



MIKE McCALLISTER
PLANNING AND ZONING DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

CLACKAMAS COUNTY BOARD OF COMMISSIONERS
2051 Kaen Road, Oregon City
BCC Hearing Room - 4th Floor

LAND USE HEARING
October 26, 2016
9:30 AM

The item will not begin before time noted. Interested parties may appear and be heard during the testimony phase of any hearing at the above address. If a hearing is set for decision only, the evidence phase has been completed, so interested parties may no longer be heard. Applications or comments may be inspected, and calls or correspondence directed to: Planning & Zoning Division, 150 Beaver Creek Road, Oregon City, OR 97045, (503) 742-4500.

HEARING

File No.: Z0490-13-CP/Z0491-13-ZAP, Remand response to LUBA 2014-069

Applicants: Bruce Goldson for Hal's Construction

Proposal: Response to remand from LUBA (2014-069) regarding a previously-approved Comprehensive Plan Map Amendment from Rural to Rural Industrial and corresponding zone change from RRFF-5 (Rural Residential Farm Forest 5-Acre) to RI (Rural Industrial) for a portion of the property located at 20646 & 20666 S. Highway 213, Oregon City. That approval would allow for a limited scope of uses allowed under the RI zone, described as to those identified in the county's Zoning & Development Ordinance (ZDO) Table 604-1: Permitted Uses in the RI District, paragraph "A. Construction and Maintenance Contractors," except for building movers.

Staff Contact: Martha Fritzie, Senior Planner, MFritzie@clackamas.us



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Land Use Hearing Item Staff Summary to the Board of County Commissioners

File Number: Z0490-13-CP, Z0491-13-ZAP; Remand response, LUBA 2014-069

Staff Contact: Martha Fritzie, Sr. Planner/ Planning & Zoning Division; 503-742-4529

Board of County Commissioners Hearing Date: October 26, 2016

PROPOSAL

Response to remand from LUBA (2014-069) regarding a previously-approved Comprehensive Plan Map Amendment from Rural to Rural Industrial and corresponding zone change from RRFF-5 (Rural Residential Farm Forest 5-Acre) to RI (Rural Industrial) for a portion of the Hal's Construction property located at 20646 & 20666 S. Highway 213, Oregon City.

Background:

On June 12, 2014, The Board of County Commissioners (BCC) approved a Comprehensive Plan map change from Rural (R) to Rural Industrial (RI) and a corresponding zone change from Rural Residential Farm Forest, 5-acre (RRFF-5) to Rural Industrial (RI) for a portion of the subject properties that contains an existing construction and vehicle maintenance business, Hal's Construction. That approval was for a limited scope of uses allowed under the RI zone, described as to those identified in the county's Zoning & Development Ordinance (ZDO) Table 604-1: Permitted Uses in the RI District, paragraph "A. Construction and Maintenance Contractors," except for building movers.

That approval was appealed to the Land Use Board of Appeals (LUBA), identifying a total of 10 assignments of error. On November 20, 2014, LUBA issued a decision denying three of the 10 assignments of error (four, five, and six), and remanding all, or parts, of the remaining seven assignments of error to the County.

A limited portion of LUBA's decision was appealed to the Oregon Court of Appeals. On April 1, 2015, the Court affirmed LUBA's decision to remand the decision to the County. *Ooten v. Clackamas County*, 270 Or. App. 214 (2015).

RELATED PRIOR BCC ACTION

Approval of Z0490-13-CP and Z0491-13-ZAP January 12th, 2014 public hearing; subject to conditions of approval.

PLANNING COMMISSION (PC) ACTION

The Planning Commission did not review remand issues related to this application.

In 2014, the Planning Commission recommend denial of the application by a vote of 5-3. Generally, the Planning Commission found that the broad range of potential uses allowed in the Rural Industrial is not appropriate in this area (although at the time the proposal was not to limit the uses to those noted above).

CPO, HAMLET AND VILLAGE RECOMMENDATIONS

The subject property is located in the Hamlet of Beavercreek. To date, the Hamlet of Beavercreek has not submitted comments regarding the issues on remand from LUBA (2014-069). The prior recommendation from the Hamlet was for denial of this application.

SIGNIFICANT ISSUES

The public hearing scheduled on October 26, 2016 is to present the BCC with the proposed response to the LUBA remand. Issues raised at the public hearing need to be limited to, and directed towards, one of the seven assignments of error subject to the remand.

1. First Assignment of Error: LUBA found that the county had not established that redesignating the property does not require a new exception to Statewide Planning Goals 3 and 4; largely because of specific language in the Oregon Administrative Rules (OAR 660-004-0018(2)). This Assignment of Error was resolved by House Bill (HB) 3214 (2015) and a subsequent amendment to OAR 660-004-0018(2).
2. Second Assignment of Error: LUBA determined that the county's decision to redesignate the new location of the driveway (which is required to move for safety reasons), did not adequately explain how that portion of the property has an historical commitment to industrial uses. Additional findings have been provided by the applicant and the staff to address this Assignment of Error.
3. Third Assignment of Error: LUBA determined the county needs to revise its findings to show the consistency of the proposed RI designation with the rural character of the area, including the adjacent RFFF-5 zoned properties, and that the use is consistent with the requirement that the RI designation is "not labor intensive." Additional findings have been provided to address this Assignment of Error.
4. Seventh Assignment of Error: LUBA determined that the county did not allow adequate opportunity to respond to the proposed driveway location, the exact location of which first appeared as an attachment to the final decision. This

Assignment of Error is easily remedied by providing that opportunity; the map was provided with the public hearing notice on September 21, 2016.

5. Eighth Assignment of Error: LUBA determined that the county needs to clarify which uses the site is limited to (rather than just identifying a category listed in the ZDO). This determination was also due to the language in OAR 660-004-0018(2) that has since been changed by HB 3214 (2015), which effectively resolved this Assignment of Error as well.
6. Ninth Assignment of Error: LUBA determined that a revised Traffic Impact Analysis (TIA) is needed to determine traffic impacts of the proposal based on a study that compares the most traffic generative uses in the RRF-5 and RI zones. Also, LUBA determined that Conditions 4, 5, and 6 (in BCC Board Order 2014-46), must be revised so that roadway improvements needed to mitigate traffic impacts are certain to occur. This Assignment of Error has been addressed by a revised TIA submitted by the applicant and amendments to the conditions of approval to ensure the improvements are constructed within a year.
7. Tenth Assignment of Error: LUBA determined that the county needs to address how the proposal for the new driveway to the north satisfies provisions in the county's ZDO, Section 1202.03(E) and specifically address whether the move causes safety issues for driveways to the north and across the road from the subject property. Additional findings have been provided to address this Assignment of Error.

STAFF RECOMMENDATION

Approval of Z0490-13-C and Z0491-13-ZAP, subject to the Revised Conditions of Approval found in **Attachment 2**.

ATTACHMENTS

1. *Planning Staff Report and Recommendations to the BCC, Response to Remand at LUBA No. 2014-069*; October 19, 2016
2. *Revised Conditions of Approval*, October 19, 2016
3. *Findings and Conclusions on Remand*; submitted by David Phillips, Attorney for Applicant
4. PowerPoint presentation to be presented by staff at the October 26, 2016 hearing
5. Excerpt, Agenda Item 6 January 14, 2016 LCDC Meeting, regarding HB3412 and OAR 660-004-0018
6. September 21, 2016 public notice and attachments
 - a. Applicant's draft proposed findings relating to the remand issues
 - b. Statement from applicant's attorney regarding remand issues
 - c. *Revised Traffic Impact Study* (Lancaster Engineering), dated July 21, 2016
 - d. *Final Opinion and Order*, LUBA 2014-069
 - e. Map of approved plan and zone change area and new driveway location
 - f. BCC Board Order 2014-46; *Findings and Conclusions; and Conditions of Approval* (for Z0490-13-C/Z0491-13-ZAP)



CLACKAMAS COUNTY DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT
PLANNING & ZONING DIVISION
150 Beaver Creek Rd, Oregon City, OR 97045
Phone: (503) 742-4500

NAME: Brian King / Hal's Construction Inc.
FILE NO: Z0490-13-CP, Z0491-13-ZAP, Remand at LUBA 2014-069
REPORT AUTHOR: Martha Fritzie, Sr. Planner/ Planning & Zoning Division, DTD
HEARING DATE: Board of County Commissioners – October 26, 2016
REPORT DATE: October 19, 2016

**PLANNING STAFF REPORT AND RECOMMENDATION
TO THE BOARD OF COUNTY COMMISSIONERS**

Response to Remand at LUBA No. 2014-069

GENERAL INFORMATION:

Applicant: Bruce Goldson, Theta LLC, PO Box 1345, Lake Oswego, OR 97035

Owner: Doris M. Hickman Trustee, 20666 S. Molalla Ave., Oregon City, OR 97045

Proposal: Response to remand from LUBA (2014-069) regarding a previously-approved Comprehensive Plan Map Amendment from Rural to Rural Industrial and corresponding zone change from RFFF-5 (Rural Residential Farm Forest 5-Acre) to RI (Rural Industrial) for a portion of the property located at 20646 & 20666 S. Highway 213, Oregon City.

Property Location: Approximately 0.20 miles south of the intersection of S. Highway 213 and S. Henrici Road

Legal Description: T3S, R2E, Section 16D, Tax Lots 1000, 1001, 1002, 1100, & 1101

Site Address: 20646 & 20666 S. Highway 213, Oregon City, Oregon 97045

Comprehensive Plan Designation: Rural

Zone: RFFF-5

Total Area Involved: Approximately 8.15 acres.

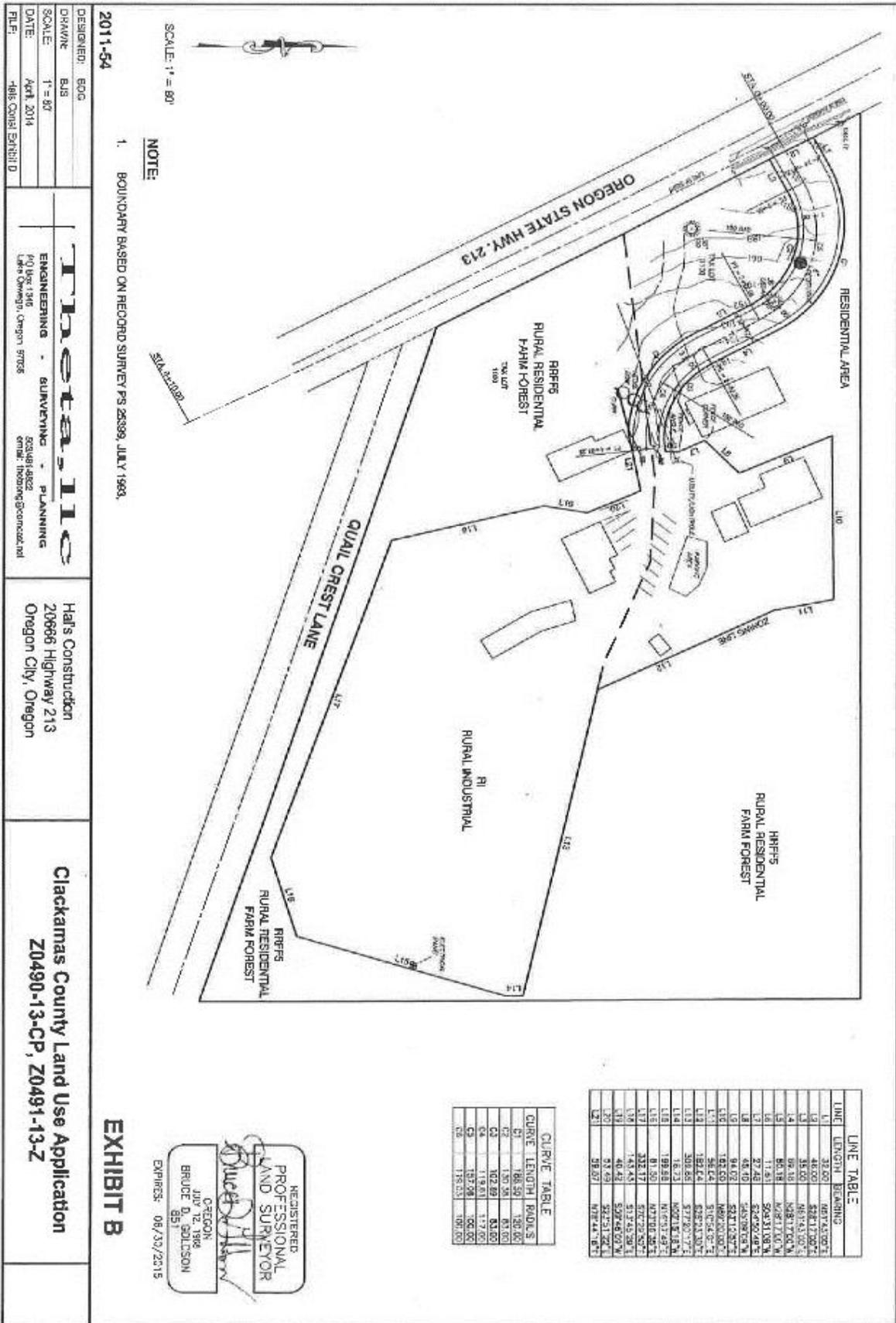
RECOMMENDATION:

Approval of the Comprehensive Plan Map Amendment (File No. Z0490-13-CP) from Rural to Rural Industrial and zone change (File No. Z0491-13-Z) from RRFF-5 to RI subject to the Revised Conditions of Approval listed in Attachment 2.

Direct Staff to finalize the revised findings to include those described below and in Attachment 3, to address all the applicable assignments of error remanded in LUBA 2014-069, for submittal to LUBA.

BACKGROUND INFORMATION:

1. This application is the outcome of several code compliance issues including solid waste, electrical work, building and zoning codes. All the code compliance issues have been resolved with the exception of alleged building code and zoning violations which will be addressed after a final decision on this application.
2. Site Description: The subject property is approximately 8.15 acres and consists of two "legal lots of record." Tax lots 1000 and 1101 combined form one legal lot of record. Tax lots 1100, 1001 and 1002 combined form one legal lot of record. The property is developed with two single family dwellings, three accessory buildings, a sport court, parking and circulation areas, two driveways to Hwy. 213, landscaping and large groves of trees. The property is fairly level. The property has approximately 440' of frontage on Hwy. 213, which is designated as a major arterial. A slatted cyclone fence borders the south side of the property adjacent to Quail Crest Lane.
3. Surrounding Conditions: All adjacent properties to the north, east, south and west on the west side of Highway 213 are zoned RRFF-5. This area consists of parcels ranging from approximately 2 acres to 40 acres in size. Most of the parcels are developed with single-family dwellings, with large wooded areas.
4. History of this application: On June 12, 2014, The Board of County Commissioners (BCC) approved a Comprehensive Plan map change from Rural (R) to Rural Industrial (RI) and a corresponding zone change from Rural Residential Farm Forest, 5-acre (RRFF-5) to Rural Industrial (RI) for a portion of the subject properties that contains an existing construction and vehicle maintenance business. That decision was subsequently appealed to the Land Use Board of Appeals (LUBA), identifying a total of 10 assignments of error. On November 20, 2014, LUBA issued a decision denying three of the 10 assignments of error (fourth, fifth, and sixth), and remanding all, or parts, of the remaining seven (7) assignments of error to the County. A limited portion of LUBA's decision was appealed to the Oregon Court of Appeals. On April 1, 2015, the Court affirmed LUBA's decision to remand the decision to the County. *Ooten v. Clackamas County*, 270 Or. App. 214 (2015).



DESIGNER: BOG
DRAWN: BJS
SCALE: 1" = 80'
DATE: APR 2014
FILE: 1816_Conri_Survey_D

TRINETA, LLC
ENGINEERING • SURVEYING • PLANNING
P.O. Box 1346
Lake Oswego, Oregon 97038
503.481.4822
email: trinetainfo@comcast.net

Hall's Construction
20666 Highway 213
Oregon City, Oregon

Clackamas County Land Use Application
Z0490-13-CP, Z0491-13-Z

EXHIBIT B

REGISTERED PROFESSIONAL LAND SURVEYOR
BRUCE D. GOLDSON
B51
OREGON
JULY 12, 1966
EXPIRES: 06/30/2015

CURVE TABLE

CURVE LENGTH	PIEDS
C1	186.50
C2	150.26
C3	102.89
C4	119.81
C5	137.08
C6	158.03

LINE TABLE

LINE	LENGTH	BEARING
L1	31.00	087°34'00"E
L2	48.00	288°11'00"E
L3	35.00	061°43'00"E
L4	58.18	N08°17'00"W
L5	80.18	N08°17'00"W
L6	11.81	S04°51'00"W
L7	27.48	S24°00'00"W
L8	48.10	S45°00'00"W
L9	84.02	S21°02'30"E
L10	124.50	060°00'00"E
L11	154.44	S10°04'00"E
L12	300.66	S01°00'00"E
L13	16.21	N00°18'18"W
L14	188.48	00°00'00"E
L15	81.50	027°00'00"E
L16	232.17	S07°20'00"E
L17	143.45	S17°45'00"E
L18	40.42	S07°48'00"W
L19	57.49	S27°51'00"E
L20	58.07	078°44'00"E

5. Responses Requested: Notice of this hearing was sent to the parties listed below, on September 21, 2016.
- a. City of Oregon City
 - b. Oregon City School District #62
 - c. Clackamas County RFPD #1
 - d. Hamlet of Beavercreek
 - e. DTD, Code Enforcement
 - f. DTD, Traffic Engineering
 - g. Water Environment Services, Soils Division
 - h. Oregon Dept. of Transportation
 - i. Dept. of Land Conservation and Development
 - j. Clackamas River Water District
 - k. Property owners within 500'
 - l. All parties who requested the original notice of decision in 2014

The notice clearly advised recipients that written and verbal testimony at the public hearing must be limited to, and directed towards, one of the seven assignments of error subject to the remand. To date, no responses have been received.

6. CPO Recommendation: The subject property is located in the Hamlet of Beavercreek. To date, the Hamlet of Beavercreek has not submitted comments regarding the issues on remand from LUBA (2014-069).
7. Attachments: See BCC Staff Summary for complete list of Attachments in this BCC hearing packet.

ASSIGNMENTS OF ERROR ADDRESSED (LUBA 2014-069):

The following discussion summarizes Staff's analysis of the applicant's proposed *Findings and Conclusions on Remand*, Draft October 16, 2016 (Attachment 3), as they relate to each of the Assignments of Error remanded by LUBA (2014-069).

1. First Assignment of Error: The current Plan designation of the subject property is Rural, which is "exception land" (Clackamas County Comprehensive Plan (CCCP), Chapter 4) meaning that an exception to Statewide Planning Goals 3 and 4 has already been taken on this land, when it was originally zoned in 1980. In this Assignment of Error, LUBA found that the county had not established that redesignating the property to allow industrial uses, however, does not require a new exception to Statewide Planning Goals 3 and 4 because the county did not demonstrate which particular uses were included in the 1980 exception to designate this land Rural. LUBA's conclusion was based largely on the fact that the specific language that existed at the time of the appeal in OAR 660-004-0018(2) necessitated that a "physically developed" or "irrevocable committed" goal exception meet all the criteria listed under subsections

(a) (b) (c) and, if applicable, (d).¹ Specifically, subsection (a) required the proposed uses be “the same as the existing land uses on the exception site”. LUBA concluded that a remand was necessary for the county to determine “*whether the RI plan and zone designation allows uses that are “the same as the existing land uses on the site’ as required by OAR 660-004-0018(2).”* LUBA 2014-069, at 10-11.

As noted in the applicants proposed *Findings and Conclusions on Remand* “ in House Bill 3214 the 2015 Oregon Legislature directed LCDC as follows: “*The [LCDC] shall adopt or amend rules regarding the statewide planning goal criteria described in ORS 197.732(2)(a) and (b). The rules adopted or amended pursuant to this subsection must allow a local government to rezone land in an area physically developed or committed to residential use, as described in ORS 197.732, without requiring the local government to take a new exception to statewide planning goals related to agricultural and forest lands. The rules must allow for a rezoning that authorizes the change, continuation or expansion of an industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use.”* HB 3214. The stated Legislative Intent of HB3214 was to eliminate the requirement to take Goal 3 and 4 exceptions for land that has been physically developed or irrevocably committed to non-resource use which had never been zoned for agricultural or forest uses.

In response to HB 3214, LCDC amended OAR 660-004-0018(2) to allow properties which are “physically developed” or “irrevocably committed” to non-resource uses to satisfy (a) or (b) or (c) and, if applicable, (d).² The new rule language no longer requires compliance with all subsections of Section -0018(2) simultaneously to avoid a Reasons Exception under Section -0018(4).

¹At the time of the original application, OAR 660-004-0018 (2) read: ‘For “physically developed” and “irrevocably committed” exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

(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; and

(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.’

² Currently OAR 660-004-0018(2) reads: ‘For “physically developed” and “irrevocably committed” exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to *those that satisfy (a) or (b) or (c) and, if applicable, (d):*’ [emphasis added] with (a) through (d) as above in footnote 1.

It is clear from the staff report issued by DLCDC regarding the change from “and” to “or” in OAR 660-004-0018(2) that DLCDC believed this was the only change necessary to address not only the specific issue of industrial uses HB 3214, but the need for another goal exception in other similar situations as noted: “*HB 3214 requires the commission to essentially change the “and” back to and “or” for a narrowly defined situation: ‘the change, continuation or expansion of an industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use.’ The department proposed that the change be made for all “physically developed” and “irrevocable committed” exception areas.*” And further, DLCDC states regarding areas already acknowledged as exception areas, that to “*require a local government to again demonstrate compliance with these criteria is unnecessarily burdensome for the applicant and local government and introduces approval criteria that may not be suitable for the proposal.*” (Pg. 3-4, Staff Report, “Agenda Item 6, January 14, 2015, LCDC Meeting”, Attachment 5)

Therefore, despite the LUBA decision requiring a look at the 1980 decision and a possible reasons exception, the language and intent of House Bill 3214 and the resulting amendments to OAR 660-004-0018(2) removed that necessity. Staff concurs with the applicant that this First Assignment of Error has effectively been resolved by the State’s actions.

2. Second Assignment of Error: LUBA determined that the County’s adoption of Conditions 2 and 3 (see Attachment 6f), which result in the relocation of the driveway to the location depicted on page 3 of this staff report, must explain how that portion of the property satisfies the applicable CCCP Rural Industrial Policy 4.MM.3 (previously numbered 3.0), which requires an “historical commitment to industrial uses” in order to qualify for the RI Plan designation. The driveway is required to relocate in order to comply with sight distance safety standards according to ODOT and AASHTO standards, as per CCCP Policy 5.O.4, which requires that changes in Comprehensive Plan designation and zoning designation to comply with the Transportation Planning Rule (OAR 660-12).

Because the driveway is being used to access industrial uses, which are not allowed in the current zone, it too needs to be re-zoned to RI, which leaves the county to assess two applicable and seemingly conflicting standards for the driveway. On the one hand, rezoning the driveways in their present locations is permissible because the existing driveways have a clear historical commitment to industrial uses for over 45 years under Policy 4.MM.3(a), as noted in the findings on pages 24 and 25 of the Original Order (Attachment 6f). On the other hand, although permissible, leaving the site access in its present, longstanding condition permanently would not provide the County and applicant with an opportunity bring the site into compliance with current transportation safety standards. Staff finds, however, that compliance with both these policies may not necessarily present a conflict.

Staff agrees with the applicant’s findings which state:

- *when balancing the interests of the County and State in promoting transportation safety where large trucks and trailers enter and exit a rural, high traffic major*

arterial near the crest of a hill against rezoning the driveway in its present location, that safety and public concern is of highest importance.

- *that the county could rezone the driveway access in its present location and not require relocation because a development application is not pending with the zone change.*
- *Conditions of Approval 2 and 3 which require relocation of the driveway access within one year should remain in force which provides the applicant and the public at large travelling on a State Highway with increased transportation safety.*
- *when the driveway is abandoned in its present location and relocated according to Conditions of Approval 2 and 3 to promote transportation safety, the decades of long standing historical commitment to industrial uses at the driveway's present location must be balanced against the interest of the County and State in providing safe public transportation facilities-and that long standing commitment supports the finding of rezoning the driveway in its future location under the Board's sound interpretation of its own Policy [4.MM.3](a), and its interest in protecting the public welfare and safety.*

Indeed, the driveway is a part of the documented "historical use" and is in fact a necessary portion of this historic commitment.

In balancing the requirements under the Plan policy 4.MM.3 with safety requirements under ODOT and AASHTO and Policy 5.O.4, it is easy to reasonably conclude that the driveway use itself does meet the historical commitment standard required for the rezoning it to RI and therefore if safety reasons require it to be moved 100 feet, that historic commitment still stands for the use itself. Further, LUBA affords the Board of County Commissioners discretion to define the "area" for the re-zone, stating that "*LUBA must defer to the county commissioners' interpretation unless it is implausible*" (LUBA2014-069, p.12) and confirmed the Board's interpretation in this case of the subject property being the appropriate "area" to consider for evaluation under Policy 4.MM.3. It follows then that if the driveway use itself constitutes an historical commitment and the "area" under consideration really includes the entire subject property, then moving the use within this "area" and rezoning the portion of that "area" where historically committed use is moving, would in fact comply with Policy 4.MM.3. Staff finds that the "area" which includes the driveway, be it in its current location or in a different location within the same subject property, constitutes and appropriate "area" for the rezoning. Therefore the Second Assignment of Error is satisfactorily addressed.

3. Third Assignment of Error: LUBA found that the county's findings were inadequate to address whether the proposed RI designation was consistent with the rural character of the area and particularly the adjacent RRFF-5 zoned parcels and that the proposed use is consistent with the requirement that the RI designation is "not labor intensive."

The Rural Industrial section of the Land Use Chapter of the Clackamas County Comprehensive Plan, Section 4.MM.1 (formerly numbered 1.0), provides: "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 the rural character, rural development, and rural facilities and services.”

To supplement the findings, the applicant addresses these issues with the following information:

- *All adjacent and surrounding properties to the north, east, south and west, on the west side of Highway 213 are zoned RRFF-5 and are developed with residential, commercial and industrial uses. Record 95 (hearing). Exhibit 1, Page 5. These properties have a rural character. Public services to the site are limited to public water provided by the Clackamas River Water District. The property is not located in a public sewer or surface water district. Services to the area include garbage service and sheriff patrol services. Record 30.*
- *Hal’s Construction is a pavement contracting business which employs up to 40 employees in peak summer months and approximately half that in the winter with nearly all employees working at construction sites, rather than at the property itself, where only office operates and storage and maintenance of the equipment and vehicles associated with the business. Exhibit 1 (Record 1122).*
- *The building on the subject property does not generate impacts from noise, fumes or other impacts aside from its visual appearance. The design and size of the buildings onsite is consistent with the rural character and existing development in the area. There are several similar structures on surrounding properties. Record 650.*

In addition, according to the Clackamas County Comprehensive Plan (CCCP) the proposed RI designation is, by its definition, not labor intensive and is consistent with the rural character of the area. The uses proposed at the subject property are allowed in the RI zone and can therefore also be considered consistent.

Staff finds the analysis provided by the applicant are sufficient to justify the conclusion that the proposed/existing uses are “rural in nature” and “not labor intensive;” particularly, while there may be up to 40 employees employed by Hal’s Construction, many employees are seasonal or work off-site; the only employees that are consistently on-site consists of clerical and equipment servicing and is only ancillary to the offsite work and is, therefore, not labor intensive. The Third Assignment of Error is satisfactorily addressed.

4. Seventh Assignment of Error: LUBA concluded that the county committed a procedural error when it accepted Exhibit B (the depiction of the relocated driveway) after the record closed and relied on Exhibit B, when the exact location of the driveway had not been previously determined. On remand, LUBA determined that the county must allow adequate opportunity for response to the evidence in Exhibit B. The county should allow adequate opportunity to respond to the proposed driveway location, the exact location of which first appeared as an attachment to the final decision

The applicant's analysis correctly notes:

- *The subject property has two driveways which provide direct access to State Highway 213. Revised TIA, Page 4. Exhibit 1, Page 4.*
- *Both driveways must have inadequate sight distance to the south according to ODOT standards. To comply with the standard, the applicant proposed to remove both driveways and construct one new driveway further north based on ODOT safety requirements for sight distance.*
- *The proposed location for the new driveway is set out in Exhibit B to the County's Order and was sent out with the Notice for the Remand Hearing [on September 21, 2016].*

This assignment of error is easily addressed by the fact that Exhibit B, the map showing compliance with the Oregon Department of Transportation's relocation for driveway access was distributed with the Notice for the remand hearing which provides for adequate notice and opportunity to respond to the new evidence in the record. The Seventh Assignment of Error is satisfactorily addressed.

5. Eighth Assignment of Error: LUBA found that the County's decision to limit the uses of the site to "the same as the existing land uses" was inconsistent with those allowed under original Order, Exhibit C, Condition No. 1, referencing Table 604-1, Construction and Maintenance Contractors, except that building movers shall not be a permitted use and determined that the county needs to clarify which uses are allowed. This determination is largely because of the need at the time under OAR 660-004-0018(2) to meet all of the criteria, which required the uses be limited to those that are the same as the existing (OAR 660-004-0018(2)(a)).

