



Land Use Application

20419.15.CP
 20420.15.ZAP

For Staff Use Only

Date received: 9/30/15 File number: _____
 Application type: comp plan/zone chg Fee: \$16570.00
 Zone: EFU CPO/Hamlet: Aurora Butte Villa
 Violation #: 2PAC0097-15

Applicant Information:

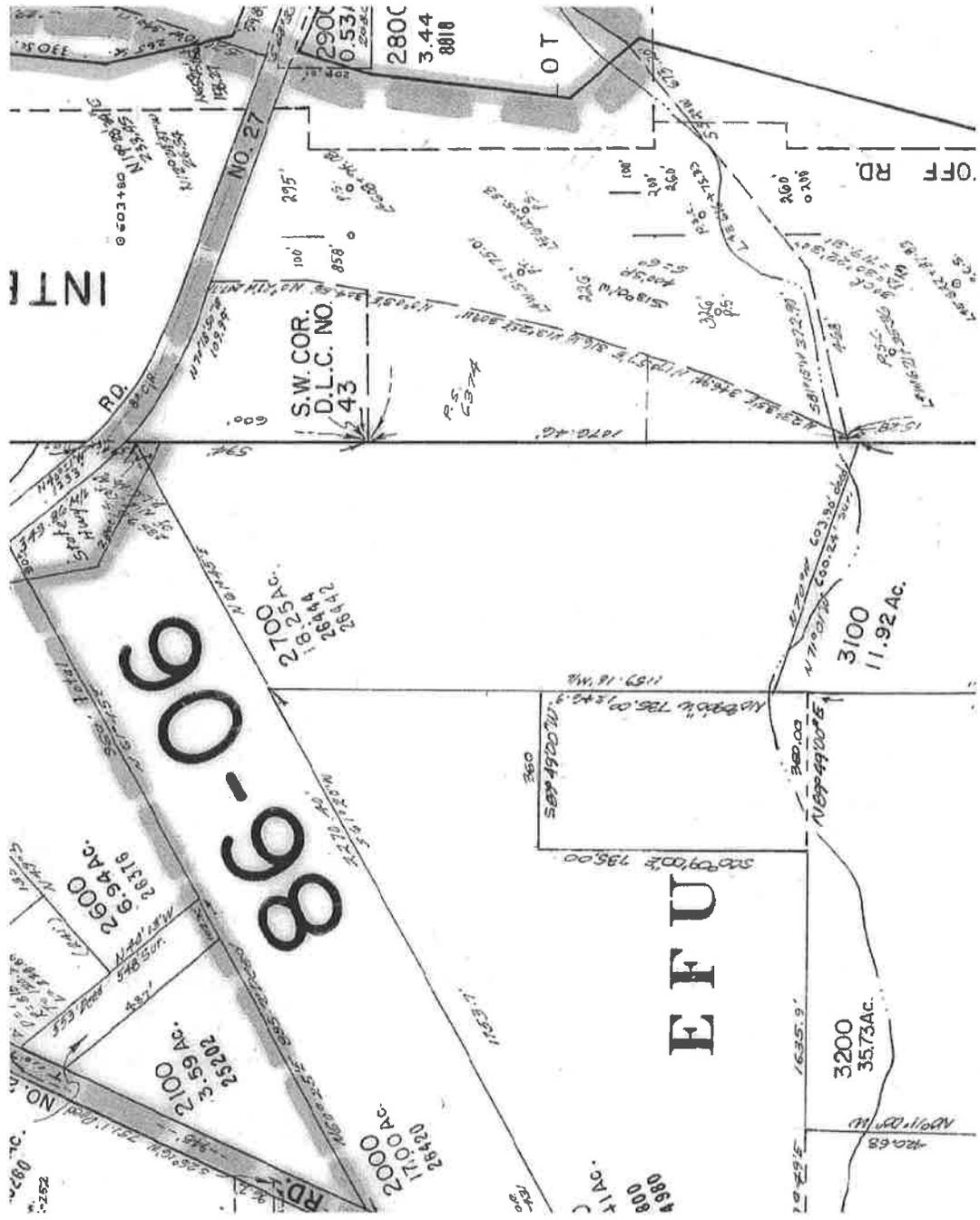
What is proposed? Proposed zone change from Exclusive Farm Use (EFU) to Rural Industrial (RI) and proposed Comprehensive Plan amendment from Agricultural to Rural Industrial (RI).
 Name of applicant: BL & DJ LLC, Attn: Jerry Jones, Jr.
 Mailing address: P.O. Box 728
 City Beaverton State OR Zip 97075
 Applicant is (select one): Legal owner Contract buyer Option buyer Agent
 Name of contact person (if other than applicant): Cardno, Attn: Read Stapleton
 Mailing address of contact person: 5415 SW Westgate Dr., Suite 100, Portland, OR 97221

Applicant #s: Wk: (503) 718-7934 Cell: _____ Email: jjones@buildlcd.com
 Contact person #s: Wk: (503) 419-2500 Cell: _____ Email: read.stapleton@cardno.com
 Other persons (if any) to be mailed notices regarding this application:

Name	Address	Zip	Relationship
Name	Address	Zip	Relationship
SITE ADDRESS:	<u>26444 NE Butteville Rd., Aurora, OR 97002</u>		
TAX LOT #:	<u>T 31 R W Section 26</u>		Tax Lot(s) <u>2700</u>
Adjacent properties under same ownership:			Total land area: <u>18.25 acres</u>
T _____	R _____	Section _____	Tax lot(s) _____
T _____	R _____	Section _____	Tax lot(s) _____
T _____	R _____	Section _____	Tax lot(s) _____

I hereby certify that the statements contained herein, along with the evidence submitted, are in all respects true and correct to the best of my knowledge.

Robert D. Lanphere, Jr. 9/23/2015 [Signature]
 Property owner's name (print) Date Owner's signature
Jerry Jones, Jr. 9/23/2015 [Signature]
 Applicant's name (print) Date Applicant's signature





SUPPLEMENTAL APPLICATION

ZONE CHANGE
(November 2011)

APPLICANT INFORMATION

Name: BL & DJ LLC, Attn: Jerry Jones, Jr. Date: 9/30/2015

WHAT IS A ZONE CHANGE?

The County Zoning & Development Ordinance (ZDO) allows for a variety of zoning districts within individual Comprehensive Plan land use designations. A zone change is a proposal to change from one zoning district to another zoning district as allowed by the Comprehensive Plan.

WHAT IS NEEDED FOR APPROVAL?

All zone change permits are discretionary and MAY be permitted after evaluation according to criteria in the ZDO. The County must make written findings to support the decision. The applicant is responsible for providing evidence to support the zone change request consistent with the criteria listed in Section 1202 of the ZDO and relevant chapters of the Comprehensive Plan.

WHAT ARE THE CHANCES FOR APPROVAL?

Staff cannot predetermine the decision on this or any application. A decision of approval or denial will only be made after the complete application is processed. This includes review of citizen and agency comments. The decision is based on criteria appropriate to this application as listed in the ordinance. In order to address the necessary criteria, the information requested in this supplemental application should be as thorough and complete as possible.

APPLICATION PROCESS

Zone change permits are subject to the Administrative Action process and public notice. Public comments received from the Community Planning Organizations (CPO), property owners, agencies and other interested parties may affect the decision on the application. Special conditions may be attached to any approvals. All Zone Change applications are reviewed at a public hearing before the County Hearings Officer who is the final county decision maker. The Hearings Officer's decision may be appealed to the State Land Use Board of Appeals. Applications which also require Comprehensive Plan Amendment will be processed by the Planning Commission and Board of Commissioners.

NOTE: A PRE-APPLICATION CONFERENCE is required prior to filing this application. For a copy of the Pre-Application Form, go to www.clackamas.us/transportation/permits.

STAFF WILL ATTACH THE FOLLOWING PERTINENT INFORMATION:

- | | |
|----------------------------|------------------------------|
| _____ Land Use Application | _____ CPO Information |
| _____ Sample Plot Plan | _____ Application Process |
| _____ ZDO Section 1202.01 | _____ Plan Criteria for Zone |

HOW LONG WILL IT TAKE TO GET A FINAL DECISION ON AN APPLICATION?

- Approximately 80 days for applications scheduled before the Hearings Officer.

COMPLETE APPLICATIONS REQUIRE THE FOLLOWING:

1. Land Use Application – Information on applicant and land involved in application.
2. Supplemental Application – Information requested on this form. Please be as complete and thorough as possible. Use additional sheets as necessary.
3. Application Fee: \$2,510.00 (Fee is nonrefundable upon decision or staff report; partial refund if withdrawn after notice; full refund if withdrawn prior to notice.)
4. Plot Plan: Drawn to scale on 8.5” x 14” or 11” x 17” paper, showing the property and your proposal.
5. Alternative Zoning Designations: Section 1202.02 of the ZDO allows the Hearings Officer to approve an alternate zoning district designation if it is determined that the applicant’s preferred designation does not comply with the approval criteria but an alternate designation does. An alternate designation may be substituted only if the public notice required pursuant to Section 1302 includes all requested designations in its description of the applicant’s proposal. Any alternative zoning designations must be specifically identified on the Land Use Application form.

JUSTIFICATION CRITERIA: See Section 1202 and other relevant ZDO sections for specific requirements. Then answer the following questions:

- A. How is approval of the requested zone change consistent with the applicable goals and policies of the Comprehensive Plan?

See Pages 11 – 16 of the attached application narrative.

- B. What public services (water, sanitary sewer, surface water management, etc.) are provided to the subject property, and are they adequate to support the level of development allowed if the zone change is approved, or are such services planned to be provided by the applicant concurrently with development?

The proposed use would be served by an on-site well and existing septic system
for wastewater.

- C. Explain why the transportation system is adequate to support the development possible if the zone change is approved. For the purposes of this standard, the following criteria are applicable:
1. The evaluation of transportation system adequacy shall include both the impact of the proposed zone change and growth in background traffic for a twenty-year period beginning with the year that a complete land use application is submitted.
 2. It shall be assumed that all improvements identified in the Clackamas County 20-Year Capital Improvement Plan, the Statewide Transportation Improvement Plan, and the capital improvement plans of other local jurisdictions are constructed.
 3. It shall be assumed that the subject property will be developed with permitted primary uses allowed in the proposed zoning district with the highest motor vehicle trip generation rate.
 4. Transportation facility capacity shall be calculated pursuant to Subsection 1007.09 of the ZDO.
 5. A determination regarding whether submittal of a transportation impact study is required shall be made based upon the *Clackamas County Roadway Standards*, which also establish the minimum standards to which a transportation impact study shall adhere.
 6. Does this proposal impact any State transportation facilities. Transportation facilities that are under the jurisdiction of the State of Oregon are exempt from this subsection. How does proposal, as it relates to transportation facilities under the jurisdiction of the State of Oregon, comply with the Oregon Highway Plan?

See Pages 17-18 of the attached application narrative and the Kittelson
and Associates, Inc. memorandum included in Exhibit I of the application
package.

- D. Is the safety of the transportation system adequate to serve the level of development anticipated by the zone change?

A safety review of an approved I-5 Farm Store was conducted with Z0393-05-C.
The proposed use will generate substantially fewer trips than this approved use.

Questions: Contact Planning & Zoning at 503-742-4500 or zoninginfo@co.clackamas.or.us.



26444 NE BUTTEVILLE RD

Clackamas County, Oregon

An Application For:
Zone Change
Comprehensive Plan Amendment
Submitted: September 30, 2015

Applicant:
LCD
c/o BL and DJ, LLC
13625 SW Farmington Road
Beaverton, OR 97007
Contact: Jerry Jones, Jr.

Prepared by:
Cardno
5415 SW Westgate Drive, Suite 100
Portland, Oregon 97221
Phone: (503) 419-2500
Fax: (503) 419-2600

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

21509650

TABLE OF CONTENTS

INTRODUCTION.....	2
SUMMARY OF PROPOSAL	0
LAND USE HISTORY.....	0
EXISTING CONDITIONS.....	2
SERVICES PROVIDED.....	3
ACCESS 3	
SURROUNDING USES.....	3
APPLICABLE REGULATIONS AND AUTHORITIES.....	8
STATEWIDE PLANNING GOALS	8
<i>Goal 1: Citizen Involvement</i>	<i>8</i>
<i>Goal 2: Land Use Planning</i>	<i>8</i>
<i>Goal 3: Agricultural Lands.....</i>	<i>8</i>
<i>Goal 9: Economic Development.....</i>	<i>8</i>
<i>Goal 11: Public Facilities and Services.....</i>	<i>9</i>
<i>Goal 12: Transportation.....</i>	<i>9</i>
STATE STATUTES AND ADMINISTRATIVE RULES (OARS).....	10
<i>ORS 197.732—Goal Exception standards.....</i>	<i>10</i>
<i>OAR 660-004-0015 Inclusion as Part of the Plan.....</i>	<i>10</i>
OAR CHAPTER 660, DIVISION 12—TRANSPORTATION PLANNING	10
<i>OAR 660-012-0060 Plan and Land Use Regulation Amendments.....</i>	<i>10</i>
CLACKAMAS COUNTY COMPREHENSIVE PLAN	11
<i>Chapter 3: Natural Resources and Energy</i>	<i>11</i>
<i>Agriculture 11</i>	
<i>Chapter 4: Land Use</i>	<i>11</i>
<i>Rural Industrial.....</i>	<i>11</i>
<i>Agricultural</i>	<i>13</i>
<i>Chapter 5: Transportation System Plan.....</i>	<i>14</i>
<i>Chapter 8: Economic.....</i>	<i>15</i>
<i>Chapter 11: The Planning Process</i>	<i>16</i>
<i>Amendments and Implementation</i>	<i>16</i>
CLACKAMAS COUNTY ZONING & DEVELOPMENT ORDINANCE PROVISIONS	16
SECTION 1202—ZONE CHANGES	16
<i>1202.03 General Approval Criteria.....</i>	<i>16</i>
CONCLUSION	18

EXHIBITS

Exhibit A	Site Map
Exhibit B	Hearings Officer Final Order (Z0393-05-C)
Exhibit C	Z0393-05-C Approved Facilities
Exhibit D	I-5 Farm Store Built Conditions (2006)
Exhibit E	15-mile Radius Area
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
13625 SW Farmington Road
Beaverton, OR 97007
Phone: (503) 718-7934
Contact: Jerry Jones, Jr., President

Applicant's Representative Cardno
5415 SW Westgate Drive
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

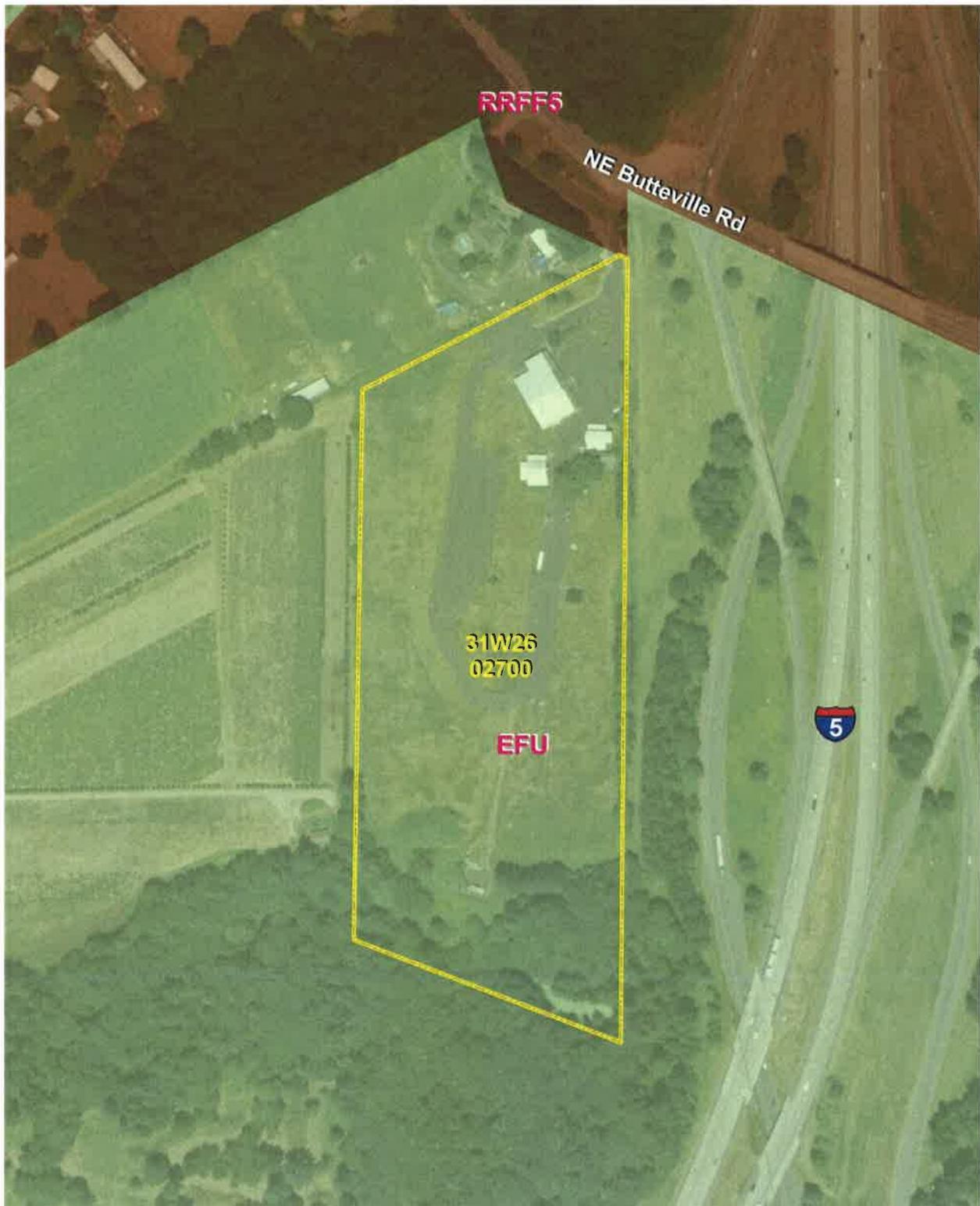


Figure 3: NE Butteville Rd Current Comprehensive Plan Designation



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:

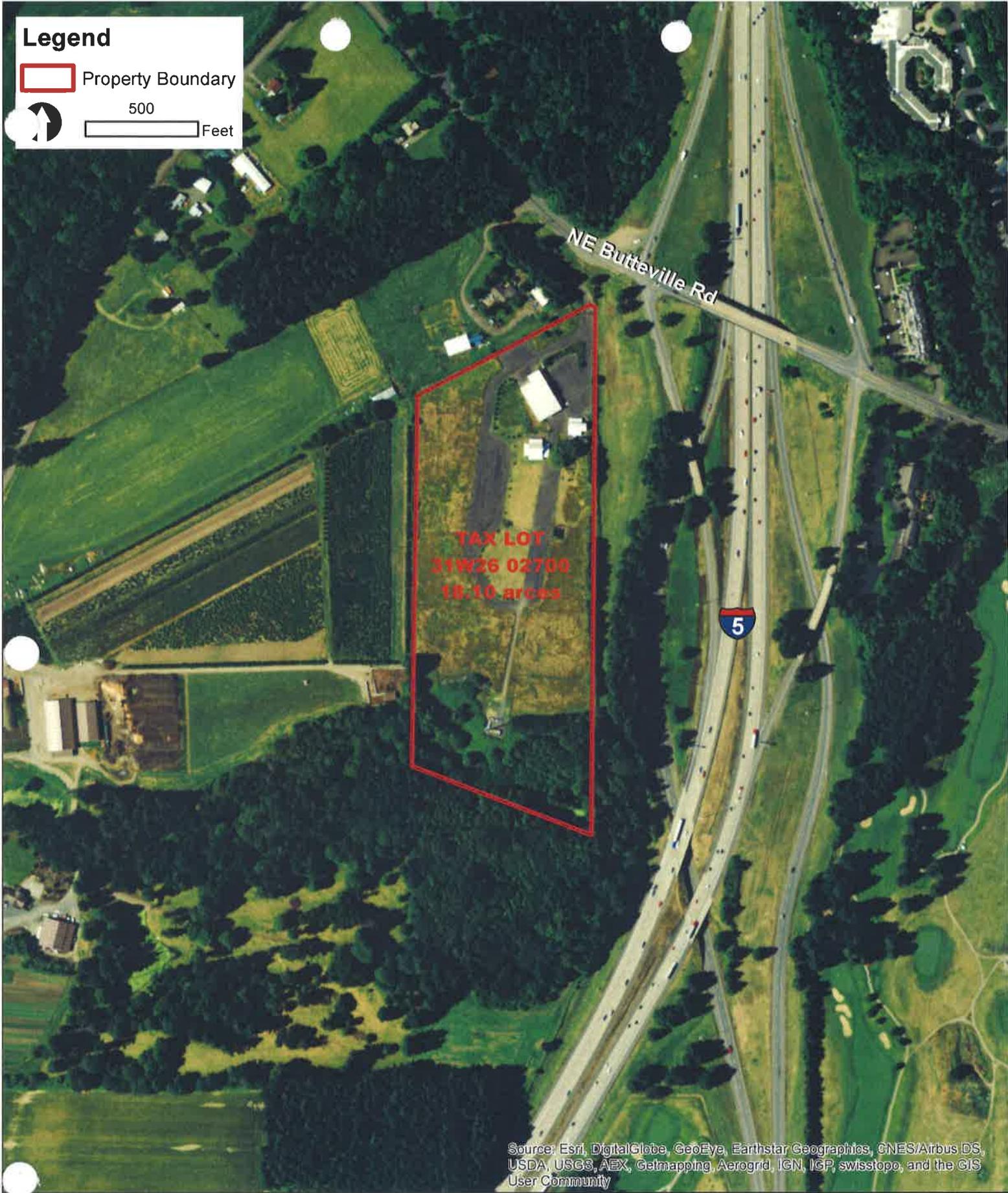
- A substantial reduction in the number of vehicular trips that could occur with the use compared to the approved I-5 Farm Store.
- As described in the application, the uses will be limited to servicing new cars and no retail sales of any kind will be allowed. Furthermore, the traffic generated by approved 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.

Legend

 Property Boundary

 500 Feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

NE Butteville Road Zone Change

Exhibit A Site Map



**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an application by David Van Doozer for a) **FINAL ORDER**
conditional use permit for a commercial use in conjunction)
with farm uses at 26444 NE Butteville Road, Aurora, in the) **Case No. Z0393-05-C**
EFU zone in unincorporated Clackamas County, Oregon) **(Van Doozer)**

A. SUMMARY

1. On May 24, 2005, Daniele Flynn Riehl filed an application on behalf of David Van Doozer (the "applicant") for a conditional use permit ("CUP") to build and operate what the applicant characterizes as an agricultural marketing and service center in conjunction with farm uses on the site. The County found that the application was complete after the applicant amended it on June 20.

a. The site is a roughly rectangular 18.25-acre parcel at 26444 NE Butteville Road; also known as tax lot 2700, Section 26, T3S, R1W, WM, Clackamas County. The site is zoned Exclusive Farm Use ("EFU") and contains high value farmland. The site is developed with a home, barn, storage building, pavilion, cell tower, storm water pond, large farm stand, crops and timber. Adjoining properties also are zoned EFU. To the west and northwest are lots containing 29, 36 and 17 acres that are in farm and/or forest use. To the south and east is the Interstate-205 right of way. A 7-acre parcel across Butteville Road to the north is zoned RRFF-5 (Rural Residential Farm & Forest - 5 acre minimum lot size) and is used for a home and farming.

b. The applicant proposes a farm stand (already permitted and under construction), accessory buildings and a farmers' market; sales, display and service of farm supplies, machinery and equipment; preparation of meat and produce grown on and off the site; storage of materials including landscape material and soil amendments; sales of fuel and fuel conversion services; and sale of non-farm items.¹ See the preliminary site plan and descriptions of the proposed use in the application narrative and exhibits. The farmers' market would accommodate up to 100 vendors beneath temporary tents. Access is proposed by means of an existing 20-foot wide easement to NE Butteville Road. Water will be provided by on-site wells. Sanitary waste will be disposed by means of a subsurface septic system. Portable sanitary systems also will be used. Storm water will be treated and detained on site and discharged to the Interstate-205 right of way.

2. On August 4, 2005, Clackamas County Land Use Hearings Officer Larry Epstein (the "hearings officer") held a public hearing about this application. County staff recommended that the hearings officer deny the application because of the lack of

¹ In Exhibit AA, the applicant withdrew the part of the application that relates to sales of natural gas, biodiesel and alternative fuels. In Exhibit DD, the applicant withdrew the part of the application that relates to services to convert vehicles to burn natural gas or biodiesel. Therefore the hearings officer does not address these uses further. This decision does not authorize them.

evidence that the site is suitable for the proposed subsurface septic system. See the Staff Report and Recommendation to the Hearings Officer dated July 27, 2005 (the "Staff Report"). The applicant responded to the findings and recommendations in the Staff Report. Six persons testified orally against the application or with questions or concerns. Other persons testified in writing. The hearings officer ordered the public record held open for a total of five weeks after the hearing to allow the parties to introduce additional written argument and evidence.

3. The hearings officer lists the major issues in dispute in the case as follows:

a. Whether and to what extent the proposed uses are permitted in the EFU zone and pursuant to what authority (e.g., as primary uses, uses subject to planning director review, or as conditional uses). Related issues include the description of "local agricultural area," the nature of agricultural products, supplies and services, the definition and amount of sales of incidental items, and other issues related to the scope of and limits on the proposed uses if they are approved. ZDO 202, 401 and 1203.01.A, ORS 215.203 and 215.283, OAR 660-033-020 and cases cited in the Staff Report.

b. Whether the physical characteristics of the site make it suitable for the proposed use, including characteristics related to soils and suitability for subsurface septic disposal systems. ZDO 1203.01.B.

c. Whether access to the site is or will be consistent with the concurrency standards in ZDO 1022.07 and will be safe. ZDO 1203.01.C.

d. Whether the proposed use will alter the character of the area in a manner that substantially limits use of surrounding properties for farm and forest purposes, and whether it will force a significant change in or will significantly increase the cost of accepted farm or forest practices on land devoted to farm or forest use. ZDO 401.07.A and 1203.01.D.

4. The hearings officer observes that the proposed complex of uses is relatively novel in the area, and the relevant law is relatively complex, ambiguous and conflicting. Although this application raises issues that are similar to issues raised in other cases and other contexts, this application raises them for the first time in this context. Reasonable people can disagree about how to construe ambiguous standards relevant to this review. Nevertheless the hearings officer concludes that the applicant sustained the burden of proof that most of the proposed uses are permitted in the EFU zone in the manner proposed or in some similar manner, subject to the feasible limits provided herein; that the site is or will be suitable for the proposed use notwithstanding certain constraints; that safe and adequate access can and will be provided notwithstanding other constraints; and that the proposed use will not *significantly* impede use of surrounding land for the primary purposes permitted in the zone or force a change in or significantly increase the cost of farm or forest practices on land devoted to farm or forest use. Therefore the CUP does or will comply with the relevant approval standards of the Clackamas County

Zoning and Development Ordinance (the "ZDO") and other applicable standards identified herein, provided the applicant complies with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use does comply in fact with those standards. Therefore the hearings officer approves the application subject to the conditions at the end of this final order based on the findings and conclusions in this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about this application on August 4, 2005. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony and evidence offered at the public hearing.

2. County planner Mike McCallister summarized the proposed CUP, reviewed the preliminary site plan and identified the uses and zoning in the vicinity.

a. The first issue is whether and to what extent the proposed uses are permitted in the EFU zone, and pursuant to what procedural authority. This issue is central to ZDO 1203.01.A. He noted that the County relied on ZDO 401.04, ORS 215.203 and OAR 660-33-0020 to provide definitions for the analysis of the uses proposed in the CUP. The County argues that each of the proposed uses --- other than essentially the growing and marketing of crops and animals raised on the site consistent with accepted farm practices in the area --- is allowed only as a use subject to planning director review and approval or as a commercial use in conjunction with a farm use, which triggers certain limits on uses and authority to impose limits. The applicant disputes that argument with regard to some uses.

i. Mr. McCallister acknowledged that there are existing and proposed farm uses on the property, (e.g., raising crops, livestock and poultry; horse stabling, training and showing) that are primary uses and not part of the CUP. A farm stand approved based on the existing farm use is approved and being built. It is not relevant except to the extent that the applicant proposes to operate it as a year-round store with produce from an area that fluctuates significantly with product availability. A cell tower on the site was approved by an earlier CUP, and the applicant does not propose to change it. Given the small area it affects, it is not significant to the application.

ii. He argued that OAR 660-33-0020 makes distinctions between "preparation" and "products or by products" that affected the County's analysis of the proposed uses, although not quite explaining how. He argued that the applicant failed to meet the burden of proving that the property will be operated *primarily* as a farm use with an intent to make a profit from farming, highlighting the various existing and

proposed non-farm activities and improvements on the site. He testified that he observed only 3 to 4 acres of the site in farm use. Because, he argued, the applicant failed to show that the primary use of the property is farm use, processing of agricultural produce and meats is not permitted on the site as a primary use under the administrative rule. It is permitted as a use subject to planning director approval, provided it complies with certain limits, including a requirement that at least 25% of the products processed on the site must be grown on the site. ZDO 401.06.B. There is not substantial evidence in the record to support such a finding.

iii. He argued that the proposed vendors' area is not a farm use, because the vendor space will be leased, making it a commercial enterprise. Also most of the vendors will not sell products raised on the site. He argued that it can be permitted only pursuant to the CUP as commercial activity in conjunction with farm use. He argued that the scale of the farmers' market area is too extensive to qualify as an incidental use.

iv. As commercial uses in conjunction with a farm use, the proposed conditional use must enhance farm enterprises in the area and have a direct relationship with farming in the local agricultural area. The term "local" is not defined. The applicant proposes a 25-mile radius for "local." See Exhibit 6 in the application. County staff recommend a maximum 15-mile radius, because the vendors identified by blue dots in the application are within 15 miles of the site. *Sandy v. Clackamas County*, 28 Or LUBA 316 (1994).

b. The second issue is whether the site is suitable for the proposed use. Mr. McCallister argued that it is, citing evidence in the record, except with regard to the capacity to accommodate a septic system. The applicant has not defined the nature and scope of the proposed uses sufficient for the County Soils Section to determine what septic requirements to apply. Until the Soils Section is able to do so, the suitability of the site cannot be determined. He responded to comments about fire flows, concluding that the issue of fire flows can be addressed in permitting, with the applicant providing supplemental water storage on site as directed by the Fire District.

c. The third issue involves access and parking. He described the proposed access and summarized written comments from County Transportation & Engineering staff. County staff conclude that adequate access exists or can be provided. Proposed parking is based on substantial evidence in the application, and County staff support that parking amount, provided that the applicant monitors parking use during farmers' market events, reports results to the planning director for a period of time and modifies the use or the parking if the director requires it based on the monitoring.

d. He concluded by recommending that the hearings officer deny the application unless the applicant provides substantial evidence that the site is suitable for a septic system for the uses proposed; in which case, he recommended that the

hearings officer approve the application subject to the conditions of approval in the Staff Report.

3. Danielle Riehl (née Flynn), Robert Sweeney and David Van Doozer testified for the applicant.

a. Ms. Riehl testified about the lack of a suitability statement or equivalent from the Soils Section. She testified that the application included a soil feasibility study application. A County soil scientist inspected test pits on the site and found the soils to be suitable generally, but could not determine the type and size of the system to require.

b. Robert Sweeney testified as a registered environmental health specialist with 28 years of experience. He testified that he did a detailed soil study that he submitted to the County in 2003. In 2004 he prepared a conceptual design for the system. Since then he has refined the design, He assumed about 2400 gallons of peak daily flow on weekends that would be collected into a dosing tank and directed through the cells of a serial drainfield to achieve an average of 1355 gallons per day into the drainfield. He assumed that the use would include meat preparation, a bakery, public restrooms, food preparation, produce processing, 15 employees and 300 customers per day. He has not discussed the plan with County soils scientists since January 2004, when there was some uncertainty about whether the County could issue the necessary permit or whether ODEQ must do so. Since then he testified that OAR 340-71 was adopted and went into effect, clearly authorizing the County to do so.

c. Ms. Riehl agreed with County staff that the findings addressing ZDO 1203.01.D are sufficient to show that the application also complies with ZDO 401.07.A based on Exhibit P. She argued that the proposed use will enhance agriculture in the local area by providing a convenient market.

d. Ms. Riehl argued that the site primarily is and will be used for farm purposes, citing to Exhibit Q. She also provided photographs of what she testified are crops, cattle, horses and timber on the site. Exhibit R.

i. She argued that the hearings officer should recognize that the *proposed* uses exist for purposes of the CUP, but the hearings officer declined to do so.

ii. The hearings officer questioned the adequacy of the evidence in support of the finding that the site does and will operate *primarily* as a farm use with an intent to make a profit from farming. Mr. Van Doozer asked the hearings officer to hold open the record to give him the opportunity to provide additional evidence.

iii. Ms. Riehl acknowledged that the site is not a traditional farm unit. But she argued that it is a farm. She admitted it is difficult to separate the elements of the farm use from the commercial activity in conjunction with farm use. But she

argued that the meat and produce preparation areas and vehicle parking and circulation areas are farm uses or essential to the farm uses. She argued that similar uses have been approved in the EFU zone in the past, albeit at smaller scales. She agreed to accept conditions of approval with changes to substitute a percentage limitation for an outright prohibition on certain non-farm products and services.

iv. She argued that OAR 660-33 does not require a specific minimum percentage of products sold on the site to be from the farm, and she objected to such a minimum as a condition of approval.² She argued that seasonal variations in productivity (among other causes) will change the percentage of the products in the farm stand that are grown on the site. That reflects the seasonal nature of agricultural products.

v. She argued that, because the farmers' market will contain vendors whose products are grown, raised or processed on the site, the whole farmers' market should count toward the farm use on the site rather than as a commercial use in conjunction with the farm use. She argued that this is consistent with Exhibit S, an opinion Ms. Riehl wrote when she was on the County Code Compliance staff. She argued the act of leasing the vendor spaces is not relevant to the classification of the use of the farmers' market.

vi. She testified that the applicant intends to take local agricultural products and prepare them into ready-to-eat foods – baked goods, processed meats and other value-added products – and sell them at the farmers' market and/or farm stand. She argued that all of this is part of the farm use, because it involves local agricultural products.

vii. She requested approval for 25% of the goods sold on the site to be "incidental," i.e., not a product of the local agricultural area, including pond supplies, landscaping ornaments, and other products County staff recommended be prohibited.

viii. She discussed plans to sell small tractors and irrigation supplies, attempting to distinguish them from similar non-farm supplies that County staff recommend be prohibited.

ix. She discussed plans to sell landscape materials such as bark dust, fertilizer, and potting soil, which County staff recommend be prohibited. She introduced Exhibits T and U to show that these materials are used in farms in the area and are sold by a local farm supplier. Mr. Van Doozer testified that he has about 3000 hydrangeas planted in a mix that includes the bark dust and soil. Ms. Riehl also argued it

² Ms. Riehl proposed a maximum 25% incidental sales limit. However she objects to the use of a minimum percentage of farm products raised/grown on the site as a limit on the value of farm products sold from the site.

should be allowed, because it is allowed in the RFFF-5 zone, as noted in Exhibit V, a zone in which farms are allowed.³

x. She argued that proposed sale of natural gas and biodiesel products should be permitted as part of the CUP, which County staff recommend be prohibited. She argued that they are used in farm operations in the area and that farmers in the area expressed an interest in using them in the future. Exhibit X. Mr. Van Doozer argued that very little of the site area would be used for fuel sales. He intends to produce biodiesel for his own use. The hearings officer expressed doubt about the adequacy of the evidence to support a fuel station and fuel conversion service as a commercial use in conjunction with a farm use given the applicable regulations and case law.

xi. She discussed plans for the dwelling on the site. The dwelling will be retained and used for residential purposes for the foreseeable future. Someday the applicant might move or remove it.

xii. She testified that the applicant would provide recommended loading spaces and submit to design review, but noted that several buildings already exist on the site, and the applicant does not volunteer to substantially change or remove them.

xiii. In response to her questions, the hearings officer opined that the application did not include group events; therefore the CUP does not authorize any. The hearings officer noted that the applicant could amend the application to include events, but, depending on the nature, number and scale of the events, such a change could require new public notice and a continued or new hearing. However the hearings officer opined that the applicant can provide live music that is accessory and incidental to the farmers' market.

xiv. She raised a concern about the breadth of recommended condition of approval 9 that requires the applicant to obtain permits before beginning operations, to which the hearings officer agreed to respond in the final order.

xv. She requested that the hearings officer state what products and services are farm products and services and what products and services are non-farm products and services. She proposed that the hearings officer limit the sales of non-farm products to 15% of total sales and limit the sales of farm products from outside the local area to 25%. She argued that the "local area" should extend 25 miles from the site.

4. Reginald Kenney testified on behalf of Wilcox Farms, which owns Edelweiss Farms on Danbrook Road, a large commercial egg production facility. He objected to the proposed poultry facility, which is shown on the preliminary site plan as a 180-foot x 60-foot structure. He argued that the design of the facility would not protect against the

³ Mr. McCallister noted that the Board of Commissioners construed the RFFF-5 zone to allow landscape supplies, but expressly said that the interpretation did not apply in the EFU zone. See Exhibit V.

spread of disease or bio-terrorism. The hearings officer explained that, under state law, the County cannot regulate the poultry facility for purposes of land use, because it is a farm use.

5. Tony Holt testified as a director of the Charbonneau Homeowners' Association and resident of Charbonneau. He testified about the Associations' efforts to limit certain development. He also expressed concern about the proposed use, because of the curve west of the site that constrains sight distance on Butteville Road. He favored the limits recommended by County staff in this case. He argued that the 20-foot wide driveway to the site is not adequate or safe.

6. Patricia and Duane Wamsher testified as the owners of a 17-acre parcel on the west side of the site. They farm their property. They are concerned about the size of the farm store.⁴ They were concerned about the impact of refrigerated semi-trailers on the driveway and Butteville Road as it relates to views and noise at their home. They argued against allowing use of the easement to Butteville Road, opining that the applicant should have to obtain deeded frontage to the road where he can have access. They objected to the impact of the proposed use of the privacy and security of their home and the increased noise from traffic and people and loss of trees along their common boundary with the site. They expressed concern about the restrooms and the safety of septic effluent given that they draw drinking water from a well. They expressed concern about the size of the poultry barn and confirmed that the applicant does not intend to slaughter poultry at the site. They testified that there is an ongoing dispute about the precise location of the common property line. They discussed the requirement for three loading berths at the site and their concerns about the extent of the commercial activity that they will be able to observe on the site.

7. Anna Wagoner testified against the application. Although she raised the issue of an unresolved grading violation on the property (see Exhibit N), her principal objections concerned the safety of the transportation system. She argued that development and traffic volume have increased significantly on Butteville Road in the last ten years. She described the peak hour traffic on weekend afternoons, and argued that the traffic study is not adequate, because it did not address traffic performance during those hours.

8. Lindsay Hughes testified for the purpose of determining how long the hearing officer would hold open the record. The hearings officer described his predisposition regarding the open record period and invited public response. No one responded.

9. There was additional discussion by Ms. Riehl, Mr. McCallister, Mr. and Mrs. Wamsher and the hearings officer, but it did not include new evidence nor raise new issues. Mr. and Mrs. Wamsher continued to argue that the evidence is inadequate to

⁴ According to Exhibit F, the farm stand building contains 7200 square feet. In Exhibit DD, Ms. Riehl states that it contains 9600 square feet. The record does not resolve the difference in testimony.

support the necessary findings under ZDO 1022.07, because the application did not include an adequate traffic study. For instance, the applicant did employ traffic counters to establish a baseline of existing use. The hearings officer invited the Wamshers to introduce substantial evidence regarding traffic during the open record period.

10. At the end of the public hearing, the hearings officer ordered the record held open for a total of five calendar weeks. The hearings officer held open the record for an initial two weeks for all parties to introduce new evidence and argument; for a subsequent two weeks for all parties to introduce evidence and argument in response to evidence and arguments submitted the prior to two weeks; and for a subsequent week for the applicant to submit a closing written argument without new evidence. The record in this case closed on September 15, 2005.

C. DISCUSSION

1. The Staff Report is intended to identify the applicable standards for the application, so that the parties know what standards apply.

a. The hearings officer finds that the approval criteria identified in the Staff Report are the applicable approval standards for the application, and the hearings officer adopts that list as his own.

b. The hearings officer also finds that ZDO 1303 contains relevant procedures and standards for certain conditions of approval. The Clackamas County Roadway Standards and Tables V-1 through V-5 of the Transportation Element of the Comprehensive Plan are incorporated into the ZDO by reference and are also relevant. To the extent that the ZDO implements corresponding provisions of Oregon Revised Statutes ("ORS"), that law, related Oregon Administrative Rules ("OAR") and the case law relating to them also are relevant as described more herein and in the Staff Report. The County decision must comply with the applicable standards in the ZDO unless superseded by applicable state law.⁵

⁵ ORS 215.416(8)(a) provides as follows:

Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the County and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the County as a whole.

However the hearings officer also observes that, on appeal, the Land Use Board of Appeals shall reverse or remand a local government decision that is "contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements." ORS 197.829(1)(d). Therefore state statutes and administrative rules regarding agricultural land also are relevant to that extent.

2. The Staff Report contains findings that the application does or can comply with the applicable approval standards with one exception subject to the recommended conditions of approval. The hearings officer agrees with and adopts the affirmative findings in the Staff Report as his own except to the extent that they are inconsistent with the following discussion or conclusions.

3. There is no dispute in the record that the proposed uses do or can comply with most of the applicable approval standards for the application. The principal disputes involve the classification of and limits imposed on the proposed land uses as a result.⁶ The hearings officer prefaces the discussion by saying that the variety of proposed uses and their interrelationships makes the analysis particularly difficult in light of the ambiguities in many of the relevant regulatory standards and terms.

4. The first dispute involves the classification of the proposed uses on the site pursuant to ZDO 1203.01.A, quoted in the prior footnote.⁷

⁶ ZDO 1203.01 provides as follows:

The Hearings Officer may approve a conditional use pursuant to Section 1300 if the applicant provides evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates that the proposed use satisfies the following criteria:

- A. The use is listed as a conditional use in the underlying zoning district.
- B. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.
- C. The proposed development is consistent with Section 1022 and safety of the transportation system is adequate to serve the proposed development.
- D. The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the underlying zoning district.
- E. The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.

⁷ The hearings officer understands that the proposed uses include the following, which the hearings officer classifies in the subsequent findings:

- Farming. The hearings officer mentions this land use for the sake of being thorough. Farming, *per se*, is not subject to regulation pursuant to the ZDO. However the ZDO and other standards are relevant to what qualifies as a "farm use."
- A farm stand. Although sometimes referred to in the record as a "farm store," the hearings officer understands from its repeated description as such that it is a farm stand.
- A farmers' market consisting of up to 100 tents for lease.
- Preparation of meats (but not slaughtering) and farm crops (e.g., produce, grains, nuts, fruits).
- Sales and service of agricultural supplies, machinery and equipment, including outdoor display and indoor and outdoor materials storage.
- Processing of farm products grown on and off the site into value-added products such as cooking fruit to make pies and jam, carding fleece into yard, and blending berries with other ingredients to make drinks or foods.
- Sale of non-farm items and farm products from outside the local agricultural area in several of the foregoing (which the hearings officer discusses in the content of the associated use).

a. Farm use. ZDO 401.04 lists the primary uses permitted in the EFU zone on high value farm land, including “farm use” consistent with ORS 215.203.⁸ Substantial evidence in the record reflects that the applicant is using the site for farm use.⁹ See particularly the photographs and illustrations and volumes of planted crops, ferns, flowers, etc. (including their coverage as illustrated on the site plan) in Exhibits Q, R and AA and the testimony by Mr. Van Doozer and Ms. Riehl. Although neighbors dispute the extent of the farming on the site, and County staff dispute whether the primary purpose of the site is to obtain a profit in money from the farm use of the site, the hearings officer is persuaded that the applicant does use the site for farm purposes. The hearings officer addresses the primary purpose of the use of the site in the findings regarding the preparation facility.

b. The farm stand. ZDO 401.04.H allows “farm stands” as a primary use on low or high value farmland in the EFU zone. However there are disputes about what the farm stand can sell in this case.

i. The applicant argues that the proposed farm store is a farm stand to the extent that it sells agricultural products from the site and local agricultural area.

⁸ ZDO 401.03.B incorporates ORS 215.203(2)(a), which defines “farm use” as follows in relevant part:

[T]he current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. “Farm use” includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. “Farm use” also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. . . “Farm use” includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.

ORS 215.203(2)(b) provides that “Current employment” of land for farm use includes the following:

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(x) and 215.283 (1)(u);
(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

ORS 215.203(2)(c) defines “accepted farming practice” to mean:

A mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

⁹ Substantial evidence is evidence a reasonable person would rely on in reaching a decision. *Carsey v. Deschutes County*, 21 Or LUBA 118, *aff’d* 108 Or App 339, 815 P2d 233 (1991).

The applicant concedes that some of the sales from the farm store will involve non-farm products and farm products from outside the local agricultural area. The applicant proposes that no more than 25% of the gross value of products sold at the store will be for non-farm products and products grown or raised outside the local agricultural area, and that no more than 15% of gross sales will be for non-farm products. The applicant argues that the 25% cap is consistent with the standards for a farm stand.¹⁰

ii. County staff agree with the applicant that the proposed farm store is a farm stand and thus a primary use in the EFU zone, subject to the terms of the definition of "farm stand." But staff recommend a limit of 15% on gross sales of incidental items (i.e., products from the stand that were not raised/grown on the site or in the local agricultural area or are non-farm products). Staff argue that this cap is appropriate based on the following:

"[D]ue to the very large scale of the proposed facility, variety of produce, crops and livestock to be sold and range of other proposed services... [T]hese limitations are necessary to ensure the proposed use primarily serves the local agricultural area, does not become a regional draw, and does not draw the non-farming community on-site for sales and services... The County may regulate or limit commercial activities that are in conjunction with farm uses more restrictively than required by State law. It is appropriate to do so when the proposed uses include a range of sales, services and products that may be purchased for non-farm use..." p. 10, Staff Report.

County staff also point to precedents in at least three recent County decisions for a cap of 15% or less on incidental sales involving commercial uses intended to serve the local agricultural area.¹¹

¹⁰ ZDO 401.03.I defines "farm stand" as follows:

A structure designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of the incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and the farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

This definition is substantively identical to the one in ORS 215.283(1)(r). A farm stand is a permitted use in the EFU zone on low or high value farmland. ZDO 401.04.H.

¹¹ In the final order in File No. Z0011-00-C (Dorie Feed Store), the hearings officer imposed a 10% cap on gross sales of non-farm products at a store that was allowed as a commercial activity in conjunction with a farm use in the RRF-5 zone.

iii. The hearings officer observes that, on one hand, the applicant is proposing a farm stand, and that stand should be subject to the standards that apply to it. That is, each proposed use should be considered separately, and evaluated relatively independent of other proposed uses for the site. This is the applicant's approach. On the other hand, the applicant is proposing much more than a farm stand on the site. Therefore it could be argued that all of the proposed uses on the site need to be considered together as a whole, and that the impact of the sum of the proposed uses may be greater than their constituent impacts considered individually. This is the basis of the County staff's approach. Each approach has merit in that each is based on reasonable logic and certain reasonable assumptions.

iv. The hearings officer is aware of the overriding legislative goal served by ZDO 401: to preserve agricultural use of agricultural land consistent with Statewide Planning Goal 3. Also see ORS 215.243 and Board of Commissioner's Order 01-179 regarding File No. Z0585-00-I.¹² It is reasonable to be concerned that a multiplicity of uses on a given site could detract from that goal, particularly when the applicant proposes to push the edge of the envelope (e.g., regarding the limits of the "local agricultural area"). But if proposed uses do or can and will fit into that envelope, they are primary uses, and the hearings officer is not aware of any legal authority for restricting those uses more than authorized by the plain meaning of the unambiguous words in the law.

v. The hearings officer finds that the farm stand on the site is a "structure designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee based activity to promote the sale of farm crops or livestock sold at the farm stand." Therefore, based on the plain meaning of the unambiguous words in ZDO 401.03.I, the farm stand remains a farm stand provided not more than 25% of the total sales from the farm stand are for incidental items and, given the applicant's proposal in this case, not more than 15% of

In the final order in File No. Z0484-00-C (Lyon), the applicant agreed to limit sales at a proposed store in the EFU zone to a specific list of goods that the hearings officer found served the local agricultural area exclusively, allowing an unspecified, incidental amount of sales of other products.

In the final order for File No. Z0775-02-C (Hammons Farm Stand), Hearings Officer Turner imposed a 15% cap on the incidental sales at a farm stand in the RRF-5 zone. See condition 3 and the discussion at pp. 4-6 of that final order, incorporated herein by reference.

In each of these decisions, the hearings officer required the applicant to maintain records substantiating the source and its location and the nature and value of all products sold and to report certain results to the planning director periodically or when requested.

¹² In the Board of Commissioner's Order 01-179 regarding File No. Z0585-00-I, the Board construed "farm use" in the EFU zone to be "narrower" than use of the same term in the RRF-5 zone. Exhibit V.

total sales from the farm stand are for non-farm products.¹³ The structure is not suited or intended for banquets, public gatherings or public entertainment.¹⁴ The hearings officer is not persuaded that the County can legally restrict sales of incidental items to less than 25% of total sales at a farm stand based on the plain meaning of the unambiguous words in ZDO 401.03.I.¹⁵

(A) The hearings officer construes the words “incidental items” in ZDO 401.03.I to mean any non-farm products and products that were not grown or raised within the local agricultural area.

(B) The ZDO does not define the term “local agricultural area.” The hearings officer construes that term to mean the geographic area within which similar accepted agricultural practices, suppliers and markets are used to raise, produce and market similar products in roughly similar physical settings. Often one such area is separated from another such area by distance, intervening land use uses or significant physical obstacles and/or such an area can be centered around some market opportunity or resource. Local agricultural areas for different products may differ.

(C) In this case, the hearings officer finds that the applicant did not bear the burden of proof that the “local agricultural area” for the farm stand proposed on this site includes farms more than 15 miles from the site.¹⁶

(1) All of the farms identified in Exhibit 6 of the application narrative are within roughly 15 miles of the site and half are within five miles.

(2) The applicant failed to show that farms beyond a 15-mile radius are “local” in question in terms of accepted agricultural practices, suppliers, markets, physical or other relevant characteristics. The applicant did not show that selling crops from more distant farms benefits the local agricultural area where “local” means:

1. relating to place.

¹³ The hearings officer can impose the additional 15% cap on incidental sales of non-farm goods in this case, because the applicant proposed such a cap.

¹⁴ The hearings officer finds that use of the farm stand to make and sell value-added products using products of the farm on the site and in the local agricultural area is part of the farm use. However to the extent that the value-added products are made from products from outside the local agricultural area, they are incidental goods and/or part of the commercial use in conjunction with farm use.

¹⁵ A lesser cap would emphasize sales of more local farm products. But the law quoted in the footnote above is not ambiguous about the cap amount, and it does not authorize the County to reduce that amount.

¹⁶ It is possible to do so; the applicant simply did not do so in this case. Contrast the record and result in this case with the record and result in File No. Z1039-00-C (Casey) (discussed more in the next footnote).

2. of, characteristic of, or confined to a particular place.
3. restricted; narrow; confined...".¹⁷

(3) Without additional substantial evidence of a relevant relationship between the site and more distant agricultural areas, the hearings officer finds that more distant areas are not local to the agricultural area in question, in part, because they are separated from the site by significant distance and barriers (e.g., rivers, highways, urban development and other physical features). Therefore, even if sales at the site involve farm products, they are incidental sales for purposes of ZDO 401.03.I if the products were not raised or grown within a 15-mile radius of the site.¹⁸

vi. There is some dispute about whether sales of certain products or byproducts at the farm stand (or farmers' market) qualify as part of the farm use. Based on the plain meaning of the words in ORS 215.203(2)(a), a farm use can include preparation of products or by-products of farm use under certain circumstances.¹⁹

(A) The hearings officer finds that sales of goods that are prepared from farm products grown or raised on the site or in the local agricultural area are part of the farm use of the site, based on OAR 660-033-0020(7) and ORS 215.203(2)(a).²⁰

¹⁷ WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE (1966). Based on this definition, the hearings officer finds an applicant must describe and substantiate with some particularity the basis for including in the "local agricultural area" farms that are more distant. In the case of File No. Z1039-00-C (Casey), the local area was larger because the product being processed was alpaca wool, which the record in that case showed included as an accepted agricultural practice collection of wool from a larger area, because the alpacas are an exotic animal that are distributed widely throughout a large area. The hearings officer is not persuaded that the same rationale exists in this case, because the applicant can and does buy the more common produce, fruits and other farm products he sells from farms within a smaller area.

¹⁸ In the final order in File No. Z0775-02-C (Hammons Farm Stand), Hearings Officer Turner defined "local agricultural area" as farms within an *average* of ten miles of the site, based on the dollar amount of farm products bought from each farm. However that definition introduces a certain amount of complexity to monitoring. In this case the hearings officer finds a fixed radius of 15 miles is more certain and easier to enforce and warranted by the multiplicity of uses on the site. A 15-mile radius also includes an area more than twice as large as a fixed 10-mile radius (706 sq. miles vs. 314 sq. miles), so it allows access to more farm land in the local area for marketing products and byproducts as part of the farm use on the site.

¹⁹ ORS 215.203(2)(a) provides as follows in relevant part:

... "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use...

²⁰ OAR 660-033-0020(7) was amended in 2004 to read as follows. No similar language exists in the ZDO, but the OAR reflects the vote of the Land Conservation and Development Commission about the meaning of term "farm use" in relation to Statewide Planning Goal 3 (Agriculture).

(B) There is a dispute about whether sale of products or byproducts of farms outside the local agricultural area and value-added goods that are prepared from them are incidental sales for purposes of the farm stand in light of OAR 660-033-0020(7)(b). No court has addressed the issue, based on the hearings officer's review.

(1) The applicant relies on OAR 660-033-0020(7)(b) to argue that the farm use of the site includes preparation and marketing (e.g., sale) of any product or byproduct of a qualifying farm situated anywhere.

(2) OAR 660-033-0020(7)(b) says that "farm use" includes the preparation and marketing of any product or byproduct raised on a farm *situated anywhere*, as long as the property where the goods are prepared is used for the primary purpose of making a profit in money from the farm use of the land.

(3) The hearings officer finds that the administrative rule is ambiguous because it appears to conflict with the definition of "farm stands" in ORS 215.283(1)(r) (and its mate in the ZDO), which clearly limits the sale of products to those raised on the property or in the local agricultural area. See footnotes above. It also conflicts with ORS 215.283(1)(u) (and its mate in ZDO 401.06.B(1)), which clearly requires at least 25% of the products at a facility for processing farm crops to be from the farm operation where processing occurs.

(4) Given the ambiguity created by this apparent conflict, the hearings officer considered the context of the administrative rule. That context begins with strong legislative policies to protect farm land. But the subsequent exceptions and qualifications reflect multiple priorities, and the testimony attributed to DLCD staff Ron Eber regarding the rule reinforces that conclusion. The result is that the hearings officer cannot determine the meaning of the administrative rule based on the context.

(5) The hearings officer considered the legislative history of the administrative rule in the record, which is limited to a characterization of testimony by Mr. Eber about his agency's intention not to require prepared products and

-
- (a) "Farm Use" as that term is used in ORS Chapter 215 and this division means "farm use" as defined in ORS 215.203.
 - (b) As used in the definition of "farm use" in ORS 215.203 and in this division:
 - (A) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, composting or packaging of the products or by-products; and
 - (B) "Products or by-products raised on such land" means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.

byproducts to be from within a given area so as to unburden farmers. However the hearings officer finds that LCDC did not intend the ambiguity in OAR 660-033-0020(7)(b) to be construed in a way that would conflict with the plain meaning of the words in ORS 215.283(i)(r) or (u), because neither the rule nor Mr. Eber's testimony address those provisions. Therefore resort to legislative history does not resolve the ambiguity.²¹

(6) The hearings officer considered common rules of statutory construction to resolve the dispute, including the following: statutes take priority over administrative rules; statutes and administrative rules take priority over County rules that address farm land; and statutes and rules should be construed to be consistent and to apply to the extent possible. To be consistent with the plain meaning of the unambiguous words in ORS 215.283(1)(r) and (u), the hearings officer construes OAR 660-033-0020(7)(b) to allow the following:

(I) Sales of products and byproducts of farm crops from outside the local agricultural area that, when combined with other incidental sales, do not exceed 25% of the gross sales from the farm stand and farmers' market; and

(II) Preparation of farm products and byproducts grown or raised anywhere; provided, at least 25% of the value of the goods prepared in the facility are grown or raised on the site on an annual basis; and, the site is being used for the primary purpose of obtaining a profit in money from farm use.²²

(7) The hearings officer notes that processing farm crops in the EFU zone is not allowed as a conditional use. ORS 215.283(2)(a) and ZDO 401.07.B(1).

vii. A condition of approval is warranted pursuant to ZDO 1303.09.A and B(1) to require the applicant to record the value of all goods sold in conjunction with the farm stand (and the farmers' market and processing facilities), including products, byproducts, processed and prepared goods raised or grown on a farm or created from those farm goods and non-farm goods (i.e., goods that were not raised or grown on a farm or created from those farm goods). The applicant agreed to comply with such a condition. Although neighbors disputed the applicant's credibility, the hearings officer is not persuaded that the applicant will not comply with such a condition.

²¹ DLCD's participation in this case might have helped explain away the conflict. This particular issue took an inordinate amount of time for the hearings officer to resolve, and the hearings officer continues to harbor uncertainties regarding the administrative rule. The hearings officer regrets the decision took so long to issue, and apologizes to the parties for the delay.

²² In effect the hearings officer finds that LCDC exceeded its authority in adopting part of the administrative rule, because it conflicts with the plain meaning of the unambiguous words in the statute. Of course the hearings officer does not have jurisdiction over LCDC or DLCD. But to make this decision, the hearings officer must construe the rule in light of the statute. That construction is not entitled to deference by LUBA or the courts; it is a question of law.

(1) Such records should identify clearly and in a manner that can be reproduced and verified readily where all farm goods originate (i.e., products, byproducts, processed and prepared goods raised or grown on a farm or created from those farm goods). The record should include a list of the relevant farms and their location on a scaled map. The applicant should be required to show by means of these records that not more than 25% of the gross value from the farm stand is derived from the sale of non-farm goods and goods grown or raised (or created from those farm goods) on a farm more than 15 miles from the site (measured in a straight line from the closest point on the site) nor more than 15% of the gross value from the farm stand is derived from the sale of non-farm goods. The applicant should be required to maintain and provide these records to the planning director at least annually or more often if requested by the planning director.

c. The Farmers' Market. ZDO 401.04.H allows "farm stands" as a primary use in the EFU zone. ZDO 401.07.B(1) allows commercial activities in conjunction with farm use (other than processing farm crops) as a conditional use in the EFU zone. There is a dispute about whether the farmers' market qualifies as one or the other kind of use.

i. The applicant argues that the proposed farmers' market is a farm use because it includes a qualifying farm stand. That is, the applicant argues that some number of the maximum 100 vendors in the farmers' market will sell farm goods grown or raised on the site and on farms in the local agricultural area. Therefore the farmers' market is a farm stand. The applicant will ensure that not more than 25% of the gross sales will be from non-farm goods and goods not grown or raised in the local agricultural area. Ms. Reihl highlighted Exhibit S in this regard, which is a letter she wrote regarding an unrelated farm stand at a different location in the EFU zone when she was employed in the Clackamas County Community Environment Division. Faced with a noncompliant farm stand, she offered to allow the property owner to treat income from the several vendors there as a unit rather than separately. The other alternative she offered to remedy the violation was to require each vendor to show that not more than 25% of their sales are incidental (i.e., from non-farm goods and goods not grown or raised in the local agricultural area). She argues the hearings officer should rely on this precedent to treat the farmers' market as a unit rather than as up to 100 individual vendors.

ii. County staff respond that the farmers' market is inherently a non-farm use, because it results in income derived from something other than growing or raising farm goods: leasing land and sales facilities. It is inherently commercial in nature. Also there is no assurance that the market always will include farm goods grown or raised on the site. County staff argue that the farmers' market is permitted only as a conditional use. County staff recommend that the hearings officer approve the farmer's market as a conditional use, subject to conditions limiting the source of the goods sold to farms within a 15-mile radius, and limiting the goods to farm products, byproducts and goods largely processed from them.

iii. The hearings officer finds that the applicant failed to meet the burden of proof that the proposed farmers' market will be a farm stand. What the applicant provided in the way of evidence is largely speculative or preliminary in nature. The farmers' market does not exist. The applicant has not provided substantial evidence that any particular vendors plan or have executed any letters of intent or similar commitment to lease space. The applicant has not identified crops from any particular farms in the area that will be marketed at the farmers' market. The applicant expects, perhaps reasonably, that if the farmers' market is approved, vendors from the local agricultural area will appear in sufficient numbers and with sufficient goods to maintain the market as a farm stand. Similarly the applicant expects, perhaps reasonably, that the applicant will offer goods for sale at the farmers market that were raised or grown on the site. But there is not sufficient substantial evidence in the record to support the necessary findings to that effect, particularly given the scale of the proposed farmers' market. The hearings officer can make reasonable inferences from substantial evidence in the record, but generally, unsupported assurances by the applicant or the applicant's representative that an applicable standard will be met are not substantial evidence that the proposal complies with the standard. *Wuester v. Clackamas County*, 25 Or LUBA 425, 437 (1993).

iv. The hearings officer agrees with Staff Report that the proposed farmers' market qualifies as a commercial use in conjunction with farm use for purposes of ZDO 401.07.B(1), provided that it meets the test in *Craven v. Jackson County*, 308 Or. 281, 289, 779 P.2d 1011, 1015 (1989), that the commercial activity "enhance[s] the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates." 308 Or. at 289.²³

v. The hearings officer also largely agrees with Staff Report that a farmers' market enhances the farming enterprises of the local agricultural community to which the site relates only if the goods offered for sale or display primarily are grown or raised in the local agricultural area or are created primarily of such goods.²⁴ However, based on *Craven*, some allowance can be made for incidental sales without violating the law. Therefore the hearings officer finds that the farmers' market should be allowed to include some incidental sales of non-farm goods and farm goods that were not raised or grown in the local agricultural area. There is no adopted standard in the ZDO, OARs or

²³ The hearings officer also was not persuaded that the farmers' market cannot be a farm stand simply because it consists of leased land and hardware. Marketing farm goods can be a farm use. ORS 215.203(2)(a). If an accepted agricultural marketing practice in a local agricultural area includes leasing land off the farm for sale of farm products and byproducts or products prepared from them, it is a farm use. The applicant in this case did not offer substantial evidence that farmers' markets are an accepted agricultural marketing practice in this area, although the hearings officer is familiar with such markets in urban areas.

²⁴ It is not the vendors but the goods for sale that must come from the area. County staff recommended a strict prohibition on sales of non-farm goods and goods from beyond the local agricultural area. However they did not provide a rationale for such a strict prohibition in light of the incidental sales allowed at other commercial uses in conjunction with farm use, and the 25% incidental sales allowed in a farm stand.

ORS for how much incidental sales is too much. The hearings officers have imposed a 15% cap on such sales for other commercial uses in conjunction with farm use. Although there is nothing magic about that number, it ensures that at least 85% of the sales are for farm goods from the site and the local agricultural area, which sufficiently enhances farming in the area to pass muster under *Craven*.

vi. The same sort of recordkeeping and reporting should apply to the farmers' market as applies to the farm stand, provided that the cap on incidental sales shall be 15%.

(1) It is not clear from the record how the applicant intends to undertake such recordkeeping of sales by vendors in a way that is verifiable. There will be potential for abuse, given the many vendors and, from the hearings officer's experience at other farmers' markets, the common use of cash without receipts. 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.

(2) The applicant should be allowed to reduce the size of the proposed farmers' market without amending the conditional use permit, because it will reduce the impacts of the use.

d. Preparation facility. The applicant proposes to clean, sort, cut, package and temporarily store a portion of the meats and produce sold in the farm stand and farmers' market in a proposed 4960-square foot building along the east setback line. ORS 215.283(1)(r) and ZDO 401.06.B(1) allow a facility for processing farm crops subject to certain standards as a use subject to planning director review. OAR 660-033-0020(7) allows preparation as a "farm use" subject to certain standards. The applicant and the County dispute how to classify the preparation facilities.

(1) Based on the construction of OAR 660-033-0020(7) adopted above, the applicant can prepare farm products and byproducts grown or raised outside the local agricultural area as a primary (i.e., farm) use; provided, at least 25% of the weight or value of the goods prepared in the facility are grown or raised on the site on an annual basis (ORS 215.283(1)(r) and ZDO 401.06.B(1)); and, the site is being used for the primary purpose of obtaining a profit in money from farm use (OAR 660-033-0020(7)).

(2) There is a dispute about whether preparation will be "only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land." OAR 660-033-0020(7)(b).²⁵ County staff conclude that there is too little

²⁵ The administrative rule is ambiguous in several ways. It could be read to allow processing only if the site of the processing activity is used for primary purpose of making a profit from its use for farming. That construction would allow processing facilities only as a temporary use, because the land where it is situated

evidence to support such a finding. The applicant made an effort to fill that gap at and after the hearing; County staff did not respond to the new evidence.²⁶ Neighbors disputed the applicant's evidence.

i. On the one hand, the hearings officer finds that there is substantial evidence in the record that the site now is being used for farming, based on Exhibits Q, R, AA and DD. The photographs in Exhibits R and AA and the table in Exhibit Q show that much of the site is cultivated or used for farm purposes (including the woodlot that also is used to grow mushrooms). The tax return in Exhibit AA appears to show that the applicant's business generated annual gross sales of \$121,000 and a net profit of about \$56,000 in 2004. Based on ORS 215.203(2)(b)(F), the land under the farm stand and the processing building is in farm use. Arguably the land beneath the farmers' market area is in farm use to the extent that the vendors sell products or byproducts grown on the site and in the local agricultural area. Although neighbors disputed the applicant's primary purpose, their testimony was not persuasive to the hearings officer.

ii. On the other hand, the hearings officer finds that some of the evidence is ambiguous. On its face, the tax return is for a business known as the I-5 Farm Store, Inc. with a listed address on Second Avenue in Canby. It is not clear whether that is the farm on Butteville Road, but the hearings officer assumes that it is based on the text on p. 1 of Exhibit AA. The return lists supplies of \$65,000. It is not clear what that expense is for. To the extent that it is for farm goods purchased from off the site for resale, it would affect the analysis. Similarly it is not clear how much of the income from the property will be generated from the sale of products grown or raised on the site (or created from them) as opposed to rent and income from products not raised or grown on the site. Buildings, parking, storage and vehicle circulation occupy more than 4 acres of the site. Some aspects of the farm operation, e.g., the poultry barn, may be impracticable, based on the testimony of an expert in such matters. Moreover the poultry barn would be isolated from other aspects of the farm by the proposed 3.67-acre graveled area and landscape storage. Lastly the poultry barn does not exist, and there is no evidence in the record that its existence is reasonably certain at any time. The applicant proposed 3.67 acres of gravel-covered display area as part of the conditional use (see p. 4 of the application narrative), although its limits are not apparent from the preliminary plan. There is a lot going on other than traditional farm uses on the site.

iii. Although a very close question, due to the uncertainties in the record, the hearings officer concludes that the applicant did not sustain the burden of proof that preparation is occurring only on land being used for the primary purpose of

must be used for farming most of the year. However the hearings officer finds that such a construction is unreasonable, because there was no suggestion in the legislative history that that was the intent of LCDC, and processing facilities typically are of a permanent nature in the experience of the hearings officer. The hearings officer construes the word "land" in the rule to refer to the farm operation as a whole.

²⁶ A timely staff response to new evidence on disputed issues would assist the hearings officer.

obtaining a profit in money from the farm use of the land. After removing 4+ acres of buildings and pavement and almost 4 acres of gravel surface, only about 10 of the 18 acres are available for farm use, and some of that is wooded. The hearings officer cannot determine the share of the income that will come from raising or growing farm products on the site. Although some of the structures qualify in whole or in part as farm uses, the hearings officer is not persuaded that income from growing and raising farm products and byproducts will exceed income from the conditional uses and preparation facility, in which case the land is not being used for the primary purpose of obtaining a profit in money from the farm use of the land.

(A) The hearings officer concludes that the proposed preparation facility is permitted only as a use subject to planning director review. Therefore at least 25% of the goods prepared must be from the applicant's farm operation. ZDO 401.06.B(1) and ORS 215.283(1)(r). Such a limit is feasible, because the applicant can control the source and amount of prepared goods, and recordkeeping and reporting can ensure compliance, pursuant to conditions of approval.

(B) The applicant should be allowed to reduce the size of the proposed processing facility or any of the other proposed structures from that listed in the preliminary plan without amending the conditional use permit, because it will reduce impacts and the intensity of the use.

e. Storage, sales and service of agricultural supplies, machinery and equipment, including outdoor display. The applicant proposes to sell farm machinery, implements and supplies in a 2048-square foot structure situated on the east setback line and to maintain and repair farm vehicles, machinery and equipment in two 2520-square foot buildings proposed along the east setback line. At the south end of the row of buildings along the east setback line, the applicant proposes a 10,000 square foot storage building. The applicant proposes about 40,000 square feet for outdoor storage of "landscape material" along the west edge of the site and 160,000 square feet of outdoor display between the landscape storage and the buildings to the east.

i. The parties and hearings officer agree that storage, sales and service of agricultural supplies, machinery and equipment are allowed as a conditional use in conjunction with farm use if they comply with applicable standards.

ii. To be "in conjunction with farm use," the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The agricultural and commercial activities must occur together in the local community. *Craven v. Jackson County*, 308 Or 281, 289, 779 P2d 1011, 1015 (1989).²⁷

²⁷ In *Craven*, the Oregon Supreme Court dealt with the question of whether a winery that would receive grapes from growers in the area, and would include a tasting and sales room where wine and winery related retail items would be sold was properly categorized as a "farm use" that might be permitted outright on

iii. The hearings officer agrees with County staff that sales and service of supplies, machinery and equipment for commercial and noncommercial farms will enhance the local agricultural community in which it is situated. Financing of those goods should be limited to the goods sold on the site, because financing of farm equipment outside the local agricultural area does not sufficiently enhance farming in the area.

iv. The hearings officer agrees with the applicant that the tractors and related equipment listed and displayed in Exhibit AA are suitable only for and will enhance commercial and noncommercial farms and should be permitted.

v. Sales and service of irrigation systems and fencing suitable only for commercial and noncommercial farms also should be permitted for the same reason.

vi. Building supplies and hardware are not inherently farm-related. However if the applicant is able to show to the satisfaction of the planning director that particular building supplies and hardware are suitable primarily for commercial and noncommercial farms or essential to their operation, that should be permitted.

vii. Sales of farm supplies including seeds, fertilizers, weed killers, soil amendments, rakes, shovels and other farm implements should be permitted.

viii. There is some dispute about landscape materials. The applicant argues that he and others use such landscape materials as bark dust as a plant-growing medium or as an ingredient in a mix of materials for that purpose. The County argues that the applicant failed to show that landscape supplies, garden decorations and pond supplies were part of any accepted agricultural practice. The parties agree that soil amendments are allowed.

(A) The hearings officer is persuaded that some landscape materials have a sufficient relationship to accepted farming practices to be allowed as part of the conditional use, such as bark dust and other materials that could be mixed with

EFU-zoned land, or whether it was a "commercial activit[y] that [is] in conjunction with farm use" ... that could be permitted provided the use complied with applicable conditional use criteria. The Court analyzed each aspect of the proposed use, concluding that (1) growing grapes fell within the definition of "farm use" set out in ORS 215.203(2)(a); and (2) wineries and tasting rooms are "accepted farming practices" because they are "customarily utilized in conjunction with" vineyards. The Court also concluded that a winery building may be constructed prior to the maturation of grapes on the property, as a "nonresidential building customarily provided in conjunction with farm use" pursuant to ORS 215.283(1)(f), provided the "structure's size and capacity must be proportional and commensurate to the existing level of dedication of land in that immediate area to the crop for which the structure is suited." *Craven*, 308 Or at 286. Turning to the retail sales aspect of the proposed use, the Court held that such retail uses could be allowed as commercial activities that are in conjunction with farm use, so long as the commercial activity "enhance[s] the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates." *Id.* at 289.

clean soil and other amendments. These materials should be allowed as part of the conditional use.

(B) However the hearings officer is not persuaded that landscape timbers, garden rocks, ornaments, lights or goods of that kind generally bear a sufficient relationship to farm use.

(C) In case of doubt, the planning director should be authorized to determine what landscape materials bear a sufficient relationship to farm use.

ix. To the extent that supplies, material and machinery do not bear a sufficient relationship to farm use in the local agricultural area, their sale is permitted as part of the incidental sales of the conditional use. The hearings officer finds that incidental sales (i.e., sales of goods that are not authorized by the conditional use permit) should be allowed from the supply/equipment/machinery facilities as with the other facilities. For purposes of the repair and service facilities, all goods needed to service or repair an eligible product are authorized by the conditional use permit. The hearings officer finds that 15% of sales of these facilities may be incidental, consistent with the County practice in other cases involving commercial uses in conjunction with farm use. Recordkeeping is required to ensure compliance as with other aspects of the proposed use.

x. Outdoor advertising displays are expressly prohibited in the EFU zone. ZDO 401.08.C. The hearings officer finds that the proposed outdoor display of farm equipment, supplies or machinery is for the purpose of advertising those goods. Therefore the hearings officer finds that the proposed outdoor display is not permitted by conditional use permit or otherwise. The applicant should be prohibited from applying gravel to the surface of the land to accommodate such displays. The maximum possible surface area of the site should remain available for farm use when not used for another purpose authorized herein so that the site can remain in farm use to the maximum extent practicable.

f. Value-added products. The applicant proposes to use farm products grown on and off the site to make value-added products such as cooking fruit to make pies and jam, carding fleece into yard, and blending berries with other ingredients to make drinks or foods. The hearings officer understands that this activity may happen in the farm stand, which the hearings officer finds is acceptable, or in one or more other buildings on the site or in other locations in the local agricultural area where ingredients are grown. The hearings officer and the parties agree that processing, storage and sale of such products are permitted provided that income from the sale of such products is from incidental sales to the extent that the ingredients are not grown or raised on the site or in the local agricultural area. It is feasible to enforce such a limitation through recordkeeping and reporting.

g. In summary the hearings officer concludes that the proposed uses are allowed pursuant to the following classifications:

<i>Primary Uses</i>	<i>Uses Subject to Planning Director Review</i>	<i>Conditional Uses</i>
Farm uses, including growing and raising crops and animals, the farm stand, processing of farm goods into value-added products using farm products grown or raised in the local agricultural area	The preparation facility	The farmers' market; sales and service of agricultural supplies, machinery and equipment, without outdoor display; indoor storage; outdoor storage of soil amendments and ingredients

5. Having determined what part of the proposal is subject to the conditional use permit, the hearings officer can proceed to the second criterion for that permit: whether the site is suitable for the proposed conditional uses considering size, shape, location, topography, existing improvements and natural features.

a. County staff concluded that the applicant failed to meet the burden of proof that the site is suitable for a septic system. Based on Exhibits Y and BB, the hearings officer finds that it is suitable, subject to a condition of approval requiring approval and implementation of a permit for such a system.

b. Dwayne and Patricia Wamsher argued that the location of their home so close to the driveway to the site makes the site unsuitable. The loss of trees along the south edge of the driveway easement will make things worse for them by reducing their visual and aural privacy and security.

i. By referring to Exhibit 10 attached to the application narrative, the hearings officer observes that the Wamshers' home is situated immediately south of the trees that adjoin and perhaps extend into the 20-foot wide driveway easement between Butteville Road and the site. Trimming or removal of those trees would reduce the buffer between their home and the driveway. Increased traffic on the driveway would be perceptible to them, as could the noise of compressors for refrigeration equipment and the noise of truck engines, people and activity related to the proposed uses.

ii. The hearings officer finds that the location of the site is not unsuitable for the conditional uses, because the applicant can be required to provide a sight-obscuring fence or equivalent to mitigate the loss of trees if they have to be cut to provide safe access to the site. The precise need for and nature of the fence can be determined in design review, by which time the applicant should be required to determine precisely whether and to what extent vegetation south of the driveway easement must be removed to make the driveway comply with the relevant conditions of approval and how

to mitigate that impact. The hearings officer should amend the condition of approval regarding design review to that effect.

iii. The hearings officer finds that the farther east the applicant takes access to Butteville Road, the less the impact to the Wamshers of traffic associated with the conditional use. But the site adjoins I-5 to the east, which limits the potential for relocating the access. The hearings officer infers from Exhibit J and Exhibit 10 of the application narrative that ODOT would not authorize moving the driveway eastward. Therefore it would not be feasible to require it as a condition of approval.

6. The third criterion for the conditional use permit relates to concurrency and the safety of the transportation system. The only disputed issue under this criterion relates to the transportation system.

a. Neighbors and residents of the area argue that Butteville Road carries too much non-resident traffic and is not safe due to speeding and a sight distance constraint (i.e., a “blind curve”) to the west.

b. County staff conclude that the transportation facilities serving the site are adequate, because they comply with level of service standards, and the safety of the transportation system is adequate to serve the proposed development, based on substantial evidence in the record (see Exhibit J), including a traffic study from a professional traffic engineer on behalf of the applicant (see Exhibit 12 of the application narrative).²⁸ The hearings officer agrees with the County staff, based on the evidence cited in the Staff Report and herein.

c. The hearings officer observes that the County has adopted a measure of the adequacy of a road, called a “level of service” or LOS. This measure is commonly used and is generally accepted for the purpose. By law intersections affected by traffic from a proposed development cannot cause an intersection to operate at less than the minimum LOS during the weekday peak hour. Based on substantial evidence in the record (Exhibit J and p. 3 of Exhibit 12 attached to the application narrative), the LOS at affected intersections will be adequate. The LOS analysis does not and cannot take into account peak traffic impact of a Saturday/Sunday activity, such as a typical weekend farmers’ market. But the analysis of the adequacy of safety does consider the traffic impact on weekends.

d. County staff confirmed that adequate sight distance is available at the access driveway to Butteville Road. See Exhibit J and p. 3 of Exhibit 12 attached to the application narrative. They acknowledge a sight distance constraint to the west, but argue

²⁸ There is substantial evidence in the record that the proposed uses will generate up to 660 one-way trips when the farmers’ market is operating at capacity. When added to the existing average daily traffic on Butteville Road of 1400 vehicles, this means that the road will carry more than 2000 vehicle trips per day (VPD), which is within its capacity given its functional classification and improvements.

that the proposed use will generate relatively little traffic in that direction (15% or about 15 trips). Also accident rates are not high. As a consequence, County staff concluded that traffic from the site is insignificant for purposes of traffic safety. They conclude that the transportation system is "adequate." The hearings officer agrees. Safety always could be better. But the impact of 15 vehicles to or from the site during the peak hours is not significant given the capacity of the road, adequate LOS at affected intersections and the absence of evidence of a safety hazard based on accidents.

7. The fourth criterion for the conditional use permit prohibits a conditional use from altering the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the underlying zoning district. Related to this criterion is ZDO 401.07.A, which requires the applicant to show that the proposed conditional uses "will not force a significant change in" nor "significantly increase the cost of accepted farming practices on land devoted to farm or forest use." After reviewing the nature of the uses and farm practices on adjacent and nearby properties used for farm and forest purposes, County staff consider the following potential impacts: noise, lighting, dust, traffic, views, surface water. They conclude either that an impact will not occur or that it will not be significant. Also see Exhibit P from the applicant.

a. The substantial evidence in the record shows that surrounding properties devoted to farm purposes use agricultural practices common for row crops, with soil preparation and planting in the spring; maintenance, watering and weeding throughout the summer; harvesting, preparing and shipping or marketing in the fall; and removal of crop residue and preparation for the spring. Farms in the area are relatively small, so are unlikely to use aerial spraying. Only the Wamshers' farm adjoins the site, and they do not appear to raise animals who could be affected by the noise and activity on adjoining land. The hearings officer finds that members of the public shopping at a farmers' market are not reasonably likely to object to impacts of farming nearby. The hearings officer finds that the increased traffic on area roads as a result of peak traffic from the site may reduce the speed with which farm vehicles can enter or travel along Butteville Road, but concludes that this is not a significant impact for purposes of ZDO 401.07.A or ZDO 1203.01.D. Provided that the applicant is required to mitigate the potential for raising dust, the hearings officer finds that the proposed conditional uses will not have a significant impact on farm or forest practices on lands devoted to that purpose.

b. The Staff Report lists the primary uses in the EFU zone. They do not include residential uses. Therefore the impacts to the peaceful occupancy of the Wamshers' home are not relevant to ZDO 1203.01.D. For the reasons listed in the Staff Report and at pp. 19-21 of the application narrative and supporting evidence in the record regarding the impacts of the proposed uses, the hearings officer finds that the conditional use will not the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the underlying zones.

8. The fifth criterion for a conditional use permit requires compliance with applicable provisions of the Comprehensive Plan. The hearings officer finds that the applicant will comply with the applicable provisions of the Comprehensive Plan, based on the findings in the Staff Report, which were not disputed.

9. ZDO 1303.09.A requires conditions of approval to be fulfilled within a reasonable time. It is not be timely to require the applicant to obtain permits before they are necessary. The hearings officer should amend condition of approval 9 to recognize that.

10. To the extent that the arguments raised other issues, the hearings officer finds that they were not relevant, were not supported by substantial evidence or were supported by substantial evidence that was not as persuasive to the hearings officer as equally or more probative substantial evidence in the record.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that file number Z0393-05-C (Van Doozer) should be approved in large part, because the application does or can comply with applicable standards of the Clackamas County ZDO and the applicable provisions of ORS 215 and OAR 660-033-0020(7) as construed herein, provided it is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies incorporated by reference in the Staff Report.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Z0393-05-C (Van Doozer) subject to the following conditions:

1. Approval is for the specific use identified in the application materials and on the submitted site plan labeled as Exhibits 3 to the extent they are consistent with the remaining conditions of approval. The applicant may reduce the size or number of buildings proposed and/or may reduce the area of outdoor storage and/or of the Farmers' Market without amending the conditional use permit.
2. This approval and associated conditions do not limit the proposed farm uses identified in this application or any other farm uses allowed under ORS 215.
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.

- a. 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 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. Not 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.
- b. Regarding the agricultural supplies, machinery and equipment facilities, the records shall distinguish between goods authorized for sale herein (or approved by the planning director as having an essential relationship to accepted farming practices on commercial and/or noncommercial farms in

the local agricultural area) and all other goods. For purposes of this condition, the "all other goods" are referred to as "incidental" goods.