As discussed above, HB 3214 and the subsequent amendments to OAR 660-004-0018(2) provide that jurisdictions are no longer required to limit zone changes to the same as those existing on the site at the time of application.

Therefore, despite the LUBA decision requiring more a more detailed description of the uses approved under this decision, the language and intent of House Bill 3214 and the resulting amendments to OAR 660-004-0018(2) removed that necessity as the approval of the zone change is no longer required to be limited to the same uses as the existing uses; rather the uses will remain limited to those uses set forth in Table 604-1, Paragraph A, Construction and Maintenance Contractors, except building movers (see Condition 1) in an effort to ensure continued compatibility with neighboring uses, which are primarily rural residences. Therefore, this Eighth Assignment of Error has effectively been resolved by the state's actions.

6. Ninth Assignment of Error: The LUBA decision required a revised Traffic Impact Analysis (TIA), which compares the most traffic generative uses in the RRFF-5 and RI zones to determine whether or not mitigation efforts need to be increased. Also, Conditions 4, 5, and 6 (see BCC Board Order 2014-46, Attachment 6f) must be revised so that mitigation triggers are certain to occur.

A revised TIA was completed and submitted to the county in July 2016; a copy was provided with the public notice sent out on September 21, 2016 and is found in Attachment 6c. The revised TIA did provide the required analysis comparing the most traffic generative uses in the RRFF-5 and RI zones. The applicant provides the following analysis regarding the TIA and implications on the mitigation required in Conditions 4, 5, and 6.

As the County previously found, the increased traffic under the RI zone would significantly affect two transportation facilities near its frontage on State Hwy 213, a major arterial. This highway is under the jurisdiction of the ODOT and the Transportation Planning Rule applies. The impact area for this application includes the intersection of Hwy 213 at Henrici Road and Hwy 213 at the site access.

According to the Revised TIA, comparing the most traffic generative uses in the RRFF-5 and RI zones according to LUBA's direction, the mitigation efforts set forth in Conditions 4, 5, and 6, previously adopted by the County, are sufficient to comply with the Transportation Planning Rule. Revised TIA, at 3, 20 and 21. Similarly, the traffic engineer's recommendations for mitigation, summarized at pages 20 and 21 of the Revised TIA, address the recommended mitigation and ensure compliance with the Transportation Rule.

The LUBA found that "conditions with timing elements are an acceptable method of mitigation of traffic impacts." LUBA 2014-069, at 26-27. The County and applicant agree that the conditions of approval regarding mitigation should be imposed with a timing element so there is no question as to what triggers the required mitigation and improvement efforts.

As noted by the applicant, the mitigation set forth in the revised Conditions 4, 5, and 6 (Attachment 2) are adequate to ensure transportation safety under the rule. Per the direction of LUBA, these conditions have been revised to contain a timing element: Conditions 4, 5, and 6 are to be completed by the Applicant within 1 year of the final approval of Z0490-13 and Z0491-13. Therefore, the Ninth Assignment of Error is satisfactorily addressed.

7. Tenth Assignment of Error: LUBA found that the County must adopt findings that ensure the zone change is compliant with the county's Zoning & Development Ordinance (ZDO), Section 1202.031(E) [formerly numbered 1202.01(E)], which requires that the "[s]afety of the transportation system is adequate to serve the level of development anticipated by the zone change," and specifically address whether relocating the driveway access would cause safety issues for the properties located to the north and across Hwy 213.

The applicant notes that in the revised TIA, the transportation engineer's safety analysis (page 11-12) addresses safety, crash history and recommended safety improvements, including the need to relocate the driveway access northerly because of sight-distance concerns. The engineer and County also recommend a southbound left turn lane at the relocated driveway access to serve traffic entering the site in order to

address any safety issues for the properties to the north and across Hwy 213 as a result of relocating the driveway access.

The revised TIA, prepared by Lancaster Engineering addresses safety concerns from the relocation of the driveway access for the site and that imposing Conditions of Approval 4, 5 and 6 to be completed within one year ensures that the safety of the transportation system is adequate to serve the level of development anticipated by the zone change according to ZDO 1202.03(E), including ensuring the safety of driveways north of and across the highway from the subject property. The Tenth Assignment of Error is satisfactorily addressed.

CONCLUSION:

The additional evidence and findings provided by the applicant are sufficient to address the Seven Assignments of Error remanded in LUBA, 2014-069.

Exhibit Attachment 2- REVISED Conditions of Approval

File No. Z0490-13-CP and Z0491-13-Z

1. Future uses of the property are limited to those identified in Table 604-1: Permitted Uses in the RI District, paragraph “A. Construction and Maintenance Contractors,” except for building movers, on the effective date of this order.
2. The applicant shall design and construct improvements that permanently close the existing southernmost driveway to Highway 213 in accordance with ODOT standards ~~within six months of approval.~~
3. The applicant shall design and construct improvements that relocate the existing northernmost driveway to Highway 213 in accordance with ODOT standards to achieve adequate intersection sight distance ~~within one year of approval.~~
- ~~3.4.~~
- ~~4. With each future proposed phase of development, the applicant shall submit a traffic analysis to address the need for a southbound left turn lane at the intersection of Highway 213 and the site access. As recommended by ODOT and as warranted, t~~The applicant shall design and construct a southbound left turn lane at the intersection of Highway 213 and the site access according to ODOT standards. ~~, within one year of approval.~~
5. ~~With each future proposed phase of development, the applicant shall submit a traffic analysis to address the need to widen their site access at Highway 213 to two outbound travel lanes. As warranted, t~~The applicant shall design and construct a second outbound site access travel lane according to ODOT and County standards.
6. ~~With each future proposed phase of development, the applicant shall submit a traffic analysis to address the need for improvements at the Highway 213/Henrici Road intersection. If a proposed phase generates any new traffic during the weekday PM peak hour, the~~The applicant shall design and construct a two way left turn lane or acceleration lane on Highway 213 south of Henrici Road in accordance with ODOT standards. ~~If a proposed phase does not generate new traffic during the weekday PM peak hour, the applicant shall not be required construct improvements to the Highway 213/Henrici Road intersection with that particular phase.~~
- ~~6.7.~~ The map amendment and zone change will become effective upon completion of all required roadway and driveway improvements, or upon bonding of required roadway improvements and completion of driveway improvements. This approval shall become void if the required roadway and driveway improvements set forth in Conditions 2-6 are not completed within one (1) year from the date this decision becomes final.

ORDER EXHIBIT A – FINDINGS AND CONCLUSIONS ON REMAND

File No. Z0490-13-CP and Z0491-13-Z

Remanded at LUBA No. 2014-069

GENERAL INFORMATION:

Applicant: Bruce Goldson, Theta LLC, PO Box 1345, Lake Oswego, OR 97035

Owner: Doris M. Hickman Trustee, 20666 S. Molalla Ave., Oregon City, OR 97045

Proposal: Comprehensive Plan Map amendment from Rural to Rural Industrial. Corresponding Zone Change from RRFF-5 (Rural Residential Farm Forest 5-Acre) to RI (Rural Industrial).

Location: Approximately 0.20 miles south of the intersection of S. Highway 213 and S. Henrici Road

Legal Description: T3S, R2E, Section 16D, Tax Lots 1000, 1001, 1002, 1100 & 1101

Site Address: 20466 and 20666 S. Highway 213, Oregon City, Oregon 97045

Comprehensive Plan Designation: Rural

Zone: RRFF-5

Total Area Involved: Approximately 8.15 acres

BACKGROUND INFORMATION:

On June 12, 2014 the Board of County Commissioners (BOCC) approved a Comprehensive Plan map change from Rural (R) to Rural Industrial (RI) and a corresponding zone change from Rural Residential Farm Forest, 5-acre (RRFF-5) to Rural Industrial (RI) for a portion of the subject properties that contains an existing construction and vehicle maintenance business. Subsequent to that approval, the decision was appealed to the Land Use Board of Appeals (LUBA), identifying a total of ten assignments of error. On November 20, 2014, LUBA issued a decision denying three of the ten assignments of error (four, five and six) and remanding all, or a portion of the remaining seven assignments of error to the County at LUBA No. 2014-069. A limited portion of LUBA's decision was appealed to the Oregon Court of Appeals. On April 1, 2015 the Court affirmed LUBA's decision to remand the decision to the County at *Ooten v. Clackamas County*, 270 Or.App. 214 (2015). On April 24, 2015, the Oregon Legislature issued House Bill 3214 which addressed Statewide Planning Goals exceptions requiring LCDC to adopt new Goals

exception rules. The intent of HB 3214 was to eliminate the requirement to take exceptions to Planning Goals protecting agricultural and forest uses for zone changes to land physically developed or irrevocably committed to non-resource use so long as that land was never zoned for agricultural or forest uses. The new LCDC rules change the requirements for Goals Exceptions under OAR 660-004-0018(2).

FIRST ASSIGNMENT OF ERROR: Goals Exception, House Bill 3214 and amendments to OAR 660-004-0018(2).

- a. *Standard:* The LUBA found that the a reasons exception to Statewide Planning Goals 3 and 4 would be required if the County could not determine, in the previous words of OAR 660-004-0018(1) and (2), that the proposed uses for the property under the RI designation were the same as the existing land uses when the property was zoned in 1980. LUBA 2014-069, at 10-11. Despite the LUBA decision requiring a look at the 1980 decision and a possible reasons exception, the Board finds that the language and intent of House Bill 3214 and the resulting amendments to OAR 660-004-0018(2) do not require such a determination.
- b. *Analysis:*
 - i. In House Bill 3214 the Oregon Legislature directed the LCDC as follows: “The [LCDC] shall adopt or amend rules regarding the statewide planning goal criteria described in ORS 197.732(2)(a) and (b). The rules adopted or amended pursuant to this subsection must allow a local government to rezone land in an area physically developed or committed to residential use, as described in ORS 197.732, without requiring the local government to take a new exception to statewide planning goals related to agricultural and forest lands. The rules must allow for a rezoning that authorizes the change, continuation or expansion of an industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use.” HB 3214. The stated Legislative Intent of HB3214 was to eliminate the requirement to take Goal 3 and 4 exceptions for land that has been physically developed or irrevocably committed to non-resource use which had never been zoned for agricultural or forest uses.
 - ii. The LCDC amended OAR 660-004-0018(2) to allow properties which are physically developed or irrevocably committed to non-resource uses “**to those that satisfy (a) or (b) or (c) and, if applicable, (d).**” The new rule language no longer requires compliance with all subsections of Section -0018(2) simultaneously to avoid a Reasons

Exception under Section -0018(4), according to the intent of the Oregon Legislature in HB 3214.

- iii. It is undisputed that the subject area was never zoned for agricultural or forest use because the County zoned the subject property RRF-5 and designated it Rural in 1980. Original Order, at page 5.
- iv. On appeal, the LUBA addressed the adequacy of the County's findings that OAR 660-004-0018(2)(b)(A)-(C) is satisfied. The County previously found:

“The proposal is consistent with OAR 660-004-0018 because:

- a. The Board has limited the uses of the site to the same as the existing land uses. See Order Exhibit C, condition no.1. The applicant has proposed to continue the existing uses on the property. No new uses have been identified or proposed that require further analysis to determine if they are ‘rural’ in nature.
 - b. The County's Rural Industrial Plan designation and implementing RI zoning district has recently been amended and acknowledged to be in compliance with Statewide Planning Goals 11 and 14.
 - c. The findings addressing Statewide Planning Goals 11 and 14 demonstrate that the rural uses, density and public facilities will maintain the land as rural land. The property is not located in a public sewer or surface water district. The Rural Industrial Plan designation will not require or allow the extension of public sewer to the property. The existing uses and limited future uses contemplated for the property will not require the provision for extension of additional public services and facilities. The record demonstrates the rural uses, density and public facilities will not commit adjacent or nearby resource lands to other uses because there are no resource lands in adjacent or close to the subject property.” Original Order, at 12.
- c. *Findings and Conclusions:* The Board adopts its previous findings relating to compliance with OAR 660-004-0018. It further finds that the Oregon Legislature intended to change Statewide Planning Goals exception requirements and eliminate the requirement to take Goal 3 and 4 exceptions for land that has been physically developed or irrevocably committed to non-resource use which had never been zoned for agricultural or forest uses, as in the present case where the subject property was never zoned for such resource uses. It further finds that its original findings, together with the LUBA's determination at LUBA 2014-069,

Page 9: “We think the county’s findings are adequate to explain why the RI plan and zone designations meet OAR 660-004-0018(2)(b)(A)-(C). Accordingly, petitioner’s challenge to the county’s findings adopted in response to OAR 660-004-0018(2)(b)(A)-(C) provides no basis for reversal or remand” show that an exception to Goals 3 and 4 is not required because the revised language of OAR 660-004-0018 is satisfied.

SECOND ASSIGNMENT OF ERROR: Future driveway relocation and ODOT/AASHTO safety requirements.

- a. *Standard:* The LUBA determined that the County’s adoption of Condition No. 2 which relocates the driveway access to the site for safety reasons must explain how that portion of the property satisfies the applicable Rural Industrial Plan Policy 3.0. Condition 3 requires for safety reasons that the applicant permanently relocate the access to the site within one year of approval. The Oregon Department of Transportation (“ODOT”) standards require that when a development application is submitted to the County, the access to the site is to be relocated to comply with sight distance safety standards according to ODOT and AASHTO standards.
- b. *Analysis:* The proposed location of the future driveway access complying with sight distance standards is approximately 100 feet to the north of the northern existing driveway access to State Highway 213 according to the revised traffic study submitted by Lancaster Engineering (“Revised TIA”).
 - i. The Board finds that two applicable standards apply to the driveway in its present and relocated position. The ODOT sight distance safety standards applicable to Hwy 213 and the County’s historical commitment Policy 3.0(a).
 - ii. The Board finds that rezoning the driveway in its present location is permissible without a development application and that the existing driveways have a clear historical commitment to industrial uses for over 45 years under Policy 3.0(a), according to the lengthy findings at pages 24 and 25 of the Original Order. Although permissible, leaving the site access in its present, longstanding condition permanently would not provide the County and applicant with an opportunity bring the site into compliance with current transportation safety standards.
 - iii. Policy 14.0, Access Standards are applicable to this application, and requires that the County plan and control access onto roads within the County, as shown on Table V-5, for urban areas and according to the American Association of State Highway and Transportation Officials (AASHTO) guidelines for rural areas, for both new and existing uses, and coordinate with the Oregon Department of Transportation for access

control on state highways. The ODOT has recommended that the site access be relocated according to the analysis in the Revised TIA and Exhibit B to the Original Order.

- iv. According to its previous findings, the subject property has frontage on State Highway 213, which is classified as a major arterial. This highway is under the jurisdiction of the Oregon Department of Transportation (ODOT). Access to the property is subject to the requirements of ODOT and the Oregon Highway Plan. The subject property has two driveways which provide direct access to Hwy 213. The record demonstrates that neither driveway meets minimum sight distance standards to the south of the subject property due to a horizontal curve. The applicant has identified an alternate location for the driveway to the north of the existing driveways which meets minimum sight distance standards and agreed to close the two existing driveways. The proposed driveway complies with minimum sight distance standards and the applicant has agreed to a condition to construct the new driveway within one year of final approval. A corresponding condition of approval is included requiring removal of the existing northerly and southerly driveways. This condition will ensure the access location to the subject property for both the rural residential and rural industrial uses satisfies AASHTO minimum safety guidelines.
 - v. The nature of the vehicles entering and exiting the subject site, namely large trucks and trailers and the ability of a driver of such a vehicle to enter and exit the traffic flow on State Highway 213, a major arterial with high traffic volumes travelling at speed in a rural area over the crest of a hill requires that policies in Chapter 5 of the Comprehensive Plan promoting transportation safety be of utmost importance and of public concern when applying countervailing policies in the Clackamas County Comprehensive Plan.
- c. *Findings and Conclusions:* The Board finds when balancing the interests of the County and State in promoting transportation safety where large trucks and trailers enter and exit a rural, high traffic major arterial near the crest of a hill against rezoning the driveway in its present location, that safety and public concern is of highest importance. The Board finds that it could rezone the driveway access in its present location and not require relocation because a development application is not pending with the zone change. The Board finds that Conditions of Approval 2 and 3 which require relocation of the driveway access within one year should remain in force which provides the applicant and the public at large travelling on a State Highway with increased transportation safety. The Board further finds that when the driveway is abandoned in its present location and relocated according to Conditions of Approval 2 and 3 to

promote transportation safety, the decades of long standing historical commitment to industrial uses at the driveway's present location must be balanced against the interest of the County and State in providing safe public transportation facilities- and that long standing commitment supports the finding of rezoning the driveway in its future location under the Board's sound interpretation of its own Policy 3.0(a), and its interest in protecting the public welfare and safety.

THIRD ASSIGNMENT OF ERROR: RI use consistency with the rural character of the area and labor intensive uses.

- a. *Standard:* The Rural Industrial section of the Land Use Chapter of the Clackamas County Comprehensive Plan, Section 1.0, provides: "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 the rural character, rural development, and rural facilities and services."
 - i. The Rural Industrial plan designation may be applied for industrial uses on the subject property if they are not labor intensive and consistent with the rural character of the area.
 - ii. The RI designation must be consistent with the rural character of the adjacent RRF-5 properties. LUBA found that the County should adopt findings that address the consistency of the proposed RI designation with the rural character of the area and address that the proposed RI designation is not labor intensive. LUBA 2014-069, at 16.
- b. *Analysis:*
 - i. All adjacent and surrounding properties to the north, east, south and west, on the west side of Highway 213 are zoned RRF-5 and are developed with residential, commercial and industrial uses. *Record 95 (hearing). Exhibit 1, Page 5.* These properties have a rural character. Public services to the site are limited to public water provided by the Clackamas River Water District. The property is not located in a public sewer or surface water district. Services to the area include garbage service and sheriff patrol services. Record 30.
 - ii. Hal's Constructions is a pavement contracting business which employs up to 40 employees in peak summer months and approximately half that in the winter with nearly all employees working at construction sites, rather than at the property itself, where only office operates and storage and maintenance of the equipment and vehicles associated with the business. Exhibit 1 (Record 1122).
 - iii. The building on the subject property does not generate impacts from noise, fumes or other impacts aside from its visual appearance. The design and size of the buildings onsite is consistent with the rural character and

existing development in the area. There are several similar structures on surrounding properties. Record 650.

c. *Findings and Conclusions:*

- i. The Board finds this extensive record shows Hal's Construction is a paving contractor where the company's work occurs offsite. While there may be up to 40 employees employed by Hal's Construction, the Board finds that any onsite labor consists of clerical and equipment servicing and is only ancillary to the offsite work and is, therefore, not labor intensive. Record 323. The Board finds that the area surrounding the site is developed with a mix of rural residential, commercial and industrial uses.
- ii. The Board finds that according to the Clackamas County Comprehensive Plan the proposed RI designation is not labor intensive and is consistent with the rural character of the area.

SEVENTH AND TENTH ASSIGNMENTS OF ERROR: Provide notice and adequate opportunity to respond to relocated driveway map.

- a. *Standard:* CCZO 1202.01(E) provides that in order to approve the zone change, the county must find that "[s]afety of the transportation system is adequate to serve the level of development anticipated by the zone change." LUBA required that the County allow adequate opportunity to respond to Exhibit B, the depiction of the relocated driveway.
- b. *Analysis:*
 - i. The subject property has two driveways which provide direct access to State Highway 213. Revised TIA, Page 4. Exhibit 1, Page 4.
 - ii. Both driveways must have inadequate sight distance to the south according to ODOT standards. To comply with the standard, the applicant proposed to remove both driveways and construct on new driveway further north based on ODOT safety requirements for sight distance.
 - iii. The proposed location for the new driveway is set out in Exhibit B to the County's Order and was sent out with the Notice for the Remand Hearing.
- c. *Findings and Conclusions:*
 - i. The Board finds that ODOT has determined that there is a suitable location to construct a driveway to meet the minimum sight distance standards. This location is set out in Exhibit B to the Order.
 - ii. The Board finds that Exhibit B, the map showing compliance with the Oregon Department of Transportation's relocation for driveway access was distributed with the Notice for the remand hearing which provides for adequate notice and opportunity to respond to the new evidence in the record.

EIGHTH ASSIGNMENT OF ERROR: Adequacy of site use limits.

- a. *Standard:* LUBA found that the County's decision was inconsistent because it limited the uses of the site to "the same as the existing land uses" as well as those enumerated in the original Order, Exhibit C, Condition No. 1, referencing Table 604-1, Construction and Maintenance Contractors, except that building movers shall not be a permitted use.
- b. *Analysis:* As discussed above, House Bill 3214, which became effective on June 18, 2015, together with the LCDC amendments to OAR 660-004-0018(2) provides that Counties are no longer required to limit zone changes to the same as those existing on the site at the time of application.
- c. *Findings and Conclusions:* The Board finds that amendments to OAR 660-004-0018(2) required by the Oregon Legislature in HB 3214 provide that the existing condition of approval No. 1 regarding site use limits set forth in Table 604-1, Paragraph A, Construction and Maintenance Contractors, except building movers, is adequate because OAR 660-004-0018(2) permits the County to limit future uses to "those that satisfy (a) or (b) or (c), and, if applicable (d)" no longer requiring compliance with all subsections of Section -0018(2).

NINTH ASSIGNMENT OF ERROR: Mitigation based on a revised traffic study and Conditions of Approval 4, 5 and 6.

- a. *Standard:* The LUBA decision required a revised Traffic Impact Study to compare the current most traffic generative uses in the RRF-5 and RI zones in order to determine whether or not mitigation efforts need to be increased. LUBA 2014-069, at 25. The LUBA also found that the decision did not explain the circumstances which trigger the new required improvements to the transportation system. LUBA 2014-069, at 26.
- b. *Analysis:* As the County previously found, the increased traffic under the RI zone would significantly affect two transportation facilities near its frontage on State Hwy 213, a major arterial. This highway is under the jurisdiction of the ODOT and the Transportation Planning Rule applies. The impact area for this application includes the intersection of Hwy 213 at Henrici Road and Hwy 213 at the site access. According to the Revised TIA, comparing the most traffic generative uses in the RRF-5 and RI zones according to LUBA's direction, the mitigation efforts set forth in Conditions 4, 5, and 6, previously adopted by the County, are sufficient to comply with the Transportation Planning Rule. Revised TIA, at 3, 20 and 21. Similarly, the traffic engineer's recommendations for mitigation, summarized at pages 20 and 21 of the Revised TIA, address the recommended mitigation and ensure compliance with the Transportation Rule. The LUBA found that "conditions with timing elements are an acceptable method of mitigation of traffic impacts." LUBA 2014-069, at 26-27. The County and applicant agree that the conditions of approval regarding mitigation should be

imposed with a timing element so there is no question as to what triggers the required mitigation and improvement efforts.

- c. *Finding and Conclusions:* The Board finds that mitigation set forth in Conditions 4, 5, and 6 are adequate to ensure transportation safety under the rule, and shall impose a timing element as directed by the LUBA. The Board finds that Conditions 4, 5, and 6 are to be completed by the Applicant within 1 year of this Decision.

TENTH ASSIGNMENT OF ERROR: Compliance with CCZO 1202.01(E).

- a. *Standard:* LUBA found that the County must adopt findings that ensure the zone change is compliant with CCZO 1202.01(E), which requires that the “[s]afety of the transportation system is adequate to serve the level of development anticipated by the zone change.” The LUBA also found that the Findings should address the issue as to whether relocating the driveway access would cause safety issues for the properties located to the north and across Hwy 213.
- b. *Analysis:* Based on the revised Traffic TIA prepared by Lancaster Engineering and provided with the remand Notice, the safety of the transportation system will be adequate to serve the level of development allowed under the proposed zone change. Revised Lancaster Report Page 4. Exhibit 1, Page 4. The study areas which include the site access on Hwy 213 and S. Henrici Road are currently operating acceptably with respect to safety and no mitigations are currently necessary but that Conditions 4, 5 and 6 will address any significant effect of the zone change on surrounding transportation facilities. Revised Lancaster Report, page 3. The transportation engineer’s detailed safety analysis, beginning on page 11 continuing through page 12 addresses safety, crash history and recommended safety improvements, including the need to relocate the driveway access northerly because of sight-distance concerns. The engineer and County also recommend a southbound left turn lane at the relocated driveway access to serve traffic entering the site in order to address any safety issues for the properties to the north and across Hwy 213 as a result of relocating the driveway access.
- c. *Findings and Conclusions:* The Board finds that the revised TIA, prepared by Lancaster Engineering addresses safety concerns from the relocation of the driveway access for the site and that imposing Conditions of Approval 4, 5 and 6 to be completed within one year ensures that the safety of the transportation system is adequate to serve the level of development anticipated by the zone change according to CCZO 1202.01(E).



Board of County Commissioners

Land Use Hearing:

File Nos. Z0490-13-CP / Z0491-13-ZAP

Remand Response

LUBA 2014-069

October 26, 2016

Applicant : Hal's Construction Inc.