- i. Not more than 15% of the gross value of sales from the agricultural supplies, machinery and equipment facility shall be for incidental goods.
- c. Regarding maintenance and repair facilities, the applicant may maintain and repair only farm supplies, machinery or equipment used in accepted farming practices in the local agricultural area or sold from the site.
- i. Except as otherwise required pursuant to condition 3.c.ii, the applicant is not required to keep records of the source of goods sold in conjunction with repairs or maintenance of farm supplies, machinery or equipment, because they are all in conjunction with farm use by definition.
 - ii. The planning director may require in writing that the applicant keep and timely produce records of the subject and source of any supplies, machinery or equipment maintained or repaired at the site to facilitate compliance with this condition.
- d. At least annually or more often if requested by the planning director, the applicant shall submit to the planning director a copy of the records required in condition 3.a and b above for the prior twelve months and a report summarizing the records in relation to the limits in this condition of approval and, if necessary, any changes proposed to bring the use into compliance and a schedule for implementing those changes.
- e. The planning director may waive or reduce the frequency of reports required by this condition of approval in whole or in part if he or she determines, based on a consistent record of results for at least five years from the date the County authorizes occupancy of the building containing a use, that the uses authorized herein, including the farm stand, preparation facility, farmers' market and agricultural supplies, machinery and equipment facility have been operated substantially in compliance with these conditions of approval. If, after waiving or reducing reporting requirements in any given year or years, the planning director may require in writing that the applicant or successor in interest file such reports annually or more often.
- f. In case of doubt about how to classify a given product, the planning director shall make a written determination pursuant to at least at Type I process consistent with the findings in this final order.

- g. The following goods are non-farm or incidental goods:
 - i. Crafts, jewelry, art, etc. and other non-agricultural related items;
 - ii. The sale of landscape materials such as bark dust, decorative rock, ponds and pond supplies, etc., unless they are used for an essential agricultural purpose, such as to provide or to mix with other ingredients to create a medium for plants.
 - iii. The sale of dog and cat food and food for other domestic animals.
 - iv. Irrigation supplies for home lawns and gardens.
 - v. Small lawnmowers and tractors commonly used for home lawns and gardens.²⁹

- h. The following are prohibited:
 - i. Fuel and alternative fuel sales and conversion services.
 - ii. Events such as weddings, concerts, bands or other public gathering or events.³⁰
 - iii. Slaughtering of livestock, poultry and other animals except for those that are raised on the subject property.
 - iv. Farm equipment financing or loan services except for machinery and equipment sold from the subject property.
 - v. Outdoor display of agricultural supplies, machinery or equipment.

4. Before the County issues a building or change of use permit for development on the site other than for a primary use, the applicant shall apply for and receive approval of a Design Review application for the development in question pursuant to Section 1102 of the ZDO. To comply with this condition, the applicant shall apply for and attend a pre-application meeting and submit a complete Design Review application that complies with applicable standards. Design Review shall consider the relevant standards of the following sections of the ZDO and the

²⁹ The machines and equipment illustrated in the attachment to Exhibit AA and substantially similar or larger machines and equipment are not incidental or non-farm goods.

³⁰ Musical and other forms of entertainment are permitted provided that it is clearly incidental and accessory to an activity authorized herein or otherwise permitted by law.

findings and conditions of approval in this decision:

- a. Section 401.
- b. Section 1007.
 - i. Parking spaces shall meet minimum and maximum *ZDO* section 1007 requirements, both in number and dimensions.
 - ii. A minimum of 64 off-street parking spaces is required for all of the development authorized herein, although the applicant may propose to reduce the scale of any part(s) of the development or propose phasing of the development in a way that changes the minimum number of required parking spaces.
 - iii. The plans shall list the number of parking spaces required and the number of parking spaces provided. The applicant shall label all compact, carpool, handicap, and loading berth spaces on the plans. All parking and maneuvering areas that are not required to be paved shall be surfaced with screened gravel or better.
 - iv. The applicant shall provide at least the minimum number of illuminated bicycle-parking spaces in accordance with *ZDO* section 1007, Table 2. A minimum of 2 spaces is required for the proposed development. Both spaces shall be within 50 feet of a public entrance to the building, in conformance with *ZDO* subsection 1007.07 E.
 - v. The applicant shall propose how, when and where to monitor parking to confirm that it is adequate, particularly for peak traffic events, such as the weekend farmers' markets. The applicant shall modify the use or parking or both if the planning director requires it based on the results of monitoring.
- c. Any proposed lighting shall demonstrate that the lights are directed downward and do not shine on to adjacent properties.
- d. Section 1008 – Storm Drainage.
- e. Section 1009 – Landscaping.
- f. Section 1010 – Signs, if applicable.

8. The applicant shall provide and maintain adequate intersection sight distance at the intersection of the site driveway with Butteville Road. Adequate intersection sight distance for drivers turning left into the site shall also be provided and maintained. In addition, no plantings at maturity, retaining walls, embankments, fences or any other objects shall be allowed to obstruct vehicular sight distance. Minimum intersection sight distance, at the driveway intersection with Butteville Road, shall be 500 feet, both easterly and westerly along Butteville Road, measured 15 feet back from the edge of the travel lane. Minimum intersection sight distance for drivers turning left into the site shall be 365 feet measured from the driver's location at the intersection to the middle of the oncoming travel lane.
9. The applicant shall trim/prune the existing evergreen trees adjacent to the southerly side of the access driveway between Butteville Road and the gated entrance at the northerly property line in order to maintain a 20-foot wide access driveway with 14 feet of vertical clearance.
10. The applicant shall install and maintain a 30-inch "STOP" sign, with the bottom of the sign positioned at least five feet above the pavement surface at the driveway intersection with Butteville Road.
11. All traffic control devices, located where private driveways intersect County facilities shall be installed and maintained by the applicant, and shall meet standards set forth in the *Manual on Uniform Traffic Control Devices* and relevant Oregon supplements.
12. Prior to the issuance of a building permit, the applicant shall submit to Clackamas County Engineering Office:
 - a. Written approval from the local Fire District for the planned access, circulation, fire lanes and water source supply. The applicant is advised that the local and State Fire Marshall will require adequate fire flows to be provided by fire hydrants or other approved source. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - b. Written approval from the Department of Transportation and Development for surface water detention facilities and erosion control measures.
 - c. A set site improvement construction plans for review, in conformance with *Clackamas County Roadway Standards* Section 130, to Deana Mulder in Clackamas County's Engineering Office and obtain written approval, in the form of a Street Construction and Encroachment Permit. The permit will be for drainage, circulation, and parking improvements. The permit fee is a minimum of \$400.00 or calculated at \$50.00 per new or

reconstructed parking space, whichever is greater. The applicant shall have an Engineer, registered in the state of Oregon, design and stamp the construction plans for all required improvements.

- d. Since the Department of Transportation and Development is the surface water authority for the proposed project and detention facilities are a requirement of development, the applicant shall provide a copy of an approved grading permit to DTD Engineering, Deana Mulder, prior to the issuance of a SC&E permit.
13. Direct access to I-5 is prohibited. But access to Butteville Road at a point further east than the existing easement is permitted, subject to review and approval by the county engineer and ODOT.
14. The applicant shall obtain all necessary County and State licenses and approvals for food handling and other regulated aspects of this business.
15. This Conditional Use is granted subject to the conditions of approval. Non-compliance with any of these conditions constitutes a violation of this permit and shall be cause for revoking this permit.
16. This approval is valid for a period of two years from the date of final written decision. If the proposed use has not been established within that time, the approval shall expire unless a timely application for extension of the permit is filed with the County under ZDO Section 1203.03 and the application is approved. The conditional use approval is implemented when all necessary permits for the development have been secured and are maintained.
17. Approval is subject to the above stated conditions. Failure to comply with any of the conditions of approval may be cause for revocation of this approval.

DATED this 13th day of October 2005.

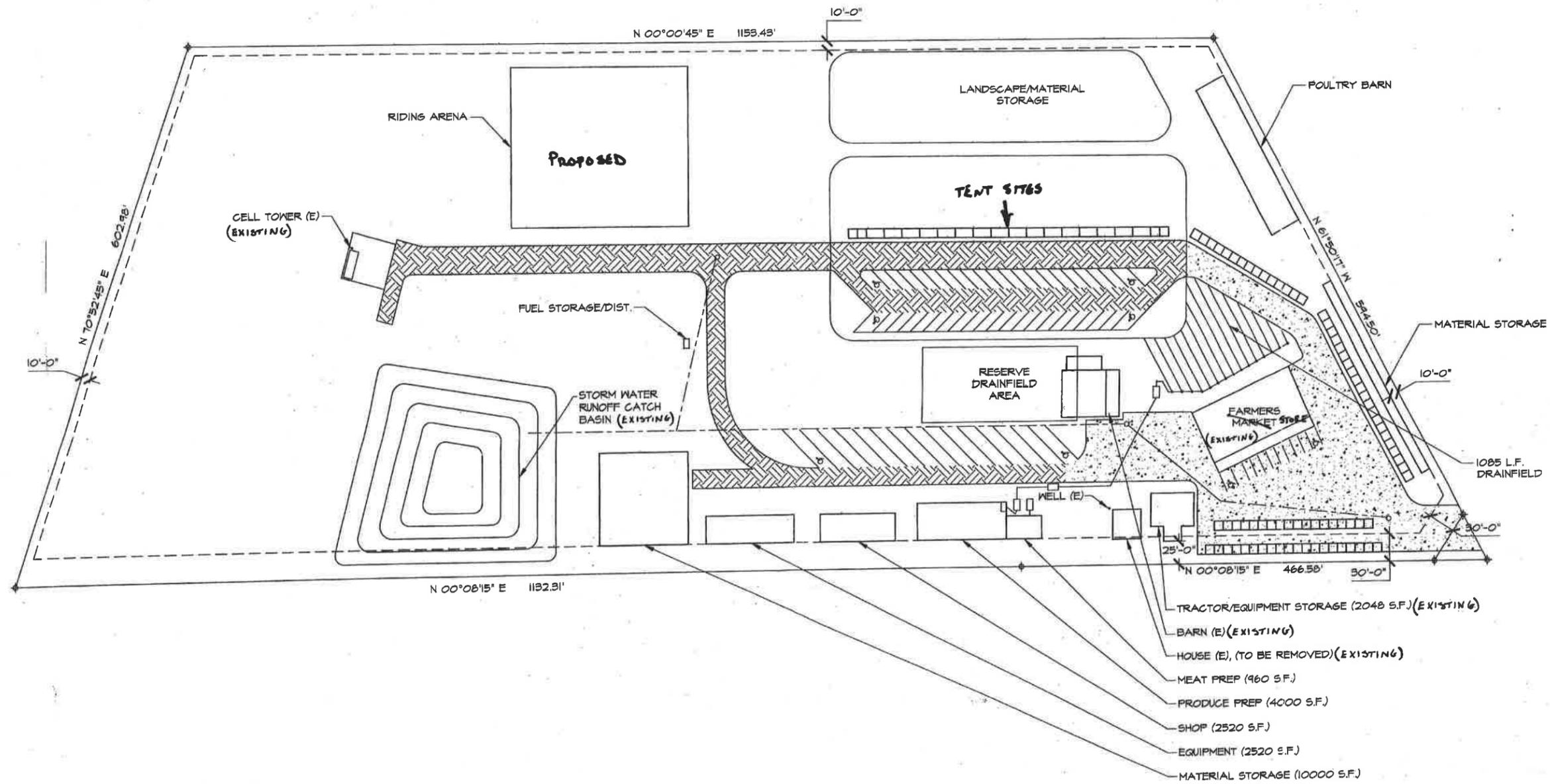
Larry Epstein, Esq., AICP
Clackamas County Land Use Hearings Officer

ENDANGERED SPECIES ACT NOTICE

This decision addresses only the applicable criteria under the ZDO. It does not address whether the activities allowed by this decision will comply with the provisions of the federal Endangered Species Act ("ESA"). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsible for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

APPEAL RIGHTS

ZDO 1304.01 provides that the Land Use Hearings Officer's decision is the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how an appeal must be filed with LUBA. Presently, ORS 197.830(8) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." ZDO 1304.02 provides that this decision will be "final" for purposes of a LUBA appeal as of the date of mailing of this final order (which date appears on the last page herein).



LOT INFORMATION:

TAX LOT 2700, 18.43 ACRES
 S.E.¼, SECTION 26, TOWNSHIP 3 SOUTH,
 RANGE 1 WEST, WILLAMETTE MERIDIAN,
 CLACKAMAS COUNTY, OREGON

ON THE INTERCHANGE OF
 INTERSTATE - 5 and Exit (282-B)
 CARBONNEY "SOUTHBOUND" AND EXIT
 (282) CANBY "NORTHBOUND" LOOK FOR
 THE BIG RED BARN & GREEN GATES

REVISIONS	DATE	DESCRIPTION

TITLE: SITE PLAN
 PROJECT: 1-5 FARM STORE
 LOCATION: WILSONVILLE, OR

DRAWN	mmp
CHECKED	mmp
DATE	08-10-04
SCALE	1"=60'-0"
SHEET	

01

EXHIBIT C



Material Storage

Septic Drain Field

Farmer's Market Store

Tractor and Equipment Storage

Farmer's Market Tent Sites and Parking

House

Barn

Evergreen Tree Screening

Storm Water Basins

Parking and Site Circulation

Cell Tower Maintenance Access

Cell Tower

BOONES FERRY

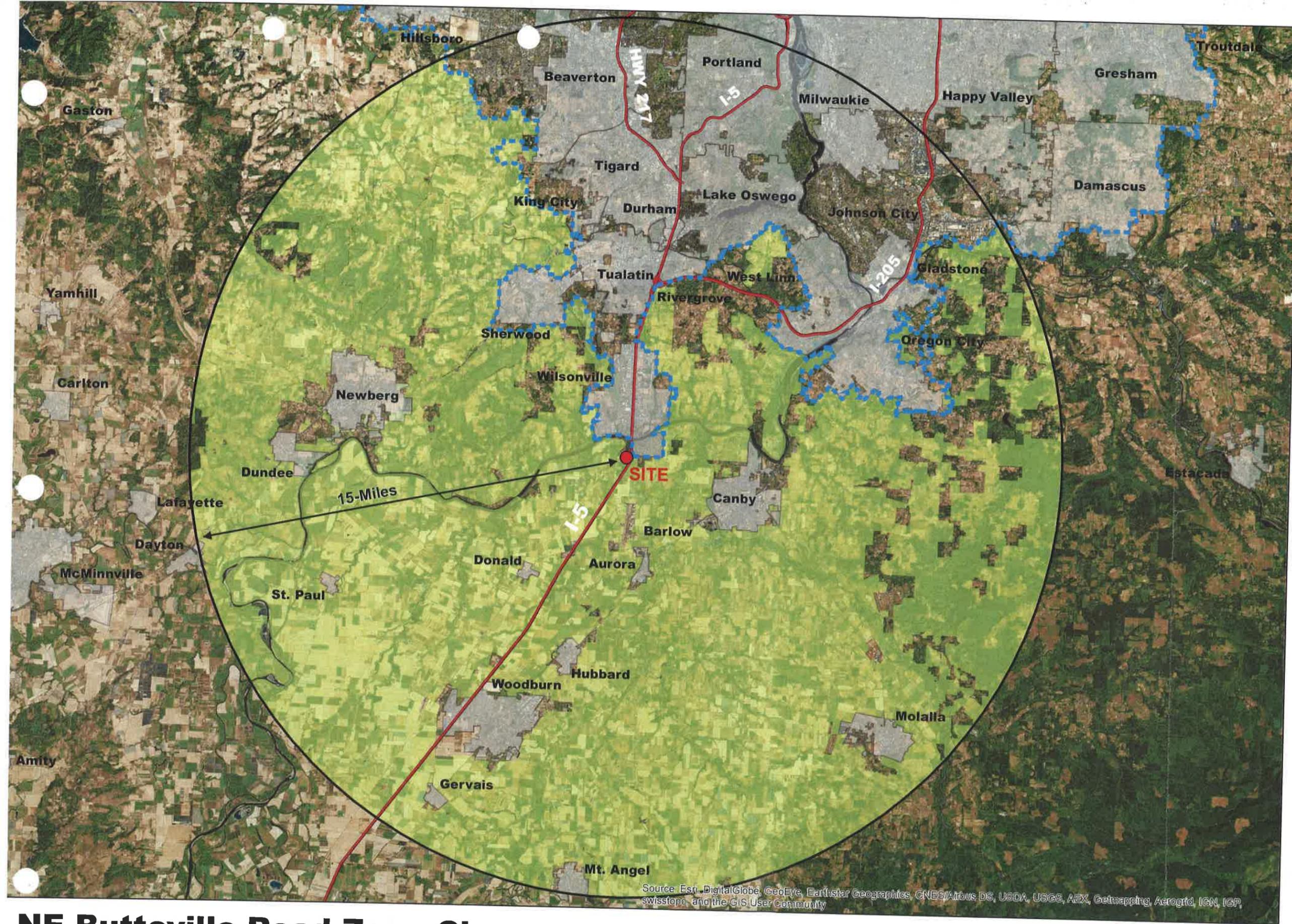
MILEY



250 Feet

NE Butteville Road Zone Change

Exhibit C I-5 Farm Store 2006 Built Conditions



Legend

- Site
- 15-Mile Radius
- Portland Metro Urban Growth Boundary
- City Limits
- Agriculture Zoned Properties

↑

3.5 Miles

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

NE Butteville Road Zone Change

Exhibit E 15-Mile Radius Area

MEMORANDUM

DATE: September 29, 2015

TO: BL & DJ, LLC.

FROM: Jerry Johnson
JOHNSON ECONOMICS

SUBJECT: Economic Analysis of a Zone Change Application for a Site at 26444 NE Butteville Road

This memorandum summarizes our evaluation and assessment of the proposed zone change and comprehensive plan amendment for the aforementioned property.

SITE DESCRIPTION

The subject site is an 18.25-acre property at the southwest quadrant of the intersection of I-5 and Wilsonville Road. The site is currently zoned Exclusive Farm Use (EFU), and designated in the comprehensive plan as Agricultural. A conditional use permit (CUP) was approved in 2005 that allowed for construction of several buildings as well as paving. The CUP included a series of limits on income generated on the property. These include:

- *Not 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 on a farm outside of the local agricultural area;*
- *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*
- *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 on a farm outside of the local agricultural area.*



The "local agricultural area" is defined as being within 15 miles of the closest edge of the site. The improvements included maintenance and repair facilities, and the CUP limited use of those 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.

PROPOSED CHANGE

The applicant, BL & DJ, LLC, is proposing a zone change and comprehensive plan amendment to change the zoning to Rural Industrial (RI), with a Rural Industrial (RI) comprehensive plan designation. The intended use on the site would be auto detailing of new cars in support of the Wilsonville Toyota showroom and sales facility. Commercial uses on the site would be prohibited. Activities associated with this use would be expected to have an intensity at or below the traffic volumes allowed under the current CUP, and have fewer impacts on nearby properties than what is currently permitted. The requested approval would also allow for existing facilities to be used as a fire and rescue response facility.

The proposed change in designation and the uses it is intended to accommodate represent a logical response to the current site conditions, which makes sense from both an economic as well as a planning and land use perspective.

- The site has existing improvements that have significant value, but which are unable to be utilized given the restrictions on use in the current CUP. The previous owner attempted to operate under the current CUP limitations and was unsuccessful. While the location of the property allows for strong regional access via the I-5 corridor, farm stands perform best when surrounded by significant residential density, and are not viewed as an adequate draw to pull traffic off of the Interstate. In addition, agricultural production is highly seasonal, and the limited "local agricultural area" would not provide the range of product offerings necessary to create a regional draw or carry an operation through seasons with limited local production.
- 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.
- The extensive site improvements, coupled with the requirement that the source of income for any farm use on the site must come from the "local agricultural community," makes it highly unlikely that the site can support a profitable farm use. The land within the 15-mile radius defined as the local agricultural area includes a large amount of urban and rural exception land. There is not enough high-value active farm use within the remainder of the area to reasonably support a commercial farm use on the subject 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 use is just one of many that could productively utilize the existing improvements. 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 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.

PROJECTED PROPERTY TAX REVENUES

Entity	Rate/\$000	Annual	20-Year
Clackamas Community College	0.5557	\$1,389	\$37,330
Clackamas Educational Service District	0.3675	\$919	\$24,687
Canby School District	4.5765	\$11,441	\$307,431
Total Education	5.4997	\$13,749	\$369,447
Clackamas County	2.9549	\$7,387	\$198,498
County Extension and 4-H	0.0499	\$125	\$3,352
County Library	0.3961	\$990	\$26,608
County Public Safety Local Option	0.2480	\$620	\$16,660
County Soils Conservation	0.0499	\$125	\$3,352
FD63 Aurora	0.8443	\$2,111	\$56,717
FD63 Aurora Local Option	0.4900	\$1,225	\$32,916
Port of Portland	0.0699	\$175	\$4,696
Recreation Canby Area Parks	0.0000	\$0	\$0
Urban Renewal County	0.0277	\$69	\$1,861
Vector Control	0.0065	\$16	\$437
Vector Control Local Option	0.0250	\$63	\$1,679
Total General Government	5.1622	\$12,906	\$346,776
Clackamas Community College Bond	0.1491	\$373	\$10,016
Canby School Bond	2.2888	\$5,722	\$153,752
Total Excluded from Limitations	2.4379	\$6,095	\$163,768
Total Rate	13.0998	\$32,750	\$879,991

- 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. The proposed use on the site is consistent with an oft repeated desire to see low intensity components of auto sales moved to lower value locations.
- The proposed use better utilizes transportation infrastructure investments for limited industrial use, and is expected to reduce transportation impacts on neighboring farm uses relative to the currently allowed use.

In summary, as currently entitled the property is likely to remain largely unutilized. The improvements have value if the entitlements would be changed, but the allowed uses do not represent a sustainable economic use for the site under the current CUP. The cost of demolition of the improvements is likely greater than the value of the underlying property for agricultural uses, and as a result, the properties will likely continue to slowly deteriorate under the EFU designation and CUP limitations.

A rural industrial designation will allow for a viable use to occupy the structures and ensure their long-term maintenance and repair. The proposed zone change would allow for productive use of the existing



structures and infrastructure, while not inhibiting continued agricultural use of the neighboring properties. In addition to more efficient utilization, the net benefits to Clackamas County include enhanced property tax revenues from the site.



VALUATION SERVICES

Real Estate Appraisal
Consulting
Litigation
Estate Planning
Feasibility Analysis
Rent Surveys

PROPERTY TYPES

Land
Subdivisions
Multi-Family
Single-Family
Industrial
Office
Medical
Retail
Public
Religious
Parks / Open Space
Farms / Agricultural
Specialty

SERVING

Oregon
Washington
Idaho
Northern California

Powell Valuation Inc

2005 Madrona Avenue SE
Salem, Oregon 97302
(503) 371-2403 voice
(503) 371-2613 fax
www.powellvaluation.com

**REAL ESTATE APPRAISAL
SUMMARY REPORT**



Photo taken 10/3/2012 (9594-1)

FORMER I-5 FARM STORE

26444 NE Butteville Road
Aurora, Oregon 97002

REVS File Number: 12-1155 OR

PREPARED FOR

Gregory M. Lowes, Vice President
Real Estate Valuation Services
Umpqua Bank
6650 SW Redwood Lane, Suite 215
Tigard, Oregon 97224

PREPARED BY

Shirley A. Layne
Katherine Powell Banz, MAI
PV Inc File Number: P121410

EFFECTIVE DATE OF VALUE

As Is Value: October 3, 2012

POWELL VALUATION INC



POWELL VALUATION INC

October 10, 2012

Gregory M. Lowes, Vice President
Real Estate Valuation Services
Umpqua Bank
6650 SW Redwood Lane, Suite 215
Tigard, Oregon 97224

RE: FORMER I-5 FARM STORE
26444 NE Butteville Road
Aurora, Oregon 97002
REVS File Number: 12-1155 OR

Dear Mr. Lowes:

As requested, the captioned property has been valued using generally accepted appraisal principles and practices. The report is intended to comply with the development and report requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), the Appraisal Institute, the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), the Interagency Appraisal and Evaluation Guidelines (effective December 10, 2010) and any supplemental requirements of Umpqua Bank. A copy of your engagement letter is included in the Addenda.

The subject is a multi-building farm related enterprise, vacant on the day of inspection. Access was available to the site and buildings on October 3, 2012.

Based upon our investigation and analysis of available information, the concluded values under the requested scenarios, as of October 3, 2012 were:

MARKET VALUE SCENARIOS	DATE	VALUE
"As Is" Value – Fee Simple	October 3, 2012	\$2,700,000
180 Day Disposition Value – Fee Simple	October 3, 2012	\$1,250,000
Estimated Marketing/Exposure Time		At Least One Year

According to a survey provided by David Van Doozer in 2007, the site size is 18.43 acres or 802,811 SF. County records list the site as 18.25 acres. It is assumed for the purpose of this report that the most recent survey of the site is most reliable. A copy of the survey is provided in the Addenda.

The subject was previously appraised on August 2, 2007, July 30, 2009, April 21, 2010, December 17, 2010 and May 4, 2012. (Powell Valuation Inc File numbers P071358, P091219, P091282, P101202, P101503 and P121244).

This appraisal is subject to the conditions and comments presented in this report. If any questions arise concerning this report, please contact the undersigned.

Sincerely,

POWELL VALUATION INC



Shirley A. Layne
OR State Certified General Appraiser
No. C000516
Expiration Date: September 30, 2014



Katherine Powell Banz, MAI
OR State Certified General Appraiser
No. C000897
Expiration Date: August 31, 2014

KPB: sal

P121410

TABLE OF CONTENTS

Transmittal Letter	
INTRODUCTION.....	1
Executive Summary	1
Preliminary Appraisal Information	2
Assumptions and Limiting Conditions.....	9
DESCRIPTION.....	12
Subject Maps	12
Description.....	15
Subject Photographs.....	28
MARKET ANALYSIS/HIGHEST & BEST USE	38
VALUATION METHODS	43
COST APPROACH.....	45
Site Valuation.....	45
Land Sales Tabulation Chart and Adjustment Grid.....	49
Land Sales Maps	50
Cost Approach	54
Cost Approach Summation Table	60
SALES COMPARISON APPROACH	61
Sales Comparison Approach.....	61
Improved Sales Tabulation Chart and Adjustment Grid.....	66
Improved Sales Maps	67
ANALYSIS OF VALUE CONCLUSIONS.....	71
NET DISPOSITION VALUE.....	73
CERTIFICATION OF APPRAISAL.....	75
ADDENDA	
Engagement Letter	
Taxes, Assessment Data, Deed & Legal Description	
Listing Flyer	
Survey	
Regional Description	
Appraiser Qualifications	

EXECUTIVE SUMMARY

PROPERTY INFORMATION	
REVS File No:	12-1155 OR
Property Name:	Former I-5 Farm Store
Address:	26444 NE Butteville Road Aurora, Oregon 97002
Tax ID:	00831764
Map/Tax Lot:	3-1-26 (tax lot 2700)
Property Type:	Vacant Farm Related Operation
Current Use:	Vacant
Proposed Use:	N/A
Owner of Record:	David A. & Deanna Gwyn Van Doozer
BUILDING CHARACTERISTICS	
Number of Buildings:	4
Gross Building Area:	18,706 SF
Percent Occupied:	0%
Year Built:	1920 – 2005
Condition:	Average
Substantial Deferred Maintenance:	None
SITE CHARACTERISTICS	
Land Area:	18.43 Acres (802,811 SF)
Zoning Designation:	EFU – Exclusive Farm Use
Conforming Use:	Yes
HIGHEST AND BEST USE	
As if Vacant:	Farm Related Uses
As Improved:	Existing improvements
Excess / Surplus Land:	None
VALUATION INFORMATION	
Site Valuation:	\$2,000,000 (\$2.49/SF)
Cost Approach:	\$3,000,000
Sales Comparison Approach:	\$2,500,000
VALUE CONCLUSION	
Date of Value:	October 3, 2012
Concluded Market Value:	\$2,700,000
Disposition Value – 180 days	\$1,350,000
Allocation for Furniture, Fixtures and Equipment	None

PRELIMINARY APPRAISAL INFORMATION

SCOPE OF WORK

Scope of Work is defined in *2012-2013 USPAP* as "the type and extent of research and analyses in an assignment." The scope of work addresses the application and extent of the development process. It can include, but is not limited to: the extent to which the property is identified, the extent to which tangible property is inspected, the type and extent of data researched and the type and extent of analyses applied to arrive at opinions or conclusions. The seven items used in defining the scope of work and the proposed solution are discussed in detail below:

PROPOSED SOLUTION

This summary report is designed to inform the reader of all factors influencing the property's value in a clear and concise manner. The Preliminary Appraisal Information sections provide an overview of the property and general information. The Description section starts with general regional issues and proceeds to more specific issues directly related to the property. The Highest and Best Use section establishes the premise upon which the property is valued.

The goal of the appraisers is to produce a credible value conclusion. Credible is defined in *2012-2013 USPAP* as "worthy of belief."

In order to conclude a credible market value estimate, a meeting of the minds between the client and appraisers determined that the Valuation section focuses on the "as is" market value of the property. It describes the Cost and Sales Comparison Approaches, and includes comparable information, application of market information to the subject, and valuation analysis. The approaches utilized are reconciled into final value conclusions as applicable. All comparable data has been verified by either a party to the transaction or an agent, unless otherwise identified. Per the client's request the 180-day disposition value is also included. Supporting information is attached in the Addenda.

CLIENT

The client for this appraisal is Umpqua Bank.

OTHER INTENDED USERS

Other intended users include the client's regulatory agencies.

INTENDED USE

The purpose of this appraisal is to estimate market values, in **fee simple**, under the applicable scenarios, as described in this report.

Without prior written approval from the authors, **the use of this report is limited to decision-making regarding internal asset monitoring by the client.** All other uses are expressly prohibited. Reliance on this report by anyone other than the client for a purpose not set forth above is prohibited. The authors' responsibility is limited to the client.

PRELIMINARY APPRAISAL INFORMATION (continued)

TYPE OF VALUE

The "As Is" Value represents the value of the subject property, in its current status as of the date of inspection.

Disposition Value: The most probable price that a specified interest in real property is likely to bring under all of the following conditions:

1. Consummation of a sale will occur within a limited future marketing period specified by the client.
2. The actual market conditions currently prevailing are those to which the appraised property interest is subject.
3. The buyer and seller is each acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider their best interests.
7. An adequate marketing effort will be made in the limited time allowed for the completion of a sale.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.¹

INSPECTION DATE

October 3, 2012

EFFECTIVE DATES OF VALUE

As Is Value: October 3, 2012

Disposition Value: October 3, 2012

DATE OF REPORT

October 10, 2012

PROPERTY CHARACTERISTICS

The subject is identified as 18.43 acres of EFU zoned land with farm-related improvements (Farm Store, Barn and Display Building). The Farm Store and Display Buildings were constructed in 2005 with interiors completed from 2006 and 2007. The Barn and Farmhouse are original to the property. The subject is within Clackamas County, Aurora, Oregon.

¹ The Appraisal Institute Dictionary of Real Estate Appraisal, 4th Edition.

PRELIMINARY APPRAISAL INFORMATION (continued)

ASSIGNMENT CONDITIONS

- An interior and exterior inspection of the subject.
- Interviewing the subject's listing agent.
- Inspecting of the subject property neighborhood.
- Gathering and confirming land sales and improved sales from the immediate area and competing marketplaces.
- Inspecting the exterior of all comparables utilized.
- Highest and best use analysis.
- The application of the Cost and Sales Comparison Approaches to arrive at an indication of value for the subject property.
- A review of the written report.

DEFINITION OF MARKET VALUE

This definition is in compliance with the OCC (Office of the Comptroller of the Currency), FDIC (Federal Deposit Insurance Corporation), *FIRREA (Federal Institutions Reforms, Recovery, and Enforcement Act)*, and *USPAP (Uniform Standards of Professional Appraisal Practice)* as adopted by the Appraisal Foundation and the Appraisal Institute.

Market Value, as defined by the *Uniform Standards of Professional Appraisal Practice*, 2012-2013 Edition, is:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States Dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.²"

² *Uniform Standards of Professional Appraisal Practice*, 2012-2013 Edition, Appraisal Standards Board of the Appraisal Foundation.

PRELIMINARY APPRAISAL INFORMATION (continued)

PROPERTY RIGHTS APPRAISED

Fee Simple Estate, defined in *The Dictionary of Real Estate Appraisal*, Fifth Edition (2010), Appraisal Institute, as:

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

SPECIFIED FINANCING

Cash to seller, with or without financing.

OWNERSHIP AND SALES HISTORY ANALYSIS

According to the Clackamas County Assessor's office, the subject property is currently under the ownership of **David A. & Deanna Gwyn VanDoozer**. The current owners purchased the subject in July 2001 for a recorded consideration of \$499,500 (\$0.63/SF - \$27,103/AC). A vesting change occurred in November 2004 with no consideration recorded.

According to Clackamas County and John Sugar, Vice President, Special Assets, Umpqua Bank, Van Doozer still owns the property, and Umpqua is still the lender. Van Doozer initially filed Chapter 7 bankruptcy and then changed it to a Chapter 11 bankruptcy. A title report would reflect **Umpqua Bank** and Patrick McKittrick, Bankruptcy Trustee, as owner.

The property is under a current listing agreement with Coldwell Banker Real Estate (CBRE) with Stuart Skaug, SIOR as the listing agent. It was listed March 26, 2012 at a listed price of \$2,800,000 or \$149.68 per SF of buildings. According to Patty Schaffer, Client Services Assistant to Mr. Skaug, there has been high interest, however no written offers. The listing expired September 30, 2012 and at this writing has not been renewed.

ASSESSMENT AND TAX INFORMATION

Annual real estate taxes levied by the Clackamas County Assessor's Office are summarized on the following table:

Account #	2011 Real Market Value			Maximum Assessed Value (MAV)	Annual Taxes	Millage Rate
	Land	Improvements	Total	Total		
831764	\$444,743	\$419,790	\$864,533	\$580,084	\$7,614.46	\$0.01313

PRELIMINARY APPRAISAL INFORMATION (continued)

The subject taxes are not paid with arrears as follows:

Year	Base Tax	Interest to 10/15/2012	Foreclosure Penalty	Sum
2008	\$6,671.64	\$3,914.03	\$1,923.04	\$12,508.71
2009	\$7,285.37	\$3,108.42	\$0.00	\$10,393.79
2010	\$7,453.88	\$1,987.70	\$0.00	\$9,441.58
2011	\$7,614.46	\$812.21	\$0.00	\$8,426.67
Total	\$29,025.35	\$9,822.36	\$1,923.04	\$40,770.75

Clackamas County Assessor's Office reported a Foreclosure Penalty effective with Year 2008 which adds a 5.0% penalty onto the total amount of taxes due. The reported penalty of \$1,023.04 was effective June 25, 2012.

In May 1997 Oregon voters approved Ballot Measure 50, which is a property tax limitation. The maximum assessed value reported above reflects a 10-percent deduction from the 1995/96 assessed value and subsequent increases after 1998/99 of 3-percent per year plus bonded indebtedness.

LEGAL DESCRIPTION

Please refer to the Addenda for a full legal description.

INSPECTION

Date of Inspection: October 3, 2012
Property Representative: Michael Toon, representative of Peter McKittrick, Bankruptcy Trustee
Powell Valuation Inc: Shirley A. Layne
Katherine Powell Banz, MAI
(exterior only – October 9, 2012)

SOURCES OF INFORMATION

The following sources were contacted to obtain relevant information:

Source	Information
Stuart Skaug, Former Listing Agent, CBRE	Subject Information.
Michael Toon, Property Representative	Subject information.
Clackamas County Assessor's Office	Subject data; tax information.
David VanDoozer, Owner	Original report data, costs, etc.
Edward O'Hanlon, Bottaini, Gallucci & O'Hanlon	Construction Costs
Clackamas County Planning Department	Zoning information.
MetroScan	Subject data, comparable research.
Multiple brokers and real estate professionals	Local area data; comparable confirmation.
Willamette Valley Multiple Listing Service	Comparable research.
Regional Multiple Listing Service	Comparable research.
Loopnet	Comparable research.
CoStar	Comparable research.
County Deed Records	Comparable research.

PRELIMINARY APPRAISAL INFORMATION (continued)

COMPETENCY RULE

We are aware of the competency rule as detailed in *USPAP*, and with our understanding, we possess the education, knowledge, technical skills, and practical experience to complete this assignment competently, in conformance with the stated regulations. Ms. Banz and Shirley A. Layne have appraised numerous commercial and farm related properties in the Willamette Valley and the State of Oregon in recent years.

PERSONAL PROPERTY, FIXTURES, AND INTANGIBLE ITEMS

No personal property, trade fixtures, or intangible items were included in this valuation.

USE OF RECOGNIZED APPRAISAL APPROACHES

This report utilizes two recognized valuation methods: Cost and Sales Comparison Approaches to value. The Income Capitalization Approach is not relevant due to the special property type comprising the subject and lack of similar properties from which to compare.

UNAVAILABILITY OF INFORMATION

All information necessary to develop an estimate of value of the subject property was available to the appraisers.

EXPOSURE TIME AND MARKETING PERIOD

Exposure time is defined within the *USPAP*, Statement 6, as:

The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.

Exposure time is best established upon the experience of recent comparable sales. The sales indicate a standard exposure period of **at least one year** for appropriately priced commercially zoned land.

Commercial Land Sales		
Comp #	City	DOM
C-1	Eugene	90
C-2	Forest Grove	108
C-4	Oregon City	270
C-5	Woodburn	720
Average Days on Market		297
Months on Market		9.90

C-1 is located adjacent to the east of Coburg, at the I-5 interchange. C-2 is less than one acre, level with good secondary highway frontage. C-3 was not included due to the Wal-Mart purchase without benefit of a Realtor. C-5 has been on and off the market for seven to 10 years, with the most recent listing 720 days (two years).

PRELIMINARY APPRAISAL INFORMATION (continued)

Average exposure equals 9.90 months. The transactions listed were formally exposed through typical Realtor channels.

Improved Commercial/Industrial Sale Comparables – The sales used in this appraisal were formally listed and exposed through typical Broker channels.

Improved Commercial/Industrial Sales		
Comp #	City	DOM
1	Salem	112
2	Portland	106
4	Clackamas	239
5	Oregon City	1,163
6	Salem	317
Average Days on Market		387
Months on Market		12.91

The five comparables averaged 387 days or nearly 13 months of exposure before securing a buyer. Days on market is calculated from when the listing was signed to when escrow is closed.

Marketing period is very similar to exposure time, but reflects a projected time period to sell the property, rather than a retrospective estimate. As such, a similar time period of **at least one year** is estimated for the subject's marketing period.

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is subject to the following assumptions and limiting conditions:

HYPOTHETICAL CONDITIONS

A hypothetical condition is a condition that is contrary to the facts, and yet will be used to value a property. An example of a hypothetical condition would be assuming a larger amount of land than actually exists to arrive at a value.

No hypothetical conditions were assumed in this analysis.

EXTRAORDINARY ASSUMPTIONS

An extraordinary assumption is an assumption made that does not exist, but could reasonably exist.

According to a survey provided by the subject's owner in 2007, the site size is 18.43 acres or 802,811 SF. County records list the site as 18.25 acres. It is assumed for the purpose of this report that the most recent survey of the site is the most reliable.

ORDINARY ASSUMPTIONS

The analysis assumes that the Clackamas County Assessor's office legal description accurately represents the subject property. However, a land survey was provided to the appraisers and is included in the Addenda. Please refer to the land survey for further verification.

We assume no responsibility for matters legal in character, nor do we render any opinion as to title, which is assumed to be marketable.

All existing liens, encumbrances, and assessments have been disregarded, unless otherwise noted, and the property is appraised as though free and clear, under responsible ownership, and competent management.

The exhibits in this report are included to assist the reader in visualizing the property. We have made no survey of the property and assume no responsibility in connection with such matters.

Unless otherwise noted herein, it is assumed that there are no encroachments, zoning, or restrictive violations existing in the subject property.

This report is not a real property inspection; the appraiser only performed a visual inspection of accessible areas and this appraisal cannot be relied upon to disclose conditions and/or defects in the property.

The appraisers assume no responsibility for determining if the property requires environmental approval by the appropriate governing agencies, nor if it is in violation thereof, unless noted.

Information presented in this report has been obtained from reliable sources, and it is assumed that the information is accurate.

This report shall be used for its intended purpose only, and by the parties to whom it is addressed. Possession of the report does not include the right of publication.

ASSUMPTIONS AND LIMITING CONDITIONS (continued)

Simply because a borrower or third party may receive a copy of the appraisal, does not mean that the borrower or third party is an Intended User as that term is defined in USPAP.

The appraisers may not be required to give testimony or to appear in court by reason of this appraisal, with reference to the property in question, unless prior arrangements have been made.

The statements of value and all conclusions shall apply as of the dates shown herein. The appraisers have no present or contemplated future interest in the property that is not specifically disclosed in this report.

Neither all, nor any part, of the contents of this report shall be conveyed to the public through advertising, public relations, news, sales, or other media without the written consent or approval of the authors. This applies particularly to value conclusions and to the identity of the appraisers and the firm with which the appraisers are connected.

This report must be used in its entirety. Reliance on any portion of the report independent of others may lead the reader to erroneous conclusions regarding the property values. No portion of the report stands alone without approval from the authors.

The valuation stated herein assumes professional management and operation of the building(s) throughout the lifetime of the improvements, with an adequate maintenance and repair program.

The valuation is based on the projection that the complex will maintain a stabilized occupancy level over its economic life, with tenants paying market level rents.

The liability of Powell Valuation Inc and employees is limited to the client only and only up to the amount of the fee actually received for the assignment. Further, there is no accountability, obligation, or liability to any third party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraisers are in no way responsible for any costs incurred to discover or correct any deficiency in the property. The appraisers assume that there are no hidden or unapparent conditions of the property, subsoil, or structures that would render it more or less valuable. In the case of limited partnerships or syndication offerings or stock offerings in real estate, the client agrees that in case of lawsuit (brought by lender, partner, or part owner in any form of ownership, tenant, or any other party), any and all awards, settlements, or cost, regardless of outcome; the client will hold Powell Valuation Inc completely harmless.

The appraisers are not qualified to detect the presence of toxic or hazardous substances or materials which may influence or be associated with the property or any adjacent properties. We have made no investigation or analysis as to the presence of such materials, and expressly disclaim any duty to note the presence of such materials.

ASSUMPTIONS AND LIMITING CONDITIONS (continued)

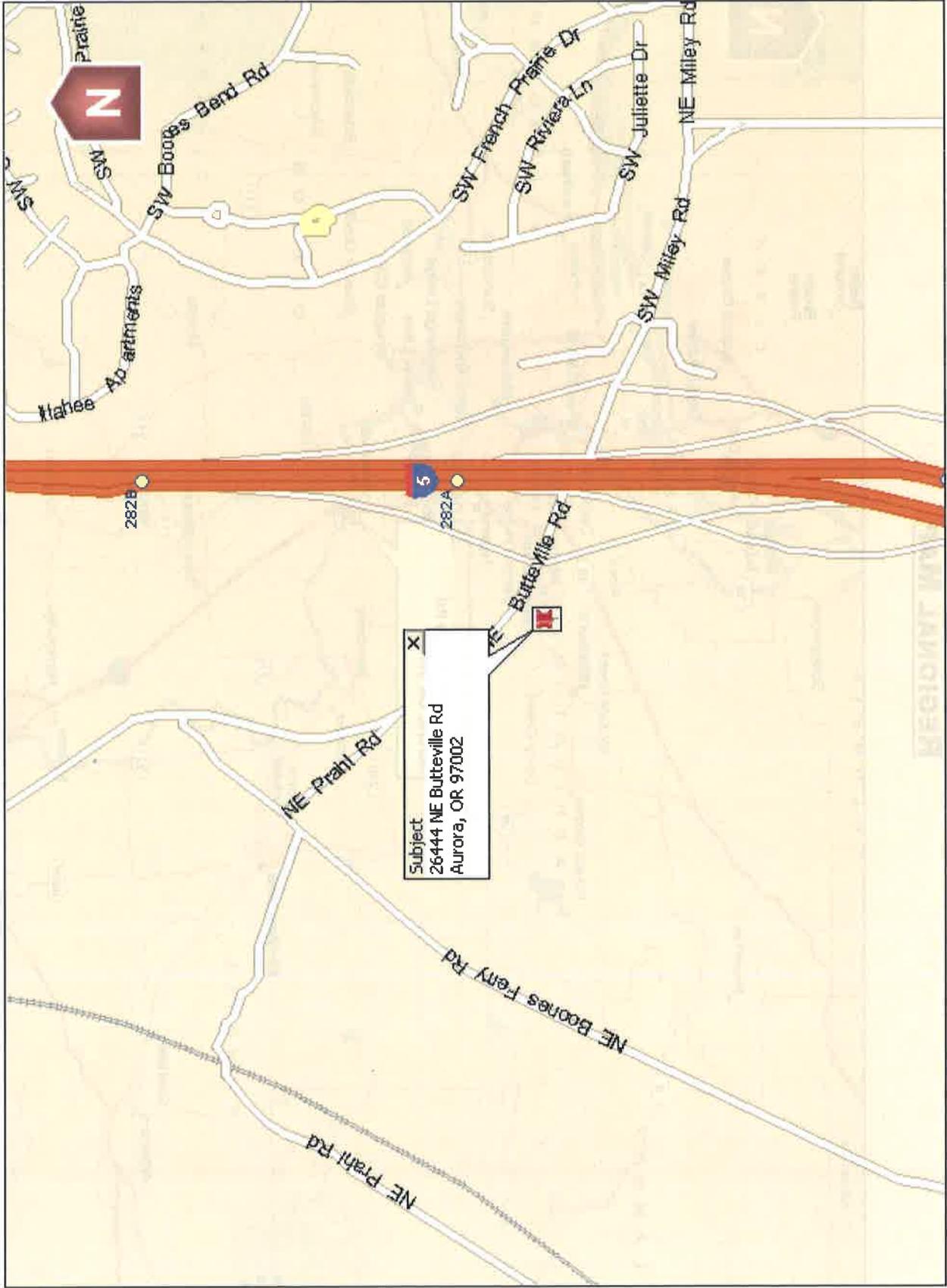
Therefore, irrespective of any degree of fault, Powell Valuation Inc and its principals, agents, and employees, shall not be liable for costs, expenses, damages, assessments, or penalties, or diminution in value, property damage, or personal injury (including death) resulting from or otherwise attributable to toxic or hazardous substances or materials, including without limitation hazardous waste, asbestos material, formaldehyde, or any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, solids, or gasses, waste materials or other irritants, contaminants, or pollutants.

The appraisers assume no responsibility for determining if the subject property complies with the *Americans with Disabilities Act (ADA)*, which prescribes specific building standards which may be applied differently to different buildings, depending on such factors as building age, historical significance, amenability to improvement, and costs of renovation. Powell Valuation Inc its principals, agents, and employees, shall not be liable for any costs, expenses, assessments, penalties, or diminution in value resulting from non-compliance. Except as otherwise noted herein, this appraisal assumes that the subject complies with all ADA standards appropriate to the subject improvements; if the subject is not in compliance, the eventual renovation costs and/or penalties would negatively impact the present value of the subject. If the necessary renovation costs, time period needed for renovation, and penalties for non-compliance (if any) were known today, appropriate deductions would be made to the value conclusion(s) reported herein.

AERIAL PHOTOGRAPH



NEIGHBORHOOD MAP



DESCRIPTION

REGIONAL DESCRIPTION

Please see the Addenda for a detailed description of the Portland MSA.

NEIGHBORHOOD DESCRIPTION

A neighborhood is defined as a geographic area characterized by a similarity of users and/or uses within which any change has a direct and immediate effect on the subject and its value or marketability. The subject is located within the Portland MSA, within Census Tract #228.

Summary Census Demographic Information - Census Tract #228.00

Tract Income Level	Upper	Tract Population	4,121
Underserved or Distressed Tract	No	Tract Minority %	5.14%
2011 HUD Estimated MSA		Minority Population	212
Median Family Income	\$72,000	Owner-Occupied Units	1,482
2011 est Tract Median Family Income	\$98,978	1-4 Family Units	1,840
2000 Tract Median Family Income	\$76,233	Renter Occupied Units	534
Tract Median Family Income %	137.47%		

source: www.ffiec.gov

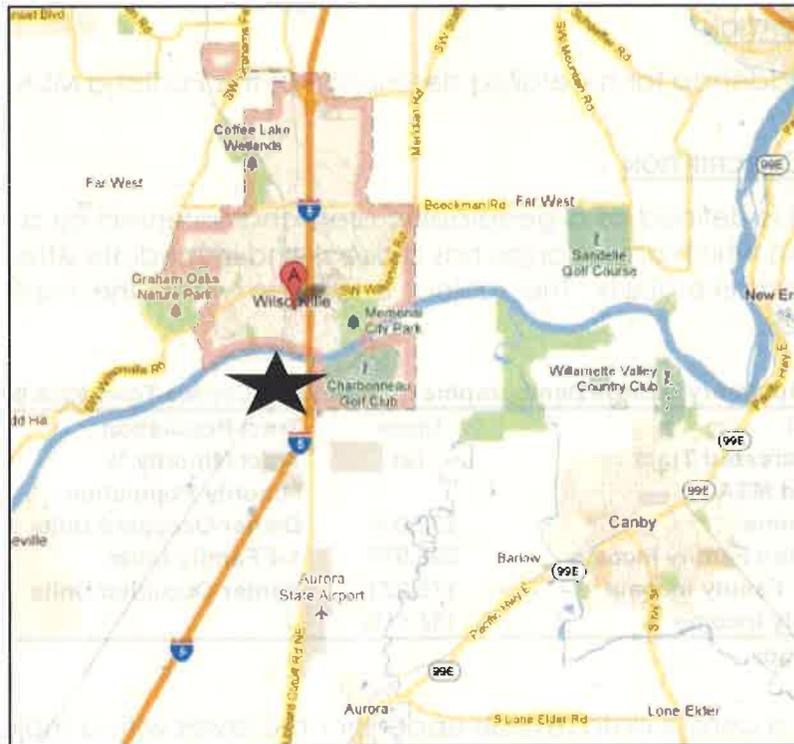
The 2011 updated census data reveals upper income levels with a majority of resident's homeowners.

The subject has an Aurora address, however is located outside the city limits and Urban Growth Boundary. The subject's I-5 location is south of Wilsonville and the Boone Bridge over the Willamette River, and north of the Canby/I-5 interchange. Population available through Portland State University as follows:

Location	2004	2005	2006	2007	2008	2009	2010	2011	Annual % Change	Annual % Change
									2004-2011	2010-2011
Aurora*	660	660	785	920	955	970	980	920	5.63%	-6.12%
Wilsonville	16,250	16,510	16,885	17,405	17,940	18,020	18,095	19,565	2.91%	8.12%
Canby	14,110	14,385	14,705	15,140	15,165	15,230	15,230	15,830	1.74%	3.94%
Woodburn*	21,790	22,110	22,615	22,875	23,355	23,350	23,150	24,090	1.51%	4.06%
Clackamas County	356,250	361,300	367,040	372,270	376,660	379,845	381,775	378,480	0.89%	-0.86%
State of Oregon	3,582,600	3,631,440	3,690,505	3,745,455	3,791,060	3,823,465	3,844,195	3,857,625	1.10%	0.35%

Wilsonville is the largest city within the subject's immediate sphere of influence. From 2010 to 2011, population strongly increased by 8.12%. Over the reporting period, this city grew by 2.91% per year. Aurora, which is the subject's address, grew from 2004 to 2011 by 5.63% setting the upper end of the range of annual change. However, a significant decrease occurred from 2010 to 2011 of 6.12%. This community is removed from the I-5 corridor and is primarily agricultural.

DESCRIPTION (continued)



The City of Wilsonville welcomes Pacific Natural Foods, one of the Northwest's leading organic food companies, to the community. On May 9, 2012, CBRE real-estate brokerage announced that Pacific Natural Foods has signed a long-term lease for 302,765 square feet at the site of the former Nike Distribution Center (DC), 27255 SW 95th Ave, Wilsonville, with the intention to move-in on approximately September 1, 2012. Construction within Wilsonville as reported by the City website is as follows:

PROJECTS UNDER CONSTRUCTION
<i>Projects that have been approved and are currently under construction.</i>
<u>Brenchley Estates</u>
<u>Fred Meyer and Old Town Square</u>
<u>Lowrie (Vilbois) Primary School</u>
<u>Wilsonville Road Business Park</u>
APPROVED PROJECTS
<i>Approved project that have not begun the actual construction phase.</i>
<u>SMART Operations Fleet Facility</u>
<u>Willamette Landing</u>
PROPOSED PROJECTS
<i>Projects that have been proposed but have not been approved through the Planning Commission and/or Development Review Board.</i>
<u>Villebois - PDP 5-South - Tonquin Woods #1</u>
<u>Villebois - PDP 1-North - Tonquin Woods 2 and 3</u>
<u>Villebois Village Community Center and Swimming Pool</u>

DESCRIPTION (continued)

This nearby activity enhances the subject as this community moves closer to their Urban Growth Boundary.

Charbonneau is directly east of the subject and home to the Charbonneau Golf Course, built in 1975 with three nine-hole courses. Further, condominiums, single family housing and apartments complete the development.

Traffic counts per the Oregon Department of Transportation for 2010 (most recent available) impacting the subject are:

2010 TRAFFIC COUNTS - OREGON DEPT OF TRANSPORTATION	
Location	# of VP-24 Hours
0.40 miles south of Aurora/Donald Interchange	86,300
1.38 miles south of Wilsonville/Hubbard (Hwy 51)	86,600
0.30 miles south of Wilsonville Interchange	117,200

In conclusion, the subject is within the path of progress, however with no expectation of incorporation into the Urban Growth Boundary, its future remains agriculturally oriented.

SITE DESCRIPTION

**Hazardous
Waste/Asbestos**

Upon physical inspection of the site, no hazardous material was evident. We have made no independent investigation regarding this issue. The property representative reported that no environmental contamination exists. This appraisal assumes the site is free of all hazardous waste and toxic materials. Please refer to the Assumptions and Limiting Conditions section regarding this issue.

Current Use

The site is improved with the **Former I-5 Farm Store.**

Address

26444 Butteville Road
Aurora, Oregon
Clackamas County

Census Tract

#228 - 2011

Site Size

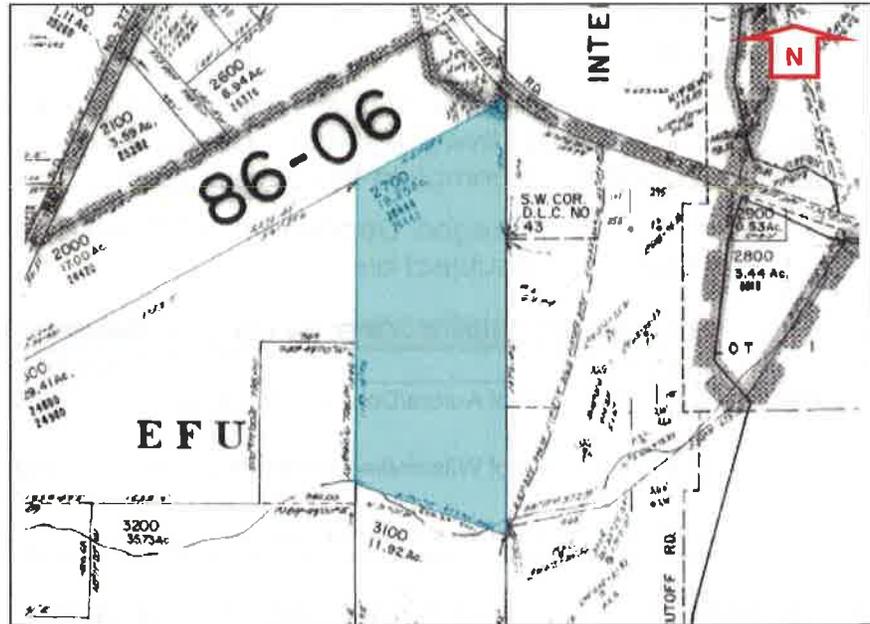
18.43 acres (802,811 SF)
Clackamas County
Survey in Addenda

Shape

Irregular.

DESCRIPTION (continued)

Plat Map



Map and Tax Lot

3-1-26 (tax lot 2700)
Clackamas County, Oregon

Topography

Generally level and at street grade.

Abutting Properties--

North	NE Butteville Road
East	Interstate 5
South	State of Oregon Rest Area
West	Unimproved EFU acreage

Utilities

No public water or sewer is available. Electric power, natural gas and telephone are available to the entire property. It is serviced by one well extracting 20 gallons per minute with a 3,000 gallon stainless steel water holding tank.

DESCRIPTION (continued)

Utilities (continued)



Photo taken 10/3/2012 (9594-10)

There are nine (9) tanks and drain fields in addition to a 3,000 gallon separate grey water tank system. This information was current July 30, 2009 and is assumed to be accurate. On October 3, 2012, there appeared to be no disturbance of these items. All electricity, gas, and water have been shut off by the respective utility companies. Without electricity, the well is inoperable.

Street Improvements

NE Butteville Road is a two-way neighborhood street providing direct access to the north and southbound ramps onto I-5. There are no curbs, gutters or sidewalks.

Exposure

The site is located at the interchange of Interstate 5 and the Charbonneau District (Exit 282). It is visible from Interstate 5 and located directly adjacent to the State of Oregon Rest Area on the south.

Accessibility

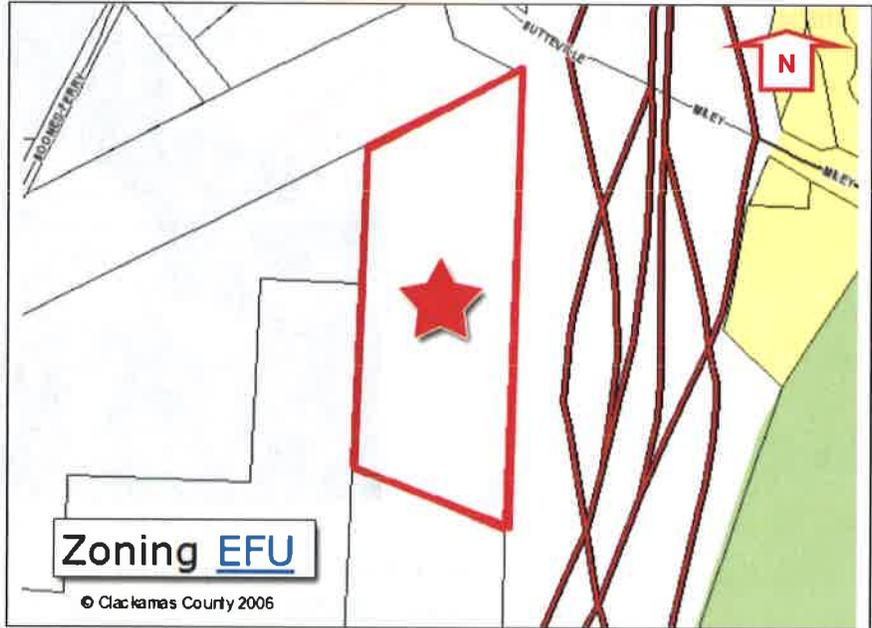
The site is easily accessible via NE Butteville Road from Charbonneau District Exit 282 via I-5 either north or southbound.

Easements and Encumbrances

A preliminary title report was not provided for review. Upon reviewing county plat maps, there did not appear to be any adverse easements, encroachments, or encumbrances relevant to the subject property. If questions arise regarding easements, encroachments, or encumbrances, further research is advised.

DESCRIPTION (continued)

Zoning and Comprehensive Plan



The site is zoned **EFU (Exclusive Farm Use)** per Clackamas County Planning Department. The site is outside the Urban Growth Boundary.

The purpose of the EFU zoning is:

- Preserve agricultural use of agricultural land
- Protect agricultural lands from conflicting uses, high taxation, and the cost of public facilities unnecessary for agriculture
- Maintain and increase the agricultural economic base of the County
- Increase agricultural income and employment by creating conditions which further the growth and expansion of agriculture and which attract related industries
- Maintain and improve the quality of air, water, and land resources
- Conserve scenic and open space
- Protect wildlife habitats

The last text revision was September 26, 2011.

The listing of primary uses includes, but is not limited to the following allowed on low and high value farmland:

- Farm uses
- Nonresidential buildings customarily provided in conjunction with farm uses
- Accessory buildings customarily incidental to an existing dwelling

DESCRIPTION (continued)

Zoning and Comprehensive Plan (continued)

- Propagation and harvesting of a forest product
- Creation, restoration, or enhancement of wetlands
- Winery
- **Farm Stands**
- Operations for the exploration for, and production of, geothermal resources

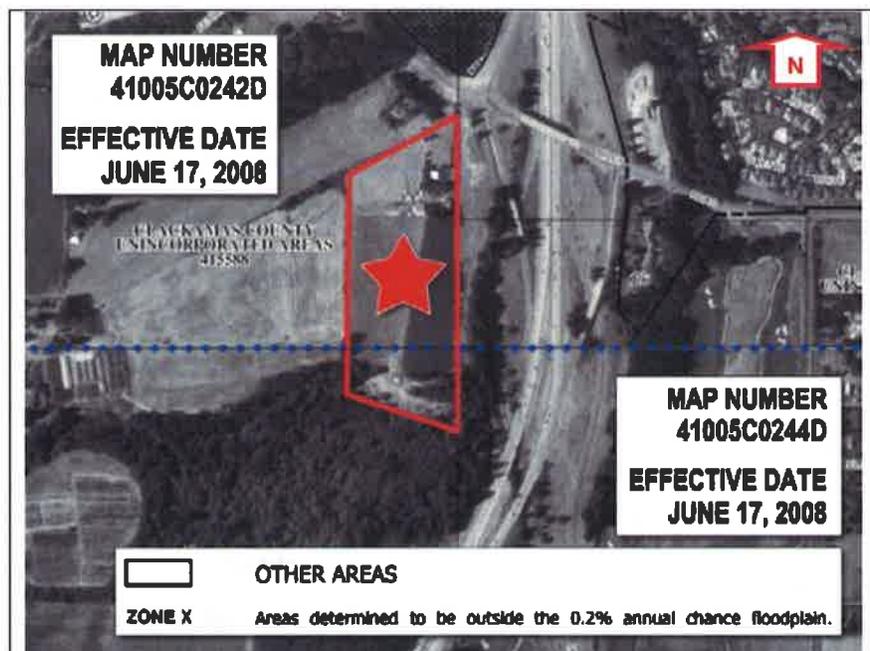
Conditional uses allowed on Low and High Value Farmland include:

- **Commercial activities that are in conjunction with farm use but no including the processing of farm crops**
- Mineral, aggregate, oil and gas uses
- Personal use airports, including associated hangar, maintenance, and service
- Roads, highways and other transportation facilities and improvements
- **Transmission towers over 200 feet in height***
- Commercial utility facilities for generating power for public use by sale
- Home occupation to host events

Based on the interchange location, the site could capitalize on commercial uses allowed under the EFU zone. ***The on-site transmission tower is outside the scope of this appraisal. It was reported that the lease payments from the cell tower were assigned to a trust controlled by David Van Doozer and go to him as Trustee.**

The complete zoning code can be located at the Clackamas County website.

Floodplain



DESCRIPTION (continued)

Floodplain (continued)

According to the Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), Flood Insurance Rate Map (FIRM), Community-Panel Nos. 41005C0242D, dated June 17, 2008 and Panel 41005C0244D, dated June 17, 2008, the subject site lies in **Zone X**, defined as areas determined to be outside the 0.2% annual chance floodplain.

Soils

Soils found on the United States Department of Agriculture's Natural Resources Conservation Service Web Soil Survey map for Clackamas County.



The type and location of the soils as reported in this map above and the following charts are considered to be accurate. However, due to the Web Soil Survey's mapping technique, the resultant site allocation percentages are approximations only.

Clackamas County Area, Oregon (OR610)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
88A	Willamette silt loam, wet, 0 to 3 percent slopes	2.8	15.0%
88B	Willamette silt loam, wet, 3 to 7 percent slopes	8.6	46.3%
91B	Woodburn silt loam, 3 to 8 percent slopes	3.0	16.1%
91C	Woodburn silt loam, 8 to 15 percent slopes	0.7	3.8%
92F	Xerochrepts and Haploxerolls, very steep	3.5	18.9%
Totals for Area of Interest		18.5	100.0%

DESCRIPTION (continued)

Soils (Continued) As such, the total area of the site calculated by the soil Web Soil Survey (18.5 acres) is slightly larger when compared to the surveyed area of the site (18.43 acres).
According to the United States Department of Agriculture's Natural Resources Conservation Service, the subject has 80% of Class II soils (high value).

Site Rating The subject is located in a rural setting with development north and east. The adjacency of the Urban Growth Boundary of Clackamas County may prove advantageous in the long term. Location, site size, topography and exposure give the subject site a high rating for farm related commercial uses allowed under the EFU zone.

DESCRIPTION OF IMPROVEMENTS

Introduction The improvement description is primarily based upon a physical inspection and an interview with the property representative.

Hazardous Materials/Asbestos This appraisal assumes that the structures are free of all hazardous waste and toxic materials, including (but not limited to) asbestos. Please refer to the Assumptions and Limiting Conditions section regarding this issue.

General Description The subject property contains four buildings:

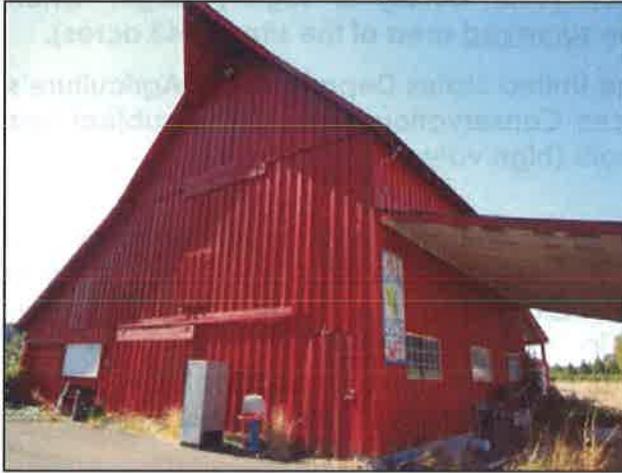
1. A single family dwelling built in 1920
2. A barn – construction date unknown
3. A Display Building built in 2005
4. A Market Building built in 2005

The following descriptions of each building will be segregated as listed above.

Single Family Dwelling A single family dwelling constructed in 1920 contains four bedrooms/one bath and measures 2,224 SF. It is wood framed with composition shingle roof and a concrete foundation. It is original to the site and has not been upgraded and does not offer any contributory value to the site.

DESCRIPTION (continued)

Barn



(9594-15) taken October 3, 2012 by Shirley Layne.

This building was on site when purchased in 2001 and measures **5,054 SF**. Year of construction is unknown. It was formerly a milking barn. It is wood sided with a metal roof and concrete floor. It has been rewired with a single phase system. The second floor is wood framed for storage. There is no sewer service to this building. This building has storage on the west side and animal stalls on the south side. It was painted in 2005.

Display Building



(9594-4) taken October 3 2012 by Shirley Layne

This single story wood framed building was constructed in 2005 and measures **2,048 SF**. A 403 SF mezzanine office space is accessible via a wooden staircase. The office overlooks the display area below. This building has one overhead door and a concrete floor. It is an all steel structure with ½" glass windows. Heat is via a gas furnace mounted on the wall and there is one restroom. It has 3-phase power with a step-down transformer going from 227 to 480 volt to 120-128 volt. It is wired for computer and internet service to six stations. Lastly, it has mercury vapor lighting. The condition of the wiring and transformer is unknown.

DESCRIPTION (continued)

Market Building



(9594-29) taken October 3, 2012 by Shirley Layne

This building is commonly called **The Market Building** constructed in 2005 and measures **11,201 SF**. It is single story save for a small office mezzanine in the southwest corner. It was built on a concrete slab. Floors are concrete based acid etched, sealed and waxed.

The building is steel framed with two 10"x10" overhead doors located on the north and south sides. All walls are concrete clad insulated with meal on the exterior. The north side is dock high with tractor-trailer turnaround capability. There is one bathroom with a

sink, urinal and toilet. On the north end, there is a room for freezer equipment and walk-in freezer with no equipment installed. All the windows surrounding the building are thermopane.

Interior improvements to this building include the following list. These improvements were in place on October 3, 2012.

- Display cases bolted to the concrete floor and connected to the drain system
- Cooking areas which have stainless steel counters, galvanized and stainless steel backsplashes and overhead exhaust hoods and sinks.
- Locks built-in proofer
- Walk in meat freezer
- Dry Good permanently fixed display cases
- Computerized smoke and video system (both market and display buildings)
- Built-in refrigerated meat cases
- Surround sound
- Electronic front doors
- Freon gas detectors, heat and smoke detectors
- Lighted ceiling fixtures (T-5, 277 volt)

Site Improvements

The following site improvements were physically seen on October 3, 2012.

Site improvements include extensive asphalt paving, underground utilities (natural gas and water) running north to south and a required retention pond in the southeast corner of the site.

There are three (3) electric vaults with single and 3-phase power to service all existing and future improvements.

DESCRIPTION (continued)

Site Improvements (continued)

The entire property is serviced by one well extracting 20 gallons per minute with a 3,000 gallon stainless steel holding tank. It is **potable** water only under a pressurized system. In addition, there are five springs feeding into a 6" irrigation line and 400,000 gallon pond for irrigation.

The sewer system has all approvals from Clackamas County and Department of Environmental Quality (DEQ).

Lastly, there is a complete irrigation system servicing the entire 18 acres. A gray water sewer system services the cooking areas and is independent of the primary sewer system. There is 3.5 miles of natural gas and electrical pipe. A metal entry gate provides access into the site.

On the south side of the site, there is a natural gas filling station and a fully approved holding tank with automatic feeder from a well with automatic leveling. It is fenced and has full DEQ approvals. It was fire department designed and monitored during construction.

Throughout the site are freestanding light poles with electric plugs as well as asphalt walkways connecting the east to west sides of the site.

The appraiser makes no warranties that the items listed above are in working order, however, there was no evidence at the physical inspection that any removal of these items was done.

Parking

Ample asphalt parking is available throughout the site for both tractor-trailer rigs and smaller vehicles approved by Clackamas County. There is as total of **3.50 acres of asphalt paving**. Electric and wireless service for RV and bus parking may still be in place. There are a total of 88 tent spaces on the asphalt for outdoor retail sales with nearby electricity and water services. Striping has faded and vegetation is overtaking the asphalt.

Effective Age

The single family dwelling has an actual age of 92 years with no contributory value to the site.

The age of the barn is unknown; however it has been marginally updated. Effective age is about 45 years.

The Display and Market Buildings were constructed in 2005 with an actual age of seven years. Actual and effective age is seven years.

DESCRIPTION (continued)

Audited Improvement Cost

Per Edward O'Hanlon with Bottaini, Gallucci & O'Hanlon, PC 1500 NE Irving St, Suite 440, Portland, Oregon 97232 (503-233-1133), the audited cost of the improvements including buildings and fixtures, asphalt, infrastructure and landscaping total \$3,644,860. These costs were reliable July 30, 2009 and are used in this appraisal.

Actual Total Costs	\$3,644,860
<u>Buildings Only</u>	<u>(\$2,618,586)</u>
Fixtures, Infrastructure, paving, fencing	\$1,026,274

Heating and Air Conditioning

Forced air gas heating and cooling systems are installed in the Display and Market Buildings.

Condition

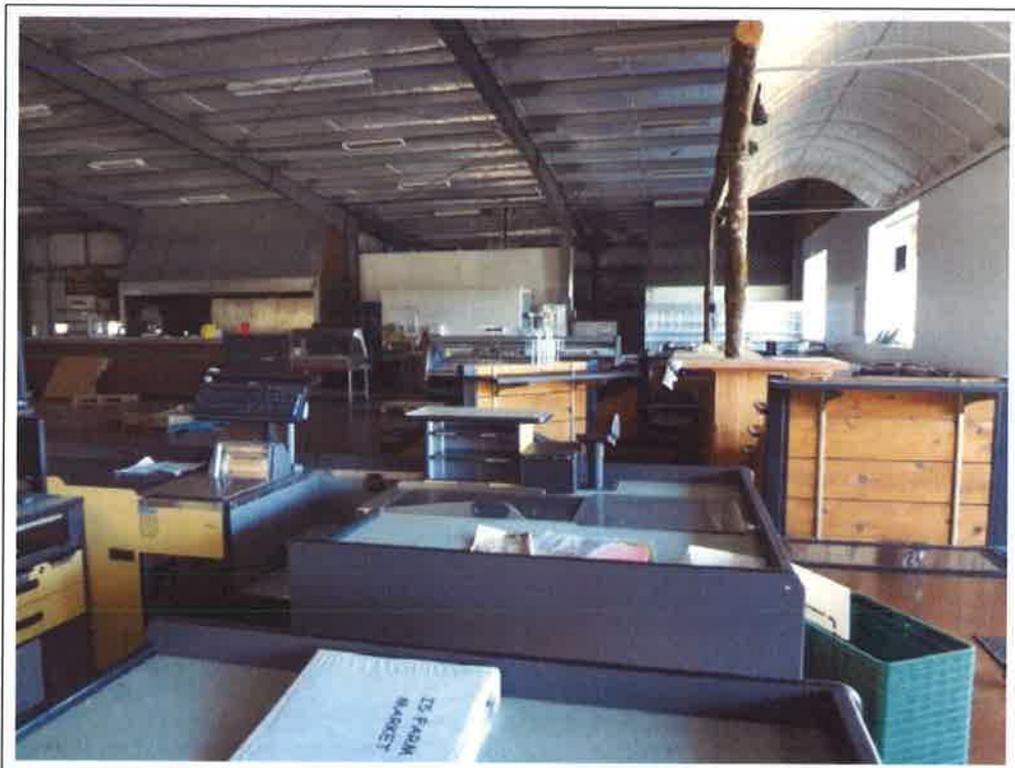
The building improvements have been vacant since 2010. Access was available on October 3, 2012 to the Market and Display Buildings. There was no evidence of vegetation entering the buildings, nor was there evidence of roof leaks. The exterior paint of the Display Building is deteriorating. The SFR contributes no value to the property. On balance, the overall condition is fair to average.

Summary – The preceding information is a basic description of the subject improvements. This information is utilized in the valuation of the property. Reliance has been placed upon information provided by the owner and previous appraisals, the physical inspection and county records. It is assumed that there are no hidden defects, and that all structural components are functional and operational. If questions arise regarding the integrity of the structures or their operational components, it may be necessary to consult additional professional services.

SUBJECT PHOTOGRAPHS
OCTOBER 3, 2012



1. Exterior of Market Building. (9594-28)



2. View north of interior of Market Building. (9594-39)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)



3. View of Market Building built-ins. (9594-34)



4. Exterior of meat freezer. (9594-37)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)



5. View of cooking built-ins. (9594-35)



6. View south of interior of Market Building. (9594-44)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)



7. View of south elevation of Market Building. (9594-46)



8. View of north elevation of Market Building. (9594-26)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)



9. View of west elevation of barn. (9594-24)



10. West elevation of Display Building. (9594-30)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)

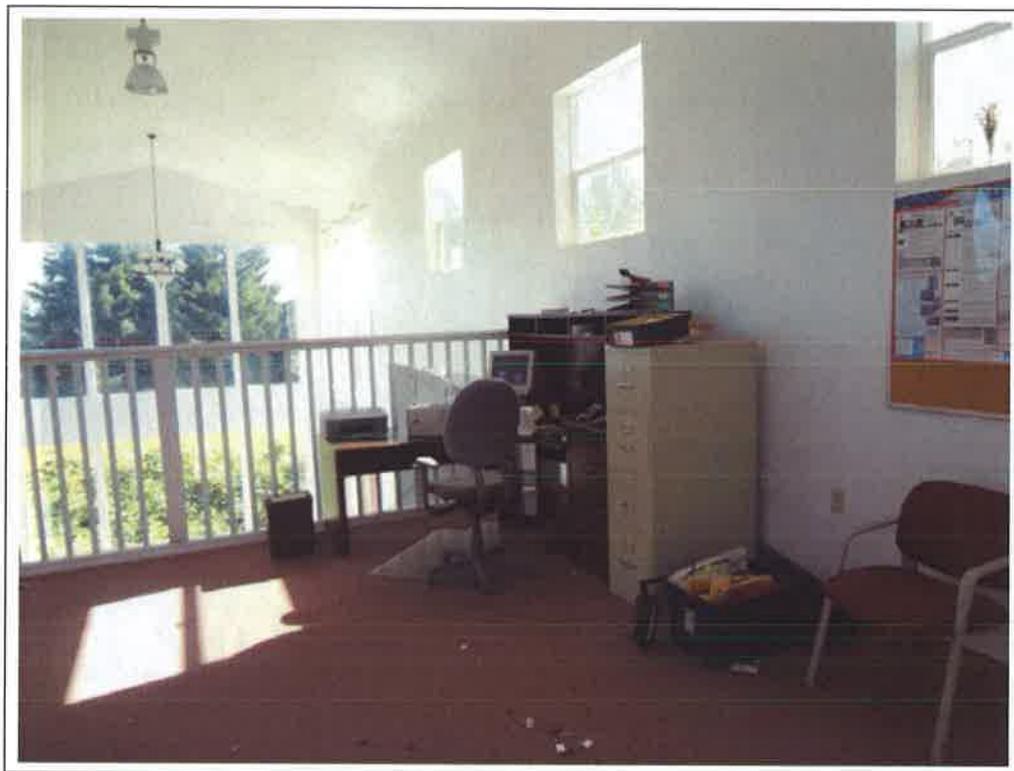


11. Interior of Display Building. (9594-7)



12. Interior of Display Building. (9594-5)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)



13. View of mezzanine of Display Building. (9594-8)



14. View north of pavement. (9594-18)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)



15. View of retention pond. (9594-17)



16. Exterior of SFR. (9594-14)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)

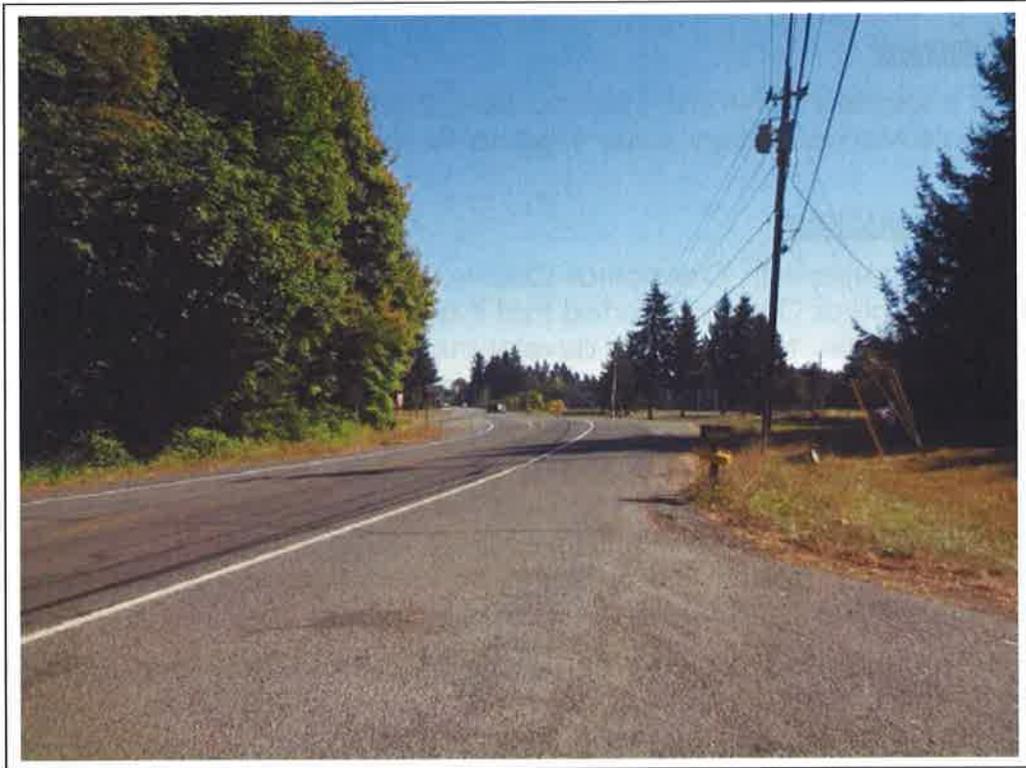


17. View west of driveway. (9594-2)



18. View west on Butteville Road; access on left. (9594-47)

SUBJECT PHOTOGRAPHS – OCTOBER 3, 2012 (continued)



19. View east on Butteville Road; access on right. (9594-48)

MARKET ANALYSIS/HIGHEST & BEST USE

MARKET OVERVIEW

The subject is located within the Portland MSA. Please see the Population, Economy, and Real Estate Market sections in the Regional Description located in the Addenda.

MARKET CONSIDERATIONS

The subject is located with Clackamas County, outside the Wilsonville Urban Growth Boundary. Clackamas County reported that if and when the property was annexed, it would be in Wilsonville. No significant developments have taken place on the west side that would alter the rural state. Specifically it is sited west of I-5 at the Charbonneau District/Canby exit (282) surrounded by unimproved EFU acreage.

Metro (elected regional government) is responsible for managing the Portland metropolitan region's Urban Growth Boundary and is required by state law to have a 20-year supply of land for future residential development inside this Boundary. Every five years, the Metro Council is required to conduct a review of land supply and, if necessary, expand the boundary to meet this requirement.

Calling it a watershed moment and a plan to protect farms, forestland and urban form, the Metro Council voted to add 1,985 acres to the Urban Growth Boundary, including the region's first addition of residential land since 2002.

The vote included adding land south of Hillsboro, southwest of Beaverton and southwest of Tigard for new residential communities. Another 300-acre area north of Hillsboro was designated as a potential site for large-lot employers.

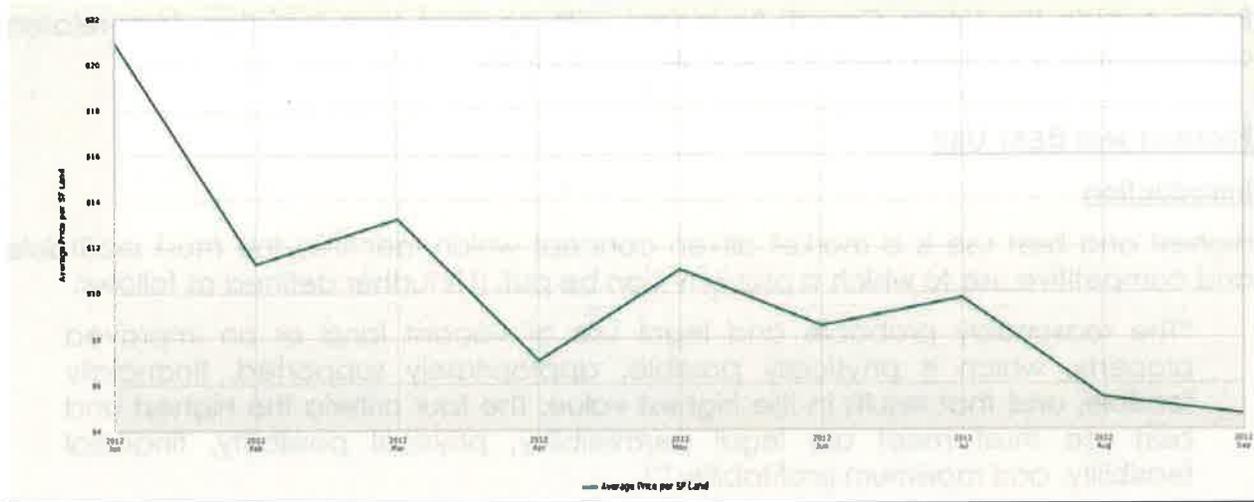
Metro is required to keep enough land in the Urban Growth Boundary to accommodate 20 years of residential and employment growth. Metro's official estimate is that the region needs 47,100 more homes to accommodate growth through 2030; the council said the boundary needed to expand by enough to handle about 16,000 more homes. Undeveloped and redeveloped areas already in the Urban Growth Boundary are expected to accommodate the rest of the growth.