Proposal

- Response to Remand at LUBA 2014-069:
 - Comprehensive Plan Map Amendment from Rural(R) to Rural Industrial (RI); Z0490-13-CP
 - Corresponding zone change from RRFF-5 (Rural Residential Farm Forest 5-Acre) to RI (Rural Industrial); Z0491-13-ZAP



Site Characteristics

- Site Size: 8.15 Acres
- Lots of Record:
 - Tax Lots 1000 and 1101 = One Lot of Record
 - Tax Lots 1100, 1001 and 1002 = One Lot of Record
- Topography: Property is fairly level
- No environmental overlay districts
- Existing Uses and Site Improvements: 2 dwellings, sport court, septic systems and drain fields, accessory structures, parking and circulation areas, two driveways to Hwy. 213
- Quail Crest Lane to the south

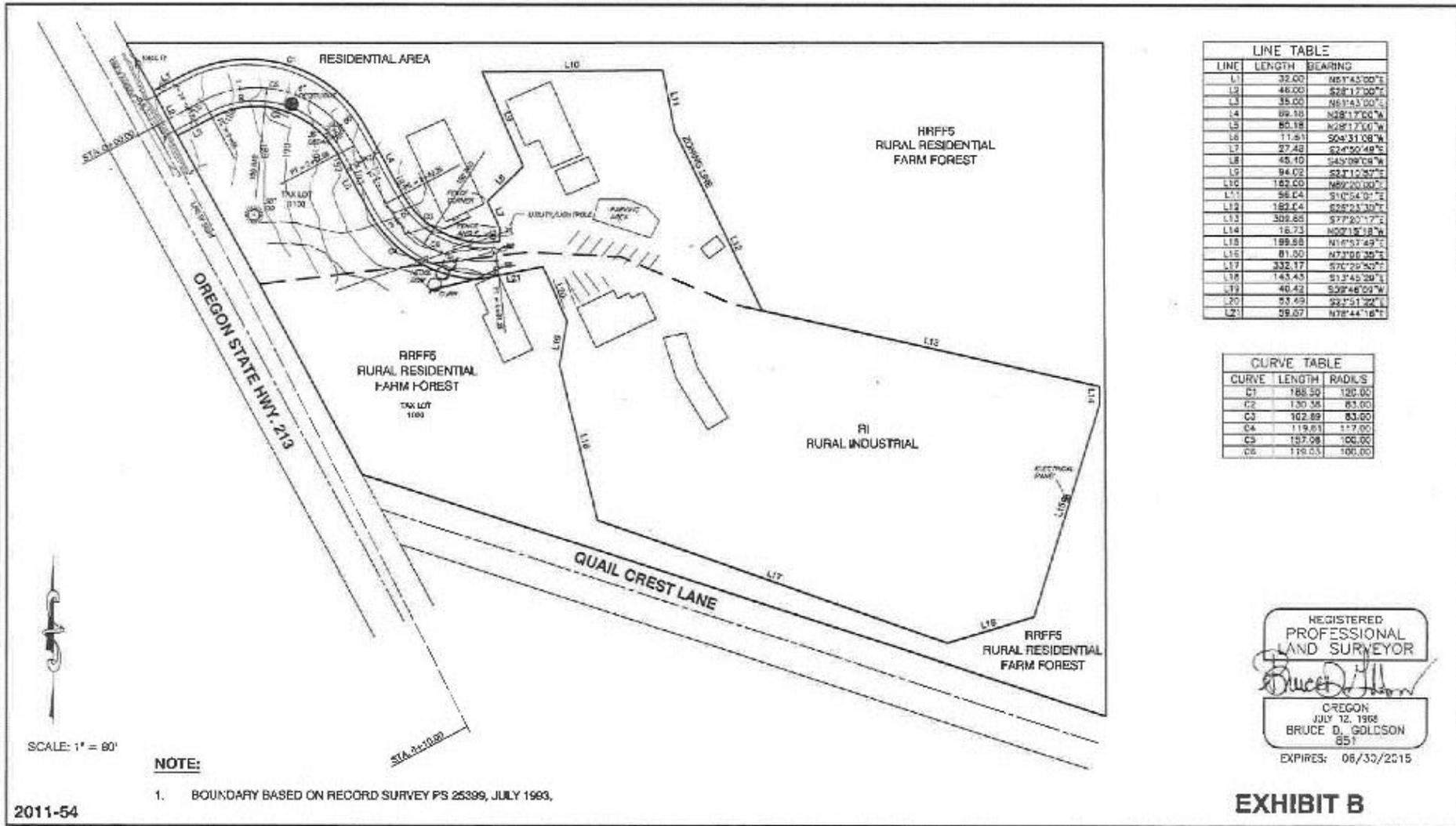
Subject Property



Background

- Board of County Commissioners (BCC) approved Z0490-13-C & Z0491-13-ZAP (June 12, 2014)
 - The portion of the properties that contains an existing construction and vehicle maintenance business and driveway
- Decision appealed to the Land Use Board of Appeals (LUBA); ten assignments of error
- LUBA issued a decision denying three of the ten assignments of error (four, five and six) and remanding all, or a portion of the remaining seven (7) assignments of error to the County at LUBA No. 2014-069 (November 20, 2014)
- A limited portion of LUBA's decision was appealed to the Oregon Court of Appeals.
- Court affirmed LUBA's decision to remand the decision to the County (April 1, 2015)

What the BCC Approved



LINE TABLE		
LINE	LENGTH	BEARING
L1	32.00	N61°45'00"E
L2	46.00	S28°17'00"W
L3	35.00	N61°45'00"E
L4	69.10	N38°17'00"W
L5	80.19	N28°17'00"W
L6	11.81	S09°31'08"W
L7	27.43	S74°50'49"E
L8	45.10	S45°39'09"W
L9	94.02	S21°10'27"E
L10	102.00	N89°00'00"E
L11	56.04	S10°54'59"E
L12	182.04	S28°21'30"E
L13	309.88	S77°20'17"E
L14	16.73	N02°15'18"W
L15	199.88	N16°07'49"E
L16	81.00	N73°06'30"E
L17	332.17	S70°28'50"E
L18	143.43	S13°45'20"E
L19	40.42	S59°46'09"W
L20	57.69	S27°51'22"E
L21	59.07	N78°44'16"E

CURVE TABLE		
CURVE	LENGTH	RADIUS
C1	188.50	120.00
C2	130.35	83.00
C3	102.89	83.00
C4	119.01	117.00
C5	137.08	100.00
C6	119.03	100.00

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Bruce D. Goldson

OREGON
JULY 12, 1968
BRUCE D. GOLDSON
651

EXPIRES: 06/30/2015

2011-54

DESIGNED: BCG
DRAWN: BJS
SCALE: 1" = 80'
DATE: April, 2014
FILE: Hets Const Exhibit D

Theta, llc

ENGINEERING - SURVEYING - PLANNING

PO Box 1316
Lake Oswego, Oregon 97036

503/481-8822
email: theta@comcast.net

Hal's Construction
20666 Highway 213
Oregon City, Oregon

Clackamas County Land Use Application
Z0490-13-CP, Z0491-13-Z

EXHIBIT B

First Assignment of Error

- Need additional findings to establish that redesignating the property does not require a new exception to Statewide Planning Goals 3 & 4
- Determination largely due to specific language in the Oregon Administrative Rules (OAR 660-004-0018(2)).
- Issue resolved in by House Bill (HB) 3214 (2015) and a subsequent amendment to OAR 660-004-0018(2)

Second Assignment of Error

- Explain how the portion of the property where the driveway will move (which is required to move for safety reasons), has an historical commitment to industrial uses.
 - Comp Plan policies require and “historic commitment” to rezone to RI
 - Comp Plan policies require plan and zone change meet transportation safety standards, which require the driveway move for safety reasons
- Additional findings provided

Third Assignment of Error

- Need additional findings to demonstrate
 - RI designation is consistent with the rural character of the area, including the adjacent RRFF-5 zoned properties
 - The use is consistent with the requirement that the RI designation is “not labor intensive”
- Additional findings provided



Seventh Assignment of Error

- County did not allow adequate opportunity to respond to the exact location of the relocated driveway
- Map of proposed change sent with the public notice on September 21, 2016
- Sufficient time has been provided for review

Eighth Assignment of Error

- Need to clarify which uses the site is limited to (rather than just identifying a category)
- This determination was due to the language in OAR 660-004-0018(2)
- Issue resolved in by HB 3214 (2015) and subsequent amendment to OAR 660-004-0018(2)
 - No longer a requirement to “limit uses to those existing on the property”; however
 - Condition will remain to help ensure continued neighborhood compatibility

Ninth Assignment of Error

- Need revised Traffic Impact Analysis (TIA) that compares the most traffic generative uses in the RRFF-5 and RI zones
 - Revised TIA submitted by the applicant
- Need to revise Conditions 4, 5, and 6 so that roadway improvements needed to mitigate traffic impacts are certain to occur.
 - Conditions of approval amended to ensure improvements will be completed within a year

Tenth Assignment of Error

- Need to address how the proposal for the new driveway to the north satisfies provisions in the ZDO, Section 1202.03(E), safety of the transportation system
 - Specifically, whether the move causes safety issues for driveways to the north and across Hwy 213
- Safety will be addressed by required road safety improvements – in particular the left turn lane on Hwy 213 at the subject property

Staff Recommendation

Approval subject to Revised Conditions of Approval:

- Approval limited to uses identified in ZDO Table 604-1: Permitted Uses in the RI District, paragraph “A. Construction and Maintenance Contractors,” except for building movers (same as previous approval)
- Both existing driveways shall be removed. Access to the property shall be limited to one driveway relocated to the north (same as previous approval)
- Within one year, applicant will construct three identified roadway/driveway improvements to mitigate transportation capacity and safety impacts, per ODOT and DTD Traffic Engineering (revised)



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2540

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www.oregon.gov/LCD

January 6, 2016

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Sadie Carney, Rural Policy Analyst
Katherine Daniels, Farm and Forest Lands Specialist
Rob Hallyburton, Community Services Division Manager

SUBJECT: **Agenda Item 6, January 14, 2015, LCDC Meeting**



**PUBLIC HEARING AND PROPOSED ADOPTION OF MINOR, TECHNICAL
AND CONFORMING AMENDMENTS TO OREGON ADMINISTRATIVE RULES
CHAPTER 660, DIVISIONS 4, 6, 25, AND 33**

I. AGENDA ITEM SUMMARY

The Department of Land Conservation and Development (DLCD or department) staff requests the Land Conservation and Development Commission (LCDC or commission) consider the proposed adoption of amendments to OAR chapter 660, divisions 4, 6, 25, and 33 to make minor and technical changes to conform to recent legislation, amend minor substantive provisions, or to provide additional clarification for certain rules.

For additional information about this report, please contact Rob Hallyburton, Community Services Division Manager, at 503-934-0018 or rob.hallyburton@state.or.us.

II. RECOMMENDED ACTION

The department recommends that the commission review the proposed rule amendments as described in section IV of this staff report, conduct a hearing on the proposals, and adopt the proposed revisions as presented in Attachments A–D.

III. BACKGROUND

A. Zoning of Exceptions Areas

The 2015 legislative session resulted in the passage of a bill ([House Bill 3214](#)) requiring the commission to adopt a rule amendment related to zoning of exception areas.¹ An “exception” is a

¹ House Bill 3214 states, in relevant part: (1) The Land Conservation and Development Commission shall adopt or amend rules regarding the statewide planning goal criteria described in ORS 197.732 (2)(a) and (b). The rules adopted or amended pursuant to this subsection must allow a local government to rezone land in an area physically developed or committed to residential use, as described in ORS 197.732, without requiring the local government to take a new exception to statewide planning goals related to agricultural and forest lands. The rules must allow for a rezoning that authorizes the change, continuation or expansion of an

comprehensive plan provision that is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability; does not comply with some or all goal requirements applicable to the subject properties or situations; and complies with applicable statutes and administrative rules. OAR 660-004-0005(1). An “exception area” therefore, is a parcel or a group of parcels subject to an acknowledged exception. A common example is a rural area planned and zoned for residential use rather than for farm or forest use.

Relevant statute (ORS 197.732) and rules (OAR chapter 660, division 4) provide for three separate justifications for an exception. That is, the law recognizes three different circumstances under which it is appropriate for a local government to plan and zone an area differently than would otherwise be required by the statewide planning goals. The three justifications for an exception are:

1. The land is physically developed to the extent that it is no longer available for uses allowed by the applicable goal (a “physically developed” exception);
2. The land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable (an “irrevocably committed” exception); and
3. Reasons justify why the state policy embodied in the applicable goals should not apply (a “reasons” exception)

The rules go on to provide requirements for how an exception area may be designated on the plan and zone maps and what uses may be allowed. HB 3214 affects planning and zoning for “physically developed” and “irrevocably committed” exception areas under ORS 197.732(2)(a) and (b).

Section (2) of OAR 660-004-0018, “Planning and Zoning for Exception Areas” must be amended in order to comply with the requirements in HB 3214. The department proposes that the commission approve amendments that are not limited to bare compliance with the bill.

When the commission originally adopted OAR 660-004-0018(2) in 1986, it stated:

- (2) Plan and zone designations shall limit uses to:
 - (a) Uses which are the same as the existing types of land uses on the exception site; *or*
 - (b) Rural uses which meet the following requirements:

industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use.

(2) The rules adopted pursuant to subsection (1) of this section must provide that:

- (a) The rezoned use will maintain the land:
 - (A) As rural land as described by commission rule; and
 - (B) In a manner consistent with other statewide planning goal requirements;
- (b) The rural uses, density and public facilities and services permitted by the rezoning will not commit adjacent or other nearby resource land to uses that are not permitted by statewide planning goals related to agricultural and forest lands;
- (c) The rural uses, density and public facilities and services permitted by the rezoning are compatible with the uses of adjacent and other nearby resource land uses; and
- (d) The land to be rezoned is not in an area designated as a rural or urban reserve under ORS 195.141.

- (A) The rural uses are consistent with all other applicable Goal requirements; and
- (B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
- (C) The rural uses are compatible with adjacent or nearby resource uses. (italics added)

The rule at that time provided for a local government to allow uses in a “physically built” or “irrevocably committed” exception area under two separate justification scenarios: (1) if those that are the same as existing types of uses (e.g., permitting rural residential uses in an area physically developed to residential use) or (2) other uses so long as they are rural, do not commit other land to nonresource use, and the permitted uses are compatible with resource uses.

The commission amended this rule from time to time for a variety of reasons, but the *or* between subsections (a) and (b) remained in the rule until it was amended in 2011, when one of the changes was to replace the “or” with an “and.”² This change meant that zoning of an exception area needs to limit allowed uses to those that are *both* the same as existing uses on the site and which comply with the rural use, commitment, and compatibility criteria. This change means that a proposal to allow uses that are not “the same as existing types of uses on the exception site” is subject to a requirement to justify a new “reasons” exception because the “physically developed” and “irrevocably committed” options are no longer available.

HB 3214 requires the commission to essentially change the “and” back to an “or” for a narrowly defined situation: “the change, continuation or expansion of an industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use.” The department proposes that the change be made for all “physically developed” and “irrevocably committed” exception areas.

² OAR 660-004-0018(2) currently provides:

(2) For “physically developed” and “irrevocably committed” exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

- (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; and
 - (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. (italics added.)

An acknowledged exception area is land for which the local government (usually a county) has adequately demonstrated that the applicable goal (usually Goal 3, Agricultural Land, or Goal 4, Forest Lands) should not apply. For a “physically developed” exception, a county must show that the land is “no longer available for uses allowed by the applicable goal.” For an “irrevocably committed” exception, the standard is that “existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.” To require the local government to again demonstrate compliance with these criteria is unnecessarily burdensome for the applicant and local government and introduces approval criteria that may not be suitable for the proposal. The “reasons” exception criteria³ are proper for weighing whether a non-resource use is justifiable on farm or forest land, but less appropriate for weighing one non-resource use alternative with another. The department suggests that the existing criteria in OAR 660-004-0018, with the proposed amendment contain the appropriate set of considerations.

Department staff has been unable to determine why the “or” was changed to “and” in 2011, but a review of the staff report explaining that amendment to the commission for its January 12–13, 2011, meeting revealed that the outcome described above – that a new exception would be required to change the zone in an existing exception area – was not discussed. The change of the conjunction was, in fact, not addressed at all. The department concludes that, whatever the reason for the change, the negative consequences warrant a restoration of the previous criteria for all “physically developed” and “irrevocably committed” exceptions, not just the narrow circumstances addressed in the bill.

Earlier amendments to OAR 660-004-0018(2) brought the rule into conformity with a different, at-the-time new division regarding planning and zoning of unincorporated communities (see subsection (c) of the current rule, footnote 2). During staff’s preparation for the proposed rule amendment described above, it was discovered that the “and” at the end of subsection (c) also has the possible effect of requiring the provisions for planning and zoning normal “built” and “committed” exception areas to apply to unincorporated communities. This has not been argued before the Land Use Board of Appeals or a court, but it is a plausible, unintended outcome further justifying an amendment to the rule.

B. Periodic Review, Division 25

The 2015 legislative session resulted in passage of HB 3282 pertaining to when the commission may approve a city’s request to enter the periodic review process. The bill clarifies that the commission may permit a city to enter periodic review for the limited purpose of responding to a remand of amendments reviewed “in the manner of periodic review.”

³ The statutory criteria at ORS 197.732(2)(c) provide:

- (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
- (B) Areas that do not require a new exception cannot reasonably accommodate the use;
- (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
- (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

DIVISION 4

INTERPRETATION OF GOAL 2 EXCEPTION PROCESS

1 **660-004-0018**

2 **Planning and Zoning for Exception Areas**

3 * * *

4 (2) For "physically developed" and "irrevocably committed" exceptions to goals,
5 residential plan and zone designations shall authorize a single numeric minimum lot size
6 and all plan and zone designations shall limit uses, density, and public facilities and
7 services to those that satisfy (a) or (b) or (c) and, if applicable, (d):

8 (a) That are the same as the existing land uses on the exception site;

9 (b) That meet the following requirements:

10 (A) The rural uses, density, and public facilities and services will maintain
11 the land as "Rural Land" as defined by the goals, and are consistent with
12 all other applicable goal requirements;

13 (B) The rural uses, density, and public facilities and services will not
14 commit adjacent or nearby resource land to uses not allowed by the
15 applicable goal as described in OAR 660-004-0028; and

16 (C) The rural uses, density, and public facilities and services are
17 compatible with adjacent or nearby resource uses;

18 (c) For uses in unincorporated communities, the uses are consistent with OAR
19 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the
20 county chooses to designate the community under the applicable provisions of
21 OAR chapter 660, division 22; ~~and~~

22 (d) For industrial development uses and accessory uses subordinate to the
23 industrial development, the industrial uses may occur in buildings of any size and
24 type provided the exception area was planned and zoned for industrial use on
25 January 1, 2004, subject to the territorial limits and other requirements of ORS
26 197.713 and 197.714.

27 * * *
28



**NOTICE OF PUBLIC HEARINGS BEFORE THE BOARD OF COUNTY COMMISSIONERS ON
A PROPOSAL IN YOUR AREA**

Date of Mailing of this Notice: September 21, 2016

Notice sent to: Agencies, Community Planning Organizations, interested parties, and property owners within 500 feet of the subject property.

BOARD OF COUNTY COMMISSIONERS HEARING DATE & TIME: Wednesday, October 26th, 9:30 A.M.
HEARING LOCATION: Clackamas County Public Services Building, BCC Hearing Room, 4th Floor
2051 Kaen Road
Oregon City, OR 97045

Case File Number(s): Z0490-13-CP & Z0491-13-ZAP (Hal's Construction) – response to LUBA remand

Applicant: Bruce Goldson, Theta LLC

Property Owner: Doris M Hickman Trustee

Site Address and/or Location: 20646 & 20666 S. Highway 213, Oregon City, OR 97045

Assessor's Map: T3S, R2E, Section 16D, Tax Lots 1000, 1001, 1002, 1100, & 1101

Total Area Involved: Approximately 8.15 acres

Zoning Designation: Rural Residential Farm Forest, 5-acre (RRFF-5)

Proposal: On June 12, 2014, The Board of County Commissioners (BCC) approved a Comprehensive Plan map change from Rural (R) to Rural Industrial (RI) and a corresponding zone change from Rural Residential Farm Forest, 5-acre (RRFF-5) to Rural Industrial (RI) for a portion of the subject properties that contains an existing construction and vehicle maintenance business. Subsequent to that approval, the decision was appealed to the Land Use Board of Appeals (LUBA), identifying a total of 10 assignments of error. On November 20, 2014, LUBA issued a decision denying three of the 10 assignments of error (four, five, and six), and remanding all, or parts, of the remaining seven assignments of error to the County. A limited portion of LUBA's decision was appealed to the Oregon Court of Appeals. On April 1, 2015, the Court affirmed LUBA's decision to remand the decision to the County. *Ooten v. Clackamas County*, 270 Or. App. 214 (2015). The grounds for remand are summarized below and are discussed in more detail in the attached LUBA decision (LUBA No. 2014-069):

1. First Assignment of Error: The county must establish the uses which justified the 1980 exception and show they are the same as the existing land uses, otherwise it must seek a reasons exception as required by OAR 660-004-0018(3).

2. Second Assignment of Error: Where the county's decision redesignates the new driveway, it must explain how that portion of the property has an historical commitment to industrial uses.
3. Third Assignment of Error: The county needs to revise its findings to show the consistency of the proposed RI designation with the rural character of the area, including the adjacent RRF-5 zoned properties and that the use is consistent with the requirement that the RI designation is "not labor intensive."
4. Seventh Assignment of Error: The county should allow adequate opportunity to respond to the proposed driveway location, the exact location of which first appeared as an attachment to the final decision.
5. Eighth Assignment of Error: The county needs to clarify which uses the site is limited to and should revise Condition 1 of the Order, if needed, to reflect those limits.
6. Ninth Assignment of Error: The county needs to determine traffic impacts of the proposal based on a revised Traffic Impact Study, which compares the most traffic generative uses in the RRF-5 and RI zones. Conditions 4, 5, and 6 (see BCC Board Order 2014-46) must be revised so that mitigation triggers are certain to occur.
7. Tenth Assignment of Error: The county needs to address how the proposal for the new driveway to the north satisfies provisions in the county's Zoning & Development Ordinance (ZDO), Section 1202.01(E).

Written and verbal testimony at the public hearing must be limited to, and directed towards, one of the seven assignments of error subject to the remand.

The following documents (1-3) have been submitted by the applicants in response to the LUBA appeal and are available for review at <http://www.clackamas.us/planning/zdoproposed.html>. Also available for review at that website are the LUBA decision; map of the proposed driveway location; and the BCC Board Order 2014-069 and associated exhibits.

1. Applicant's proposed findings relating to the remand issues
2. Statement from applicant's attorney regarding remand issues
3. A revised Traffic Impact Study (Lancaster Engineering), dated July 21, 2016
4. Final Opinion and Order, LUBA 2014-069
5. Map of proposed driveway location
6. BCC Board Order 2014-46; Findings and Conclusions; and Conditions of Approval

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

HOW TO OBTAIN ADDITIONAL INFORMATION

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

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

1. Emailing or calling the staff contact;
2. Visiting the Planning & Zoning Division at the address shown at the top of this notice during regular business hours, which are Monday through Thursday, 8am to 4pm, and Friday, 8 am to 3 pm; or
3. Going to the Clackamas County website page:
<http://www.clackamas.us/planning/zdoproposed.html>

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

HOW TO SUBMIT TESTIMONY ON THIS APPLICATION

- All interested citizens are invited to attend the hearings and will be provided with an opportunity to testify orally, if they so choose.
- Written testimony received by October 16, 2016 will be considered by staff prior to the issuance of the staff report and recommendation on this application. However, written testimony will continue to be accepted until the record closes, which may occur as soon as the conclusion of the Board of County Commissioners' hearing.
- Written testimony may be submitted by email, fax, regular mail, or hand delivery. Please include the case file number on all correspondence and address written testimony to the staff contact who is handling this matter.
- **Testimony, arguments, and evidence MUST be directed toward the Assignments of Error summarized above and discussed in more detail in the attached LUBA decision (LUBA No. 2014-069). Testimony not directly related to the Assignments of Error WILL NOT be considered.** Failure to raise an issue in person at the hearing or by letter prior to the close of the record, or failure to provide statements or evidence sufficient to afford the Board of County Commissioners and the parties involved an opportunity to respond to the issue, precludes an appeal to the Oregon Land Use Board of Appeals based on that issue.
- Written notice of the Board of County Commissioners' decision will be mailed to you if you submit a written request **and provide a valid mailing address.**

PROCEDURE FOR THE CONDUCT OF THE HEARING

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

1. The length of time given to individuals speaking for or against an item will be determined by the Chair presiding over the hearing prior to the item being considered.
2. A spokesperson representing each side of an issue is encouraged.
3. Prior to the conclusion of the evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The Board of

County Commissioners may either continue the hearing or leave the record open for additional written evidence, arguments, or testimony.

4. The Board of County Commissioners is the final decision maker for Clackamas County on this matter.

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

HAL'S CONSTRUCTION REZONE PROPOSED FINDINGS ON REMAND

FIRST ASSIGNMENT OF ERROR: Goals Exception, House Bill 3214 and amendments to OAR 660-004-0018(2).

- a. Despite the LUBA decision requiring a Reasons Exception, the Board finds that House Bill 3214 resulted in amendments to OAR 660-004-0018(2).
- b. In House Bill 3214 the Oregon Legislature directed the LCDC as follows: **“The [LCDC] shall adopt or amend rules regarding the statewide planning goal criteria described in ORS 197.732(2)(a) and (b). The rules adopted or amended pursuant to this subsection must allow a local government to rezone land in an area physically developed or committed to residential use, as described in ORS 197.732, without requiring the local government to take a new exception to statewide planning goals related to agricultural and forest lands. The rules must allow for a rezoning that authorizes the change, continuation or expansion of an industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use.”**
- c. The LCDC amended OAR 660-004-0018(2) to allow physically developed or irrevocably committed exceptions **“to those that satisfy (a) or (b) or (c) and, if applicable, (d):”** which no longer requires compliance with all subsections of Section -0018(2) to avoid a Reasons Exception under Section -0018(4).
- d. The Board finds the subject area was never zoned for agricultural or forest use because the County zoned the subject property RRFF-5 and designated it Rural in 1980.
- e. The Board finds that its original findings relating to satisfaction of OAR 660-004-0018(2)(b)(A)-(C) together with the LUBA's findings at page 9- “We think the county's findings are adequate to explain why the RI plan and zone designations meet OAR 660-004-0018(2)(b)(A)-(C).” show that an exception to Goals 3 and 4 is not required.

SECOND ASSIGNMENT OF ERROR: Future driveway relocation and ODOT safety requirements.

- a. The Oregon Department of Transportation standards require that when a development application is submitted to the County, the access to the site is to be relocated to comply with sight distance safety standards.
- b. The Board finds that the location of the future driveway access is approximately 100 feet to the north of the northern existing driveway access to State Highway 213 according to the revised traffic study submitted by Lancaster Engineering.
- c. The Board finds that two applicable standards apply to the driveway in its present and relocated position, ODOT sight distance safety standards applicable to Hwy

213 and the County's historical commitment Policy 3.0(a). The Board finds that rezoning the driveway in its present location is permissible without a development application and because that driveway has a clear historical commitment to industrial uses under Policy 3.0(a). When balancing the interests of the County in promoting transportation safety against rezoning the driveway in its present location the Board finds that Conditions of Approval 2 and 3 which require relocation of the driveway access within one year should remain in force which provides the applicant with increased transportation safety on State Highway 213. The Board also finds that when the driveway is abandoned in its present location and relocated according to Conditions of Approval 2 and 3 to preserve transportation safety, the historical commitment to industrial uses which is long standing at the driveway's present location must be balanced against the interest of the County and State in providing safe transportation facilities and that long standing commitment supports the finding of rezoning the driveway in its future location under the Board's sound interpretation of its own Policy 3.0(a).

THIRD ASSIGNMENT OF ERROR: RI use consistency with the rural character of the area.

- a. All adjacent and surrounding properties to the north, east, south and west, on the west side of Highway 213 are zoned RRFF-5 and are developed with residential, commercial and industrial uses. These properties have a rural character.
- b. The Board finds this extensive record shows Hal's Construction is a paving contractor where the company's work occurs offsite. While there may be up to 40 employees employed by Hal's Construction, the Board finds that any onsite labor consists of clerical and equipment servicing and is only ancillary to the offsite work and is not labor intensive.
- c. Because the existing industrial uses permitted under the RI are not labor intensive and because this rural area is a mix of rural uses the RI uses are consistent with the rural character for the area.

SEVENTH AND TENTH ASSIGNMENTS OF ERROR: Driveway Relocation Notice.

- a. The subject property has two driveways which provide direct access to State Highway 214. Both driveways have inadequate sight distance to the south according to ODOT standards. The applicant proposed to remove both driveways and construct on new driveway further north based on ODOT safety requirements for sight distance.
- b. ODOT has determined that there is a suitable location to construct a driveway to meet the minimum sight distance standards. This location is set out in Exhibit B to the Order.

- c. The map showing compliance with the Oregon Department of Transportation's relocation for driveway access was distributed with the Notice for the remand hearing which provides for review and response.

EIGHTH ASSIGNMENT OF ERROR: Site Use Limits.

- a. The Board finds that amendments to OAR 660-004-0018(2) required by the Oregon Legislature in HB 3214 provide that the existing conditions of approval regarding site use limits are adequate.

NINTH ASSIGNMENT OF ERROR: Mitigation Based on a Revised Traffic Study and Conditions of Approval 4, 5 and 6.

- a. The LUBA decision required a revised Traffic Impact Study by Lancaster Engineering to compare the most traffic generative uses in the RRFF-5 and RI zones in order to determine whether or not mitigation efforts need to be increased.
- b. As the County previously found, the increased traffic under the RI zone would significantly affect two transportation facilities.
- c. Comparing the most traffic generative uses in the RRFF-5 and RI zones in the revised transportation report, the mitigation efforts set forth in Conditions 4, 5, and 6 are sufficient to comply with the Transportation Planning Rule.
- d. The County finds that mitigation set forth in Conditions 4, 5, and 6 need to be completed within 1 year of this Decision.

TENTH ASSIGNMENT OF ERROR: Compliance with CCZO 1202.01(E).

- a. CCZO 1202.01(E) requires that the safety of the transportation system is adequate to serve the level of development anticipated by the zone change.
- b. The revised Traffic Study prepared by Lancaster Engineering addresses safety concerns from the relocation of the driveway access for the site. The Board finds that the standard in CCZO 1202.01(E) is satisfied.



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July 27, 2016

Hand Delivered

4371-005

Mike McCallister
Planning Director
Planning and Zoning Division, Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045
MikeM@clackamas.us

Re: *Remand Statement – LUBA No. 2014-069; Hal's Construction Rezone*

Dear Mr. McCallister and the Clackamas County Board of Commissioners:

As you know, our office represents Bruce D. Goldson, Intervenor-Respondent and Hal's Construction, Inc. in the above referenced matter. This letter is a remand statement, which frames the issues remanded by the Land Use Board of Appeals ("LUBA") and the means by which the remands can be complied with. We suggest that these arguments be incorporated in your Staff Report and Recommendation to the Commission where necessary. Please note that attached hereto is an updated Transportation Impacts Report with subsequent analysis by Lancaster Engineering as directed by LUBA. The attached report is the only new evidence to be added to the voluminous record for this matter.

There were 10 total assignments of errors raised in the 2014 appeal before LUBA. Assignments four, five, and six were denied, and the remaining seven were sustained. I will not address the assignments of error LUBA denied in the previous appeal. As further background, after the LUBA decision there was a subsequent appeal to the Oregon Court of Appeals as well as a legislative change which directly addressed the outcome of this matter. As discussed below, some of

the Assignments of Error can be effectively addressed with updated findings and others can be addressed by complying with new rules pursuant to House Bill 3214 and amendments to ORS 197.732 which modified Oregon's Land Use Goal exception process.

First Assignment of Error

The County must establish the uses which justified the 1980 exception, and show they are the same as the existing land uses, otherwise it must create a reasons exception for Goals 3 and 4.

The County originally determined that exceptions to Goals 3 and 4 were unnecessary based on the 1980 exception that designated the property Rural and zoned RRFF-5. The 1980 exception, however, took exception to Goals 3 and 4 only for the uses justified in the exception. On appeal before LUBA the Board, in a decision where all three Board members wrote separately, found that an exception was necessary nonetheless. See *Ooten v. Clackamas County*, OR LUBA 2014-069 at 5-11 (with concurrence by Bassham at p. 27 and Holstun at p. 33).

Although three members of the Board interpreted OAR 660-004-0018 differently, no new reasons exception is needed if the proposed plan and zone designation satisfies OAR 660-004-0028(2)(a) and (2)(b) because House Bill 3214 amended ORS 197.732 in part as follows:

(8) A local government is not required to take an exception to a goal related to agricultural use or forest use to change the zoning of a lot or parcel that has never been zoned, pursuant to the goal and comprehensive plan designation, for the protection of agricultural use or forest use.

It is clear from this record that the subject area was never zoned for agricultural or forest use because Clackamas County zoned the subject property RRFF-5 and designated the property Rural in 1980.

Revising the findings to reflect these facts will adequately address LUBA's First Assignment of Error.

Second Assignment of Error

Where the County's decision redesignates the new driveway, it must explain how that portion of the property has a historical commitment to industrial uses.