The addition is the fourth-largest expansion of the boundary since 1979, when 227,491 acres were originally included in the Urban Growth Boundary. Metro has added more than 1,000 acres to the boundary six times since then – in 1980, 1983, 1998, 2003, 2005 and 2011. The Metro Council's next Urban Growth Boundary review is scheduled for 2014.

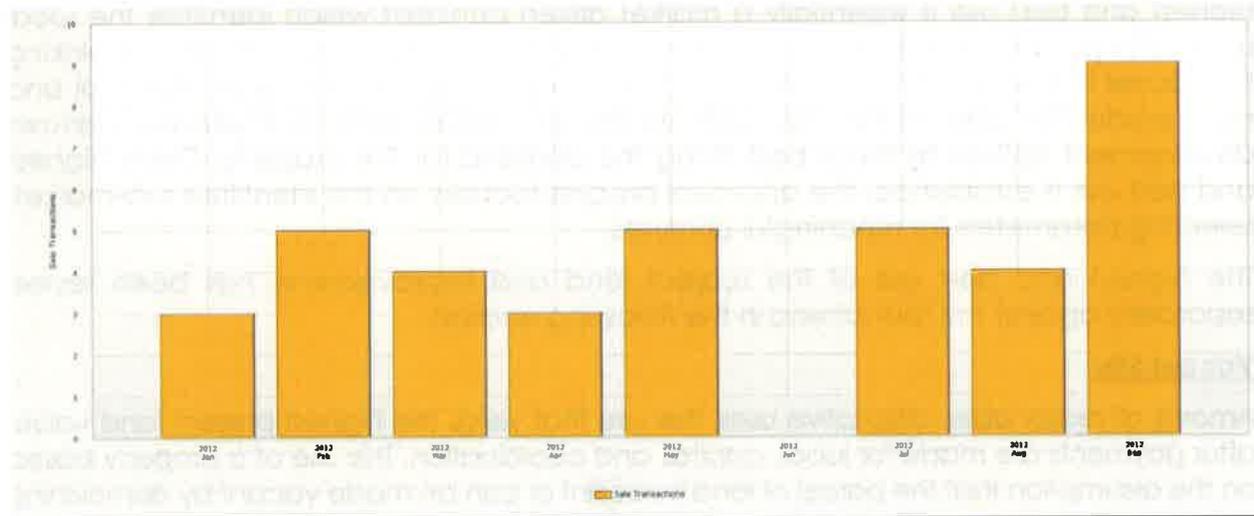
One must consider that although the property is currently zoned EFU for farm use only, the location and wide range of allowable commercial uses make the property unique to the immediate area. Although the same conditional uses are available to all EFU zoned land, location characteristics typically make them financially unfeasible.

Statistics from CoStar indicate 10 commercial/industrial land sales occurred from January 2011 to September 2012 in Washington, Clackamas and Marion Counties. These sales have a *commercial/industrial highest and best use*.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)



This chart represents the number of commercial/industrial land sales in the targeted area over the past year. The most recent period illustrates a solid decrease commencing in July 2012. Regarding sale price trending, the following chart uses the same data.



The increased sales volume in September 2012 shows a sale price at the low end, trending downward since July 2012. However, the small number of transactions (50 total) over the nine month period may skew the data.

With regard to EFU/Farm/Forest zoned parcels, a search through *RMLS* was completed. For the preceding nine months (January 2012 to September 2012), 19 parcels sold for an average price of \$436,921 or \$8,424 per acre based on the average acreage of 51.86. Average days on market totaled 204 or 6.80 months. Sale prices equaled 89.14% of list price, suggesting buyers are negotiating.

In summary – the scarcity of sales is apparent in the bare land category due to the lack of financing for proposed projects and the continued hesitancy of lending institutions to assume a portion of the risk. This hesitancy is driven by the large number of foreclosures or troubled assets that banks are currently embracing.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

Being outside the Urban Growth Boundary, with no short term inclusion, farm-related development is the best hope for feasibility at this time.

HIGHEST AND BEST USE

Introduction

Highest and best use is a market driven concept which identifies the most profitable and competitive use to which a property can be put. It is further defined as follows:

"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability."³

The concept of highest and best use is fundamental to real property value. In one application of the concept, a site is valued as though vacant and available for development to its highest and best use. In another application, the highest and best use of the property as improved is estimated. A site may have one highest and best use as though vacant, while the improved site may have another optimal use.⁴

Highest and best use is essentially a market driven concept which identifies the ideal use(s) of a property which follow logical market criteria. It attempts to mirror the thinking of a buyer in the marketplace. Analysis pertaining to the legal, physical, financial and most productive uses of the site, both as though vacant and as improved, narrows development options to those best fitting the demand for the property. Once highest and best use is established, the appraisal process focuses on the identified sub-market, selecting parameters for meaningful analyses.

The highest and best use of the subject land and improvements has been tested separately against the four criteria in the following analysis.

Vacant Site

Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.⁵

Legally Permissible - Legal factors influencing the subject are primarily zoning regulations and City ordinances. The subject site is zoned **EFU** (Exclusive Farm Use), as designated by Clackamas County. As a vacant site, legal uses support a **farm-related commercial use**.

Physically Possible - The physical characteristics of the site (location, shape and topography) generally support any of the conditional uses, with no adverse conditions noted. Regarding locational features, the subject is located south of the Urban Growth Boundary and the community of Wilsonville, with farm related uses west of the site. Its location west of I-5 offers good exposure and access at exit 282.

³ *The Dictionary of Real Estate Appraisal, Fifth Edition*. Chicago: Appraisal Institute, 2010.

⁴ *The Appraisal of Real Estate, Thirteenth Edition*. Chicago: Appraisal Institute, 2008.

⁵ *The Dictionary of Real Estate Appraisal, Fifth Edition*. Chicago: Appraisal Institute, 2010.

MARKET ANALYSIS/HIGHEST & BEST USE (continuea)

Eighty percent of the site is Class II soils (high value); however, the Interstate 5 frontage at a highly traveled on/off ramp suggests alternative uses should be considered. Therefore, physical and locational characteristics suggest a **farm-related commercial use** is supported for the vacant site.

Financially Feasible - Based on the site's exposure and access, it would be financially irresponsible to continue operation of traditional farm uses. The prospective use of farm-related commercial activity will bring the highest return to the land.

Therefore, development of the site with a legally and physically supported commercial use is financially feasible.

Maximally Productive - Legal and physical factors support a commercial use of the vacant site. Surrounding development suggests a farm-related commercial use is more feasible than crop farming. Therefore, a **farm-related retail use** accurately describes the maximally productive use of the site, as it represents a financially feasible, physically possible and legally permissible use.

Marketability - Due to the subject's frontage along I-5, the subject has high marketability for a **commercial** use consistent with the allowable uses of the EFU conditional uses within the zoning ordinance.

Because of the subject's size and location, we anticipate a **marketing period of at least one year**, if listed at or near market value. This is consistent with marketing periods of similar properties in the subject's market area.

Highest and Best Use Conclusion As Vacant - Based upon past, present and prospective market activity in the subject's market area, it is our opinion that a **farm related commercial use; or a farmer's market** is an adequate expression of the highest and best use of the vacant site.

"AS IMPROVED"

Highest and best use of a property as improved pertains to the use that should be made of an improved property in light of its improvements.

Legally Permissible - The site is zoned **EFU (Exclusive Farm Use)** by Clackamas County. The existing **farmer's market** use is an allowed conditional use and meets all developmental standards.

Physically Possible - the subject's buildings are primarily newer (post 2005) and were constructed to conform with a "western theme" for produce sales, farm implement sales and other commercial farm related activities. The current improvements have good utility for these uses. They conform to the requirements of a commercial farm related use; however, they may include some functional obsolescence in the form of super adequacies in the current market. This resulted in higher costs than can be readily recaptured if offered for sale.

Financially Feasible - The subject is anticipated to be owner occupied with rentals provided to outside vendors. The buildings were constructed for use as a farmer's market and farmer implement distribution.

Maximally Productive - As improved, the subject has good utility for the farm related uses consistent with the EFU zone, conforming to the surrounding neighborhood and considered well supported in terms of design, quality and appeal.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

Marketability - The subject's good quality and centralized location appeal to a broad tenant base. The marketability of the subject as farm related commercial property has been discussed previously.

Because of the subject's size and location, we anticipate a marketing period of **at least one year**, if listed at or near market value. This is consistent with marketing periods of similar properties in the subject's neighborhood.

Highest and Best Use Conclusion As Improved - Based upon past, present and prospective activity in the market area, it is our opinion that the highest and best use of the subject as improved is adequately expressed by the **existing farmer's market and farm implement distribution improvements**.

VALUATION METHODS

SITE VALUE

In valuing the subject site, as though vacant as of the effective date of this report, the Sales Comparison Approach is utilized. In this approach, recent sales and/or listings of similar sites are compared to the subject using the adjustment process (if appropriate) to indicate value. Where good market activity and data is available, this approach best reflects market behavior and provides a useful estimate of value for the subject land.

COST APPROACH

The Cost Approach is based upon the principle that the value of property is significantly related to its physical characteristics and that no one would pay more than the cost to build a like facility in today's market on a comparable site. In this approach, the market value of the site is estimated and added to the depreciated value of the improvements. In addition, entrepreneurial profit is added. For proposed or newer properties, this approach may have significant relevance. For older properties or those with substantial depreciation, this approach has limited application. However, the Cost Approach may prove useful as an indication of potential supply, as measured by the amount of profit evident. These factors will be considered in addressing the emphasis placed on the Cost Approach.

INCOME APPROACH

This approach is predicated on the assumption that there is a definite relationship between the net income a property will earn and its value. Net income is the income generated before payment of any debt service. The process of converting it into value is called capitalization. Net income is divided by a capitalization rate. Factors such as risk, time, interest on the capital investment, upside potential and recapture of the depreciating asset are considered in the rate. Applying a capitalization rate based on indications from comparable sales reflects expectations of buyers and sellers in the market.

Another capitalization concept employed with the Income Approach is the Discounted Cash Flow Analysis or **yield capitalization**. It is developed by projecting cash flows over a holding period assuming variations in income, expenses, lease terms, reversion rates and internal rates. The net present value of the cash flows is a method of measuring anticipated future benefits.

SALES COMPARISON APPROACH

This approach analyzes sales of comparable properties with regard to the nature and condition of each sale. Logical adjustments and/or comparisons are made for varying physical characteristics. For land value, a common denominator is a price per square foot or price per acre; for improved properties, it may be the price per square foot, price per unit, or a gross income multiplier. This approach develops a good indication of value when sales of similar properties have occurred.

VALUATION METHODS (continued)

RECONCILIATION

This is the process by which the individual approach indications are weighed based on validity and applicability to the subject market. The indications often indicate different values. After factors influencing each approach are carefully considered (i.e. quality and quantity of data, sophistication of the market, etc.), a final point estimate of value is concluded.

In this report the Cost and Sales Comparison Approaches will be utilized to value the subject property. At the client's request, a 180 day disposition value is also concluded.

SITE VALUATION

In this section, the market value of the subject site will be estimated by comparing it with recent sales of land located in the subject's market area. As discussed in the Site Description section, the subject contains **18.43 acres** of land area, with a highest and best use for **agriculture/commercial related development consistent with farm-related uses**.

The limited number of comparable sales in the subject's immediate area and lack of uniformity within this market prevents direct extraction of adjustments from the marketplace. General analysis reflecting market behavior is utilized to determine which comparables are superior or inferior to the subject. This analysis establishes value parameters for the subject, allowing for a final conclusion of value.

The **price per SF** unit of comparison will be used in this analysis. This indicator best reflects the behavior of the typical buyer and seller in the subject market. Information regarding the land sale comparables is presented on the Land Sales Tabulation Chart and Adjustment Grid, which follows the comparable discussion. A Land Sale Location Map is also included.

Comparable Selection - Clackamas County Zoning Department reports there are numerous potential commercial uses allowed under the EFU zoning, as long as the use is farm related. Items include produce, meats, herbs, flowers, tractors and related equipment, etc. In addition, it is realized that the frontage on I-5 provides superior exposure for the subject. The current development, market and display buildings were constructed in 2005. Noting these conditions, it is recognized that the subject is best bracketed by values based on EFU and Commercial zoning. Regarding utilities, the entire site has natural gas, water and septic available with each building served (sans SFR and barn). These utilities are specific to the site. **The parcel is not on public services save for power.**

EFU Land Analysis - The first selection is EFU/Farm/Forest/Agricultural zoned which sold from January 2012 to September 2012 with per SF indications from **\$0.24 to \$1.80 per SF**. The comparable selection considered the use of the property and site size primarily.

The seven comparable EFU-zoned land sales took place within the past nine months, within the current economic climate. No adjustment for market conditions is warranted. The comparable sales are presented on the following chart.

EFU-Zoned Comparable Land Sales

Comp #	Address	Date of Sale	Zone	Site Size	Sale Price	\$/AC	\$/SF	Utilities	Major Arterial
E-1	14601 Arndt Rd NE, Aurora	Jan-12	EFU	33.72	\$575,000	\$17,052	\$0.39	None	None
E-2	6652 S Lone Elder Rd, Aurora	Jan-12	EFU	15.61	\$250,000	\$16,015	\$0.37	Gas, power	Hwy 99E
E-3	SW Villebois & Barber Rd, Wilsonville	Apr-12	EFU	33.48	2,625,000	\$78,405	\$1.80	All available	None
E-4	6939 S Monte Cristo, Woodburn	Jul-12	EFU	29.60	\$350,000	\$11,824	\$0.27	Natural gas	None
E-5	35998 SE Tracy Rd, Estacada	Jul-12	Farm	21.37	\$227,500	\$10,646	\$0.24	Well, power, septic	Hwy 211/224
E-6	Ehlen Rd, Aurora	Aug-12	EFU	59.81	\$900,000	\$15,048	\$0.35	Nearby	I-5
E-7	Wildcat Mtn Rd, Eagle Creek	Sep-12	Ag	10.00	\$175,000	\$17,500	\$0.40	Power, septic	Hwy 224

	Per SF
HIGH	\$1.80
LOW	\$0.24
AVERAGE	\$0.55

Comparable 3 (\$1.80/SF) sets the upper end of the range due to its Wilsonville location and easy access to I-5. It capitalizes on the adjacency of the mixed use development locally known as Villebois, an upper end development.

SITE VALUATION (continued)

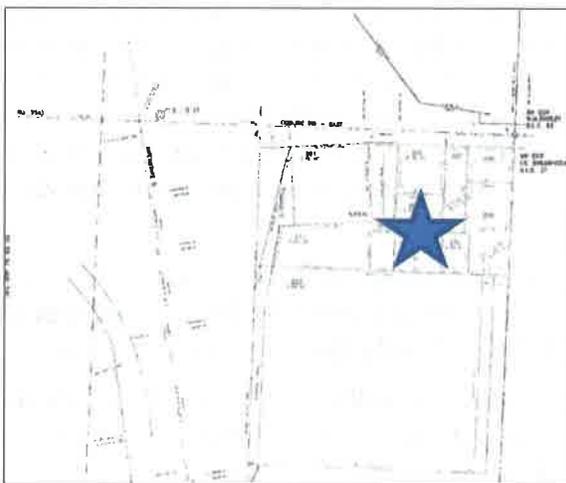
Comparable 4 (\$0.27/SF) includes a well maintained 30-year old producing hazelnut orchard. The age of the orchard may place downward pressure on price.

The best comparables are E-1, 2 and 6 when considering location. They form a tight range from \$0.35 to \$0.39 per SF. However, the subject's Interstate 5 frontage and other physical characteristics suggest a unit value at or above the upper end of the EFU-zoned comparable range.

Commercial Land Analysis – The subject has commercial potential consistent with the EFU zoning coupled with the I-5 freeway location. The entrance/exit (north and south) of I-5 provides easy access to the subject. From this point, it is critical to consider the commercial enterprise potential when concluding a price per SF.

It is recognized that satisfying many of the subject's traits in the search for reasonable comparables may be difficult, coupled with the interchange benefit. Buyer motivations influence prices paid.

The five commercially zoned comparable land sales required no adjustment for market conditions due to their dates of sale, which are within the current economic climate. The properties sold between June 2011 and March 2012, a nine month period. A search conducted in September 2012 revealed no new closed sales. The comparables form a per SF range from **\$4.03 to \$22.69.**



Comparable C-1 (\$10.39/SF) represents an 8.84 acre commercial site transacting in April 2012. It is located east of I-5 at exit 199. Benefits include level topography, available utilities and location within the city limits. Frontage includes 594 feet on I-5 and 366 feet on Van Duyn Road. The site is comprised of nine tax lots under a commercial zone.

The listing agent reports no unusual conditions to the sale which was exposed for a quick 42 days.

When compared to the subject, location is similar; however, traffic counts are 62% lower than at the subject's interchange. Developability is similar, but this site is within the city limits with all utilities available. Overall, it is a **high indicator.**

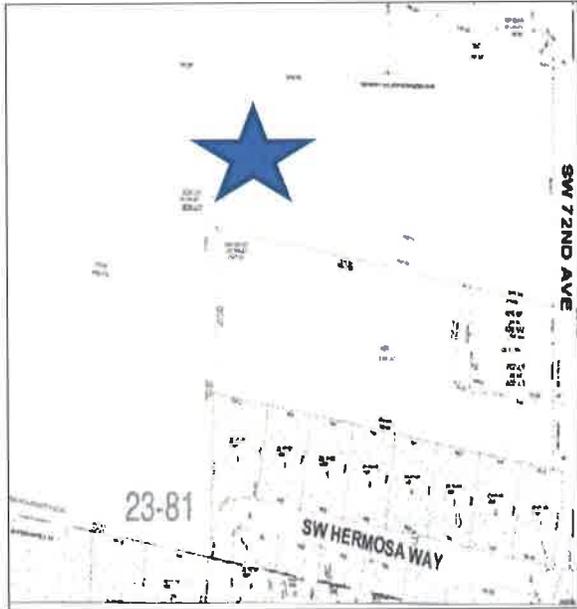


Comparable C-2 (\$4.03/SF) is less than one acre located within Forest Grove and zoned light industrial. It is level with utilities stubbed to the site. It is near Highway 47, although there is no frontage. There is one existing garage. Access is via a paved roadway.

The property was listed for \$119,000, and then reduced to \$109,000, representing a 8.40% reduction, with the final sales price another 8.26% discount. Exposure period was reported to be 108 days (3.60 months).

SITE VALUATION (continued)

When compared to the subject, site size is vastly superior; however, lack of frontage on a major arterial or interchange causes this transaction to be a **reasonable to high indicator**.

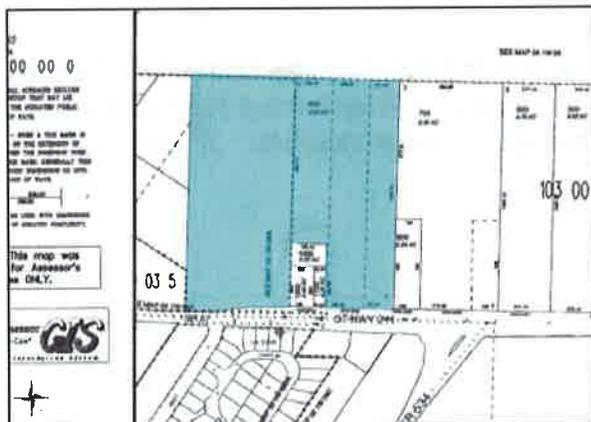


Comparable C-3 (\$22.69/SF) characterizes the closed transaction of 18.40 acres of Commercial General zoned land in Tigard, roughly 11 miles north of the subject. It is an assemblage of three tax lots which were purchased for the construction of WalMart. It is level with all utilities nearby, is in the city limits with exposure to OR Highway 99W and OR Highway 6 (Beaverton-Tigard Highway).

When compared to the subject, site size, utilities and developability are similar, however zoning and city limits inclusion place upward pressure on price, as does corporate site searches for national users. This transaction is a **high indicator**.



Comparable C-4 (\$4.30/SF) characterizes the pending sale of 10.68 acres of Campus Industrial zoned land in Oregon City. A wide variety of uses include light manufacturing to outdoor storage facilities. It is blocks from Highway 213 with all services available and minimal road improvements needed. All utilities are available and access is via a paved roadway. When compared to the subject, site size, utilities and developability are similar, however zoning and city limits inclusion place upward pressure on price. This transaction is a **high indicator**.



Comparable C-5 (\$3.99/SF) is the long term listing of 8.62 acres of Commercial General zoned land in Woodburn. It is within the Woodburn UGB and per the listing, cannot be rezoned to industrial or residential uses. The listing Realtor reports that this property has been listed for eight to 10 years with no written offers. However, he confirms the listed price is "right" for this site. Limited utilities are available and topography is level. The site is 1,005 feet deep with 277 feet of frontage. Present use is pasture.

SITE VALUATION (continued)

When compared to the subject, it appears that the listed price is high based on the length of the listing. This property is a **high indicator**.

In determining a per SF land value, both the EFU and commercially zoned sales must be considered and ranked according to the following:

Advantages of the subject site:

- I-5 Visibility
- I-5 Exit 282
- All private utilities in place
- Farm related commercial uses allowed

Disadvantages include:

- Outside the UGB and city limits
- No zone change possible
- Lackluster demand

The subject's placement among the comparables is arrayed below:

Comp #	\$/SF Land	Indication
C-3	\$22.69	High
C-1	\$10.39	High
C-4	\$4.30	High
C-2	\$4.03	High
C-5	\$3.99	High
Subject		
E-8	\$1.80	Low

The data suggests a per SF range from **\$1.80 to \$3.99 per SF**, with more weight toward the low end, due in part to the relatively long-term EFU zone and restrictions placed on commercial development. For the purposes of this analysis, a unit value of **\$2.50 per SF** is concluded.

SITE VALUATION CONCLUSION:

The indicated market value via the Sales Comparison Approach, as of October 3, 2012, was \$2,007,028 (802,811 SF x \$2.50/SF), rounded to:

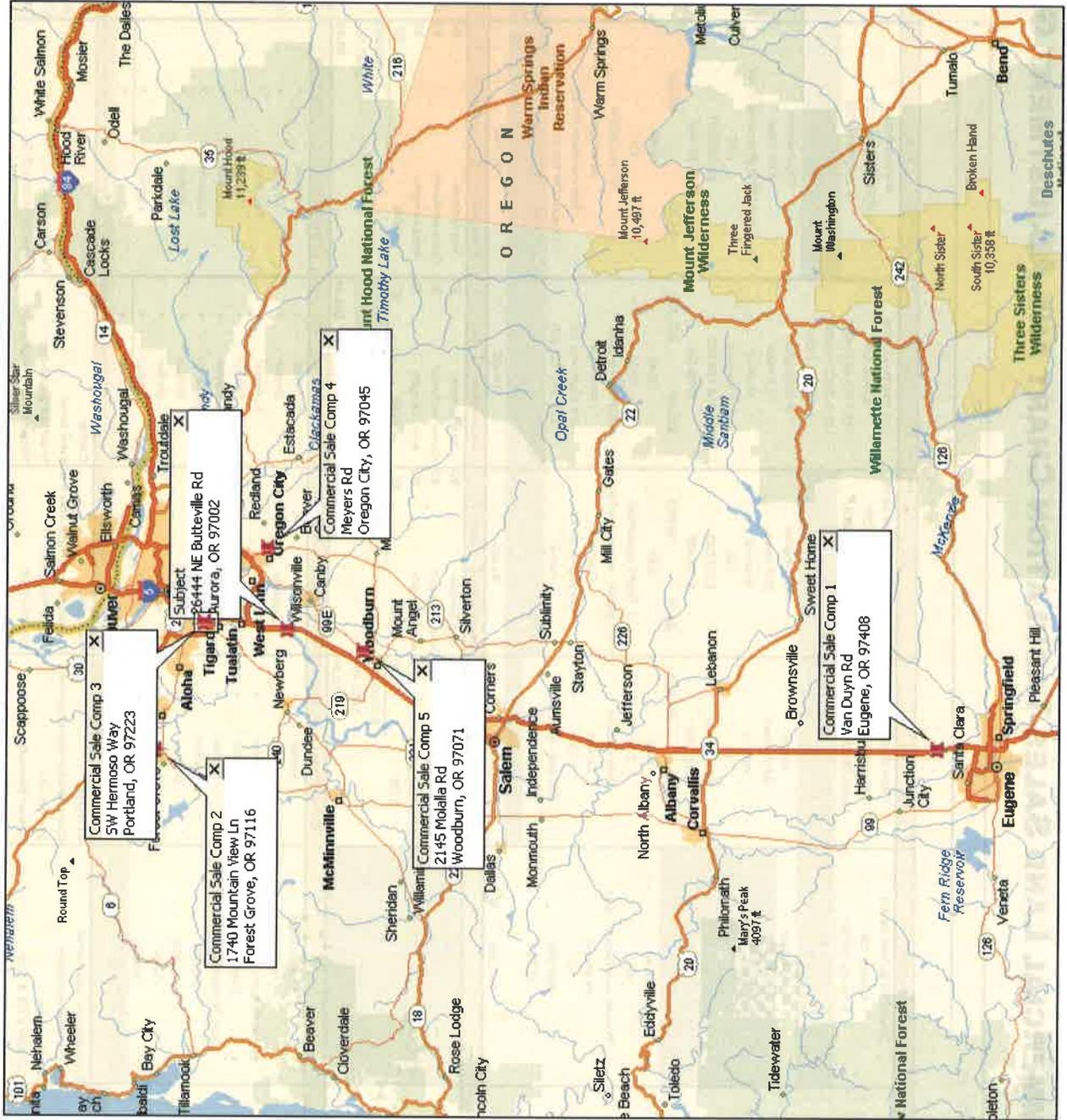
\$2,000,000

According to a survey provided by David Van Doozer in 2007, the site size is 18.43 acres or 802,811 SF. County records list the site as 18.25 acres. It is assumed for the purpose of this report that the most recent survey of the site is most reliable. A copy of the survey is provided in the Addenda.

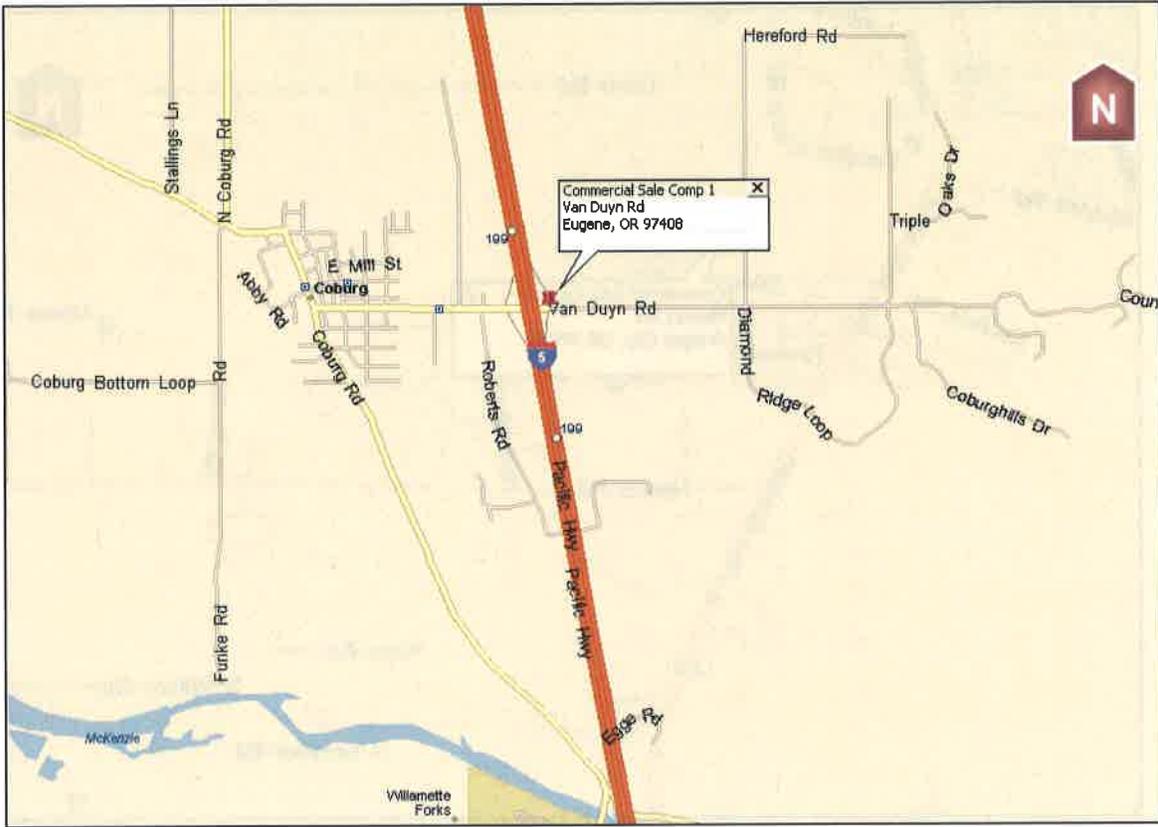
COMMERCIAL LAND SALES TABULATION CHART AND ADJUSTMENT GRID

Characteristics	C-1		C-2		C-3		C-4		C-5		
	Subject	Description	Description	Description	Description	Description	Description	Description	Description	Description	
Address	26444 NE Butteville Rd Aurora, OR 3-1W-26 (2700)	Van Duhn Rd Eugene, OR 16-03-33-200 to 211	1740 Mountain View Lane Forest Grove, OR 15-03-05AD (1000)	SW Hermosa Way Tigard, OR 25-1-01-AB (1400) 15-1-36CD (4200) 2-1-01BA (101)	Meyers Road Oregon City, OR 3-2E-09D (1400)	2145 Madala Rd Woodburn, OR 5-1-09B (900)					
Map #											
County	Clackamas	Lane	Washington	Washington	Clackamas	Marion					
Proximity to Subject		84.9 miles	30.7 miles	11.5 miles	12.2 miles	8.7 miles					
Sale Date		Apr-12	Mar-12	Mar-12	10/11/2012 (Pending Sale)	LISTING					
DOM (Days on Market)		90	108	unknown	270	720					
Sale Price		\$4,000,000	\$100,000	\$18,188,860	\$2,000,000	\$1,500,000					
Price/Acre (Unadjusted)		\$452,489	\$175,439	\$988,525	\$187,266	\$174,014					
Price/SF (Unadjusted)		\$10.39	\$4.03	\$22.69	\$4.30	\$3.99					
Site Area (Acre)	18.43	8.84	0.57	18.40	10.68	8.62					
Zone	EFU	C-2	L1 (Light Industrial)	CG	CI	CG					
Utilities	Power, well/septic, gas	All available	Water, sewer, water, well	Utilities Nearby	All available	Utilities Nearby					
Exposure	Average	Good	Good	Average	Average	Average					
Access	I-5	I-5	OR Highway 47	OR Highway 217	Beavercreek Road	OR Highway 211					
2010 Interchange Traffic	Exit 282	OR 569 - 66,400	None	Exit 293 108,000	113,800 (OR 99E & Oregon City)	Exit 271 15,800					
Counts (VPD)	117,200	15/105 - 53,500									
Traffic Counts - 2010	117,200	44,600	30,500	114,600	29,100	84,500 (Hwy 214/I-5)					
Element											
Property Rights Conveyed		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple					
Financing Terms		\$0	\$0	\$0	\$0	\$0					
Conditions of Sale		Conventional	Conventional	Conventional	Conventional	Conventional					
Market Conditions: Time		Arms Length	Arms Length	Arms Length	Arms Length	Arms Length					
Adjusted Price		\$0	\$0	\$0	\$0	\$0					
Adjusted Price/AC		\$4,000,000	\$100,000	\$18,188,860	\$2,000,000	\$1,500,000					
Adjusted Price/SF		\$452,489	\$175,439	\$988,525	\$187,266	\$174,014					
Qualitative Adjustment		\$10.39	\$4.03	\$22.69	\$4.30	\$3.99					
Location	I-5 interchange	Similar	Similar	Superior	Inferior	Inferior					
Size (AC)	18.43	Superior	Superior	Similar	Similar	Slightly Superior					
Zone	EFU with farm-related comm'l	Superior	Superior	Superior	Superior	Superior					
Interstate Proximity	Excellent	Similar	Inferior	Similar	Inferior	Inferior					
Utilities	Gas, Water, Septic, Power	Similar	Similar	Superior	Superior	Similar					
City Limits/UGB	No/No	Superior	Inferior	Similar	Superior	Superior					
Traffic Counts-2010	117,200	Similar	Inferior	Similar	Similar	Inferior					
Access	Good	Similar	Inferior	Similar	Similar	Similar					
Exposure	Good	Similar	Inferior	Similar	Similar	Similar					
Conclusion		High Indicator	High Indicator	High Indicator	High Indicator	High Indicator					
Comments	Conditional Use Permit for commercial-farm related uses. Outside UGB & City Limits: in ground private utilities.	45 DOM Commercial development 594' on I-5 Robert Blewett seller 208-983-2935 Costar	108 DOM Garage no contributory value Tanya Peterson 503-359-9100 RMLS	Costar Raw land Walmart purchase Visible from TV Highway Utilities nearby	RMLS Raw land Pending sale Blocks from Hwy 213 All utilities nearby	RMLS Raw land On market since 8-10 years Secondary highway frontage Utilities nearby					

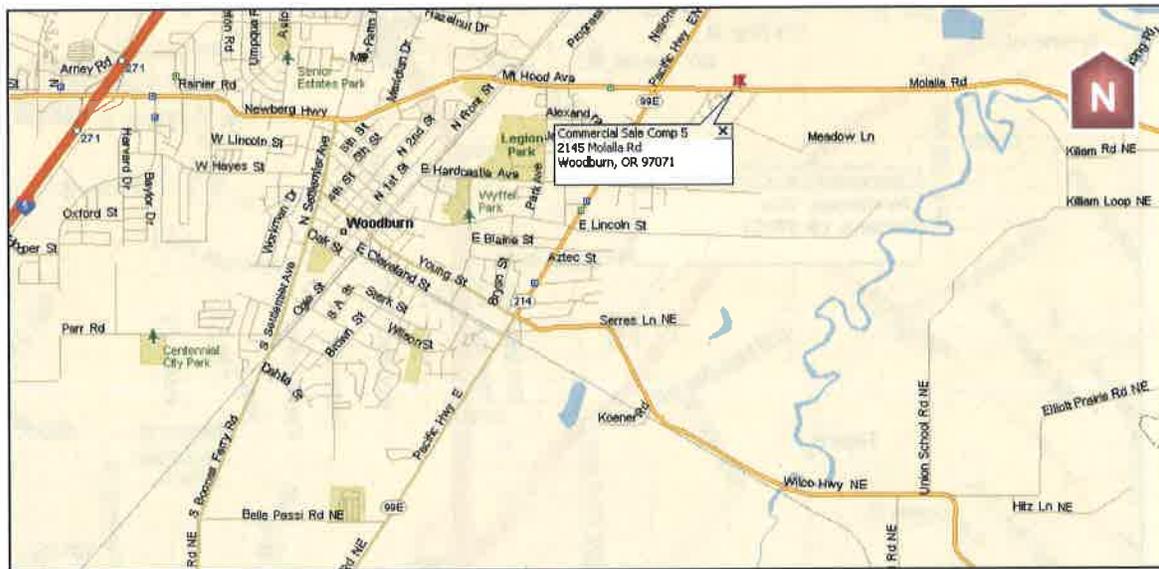
LAND SALES MAP



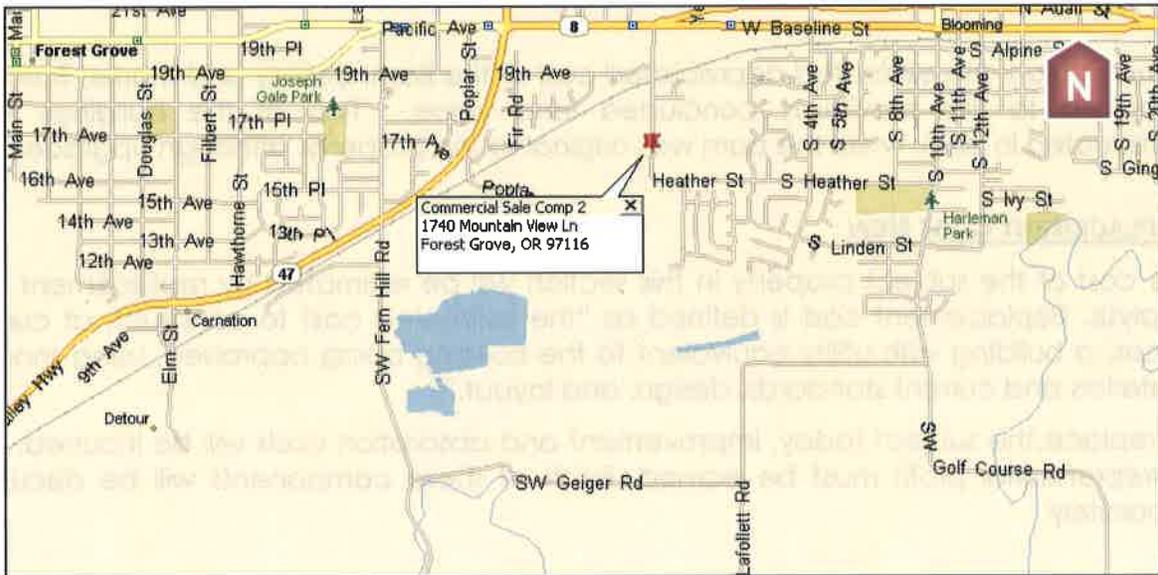
LAND SALES DRIVE-TO MAP – COMP 1



LAND SALES DRIVE-TO MAP – COMP 5



LAND SALES DRIVE-TO MAP – COMP 2



COST APPROACH

In this section, the estimated depreciated cost of the Barn, Display and Market Buildings is added to the previously concluded land value. Two of the buildings were constructed in 2005, while the barn was original to the property, although upgraded.

REPLACEMENT COST NEW

The cost of the subject property in this section will be estimated by replacement cost analysis. Replacement cost is defined as "the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised, using modern materials and current standards, design, and layout."⁶

To replace the subject today, improvement and absorption costs will be incurred, and entrepreneurial profit must be earned. Each of these components will be discussed separately.

IMPROVEMENT COST ANALYSIS

To estimate the improvement cost of the subject, the following sources were relied upon: (1) actual construction costs and (2) *Marshall Valuation Service*.

Actual Construction Costs

The subject's total cost to construct, which includes barn upgrades, market building and display building construction equals **\$2,618,586**. This equates to \$139.99 per SF of building area and includes all direct costs associated with the construction of the project. Indirect costs are **not** included.

Indirect Costs associated with the construction of the improvements have been estimated. These costs typically range between 10% to 20% of the total direct costs. Actual indirect costs as provided by the owner, total 28% of the direct costs and include loan fees, taxes and legal fees. An estimate of 25% of direct costs is concluded, relying on the industry range and actual percentage (\$654,646).

The cost new for the subject now totals (\$2,618,586 + \$654,646) \$3,273,233 or **\$174.98 per SF** for the improvements in 2005. Typically, annual cost changes provided by *Marshall Valuation Service* are added. However, due to the super adequacy of the construction and the initial high costs, no additions are included and the actual costs remain unchanged.

Marshall Valuation Service - This national cost estimating guide publishes the average cost of various building types. The costs include the following: construction interest, permits, architect's and engineering fees, taxes during construction, contractor's overhead and profit, and standard tenant improvements. The costs do not include: miscellaneous indirect costs, site improvement costs, absorption costs, entrepreneurial profit and overhead, and land acquisition. The subject is comprised of:

⁶ *The Dictionary of Real Estate Appraisal, Fifth Addition*

COST APPROACH (continued)

Building Type	SF
Market Bldg	11,201
Display Bldg	2,048
Mezzanine	403
Barn	5,054
Total SF	18,706

- The total gross area of the **primary improvement** is 11,201 SF. The primary improvement is best identified by *Marshall Valuation Service* as an average, Class B, Storage/Warehouse with good lighting and plumbing. Heat is via a forced air gas ceiling mounted unit with electronic ignition. The estimated base unit cost to construct a like facility is \$56.27 per SF for average construction to \$77.32 per SF for good construction. Concluding **\$60 per SF** is reasonable (Section 14, page 26-effective through February 2014).
- The total gross area of the **secondary improvement** is 2,048 SF. This building is two story with a small mezzanine office (403 SF). This space is best identified by *Marshall Valuation Service* as an average quality, Class C, showroom building. The estimated base unit cost to construct a like facility is **\$90.00 per SF** with a range from \$88.40 per SF (average quality) to \$122.07 per SF (good quality). (Section 14, page 31, effective through February 2014). *Marshall Valuation* reports a Class D mezzanine with average lighting with a showroom finish of **\$30.00 per SF, rounded**. (Section 14, page 27, effective through February 2014).
- The total gross area of the **third improvement** is a 5,054 SF barn which has been upgraded. *Marshall Valuation Service* identified this improvement as an average quality, Class D general purpose barn. The estimated base unit cost to construct a similar facility ranges from \$20.63 per SF (average quality) to \$28.56 per SF (good quality), concluded to be **\$25.00 per SF**. (Section 17, page 30, effective through May 2011- most recent available).

The *Marshall Valuation Service Calculator Cost* method gives average costs for typical buildings of each type, based on averages of detailed construction estimates, actual cost breakdowns, and total end costs of many actual projects. However, because each building is in some way unique, these average cost figures must be further refined. The tabulation chart on the following page presents the respective refinements and calculations pursuant to the *Marshall Valuation Service Calculator Cost Method*.

COST APPROACH (continued)

MARSHALL VALUATION SERVICE	Barn	Display Building	Display Mezzanine	Market Building
BASE SQUARE FOOT COST	\$25.00	\$90.00	\$30.00	\$60.00
SQUARE FOOT REFINEMENTS				
Heating, cooling, ventilation	\$0.00	\$0.00	\$0.00	\$0.00
Adjusted Square Foot Cost	\$25.00	\$90.00	\$30.00	\$60.00
HEIGHT & SIZE REFINEMENTS				
Height per story multiplier	0.0000	0.0000	0.0000	0.0000
Floor area-perimeter multiplier	0.0000	0.0000	0.0000	1.2100
Combined height & size multiplier	0.0000	0.0000	0.0000	0.0000
	\$25.00	\$90.00	\$30.00	\$72.60
FINAL CALCULATIONS				
Refined square foot cost	\$25.00	\$90.00	\$30.00	\$72.60
Current cost multiplier	1.006	1.006	1.006	1.006
Local multiplier	1.08	1.08	1.08	1.08
Final Square Foot Cost	\$27.16	\$97.78	\$32.59	\$78.88
Size (SF)	5,054	2,048	403	11,201
Replacement Cost New	\$137,277	\$200,260	\$13,136	\$883,517
TOTAL REPLACEMENT COST NEW				\$1,234,190

Based on the *Marshall Valuation Service*, the contributory value of the subject components to the total replacement cost new are:

Barn	11.12%
Display Bldg	16.23%
Mezzanine	1.06%
Market Bldg	71.59%
	<u>100.00%</u>

The total Marshall Valuation Service estimate of **\$1,234,190** excludes costs associated with miscellaneous indirect expenses and site improvements. A summary of these costs is as follows:

- Miscellaneous indirect costs that are excluded from the above cost estimate include legal fees, taxes during construction, escrow fees, appraisal fees, environmental report fees, and other consulting or miscellaneous fees. Cost related to these items is estimated to be approximately **\$185,129** or 15%.
- Site improvement costs relate to site grading and improvements (i.e., gravel/asphalt or concrete, storm water drains, landscaping). Actual subject site improvements equaled \$376,000 or \$2.47 per SF. Site improvements costs for other construction projects are approximately \$2.50 to \$3.00 per SF of improved site area, with the mid-range of **\$2.75 per SF** estimated. Based on approximately 152,460 SF of site improvement area for the subject, total site improvement costs are estimated at (\$2.75/SF x 152,460 SF) **\$420,000**, rounded.

Adding the two cost components to \$1,234,190 indicates as total replacement cost for the subject improvements of (\$1,234,190 + \$185,129 + \$420,000) **\$1,839,319** or \$98.33 per SF of gross building area.

COST APPROACH (continued)

CONCLUSION

Two sources were used to estimate the subject's improvement cost, as summarized on the table below:

<u>Source</u>	<u>Indicated Cost/SF</u>
Actual Construction Costs, adjusted	\$174.98
Marshall Valuation Service	\$98.33

The cost sources range from \$98.33 to \$174.98 per SF. The actual construction cost reflects the upper end of the range. It is given substantial consideration as it reflects the subject's design and materials. However, as compared to the *Marshall Valuation Service* estimate, the actual costs appear to be above market. It is likely that the actual costs contain super adequacies for this property type. In addition, the indirect cost estimate of 25% is much high than other agriculture-related commercial projects. With emphasis placed on both indicators, tempered by the MVS estimate, a unit cost of **\$125.00 per SF** is concluded.

$$18,706 \text{ SF} \times \$125.00/\text{SF} = \$2,338,250$$

ABSORPTION COSTS

The improvement cost estimate does not include absorption costs necessary to achieve stabilized occupancy, which includes rent loss and leasing commissions. The subject is primarily owner occupied and due to the transitional nature of the use, no absorption costs were estimated.

ENTREPRENEURIAL PROFIT AND OVERHEAD

Entrepreneurial profit and overhead compensates the developer for project risk and management. It is unlikely that a developer would proceed with a development unless adequate profit is available to justify the effort. This cost component includes office overhead, staff, and profit. The profit component is typically used to cover excess lease-up or holding costs if absorption does not meet expectations. Entrepreneurial profit generally ranges between five and 20 percent of the total improvement cost, depending upon project size, location, and marketability.

Entrepreneurial profit and overhead of **5.0%** of the project cost plus land is at the low end of the range of typical profit and overhead margins. This profit component is reasonable considering risks associated with developing farm-related buildings under current market conditions:

$$5.00\% \quad \times \quad \$4,338,250 \quad = \quad \$216,913$$

TOTAL REPLACEMENT COST NEW

Improvement costs, absorption costs, and entrepreneurial profit and overhead were analyzed in this section. Based on these individual cost estimates, total replacement cost new is estimated to be:

$$\mathbf{\$2,555,163 \text{ or } \$136.60 \text{ per SF}}$$

COST APPROACH (continued)

DEPRECIATION

There are three types of possible depreciation: physical, functional, and external. *Physical deterioration* is the result of physical wear and tear on the improvements, typically measured by an age/life technique. *Functional obsolescence* is the result of design or physical problems that reduce the income-producing ability or desirability of the subject property. *External obsolescence* is the result of outside influences (economic, neighborhood) that decrease the value of the property. All three types of depreciation have been considered, and it is concluded that only forms of physical, functional and/or economic are applicable to the subject property.

Physical Deterioration - The **barn** has an unknown construction date, however it was on the property when purchased and its construction may coincide with the single family house. Upgrading occurred in 2005 in the amount of \$217,250 or \$43 per SF. This upgrading has extended its economic life to the point that it is included in the overall project as a viable contributor, however no entry was provided on October 3, 2012. Its remaining economic life is estimated to be 25 years. The barn comprises 11.12% of the total project (as determined in the *Marshall Valuation Service* estimate). Applying this percentage to the total project cost results in a cost new of (11.12% x \$2,555,163 RCN) \$284,134. Physical deterioration of 70% is reasonable, resulting in depreciation to the barn building of (\$284,134 RCN x 70%) **\$198,894**.

The **display and market buildings** were constructed in 2005 and have an actual age of seven years. Effective age is equal to 10 years since the buildings have had no upkeep, have remained virtually unoccupied and subject to weather. Typical building lives for these improvements range from 40 to 50 years, with 40 years used in this analysis. With an effective age of 10 years, depreciation for these improvements totals (10 years/40 years) 25%. The display and market buildings comprise 88.88% of the total project (as determined in the *Marshall Valuation Service* estimate). Applying that percentage to the total replacement cost new equals a cost new of (88.88% x \$2,555,163 RCN) \$2,271,029 for the display and market buildings. Applying 25% depreciation results in physical deterioration of (\$2,271,029 x 25%) **\$567,757**.

Total physical deterioration equals (\$198,894 + \$567,757) \$766,651.

Functional Obsolescence - Functional obsolescence is the result of design or physical problems, which may reduce the income-producing ability, or the desirability of the subject property. Further, the super adequacy of the improvements diminish the pool of prospective buyers. Noting the specialized nature of the subject improvements, conversion may be difficult. In addition, current economic conditions and a lack of buyers looking for such a specialized property type suggest that there is a measure of functional obsolescence at play. For the purposes of this analysis, a **subjective 30% functional obsolescence adjustment is applied**. This adjustment is applied to the Replacement Cost New (\$2,555,163), for a functional obsolescence adjustment of **\$766,549**.

Total depreciation equals (\$766,651 + \$766,549) **\$1,533,200**.

COST APPROACH (continued)

COST APPROACH CONCLUSION –

Replacement Cost New	\$2,555,163
Less: Depreciation	<u>(\$1,533,200)</u>
Equals: Net Depreciated Value	\$1,021,963
ROUNDED	\$1,020,000

Net depreciated value of the improvements is \$1,020,000. Land value was estimated at \$2,000,000 for a total property value by the Cost Approach of \$3,020,000, rounded to:

\$3,000,000

■ COST APPROACH SUMMATION TABLE ■

Replacement Cost New--				
Total Improvement Cost	18,706 SF	x	\$125.00 /SF	= \$2,338,250
Entrepreneurial Incentive (Direct costs plus land value)	5.0%	x	\$4,338,250	= <u>\$216,913</u>
Total Replacement Cost New, rounded				= \$2,555,163
Less Depreciation--				
Physical			(\$766,651)	
Functional			(\$766,549)	
External			<u>\$0</u>	
Total Depreciation			(\$1,533,200)	= <u>(\$1,533,200)</u>
Depreciated Replacement Cost				= \$1,021,963
Plus Site Value	\$2.50 /SF	x	802,811 SF	= <u>\$2,000,000</u>
Estimated Market Value				\$3,021,963
Estimated Market Value (Rounded)				\$3,000,000

SALES COMPARISON APPROACH

In this section, the market value of the subject property will be estimated by direct comparison analysis. Direct comparison analysis compares improved sales to the subject property on a **price per SF basis**. The price per SF is based upon the physical characteristics of the property, and care must be taken in the comparable selection process. The comparables are analyzed considering such factors as age, quality, condition and location.

The subject is a special purpose property constructed in 2005. It was built for farm-related sales and a retail agricultural market. To replicate these improvements is difficult at best; therefore, the search considered industrial buildings built post 2000 in order to ascertain a per SF building component.

Following the comparable discussion is an Improved Sales Tabulation Chart and Adjustment Grid, which summarizes the sales used in this analysis. An Improved Sales Location Map is also provided.

Market Conditions - The comparables indicate an unadjusted range in sales price of \$41.44 to \$96.52 per SF. The sales encompass a period of six months, from February 2012 to August 2012, a period solidly within the confines of the unsettled economy. Details of the sales conclude the purchasers were primarily for owner occupancy and current needs of the business, rather than speculation.

<u>Comp #</u>	<u>Buyer</u>	<u>Occupancy</u>
1	Hawthorn Retirement	Owner/User
2	Oreo Corp	Owner/User
3	VPC Roethe Road LLC	Investment
4	Grant Design	Owner/User
5	Great Fir Properties	Owner/User
6	State Investments	Investment

The transaction dates place solid confirmation that no adjustment is needed.

SALES COMPARISON APPROACH (continued)

COMPARABLE ANALYSIS

The comparable sale price per SF is based on the **building only**, with the land value extracted from the sale price. The land value was based on the 2011 Real Market Value provided by the individual counties. **Building only sale prices ranged from \$26.05 to \$60.89 per SF.** Each comparable is reflective of warehouse/distribution space.



3150 Kettle Ct SE
Salem, OR
9252-60
Taken May 16, 2012
By Shirley Layne

Comparable 1 (\$47.11/SF – building only) is the February 2012 sale of a Class B warehouse building constructed in 2005. This building has 28' ceiling height, two loading docks and surface parking. It is located in an area of other large warehouse users.

The property was formally listed for \$2,400,000 selling at a buyer discount of 7.71% after an exposure period of 112 days (3.73 months). The buyer will occupy the building. This was an all-cash transaction.

When compared to the subject, location, condition and quality are superior suggesting the comparable is a **high indicator**.



12245 NE Whitaker Way
Portland, OR
9252-48
Taken May 16, 2012
By Shirley Layne

Comparable 2 (\$30.06/SF – building only) denotes 1976 built, 17,690 SF building suitable for warehousing and distribution. A 6,000 SF dock high section including small office was added in 1983. The warehouse has 22' ceilings, 12' loading docks and 27.9' high cube space. There are 11 dock high loading and three on grade docks plus vehicle parking.

KW Commercial Brokerage listed the property for \$1,100,000 on October 25, 2011. It sold in March 2012 after 106 days of exposure for \$925,000 representing 15.91% discount. This bank owned property was partially leased.

When compared to the subject, age is inferior, but quality and condition are similar. On balance, it is a **reasonable indicator**.

SALES COMPARISON APPROACH (continued)



4100 SE Roethe Rd
Milwaukie, OR
9252-50
Taken May 16, 2012
By Shirley Layne

Comparable 3 (\$36.26/SF – building only) symbolizes the April 2012 transaction of a 1978 constructed warehouse in Milwaukie, Oregon. Amenities include three restrooms, storage, office, six truck doors and a fully fenced yard.

The property was fully leased at the time of sale with the purchase as an investment. It was listed for \$1,400,000, selling at a buyer discount of 21.43%.

When compared to the subject, age is inferior; however, condition and quality are similar concluding a **reasonable indicator**.



11767 SE Highway 212
Clackamas, Oregon
9594-51
Taken October 5, 2012
By John Gillem

Comparable 4 (\$51.96/SF – building only) represents the June 2012 sale of a single tenant industrial building. It was constructed in 1997 and features two loading docks, one drive-in bay and a 24 foot clear height. Additionally, it has an interior wet sprinkler system and office mezzanine. Power is standard warehouse 3-phase.

It was formally listed for \$2,200,000 (\$114.78/SF) selling at a buyer discount of 15.91% after an exposure period of 7.97 months.

When compared to the subject, age is similar, however quality and condition are superior, concluding a **high indicator**.



13990 Fir Street
Oregon City, Oregon
9594-50
Taken October 5, 2012
By John Gillem

Comparable 5 (\$60.89/SF – building only) characterizes the June 15, 2012 sale of a 1980 built distribution building totaling 41,914 SF. The 34,250 SF shell includes 12,000 SF of coolers and floor drains, an attached office and a free standing two bay truck shop. This property has eight docks and three grade doors, all serviced by a wet interior sprinkler system. Power is 480 volt, 3-phase plus 800 amps.

It was initially listed for \$4,150,000 (\$99.01/SF), then reduced by 9.64% to \$3,750,000 before selling at a discount off reduced price of 9.33%. Exposure period was lengthy at 3.23 years.

SALES COMPARISON APPROACH (continued)

Comparable 5 (continued)

When compared to the subject, location and quality are superior, while condition is similar, suggesting a **high indicator**.



3513-3545 Fairview Industrial Dr SE
Salem, OR
9594-52
Taken October 5, 2012
By John Gillem

Comparable 6 (\$26.05/SF – building only) comprises 112,429 SF buildings constructed in 1995. The sale comprises two tax lots with buildings leased at 88.4%. These five buildings are concrete tilt with campus amenities. Interiors have varying finishes with a mix of professional space and unfinished warehouse space.

The property was formally listed by First Commercial Real Estate, Salem for \$6,650,000 selling at a discount of 29.32%.

The number and size of the buildings places downward pressure on price, however quality is vastly superior. Offsetting factors suggest this comparable is a **reasonable indicator**.

The comparables are arrayed below, illustrating the subject's competitive position.

Comp #	Adjusted \$/SF/Bldg	Qualitative Ranking
5	\$60.89	High
4	\$51.96	High
1	\$47.11	High
3	\$36.26	Reasonable
Subject		
2	\$30.06	Reasonable
6	\$26.05	Reasonable

Based on the physical and locational characteristics influencing value, Comparables 2 and 3 form a reasonable range from **\$30.06 to \$36.26 per SF – building only**. The comparables concluded to be high indicators are 1, 3, 4 and 5, with comparable 6 setting the low end of the data set.

A conclusion of **\$30.00 per SF** is reasonable based on the following factors:

- I-5 interchange
- Good visibility & freeway ramp access
- 2005 construction
- Infrastructure

After analyzing the comparable sales, the indicated market value via the Sales Comparison Approach, was (18,706 SF x \$30.00/SF) \$561,180 rounded to **\$560,000**. Adding the concluded market value of the land (\$2,000,000) results in a value of **\$2,560,000**.

SALES COMPARISON APPROACH (continued)

The specialized built-in fixtures, infrastructure, paving and fencing cost new \$1,026,274. According to Marshall Valuation Service, life expectancy guidelines effective March 2011 (most recent available) (Section 97, Page 13) of 17 years equaling a depreciation percentage based on age/life method of 41%, rounded to 40%. The depreciated value equals \$615,764. However, the comparable sales include site infrastructure in the building-only analysis. That leaves the specialized built-in fixtures. Itemized actual costs were not available; however, it is reasonable to assume that the fixtures contributed roughly 20% of the cost. This results in a contributory cost of approximately \$125,000, rounded.

Adding the estimated cost of the specialized fixtures to the concluded building-only value results in a total value via the Sales Comparison Approach of (\$2,560,000 + \$125,000) **\$2,685,000**.

The specialized infrastructure, built-in's, extensive paving, and fencing were specifically required for the former use. To find an end user to utilize these items has been difficult, suggesting that they may be a hindrance to a purchaser. Further, disposition of these items may be costly and would be the burden of the buyer. Deducting the depreciated value of \$615,764 from the concluded value of \$2,725,000 is **\$2,110,000**, rounded.

Reconciling these two values concludes a final value per the Sales Comparison Approach of:

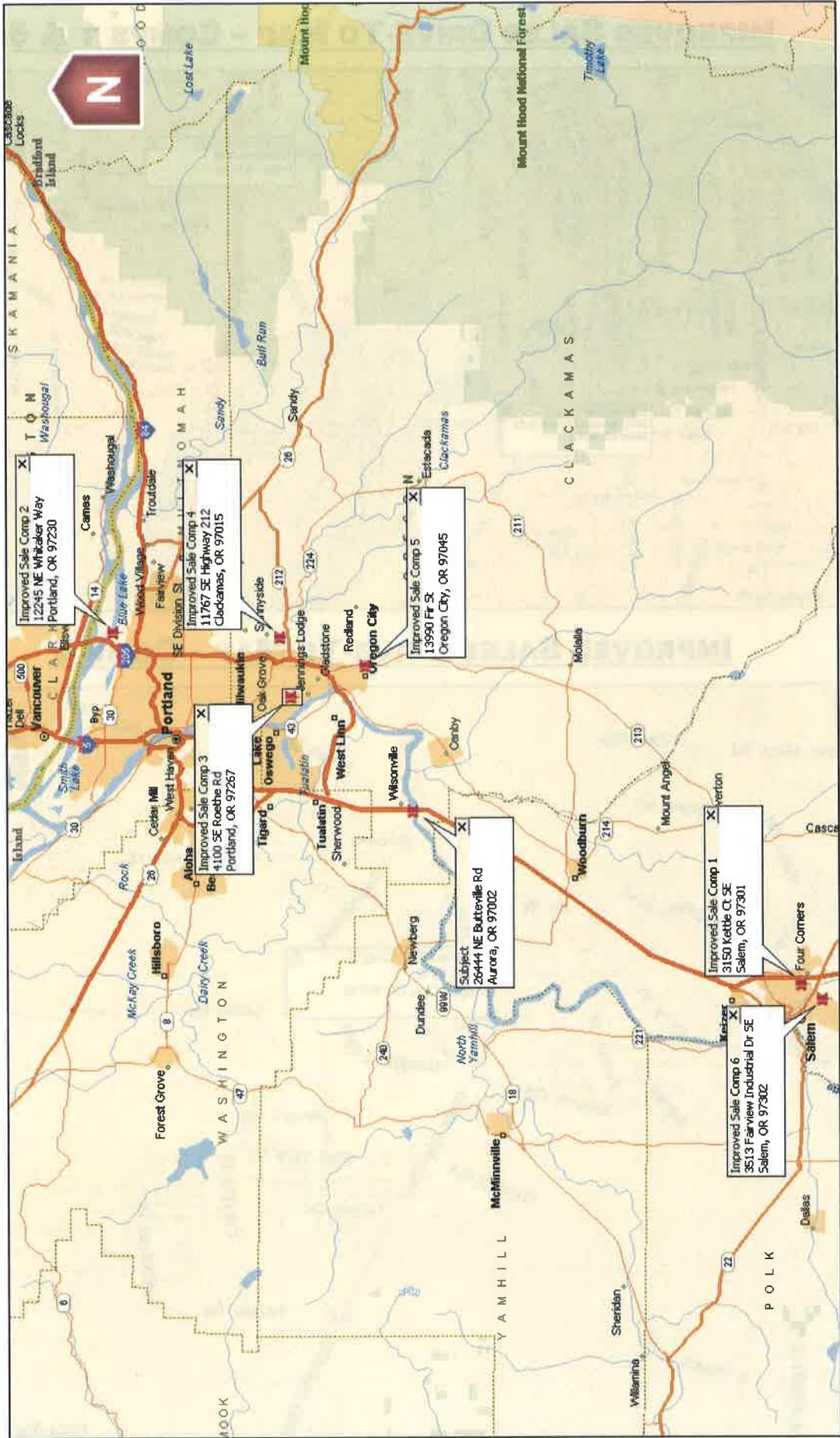
\$2,500,000

The concluded value results in a unit value of \$133.65 per SF. In early 2012, the subject was listed for \$2,800,000, expiring in September 2012 with no price reduction. The concluded value of \$2,500,000 is reasonable considering the lack of buyers at \$2,800,000.

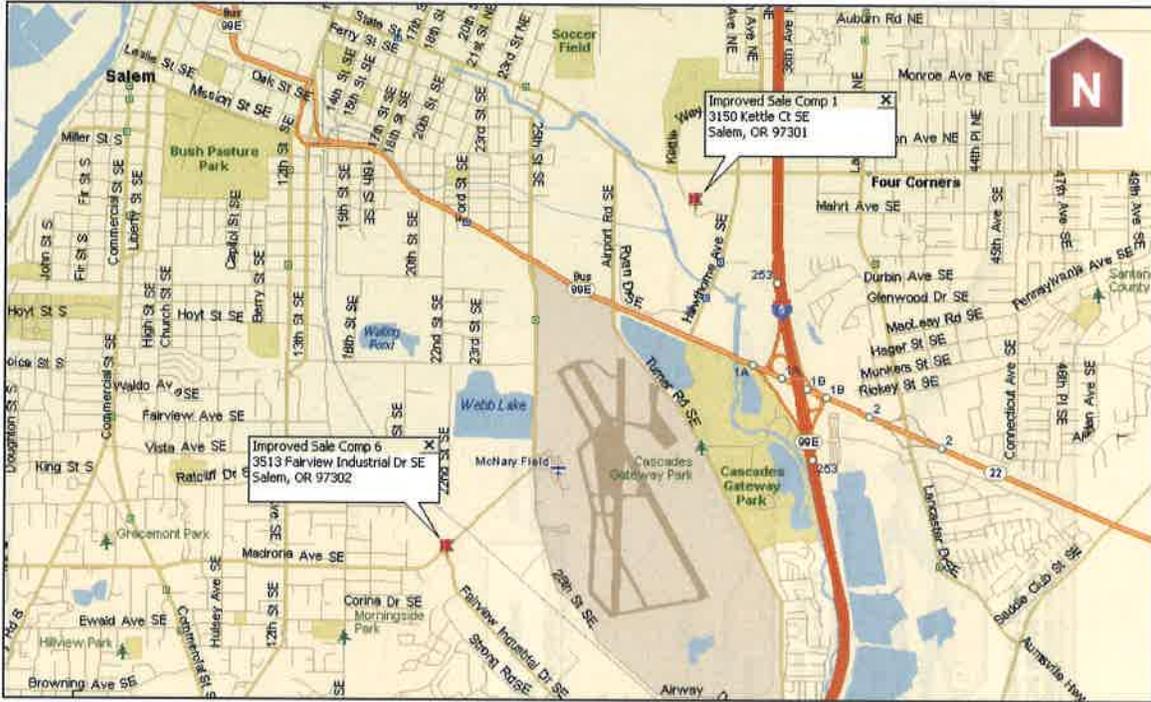
IMPROVED SALES TABULATION CHART AND ADJUSTMENT GRID

Characteristics	Subject	Comparable 1	Comparable 2	Comparable 3	Comparable 4	Comparable 5	Comparable 6
Name	26444 NE Butterville Rd	3150 Kettle Ct SE	12245 NE Whitaker Way	4100 SE Roethe Rd	11767 SE Highway 212	13990 Fir St	3513 Fairview Ind Dr SE
Address	Aurora, OR	Salem, OR	Portland, OR	Milwaukie, OR	Clackamas, OR	Oregon City, OR	Salem, OR
Acct #	831764	R81449	R236750	C176278	1697961	869616	R735666 & R73567
County	Clackamas	Multnomah	Multnomah	Clackamas	Clackamas	Clackamas	Marion
Proximity to Subject		29.8 miles	28.2 miles	17.7 miles	17.2 miles	12.2 miles	27.3 miles
Sale Date		Feb-12	Mar-12	Apr-12	Jun-12	Jun-12	Aug-12
Sale Price		\$2,215,000	\$925,000	\$1,100,000	\$1,850,000	\$3,400,000	\$4,700,000
Price/SF (Unadjusted)		\$68.55	\$52.29	\$55.00	\$96.52	\$81.12	\$41.44
Date Inspected	October 3, 2012	May 16, 2012	May 16, 2012	May 16, 2012	Via photographs	Via photographs	Via photographs
Site Area (SF)	802,811	221,285	62,738	66,211	114,127	218,236	446,054
Building Size (SF)	18,706	32,312	17,690	20,000	19,167	41,914	113,423
Site Coverage (%)	2.33%	14.60%	28.20%	30.21%	16.79%	19.21%	25.43%
DOM	Listed 3/26/2012/Expired 9/30/2012	112	106	unknown	239	1,163	317
Year Built	2005	2005	1976	2004	1997	1980	1995
Value Adjustment							
Property Rights Conveyed		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing Terms		Conventional	Conventional	Conventional	Conventional	Conventional	Conventional
Conditions of Sale		Arm's Length	Arm's Length	Arm's Length	Arm's Length	Arm's Length	Arm's Length
Market Conditions		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Adjusted Price		\$2,215,000	\$925,000	\$1,100,000	\$1,850,000	\$3,400,000	\$4,700,000
Less: RMV Land Value (2011)		(\$692,710)	(\$393,320)	(\$374,704)	(\$854,145)	(\$847,684)	(\$1,744,930)
Total Adjusted Price		\$1,522,290	\$531,680	\$725,296	\$995,855	\$2,552,316	\$2,955,070
Price/SF (Building Only)		\$47.11	\$30.06	\$36.26	\$51.96	\$40.89	\$26.05
Qualitative Adjustment							
Location	I-5 Interchange	Superior	Superior	Superior	Superior	Superior	Superior
Site Size	802,811	Inferior	Inferior	Inferior	Inferior	Inferior	Similar
Condition	Average	Superior	Similar	Similar	Superior	Superior	Similar
Quality	Average	Superior	Similar	Similar	Superior	Superior	Superior
Building Size (SF)	18,706	Inferior	Similar	Similar	Similar	Inferior	Inferior
Comparability		+	=	=	++	+	=
Conclusion		High Indicator	Reasonable Indicator	Reasonable Indicator	High Indicator	High Indicator	Reasonable Indicator

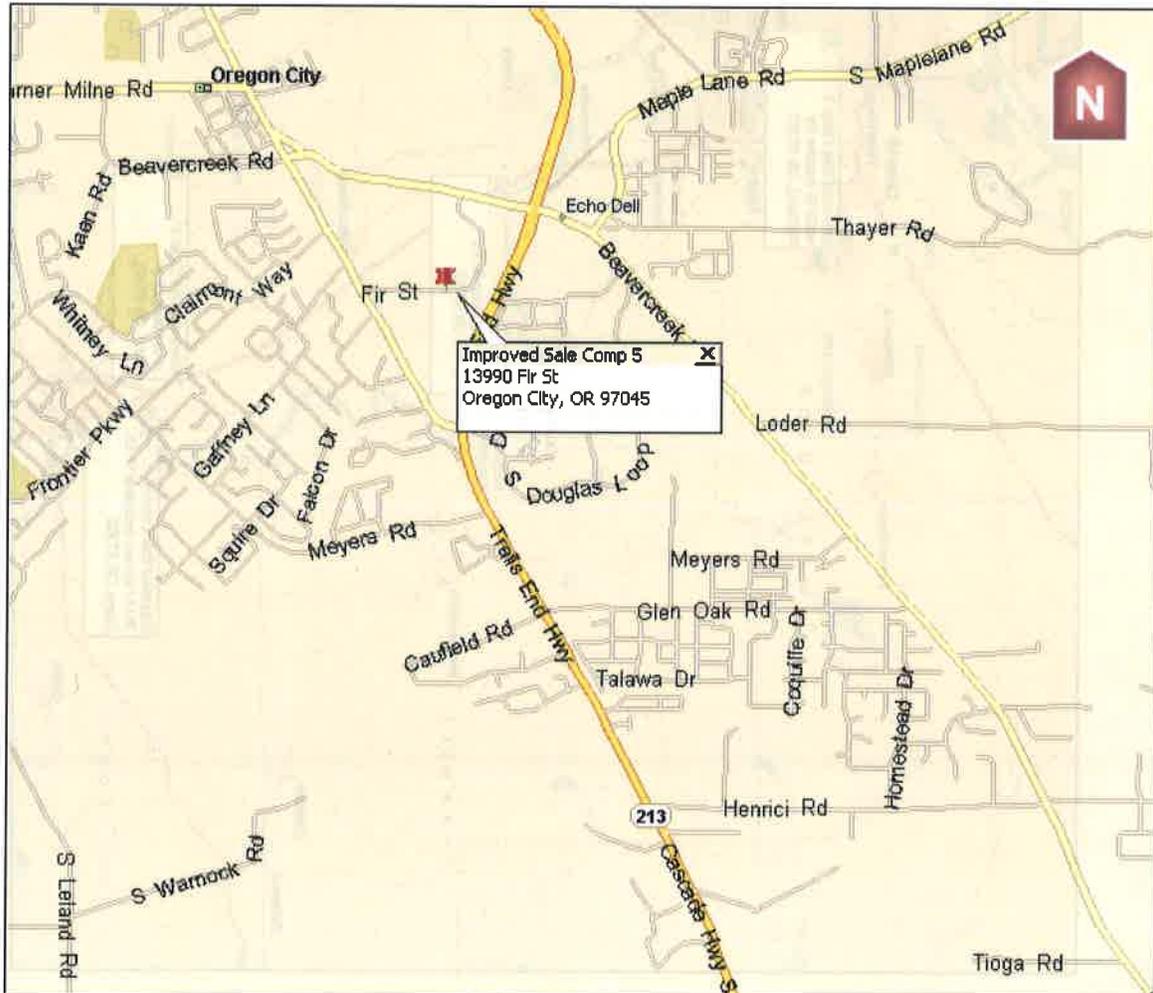
IMPROVED SALES MAP



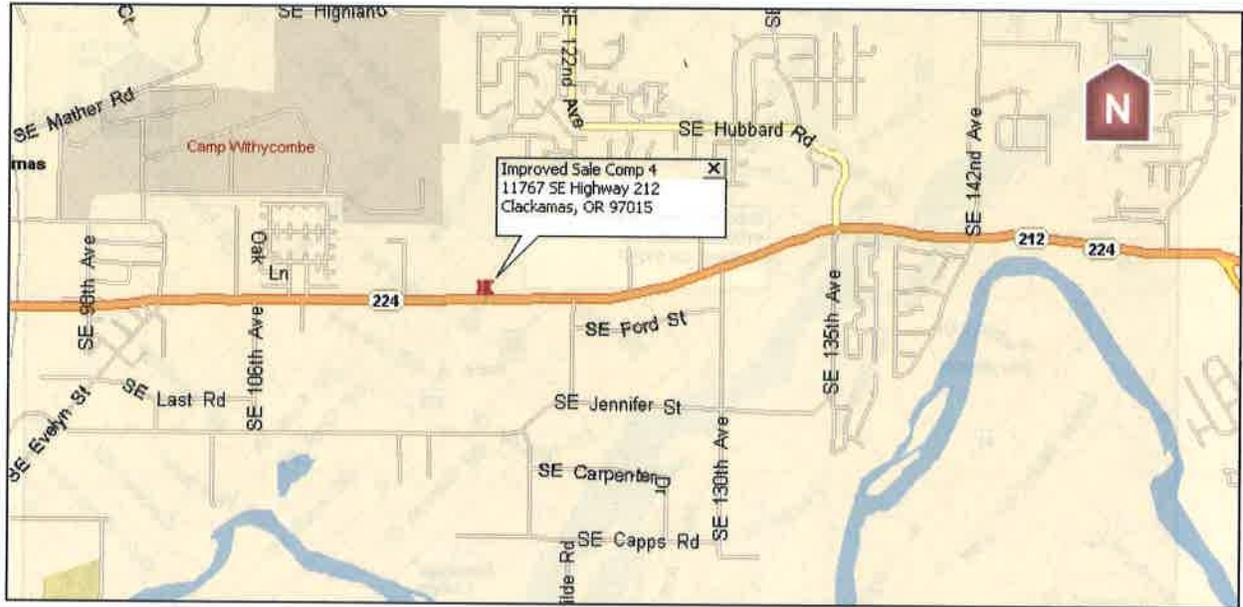
IMPROVED SALES DRIVE-TO MAP - COMPS 1 & 6



IMPROVED SALES DRIVE-TO MAP - COMP 5



IMPROVED SALES DRIVE-TO MAP - COMP 4



ANALYSIS OF VALUE CONCLUSIONS

The Analysis of Value Conclusions is the final step in the appraisal process and involves the weighing of the individual valuation techniques in relationship to their substantiation by market data, and the reliability of each valuation technique to the subject property.

Indicated Values—

Cost Approach:\$3,000,000
Sales Comparison Approach:\$2,500,000

The following analysis summarizes the conclusions and explains the amount of weight applied to each value indication.

The **Cost Approach** has greatest credibility when the valuation process involves improvements which are new or proposed. This approach reflects the estimated replacement cost of the existing complex added to the estimated site value. The replacement cost estimate was based on *Marshall Valuation Service*, which provides generally reasonable indication of replacement costs and the 2005 actual construction costs. Comparables were somewhat limited in our Site Valuation section; however, our land value estimate is considered reliable. The limiting factor of this approach was the subjective estimate of physical deterioration and functional obsolescence. Due to the time span from date of construction to October 3, 2012, the original construction costs become less reliable. Further, a buyer may not place emphasis on this approach due to the special purpose nature of the property and lack of demand; therefore, this approach is given **secondary weight** in the final value conclusion.

The **Income Capitalization Approach** to value is generally considered to be the best and most accurate measure of the value of income-producing properties, as the value estimate by this approach is based upon the premise that these properties are owned for their income-producing ability. In the case of the subject, the improvements were owner occupied, with unknown income potential. This approach was not developed.

The **Sales Comparison Approach** included six comparable sales from which to derive a value estimate for the subject property. The price per square foot unit of comparison based on comparable property sales was used in this analysis and was determined to be the best unit of comparison in this approach. Although most of the sales were relatively current, the lack of sales with similar utility from the local marketplace limited the reliability of this approach. However, buyers in this market would not likely base their purchasing decisions on depreciated cost. Therefore, **primary emphasis** is placed on the Sales Comparison Approach. It is noted that the comparable sales did provide valuable information regarding activity in the market and various investor expectations utilized in other sections of the report. In addition, the subject's most recent formal listing was at a price point of \$2,800,000, which did not secure a sale. However, the property was listed less than one year, shorter than the estimated exposure time referenced in this report.

With primary emphasis placed on the Sales Comparison Approach, bolstered by the Cost Approach, the estimated "as is" market value of the **fee simple** interest in the subject property, as of October 3, 2012, was:

\$2,700,000

ANALYSIS OF VALUE CONCLUSIONS (continued)

The concluded market value equals the formerly listed price of \$2,700,000. It considers the specialized nature of the improvements and fully serviced land area. The concluded value is predicated on an exposure period of at least one year. In order to sell the property in a shorter period of time, discounting would likely be required. Further, the land value represents 74.07% of the total value or \$2,000,000.

DISPOSITION VALUE – 180 DAYS

Disposition is the forced or voluntary cash realization; the selling of real estate, stocks, bonds, or other investments, either to take profits/limit losses or in anticipation of declining prices. Disposition value is the most probable price that a specified interest in real property is likely to bring under all of the following conditions:

- **Consummation of a sale will occur within a limited future marketing period specified by the client**
- The actual market conditions currently prevailing are those to which the appraised property interest is subject
- The buyer and seller are each acting prudently and knowledgeably
- **The seller is under compulsion to sell**
- The buyer is typically motivated
- Both parties are acting in what they consider their best interest
- An adequate marketing effort will be made in the limited time allowed for the completion of a sale
- Payment will be made in cash in US Dollars or in terms of financial arrangement comparable thereto
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale⁷

These factors may inhibit the pool of available buyers, thus increasing the percentage off of the market value.

This analysis assumes a **disposition of 180 days** and the value adjustment reflects the subject available for sale. The client has requested a **disposition value**, which is the disposition value less marketing expenses including brokerage commissions.

Sales Commission/Marketing Expenses - Typical market sales commissions range from 2% to 5% of the total purchase price, with a **5% commission** used here to reflect aggressive marketing associated with selling the subject in such a short period of time (90 days).

Market Participant Opinion - An accurate indication of discount from retail is difficult to ascertain through market indicators. Various market participants were contacted regarding "quick sale/disposition" and liquidation discounts of various property types. Their estimates of a liquidation discount ranged from **15% to 30%**.

Lindsey Martin, Broker for Sperry Van Ness in Salem (503-588-0400), estimated a 180-day liquidation discount of **20 to 25%**.

David Hill, Commercial Realtor with Grubb & Ellis Company in Portland (503-972-5510), reported that liquidation/quick disposition value should be at a minimum **25%** of market value.

⁷ The Dictionary of Real Estate Appraisal. Fifth Edition, Appraisal Institute, 2010.

DISPOSITION VALUE – 180 DAYS (continued)

Tiffany Jones, Broker with Coldwell Banker Commercial Real Estate (503-587-4777), stated that CBCRE recently sold an improved commercial property in Salem within 90 days at a liquidation discount of **30-40%**.

Jason Tokarski, Vice President of Mountain West Investment Group in Salem (503-584-4598), indicated that in a liquidation or disposition situation, he considers the intended use of the property, what the market is like for that intended use, and the jurisdiction under which the property falls in regards to obtaining the necessary approvals for development. In today's market, if dealing with a less restrictive jurisdiction, he suggested a **25% to 30%** discount. However, if there is less of a market for the intended use or the jurisdiction is more restrictive, he indicated a discount of closer to **50%**.

The subject was listed for \$2,800,000 since March 2012 with the expiration of the listing September 30, 2012. No offers were received.

With regard to the subject property, considering the special property type under-represented in the Portland Metro Area and the small pool of buyers, a discount of **45%** is concluded.

Applying a discount of **45%** to the concluded "as is" market value (**\$2,700,000**) of the subject results in \$1,485,000 (\$2,700,000 - 45%).

Subtracting an additional **5%** for sales commissions and aggressive marketing costs suggests a 180-day disposition value for the subject, as of October 3, 2012, of (\$1,485,000 x 0.95) **\$1,410,000**.

However, also of consideration is the concluded land value of the subject property. A buyer would likely consider the value of the land alone, which was estimated to be \$2,000,000. Without consideration of the specialty improvements, a lower discount of 30% would be reasonable due to less risk associated with the site versus the site and specialized buildings. Subtracting 30% from \$2,000,000 suggests a 180-day disposition value of \$1,300,000; less a 5.0% commission equals **\$1,235,000**.

Reconciling the two scenarios results in a 180-day disposition value, as of October 3, 2012, of:

\$1,350,000

CERTIFICATION OF APPRAISAL

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The subject was appraised on August 2, 2007, July 30, 2009, April 21, 2010, December 17, 2010 and May 4, 2012. (Powell Valuation Inc File #s P071358, P091219, P091282, P101202, P101503 and P121244).
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective personal interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- Shirley A. Layne has made a personal interior and exterior inspection of the property that is the subject of this report. All comparables were viewed either personally or via broker aeriels or Googlearth by Shirley A. Layne.
- No one provided significant professional assistance to the persons signing this report.
- As of the date of this report, I (Shirley A. Layne) have completed the Standards and Ethics Education Requirement of the Appraisal Institute for Associate Members.
- As of the date of this report, I, Katherine Powell Banz, MAI, have completed the requirements of the continuing education program of the Appraisal Institute.



Shirley A. Layne

OR Certified General Real Estate Appraiser
License No. C000516
Expiration Date: September 30, 2014

October 10, 2012

Date



Katherine Powell Banz, MAI

OR Certified General Real Estate Appraiser
License No. C000897
Expiration Date: August 31, 2014

October 10, 2012

Date

ENGAGEMENT LETTER



September 18, 2012

Katherine Powell Banz, MAI
Powell Valuation, Inc.
2005 Madrona Avenue SE
Salem, Oregon 97302

REVS FILE NO: 12-1155 OR

BORROWER: David Van Doozer

**RE: former I-5 Farm Store
26444 Butteville Road
Aurora, Oregon 97002**

Dear Ms. Banz:

We are engaging you to appraise the property referenced in the attached addendum. Your engagement is as an independent contractor and not as an employee or agent of Umpqua Bank. The appraisal assignment is to be prepared in accordance with: 1) the current edition of Uniform Standards of Professional Appraisal Practice (USPAP); 2) the Financial Institution Reform, Recovery and Enforcement Act (FIRREA); 3) the Interagency Appraisal and Evaluation Guidelines (effective December 10, 2010); and 4) any supplemental requirements of Umpqua Bank.