The majority of the Second Assignment of Error was denied. The sole part which was remanded was due to the inclusion of the driveway in the redesignated area. See *Ooten v. Clackamas County, OR* LUBA 2014-069, at 11-14. Based on a comprehensive review of Oregon land use and real estate law, we believe it is not necessary to rezone the *area* under the relocated driveway on the northern lot in the present case where the relocation of the driveway is required by the Oregon Department of Transportation, lies on the Applicant's own property and is used for ingress and egress for varied uses in the RI and RRFF-5 zones. The Second Assignment of Error will be addressed thereby.

Third Assignment of Error

- a. **The County should revise its findings to show the consistency of the proposed RI designation with the rural character of the area, including the adjacent RRFF-5 zoned properties.**

According to LUBA, the original findings did not adequately address the issues regarding the inconsistency of the RI designation with the rural character of the area. The findings must focus particularly on the adjacent RRFF-5 zoned properties. The remand provided that because some historic types of use are part of the area's rural character, it does not mean that the existing industrial uses allowed under the RI are as a result consistent with the rural character of the area. Revised findings which show the existing industrial uses are consistent with the character of the area will address this Assignment of Error.

- b. **The County should revise its findings to show that the RI designation is “not labor intensive”**

The County will need to revise its findings to show that Hal’s Construction *onsite* work is not labor intensive. This record is replete with facts that show that Hal’s Construction is a paving contractor and that the company’s work occurs offsite at various locations where paving preparation and asphalt paving materials are installed at sites all over the region by up to 40 employees. The onsite labor consisting of clerical and equipment servicing is support only and ancillary to the offsite paving construction work. Revised findings including this information from the record together with reference to the use restriction imposed will be sufficient to satisfy this Assignment of Error.

Seventh Assignment of Error

The County should allow adequate opportunity to respond to the driveway location attached as Exhibit B to the Order.

The driveway location which is set out in Exhibit B to the Order was included for the first time as an attachment to Clackamas County’s final decision. Exhibit B is a depiction of compliance with the Oregon Department of Transportation requirement to relocate the access for the site. As such, the County should permit adequate opportunity to respond to Exhibit B prior to the remand hearing.

Eighth Assignment of Error

The County should revise Condition 1 of the Order to clarify site use limits.

The County must determine which uses specifically are permitted so that they comply with the decision to limited uses to those that currently exist on the property. CCZO Table 604-1 is more expansive than those uses currently existing on the property. The county should revise Condition 1 showing the limitation to those currently existing uses for consistency and compliance with the LUBA order to address the Eighth Assignment of Error.

Ninth Assignment of Error

- a. **The County must determine mitigation based on a revised Traffic Impact Study which compares the most traffic generative uses in the RRF-5 and RI zones.**

As directed by LUBA (See *Ooten v. Clackamas County*, OR LUBA 2014-069 at 25) the County should to review a Traffic Impact Study which compares “the most traffic-generative use reasonably allowed in the RRF-5 zone with the most traffic-generative use reasonably allowed in the RI zone.”

The County does not necessarily need to increase the mitigation efforts (although they will need to be revised as explained in subpart b, below); however, the attached, revised Traffic Impact Study prepared by Lancaster Engineering was prepared as directed by LUBA. See *Ooten v. Clackamas County*, OR LUBA 2014-069, at 25.

- b. **Conditions 4, 5, and 6 must be revised so that mitigation triggers are certain to occur.**

The 4th, 5th, and 6th conditions are there to mitigate the effects of the plan amendment. The conditions do not specifically explain the circumstances which would trigger the new traffic study and improvements. The County is permitted to include conditions with timing elements; however, the ones currently in place may never be triggered if there is never a future proposed phase of development. In order to correct this, the County should revise these conditions to include specific timing elements which trigger the mitigation efforts. These revisions, in conjunction with integrating the revised Traffic Impact Report into the conditions of approval, will properly address the Ninth Assignment of Error.

Tenth Assignment of Error

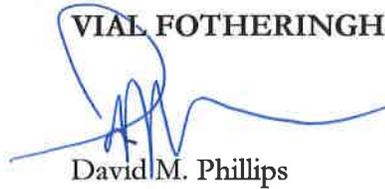
The County should expand on why proposal for new driveway to the north satisfies CCZO 1202.01(E)

The County may not have adequately make findings as to whether a new driveway to the north complies with CCZO 1202.01(E). The record contains evidence which addresses whether a new

access point at the north end of the property could cause safety issues for properties to the north and across the highway. The findings should be revised to show that the new location for the access point on the north of the driveway complies with CCZO 1202.01.

Very truly yours,

VIAL FOTHERINGHAM LLP



David M. Phillips

DMP\NAB

Enclosure (Lancaster Engineering revised report)

cc : Client

**20646 AND 20666 S. HIGHWAY 213 ZONE CHANGE
TRAFFIC IMPACT STUDY**

CLACKAMAS COUNTY, OREGON

DATE:
July 21, 2016

PREPARED FOR:
Brian King

PREPARED BY:
Lancaster Engineering



EXPIRES: 12/31/17



321 SW 4th Ave., Suite 400 | Portland, OR 97204 | 503.248.0313 | lancasterengineering.com

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EXECUTIVE SUMMARY

1. A zone change from RRFF-5 (Residential Farm/Forest 5 Acres) to RI (Rural Industrial) is proposed for properties with a total area of 8.15 acres along the east side of S. Highway 213 south of S. Henrici Road in Clackamas County.
2. Under the proposed zoning, development of the subject property could result in an increase of 174 net new site trips during the morning peak hour and 213 trips during the evening peak hour as compared to the permitted uses under the existing RRFF-5 zoning.
3. Based on the most recent five years of crash data, the study area intersections are currently operating acceptably with respect to safety. No safety mitigations are recommended.
4. Upon any future development resulting in an increase in site trips on the subject property, the existing site access driveways should be closed and a new driveway should be constructed at a location providing a minimum of 610 feet of intersection sight distance in each direction. Additionally, a southbound left-turn lane should be constructed on Highway 213 to serve traffic entering the site.
5. In conjunction with any future development proposals on the subject property a proportionate share of project costs for the necessary improvements at Highway 213 and Henrici Road should be collected for the development.
6. If at any point the site trip generation associated with a proposed development on the subject property is projected to exceed 154 total trips during the evening peak hour, a westbound left-turn lane should be constructed to serve the site.
7. If the trip generation for the subject property is projected to exceed 186 total trips during the evening peak hour, the highway should be reconstructed to accommodate two-stage left turns at the site access.
8. Conditions of approval requiring the above improvements at the identified times are sufficient to meet the requirements of Oregon's Transportation Planning Rule. No further mitigations are recommended in conjunction with the proposed zone change.

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PROJECT DESCRIPTION

INTRODUCTION

This updated traffic impact study is written to provide information related to the proposed zone change at 20646 and 20666 S Highway 213 in Clackamas County, Oregon. In order to avoid potential confusion associated with updating the original TIS as well as the two supplementary analysis addendum letters previously prepared for the project, this revised study incorporates information and updates that were previously provided in both addendum letters dated February 3, 2014 and February 25, 2014. Additionally, the study was updated to include requested revisions to the “background” conditions analysis, which is now based on traffic volumes associated with allowed uses under the current zoning rather than assuming that the current non-conforming site uses will continue.

The project site is currently zoned Rural Residential Farm/Forest 5 Acres (RRFF-5), and is proposed to be rezoned to Rural Industrial District (RI). The subject property includes tax lots 1000, 1001, 1100 and 1101, with a total area of 8.15 acres.

The purpose of this study is to assess the traffic impact of the proposed relocation on the nearby street system and to recommend any required mitigative measures. The analysis will include level of service calculations, queuing analysis and an evaluation of left-turn lane warrants.

In accordance with Oregon’s Transportation Planning Rule, the analysis will examine the “reasonable worst-case” development levels under the existing and proposed zoning to determine whether the proposed zone change will require mitigations or a trip cap in order to proceed.

Detailed information on traffic counts, trip generation calculations, and level of service calculations is included in the appendix to this report.

LOCATION DESCRIPTION

The subject property includes tax lots 1000, 1001, 1002, 1100 and 1101, with a total area of 8.15 acres. Lot 1000 (3.71 acres) and 1100 (4.17 acres) form the majority of the site. The site takes access via two driveways on Highway 213, immediately north of S Quail Crest Lane. Under existing conditions, the site is home to Hal’s Construction and two single-family homes. A parking area in the rear of the site is more than large enough to accommodate the trucks, trailers and equipment associated with Hal’s Construction. There is also a separate area for employee and visitor parking.

Clackamas County and the Oregon Department of Transportation have expressed concerns about the operation of the nearby intersection of S. Highway 213 at Henrici Road. Accordingly, traffic count data was collected during the morning and evening peak hours for this intersection to facilitate preparation of a detailed operational analysis. The analysis was prepared for existing conditions, year 2035 background conditions and year 2035 background plus zone change conditions.

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S. Highway 213 (S. Molalla Avenue) operates under the jurisdiction of the Oregon Department of Transportation and is classified as a District Highway. It generally has a two-lane cross-section with a posted speed limit of 45 mph in the site vicinity. The roadway widens in the vicinity of S. Henrici Road to provide dedicated turn lanes.

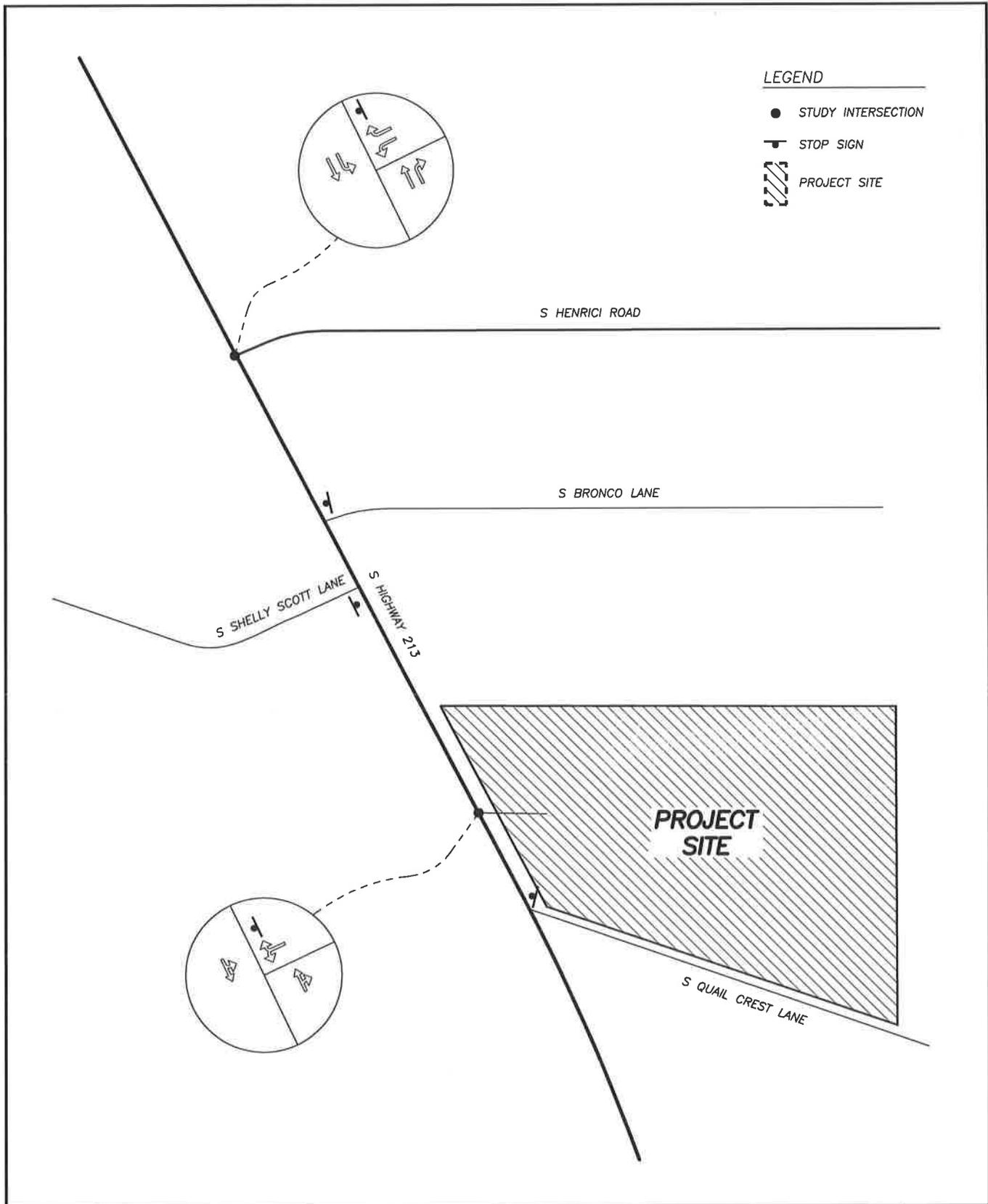
S. Henrici Road operates under the jurisdiction of Clackamas County. It is classified as a Minor Arterial with a posted speed limit of 40 mph in the vicinity of Highway 213. It has a two-lane cross section with centerline and fog line striping.

The intersection of S. Highway 213 at S. Henrici Road is a "T" intersection controlled by a stop sign on the westbound Henrici Road approach. Through traffic travelling along Highway 213 is free-flowing. The westbound approach has a left-turn lane and a right-turn lane. The northbound approach has an exclusive through lane and a dedicated right turn lane. The southbound approach has a left-turn lane and an exclusive through lane. A striped median is in place in the center of Highway 213 immediately south of Henrici Road, but the intersection is not currently designed to accommodate two-stage left turn movements from Henrici westbound to Highway 213 southbound.

The subject property is located on the east side of S. Highway 213 approximately 1,000 feet south of S. Henrici Road.

Manual turning movement counts were conducted at the intersection of S. Highway 213 and S. Henrici Road during August 2013 from 7:00 to 9:00 AM and from 4:00 to 6:00 PM. The peak hours occurred from 7:00 to 8:00 AM and from 4:30 to 5:30 PM. Detailed traffic count data is included in the appendix to this report.

Figure 1 on page six shows the project study area and the location of the site. Figure 2 on page seven shows the existing traffic volumes at the study area intersection.



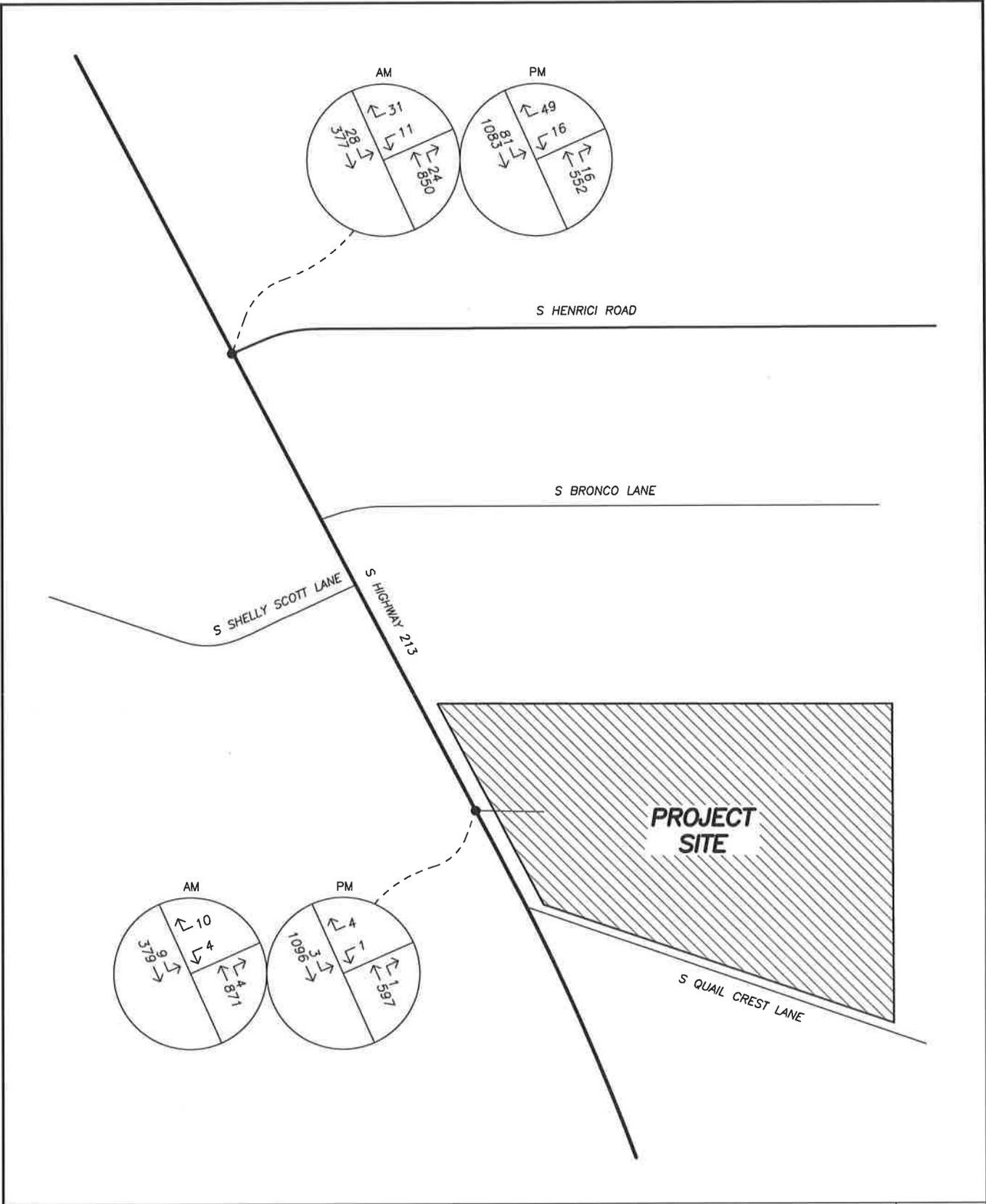
- LEGEND**
- STUDY INTERSECTION
 - ⊥ STOP SIGN
 - ▨ PROJECT SITE



VICINITY MAP



FIGURE
1
PAGE
6



TRAFFIC VOLUMES
Existing Conditions
AM and PM Peak Hours



FIGURE
2
PAGE
7

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TRIP GENERATION & DISTRIBUTION

TRIP GENERATION

To estimate the number of trips that could be generated following approval of the proposed zone change, the uses allowed by Clackamas County for the RI (Rural Industrial) zoning were examined. Potential site uses included various light industrial uses typical of industrial-park developments as well as automobile, truck and motorcycle repair, veterinary hospitals and indoor recreational facilities. The zoning specifically allows “Storage, sales, repair and servicing of equipment and materials associated with farm and forest uses, logging, road maintenance, mineral extraction, construction, or similar rural activities”, which describes the existing historical non-conforming use of the property.

Many of the allowed uses described for the RI zoning could not reasonably utilize a significant portion of the 8.15-acre site. For instance, trip data for animal hospital/veterinary clinic land uses ranges from 10,000 to 15,000 square feet, which would result in minimal utilization of the site. Similarly, automobile care centers range from 10,000 to 40,000 square feet, which would represent only three to eleven percent of the total site area. Accordingly, these uses alone were determined not to represent a “reasonable worst case” development scenario for future development under the proposed zoning. However, a mix of such uses could potentially be implemented within the proposed zoning. Accordingly, the “reasonable worst case” development scenario analyzed consists of a mix of several uses.

Considering the mix of allowed uses within the site, the maximum possible development level was determined to consist of a 15,000 square foot veterinary office, a 40,000 square foot auto care center, 2.64 acres of industrial park, and 5,000 square feet of accessory retail sales (analyzed using shopping center trip rates). Based on this mix of uses, the subject property could generate up to 176 trips during the morning peak hour and 215 trips during the evening peak hour.

Under the existing RRF-5 zoning, the two parcels are each permitted to accommodate one single-family home. Based on data from the ITE Trip Generation Manual, Ninth Edition, the two homes would be projected to generate two trips during the morning peak hour, two trips during the evening peak hour, and 20 daily trips.

Since the retail uses within the site would be ancillary to the primary uses, it is likely that a very high portion of trips to and from the retail uses would be shared trips visiting other portions of the site. However, to maintain a conservative analysis, no internal trip reductions were taken. A 34 percent pass-by trip reduction was taken for the retail trips. No reductions were taken for transit use.

A summary of the trip generation calculations for the proposed zone change is provided in the table on the following page. Detailed trip generation calculation worksheets for the uses analyzed under the existing and proposed zoning are provided in the attached technical appendix.

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TRIP GENERATION SUMMARY
20646 and 20666 S. Highway 213 Zone Change

	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
Auto Care Center (40,000 sf)	59	31	90	52	56	108
Veterinary Clinic (15,000 sf)	44	17	61	28	43	71
Shopping Center (5,000 sf)	3	2	5	9	10	19
-Pass by trips (34%)	-1	-1	-2	-3	-3	-6
Industrial Park (2.64 acres)	18	4	22	5	18	23
Total "RI" Zoning Trips	123	53	176	91	124	215

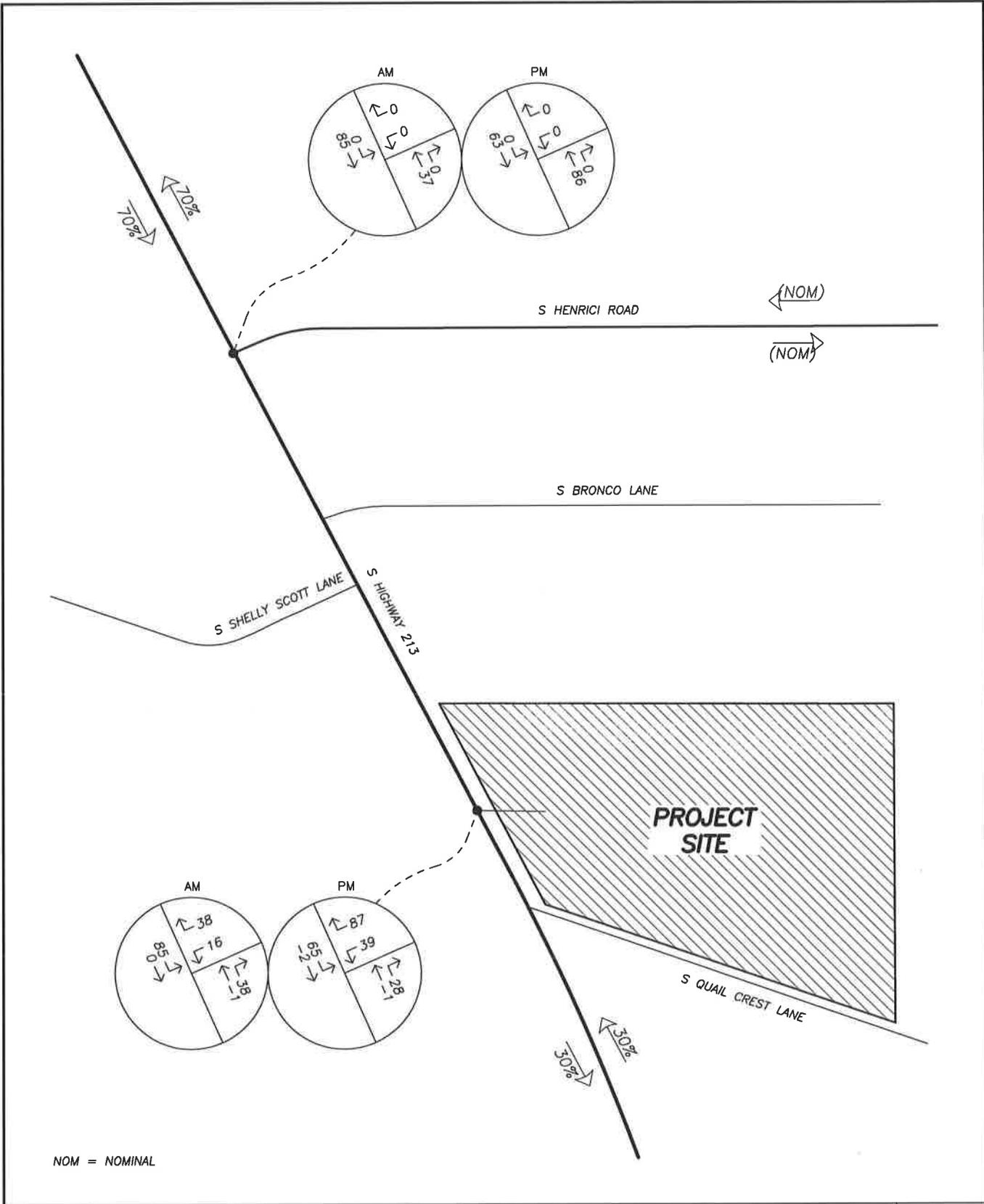
	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
2 Homes (Existing "RRFF-5" Zoning)	1	1	2	1	1	2

Based on the trip generation comparison between the existing and proposed zoning, the proposed zone change could result in an increase of up to 174 net new site trips during the morning peak hour and 213 additional trips during the evening peak hour, as compared to the existing zoning.

TRIP DISTRIBUTION

The distribution of site trips from future development within the subject property was estimated based on existing travel patterns in the site vicinity as well as the locations of nearby population centers and major transportation routes from which site trips would be expected to originate. Overall, it was assumed that 70 percent of future site trips will travel to and from the north on Highway 213, while the remaining 30 percent of site trips will travel to and from the south on Highway 213.

Figure 3 on page 10 shows the trip distribution and assignment for the projected increase in traffic associated with the proposed zone change.



le **SITE TRIP DISTRIBUTION AND ASSIGNMENT**
Net Increase in Site Trips Under RI Zoning
AM and PM Peak Hours


 no scale

FIGURE 3
PAGE 10

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SAFETY ANALYSIS

SIGHT DISTANCE

Sight distance measurements were made at the existing Hal's Construction site access intersections along Highway 213. Required intersection sight distance was calculated from the equations given in *A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS*, published in 2010 by the American Association of State Highway and Transportation Officials (AASHTO). The measurements are based on a driver's eye height of 3.5 feet above the roadway and an object height of 3.5 feet, with the driver's eye 15 feet behind the edge of the near side travel lane. Based upon the measured 85th percentile speed of speed of 54 mph on Highway 213 a design speed of 55 mph was selected and the intersection sight distance required is 610 feet in each direction.

Intersection sight distance to the north is very favorable, with available sight distances well in excess of 1,000 feet from both access locations. Sight distance to the south is limited by a crest vertical curve south of the subject property. Intersection sight distance was measured to be 455 feet to the south from the southerly site access driveway and 578 feet to the south from the northerly site access driveway. Neither of the existing access driveways currently has adequate sight distance for the identified design speed. If the south driveway is closed and the north driveway is moved approximately 100 feet to the north, it is anticipated that adequate sight distance will be available. This potential access location is approximately 95 feet south of the site's north property line.

Based on the sight distance analysis, it is recommended that upon future development within the subject property the existing site access driveways be closed, and a new driveway be constructed that provides a minimum of 610 feet of intersection sight distance in each direction from a position 15 feet behind the edge of the traveled way. No other sight distance mitigations are recommended.

LEFT-TURN LANE WARRANTS

To determine whether a southbound left-turn lane on S Highway 213 at the subject property is necessary or may become necessary with full development under the proposed RI zoning, a left-turn lane warrant analysis was conducted. A left-turn lane, or left-turn "refuge" is primarily a safety consideration for the major street, removing left-turning vehicles from the through traffic stream.

The left-turn lane warrant analysis methodology used was the method described in the Oregon Department of Transportation's Analysis Procedures Manual, which is based on curves developed by the Texas Transportation Institute. This methodology determines the need for a left-turn lane based upon the volume of traffic on the major street, the number of lanes on the major street, travel speeds along the major street and the volume of left-turning traffic. A speed of 45 mph was used for the analysis since the posted speed on S Highway 213 is 45 mph.

The warrant analysis shows that a southbound left-turn lane is not currently needed since the site serves fewer than 10 southbound left-turning vehicles under existing conditions. However following

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any site expansion that will increase the number of inbound trips during the morning peak hour it is anticipated that a southbound left-turn lane will become warranted. Additional left-turn lane warrant information is included in the attached appendix.

CRASH HISTORY

In order to determine whether there are existing safety deficiencies in the site vicinity, crash data was obtained from the Oregon Department of Transportation's Crash Analysis and Reporting Unit. The crash analysis was based on the most recent five years of crash data for the intersection of Highway 213 at Henrici Road and the segment of Highway 213 on which the site takes access. The crash data obtained was for the period between January 1, 2008 and December 31, 2012.

In addition to evaluation of the specific historical crashes at the study area locations, a crash rate was calculated for the intersection of Highway 213 at Henrici Road. Crash rates allow comparison of relative crash risks between intersections with widely differing traffic volumes by accounting for both the number of crashes occurring and the number of vehicles passing through the intersection. Crash rates are expressed as the number of crashes per million entering vehicles (CMEV). Crash rates in excess of 1.0 CMEV may be indicative of safety deficiencies and therefore require detailed analysis of the crash patterns at the intersection to determine whether there are contributing design factors.

During the five-year analysis period, there were a total of eleven reported crashes near the intersection of Highway 213 and Henrici Road. These included eight rear-end collisions, one turning movement collision, one sideswipe meeting collision and one animal-related collision. The crashes resulted in three incapacitating injuries, three non-incapacitating injuries and five reports of "possible injury/complaint of pain". The incapacitating injuries occurred during two separate crashes, both of which were rear-end collisions. The crash rate for the intersection was calculated to be 0.34 CMEV.