A qualified staff appraiser may perform the appraisal. Should this option be taken, prior permission from Umpqua Bank must be obtained and the addressee must sign and review the report. The appraisal may not be subcontracted to an outside individual firm without the prior written consent of the undersigned. By accepting this appraisal assignment, you and all members of your organization certify that they have no direct or indirect interest, financial or otherwise, in the property or transaction, or relationship with the ownership or borrower. Moreover, you agree not to accept or pursue the appraisal or related assignments of the subject property for a minimum of one year from the final report's delivery date without prior written consent from Umpqua Bank.

Timing and Fee of Appraisal Assignment: It is our understanding that the fee for this assignment includes all expenses and an allowance for any technical assistance you feel necessary or appropriate. The original signed appraisals should be delivered to the undersigned no later than the specified due date. **If delays are anticipated or occur, you must immediately request an extension of the due date in writing from the undersigned in order to avoid late fees or penalties.**

Should the appraisal not be delivered on or before this date, Umpqua Bank reserves the right, at its sole discretion, to either cancel the assignment for cause without payment of the fee; or deduct a penalty of one percent (1%) per business day until the appraisal is received. Additionally, Umpqua Bank reserves the right to cancel this assignment. Upon cancellation, payment of the fee will be limited to actual time spent and any out-of-pocket expenses incurred up to the date of termination.

We understand that you and all personnel associated with the assignment will be available to discuss any concerns we might have regarding the appraisal. Umpqua Bank reserves the right to withhold payment if, at our sole discretion, the appraiser fails to address our concerns with the appraisal within ten business days of such notice.

Property Contact / Information: Please arrange an inspection of the property and make your initial request for information with the property contact listed in the attached addendum. Your initial request for information should be made in writing within two business days of receipt of this letter and a copy of the request should be sent to the undersigned. **Any questions regarding this assignment should be directed to the undersigned at (503) 906.4413 or greglowes@umpquabank.com.**

UMPQUA BANK
Real Estate Valuation Services
6650 SW Redwood Lane, Suite 215, Tigard, Oregon 97224
Phone: (503) 906.4413 - Fax: (503) 431-2352
Mail Code: 300-2-REVS

Confidentiality: Umpqua Bank is your client and this assignment has been engaged in the strictest confidence. In the course of performing this assignment, the appraiser may have access to or be provided information and/or documentation that are confidential or proprietary in nature. Umpqua Bank places high priority on the privacy and security of our customer's confidential information. Under USPAP, the Gramm-Leach-Bliley Act of 1999 and other Federal Laws, information that has been provided related to a borrower's financial condition and other "non-public personal information" shall be handled in a confidential manner. You agree to keep all such information confidential and take reasonable steps to safeguard such information. Any information provided by Umpqua Bank, the borrower, or any other non-public source can only be used to provide the specific services you are hired to perform. Unless authorized by the undersigned, you cannot disclose confidential or proprietary data including the value conclusion, contents or purpose of the report, or the value conclusion to anyone other than the undersigned. This prohibition includes the property owner, our borrower, or anyone directly or indirectly connected to this transaction.

Delivery: Please include the REVS file number on all reports, correspondence and invoices. Send **three** appraisal reports and one original invoice to the undersigned at:

UMPQUA BANK
Real Estate Valuation Services
6650 SW Redwood Lane, Suite 215
Tigard, OR 97224

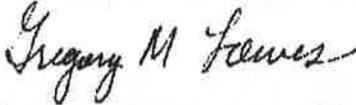
Or

UMPQUA BANK
Inter Branch Mail Code: 300-2-REVS

NOTE: In addition to the three report hard copies, please upload an electronic PDF copy of the appraisal report to: <http://transfer.umpquabank.com>

Acceptance: If you are in agreement with the terms of engagement, please sign and FAX or EMAIL a copy of this letter to REVS@umpquabank.com as soon as possible. A copy of the fully executed engagement letter must be included in the addenda of each copy of the final appraisal report

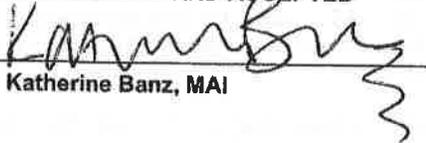
Sincerely,



Gregory M. Lowes
Vice President
Real Estate Valuation Services

ACKNOWLEDGED AND ACCEPTED

By:



Katherine Banz, MAI

Date:

9/18/2012

cc: John Sugar/ Special Assets Department / 005-2-SPAD

UMPQUA BANK
Real Estate Valuation Services
6650 SW Redwood Lane, Suite 215, Tigard, Oregon 97224
Phone: (503) 906.4413 - Fax: (503) 431.2352
Mail Code: 300-2-REVS



ADDENDUM TO ENGAGEMENT LETTER

REVS File Number: 12-1155 OR
Property Address: former I-5 Farm Store
26444 Butteville Road
Aurora, Oregon 97002
Property Description: Approximately 18 acres of site area and vacant
improvements formerly operating as the I-5 Farm Store
Borrower: David Van Doozer
Property Access: Stuart Skaug (listing agent) 503-523-6044 (cell)
Account Officer: John Sugar (541) 434-2945

*office
503-321-
4822*

APPRAISAL ASSIGNMENT

Appraisal Fee: \$2,600.
Appraisal Delivery Date: October 10, 2012
Number of Original Reports: Three and an electronic copy
Intended Use of Appraisal: Internal Asset Monitoring.
Intended User of Appraisal: Umpqua Bank
Purpose of the Appraisal: To estimate market value.
Property Rights Appraised: Fee Simple
Scope & Reporting Format: Summary Report Format
Valuation Premise: As-Is Value and a 180-day disposition value (definition
shown below)
Additional Instructions: **NOTE: In addition to the three report hard copies,
please upload an electronic PDF copy of the appraisal
report to: <http://transfer.umpquabank.com>**
Please name the file 12-1155 OR. PDF
**Please sign the acknowledgement on the engagement letter
and return to REVS@umpquabank.com.**

UMPQUA BANK
Real Estate Valuation Services
6650 SW Redwood Lane, Suite 215, Tigard, Oregon 97224
Phone: (503) 906.4413 - Fax: (503) 431.2352
Mail Code: 300-2-REVS

Disposition Value: The most probable price that a specified interest in real property is likely to bring under all of the following conditions:

1. Consummation of a sale will occur within a limited future marketing period specified by the client.
2. The actual market conditions currently prevailing are those to which the appraised property interest is subject.
3. The buyer and seller is each acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider their best interests.
7. An adequate marketing effort will be made in the limited time allowed for the completion of a sale.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Source: The Appraisal Institute Dictionary of Real Estate Appraisal, 4th Edition.

UMPQUA BANK
Real Estate Valuation Services
6650 SW Redwood Lane, Suite 215, Tigard, Oregon 97224
Phone: (503) 906.4413 - Fax: (503) 431-2352
Mail Code: 300-2-REVS

TAXES, ASSESSMENT DATA, DEED & LEGAL DESCRIPTION



agentfirst® & lenderfirst

**26444 NE BUTTEVILLE RD
AURORA, OR 97002
00831764**

Property Profile Report

Property Information

Owner(s):	VANDOOZER DAVID A / GWYN DEANNA	Parcel#	00831764
Property:	26444 NE BUTTEVILLE RD AURORA, OR 97002	Map Coord:	745-D3:745-D3
Mailing:	PO BOX 692 CANBY OR 97013	Census Tract:	0228.00
Owner Ph:		County:	CLACKAMAS
Legal:	SECTION 26 TOWNSHIP 3S RANGE 1W TAX LOT 02700		
Lot #	2700		

Characteristics

Use:	FARMS	Year Built:	1920	Sq. Feet:	2224
Zoning:	EFU	Lot Size:	794970sq (18.25)	# of Units:	
Bedrooms:	4	Bathrooms:	1	Fireplace:	
# Rooms:		Quality:	BELOW AVERAGE	Heating:	FORCED AIR
Pool/Spa:	N	Air:		Style:	
Stories:	1	Improvements:		Parking:	
Flood:		Gross Area:	2224	Garage Area:	
Basement Area:	894				

Property Sale Information

Sale Date:	11/23/2004	* \$/Sq. Ft.		2nd Mtg.	
Estimated Sale Price:		1st Loan:	\$1,150,000.00	Prior Sale Amt:	\$499,500.00
Doc No:	108252	Loan Type:		Prior Sale Dt:	07/12/2001
Doc Type:	BARGAIN & SALE DEED	Xfer Date:	11/24/2004	Prior Doc No:	54866
Seller:	SEKLA TRUST	Lender:	PRIVATE INDIVIDUAL	Prior Doc Type:	WARRANTY DEED

* \$/Sq. Ft. is a calculation of Estimated Sale Price divided by Sq. Feet

Tax Information

Imp Value:	\$419,790.00	Exemption:	
Land Value:	\$444,743.00	Tax Year/Area:	2011/086006
Total Value:	\$864,533.00	Tax Value:	\$580,084.00
Tax Amount:	\$7,614.46	Improved:	48.6 %

Information compiled from various sources and is deemed reliable but not guaranteed.

NN

David A. Van Doozer, Trustee

Grantor's Name and Address

David A. Van Doozer

Grantee's Name and Address

After recording, return to (Name, Address, Zip):

David A. Van Doozer

P. O. Box 692

Canby, OR 97013

Until requested otherwise, send all tax statements to (Name, Address, Zip):

David A. Van Doozer

P. O. Box 692

Canby, OR 97013

STATE OF OREGON,

Clackamas County Official Records
Sherry Hall, County Clerk

2004-108252



\$31.00

00784017200401082520020023

11/24/2004 10:55:31 AM

D-D Cnt=1 Stn=2 BEVL
\$10.00 \$11.00 \$10.00

NAME

TITLE

By _____, Deputy.

BARGAIN AND SALE DEED - STATUTORY FORM

(INDIVIDUAL GRANTOR)

David A. Van Doozer, Trustee of the Sekla Living Trust, dated October 30, 1998

Grantor,

conveys to David A. Van Doozer and Deanna Gwyn Van Doozer, husband and wife

Grantee,

the following real property situated in Clackamas County, Oregon, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE)

The true consideration for this conveyance is \$ -0- (Here, comply with the requirements of ORS 93.030.)

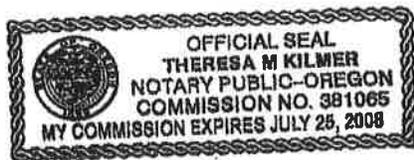
DATED November 23 2004

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

[Signature]
David A. Van Doozer, Trustee

STATE OF OREGON, County of Multnomah

This instrument was acknowledged before me on November 23, 2004
by David A. Van Doozer, Trustee



[Signature]
Theresa M Kilmer
Notary Public for Oregon
My commission expires 7/25/08

LAND AMERICA / COMM'L 1232683C

EXHIBIT "A"
Legal Description

A tract of land in the Jesse V. Boone Donation Land Claim in Township 3 South, Range 1 West of the Willamette Meridian, in the County of Clackamas and State of Oregon, said tract being also in Section 26, said Township and Range, described as follows:

Beginning on the East Donation Land Claim line 22.83 chains North of the Southeast corner of said claim which point is the Northeasterly corner of the tract described in deed recorded February 2, 1960 in Deed Book 566, Page 716; thence North 70° West 603.9 feet to the Northwesterly corner of said tract and a point in the East line of tract described in deed recorded November 4, 1927 in Deed Book 190, Page 495; thence North on the East line of said tract 1159.18 feet, more or less, to the Southerly line of the tract conveyed to Harry A. Ross, et ux, by deed recorded September 22, 1965 in Deed Book 663, Page 311; thence North 61°45' East on the Southerly line of said Ross tract to the East line of said Donation Land Claim; thence South along said Donation Land Claim line to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its State Highway Commission by Deed recorded July 30, 1969, Recorder's Fee No. 69-14321.

This map was prepared for assessment purposes only.

SECTION 26T.3S. R.1W. W.M.
CLACKAMAS COUNTY
1"=400'

D. L.C.'S. NO. 42
JESSE BOON NO. 45
GEORGE CUNNY

3 IW 26

CANCELLED

- 280
- 300
- 1700 TI
- 702
- 10
- 10
- 3400
- 100
- 200
- 3000
- 3002

00901

00901

SEE MAP 3 IW 23

SEE MAP 3 IW 23CC

RR-F-5

SEE MAP 3 IW 23DC

SEE MAP 3 IW 23DC

27

28

26

25

24

23

22000

SEE MAP 3 IW 27

SEE MAP 3 IW 25

3800 P P

2009-76

FFU

86-06

86-39

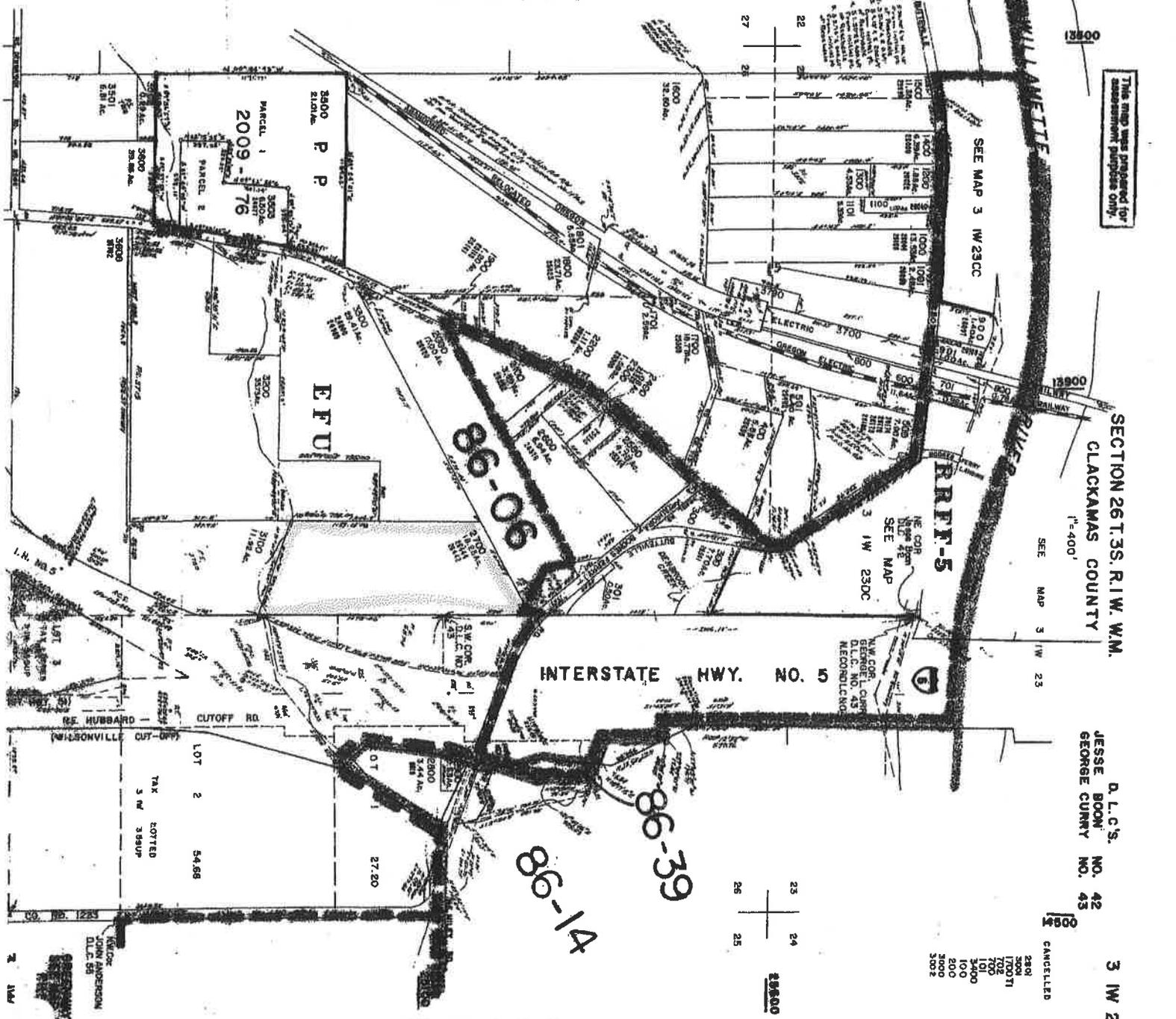
86-14

LOT 2 54.68

TAX 3.07

3.07

27.20



LISTING FLYER

FOR
SALE

UNIQUE FARM USE

WITH EXCELLENT I-5 VISIBILITY

26444 NE BUTTEVILLE ROAD :: AURORA, OR 97002



HIGHLIGHTS:

- \$2,800,000
- Excellent I-5 exposure
- Steel frame main building
- Various out buildings
- 18.43 acre land
- ± 18,706 SF buildings
- Zoned EFU (Exclusive Farm Use)*
- 3 phase power
- Dock high and drive-in loading doors
- Outside yard storage
- 0.72 miles to I-5 Interchange
- 16.8 miles to downtown Portland

* See page 3 for details



*let's mess
re map
sted 3/26/2012
strike price
1,800,000 -
3,200,000*

FOR MORE
INFORMATION
PLEASE
CONTACT

Stuart Skaug, SIOR
Licensed in OR & WA
503.221.4822
stuart.skaug@cbre.com

www.cbre.com/stuart.skaug | CBRE, Inc., 1300 SW Fifth Ave., #3000, Portland, OR 97201

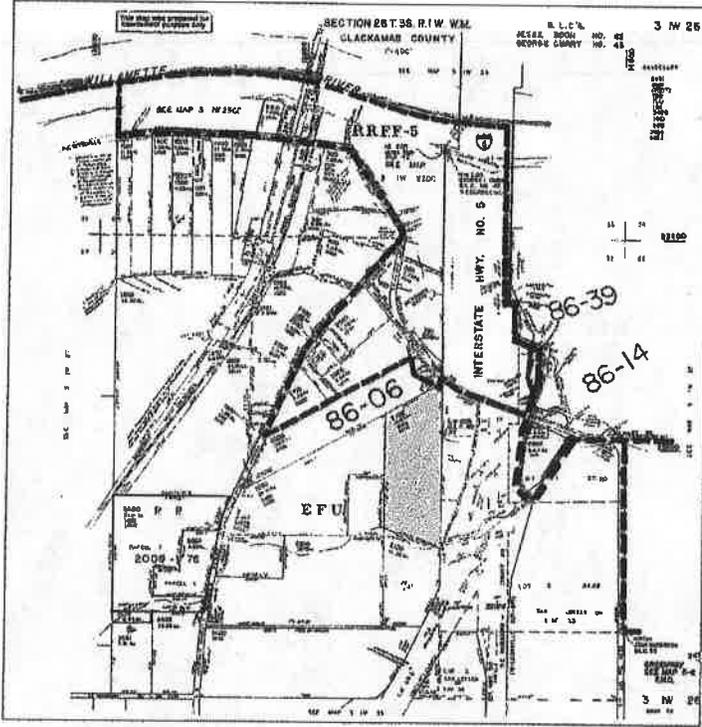
*Still listed - \$2,800,000
5/2012*

CBRE

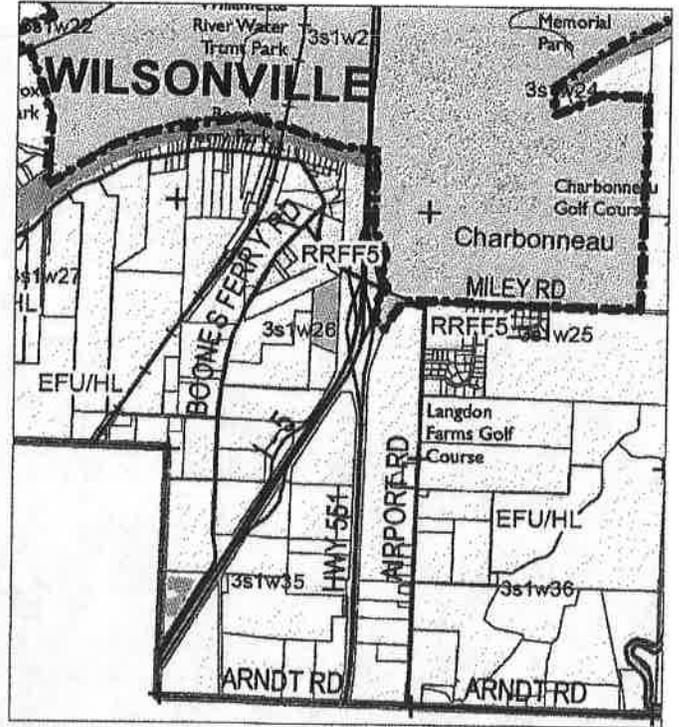
UNIQUE FARM USE

WITH EXCELLENT I-5 VISIBILITY

26444 NE BUTTEVILLE ROAD :: AURORA, OR 97002



TAX LOT MAP



URBAN CROWTH BOUNDARY MAP

Note: The property is outside of the UGB



UNIQUE FARM USE

WITH EXCELLENT I-5 VISIBILITY

26444 NE BUTTEVILLE ROAD :: AURORA, OR 97002

Project Specification

Total Site

Assessor's Parcel Number	831764
Site Size:	18.43 Acres
Total building size:	+/- 18,706 SF
Zoning:	EFU (Exclusive Farm Use)*
Year built:	1920-2005 Average
Grade Doors:	Yes
Dock doors:	Yes
Car parking stalls:	+/- 100



Building Descriptions

SINGLE FAMILY HOME

Total Building Size:	2,224 SF
Year Built:	1920
Bedrooms:	4
Baths:	1
Construction:	Wood frame
Roof:	Composition shingle
Foundation:	Concrete

BARN

Total Building Size:	3,233 SF
Year Built:	unknown
Construction:	Wood Side
Roof:	Metal
Foundation:	Concrete

DISPLAY BUILDING

Total Building Size:	2,048 SF
Year Built:	2005
Construction:	Wood Frame
Roof:	Metal
Foundation:	Concrete
Heat:	Gas
Bath:	1
Power:	3 phase, step down transformer
Lighting:	Mercury vapor

MARKET BUILDING

Total Building Size:	11,201 SF
Year Built:	2005
Construction:	Steel frame, concrete clad insulated, metal exterior
Roof:	Metal
Foundation:	Concrete
Heat:	Gas
Bath:	1
Power:	2 single phase, 1 three phase, step down transformer
Lighting:	T-5 277 volt

* EFU = The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Web site for reference to zoning law: <http://www.oregonlaws.org/ors/215.203>

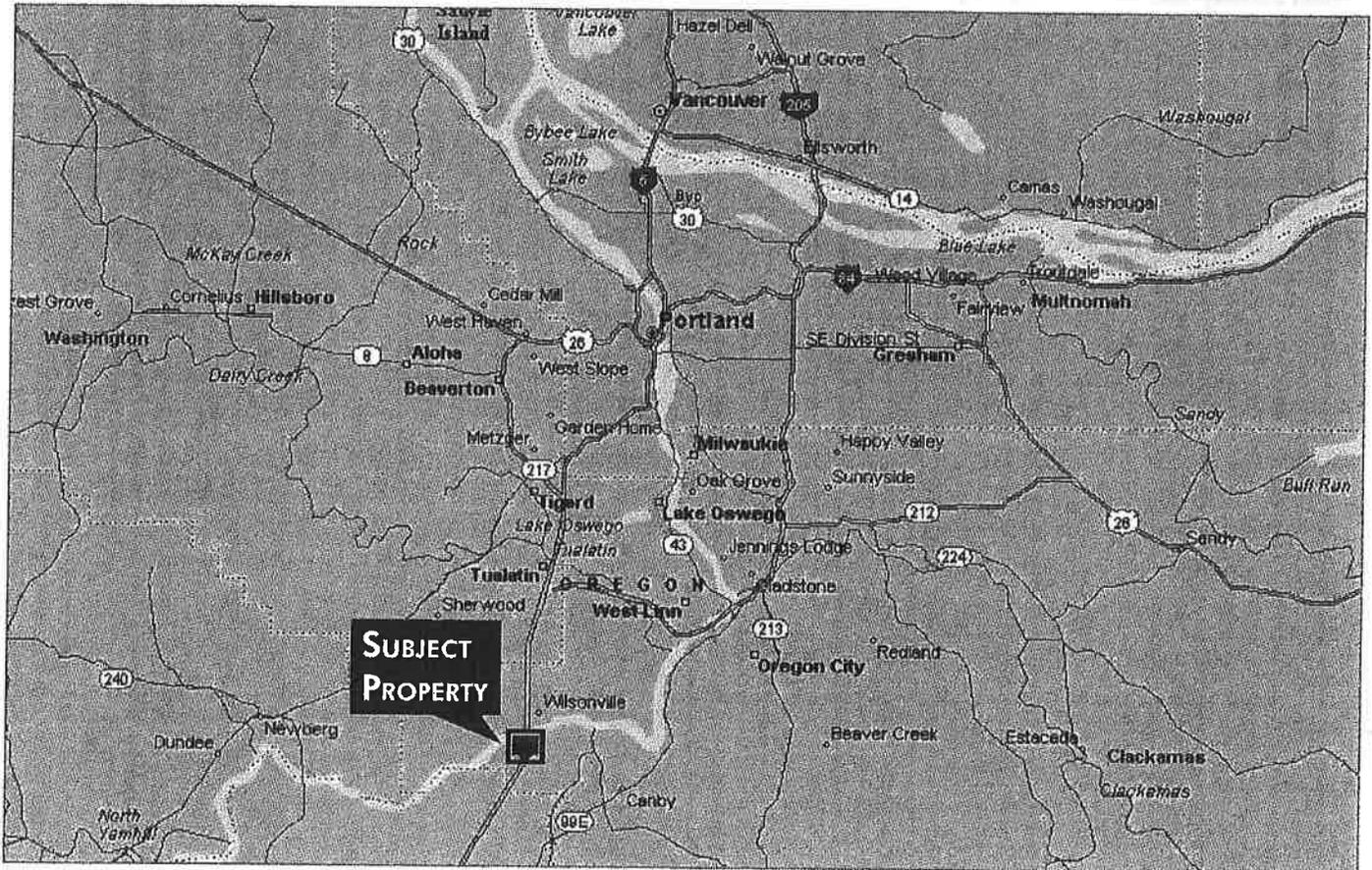
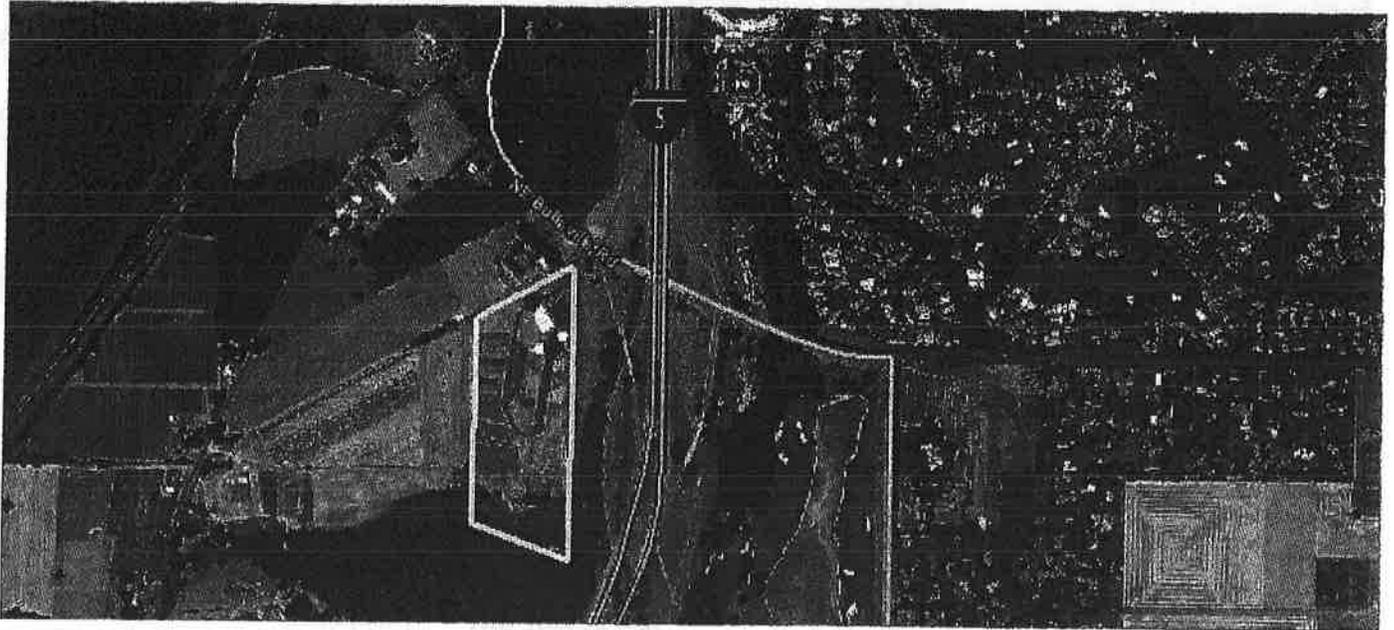
CBRE

FOR
SALE

UNIQUE FARM USE

WITH EXCELLENT I-5 VISIBILITY

26444 NE BUTTEVILLE ROAD :: AURORA, OR 97002



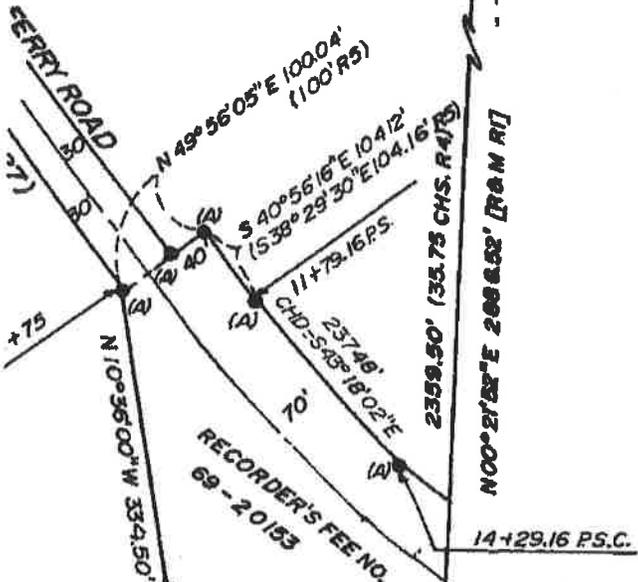
© 2012 CBRE, Inc. This information has been obtained from sources believed reliable. We have not verified it and make no guarantee, warranty or representation about it. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property. You and your advisors should conduct a careful, independent investigation of the property to determine to your satisfaction the suitability of the property for your needs. Photos herein are the property of their respective owners and use of these images without the express written consent of the owner is prohibited.

CBRE

LAND SURVEY

$\xi = 8^\circ \text{ CL}$
 $T\Delta = 25^\circ 21' 30''$
 $Ts = 286.82'$
 250' SPIRAL
 $S = 10^\circ 00'$
 $a = 3.2$

N.E. CORNER
 JESSE BOONE D.L.C. 42
 SFNF, POSITION CALC.
 PER LP-033



14 + 29.16 P.S.C.

RECORDER'S FEE NO.
 69-14321

$N 57^\circ 35' 34'' W$
 483'

INTERSTATE 5

RECORDER'S FEE
 NO. 2001-054866

S.W. CORNER G.L. CURRY
 D.L.C. 43, 3" ALUM. DISC. MARKED
 "CLCOR D.L.C. 43 T3S RIW WM"
 DOWN 1', LP-033.



SCALE: 1" = 200'

Area = 18.43 acres

REGIONAL DESCRIPTION

REGIONAL DESCRIPTION

PORTLAND METROPOLITAN AREA

LOCATION



Portland is a city of 583,845 people (Source: Portland State University as of July 2011), with a supporting metropolitan population of over 2.2 million located in the northwestern part of the State of Oregon. It is situated along the banks of the Willamette River near its confluence with the Columbia River, 110 water miles from the Pacific Ocean. In 1983, the federal government designated greater Portland as a Primary Metropolitan Statistical Area (PMSA), consisting of Multnomah, Washington, Clackamas, and Yamhill counties.

The geographic delineation was expanded in 1994 to include Oregon's Columbia County and Clark County in Washington. As of January 2005, the Office of Management and Budget (OMB) included Skamania County, Washington, as part of the Portland-Vancouver-Beaverton OR-WA Metropolitan Statistical Area. The Portland-Vancouver MSA is the largest economic and population center on the West Coast between San Francisco (650 miles south) and Seattle (180 miles north).

CLIMATE

Portland has warm and dry summers, with an average high in August of 80.3 degrees and an average low of 56.9 degrees. The winters are usually long and wet, and snow rarely falls, with an average of 2.1 inches a year. The average high in January is 45.4 degrees with a low of 33.7 degrees. Portland typically gets about 33.6 inches of rain each year, the majority in the winter months.

HOUSEHOLD INCOME

The Portland MSA has a lower percentage of poor households and a larger middle class than the rest of the nation. On the high end of the income scale, an estimated 35.6 percent of U.S. households had incomes exceeding \$75,000, while Portland had 41.0 percent of total households in this income category.

PORTLAND REGIONAL DESCRIPTION (continued)

PORTLAND-VANCOUVER MSA MEDIAN HOUSEHOLD INCOME

COUNTY	MEDIAN HOUSEHOLD INCOME				PERCENT CHANGE	
	1989	2000	2005	2010	89-'00	'05-'10
CLACKAMAS	\$ 35,472	\$ 53,036	\$ 59,550	\$ 65,818	49.5%	10.5%
CLARK (WA.)	\$ 31,806	\$ 48,456	\$ 54,648	\$ 60,610	52.3%	10.9%
COLUMBIA	\$ 29,563	\$ 45,801	\$ 51,724	\$ 57,718	54.9%	11.6%
MULTNOMAH	\$ 26,970	\$ 41,982	\$ 47,759	\$ 54,391	55.7%	13.9%
SKAMANIA (WA.)	\$ 28,778	\$ 40,007	\$ 43,678	\$ 46,783	39.0%	7.1%
WASHINGTON	\$ 35,571	\$ 53,085	\$ 58,956	\$ 64,838	49.2%	10.0%
YAMHILL	\$ 28,422	\$ 44,552	\$ 48,922	\$ 54,183	56.8%	10.8%
PORTLAND MSA	\$ 31,055	\$ 47,375	\$ 53,542	\$ 60,099	52.6%	12.2%
OREGON	\$ 27,284	\$ 41,417	\$ 46,486	\$ 51,871	51.8%	11.6%
UNITED STATES	\$ 30,097	\$ 42,729	\$ 47,837	\$ 53,746	41.9%	11.4%

Source: U.S. Department of Commerce, Bureau of the Census

Within the region, the lowest incomes are predominantly located in the central areas of Portland (Multnomah County), where the older housing stock exists. This pattern holds true in the smaller suburban cities in the metropolitan area as well. Higher income households are concentrated in suburban locations, with the exception of the affluent, centrally located neighborhoods including the West Hills, Eastmoreland, Laurelhurst, Grant Park, Alameda, and Mt. Tabor in Portland. The largest proportion of upper income households is located west of the Willamette River, in areas with view properties.

POPULATION

The Portland MSA is the 23rd largest metropolitan area in the country. The 2011 population figures as presented by Portland State University Population Research Center reflect a nominal increase from 2010 to 2011; however, the average annual growth of 1.31% between 2005 and 2011 exceeds the state as a whole. The following chart summarizes population growth trends for the Portland MSA and Oregon from 1990 to 2011.

POPULATION

	1990	2000	2005	2006	2007	2010	2011	Annual % Chg 2005-11	Annual % Chg 2010-11
MULTNOMAH	583,887	660,486	692,825	701,545	710,025	736,785	741,925	1.18%	0.70%
WASHINGTON	311,554	445,342	489,785	500,585	511,075	531,070	536,370	1.59%	1.00%
CLACKAMAS	278,850	338,391	361,300	367,040	372,270	376,780	378,480	0.79%	0.45%
CLARK (WA)	238,053	345,238	391,500	403,500	415,000	439,971	428,000	1.55%	-2.72%
YAMHILL	65,551	84,992	90,310	91,675	93,085	99,405	99,850	1.76%	0.45%
COLUMBIA	37,557	43,560	46,220	46,965	47,565	49,430	49,625	1.23%	0.39%
SKAMANIA (WA)	8,289	9,872	10,300	10,600	10,700	10,643	11,150	1.38%	4.76%
PORTLAND MSA	1,523,741	1,927,881	2,082,240	2,121,910	2,159,720	2,244,084	2,245,400	1.31%	0.06%
STATE OF OREGON	2,842,321	3,421,399	3,631,440	3,690,505	3,745,455	3,837,300	3,857,625	1.04%	0.53%

Source: Center for Population Research and Census, Portland State University
Claritas, Inc. State of Washington: Office of Financial Management

Recessionary conditions have prevailed locally and nationally, resulting in minimal to no growth in population over the most recent period.

PORTLAND REGIONAL DESCRIPTION (continued)

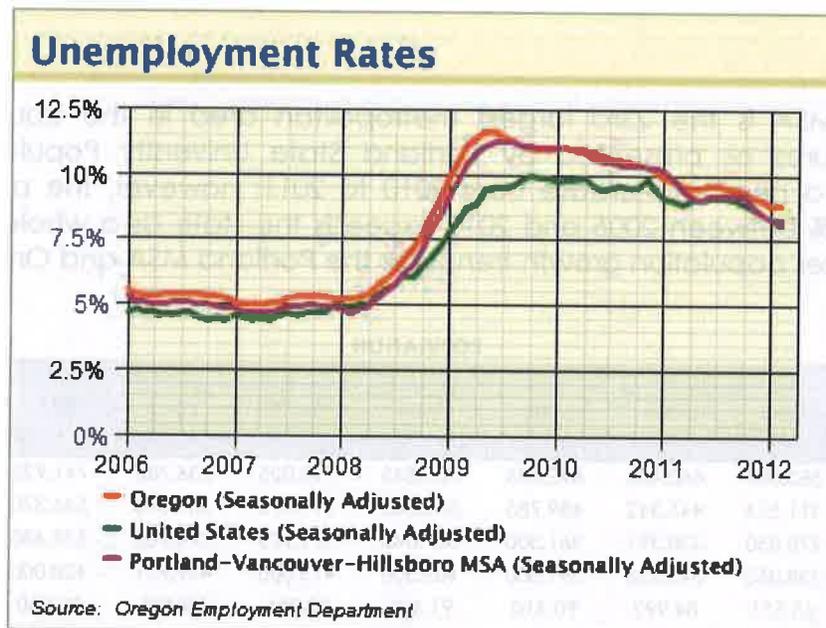
EMPLOYMENT

The Portland metropolitan area is home to more than 75,000 businesses. Of these, nearly 1,500 are classified as headquarter firms. Eighty major manufacturing companies maintain their headquarters in the Portland area, including the Fortune 500 firms of Precision Castparts Corp.; Tektronix, Inc.; Willamette Industries; Nike; and PacifiCorp.

While the metro area and the state have spent the past year making very modest gains in unemployment, job growth remains elusive and will be the one significant key to the pace and shape of the area's recovery. Despite the area's high unemployment rate, the Portland metro area continues to attract transients from around the country, which is contributing to the elevated jobless rate, as most of these in-migrants come with no job. On the other hand, those relocating to Portland tend to have a high education level and are highly employable. Portland's brain gain has not gone unnoticed, as the area was recently ranked 11th on *The Daily Beast's* smartest cities list, out of the 55 largest U.S. Cities.

The technology industry has a strong presence in Portland. Along with Tektronix and Intel, Portland is home to many smaller, but worldwide technology companies. Xerox, Novellus and Infocus are just a few of these. The rapid growth of the semiconductor industry over the past 20 years, particularly in the Portland MSA, has earned it the nickname "Silicon Forest" in reference to Intel and many smaller printed circuit board (PCB) and processor (chip) manufacturers.

Historic annual unemployment rates are summarized below.



National, state and regional employment was steady between 2006 and 2007; however, the residential market collapse and subsequent "Great Recession" doubled unemployment rates in the Portland MSA, state of Oregon, and the nation. The rates reflect a steady downward trend beginning in mid-2009; however, they remain elevated as compared with pre-recession unemployment statistics. Unemployment in Oregon and Portland continues to gradually recover in 2012.

PORTLAND REGIONAL DESCRIPTION (continued)

Specific data relevant to the Portland MSA is presented below.

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2012	8.3	8.1	-	-	-	-	-	-	-	-	-	-	-
2011	10.1	9.8	9.4	9.2	9.0	9.2	9.2	9.2	9.2	9.2	8.8	8.5	9.1
2010	11.0	11.0	10.9	10.8	10.6	10.5	10.5	10.4	10.4	10.4	10.3	10.3	10.6
2009	9.2	9.9	10.4	10.8	11.1	11.2	11.2	11.2	11.1	11.1	11.0	11.0	10.8
2008	4.8	4.7	4.8	4.9	5.2	5.5	5.8	6.2	6.6	7.1	7.8	8.5	6.0
2007	4.8	4.7	4.7	4.7	4.7	4.8	4.9	4.9	5.0	5.0	4.9	4.9	4.8

As the chart illustrates, unemployment in the Portland MSA has steadily decreased over the past one to two years.

ECONOMY

The Portland metropolitan area has a diversified economy that reflects national business conditions. A diversified industrial base within the Portland MSA provides a stable economic base, lessening the effects of business cycles, which often appear in state economy which is heavily invested in the lumber and wood products industries.