The segment of Highway 213 on which the site fronts had a total of six reported crashes during the five-year analysis period, four of which were also included in the crash data report for the intersection of Highway 213 at Henrici Road. The additional two crashes reported were rear-end collisions near the intersection of Highway 213 and Quail Crest Lane. There were no resulting injuries.

Based on the detailed crash analysis, no significant safety hazards were identified in the site vicinity, and no mitigation is recommended.

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OPERATIONAL ANALYSIS

BACKGROUND TRAFFIC

In order to determine whether the proposed development may have a significant effect on the surrounding transportation system as defined under Oregon's Transportation Planning Rule, a 20-year planning horizon analysis was prepared for the study area intersections.

Background year 2035 traffic volumes for the evening peak hour were taken from Clackamas County's Transportation System Plan. In order to determine the year 2035 morning peak hour traffic volumes, the existing year 2013 traffic volumes were adjusted to account for seasonal traffic variations as well as growth over time.

The seasonal adjustment was calculated to be 1.1 percent, following the procedure described in ODOT's Analysis Procedures Manual. This adjustment accounts for the fact that count data was collected in late August, while the annual peak traffic volumes are typically observed during the middle of August.

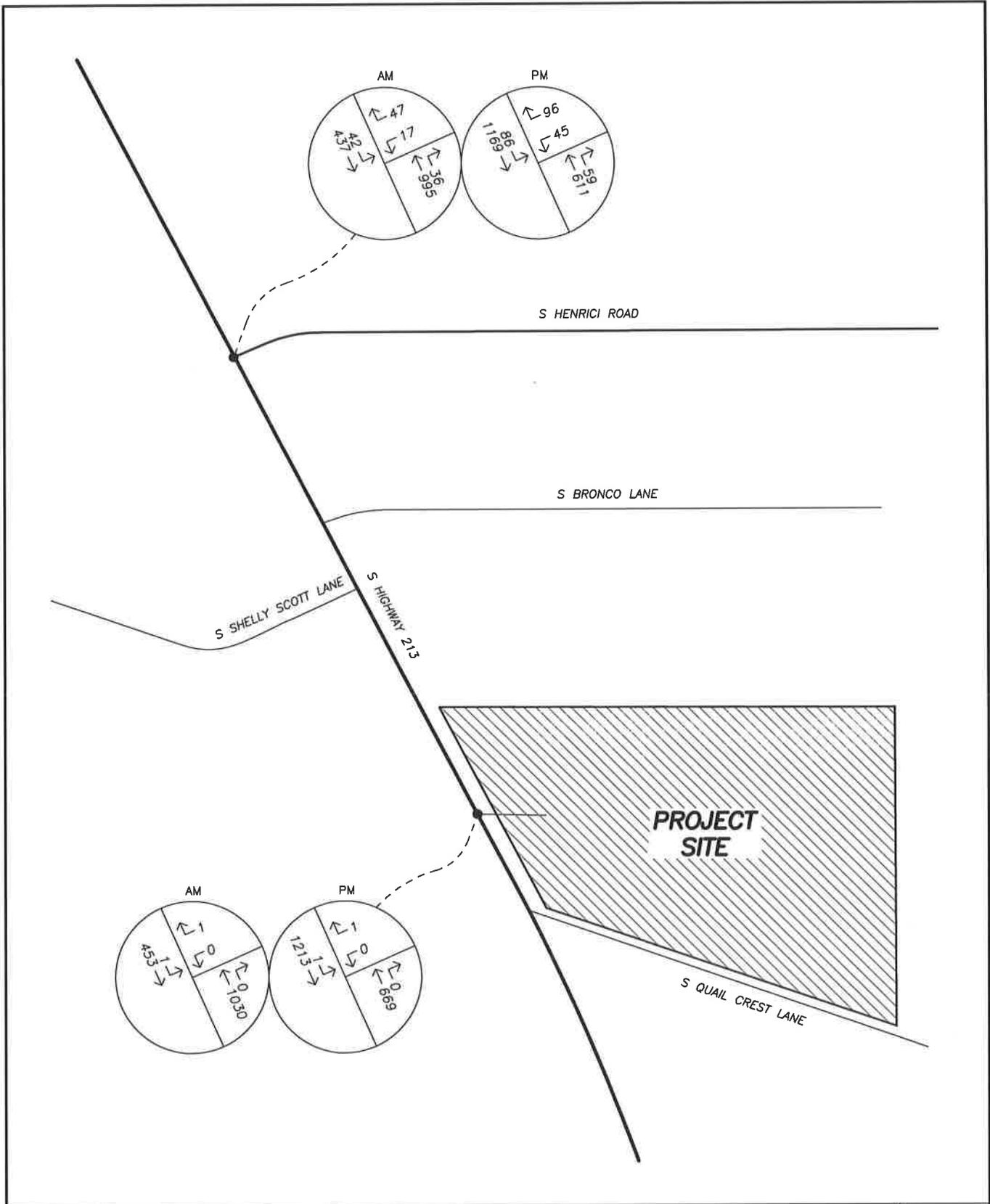
Growth in through traffic volumes along Highway 213 was projected based on data from ODOT's Future Volume Table. This table provides model data showing year 2010 and projected year 2031 traffic volumes for a location approximately 100 feet north of Henrici Road. Based on the data, a growth rate of 0.8 percent per year (linear) was calculated for this segment of Highway 213. In conjunction with the 1.1 percent seasonal adjustment this results in an increase of 18.9 percent over the existing year 2013 traffic volumes to account for anticipated growth through 2035.

Traffic volumes on Henrici Road may be subject to more variation than those on Highway 213. Accordingly, an exponential growth rate of 2.0 percent per year was applied to the existing Henrici Road traffic volumes. In conjunction with the 1.1 percent seasonal adjustment this results in an increase of 56 percent over the existing year 2013 traffic volumes.

No specific developments have been identified near the site that will contribute to the planning horizon traffic volumes at the study area intersections.

Since the outright permitted uses under the existing RRFF-5 zoning result in fewer site trips than are currently present, for the background conditions the turning movements at area intersections were adjusted to reflect a change to operation with just two single-family homes on the subject property.

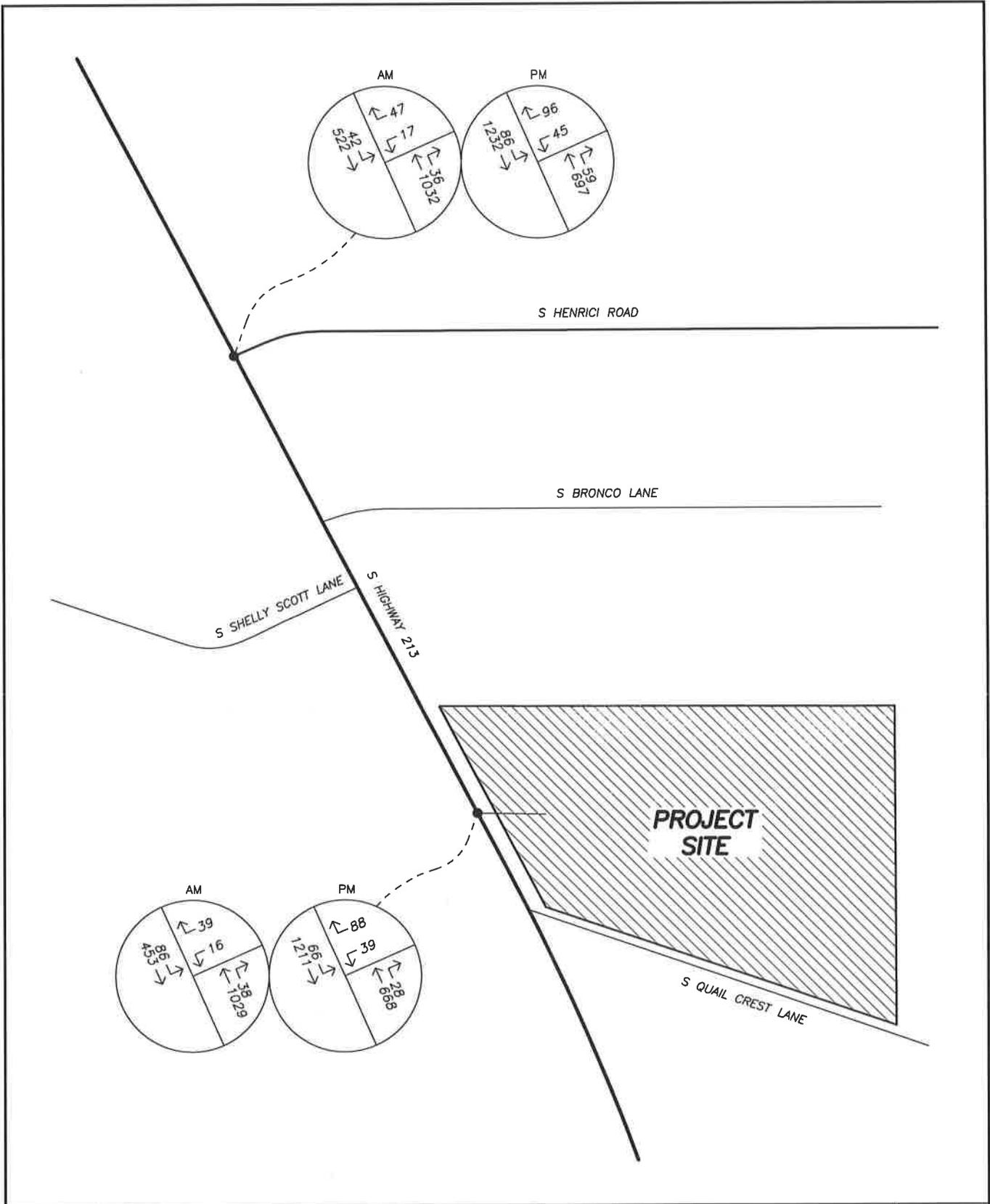
Figure 4 on page 14 shows the projected year 2035 background conditions volumes under the existing zoning. Figure 5 on page 15 shows the year 2035 traffic volumes with the addition of site trips from the "reasonable worst-case" development under the proposed zoning.



TRAFFIC VOLUMES
 Year 2035 Background Conditions
 AM and PM Peak Hours



FIGURE
 4
PAGE
 14



TRAFFIC VOLUMES
 Year 2035 Background Plus Zone Change
 AM and PM Peak Hours



FIGURE
5
PAGE
15

1e

CAPACITY ANALYSIS

To determine the level of service at the study intersections, a capacity analysis was conducted. The analysis was conducted according to the unsignalized intersection analysis methodologies in the *HIGHWAY CAPACITY MANUAL* (HCM) published by the Transportation Research Board.

Both study intersections operate under the jurisdiction of the Oregon Department of Transportation. The applicable minimum operational standards are established under the Oregon Highway Plan and are based on the volume-to-capacity ratio (v/c).

Based on the location of the study intersections in a developed rural area outside the urban growth boundary and the classification of Highway 213 as a District Highway, the maximum permissible v/c ratio is 0.75.

The intersection of Highway 213 at Henrici Road currently operates with a v/c ratio of 0.52 during the morning peak hour and 0.66 during the evening peak hour. Under year 2035 background traffic conditions, the intersection is projected to operate with a v/c ratio of 0.60 during the morning peak hour and 0.90 during the evening peak hour. With full development of the subject property under the proposed RI zoning, the intersection is projected to operate with a v/c ratio of 0.63 during the morning peak hour and 1.13 during the evening peak hour. If a center two-way left-turn lane is constructed within Highway 213 to allow two-stage left turns at the intersection, it is projected to operate with a v/c ratio of 0.63 during the morning peak hour and 0.75 during the evening peak hour with full development of the subject property under the proposed zoning.

The intersection of Highway 213 at the Hal's Construction site access currently operates with a v/c ratio of 0.54 during the morning peak hour and 0.37 during the evening peak hour. Under year 2035 background traffic conditions, the intersection is projected to operate with a v/c ratio of 0.64 during the morning peak hour and 0.41 during the evening peak hour assuming development with only two single-family homes. With full development of the subject property under the proposed RI zoning, the intersection is projected to operate with a v/c ratio of 0.66 during the morning peak hour and 1.47 during the evening peak hour. If a center two-way left-turn lane is constructed within Highway 213 to provide a southbound left-turn refuge for vehicles entering the site and allow for two-stage left turns from the driveway onto Highway 213 southbound, it is projected to operate with a v/c ratio of 0.66 during the morning peak hour and 0.60 during the evening peak hour with full development of the subject property under the proposed zoning.

The results of the capacity analysis, along with the Levels of Service (LOS) and delay are shown in the following table. Detailed capacity analysis results are included in the appendix to this report.

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LEVEL OF SERVICE SUMMARY

	AM Peak Hour			PM Peak Hour		
	<u>LOS</u>	<u>Delay</u>	<u>V/C</u>	<u>LOS</u>	<u>Delay</u>	<u>V/C</u>
<i>Highway 213 at Henrici Road</i>						
Existing 2013 Conditions	C	20	0.52	D	27	0.66
2035 Background	D	26	0.60	F	80	0.90
2035 Bkgd. Plus Zone Change	D	30	0.63	F	184	1.13
2035 Zone Change Mitigated*	C	21	0.63	C	22	0.75
<i>Highway 213 at Site Access</i>						
Existing 2013 Conditions	C	22	0.54	C	21	0.37
2035 Background	C	20	0.64	B	14	0.41
2035 Bkgd. Plus Zone Change	F	56	0.66	F	322	1.47
2035 Zone Change Mitigated*	D	27	0.66	D	35	0.60

LOS = Level of Service

Delay = Average Delay per Vehicle in Seconds

V/C = Volume-to-Capacity ratio

* With center two-way left-turn lane on Highway 213 for two-stage left turns.

As shown in the table above, the study intersections currently operate acceptably. Under year 2035 traffic conditions assuming only levels of development permissible under the current residential (RRFF-5) zoning of the subject property, the site access would be projected to operate acceptably; however the intersection of Highway 213 at Henrici Road would be projected to operate with a v/c ratio of 0.90, well above the target of 0.75. With the addition of maximum development under the proposed RI zoning, both study intersections would be projected to operate acceptably during the morning peak hour but with volumes exceeding capacity during the evening peak hour. If a center two-way left-turn lane is provided within Highway 213 to allow vehicles to make two-stage left turns at both study intersections, operation is projected to be acceptable either with or without the addition of site trips from maximum development under the proposed zoning. No other operational mitigations are necessary or recommended.

TRANSPORTATION PLANNING RULE ANALYSIS

The Transportation Planning Rule (TPR) is in place to ensure that the transportation system is capable of supporting possible increases in traffic intensity that could result from changes to adopted plans and land use regulations. The applicable portion of the TPR is quoted directly in *italics* below, with a response directly following.

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660-012-0060

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*
- (a) *Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
 - (b) *Change standards implementing a functional classification system; or*
 - (c) *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
 - (A) *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
 - (B) *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
 - (C) *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

In this case, subsections (a) and (b) do not apply, since the proposed zone change will not change the functional classification of any facilities, and will not change standards implementing the functional classification system. However subsection (c) does apply, since the performance of the study intersections is projected to be degraded by the proposed zone change and is not projected to meet the performance standards established by the Oregon Department of Transportation in the Oregon Highway Plan. Accordingly, the zone change could result in a significant effect as defined under Oregon's Transportation Planning Rule. Accordingly, a remedy for this potential significant effect will be required.

- (2) *If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehi-*

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cle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.*
- (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.*
- (c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.*
- (d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.*
- (e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.*

In this instance, the proposed remedy for the significant effect is to provide minor transportation improvements per subsection (d) above. Specifically, the necessary mitigation consists of constructing a center two-way left-turn lane within Highway 213 to allow two-stage left-turns to be made from the side-street approaches that would otherwise operate with volumes exceeding capacity. This mitigation is sufficient to meet the performance standards established under the Oregon Highway Plan and therefore is projected to fully mitigate the impact of the proposed zone change. Notably, this improvement will be required for the intersection of Highway 213 at Henrici Road to operate acceptably either with or without the addition of site trips from the proposed zone change.

2e

PROPOSED MITIGATION SUMMARY

Based on the operational and safety analysis for the proposed zone change on the Hal's Construction site, the following recommendations are made:

- 1) Upon any future development resulting in an increase in site trips, the existing site access driveways should be closed and a new driveway should be constructed at a location providing a minimum of 610 feet of intersection sight distance in each direction. Additionally, a southbound left-turn lane should be constructed to serve traffic entering the site.
- 2) Operation of the intersection of Highway 213 at Henrici Road is projected not to meet ODOT's performance standards either with or without the addition of site trips from the proposed zone change. With improvements to accommodate two-stage left turns, intersection operation is projected to be acceptable. Accordingly, it is recommended that in conjunction with any future development proposals on the subject property a proportionate share of project costs for the necessary improvements at Highway 213 and Henrici Road be collected for the development.
- 3) If at any point the site trip generation associated with a proposed development on the subject property is projected to exceed 154 total trips during the evening peak hour, a westbound left-turn lane should be constructed to serve the site.
- 4) If at any point the trip generation for the subject property is projected to exceed 186 total trips during the evening peak hour, the highway should be reconstructed to accommodate two-stage left turns at the site access.

1e

CONCLUSIONS

Based on the most recent five years of crash data, the study area intersections are currently operating acceptably with respect to safety. No safety mitigations are recommended.

Upon any future development resulting in an increase in site trips on the subject property, the existing site access driveways should be closed and a new driveway should be constructed at a location providing a minimum of 610 feet of intersection sight distance in each direction. Additionally, a southbound left-turn lane should be constructed on Highway 213 to serve traffic entering the site.

In conjunction with any future development proposals on the subject property a proportionate share of project costs for the necessary improvements at Highway 213 and Henrici Road should be collected for the development.

If at any point the site trip generation associated with a proposed development on the subject property is projected to exceed 154 total trips during the evening peak hour, a westbound left-turn lane should be constructed to serve the site.

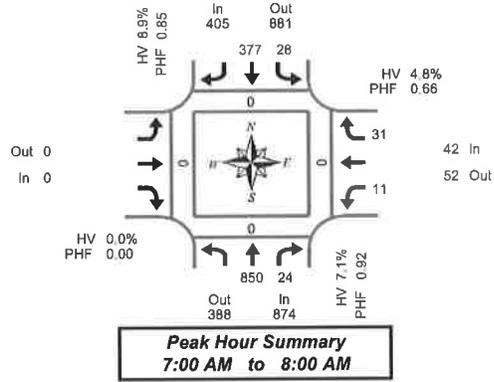
If the trip generation for the subject property is projected to exceed 186 total trips during the evening peak hour, the highway should be reconstructed to accommodate two-stage left turns at the site access.

Conditions of approval requiring the above improvements at the identified times are sufficient to meet the requirements of Oregon's Transportation Planning Rule. No further mitigations are recommended in conjunction with the proposed zone change.

1e

APPENDIX

Total Vehicle Summary



Hwy 213 & Henrici Rd

Tuesday, August 27, 2013
7:00 AM to 9:00 AM

5-Minute Interval Summary 7:00 AM to 9:00 AM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd		Westbound Henrici Rd			Interval Total	Pedestrians Crosswalk			
	T	R	Bikes	L	T	Bikes		Bikes	L	R	Bikes		North	South	East	West
7:00 AM	76	3	0	0	27	0		0	0	4	0	110	0	0	0	0
7:05 AM	89	1	1	2	22	0		0	2	4	0	120	0	0	0	0
7:10 AM	66	2	0	2	33	0		0	0	6	0	109	0	0	0	0
7:15 AM	71	0	0	1	31	0		0	0	2	0	105	0	0	0	0
7:20 AM	83	2	0	2	21	0		0	0	1	0	109	0	0	0	0
7:25 AM	67	1	0	3	33	0		0	0	3	0	107	0	0	0	0
7:30 AM	66	0	0	1	38	0		0	1	1	0	107	0	0	0	0
7:35 AM	69	0	0	2	33	0		0	1	0	0	105	0	0	0	0
7:40 AM	72	4	0	7	38	0		0	3	1	0	125	0	0	0	0
7:45 AM	67	3	0	1	33	0		0	1	4	0	109	0	0	0	0
7:50 AM	60	2	0	2	32	0		0	3	3	0	102	0	0	0	0
7:55 AM	64	6	0	5	36	0		0	0	2	0	113	0	0	0	0
8:00 AM	54	1	0	2	37	0		0	2	1	0	97	0	0	0	0
8:05 AM	43	0	0	3	22	0		0	0	1	0	69	0	0	0	0
8:10 AM	55	0	0	2	26	0		0	2	2	0	87	0	0	0	0
8:15 AM	49	0	0	6	32	0		0	1	5	0	93	0	0	0	0
8:20 AM	58	2	0	5	22	0		0	3	4	0	94	0	0	0	0
8:25 AM	50	1	0	3	21	0		0	0	4	0	79	0	0	0	0
8:30 AM	59	1	0	5	38	0		0	0	1	0	104	0	0	0	0
8:35 AM	49	0	0	2	30	0		0	1	6	0	88	0	0	0	0
8:40 AM	57	0	0	2	23	0		0	2	3	0	87	0	0	0	0
8:45 AM	66	1	0	3	35	0		0	0	7	0	112	0	0	0	0
8:50 AM	54	0	0	4	30	0		0	3	6	0	97	0	0	0	0
8:55 AM	52	1	0	4	43	0		0	1	1	0	102	0	0	0	0
Total Survey	1,496	31	1	69	736	0		0	26	72	0	2,430	0	0	0	0

15-Minute Interval Summary 7:00 AM to 9:00 AM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd		Westbound Henrici Rd			Interval Total	Pedestrians Crosswalk			
	T	R	Bikes	L	T	Bikes		Bikes	L	R	Bikes		North	South	East	West
7:00 AM	231	6	1	4	82	0		0	2	14	0	339	0	0	0	0
7:15 AM	221	3	0	6	85	0		0	0	6	0	321	0	0	0	0
7:30 AM	207	4	0	10	109	0		0	5	2	0	337	0	0	0	0
7:45 AM	191	11	0	8	101	0		0	4	9	0	324	0	0	0	0
8:00 AM	152	1	0	7	85	0		0	4	4	0	253	0	0	0	0
8:15 AM	157	3	0	14	75	0		0	4	13	0	266	0	0	0	0
8:30 AM	165	1	0	9	91	0		0	3	10	0	279	0	0	0	0
8:45 AM	172	2	0	11	108	0		0	4	14	0	311	0	0	0	0
Total Survey	1,496	31	1	69	736	0		0	26	72	0	2,430	0	0	0	0

Peak Hour Summary 7:00 AM to 8:00 AM

By Approach	Northbound Hwy 213				Southbound Hwy 213				Eastbound Henrici Rd				Westbound Henrici Rd				Total	Pedestrians Crosswalk			
	In	Out	Total	Bikes	In	Out	Total	Bikes	In	Out	Total	Bikes	In	Out	Total	Bikes		North	South	East	West
Volume	874	388	1,262	1	405	881	1,286	0	0	0	0	0	42	52	94	0	1,321	0	0	0	0
%HV	7.1%				8.9%				0.0%				4.8%				7.6%				
PHF	0.92				0.85				0.00				0.66				0.97				

By Movement	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd		Westbound Henrici Rd			Total	
	T	R	Total	L	T	Total		Total	L	R	Total		
Volume	850	24	874	28	377	405		0	11	31	42	1,321	
%HV	NA	6.9%	12.5%	7.1%	0.0%	9.5%	NA	0.0%	0.0%	NA	6.5%	4.8%	7.6%
PHF	0.92	0.55	0.92	0.70	0.86	0.85		0.00	0.39	0.55	0.66	0.97	

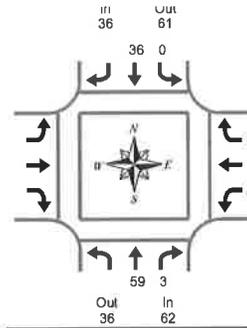
Rolling Hour Summary 7:00 AM to 9:00 AM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd		Westbound Henrici Rd			Interval Total	Pedestrians Crosswalk			
	T	R	Bikes	L	T	Bikes		Bikes	L	R	Bikes		North	South	East	West
7:00 AM	850	24	1	28	377	0		0	11	31	0	1,321	0	0	0	0
7:15 AM	771	19	0	31	380	0		0	13	21	0	1,235	0	0	0	0
7:30 AM	707	19	0	39	370	0		0	17	28	0	1,180	0	0	0	0
7:45 AM	665	16	0	38	352	0		0	15	36	0	1,122	0	0	0	0
8:00 AM	648	7	0	41	359	0		0	15	41	0	1,109	0	0	0	0

Heavy Vehicle Summary



Clay Carney
(503) 833-2740



Hwy 213 & Henrici Rd

Tuesday, August 27, 2013
7:00 AM to 9:00 AM

Heavy Vehicle 5-Minute Interval Summary 7:00 AM to 9:00 AM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total
	T	R	Total	L	T	Total	Total	Total	L	R	Total		
7:00 AM	7	0	7	0	2	2	0	0	0	0	0	9	
7:05 AM	1	0	1	0	2	2	0	0	0	0	0	3	
7:10 AM	3	0	3	0	8	8	0	0	0	0	0	11	
7:15 AM	5	0	5	0	2	2	0	0	0	0	0	7	
7:20 AM	2	0	2	0	1	1	0	0	0	0	0	3	
7:25 AM	2	0	2	0	1	1	0	0	1	1	1	4	
7:30 AM	8	0	8	0	3	3	0	0	0	0	0	11	
7:35 AM	8	0	8	0	3	3	0	0	0	0	0	11	
7:40 AM	9	1	10	0	5	5	0	0	1	1	1	16	
7:45 AM	5	0	5	0	2	2	0	0	0	0	0	7	
7:50 AM	6	1	7	0	4	4	0	0	0	0	0	11	
7:55 AM	3	1	4	0	3	3	0	0	0	0	0	7	
8:00 AM	3	0	3	0	4	4	0	0	0	0	0	7	
8:05 AM	2	0	2	0	2	2	0	0	1	1	1	5	
8:10 AM	4	0	4	0	3	3	0	0	0	0	0	7	
8:15 AM	2	0	2	1	1	2	0	0	0	0	0	4	
8:20 AM	1	0	1	1	0	1	0	1	0	1	1	3	
8:25 AM	2	0	2	0	2	2	0	0	0	0	0	4	
8:30 AM	2	0	2	0	1	1	0	0	0	0	0	3	
8:35 AM	2	0	2	0	2	2	0	0	1	1	1	5	
8:40 AM	1	0	1	0	5	5	0	0	0	0	0	6	
8:45 AM	2	0	2	0	3	3	0	0	0	0	0	5	
8:50 AM	5	0	5	0	4	4	0	0	2	2	2	11	
8:55 AM	4	0	4	0	3	3	0	0	0	0	0	7	
Total Survey	89	3	92	2	66	68	0	1	6	7	167		

Heavy Vehicle 15-Minute Interval Summary 7:00 AM to 9:00 AM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total
	T	R	Total	L	T	Total	Total	Total	L	R	Total		
7:00 AM	11	0	11	0	12	12	0	0	0	0	0	23	
7:15 AM	9	0	9	0	4	4	0	0	1	1	1	14	
7:30 AM	25	1	26	0	11	11	0	0	1	1	1	38	
7:45 AM	14	2	16	0	9	9	0	0	0	0	0	25	
8:00 AM	9	0	9	0	9	9	0	0	1	1	1	19	
8:15 AM	5	0	5	2	3	5	0	1	0	1	1	11	
8:30 AM	5	0	5	0	8	8	0	0	1	1	1	14	
8:45 AM	11	0	11	0	10	10	0	0	2	2	2	23	
Total Survey	89	3	92	2	66	68	0	1	6	7	167		

Heavy Vehicle Peak Hour Summary 7:00 AM to 8:00 AM

By Approach	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Total
	In	Out	Total	In	Out	Total	In	Out	Total	In	Out	Total	
Volume	62	36	98	36	61	97	0	0	0	2	3	5	100
PHF	0.60			0.75			0.00			0.50			0.66

By Movement	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Total
	T	R	Total	L	T	Total	Total	Total	L	R	Total		
Volume	59	3	62	0	36	36	0	0	0	2	2	2	100
PHF	0.59	0.38	0.60	0.00	0.75	0.75	0.00	0.00	0.50	0.50	0.50	0.66	

Heavy Vehicle Rolling Hour Summary 7:00 AM to 9:00 AM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total
	T	R	Total	L	T	Total	Total	Total	L	R	Total		
7:00 AM	59	3	62	0	36	36	0	0	0	2	2	100	
7:15 AM	57	3	60	0	33	33	0	0	0	3	3	96	
7:30 AM	53	3	56	2	32	34	0	1	2	2	3	93	
7:45 AM	33	2	35	2	29	31	0	1	1	2	3	69	
8:00 AM	30	0	30	2	30	32	0	1	4	4	5	67	

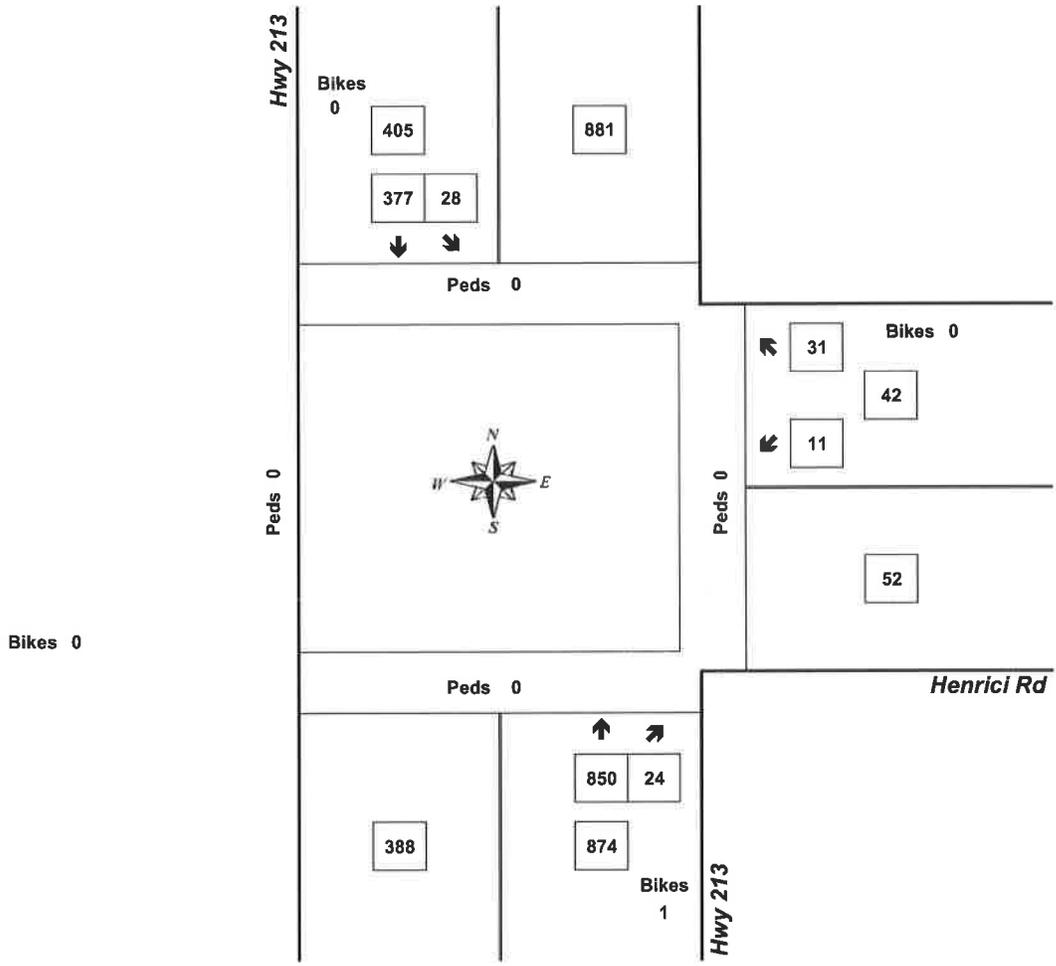
Peak Hour Summary



Clay Carney
(503) 833-2740

Hwy 213 & Henrici Rd

7:00 AM to 8:00 AM
Tuesday, August 27, 2013



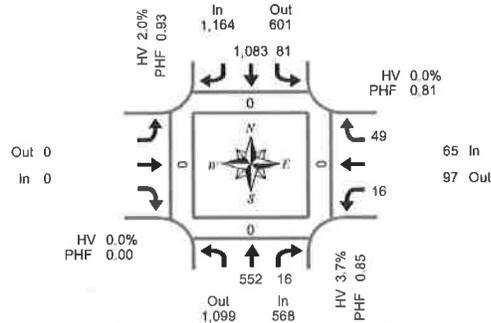
Approach	PHF	HV%	Volume
EB	0.00	0.0%	0
WB	0.66	4.8%	42
NB	0.92	7.1%	874
SB	0.85	8.9%	405
Intersection	0.97	7.6%	1,321

Count Period: 7:00 AM to 9:00 AM

Total Vehicle Summary



Clay Carney
(503) 833-2740



Peak Hour Summary
4:30 PM to 5:30 PM

Hwy 213 & Henrici Rd

Tuesday, August 27, 2013

4:00 PM to 6:00 PM

5-Minute Interval Summary

4:00 PM to 6:00 PM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total	Pedestrians Crosswalk			
	T	R	Bikes	L	T	Bikes	Bikes	L	R	Bikes	North	South		East	West		
4:00 PM	72	0	0	8	70	0	0	0	4	0	155	0	0	0	0		
4:05 PM	47	0	0	5	98	0	0	0	4	0	154	0	0	0	0		
4:10 PM	42	1	0	4	94	0	0	3	3	0	147	0	0	0	0		
4:15 PM	51	0	0	7	52	0	0	1	2	0	113	0	0	0	0		
4:20 PM	51	2	0	3	70	0	0	1	5	0	132	0	0	0	0		
4:25 PM	44	0	0	7	90	0	0	0	7	0	148	0	0	0	0		
4:30 PM	59	1	1	5	100	0	0	0	4	0	169	0	0	0	0		
4:35 PM	43	1	0	7	87	0	0	1	4	0	143	0	0	0	0		
4:40 PM	62	1	0	5	82	0	0	0	8	0	158	0	0	0	0		
4:45 PM	44	5	0	5	100	0	0	1	3	0	158	0	0	0	0		
4:50 PM	38	0	0	5	100	0	0	0	6	0	149	0	0	0	0		
4:55 PM	42	1	0	9	94	0	0	3	7	0	156	0	0	0	0		
5:00 PM	50	3	0	10	88	0	0	0	1	0	152	0	0	0	0		
5:05 PM	43	1	0	9	82	0	0	3	3	0	141	0	0	0	0		
5:10 PM	34	1	0	9	74	2	0	0	4	0	122	0	0	0	0		
5:15 PM	41	0	0	6	94	0	0	3	3	0	147	0	0	0	0		
5:20 PM	46	2	0	5	83	0	0	2	3	0	141	0	0	0	0		
5:25 PM	50	0	0	6	99	0	0	3	3	0	161	0	0	0	0		
5:30 PM	44	4	0	7	63	0	0	2	3	0	123	0	0	0	0		
5:35 PM	46	1	0	7	92	0	0	1	3	0	150	0	0	0	0		
5:40 PM	37	3	0	7	87	1	0	2	5	0	141	0	0	0	0		
5:45 PM	40	2	0	8	77	0	0	2	3	0	132	0	0	0	0		
5:50 PM	48	2	0	6	89	0	0	2	7	0	154	0	0	0	0		
5:55 PM	45	2	0	4	85	0	0	1	3	0	140	0	0	0	0		
Total Survey	1,119	34	1	154	2,050	3	0	31	98	0	3,486	0	0	0	0		

15-Minute Interval Summary

4:00 PM to 6:00 PM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total	Pedestrians Crosswalk			
	T	R	Bikes	L	T	Bikes	Bikes	L	R	Bikes	North	South		East	West		
4:00 PM	161	2	0	17	262	0	0	3	11	0	456	0	0	0	0		
4:15 PM	146	2	0	17	212	0	0	2	14	0	393	0	0	0	0		
4:30 PM	164	3	1	17	269	0	0	1	16	0	470	0	0	0	0		
4:45 PM	124	6	0	19	294	0	0	4	16	0	463	0	0	0	0		
5:00 PM	127	5	0	28	244	2	0	3	8	0	415	0	0	0	0		
5:15 PM	137	2	0	17	276	0	0	8	9	0	449	0	0	0	0		
5:30 PM	127	8	0	21	242	1	0	5	11	0	414	0	0	0	0		
5:45 PM	133	6	0	18	251	0	0	5	13	0	426	0	0	0	0		
Total Survey	1,119	34	1	154	2,050	3	0	31	98	0	3,486	0	0	0	0		

Peak Hour Summary

4:30 PM to 5:30 PM

By Approach	Northbound Hwy 213				Southbound Hwy 213				Eastbound Henrici Rd				Westbound Henrici Rd				Total	Pedestrians Crosswalk			
	In	Out	Total	Bikes	In	Out	Total	Bikes	In	Out	Total	Bikes	In	Out	Total	Bikes		North	South	East	West
Volume	568	1,099	1,667	1	1,164	601	1,765	2	0	0	0	0	65	97	162	0	1,797	0	0	0	0
%HV	3.7%				2.0%				0.0%				0.0%				2.4%				
PHF	0.85				0.93				0.00				0.81				0.96				

By Movement	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Total
	T	R	Total	L	T	Total	Total	L	R	Total			
Volume	552	16	568	81	1,083	1,164	0	16	49	65	1,797		
%HV	NA	3.3%	18.8%	3.7%	0.0%	2.1%	NA	2.0%	NA	NA	NA	2.4%	
PHF	0.84	0.57	0.85	0.72	0.92	0.93	0.00	0.50	0.72	0.81	0.96		

Rolling Hour Summary

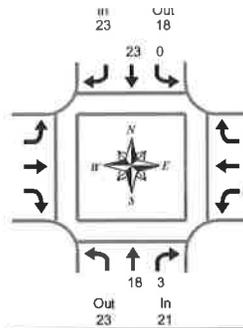
4:00 PM to 6:00 PM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total	Pedestrians Crosswalk			
	T	R	Bikes	L	T	Bikes	Bikes	L	R	Bikes	North	South		East	West		
4:00 PM	595	13	1	70	1,037	0	0	10	57	0	1,782	0	0	0	0		
4:15 PM	561	16	1	81	1,019	2	0	10	54	0	1,741	0	0	0	0		
4:30 PM	552	16	1	81	1,083	2	0	16	49	0	1,797	0	0	0	0		
4:45 PM	515	21	0	85	1,056	3	0	20	44	0	1,741	0	0	0	0		
5:00 PM	524	21	0	84	1,013	3	0	21	41	0	1,704	0	0	0	0		

Heavy Vehicle Summary



Clay Carney
(503) 833-2740



Out 0
In 0

Peak Hour Summary
4:30 PM to 5:30 PM

Hwy 213 & Henrici Rd

Tuesday, August 27, 2013
4:00 PM to 6:00 PM

Heavy Vehicle 5-Minute Interval Summary 4:00 PM to 6:00 PM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total
	T	R	Total	L	T	Total	Total	Total	L	R	Total		
4:00 PM	2	0	2	0	4	4			0	0	0	6	
4:05 PM	3	0	3	0	4	4			0	0	0	7	
4:10 PM	1	0	1	0	4	4			0	0	0	5	
4:15 PM	1	0	1	0	0	0			0	0	0	1	
4:20 PM	4	0	4	0	4	4			0	0	0	8	
4:25 PM	1	0	1	1	5	6			0	0	0	7	
4:30 PM	4	0	4	0	4	4			0	0	0	8	
4:35 PM	2	0	2	0	3	3			0	0	0	5	
4:40 PM	2	0	2	0	2	2			0	0	0	4	
4:45 PM	0	3	3	0	2	2			0	0	0	5	
4:50 PM	1	0	1	0	3	3			0	0	0	4	
4:55 PM	4	0	4	0	3	3			0	0	0	7	
5:00 PM	0	0	0	0	1	1			0	0	0	1	
5:05 PM	1	0	1	0	1	1			0	0	0	2	
5:10 PM	0	0	0	0	2	2			0	0	0	2	
5:15 PM	3	0	3	0	0	0			0	0	0	3	
5:20 PM	0	0	0	0	2	2			0	0	0	2	
5:25 PM	1	0	1	0	0	0			0	0	0	1	
5:30 PM	3	0	3	0	2	2			0	0	0	5	
5:35 PM	2	0	2	0	4	4			0	0	0	6	
5:40 PM	0	0	0	0	1	1			0	0	0	1	
5:45 PM	2	0	2	1	0	1			0	0	0	3	
5:50 PM	0	0	0	0	2	2			0	0	0	2	
5:55 PM	1	0	1	0	3	3			0	0	0	4	
Total Survey	38	3	41	2	56	58			0	0	0	99	

Heavy Vehicle 15-Minute Interval Summary 4:00 PM to 6:00 PM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total
	T	R	Total	L	T	Total	Total	Total	L	R	Total		
4:00 PM	6	0	6	0	12	12			0	0	0	18	
4:15 PM	6	0	6	1	9	10			0	0	0	16	
4:30 PM	8	0	8	0	9	9			0	0	0	17	
4:45 PM	5	3	8	0	8	8			0	0	0	16	
5:00 PM	1	0	1	0	4	4			0	0	0	5	
5:15 PM	4	0	4	0	2	2			0	0	0	6	
5:30 PM	5	0	5	0	7	7			0	0	0	12	
5:45 PM	3	0	3	1	5	6			0	0	0	9	
Total Survey	38	3	41	2	56	58			0	0	0	99	

Heavy Vehicle Peak Hour Summary 4:30 PM to 5:30 PM

By Approach	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Total
	In	Out	Total	In	Out	Total	In	Out	Total	In	Out	Total	
Volume	21	23	44	23	18	41	0	0	0	0	3	3	44
PHF	0.66			0.64			0.00			0.00			0.65

By Movement	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Total
	T	R	Total	L	T	Total	Total	Total	L	R	Total		
Volume	18	3	21	0	23	23			0	0	0	0	44
PHF	0.56	0.25	0.66	0.00	0.64	0.64			0.00	0.00	0.00	0.00	0.65

Heavy Vehicle Rolling Hour Summary 4:00 PM to 6:00 PM

Interval Start Time	Northbound Hwy 213			Southbound Hwy 213			Eastbound Henrici Rd			Westbound Henrici Rd			Interval Total
	T	R	Total	L	T	Total	Total	Total	L	R	Total		
4:00 PM	25	3	28	1	38	39			0	0	0	67	
4:15 PM	20	3	23	1	30	31			0	0	0	54	
4:30 PM	18	3	21	0	23	23			0	0	0	44	
4:45 PM	15	3	18	0	21	21			0	0	0	39	
5:00 PM	13	0	13	1	18	19			0	0	0	32	

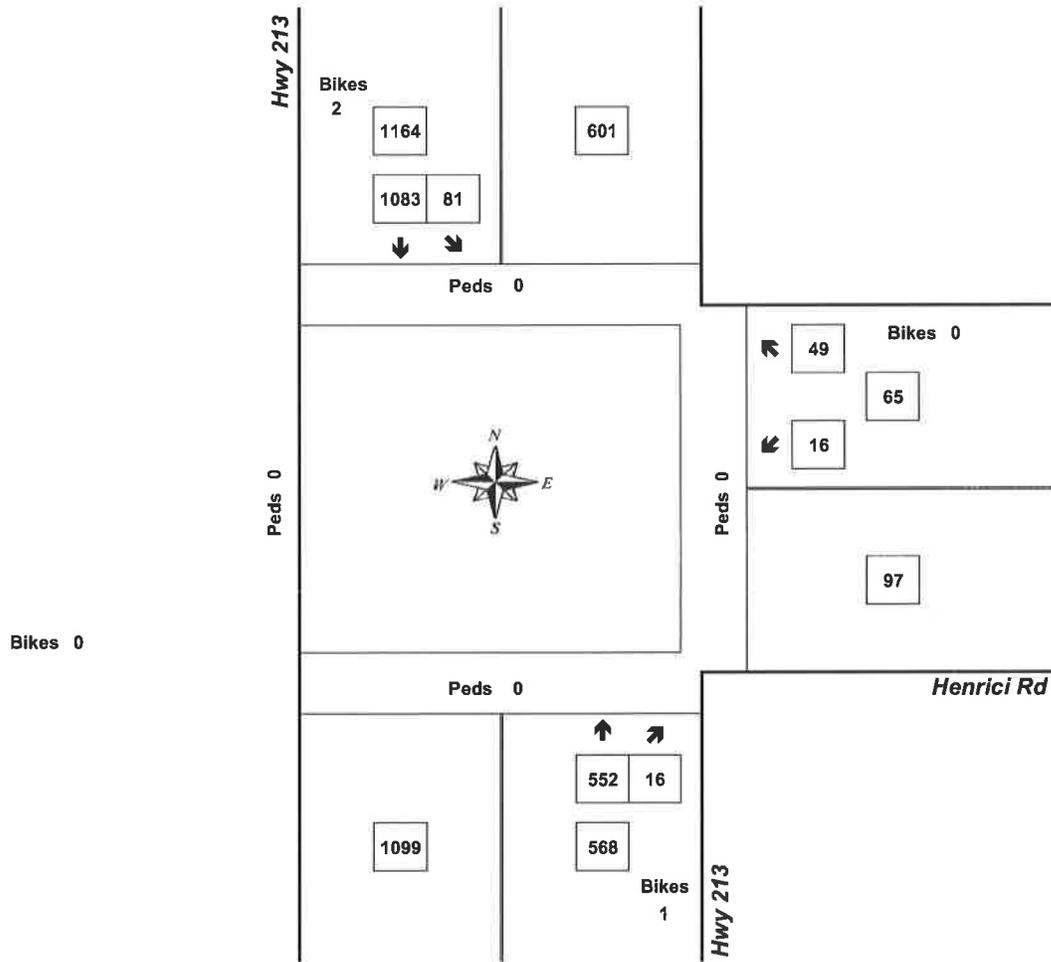
Peak Hour Summary



Clay Carney
(503) 833-2740

Hwy 213 & Henrici Rd

4:30 PM to 5:30 PM
Tuesday, August 27, 2013



Approach	PHF	HV%	Volume
EB	0.00	0.0%	0
WB	0.81	0.0%	65
NB	0.85	3.7%	568
SB	0.93	2.0%	1,164
Intersection	0.96	2.4%	1,797

Count Period: 4:00 PM to 6:00 PM

**All Traffic Data
15105 SE 17th St.
Vancouver, WA. 98683
503-833-2740**

Site Code: 1
HALS CONSTRUCTION

Start Time	27-Aug-13 Tue	Car Enter	HV Enter	Car Exit	HV Exit	Total
12:00 AM		0	0	0	0	0
12:15		0	0	0	0	0
12:30		0	0	0	0	0
12:45		0	0	0	0	0
01:00		0	0	0	0	0
01:15		0	0	0	0	0
01:30		0	0	0	0	0
01:45		0	0	0	0	0
02:00		0	0	0	0	0
02:15		0	0	0	0	0
02:30		0	0	0	0	0
02:45		0	0	0	0	0
03:00		0	0	0	0	0
03:15		0	0	0	0	0
03:30		0	0	0	0	0
03:45		0	0	0	0	0
04:00		0	0	0	0	0
04:15		0	0	0	0	0
04:30		0	0	0	0	0
04:45		0	0	0	0	0
05:00		0	0	0	0	0
05:15		1	0	0	0	1
05:30		0	0	0	0	0
05:45		1	0	0	0	1
06:00		1	0	1	0	2
06:15		5	1	0	0	6
06:30		4	0	0	0	4
06:45		4	0	0	0	4
07:00		7	0	0	0	7
07:15		5	0	0	0	5
07:30		0	0	4	8	12
07:45		1	0	1	1	3
08:00		0	0	0	0	0
08:15		1	0	1	0	2
08:30		0	0	0	1	1
08:45		1	0	1	1	3
09:00		0	0	2	0	2
09:15		0	0	0	0	0
09:30		0	1	0	0	1
09:45		0	0	0	0	0
10:00		0	1	1	0	2
10:15		0	0	0	1	1
10:30		0	0	1	0	1
10:45		2	0	1	0	3
11:00		0	0	2	0	2
11:15		0	0	0	0	0
11:30		1	1	0	0	2
11:45		2	3	1	1	7
Total		36	7	16	13	72
Percent		50.0%	9.7%	22.2%	18.1%	
Peak	-	06:15	11:00	07:30	07:00	06:45
Vol.	-	20	4	6	9	28
P.H.F.		0.714	0.333	0.375	0.281	0.583

**All Traffic Data
15105 SE 17th St.
Vancouver, WA. 98683
503-833-2740**

Site Code: 1
HALS CONSTRUCTION

Start Time	27-Aug-13 Tue	Car Enter	HV Enter	Car Exit	HV Exit	Total
12:00 PM		0	2	0	1	3
12:15		0	0	0	0	0
12:30		1	0	5	0	6
12:45		0	0	4	0	4
01:00		0	0	3	0	3
01:15		1	0	1	0	2
01:30		1	0	0	0	1
01:45		0	0	0	0	0
02:00		1	0	0	0	1
02:15		0	3	0	0	3
02:30		0	0	0	0	0
02:45		0	0	1	1	2
03:00		1	0	2	0	3
03:15		1	0	1	0	2
03:30		0	0	0	0	0
03:45		0	0	1	0	1
04:00		0	0	1	0	1
04:15		0	1	3	0	4
04:30		0	0	0	0	0
04:45		0	2	1	0	3
05:00		2	0	2	0	4
05:15		0	0	2	0	2
05:30		4	1	1	0	6
05:45		1	0	0	0	1
06:00		0	0	2	0	2
06:15		0	0	1	0	1
06:30		0	0	0	0	0
06:45		0	0	0	0	0
07:00		0	0	0	0	0
07:15		0	0	1	0	1
07:30		0	0	0	0	0
07:45		0	0	0	0	0
08:00		0	0	0	0	0
08:15		0	0	0	0	0
08:30		1	0	0	0	1
08:45		1	0	1	0	2
09:00		0	0	0	0	0
09:15		0	1	0	0	1
09:30		0	0	1	0	1
09:45		0	0	0	0	0
10:00		0	0	0	0	0
10:15		0	0	0	0	0
10:30		0	0	0	0	0
10:45		0	0	0	0	0
11:00		0	0	0	0	0
11:15		0	0	0	0	0
11:30		0	0	0	0	0
11:45		0	0	0	0	0
Total		15	10	34	2	61
Percent		24.6%	16.4%	55.7%	3.3%	
Peak	-	17:00	13:30	12:30	12:00	12:30
Vol.	-	7	3	13	1	15
P.H.F.		0.438	0.250	0.650	0.250	0.625
Grand Total		51	17	50	15	133
Percent		38.3%	12.8%	37.6%	11.3%	

ADT Not Calculated

2e

TRIP GENERATION CALCULATIONS

Land Use: Automobile Care Center
Land Use Code: 942
Variable: 1000 Sq Feet Gross Leasable Area
Variable Quantity: 40

AM PEAK HOUR

Trip Rate: 2.25

	Enter	Exit	Total
Directional Distribution	66%	34%	
Trip Ends	59	31	90

PM PEAK HOUR

Trip Equation: $T = 2.41(X) + 11.79$

	Enter	Exit	Total
Directional Distribution	48%	52%	
Trip Ends	52	56	108

SATURDAY

Trip Rate: 23.72

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	474	474	948

SUNDAY

Trip Rate: 11.88

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	238	238	476

Source: TRIP GENERATION, Eighth Edition

1e

TRIP GENERATION CALCULATIONS

Land Use: Animal Hospital/Veterinary Clinic
Land Use Code: 640
Variable: 1000 Sq Ft Gross Floor Area
Variable Value: 15

AM PEAK HOUR

Trip Rate: 4.08

	Enter	Exit	Total
Directional Distribution	72%	28%	
Trip Ends	44	17	61

PM PEAK HOUR

Trip Rate: 4.72

	Enter	Exit	Total
Directional Distribution	39%	61%	
Trip Ends	28	43	71

Source: TRIP GENERATION, Ninth Edition

1e

TRIP GENERATION CALCULATIONS

Land Use: Shopping Center
Land Use Code: 820
Variable: 1,000 Sq Ft Gross Leasable Area
Variable Value: 5.0

AM PEAK HOUR

Trip Rate: 0.96

	Enter	Exit	Total
Directional Distribution	62%	38%	
Trip Ends	3	2	5

PM PEAK HOUR

Trip Rate: 3.71

	Enter	Exit	Total
Directional Distribution	48%	52%	
Trip Ends	9	10	19

WEEKDAY

Trip Rate: 42.7

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	107	107	214

SATURDAY

Trip Rate: 49.97

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	125	125	250

Source: TRIP GENERATION, Ninth Edition

1e

TRIP GENERATION CALCULATIONS

Land Use: Industrial Park
Land Use Code: 130
Variable: Acres
Variable Quantity: 2.64

AM PEAK HOUR

Trip Rate: 8.20

	Enter	Exit	Total
Directional Distribution	83%	17%	
Trip Ends	18	4	22

PM PEAK HOUR

Trip Rate: 8.53

	Enter	Exit	Total
Directional Distribution	21%	79%	
Trip Ends	5	18	23

WEEKDAY

Trip Rate: 61.17

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	81	81	162

SATURDAY

Trip Rate: 34.23

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	45	45	90

Source: TRIP GENERATION, Ninth Edition

2e

TRIP GENERATION CALCULATIONS

Land Use: Single-Family Detached Housing
Land Use Code: 210
Variable: Dwelling Units
Variable Value: 32

AM PEAK HOUR

Trip Rate: 0.75

	Enter	Exit	Total
Directional Distribution	25%	75%	
Trip Ends	6	18	24

PM PEAK HOUR

Trip Rate: 1.00

	Enter	Exit	Total
Directional Distribution	63%	37%	
Trip Ends	20	12	32

WEEKDAY

Trip Rate: 9.52

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	152	152	304

SATURDAY

Trip Rate: 9.91

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	159	159	318

Source: TRIP GENERATION, Ninth Edition

Highway 160 ALL ROAD TYPES, MP 4.2 to 4.6 01/01/2008 to 12/31/2012, Both Add and Non-Add mileage

COLLISION TYPE	NON-PROPERTY			TOTAL CRASHES	PEOPLE		TRUCKS	DRY SURF	WET SURF	DAY	DARK	INTER-SECTION RELATED	INTER-SECTION RELATED	OFF-ROAD
	FATAL CRASHES	FATAL CRASHES	PROPERTY DAMAGE ONLY		KILLED	INJURED								
YEAR: 2012														
REAR-END	0	0	1	1	0	0	0	1	0	1	0	0	0	0
TURNING MOVEMENTS	0	1	0	1	0	3	0	0	1	0	1	0	1	0
YEAR 2012 TOTAL	0	1	1	2	0	3	0	1	1	1	1	0	1	0
YEAR: 2010														
REAR-END	0	0	1	1	0	0	0	1	0	0	1	0	0	0
YEAR 2010 TOTAL	0	0	1	1	0	0	0	1	0	0	1	0	0	0
YEAR: 2009														
REAR-END	0	1	2	3	0	1	1	2	1	3	0	0	0	0
YEAR 2009 TOTAL	0	1	2	3	0	1	1	2	1	3	0	0	0	0
YEAR: 2008														
MISCELLANEOUS	0	0	1	1	0	0	0	1	0	1	0	0	0	0
REAR-END	0	2	1	3	0	7	0	3	0	3	0	0	1	0
SIDESWIPE - MEETING	0	0	1	1	0	0	0	1	0	0	1	0	0	0
YEAR 2008 TOTAL	0	2	3	5	0	7	0	5	0	4	1	0	1	0
FINAL TOTAL	0	4	7	11	0	11	1	9	2	8	3	0	2	0

Disclaimer: The information contained in this report is compiled from individual driver and police crash reports submitted to the Oregon Department of Transportation as required in ORS 811.720. The Crash Analysis and Reporting Unit is committed to providing the highest quality crash data to customers. However, because submittal of crash report forms is the responsibility of the individual driver, the Crash Analysis and Reporting Unit can not guarantee that all qualifying crashes are represented nor can assurances be made that all details pertaining to a single crash are accurate. Note: Legislative changes to DMV's vehicle crash reporting requirements, effective 01/01/2004, may result in fewer property damage only crashes being eligible for inclusion in the Statewide Crash Data File.