High unemployment, stagnating wages, increased savings rates among the populace and moderating standard of living expectations will all prove impediments to the recovery. Oregon's state budget will also present a significant obstacle as the state struggles to address its looming budget shortfall and tax burdens adjust to meet fiscal challenges. Although there is significant discourse in the media and business community regarding the view that the business tax climate is harsh in Oregon, the National Tax Foundation recently released its annual *State Business Tax Climate Index* and found Oregon to be the 14th best state with regard to its business tax climate. In addition, a recent *Forbes Magazine* ranking found Oregon to be the 6th best place for business and careers, ranking Oregon's labor supply 4th in the nation and its growth prospects 12th. Taken together, these indices give cause for an optimistic view of the area's recovery trajectory in comparison to the national average.

Local Governments

A regional agency, the Metropolitan Service District (METRO), takes responsibility within urbanized areas for review of city and county comprehensive growth plans, solid waste management, and transportation planning. METRO manages regional parks and green spaces, and the Metro Washington Park Zoo. It also oversees operation of the Oregon Convention Center, Civic Stadium, the Portland Center for Performing Arts, and the Expo Center. METRO is governed by an executive officer elected region-wide, a seven-member council elected by districts, and an auditor who is elected region-wide.

Local governments can augment revenues with bonded indebtedness. Oregon does not have a sales tax, but has an income tax. Although a sales tax has been considered as a probable source of new revenue, sales tax initiatives have historically been soundly defeated by voters.

PORTLAND REGIONAL DESCRIPTION (continued)

PROPERTY TAXES

In November 1996, Oregon voters approved a property tax limitation measure (Measure 47) which went into effect during the 1997/98 tax year. Under the provisions of this measure, property taxes at July 1, 1997 will be reduced to the smaller of the 1994/95 tax, or the 1995/96 tax less ten percent. Tax increases for subsequent years are limited to three percent per year, with exceptions for new construction, major remodeling, annexations and rezoning.

On May 21, 1997, voters approved a re-write of Measure 47 in the form of Measure 50. This revision effectively rolls back assessed values and tax levies freezing tax rates to 1995/96 levels. In addition, appreciation is capped at three percent per year. Ramifications of this revision are yet to be interpreted by county assessors.

COMMUNITY FACILITIES

The Portland metropolitan area maintains a symphony orchestra, junior symphony, opera company, art museum, museum of science and industry, public zoo, and an extensive public library system with 19 branches. The Portland Center for the Performing Arts includes the 3,000-seat Civic Auditorium, the 2,776-seat Arlene Schnitzer Concert Hall, the 322-seat Winningstad Theater, and the 916-seat Intermediate Theater.

Also located in Portland are the Historical Preservation Gallery, Japanese Gardens, Western Forestry Center, and the International Rose Test Gardens. The city of Portland has the most parkland per capita in the country, which includes the 5,000-acre Forest Park. Portland supports a men's National Basketball Association (NBA), and a Western Hockey League junior ice hockey team that play in two indoor arenas and a professional indoor lacrosse team. The Portland Beavers, a AAA baseball team affiliated with the San Diego Padres, play in the renovated PGE Park. The Oregon Convention Center (400,000 SF) was completed in September 1990, and expanded during 2002 (507,500 SF). The expanded center's total capacity of 907,500 square feet makes it the largest facility of its type in the Pacific Northwest. It attracts national, regional, and local events.

The area is well served by public and parochial schools. Institutions of higher education include Portland State University, University of Portland, Lewis & Clark College and Law School, Reed College, and Oregon Health Sciences University. There are three large junior colleges and many community education centers. Oregon Museum of Science and Industry (OMSI) is a \$40 million facility on the east bank of the Willamette River in downtown Portland. OMSI is a major educational facility and tourist attraction.

The Memorial Coliseum is a 12,666-seat structure that currently hosts the Portland Winter Hawks hockey team, and other major entertainment attractions. The 21,000-seat Rose Garden Arena (\$262 million) opened in October 1995 and is the home of the Portland Trailblazers (NBA). This multi-event entertainment complex is located adjacent to Memorial Coliseum and has established a national reputation for excellence. The majority of the funding for this project was derived from private investors and the team owner, Paul Allen. This sports arena has generated significant new economic activity and has created hundreds of new full and part-time jobs.

PORTLAND REGIONAL DESCRIPTION (continued)

REGIONAL HIGHLIGHTS

The Portland–Beaverton–Vancouver MSA consists of many smaller cities in a six county region. Washington County, in the southeast Portland area, incorporates 11 cities; including Hillsboro, Tigard, Tualatin, Sherwood and Beaverton. Washington County utilizes a nationally recognized urban growth boundary to continue its practice of focused industrial and commercial growth. The county's developed regions are home to traditional suburban and new mixed-use neighborhoods, electronics leaders such as Intel, IBM and Tektronix, and world headquarters for both Nike and Columbia Sportswear.

Hillsboro, home to Intel and other high-tech leaders, relies primarily on the stable forestry and timber products industries as an employment base. However, the high-tech boom has attracted many service industries to support the manufacturing companies. With a 2011 population of 92,950, Hillsboro is the fifth largest city in Oregon. Population has increased 30.10% from 2000 to 2011. The median household income of Hillsboro was \$60,695 as of the 2010 census.

Tigard, located 15 minutes from downtown Portland, is also within the Portland Urban Growth Boundary. It is a growing suburban commuter community. Tigard's population was approximately 48,415 in 2011, with a median income of \$62,077. Tigard's population has increased 14.56% from 2000-2011.

Tualatin is located 12 miles south of Portland on the Tualatin River. It had a 2011 population of 26,060 and had a median household income of \$60,182 as of the 2010 Census. While Tualatin is home to roughly 160 manufacturing companies, several of the largest employers in the city include: Legacy Meridian Hospital, UPS, GE Security, and Novellus Systems. Bridgeport Village, a newer commercial and entertainment lifestyle center is located several miles to the north, between Tigard and Tualatin.

DEVELOPMENT

Industrial Market – The industrial market in the Portland metropolitan area has been very active since the mid-1990s. This was particularly evident during 1999 when net absorption reached 2.25 million square feet, but not enough to offset the construction of 4.00 million square feet, resulting in an overall vacancy rate of 10.1 percent. During 2000, this trend was reversed with 5.38 million square feet absorbed and 2,140,767 square feet constructed. This resulted in a year-end vacancy of 6.7 percent. By the beginning of 2001, national recessionary trends began to impact the local economy with escalating vacancy rates for industrial projects that continued through the end of 2003.

After four quarters of positive Gross Domestic Product (GDP) growth and record corporate profits, investors believe the much feared double-dip recession has been avoided. For the first quarter of 2011, net absorption came in at 243,119 square feet and vacancy has fallen from 11.8% in 2010 down to 11% in 2011. The Oregon economic recovery has been gaining momentum: 26,700 jobs in the state and 13,300 in the Portland Metro have been created over the course of the last 12 months; unemployment rates have fallen to 9.6 percent in Portland and 10.2 percent in the state and consumer sentiment and retail sales have improved. The outlook has also strengthened, as the state Office of Economic Analysis has revised its job growth forecast for 2011 and 2012, expecting gains of 1.4 and 2.0 percent, respectively.

PORTLAND REGIONAL DESCRIPTION (continued)

Construction activity will also pick up slightly and will be primarily limited to build-to-suit and owner-built projects. In addition to Intel's \$4 billion new D1X semiconductor fab, ON Semiconductor has announced plans for a \$30 million expansion.

Office – The Oregon economic recovery is gaining momentum with positive job growth and unemployment rates easing. Consumer sentiment is improving slightly and retail sales are rising, as reported by Grubb & Ellis. Thanks to a multitude of urban housing options, a well designed public transit system and a growing demographic of young, highly educated workers, the central business district is capturing much of the market. A migration of area businesses from the suburbs back to the city core will continue through 2011.

2011 began with a sharp increase in institutional investment activity localized to the CBD. Within the first few weeks of the New Year, four significant CBD office buildings were placed on the market for sale. Interest has been significant, with new players aggressively pursuing properties in the market. Shorenstein's First & Main sold to American Assets Trust for approximately \$129 million or \$354 per square foot and an approximate 6.9 percent cap rate. Consider this sale in comparison to the year-ago sales of One Main Place (\$180 per square foot; 9.25 percent cap rate) and KOIN Center (\$160 per square foot), and it is clear that the market for Class A CBD office buildings in Portland has recovered dramatically. With vacancy in the CBD Class A market now approaching 6 percent and one the last large blocks of space taken off the market, look for rents for premium space to spike and pre-development activity to increase.

Retail Market – The deflating housing market has had a major impact on retailers around the country and Portland is not immune. Declining home values and a halt to mortgage equity withdrawal has created a negative wealth effect, making consumers feel significantly less well off. This has placed a damper on consumer spending. Declining home values and rising cost of necessities such a fuel and food, has caused consumers to watch budgets closely and cut back on discretionary spending.

In a recent forecast of commercial real estate, Portland placed in the top 10 U.S. cities for office, retail and industrial real estate investment opportunities. The report, released by Grubb & Ellis, a Portland commercial real estate firm, found Portland to have an overall vacancy rate of around 10%. This placed Portland third on the report's list of 47 cities, just below New York and Washington, D.C., for investment opportunities. Portland fared best in retail, with a vacancy rate of 6.1%.

While Portland may face high unemployment, it's still considered a safe market for investors because the market was not overdeveloped when the economy went sour. This is particularly true for the retail sector and is one of the strongest draws for companies wanting to enter the Portland market. With limited space, competition for national retailers is high. It took a deal two years in the making to bring retail clothing giant H&M to downtown Portland, which opened late last year. The space was formerly held by Saks Fifth Avenue.

Multi-family –Current Portland market trends data indicates a decrease of -0.1% in the median asking price per unit for Multifamily properties compared to the prior 3 months, with an increase of +5.0% compared to last year's prices. County-wide asking prices for

PORTLAND REGIONAL DESCRIPTION (continued)

Multi-family properties are 0.6% higher at \$96,230 per unit compared to the current median price of \$95,671 per unit for Multifamily properties in Portland, OR.

The Market Tightness Index, which examines vacancies and rents, rose to a record 90 from 78 last quarter. For all indexes, a reading above 50 indicates improving market conditions. Foreclosures continue to create renters faster than their former houses and condos are being added to the shadow supply of rental units. Modest job growth also is creating new renter households. Home prices remain soft, generating little urgency among renters who could afford to buy while mortgages, though historically cheap, are tough to get as lenders carefully scrutinize borrowers.

SUMMARY

The commercial real estate leasing market hit bottom in 2010 while the investment market – segments of it – perked up faster than was possible a year ago at this time. Thanks to quick action by the Federal Reserve and, arguably, more than \$1 trillion dollars in stimulus spending, the Great Recession ended in June 2009, and employers added a modest 1 million net new payroll jobs in 2010. This was a fraction of the 8.4 million jobs lost from the peak of the labor market in December 2007 to the trough in December 2009, but it was enough to put a floor under the leasing market and generate some positive net absorption in the second half of the year.

Grubb & Ellis expects GDP growth in the range of 2.5 to 3 percent in 2011, still a little below the economy's long-term growth potential of around 3 percent. U.S. companies are sitting on record cash reserves of nearly \$2 trillion, some of which they will deploy as demand from businesses and consumers expands modestly. Employers are likely to add 1.5 million net new payroll jobs, right at the level needed to accommodate the growing labor force, which means that the unemployment rate will remain stubbornly high for the next year or so.

APPRAISER QUALIFICATIONS

EXPERIENCE AND QUALIFICATIONS

SHIRLEY A. LAYNE

Shirley Layne is a staff appraiser with PGP VALUATION INC. Following graduation from Highland High School in Albuquerque, New Mexico in 1967, she attended Texas Woman's University (Denton, Texas) and Boise State University (Boise, Idaho) and traveled abroad extensively. She has been employed with PGP VALUATION INC since August, 1991. Shirley has performed a variety of commercial valuation assignments, with specialized concentration in multi-family projects in the Willamette Valley. She has qualified as an expert witness in both the Federal Court and Marion County Circuit Court.

PROFESSIONAL AFFILIATIONS

State of Oregon Certified General Appraiser (#C000516)
State of Washington Certified General Appraiser (#LA-YN-ES-A510J)
Oregon State Real Estate Licensee since 1986.
Associate Member of the Appraisal Institute

EDUCATION

Texas Woman's University, Denton, Texas, 1967-1969
Boise State University, Boise, Idaho, 1973
Norm Webb School of Real Estate, 1986
Western Oregon University, Monmouth, Oregon, 1998

Chemeketa Community College, Salem, Oregon
Appraisal I
Appraisal II
Appraisal III
Residential Applications
Portland State University, Portland, Oregon
Finance/Law 457-557

Appraisal Institute, Chicago, Illinois
Course 1A1, Real Estate Appraisal Principles
Course 1A2, Basic Valuation Procedures
Course SPPA, Standards of Professional Practice, Part A and B
Course 120, Appraisal Procedures (challenged)
Course 310, Income Capitalization
Course 520 - Highest & Best Use Analysis
Course 530 - Advanced Sales Comparison & Cost Approaches
Small Hotel/Motel Valuation Seminar
Appraising from Blueprints and Specs Seminar

EXPERIENCE

Coldwell Banker Mountain West Real Estate, Salem, Oregon, 1981-1989
Prudential Real Estate Professionals, Salem, Oregon, 1989-1991
PGP VALUATION INC Salem, Oregon 1991 to present

EXPERIENCE AND QUALIFICATIONS

KATHERINE POWELL BANZ, MAI

Katherine Powell Banz, MAI is a Managing Partner and Certified General Appraiser with Powell Valuation Inc. She is licensed in Oregon and Washington and has performed a diverse range of commercial valuation assignments throughout the Northwest since joining the firm in 2002. Professional experience includes a wide variety of valuation-related work, including appraisal and feasibility analysis of income-producing properties; including retail, office, development land, light industrial, and special use properties such as churches and schools.

Katherine graduated from Linfield College (McMinnville, Oregon) in 1997 with a Bachelor of Arts degree. Following college, she worked as a graphic artist and project manager with the Boeing Company in Seattle until joining Powell Valuation Inc in 2002. Katherine attended the Appraisal Institute's Leadership Development and Advisory Council in 2006 in Washington DC and helped lobby congress for mortgage fraud legislation. She is active in the Greater Oregon Chapter of the Appraisal Institute; receiving the Outstanding Associate Member of the Year Award in 2008 and was elected to serve on the Board of Directors for 2012. Katherine is continuing her education with the Appraisal Institute and achieved her MAI designation in 2011.

PROFESSIONAL AFFILIATIONS

State of Oregon Certified General Appraiser (#C000897)
State of Washington Certified General Appraiser (#1101856)
Designated Member of the Appraisal Institute (#480999)
2012 Board Member, Greater Oregon Chapter of the Appraisal Institute
Member, Salem Art Association

EDUCATION

APPRAISAL INSTITUTE

Litigation Appraising: Specialized Topics and Applications
Understanding New Interagency Appraisal and Evaluation Guidelines
Business Practices and Ethics
Office Building Valuation - A Contemporary Perspective
Eminent Domain and Condemnation
Advanced Applications, Course 550
Report Writing, Course 540
Advanced Sales Comparison & Cost Approaches, Course 530
Market Analysis/Highest and Best Use, Course 520
Advanced Income Capitalization, Course 510
Evaluating Commercial Construction
Uniform Standards of Professional Practice 15 Hour
Uniform Standards of Professional Practice 7 Hour

LINFIELD COLLEGE, McMinnville, Oregon, 1993-1997
Bachelor of Arts

EXPERIENCE

Powell Valuation Inc, Managing Partner, Salem, Oregon, 2002 - Present

EXPERIENCE AND QUALIFICATIONS

POWELL VALUATION INC has been serving the northwest since 1973. The firm concentrates on complex commercial, industrial and multi-family valuation assignments for government, corporations and individuals. Work has been performed on a national scale. A sample of clients served is included below.

Financial:

Absolute Funding, Inc.
American Federal Savings
American Pacific Bank
American Savings & Loan (FCA)
AT&T Capital Credit
Baker Mortgage, Inc.
Bank of America
Bank of California
Bank of Newport
Bank of Salem
Bank of the West
Banner Bank
Benjamin Franklin
Berkeley Bank and Trust
Centennial Bank
Church Extension Plan
Citizens Bank
CitiGroup
CIT Small Business Lending
Commercial Bank

Continental Bank
Cypress Pointe Capital, Inc.
Eichler, Fayne & Associates
Family Federal Savings
First Federal, Coeur d'Alene
First Federal, Longview
First Federal, McMinnville
First Interstate Bank, N.A.
First Mutual Bank
First Tennessee Bank
First Security Bank
First Security Leasing Company
Freedom Federal Savings
Interwest Mortgage
Independence/Graimark
Juniper Banking Company
Key Bank of Oregon
Liberty Federal Bank
Old National Financial
National Mortgage Company

Norris, Beggs & Simpson
Pioneer Trust Bank, N.A.
Rainier Bank
Seafirst Real Estate Advisory
Southern Pacific Thrift & Loan
The Oregon Bank
Umpqua Bank
U.S. National Bank of Oregon
United Savings Bank
Vancouver Federal
Ward Cook Inc.
Washington Federal Bank
Washington Mutual Bank
Wells Fargo Bank
Western Bank
Western Security Bank
Willamette Savings
Willamette Resources
Yakima Valley Bank

Governmental:

Benton County
Bonneville Power Administration
City of Albany
City of Coos Bay
City of Corvallis
City of Eugene
City of Lincoln City
City of Salem
City of Silverton
City of Woodburn
Dallas School District
Douglas County
FDIC

Federal Home Loan Bank
FSLIC
GSA - State of Oregon
Klamath County
Lane County
Marion County
Military Dept. - State of Oregon
Mount Angel School District
Oregon Attorneys General
Oregon Dept. of Transportation
Oregon Division of State Lands
Oregon Dept. of General Services
Network Oregon Affordable Housing

Port of Portland
Resolution Trust Corporation
Riverdale School District
Salem/Keizer School District
U.S. Army Corps of Engineers
U.S. Bureau of Land Management
U.S. Dept. of Interior
U.S. Marshall's Office
U.S. Forest Service
Washington Dept. of Fish & Wildlife
Woodburn School District
Yamhill County Housing Authority

Insurance/Medical:

Mutual of Enumclaw
Oregon Mutual
Killen Enterprises
Mid-Valley Healthcare
Harvard Medical

Northwest Life Assurance
OMO Partnership
Salem Hospital
Corvallis Clinic
Good Samaritan Hospital (Corvallis)

MetLife Capital Insurance Company
Equitable of Iowa
Pacific Mutual
St. Paul Fire & Marine
Osteon Partners

General:

Aegon USA Realty, Inc.
Agripac, Inc.
Atlantic Richfield Corporation
Brand "S" Corporation
Capital Consultants
Capitol Auto World
Chevron, USA
Chrysler Realty
Colson & Colson Construction
Conservation Fund
DAV II Investments
McDonalds Corporation
George R. Suniga Enterprises

First American Title
International Business Machines
Keller Enterprises
Merritt Truax
Meler & Wyse
Miller, Nash
Microfect, Inc.
Marrow Crane
Mt. West Development
Moyer Theaters
Neilsen Manufacturing
Nippon Kokan K.K.
Nonpareil, Inc.

Pacific Petroleum
Portland General Electric
River Network
Saafeld, Griggs & Gorsuch
Schnitzer Investment
State Farm Insurance Co.
Stoel, Rives, L.L.P.
Sun America Investments
Texaco Lubricants
Valley Rolling Mills
Viking Insurance Company



NE Butteville Road Zone Change

Exhibit H Surrounding Land Uses



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 P 503.228.5230 F 503.273.8169

September 28, 2015

Project #: 18865

Jerry Jones, Jr.
LCD
13625 SW Farmington Road
Beaverton, OR 97005

RE: NE Butteville Road Property Trip Generation Comparison

Dear Jerry,

Per your request, this letter summarizes a comparison of trip generation rates associated with land uses that could be developed on an 18.25-acre property located at 26444 NE Butteville Road in Clackamas County, Oregon. The site is currently located within an unincorporated portion of the County and is zoned Exclusive Farm Use (EFU). The site was previously developed as the I-5 Farm Store (no longer in operation) and hosts multiple buildings including a farm store, display building, a barn, and a farmhouse.

The applicant is proposing to change the property's zoning from EFU to Rural Industrial (RI). To comply with Oregon's Transportation Planning Rule (TPR), as documented in Oregon Administrative Rule 660-060-012, the rezone must not result in a significant effect on the transportation system. To test for a significant effect, we first reviewed the trip generation potential of the permitted land uses associated with the existing and proposed zoning. Our review found that implementing a trip cap on future land uses that would be allowed under the proposed zoning would ensure that resultant vehicular trip levels are less than or equivalent to those associated with the former site use (I-5 Farm Store and single family home), which were conducted under the existing zoning. Therefore, the proposed rezone would not result in an increase in trips generated by the property and would not result in a significant effect on the transportation system, as defined by the TPR.

Based on the analyses presented in this letter, we find that the proposed rezone will not result in a significant affect assuming implementation of a trip cap and that no additional technical transportation analyses should be needed to support the TPR findings. We recommend the trip cap be established at the level associated with the prior approved site uses, estimated to be 670 daily trips including 103 AM peak hour trips and 41 PM peak hour trips.

In addition to the proposed zone change, the property owner would like to re-occupy existing buildings on the site for use as a new vehicle preparation area to support two auto dealerships in Wilsonville. As documented herein, the proposed use of the site to support auto dealerships is expected to operate well under the recommended trip cap. The remainder of this memo documents our assumptions and analyses.

PRIOR LAND USE TRIPS

A traffic impact study was prepared for the former I-5 Farm Outlet Store¹. The study assumed the outlet store site development would total 14,900 square feet including a 7,200 square foot permanent farm store, a 4,200 square foot produce preparation building, a 1,000 square foot meat preparation building, and 2,500 square feet of materials storage building space. The store was assumed to operate Monday through Saturday between 7:00 AM and 10:00 PM and on Sundays between 12:00 PM and 7:00 PM. The study estimated the 14,900 square foot retail component of the property would generate 660 daily trips including 102 AM peak hour trips (49 entering and 53 exiting) and 40 PM peak hour trips (918 entering and 22 exiting). A copy of the original traffic study is attached to this letter.

In addition to the retail Farm Outlet Store, the study site includes an existing single family home and a barn.

PROPOSED LAND USE

Wilsonville Toyota proposes to accept and store new automobile deliveries from the Toyota factory at the site. Vehicles will undergo minor preparation/detailing work on-site before they are individually moved to the Wilsonville Toyota showroom for retail display and sale. The proposed on-site activities will utilize the existing site improvements (no new buildings proposed) and are expected to occur Monday through Friday.

TRIP COMPARISON

To comply with the TPR, potential land uses were assessed under the existing and proposed zoning as described below.

Existing EFU Zoning

Per Section 401 of the Clackamas County Zoning and Development Ordinance (ZDO), typical EFU permitted uses include farm uses, non-residential buildings customarily provided in conjunction with farm uses, accessory buildings customarily incidental to an existing dwelling, winery, farm stands (subject to Type II application), dog training classes, etc. For trip comparison purposes, we will assume reasonable "worst-case" development under the existing zoning is represented by the existing farm home, barn, and I-5 Farm Outlet Store.

¹ I-5 Farm Outlet Traffic Assessment and Sight Distance Certification dated January 22, 2004 by Charbonneau Engineering LLC

Proposed RI Zoning

Section 604 of the Clackamas County ZDO identifies RI primary uses including construction and maintenance contractors, farmers markets, indoor recreational facilities (including facilities for dance, gymnastics, martial arts, soccer, basketball, and skating but excluding health and fitness clubs), light metal and fiberglass fabrication, ornamental and horticultural nurseries, motor vehicle repair, retail sales of lumber and building materials, farm equipment retail sales and repair, upholstery shops, a veterinary hospital, and other uses. From a trip generation perspective, construction of a lumber and building materials retail sales building, an indoor recreational facility, or a veterinary hospital could each result in relatively high site trip generation.

Trip Generation Comparison

The 18.25-acre site conceivably could be developed to accommodate approximately 180,000 to 200,000 square feet of building space assuming a 0.25 floor area ratio.

Potential trip rates for a variety of land uses were reviewed from the standard reference *Trip Generation, 9th Edition* (Reference 1) and compared to the trip rates assumed for the I-5 Farm Store. Through this review, we determined that a lumber and building materials store constructed under the proposed RI zoning has the potential to generate more trips than the I-5 Farm Store under the existing zoning which in turn would result in additional impacts per the TPR.² Note that no ITE *Trip Generation* data is directly available for an indoor recreational facility or a veterinary hospital; however, one could expect a potentially large number of trips associated with either of these uses as well.

In order to ensure that site development under the proposed rezone does not result in an additional traffic impact per the TPR, we recommend that a trip cap be placed on the property as a condition of rezone approval. Trip caps have been used extensively across Oregon and are recognized by the Oregon Department of Transportation and Clackamas County. We recommend that a trip cap be established based on the existing site uses as documented in Table 1.

Table 1. Existing Site Development Trip Generation Estimate

Land Use	Data Source	Size	Daily Trips	Weekday AM Peak Hour			Weekday PM Peak Hour		
				Total	In	Out	Total	In	Out
I-5 Farm Store	2004 Traffic Study ¹	14,900 square feet	660	102	49	53	40	18	22
Single Family Home	ITE Land Use 210	1 home	10	1	0	1	1	1	0
Total Trips			670	103	49	54	41	19	22

¹ Obtained from *I-5 Farm Outlet Traffic Assessment and Sight Distance Certification* dated January 22, 2004 by Charbonneau Engineering LLC

² Building Materials and Lumber Store (ITE Land Use 812) is estimated to generate 45.16 trips/1,000 square feet on a daily basis.

Note that the trip rates in Table 1 make no effort to account for trips to and from the existing barn building that was associated with the farm.

Proposed Use Trip Implications

The property owner proposes to unload, store, and prepare new motor vehicles at the site prior to transferring the vehicles to existing Wilsonville dealership sites. In addition to unloading and storing new automobiles from factory delivery vehicles, the site will provide services related to minor preparation/detailing work. We reviewed the proposed uses to assess how the trip generation of the proposed compares to trips associated with the existing site uses (previously detailed in Table 1). We also reviewed information contained in *Trip Generation* and concluded that there are no comparable data from which to calculate the like effects on the transportation system.

In lieu of national data, we used information provided by the property owner to develop a trip estimate for the proposed use, including:

- Up to 10 employees per day will work at the site during a daytime shift.
- Hours of operation will be from 7:00 AM to 5:00 PM weekdays. No weekend operations are anticipated.
- Approximately 100 vehicles will be stored on-site for future sale at the auto dealerships in Wilsonville.
- Vehicles will be delivered to the site from the factory via delivery truck (eight vehicles per load) for processing prior to relocation to the auto dealerships in Wilsonville.
 - Delivery truck frequency will vary depending on sales/inventory and is expected to range from no deliveries up to four deliveries per day.
- Vehicles will be transferred from the site to the car sales location (off-site) by individual driver with an average of five vehicle transfers anticipated per day.
- Assume up to five miscellaneous deliveries (UPS/FedEx, etc.) per day.

Summarizing the above information, Table 2 presents a trip estimate for the proposed site use (ITE Trip Generation does not have trip rate data directly applicable to the proposed use).

Table 2. Proposed Use Site Development Trip Generation Estimate

Site Activity	Daily Trips	Weekday AM Peak Hour			Weekday PM Peak Hour		
		Total	In	Out	Total	In	Out
<i>Site Employees Arrival</i> (shift start, assume 80% drive alone, 20% dropped off)	12	12	10	2	-	-	-
<i>Site Employee Lunch Trips</i> (assume 50% or 5 employees leave & return to site)	10	-	-	-	-	-	-
<i>Site Employee Departure</i> (shift end, assume 80% drive alone, 20% picked up)	12	-	-	-	12	2	10
<i>Toyota Delivery Truck</i> (assume 4 deliveries, each with 1 factory truck trip in and 1 out and assume 1 occurs during AM peak hour and 1 during PM peak hour)	8	2	1	1	2	1	1
<i>Vehicle Transfer from Site to Wilsonville Toyota</i> (assume 10 transfers/day. Further assume that each transfer requires a second vehicle to pick up and return transfer driver to site for a total of 3 trips consisting of: 1 trip out by vehicle being transferred, 1 trip out by companion driver and 1 return trip in with companion driver). Assume 20% occur during AM and PM peak hours.	30	6	2	4	6	2	4
<i>Miscellaneous deliveries</i> (assume 5 deliveries, 1 each during AM and PM peak hours)	10	2	1	1	2	1	1
Total Trips	82	22	14	8	22	6	16
Total Trips from Existing Use (refer to Table 1)	670	103	49	54	41	19	22
<i>Proposed Use Total Trips - Existing Use Total Trips</i>	-588	-81	-35	-46	-19	-13	-6

As shown in Table 2, the trip generation of the proposed new vehicle preparation use is expected to be lower than the trip generation of the current site uses on a daily and weekday AM and PM peak hour basis. Accordingly, we conclude the proposed uses trip generation will operate well within the limits of a trip cap established at the level of the previously permitted site uses.

SUMMARY

Based on our review of the existing and proposed site zoning, we recommend implementation of a trip cap to ensure the rezone complies with Oregon’s Transportation Planning Rule (TPR) as documented in Oregon Administrative Rule 660-060-012. We further recommend the trip cap be established at the level associated with the existing site uses, estimated to be 670 daily trips including 103 AM peak hour trips and 41 PM peak hour trips.

Assuming implementation of this trip cap, development of the site under the proposed zoning would not result in higher levels of vehicular trip than allowable under reasonable “worst case” the existing zoning and there should be no significant effect for TPR purposes. The proposed new vehicle preparation use of the site is expected to operate well under the recommended trip cap.

Please let me know if you have questions or if you want to discuss.

Sincerely,
KITTELSON & ASSOCIATES, INC.



Chris Brehmer, P.E.
Principal Engineer



Expires: 12-31-2015

REFERENCES

1. Institute of Transportation Engineers. *Trip Generation*, 9th Edition. 2012.

ATTACHMENTS

1. I-5 Farm Store Outlet Traffic Assessment and Sight Distance Certification

Jeff Bachrach
Bachrach.Law, P.C.
921 SW Washington Street, Ste 320
Portland, OR 97205
503.295.7797

From:	Jeff Bachrach, on behalf of the applicant, BL & DJ, LLC
Re:	Legal Standards for Statewide Goal Exception, Butteville Road Zone Change and Comprehensive Plan Amendment
Date:	September 29, 2015

The applicant has requested an amendment to the subject property's comprehensive plan designation from Agriculture to Rural Industrial, and a corresponding zone change from EFU to Rural Industrial (RI).

As a prerequisite to the county's consideration and approval of the proposed changes, the application must first satisfy the standards for an exception to Statewide Planning Goal 3 (Agriculture). State law provides for three different types of exceptions with different approval criteria for each. The three types of exceptions are: "physically developed," "irrevocably committed," and "reasons."

The applicant requests the county approve a physically developed exception for the subject property.

This memorandum addresses the statutory and administrative rules applicable to a physically developed exception. As discussed below, the existing development of the site – the extensive site improvements – satisfies the standards for the proposed exception.

ORS 197.732—Goal Exception standards

GOAL EXCEPTIONS

(1) As used in this section:

(a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(b) "Exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(C) Complies with standards under subsection (2) of this section.

(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;

and

OAR 660-004-0025 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.

The statute and administrative rule cited above provide the fundamental approval standard that must be addressed and satisfied in order for the county to approve the exception.

The purpose provisions in ORS 197.732(1) recognize the exceptions analysis is focused on the subject property's specific "situations," and the approval of an exception is unique to the situation and "does not establish a planning or zoning policy of general applicability."

The application describes the extensive physical development of the site. The question is whether that development and other relevant factors make it impractical for the property to accommodate farm uses allowed by Goal 3.

ORS 215.203(2)(a) defines "farm use" as "the current employment of land for the primary purpose of obtaining a profit in money * * * ."

The expert testimony from Johnson Economics concludes that due to the nature and extent of the site's existing physical improvements and the absence of a viable local agricultural community in the area the site cannot reasonably support any profitable farm uses.

In reaching that conclusion, 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.

In summary, the extensive site improvements, backed up by the expert testimony regarding the impacts of those improvements, satisfy the physically developed standard for approving an exception for the subject property.

Having established the basis for the exception under ORS 197.732(2)(a) and OAR 660-004-0025, the county must then determine if the applicant's proposed use satisfies OAR 660-004-0018.

OAR 660-004-0018 Planning and Zoning Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. * * * Physically developed * * * exceptions under OAR 660-004-0025 * * * are intended to recognize and allow continuation of existing types of development in the

exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

- (2) For "physically developed" and "irrevocably committed" exceptions to goals, * * * all plan and zone designations shall limit uses, density, and public facilities and services to those:
- (a) That are the same as the existing land uses on the exception site;
 - (b) That meet 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;
 - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028;
 - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;
 - (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22; and
 - (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

A recent decision by LUBA has created confusion about the correct interpretation and application of OAR 660-004-0018(1) and (2). In *OOten v. Clackamas County*, LUBA No. 2014-069 (November 20, 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.

Because the *OOten* decision does not contain a majority opinion as to the correct interpretation of OAR 660-004-0018(1) and (2), the case does not establish a new legal precedent the county can rely on to decide whether the subject application satisfies the rule. Therefore, as suggested by the concurring opinion of LUBA member Holstun (*OOten* at page 33), the interpretation of OAR 660-004-0018(1) and (2) that was established pre-*OOten* remains 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.

Thus, this analysis of why the subject application satisfies OAR 660-004-0018(1) and (2) is based on existing case law (pre-*OOten*) as described in the Holstun concurring opinion. According to the Holstun opinion, if the subject application satisfies OAR 660-004-0018(2)(b), then it is not necessary to address OAR 660-004-0018(2)(a),(c) and (d).

As discussed below, the application satisfies OAR 660-004-0018(2)(b).

OAR 660-004-0018(1) recognizes that physically developed exceptions under OAR 660-004-0025 can be allowed based on “existing types of development” as distinguished from existing or allowed uses. That interpretation is consistent with the provision in ORS 197.732(2)(a), which asks whether the “land subject to the exception is physically developed” to an extent that it is unavailable for uses consistent with the applicable Goal. 197.732(1)(b)(A) provides that the exceptions analysis should focus on a property’s specific “situation” – again, the statute does not use the term “uses”

As described in the application, it is the existing development, including several large buildings, a large paved area and other improvements, that make the subject property impractical for any Goal 3 uses, i.e., profitable farm uses. No change in the existing type of development is proposed. The existing improvements on the site can accommodate the proposed uses without any change.

As stated in OAR 660-004-0018(1), the rule is “intended to recognize and allow the continuation of the existing type of development.”

Having established that the existing development on the subject site supports an exception under OAR 660-004-0025, the next requirement established by OAR 660-004-0018(2) focuses on the proposed use of the exception site.

According to the Holstun opinion, if the proposed use of the site – not the type of existing development - is the same as the existing use, then OAR 660-004-0018(2)(a) is satisfied and no further analysis under OAR 660-004-0018(2) is necessary. That is not the situation for the subject property because the proposed use – servicing of new vehicles - is not an existing use, and it is not a use allowed in the EFU zone.

However, the exception can be approved because, as discussed below, the proposed use satisfies the three requirements for a new use on the exception site set out in OAR 660-004-0018(2)(b)(A), (B), and (C).

As the Holstun opinion explains, each of the four subsections under OAR 660-004-0018(2) addresses a different situation and satisfying any one of them is sufficient to support an exception. According to the Holstun opinion, the opinion of another member of LUBA that all four subsections should be applied in the conjunctive – meaning an applicant must address and satisfy all four – is “an unwarranted meaning that is inconsistent with the stated purpose of OAR 660-004-0018.” His opinion explains:

“Under the first option, OAR 660-004-0018(2)(a), a local government may apply ‘plan and zone designations to limit uses * * * to those uses * * * that are the same as the existing land uses on the exception site.’

“Under the second option, OAR 660-004-0018(2)(b), a local government may apply ‘plan and zone designations to limit uses * * * to those * * * that meet the * * * requirements of OAR 660-004-0018(2)(b)(A), (B), and (C).’ In other words, the second option provides a limited opportunity to plan and zone a ‘developed’ or ‘committed’ exception site for uses beyond those that exist on the site at the time of the exception * * * so long as the limitations imposed by OAR 660-004-0018(2)(b)(A) through (C) are satisfied. *Doty v Coos County*, 42 Or LUBA 103, 114 (2002) *rev’d and rem’d on other grounds* 185 Or App 233, 59 P3d (2002); *Leonard v Union County*, 15 Or LUBA 135, 138 (1986).

The third and fourth options, OAR 660-004-0018(2)(c) and (d), apply in special circumstances.

* * * If a local government wishes to plan and zone an exception area for uses that do not comply with at least one of the four subsections of OAR 660-004-0018(2), [then] a reasons exception is required."

Holstun, concurring opinion, page 35.

The limited use of the property proposed by the applicant - servicing new cars - can be accommodated by the existing development and can be approved as part of the exception because it satisfies OAR 660-004-0018(2)(b)(A), (B), and (C).

OAR 660-004-0018(2)(b)(A) provides that the proposed uses of the site and the public facilities and services needed for them can be considered rural in nature.

Servicing of vehicles is an allowed use in the county's acknowledged Rural Industrial designation, which means the county's comprehensive plan considers the use to be compatible with the property's status as rural land. In addition, the limitations on the use proposed by the applicant - no retail sales, no other uses and a trip cap - serve to further minimize the use's impact and thus help to maintain the site's rural character as well as the rural character of the surrounding area.

The application describes the existing infrastructure that provides sanitary/septic service and water to the site. The same infrastructure is adequate, as is, to serve the proposed vehicle service use of the site.

The uses allowed by the Conditional Use Permit for the property approved in 2005 (Case File No. Z0393-05-C) include a commercial farmers' market, the sales and servicing of agricultural supplies, machinery and equipment, and related accessory buildings.

Those allowed uses and supporting infrastructure were determined to be consistent with the property's status as "Rural Lands". The use proposed by the applicant is more consistent with the site's rural status than the extensive commercial "farm-uses" approved by the county.

In summary, the proposed uses and the supporting infrastructure "will maintain the land as "Rural Land," as required by OAR 660-004-0018(2)(b)(A).

OAR 660-004-0018(2)(b)(B) provides that the proposed uses of the site and the public facilities and services needed for them "will not commit adjacent or nearby resource land to uses not allowed by Goal 3."

As described in the application, the proposed uses and supporting infrastructure will not have any tangible impact on the relatively small amount of resource land uses in the area. Nothing associated with the proposed use will make it more difficult to maintain the resource land in the area for resource uses. OAR 660-004-0018(2)(b)(B) is satisfied.

OAR 660-004-0018(2)(b)(C) provides that the proposed uses of the site and the public facilities and services needed for them "are compatible with adjacent or nearby resource uses."

As described above, the proposed uses will not have any tangible impact on the relatively small amount of resource land uses in the area. OAR 660-004-0018(2)(b)(C).

In conclusion, based on the evidence and analysis provided in the application and supporting exhibits, the county should find that the subject property meets the applicable criteria in OAR 660-004-0025 and 660-004-0018, and approve the physically developed exception for the subject property.

TRANSMITTAL



To: Clackamas County
Planning and Zoning Date: 9/30/2015
Development Services Building Project: NE Butteville Road
150 Beaver Creek Project #: 2150965000
Oregon City, OR 97045 Case/File#: CR032715
 Fax #: _____ Total Pages: _____
 From: Cardno

5415 SW Westgate Drive
 Suite 100
 Portland, Oregon 97221
 USA

Phone (503) 419-2500
 Fax (503) 419-2600

www.cardno.com

Transmitting Via:

- UPS
- Other: Messenger

Purpose:

- For your approval
- Other: _____

Quantity	Description
1	Land Use Application
1	Supplemental Zone Change Application
1	Application Materials
1	Application Fee/Check

Comments:

Submittal items for NE Butteville Road Zone Change and Comprehensive Plan Amendment land use application

Signature: _____

C:

RECEIPT

Clackamas County
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK RD.
OREGON CITY, OR 97045

Application: Z0419-15
Application Type: Planning/PC-BCC/NA/NA
Address: 26444 NE BUTTEVILLE RD, AURORA, OR 97002

Receipt No.	Ref Number	Amount Paid	Payment Date	Cashier ID	Received	Comments
1209933						
Check	24834	\$4,000.00	10/05/2015	LINDAM		PAID BY LANPHERE CONSTRUCTION 13625 SW FARMINGTON RD BEAVERTON, OR 97005

Owner Info.: BL & DJ LLC
PO BOX 728
BEAVERTON , OR 97075

Work Description: COMP PLAN AMENDMENT

RECEIPT

Clackamas County
 DEVELOPMENT SERVICES BUILDING
 150 BEAVERCREEK RD.
 OREGON CITY, OR 97045

Application: Z0420-15
Application Type: Planning/PC-BCC/NA/NA
Address: 26444 NE BUTTEVILLE RD, AURORA, OR 97002

Receipt No. 1209934

Payment Method	Ref Number	Amount Paid	Payment Date	Cashier ID	Received	Comments
Check	24834	\$2,510.00	10/05/2015	LINDAM		PAID BY LANPHERE CONSTRUCTION 13625 SW FARMINGTON RD BEAVERTON, OR 97005

Owner Info.: BL & DJ LLC
 PO BOX 728
 BEAVERTON , OR 97075

Work Description: ZONE CHANGE