Highway 160 ALL ROAD TYPES, MP 4.5 to 4.65 01/01/2008 to 12/31/2012, Both Add and Non-Add mileage

COLLISION TYPE	NON-PROPERTY		TOTAL CRASHES	PEOPLE KILLED	PEOPLE INJURED	TRUCKS	DRY SURF	WET SURF	DAY	DARK	INTER-SECTION RELATED		OFF-ROAD
	FATAL CRASHES	DAMAGE ONLY									INTER-SECTION	RELATED	
YEAR: 2012	0	1	1	0	0	0	0	1	1	0	1	0	0
REAR-END	0	1	1	0	0	0	0	1	1	0	1	0	0
YEAR 2012 TOTAL	0	1	1	0	0	0	0	1	1	0	1	0	0
YEAR: 2009	0	2	3	0	1	1	1	2	3	0	0	0	0
REAR-END	0	2	3	0	1	1	1	2	3	0	0	0	0
YEAR 2009 TOTAL	0	2	3	0	1	1	1	2	3	0	0	0	0
YEAR: 2008	0	1	1	0	0	0	1	0	1	0	0	0	0
MISCELLANEOUS	0	1	1	0	0	0	1	0	1	0	0	0	0
REAR-END	0	0	1	0	2	0	1	0	1	0	0	1	0
YEAR 2008 TOTAL	0	1	2	0	2	0	2	0	2	0	0	1	0
FINAL TOTAL	0	2	6	0	3	1	3	3	6	0	1	1	0

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OREGON DEPARTMENT OF TRANSPORTATION - TRANSPORTATION DIVISION
TRANSPORTATION DATA SECTION - CRASH ANALYSIS AND REPORTING UNIT

CONTINUOUS SYSTEM CRASH LISTING

Highway 160 ALL ROAD TYPES, MP 4.5 to 4.65 01/01/2008 to 12/31/2012, Both Add and Non-Add mileage

Total crash records: 6

025380
01/24/2013

ATTACHMENT 6c
Z0490-13C, Z0491-13-ZAP, REMAND LUBA (2014-069)
Page 41 of 60

STATE	TH	MO	DA	TIME	COUNTY	CITY	STREET	RD CHAR	INT-TYPE	INT-REL	OFFRD	WTHR	CRASH	SPCL USE	TRLR QTY	MOVE	FROM	PRTC	INJ	A	S	LOC	REGIO	ACT	EVENT	CAUSE
00495	N	N	N	02/04/2009	CLACKAMAS			STRGHT	(NONE)	UNKNOWN	N	CLR	S-1STOP	01 NONE	0	STOP	S - N	01 DRVR	NONE	26	F	OR-Y	OR<25	000	013	07
								UN			N	DRY	REAR	PRVTE	0	PRVTE	S - N						026,043	000	00	
								03	(02)		N	DAY	INJ	PSNGR CAR	0	STOP	S - N	01 DRVR	NONE	16	F	OR-Y	OR<25	000	011 013	00
											N	DAY	INJ	PSNGR CAR	0	STOP	S - N							000	000	00
											N	DAY	INJ	PSNGR CAR	0	STOP	S - N	01 DRVR	NONE	27	F	OR-Y	OR<25	000	011 013	00
											N	DAY	INJ	PSNGR CAR	0	STOP	S - N							000	000	00
											N	DAY	INJ	PSNGR CAR	0	STOP	S - N	01 DRVR	NONE	23	F	OR-Y	OR<25	000	022	00
											N	DAY	INJ	PSNGR CAR	0	STOP	S - N							000	000	00
00495	N	N	N	02/04/2009	CLACKAMAS			STRGHT	(NONE)	BUS STPSGN	N	CLR	S-1STOP	01 NONE	0	STOP	S - N	01 DRVR	NONE	19	F	OR-Y	OR<25	000	000	07
								UN			N	DRY	REAR	PRVTE	0	PRVTE	S - N						043,026	000	00	
								04	(02)		N	DAY	EDO	PSNGR CAR	0	STOP	S - N	01 DRVR	NONE	73	M	OR-Y	OR<25	000	011	00
											N	DAY	INJ	HOSTAIL	0	STOP	S - N							000	000	00
01652	N	N	N	05/02/2009	CLACKAMAS			STRGHT	(NONE)	UNKNOWN	N	RAIN	S-1STOP	01 NONE	0	STOP	M - S	01 DRVR	NONE	29	M	OR-Y	OR<25	000	000	07
								UN			N	WET	REAR	PRVTE	0	PRVTE	M - S						043,026	000	00	
								03	(02)		N	DAY	INJ	PSNGR CAR	0	STOP	M - S	01 DRVR	NONE	55	M	OR-Y	OR<25	000	012	00
											N	DAY	INJ	PSNGR CAR	0	STOP	M - S							000	000	00
											N	DAY	INJ	PSNGR CAR	0	STOP	M - S	01 DRVR	NONE	16	M	OR-Y	OR<25	000	012	00
											N	DAY	INJ	PSNGR CAR	0	STOP	M - S	02 PSNG	INJC	16	M	OR-Y	OR<25	000	000	00
02601	Y	N	N	07/10/2008	CLACKAMAS			STRGHT	(NONE)	UNKNOWN	N	CLR	ANIMAL	01 NONE	0	STOP	N - S	01 DRVR	NONE	19	M	OR-Y	OR<25	000	035	01
								UN			N	DRY	OTH	PRVTE	0	PRVTE	N - S							000	035	00
								03	(02)		N	DAY	PDO	PSNGR CAR	0	STOP	N - S	01 DRVR	NONE	19	M	OR-Y	OR<25	047	000	01
											N	DAY	PDO	PSNGR CAR	0	STOP	N - S							000	000	00
04792	N	N	N	12/10/2012	CLACKAMAS			INTER	3-LEG	UNKNOWN	N	CLD	S-1STOP	01 NONE	0	STOP	NH-SE	01 DRVR	NONE	23	F	OR-Y	OR<25	016,026,052	000	27,07,32
								NW			N	WET	REAR	PRVTE	0	PRVTE	NH-SE							000	000	00
								06			N	DAY	PDO	PSNGR CAR	0	STOP	NH-SE	01 DRVR	NONE	28	M	OR-Y	OR<25	000	012 013	00
											N	DAY	PDO	PSNGR CAR	0	STOP	NH-SE							000	000	00
											N	DAY	PDO	PSNGR CAR	0	STOP	NH-SE	01 DRVR	NONE	28	M	OR-Y	OR<25	000	000	00
											N	DAY	PDO	PSNGR CAR	0	STOP	NH-SE							000	000	00

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HWY	MP	Direction	HS	Description	2009	2010	2011	2031	RSQ
154	4.09	I		0.02 mile south of Alderman Road			4200	6100	0.8537
154	6.24	I		0.02 mile north of Bellevue-Ilopeswell Highway			4200	5800	0.8333
155	0.15	I		0.15 mile east of Pacific Highway West (OR99W)			1400	1700	0.7749
155	2.24	I		0.02 mile west of Whiteson Road			1400	1800	0.8184
155	2.28	I		0.02 mile east of Whiteson Road			1700	2200	0.8718
155	4.30	I		0.02 mile east of Airport Road			1200	1500	0.6148
155	6.56	I		0.10 mile south of Stringtown Road			2700	3800	0.9188
155	6.76	I		0.10 mile north of Stringtown Road			5100	7500	0.8882
155	7.42	I		0.02 mile southwest of Lafayette Highway (OR233)			2000	2600	0.8878
155	7.46	I		0.02 mile northeast of Lafayette Highway (OR233)			1100	1400	0.8479
155	8.30	I		0.02 mile east of Flower Lane			1500	2000	0.8546
155	8.68	I		0.02 mile west of 8th Street			2600	3100	0.6667
155	9.03	I		0.02 mile west of 5th Street			3200	3300	0.2604
155	9.17	I		0.02 mile west of Salem-Dayton Highway (OR221)			2800	2900	0.0348
157	0.55	I		0.06 mile north of Willamina-Salem Highway (OR22)	4000			6000	0.3535
157	1.56	I		South city limits of Willamina, 0.08 mile south of Hill Drive	4000			6100	0.2994
157	2.03	I		0.02 mile south of Polk Street	4300			4500	0.0310
157	2.24	I		0.04 mile south of W. Main Street	5700			8700	0.2687
157	2.31	I		0.02 mile west of "B" Street	6000			8800	0.1844
157	2.40	I		0.02 mile east of "C" Street	5600			7600	0.0512
157	2.54	I		0.02 mile east of "E" Street	5000			5900	0.0192
157	2.78	I		0.11 mile east of Oaken Hills Drive	4300			5700	0.1696
157	5.59	I		0.08 mile east of Rock Creek Road	4400			6100	0.2653
157	6.53	I		0.02 mile west of Western Street	5400			8100	0.3800
157	7.11	I		0.02 mile west of Bridge Street	6200			8900	0.2697
157	7.15	I		0.02 mile east of Bridge Street	5800			7900	0.5669
157	7.26	I		0.02 mile east of Hill Street	6000			8500	0.6195
157	8.10	I		0.50 mile west of Salmon River Highway (OR18)	4900			7800	0.7218
160	0.12	I		0.02 mile north of Washington Street		65000		94900	MODEL
160	0.16	I		0.02 mile south of Washington Street		47200		60000	MODEL
160	0.50	I		0.02 mile south of Redland Road		39700		48500	MODEL
160	3.00	I		0.02 mile south of Beavercreck Road		29100		32200	MODEL
160	3.69	I		0.10 mile south of Molalla Avenue (Entrance to Clackamas Community College)		25700		29400	MODEL
160	4.38	I		0.02 mile north of S. Henri Road		18500		21600	MODEL
160	5.71	I		0.02 mile north of S. Leland Road		16900		18900	MODEL
160	7.14	I		0.02 mile south of S. Carus Road		13500		15600	MODEL
160	8.90	I		Mulino Automatic Traffic Recorder, Sta. 03-020, 0.94 mile south of S. Spangler Road		13000		14700	MODEL
160	11.03	I		0.05 mile south of S. Mulino Road at Mulino		14100		16100	MODEL
160	12.30	I		0.05 mile north of S. Union Mills Road		14100		17700	MODEL
160	13.76	I		0.02 mile north of S. Molalla Road		12100		14200	MODEL
160	13.80	I		0.02 mile south of S. Molalla Road		9100		13800	MODEL
160	15.69	I		0.02 mile north of S. Toliver Road		9700		14700	MODEL
160	16.08	I		0.02 mile north of Woodburn-Estacada Highway (OR211)		8800		13300	MODEL
160	16.12	I		0.02 mile south of Woodburn-Estacada Highway (OR211)		4100		6000	MODEL
160	20.30	I		0.02 mile south of S. Monte Cristo Road		4300		6200	MODEL
160	22.15	I		Marquam Automatic Traffic Recorder, Sta. 03-013, 2.05 miles northeast of Clackamas-Marion County Line		4000		6100	MODEL
160	24.20	I		Clackamas-Marion County Line		3800		5700	MODEL
160	26.45	I		0.02 mile north of Abiqua Road N.E.		3500		4900	0.5203
160	26.49	I		0.02 mile south of Abiqua Road N.E.		4000		5900	0.5815
160	27.30	I		0.02 mile south of S. Abiqua Road N.E.		5000		7700	0.7128
160	28.76	I		0.05 mile west of Meridian Road N.E. (Monitor Road)		7000		7400	0.4341
160	29.57	I		0.02 mile east of N. 2nd Street		5000		9900	0.8241
160	29.63	I		0.02 mile east of Hillsboro-Silverton Highway (OR214-Northbound)		6000		8800	0.7521
160	29.69	I		0.02 mile east of Hillsboro-Silverton Highway (OR214-Southbound)		3900		5000	0.6953
161	0.15	I		0.15 mile east of Pacific Highway East (OR99E) and Hillsboro-Silverton Highway (OR214)		11000		13400	MODEL
161	2.63	I		Marion-Clackamas County Line, 1.15 mile west of S. Meridian Road		6300		9400	MODEL
161	5.20	I		0.05 mile east of Barlow Road		5000		7000	MODEL
161	7.69	I		0.10 mile east of S. Canby-Marquam Road		5000		7200	MODEL
161	11.26	I		0.05 mile west of Cascade Highway South (OR213)		5500		8600	MODEL
161	11.36	I		0.05 mile east of Cascade Highway South (OR213)		8100		12700	MODEL
161	12.25	I		0.09 mile east of LeRoy Avenue		10300		16200	MODEL
161	13.27	I		0.02 mile west of Stowers Lane		7300		10000	MODEL
161	13.67	I		0.24 mile northeast of S. Mathias Road		5200		7100	MODEL
161	15.41	I		Molalla River (On Meadowbrook Bridge)		5100		6200	MODEL
161	16.34	I		0.03 mile north of Meadowbrook Road		5300		7300	MODEL
161	18.23	I		At Cedarvale, 0.19 mile east of S. Paveletz Road		4500		6600	MODEL
161	21.20	I		0.02 mile east of Wall Street at Colton		3400		4900	MODEL
161	21.69	I		0.02 mile northeast of Schieffer Road		2200		3200	MODEL
161	24.35	I		Colton Automatic Traffic Recorder, Sta. 03-014, 3.17 miles northeast of Wall Street		2300		3300	MODEL
161	26.43	I		0.02 mile north of S. Highland Road		2300		3300	MODEL
161	28.79	I		0.02 mile north of Hillock Burn Road		2800		4000	MODEL
161	30.73	I		0.02 mile north of Day Hill Road (south junction)		3100		4600	MODEL
161	32.55	I		0.02 mile north of Hayden Road		5600		8300	MODEL
161	33.20	I		0.02 mile east of Day Hill Road (North Jet.)		6300		9200	MODEL
161	33.40	I		South city limits of Estacada, 0.09 mile south of Clackamas Highway (OR224)		6300		9200	MODEL

HCM Unsignalized Intersection Capacity Analysis
 1: OR 213 & Henrici Road

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	11	31	850	24	28	377
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.97	0.97	0.97	0.97	0.97	0.97
Hourly flow rate (vph)	11	32	876	25	29	389
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)		4				
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1323	876			876	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1323	876			876	
tC, single (s)	6.4	6.2			4.2	
tC, 2 stage (s)						
tF (s)	3.5	3.3			2.3	
p0 queue free %	93	91			96	
cM capacity (veh/h)	163	344			742	
Direction, Lane #	WB 1	NB 1	NB 2	SB 1	SB 2	
Volume Total	43	876	25	29	389	
Volume Left	11	0	0	29	0	
Volume Right	32	0	25	0	0	
cSH	466	1700	1700	742	1700	
Volume to Capacity	0.09	0.52	0.01	0.04	0.23	
Queue Length 95th (ft)	8	0	0	3	0	
Control Delay (s)	19.7	0.0	0.0	10.1	0.0	
Lane LOS	C			B		
Approach Delay (s)	19.7	0.0		0.7		
Approach LOS	C					
Intersection Summary						
Average Delay			0.8			
Intersection Capacity Utilization			54.7%		ICU Level of Service	A
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	4	10	871	4	9	379
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.75	0.75	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	5	13	917	4	9	399
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1337	919			921	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1337	919			921	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)						
tF (s)	3.7	3.5			2.4	
p0 queue free %	97	96			99	
cM capacity (veh/h)	153	305			672	
Direction, Lane #	WB 1	NB 1	SB 1			
Volume Total	19	921	408			
Volume Left	5	0	9			
Volume Right	13	4	0			
cSH	237	1700	672			
Volume to Capacity	0.08	0.54	0.01			
Queue Length 95th (ft)	6	0	1			
Control Delay (s)	21.5	0.0	0.4			
Lane LOS	C		A			
Approach Delay (s)	21.5	0.0	0.4			
Approach LOS	C					
Intersection Summary						
Average Delay			0.4			
Intersection Capacity Utilization			56.1%	ICU Level of Service		B
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 1: OR 213 & Henrici Road

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	16	49	552	16	81	1083
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.96	0.96	0.96	0.96	0.96	0.96
Hourly flow rate (vph)	17	51	575	17	84	1128
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)		4				
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1872	575			575	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1872	575			575	
tC, single (s)	6.4	6.2			4.1	
tC, 2 stage (s)						
tF (s)	3.5	3.3			2.2	
p0 queue free %	77	90			92	
cM capacity (veh/h)	72	518			998	
Direction, Lane #	WB 1	NB 1	NB 2	SB 1	SB 2	
Volume Total	68	575	17	84	1128	
Volume Left	17	0	0	84	0	
Volume Right	51	0	17	0	0	
cSH	294	1700	1700	998	1700	
Volume to Capacity	0.23	0.34	0.01	0.08	0.66	
Queue Length 95th (ft)	22	0	0	7	0	
Control Delay (s)	26.6	0.0	0.0	8.9	0.0	
Lane LOS	D			A		
Approach Delay (s)	26.6	0.0		0.6		
Approach LOS	D					
Intersection Summary						
Average Delay			1.4			
Intersection Capacity Utilization			67.0%		ICU Level of Service	C
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	1	4	597	1	3	1096
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.75	0.75	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	1	5	628	1	3	1154
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type	None			None		
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1789	629			629	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1789	629			629	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)						
tF (s)	3.7	3.5			2.4	
p0 queue free %	98	99			100	
cM capacity (veh/h)	80	451			872	
Direction, Lane #	WB 1	NB 1	SB 1			
Volume Total	7	629	1157			
Volume Left	1	0	3			
Volume Right	5	1	0			
cSH	234	1700	872			
Volume to Capacity	0.03	0.37	0.00			
Queue Length 95th (ft)	2	0	0			
Control Delay (s)	20.8	0.0	0.1			
Lane LOS	C		A			
Approach Delay (s)	20.8	0.0	0.1			
Approach LOS	C					
Intersection Summary						
Average Delay			0.2			
Intersection Capacity Utilization			70.1%		ICU Level of Service	C
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 1: OR 213 & Henrici Road

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	17	47	995	36	42	437
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.97	0.97	0.97	0.97	0.97	0.97
Hourly flow rate (vph)	18	48	1026	37	43	451
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)		4				
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1563	1026			1026	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1563	1026			1026	
tC, single (s)	6.4	6.2			4.2	
tC, 2 stage (s)						
tF (s)	3.5	3.3			2.3	
p0 queue free %	84	83			93	
cM capacity (veh/h)	113	281			650	
Direction, Lane #	WB 1	NB 1	NB 2	SB 1	SB 2	
Volume Total	66	1026	37	43	451	
Volume Left	18	0	0	43	0	
Volume Right	48	0	37	0	0	
cSH	383	1700	1700	650	1700	
Volume to Capacity	0.17	0.60	0.02	0.07	0.27	
Queue Length 95th (ft)	15	0	0	5	0	
Control Delay (s)	26.3	0.0	0.0	10.9	0.0	
Lane LOS	D			B		
Approach Delay (s)	26.3	0.0		1.0		
Approach LOS	D					
Intersection Summary						
Average Delay			1.4			
Intersection Capacity Utilization			62.4%		ICU Level of Service	B
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	0	1	1030	0	1	453
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.75	0.75	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	0	1	1084	0	1	477
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1563	1084			1084	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1563	1084			1084	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)						
tF (s)	3.7	3.5			2.4	
p0 queue free %	100	99			100	
cM capacity (veh/h)	111	243			580	
Direction, Lane #	WB 1	NB 1	SB 1			
Volume Total	1	1084	478			
Volume Left	0	0	1			
Volume Right	1	0	0			
cSH	243	1700	580			
Volume to Capacity	0.01	0.64	0.00			
Queue Length 95th (ft)	0	0	0			
Control Delay (s)	19.9	0.0	0.1			
Lane LOS	C		A			
Approach Delay (s)	19.9	0.0	0.1			
Approach LOS	C					
Intersection Summary						
Average Delay			0.0			
Intersection Capacity Utilization		64.2%		ICU Level of Service		C
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 1: OR 213 & Henrici Road

7/21/2016

	↙	↖	↑	↗	↘	↓
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations	↙	↖	↑	↗	↘	↓
Volume (veh/h)	45	96	611	59	86	1169
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.94	0.94	0.94	0.94	0.94	0.94
Hourly flow rate (vph)	48	102	650	63	91	1244
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)		4				
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	2077	650			650	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	2077	650			650	
tC, single (s)	6.4	6.2			4.1	
tC, 2 stage (s)						
tF (s)	3.5	3.3			2.2	
p0 queue free %	10	78			90	
cM capacity (veh/h)	53	469			936	
Direction, Lane #	WB 1	NB 1	NB 2	SB 1	SB 2	
Volume Total	150	650	63	91	1244	
Volume Left	48	0	0	91	0	
Volume Right	102	0	63	0	0	
cSH	167	1700	1700	936	1700	
Volume to Capacity	0.90	0.38	0.04	0.10	0.73	
Queue Length 95th (ft)	163	0	0	8	0	
Control Delay (s)	79.5	0.0	0.0	9.3	0.0	
Lane LOS	F			A		
Approach Delay (s)	79.5	0.0		0.6		
Approach LOS	F					
Intersection Summary						
Average Delay			5.8			
Intersection Capacity Utilization			71.5%		ICU Level of Service	C
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	0	1	669	0	1	1213
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.75	0.75	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	0	1	704	0	1	1277
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1983	704			704	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1983	704			704	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)						
tF (s)	3.7	3.5			2.4	
p0 queue free %	100	100			100	
cM capacity (veh/h)	60	408			816	
Direction, Lane #	WB 1	NB 1	SB 1			
Volume Total	1	704	1278			
Volume Left	0	0	1			
Volume Right	1	0	0			
cSH	408	1700	816			
Volume to Capacity	0.00	0.41	0.00			
Queue Length 95th (ft)	0	0	0			
Control Delay (s)	13.9	0.0	0.1			
Lane LOS	B		A			
Approach Delay (s)	13.9	0.0	0.1			
Approach LOS	B					
Intersection Summary						
Average Delay			0.0			
Intersection Capacity Utilization			74.6%	ICU Level of Service		D
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 1: OR 213 & Henrici Road

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	17	47	1032	36	42	522
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.97	0.97	0.97	0.97	0.97	0.97
Hourly flow rate (vph)	18	48	1064	37	43	538
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)		4				
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1689	1064			1064	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1689	1064			1064	
tC, single (s)	6.4	6.2			4.2	
tC, 2 stage (s)						
tF (s)	3.5	3.3			2.3	
p0 queue free %	81	82			93	
cM capacity (veh/h)	94	267			629	
Direction, Lane #	WB 1	NB 1	NB 2	SB 1	SB 2	
Volume Total	66	1064	37	43	538	
Volume Left	18	0	0	43	0	
Volume Right	48	0	37	0	0	
cSH	355	1700	1700	629	1700	
Volume to Capacity	0.19	0.63	0.02	0.07	0.32	
Queue Length 95th (ft)	17	0	0	6	0	
Control Delay (s)	29.5	0.0	0.0	11.1	0.0	
Lane LOS	D			B		
Approach Delay (s)	29.5	0.0		0.8		
Approach LOS	D					
Intersection Summary						
Average Delay			1.4			
Intersection Capacity Utilization			64.3%		ICU Level of Service	C
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	16	39	1029	38	86	453
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.75	0.75	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	21	52	1083	40	91	477
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type	None			None		
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1761	1103			1123	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1761	1103			1123	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)						
tF (s)	3.7	3.5			2.4	
p0 queue free %	70	78			84	
cM capacity (veh/h)	70	237			560	
Direction, Lane #	WB 1	NB 1	SB 1			
Volume Total	73	1123	567			
Volume Left	21	0	91			
Volume Right	52	40	0			
cSH	140	1700	560			
Volume to Capacity	0.52	0.66	0.16			
Queue Length 95th (ft)	63	0	14			
Control Delay (s)	56.1	0.0	4.4			
Lane LOS	F		A			
Approach Delay (s)	56.1	0.0	4.4			
Approach LOS	F					
Intersection Summary						
Average Delay			3.7			
Intersection Capacity Utilization			98.4%	ICU Level of Service		F
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 1: OR 213 & Henrici Road

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	45	96	697	59	86	1232
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.95	0.95	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	47	101	734	62	91	1297
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)		4				
Median type			None			None
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	2212	734			734	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	2212	734			734	
tC, single (s)	6.4	6.2			4.1	
tC, 2 stage (s)						
tF (s)	3.5	3.3			2.2	
p0 queue free %	0	76			90	
cM capacity (veh/h)	43	420			871	
Direction, Lane #	WB 1	NB 1	NB 2	SB 1	SB 2	
Volume Total	148	734	62	91	1297	
Volume Left	47	0	0	91	0	
Volume Right	101	0	62	0	0	
cSH	131	1700	1700	871	1700	
Volume to Capacity	1.13	0.43	0.04	0.10	0.76	
Queue Length 95th (ft)	216	0	0	9	0	
Control Delay (s)	184.4	0.0	0.0	9.6	0.0	
Lane LOS	F			A		
Approach Delay (s)	184.4	0.0		0.6		
Approach LOS	F					
Intersection Summary						
Average Delay			12.1			
Intersection Capacity Utilization			74.8%		ICU Level of Service	D
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	39	88	668	28	66	1211
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.75	0.75	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	52	117	703	29	69	1275
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type	None			None		
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	2132	718			733	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	2132	718			733	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)						
tF (s)	3.7	3.5			2.4	
p0 queue free %	0	71			91	
cM capacity (veh/h)	44	400			795	
Direction, Lane #	WB 1	NB 1	SB 1			
Volume Total	169	733	1344			
Volume Left	52	0	69			
Volume Right	117	29	0			
cSH	115	1700	795			
Volume to Capacity	1.47	0.43	0.09			
Queue Length 95th (ft)	302	0	7			
Control Delay (s)	322.1	0.0	3.8			
Lane LOS	F		A			
Approach Delay (s)	322.1	0.0	3.8			
Approach LOS	F					
Intersection Summary						
Average Delay			26.6			
Intersection Capacity Utilization			121.8%	ICU Level of Service	H	
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 1: OR 213 & Henrici Road

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	17	47	1032	36	42	522
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.97	0.97	0.97	0.97	0.97	0.97
Hourly flow rate (vph)	18	48	1064	37	43	538
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)		4				
Median type			TWLTL			None
Median storage (veh)			2			
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1689	1064			1064	
vC1, stage 1 conf vol	1064					
vC2, stage 2 conf vol	625					
vCu, unblocked vol	1689	1064			1064	
tC, single (s)	6.4	6.2			4.2	
tC, 2 stage (s)	5.4					
tF (s)	3.5	3.3			2.3	
p0 queue free %	94	82			93	
cM capacity (veh/h)	279	267			629	
Direction, Lane #	WB 1	NB 1	NB 2	SB 1	SB 2	
Volume Total	66	1064	37	43	538	
Volume Left	18	0	0	43	0	
Volume Right	48	0	37	0	0	
cSH	364	1700	1700	629	1700	
Volume to Capacity	0.18	0.63	0.02	0.07	0.32	
Queue Length 95th (ft)	16	0	0	6	0	
Control Delay (s)	20.7	0.0	0.0	11.1	0.0	
Lane LOS	C			B		
Approach Delay (s)	20.7	0.0		0.8		
Approach LOS	C					
Intersection Summary						
Average Delay			1.1			
Intersection Capacity Utilization			64.3%		ICU Level of Service	C
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	16	39	1029	38	86	453
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.75	0.75	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	21	52	1083	40	91	477
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type	TWLTL			None		
Median storage (veh)	2					
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1761	1103			1123	
vC1, stage 1 conf vol	1103					
vC2, stage 2 conf vol	658					
vCu, unblocked vol	1761	1103			1123	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)	5.6					
tF (s)	3.7	3.5			2.4	
p0 queue free %	91	78			84	
cM capacity (veh/h)	240	237			560	
Direction, Lane #	WB 1	NB 1	SB 1			
Volume Total	73	1123	567			
Volume Left	21	0	91			
Volume Right	52	40	0			
cSH	238	1700	560			
Volume to Capacity	0.31	0.66	0.16			
Queue Length 95th (ft)	32	0	14			
Control Delay (s)	26.8	0.0	4.4			
Lane LOS	D		A			
Approach Delay (s)	26.8	0.0	4.4			
Approach LOS	D					
Intersection Summary						
Average Delay			2.5			
Intersection Capacity Utilization			98.4%	ICU Level of Service	F	
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 1: OR 213 & Henrici Road

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	45	96	697	59	86	1232
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.95	0.95	0.95	0.95	0.95	0.96
Hourly flow rate (vph)	47	101	734	62	91	1283
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)		4				
Median type			TWLTL			None
Median storage (veh)			2			
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	2198	734			734	
vC1, stage 1 conf vol	734					
vC2, stage 2 conf vol	1464					
vCu, unblocked vol	2198	734			734	
tC, single (s)	6.4	6.2			4.1	
tC, 2 stage (s)	5.4					
tF (s)	3.5	3.3			2.2	
p0 queue free %	73	76			90	
cM capacity (veh/h)	174	420			871	
Direction, Lane #	WB 1	NB 1	NB 2	SB 1	SB 2	
Volume Total	148	734	62	91	1283	
Volume Left	47	0	0	91	0	
Volume Right	101	0	62	0	0	
cSH	546	1700	1700	871	1700	
Volume to Capacity	0.27	0.43	0.04	0.10	0.75	
Queue Length 95th (ft)	27	0	0	9	0	
Control Delay (s)	21.7	0.0	0.0	9.6	0.0	
Lane LOS	C			A		
Approach Delay (s)	21.7	0.0		0.6		
Approach LOS	C					
Intersection Summary						
Average Delay			1.8			
Intersection Capacity Utilization			74.8%		ICU Level of Service	D
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

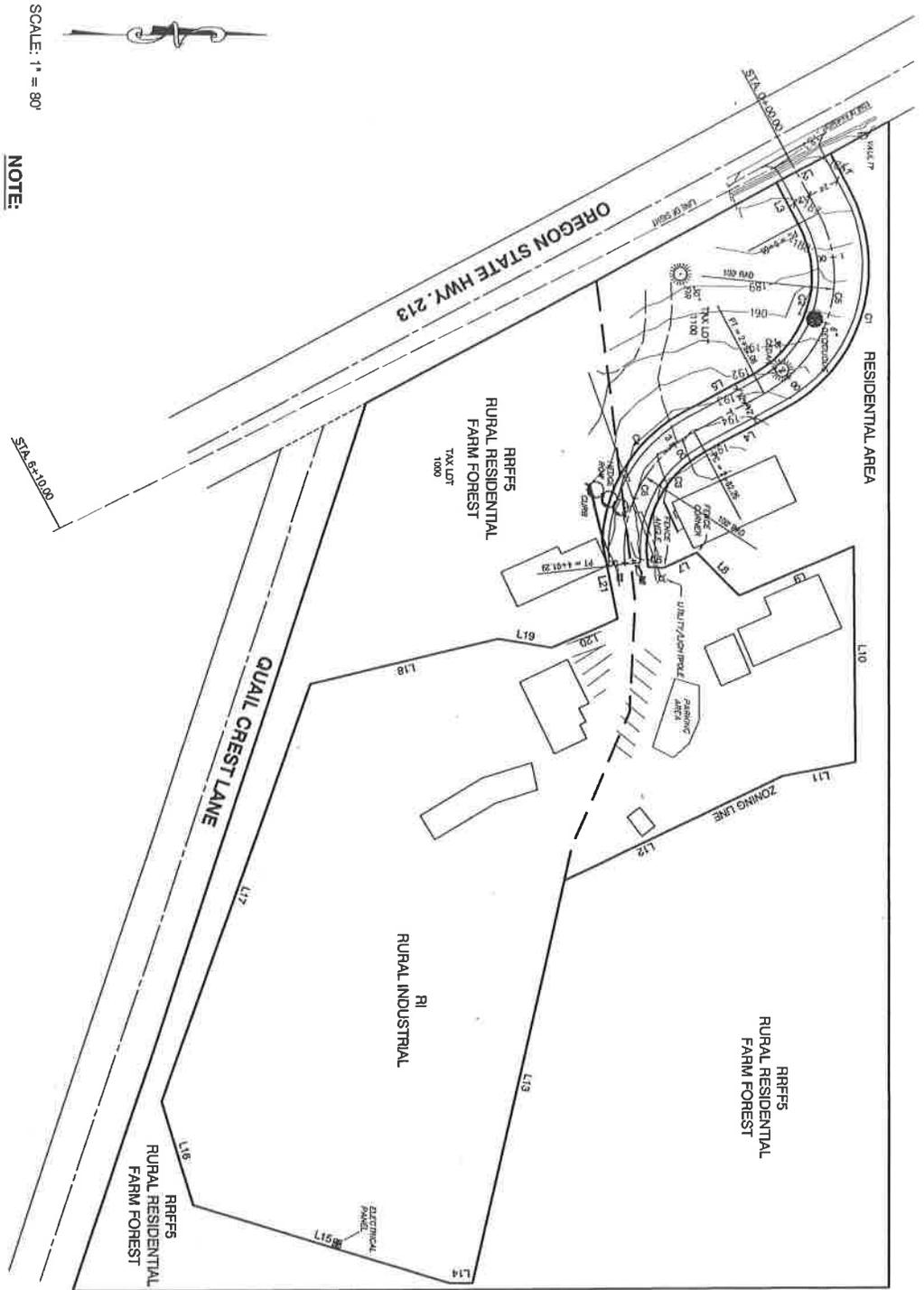
7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	39	88	668	28	66	1211
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.75	0.75	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	52	117	703	29	69	1275
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type	TWLTL			None		
Median storage (veh)	2					
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	2132	718			733	
vC1, stage 1 conf vol	718					
vC2, stage 2 conf vol	1414					
vCu, unblocked vol	2132	718			733	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)	5.6					
tF (s)	3.7	3.5			2.4	
p0 queue free %	70	71			91	
cM capacity (veh/h)	171	400			795	
Direction, Lane #						
	WB 1	NB 1	SB 1			
Volume Total	169	733	1344			
Volume Left	52	0	69			
Volume Right	117	29	0			
cSH	284	1700	795			
Volume to Capacity	0.60	0.43	0.09			
Queue Length 95th (ft)	89	0	7			
Control Delay (s)	34.9	0.0	3.8			
Lane LOS	D		A			
Approach Delay (s)	34.9	0.0	3.8			
Approach LOS	D					
Intersection Summary						
Average Delay			4.9			
Intersection Capacity Utilization			121.8%	ICU Level of Service	H	
Analysis Period (min)			15			

HCM Unsignalized Intersection Capacity Analysis
 2: OR 213 & Hals Construction

7/21/2016

						
Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Volume (veh/h)	27	61	668	20	46	1211
Sign Control	Stop		Free			Free
Grade	0%		0%			0%
Peak Hour Factor	0.95	0.95	0.95	0.95	0.95	0.95
Hourly flow rate (vph)	28	64	703	21	48	1275
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type	None			None		
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	2085	714			724	
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	2085	714			724	
tC, single (s)	6.6	6.4			4.3	
tC, 2 stage (s)						
tF (s)	3.7	3.5			2.4	
p0 queue free %	42	84			94	
cM capacity (veh/h)	49	403			801	
Direction, Lane #	WB 1	NB 1	SB 1			
Volume Total	93	724	1323			
Volume Left	28	0	48			
Volume Right	64	21	0			
cSH	124	1700	801			
Volume to Capacity	0.74	0.43	0.06			
Queue Length 95th (ft)	106	0	5			
Control Delay (s)	90.4	0.0	2.6			
Lane LOS	F		A			
Approach Delay (s)	90.4	0.0	2.6			
Approach LOS	F					
Intersection Summary						
Average Delay			5.5			
Intersection Capacity Utilization			112.9%	ICU Level of Service	H	
Analysis Period (min)			15			



SCALE: 1" = 80'

NOTE:

- BOUNDARY BASED ON RECORD SURVEY PS 25399, JULY 1993.

DESIGNED:	BDS
DRAWN:	BJS
SCALE:	1" = 80'
DATE:	April 2014
FILE:	Hals Const Exhibit D

Thetacore
 ENGINEERING - SURVEYING - PLANNING
 P.O. Box 1346
 Lake Oswego, Oregon 97035
 503/461-4822
 email: thetacore@comcast.net

Hals Construction
 20666 Highway 213
 Oregon City, Oregon

Clackamas County Land Use Application
 Z0490-13-CP, Z0491-13-Z

EXHIBIT B

REGISTERED PROFESSIONAL LAND SURVEYOR
 OREGON
 JULY 12, 1968
 BRUCE D. GOLDSON
 851
 EXPIRES: 06/30/2015

LINE TABLE

LINE	LENGTH	BEARING
L1	32.00	N81°43'00"E
L2	48.00	S28°12'00"E
L3	35.00	N81°43'00"E
L4	69.18	N28°12'00"W
L5	60.18	N28°12'00"W
L6	11.51	S04°31'08"W
L7	27.48	S24°50'49"E
L8	45.40	S45°09'08"W
L9	94.02	S23°10'57"E
L10	163.00	N89°20'00"E
L11	58.04	S10°54'01"E
L12	182.04	S25°23'30"E
L13	309.85	S77°20'17"E
L14	18.73	N00°15'18"W
L15	199.98	N16°57'48"E
L16	81.50	N73°08'35"E
L17	332.17	S70°29'50"E
L18	143.43	S13°45'29"E
L19	40.42	S09°45'08"W
L20	53.49	S23°51'22"E
L21	59.87	N78°41'18"E

CURVE TABLE

CURVE	LENGTH	RADIUS
C1	188.50	120.00
C2	130.38	83.00
C3	102.89	83.00
C4	119.81	117.00
C5	187.08	100.00
C6	119.03	100.00

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 BRIAN OOTEN,
5 *Petitioner,*

6
7 vs.

8
9 CLACKAMAS COUNTY,
10 *Respondent,*

11
12 and

13
14 BRUCE D. GOLDSON,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2014-069

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Clackamas County.

23
24 David J. Petersen and Duncan B. Delano, Portland, filed the petition for
25 review and Duncan B. Delano argued on behalf of petitioner. With them on the
26 brief was Tonkon Torp LLP.

27
28 No appearance by Clackamas County.

29
30 A. Richard Vial, Lake Oswego, filed a response brief and argued on
31 behalf of intervenor-respondent. With him on the brief were David M. Phillips
32 and Vial Fotheringham LLP.

33
34 RYAN, Board Chair, participated in the decision.

35
36 BASSHAM, Board Member, concurring.

37
38 HOLSTUN, Board Member, concurring.

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REMANDED

11/20/2014

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioner appeals a decision by the county approving a comprehensive plan amendment and zone change.

MOTION TO INTERVENE

Bruce D. Goldson (intervenor) moves to intervene on the side of the county. There is no opposition to the motion and it is granted.

FACTS

The subject property contains two parcels totaling approximately 8.15 acres, bordered by Highway 213 on the west and Quail Crest Lane on the south. We refer to the southern approximately one-half of the property as “Tax Lot 1000” and to the northern approximately one-half of the property as “Tax Lot 1100.” Tax Lot 1000 contains a dwelling, a 1,248 square foot accessory building, and a large parking and circulation area. Tax Lot 1100 contains a dwelling, a 4,200 square foot shop building, a 24 x 32 (768) square foot shop/garage, and parking areas. Both tax lots contain trees and landscaping. Access to the property is from two driveways with direct access to Highway 213. Since 1980, the property has been designated Rural on the county’s comprehensive plan map and zoned Rural Residential Farm Forest 5-acre (RRFF-5). Adjacent properties to the north and east ranging from 2 acres to 40 acres are also designated Rural and zoned RRFF-5 and contain dwellings and wooded areas. We discuss the current designation and zoning of the property and adjacent properties later in this opinion.

Intervenor purchased Tax Lot 1000 in 1991 and Tax Lot 1100 in 1996. Intervenor operates a paving business from the subject property. Uses on the property include an office for the paving business and automobile, truck and

1 heavy equipment storage and repair. Intervenor also uses the property for
2 vehicle and RV sales, and employs up to 40 people on the property.

3 There have been several previous attempts by intervenor to verify and
4 expand some of the existing uses on each tax lot. We briefly summarize those
5 attempts and their results here. A 1991 letter from the county to intervenor
6 confirmed that as of 1967, Tax Lot 1000 contained a dwelling and a 1,248
7 square foot building used for “a two person business * * * [for] installing
8 wiring and welding hitches on RVs and trailers” that qualified as a legal
9 nonconforming use of Tax Lot 1000. Record 941. In 1991, intervenor
10 received county approval to expand that nonconforming use to allow “storage
11 of construction equipment on the site.” Record 927.

12 Intervenor’s 1997 attempt to confirm the use of Tax Lot 1100 for “auto,
13 RV and light truck repair and incidental vehicle sales” partially succeeded.
14 The county found the use was a nonconforming use allowed in the 24 x 32
15 square foot shop on Tax Lot 1100. Record 909. Intervenor’s attempt to
16 confirm the nonconforming use of the 4,200 square foot building on Tax Lot
17 1100 for “repair and maintenance of heavy construction vehicles and
18 equipment” failed. That 1997 decision also found that the 4,200 square foot
19 building was constructed after 1979. Record 913. A 1998 attempt to gain
20 county approval to expand the uses on Tax Lot 1100 also failed.

21 In 2013, intervenor applied to change the comprehensive plan map
22 designation from Rural to Rural Industrial (RI) and to rezone Tax Lots 1000
23 and 1100 to Rural Industrial District (RI), the county’s zone that implements
24 the RI plan designation. The board of commissioners partially approved the
25 applications, but redesignated and rezoned only the portions of the subject
26 property that are developed with shop buildings and parking and circulation

1 areas accessory to those shop buildings, and the driveway, leaving the Rural
2 designation and RRFF-5 zoning in place for the two dwellings and the portions
3 of the property that are treed. Record 37. The board of commissioners also
4 limited the uses of the subject property to the “same as the existing land uses.”
5 Record 13. This appeal followed.

6 **FIRST ASSIGNMENT OF ERROR**

7 In 1980, the county adopted, and the Land Conservation and
8 Development Commission (LCDC) acknowledged, an exception to the
9 applicable statewide planning goals and the subject property was designated
10 Rural and zoned RRFF-5.¹ OAR 660-004-0018(1) is entitled “Planning and
11 Zoning for Exception Areas” and provides:

12 “This rule explains the requirements for adoption of plan and zone
13 designations for exceptions. Exceptions to one goal or a portion of
14 one goal do not relieve a jurisdiction from remaining goal
15 requirements and do not authorize uses, densities, public
16 facilities and services, or activities other than those recognized
17 or justified by the applicable exception. Physically developed or
18 irrevocably committed exceptions under OAR 660-004-0025 and
19 660-004-0028 and 660-014-0030 are intended to recognize and

¹ In 1980, Statewide Planning Goal 2 (Land Use Planning), Part II provided for an exceptions process whereby a local government could adopt an exception to the applicable resource goals. *See 1000 Friends of Oregon v. Clackamas County*, 3 Or LUBA 281, 285 n 1 (1981) (quoting the then-applicable version of Goal 2). As that opinion explains, in the course of dealing with the exceptions process, LCDC also developed a contested-case procedure for taking what has come to be codified as an “irrevocably committed” exception. *Id.* at 286-91.

ORS 197.732(2)(a), enacted in 1983, now describes a physically developed exception, and ORS 197.732(2)(b) describes an irrevocably committed exception.

1 allow continuation of existing types of development in the
2 exception area. *Adoption of plan and zoning provisions that would*
3 *allow changes in existing types of uses, densities, or services*
4 *requires the application of the standards outlined in this rule.”*
5 (Underlining, bold, and italics added).

6 OAR 660-004-0018(2) was amended in 2011 and currently provides:

7 “For ‘physically developed’ and ‘irrevocably committed’
8 exceptions to goals, residential plan and zone designations shall
9 authorize a single numeric minimum lot size and all plan and zone
10 designations shall limit uses, density, and public facilities and
11 services to those:

12 “(a) That are the same as the existing land uses on the exception
13 site;

14 “(b) That meet the following requirements:

15 “(A) The rural uses, density, and public facilities and
16 services will maintain the land as ‘Rural Land’ as
17 defined by the goals, and are consistent with all other
18 applicable goal requirements;

19 “(B) The rural uses, density, and public facilities and
20 services will not commit adjacent or nearby resource
21 land to uses not allowed by the applicable goal as
22 described in OAR 660-004-0028; and

23 “(C) The rural uses, density, and public facilities and
24 services are compatible with adjacent or nearby
25 resource uses;

26 “(c) For uses in unincorporated communities, the uses are
27 consistent with OAR 660-022-0030, ‘Planning and Zoning
28 of Unincorporated Communities’, if the county chooses to
29 designate the community under the applicable provisions of
30 OAR chapter 660, division 22; *and*

31 “(d) For industrial development uses and accessory uses
32 subordinate to the industrial development, the industrial
33 uses may occur in buildings of any size and type provided

1 the exception area was planned and zoned for industrial use
2 on January 1, 2004, subject to the territorial limits and other
3 requirements of ORS 197.713 and 197.714.”” (Emphasis
4 added.)

5 We set out the entire text of OAR 660-004-0018 in the appendix.

6 In several prior versions of OAR 660-004-0018(2), the word “or”
7 appeared, first between OAR 660-004-0018(2)(a) and (b), and later between
8 OAR 660-004-0018(2)(c) and (d). The 2011 amendments replaced the word
9 “or” between (c) and (d) with “and.” “And” is generally used to describe
10 conjunctive requirements. Accordingly, we conclude that subsections (2)(a)
11 and (2)(b) apply to the application for a plan amendment and zone change.
12 *Halperin v. Pitts*, 352 Or 482, 495, 287 P3d 1069 (2012) (courts will not
13 rewrite the express language of a statute).

14 In his first assignment of error, petitioner argues that OAR 660-004-
15 0018(1) and (3) require the county to take a reasons exception to Statewide
16 Planning Goal 3 (Agricultural Land) and Goal 4 (Forest Land) in order to
17 change the plan and zoning map designations of the property from Rural and
18 RRF5-5 to RI to allow the industrial uses that are allowed in the RI zone. For
19 the following reasons, we agree with petitioner that the county has not
20 established that redesignating the property to allow industrial uses does not
21 require new exceptions to Goals 3 and 4.

22 As relevant here, if a proposed plan and zone designation satisfies the
23 requirements of OAR 660-004-0018(2)(a), which limits new uses on the
24 exception site to (1) “those * * * [t]hat are the same as the existing land uses on
25 the exception site;” and (2)(b)(A) – (C), which limits those that will maintain
26 the land as “[r]ural [l]and” as defined by the goals[,]” then no new reasons
27 exception is required. If the uses on the exception site are not limited to the

1 same as existing land uses and to uses that will maintain the lands as rural land,
2 then a reasons exception to the applicable resource goals is required. OAR
3 660-004-0018(3).

4 In its decision, the county found that a reasons exception to Goals 3 and
5 4 is unnecessary, based on the 1980 exception that designated the subject
6 property Rural and zoned it RRFF-5. Record 12-13. Although it is not entirely
7 clear, the county appears to believe that due to the 1980 exception, Goals 3 and
8 4 no longer apply at all to the property. If that is the county's belief, it is
9 erroneous. The 1980 exception had the effect of taking an exception to Goals 3
10 and 4 only for the uses that were justified in the exception, presumably the uses
11 allowed in the RRFF-5 zone. But as OAR 660-004-0018(1) provides, adopting
12 new plan and zone designations that would allow changes to the existing types
13 of uses requires the application of the standards in OAR 660-004-0018(2)
14 through (4).

15 The county also adopted findings that address OAR 660-004-0018(2)(a)
16 and (2)(b)(A) – (C), which appear to take the position that the proposed uses
17 allowed under the RI zone are consistent with those rules because the decision
18 limits the uses on the property to the “existing uses” on the property, and
19 because the RI zone will maintain the land as “rural land.” Record 12.
20 Petitioner argues that the county's findings that OAR 660-004-0018(2)(b)(A) –
21 (C) are satisfied are inadequate.

22 The county's findings that the proposed change to the RI plan and zone
23 designation meets OAR 660-004-0018(2)(b)(A) – (C) are set out below:

24 “The proposal is consistent with OAR 660-004-0018 because:

25 “a. The Board has limited the uses of the site to the same as the
26 existing land uses. See Order Exhibit C, condition no. 1.

1 The applicant has proposed to continue the existing uses on
2 the property. No new uses have been identified or proposed
3 that require further analysis to determine if they are ‘rural’
4 in nature.

5 “b. The County’s Rural Industrial Plan designation and
6 implementing RI zoning district has recently been amended
7 and acknowledged to be in compliance with Statewide
8 Planning Goals 11 and 14.

9 “c. The findings addressing Statewide Planning Goals 11 and
10 14 demonstrate that the rural uses, density and public
11 facilities will maintain the land as rural land. The property
12 is not located in a public sewer or surface water district. The
13 Rural Industrial Plan designation will not require or allow
14 the extension of public sewer to the property. The existing
15 uses and limited future uses contemplated for the property
16 will not require the provision for extension of additional
17 public services and facilities. The record demonstrates the
18 rural uses, density and public facilities will not commit
19 adjacent or nearby resource lands to other uses because
20 there are no resource lands in adjacent or close to the
21 subject property. * * *” Record 12-13.

22 Petitioner does not develop any argument as to why the county’s findings that
23 OAR 660-004-0018(2)(b)(A) – (C) are met are inadequate; he merely asserts
24 that they are inadequate. Petition for Review 17. We think the county’s
25 findings are adequate to explain why the RI plan and zone designations meet
26 OAR 660-004-0018(2)(b)(A) – (C). Accordingly, petitioner’s challenge to the
27 county’s findings adopted in response to OAR 660-004-0018(2)(b)(A) – (C)
28 provides no basis for reversal or remand.

29 Petitioner also argues that in finding that OAR 660-004-0018(2)(a) is
30 met, the county erred in considering the uses that *currently exist* on the
31 property. We agree with petitioner that the requirement in OAR 660-004-
32 0018(2)(a) that the proposed uses be the “same as the existing land uses on the

1 exception site” requires the county to consider the uses that were “recognized
2 or justified” in the 1980 exception statement. It does not allow the county to
3 consider current uses on the site that were not “recognized or justified” in the
4 1980 exception statement. To read the provision as allowing the county to
5 consider current uses on the exception site would make the provision
6 meaningless, because all an applicant would need to show is that the existing
7 use exists on the site, regardless of whether the initial exception statement that
8 took an exception to the applicable resource goals “recognized or justified” the
9 use.²

10 Turning to that question, the record is exceedingly sparse regarding the
11 type or types of exceptions that were approved in 1980 to allow the property to
12 be designated in the county’s comprehensive plan as Rural and zoned RRFF-5.
13 The only evidence in the record regarding the 1980 exception is a letter from
14 petitioner’s attorney that describes a statement from the planning director to
15 petitioner’s attorney that the 1980 exception was either a “physically
16 developed” exception or “irrevocably committed” exception, or both. Record
17 804. There is nothing in the record or elsewhere cited to our attention that
18 indicates what uses were justified or recognized in the 1980 exception. On the
19 state of the current record, the county has no basis to conclude whether
20 rezoning the property RI to allow the proposed industrial uses exceeds the
21 scope of the uses recognized in the 1980 exception.

22 Remand is necessary for the county to determine, in the words of OAR
23 660-004-0018(1), what uses on the property were “recognized or justified by

² There is no dispute that many of the current industrial uses and structures on the property did not exist in 1980.

1 the applicable exception” in 1980, in order to determine whether the RI plan
2 and zone designation allows uses that are “the same as the existing land uses on
3 the site” as required by OAR 660-004-0018(2)(a). If the uses proposed for the
4 property under the RI designation are not the same as the uses that were
5 “recognized or justified” by the exception as required by OAR 660-004-
6 0018(2)(a), then intervenor will need to seek a reasons exception as required by
7 OAR 660-004-0018(3).

8 Finally, we disagree with intervenor that petitioner’s argument is a
9 collateral attack on the 1980 exception decision. The 1980 exception decision
10 did not insulate all future changes in the plan and zone designations of the
11 property from needing an exception for uses not recognized or justified under
12 the exception.

13 A portion of the first assignment of error is sustained.

14 **SECOND AND FOURTH ASSIGNMENTS OF ERROR**

15 The Rural Industrial Section of the Land Use Chapter of the Clackamas
16 County Comprehensive Plan (CCCP), Section 3.0(a) provides as relevant here:

17 “Areas may be designated Rural Industrial when * * * [A]reas
18 shall have an historical commitment to industrial uses[.]”

19 The board of commissioners interpreted the word “areas” to mean that the
20 subject property is the appropriate “area” for consideration.³ In his second

³ The county found:

“The Board finds that the subject property is the appropriate ‘area’ of consideration for evaluating this policy for the same reasons identified under Policy 1.0 in the Rural Section of the Comprehensive Plan. The term ‘areas’ includes the parcels/property which are this application. Opponents argued that the effect of defining the subject property as the ‘area’

1 assignment of error, petitioner argues that the board of commissioners
2 improperly construed the term “areas” too narrowly to include only the subject
3 8.15 acre property, and that it should have considered the “areas” to be a larger
4 area surrounding the subject property.

5 Under ORS 197.829(1), the board of commissioners’ interpretation of its
6 comprehensive plan is reversible if it “is inconsistent with the express language
7 of the comprehensive plan or land use regulation.” Under *Siporen v. City of*
8 *Medford*, 349 Or 247, 261, 243 P3d 776 (2010), LUBA’s standard of review
9 under ORS 197.829(1) is highly deferential, and LUBA must defer to the
10 county commissioner’s interpretation unless it is implausible. Petitioner has
11 not demonstrated that the board of commissioners’ interpretation of the term
12 “areas” as used in Section 3.0(a) is inconsistent with any express language of
13 the county’s comprehensive plan or land use regulations, or that it is
14 implausible.

15 The board of commissioners also concluded that the property has a
16 “historical commitment to industrial uses” because many of the existing
17 industrial uses on the subject property have been in existence for over 45 years,
18 and the board of commissioners was not required by Section 3.0 to ignore the
19 existing uses on the property even if those uses have not been legally
20 established. Record 32. Petitioner first argues that the board of commissioners
21 improperly construed the phrase “historical commitment to industrial uses” to
22 include the illegal uses that currently exist on the property, and that it should

result[s] in illegal ‘spot zoning’ and is inconsistent with the comprehensive plan. The Board finds that the purpose of Policy 3.0(a) is in fact to recognize the historical use of properties and apply the appropriate plan and zone designations.” Record 31.

1 have construed the phrase to include only lawful uses. In subsection D of the
2 second assignment of error, we also understand petitioner to argue that the uses
3 on the property are not “industrial uses” as defined in Clackamas County
4 Zoning Ordinance (CCZO) 202, and therefore the board of commissioners’
5 interpretation of the phrase used in Section 3.0(a) is inconsistent with CCZO
6 202.⁴ Finally, in subsection E of the second assignment of error, we
7 understand petitioner to argue that the board of commissioners’ decision to
8 redesignate the portion of the property that includes a new driveway shown at
9 Record 38 improperly construes Section 3.0, because since the driveway access
10 does not yet exist that portion of the subject property does not have a
11 “historical commitment to industrial uses.”

12 Petitioner has not demonstrated that the board of commissioners’
13 interpretation of the phrase “historical commitment” as including all of the
14 activities on the property over the past 45 years without regard to whether some
15 of the uses are legally established is inconsistent with any of the express
16 language of the comprehensive plan or the CCZO, or that it is implausible. We
17 also reject petitioner’s argument that the uses on the property are not “industrial
18 uses” as defined in CCZO 202 for purposes of determining whether Section 3.0
19 is met. CCZO 201.01 makes clear that the CCZO definitions are “for the
20 purpose of clarifying the provisions” of the CCZO. Petitioner has not
21 demonstrated why a CCZO definition must be used when interpreting a phrase
22 used in the county’s comprehensive plan.

⁴ CCZO 202 defines “industrial use” to mean “[t]he use of land and/or structures for the manufacturing or processing of primary, secondary, or recycled materials into a product; warehousing and associated trucking operations; wholesale trade; and related development.”

1 In his fourth assignment of error, we also understand petitioner to argue
2 that the county failed to consider the impacts of redesignating only portions of
3 the property RI on the remaining portion of the property that remains zoned
4 RRFF-5. Intervenor responds, and we agree, that the board of commissioners’
5 decision to redesignate and rezone only the portion of the property that the
6 board concluded has a historical commitment to industrial uses is consistent
7 with Section 3.0’s requirement that “areas” to be redesignated to RI shall have
8 a historical commitment to industrial uses.

9 In Subsection E of the second assignment of error, petitioner assigns
10 error to the inclusion of the driveway in the area to be redesignated. Based on
11 the county’s reasoning in the decision, which narrows the redesignation to only
12 areas of the subject property that the board of commissioners found have a
13 historic commitment to industrial uses, we agree with petitioner that where the
14 decision redesignates the new driveway that is required by Condition 2, the
15 decision does not explain how that portion of the property has a historical
16 commitment to industrial uses. Accordingly, we sustain Subsection E of the
17 second assignment of error.

18 The second assignment of error is sustained, in part. The fourth
19 assignment of error is denied.

20 **THIRD ASSIGNMENT OF ERROR**

21 The Rural Industrial section of the Land Use Chapter of the Clackamas
22 County Comprehensive Plan, Section 1.0, provides:

23 “The Rural Industrial plan designation may be applied in non-
24 urban areas to provide for industrial uses that are not labor-
25 intensive and are consistent with rural character, rural
26 development, and rural facilities and services.”

1 The county’s findings conclude that because some industrial use of the subject
2 property has been in existence for a long period of time, that industrial use of
3 the property is part of the rural character of the area. The county’s findings
4 also conclude that because the RI plan designation is a rural plan designation
5 and the RI zone limits the type and scale of uses to uses that are appropriate for
6 rural development, the rural industrial uses on the property will be consistent
7 with the rural character of the area:

8 “The subject property is located outside of the Metro UGB and
9 service district boundary and is considered a non-urban area. The
10 Rural Industrial Plan designation and implementing RI zoning
11 district limits the type and scale of uses which are appropriate for
12 rural development. * * *

13 “Opponents raised issues about the compatibility of rural
14 industrial uses and conflicts with the rural character of the area.
15 The Board finds the Rural Industrial plan designation is a rural
16 zone. The existing industrial uses of the property, which have
17 existed for over 45 years is part of the rural character of this area.
18 Furthermore, the Rural Industrial Plan policies contemplate rural
19 industrial uses in rural areas of the County because the policies are
20 intended to recognize areas historically committed to industrial
21 uses.” Record 30.

22 In his third assignment of error, petitioner argues that the county improperly
23 construed Section 1.0 when it concluded that the longstanding industrial uses
24 on the property make those uses “consistent with the rural character, rural
25 development and rural facilities and services” of the area. Petitioner also
26 argues that the findings fail to respond to evidence in the record regarding the
27 inconsistency of the proposed industrial uses with the rural character and
28 development in the area surrounding the subject property. Finally, petitioner
29 argues that the county failed to adopt any findings explaining why the proposed
30 industrial uses are not “labor intensive.”

1 The county’s decision takes the position that because some types and
2 levels of industrial use have occurred on the property for a long period of time,
3 at least those types and levels of industrial uses are part of the rural character of
4 the area. We cannot say that position improperly construes Section 1.0, or that
5 it is implausible.

6 However, we agree with petitioner that the county’s findings are
7 inadequate to respond to issues raised regarding the inconsistency of the
8 proposed RI designation with the rural character of the area, particularly the
9 adjacent RRFF-5 zoned properties. Merely because some historic types and
10 levels of industrial uses of the property are part of the rural character of the
11 area does not mean that the existing or proposed types and levels of industrial
12 uses allowed under the RI designation are consistent with the rural character of
13 the area. We also agree with petitioner that the county’s findings are
14 inadequate where the findings fail to address the requirement that the RI
15 designation is “not labor intensive,” particularly where the evidence in the
16 record is that intervenor currently employs up to 40 people on the property.

17 The third assignment of error is sustained, in part.

18 **FIFTH ASSIGNMENT OF ERROR**

19 In his fifth assignment of error, we understand petitioner to argue that the
20 county improperly construed the CCZO in failing to apply the provisions of
21 CCZO 1206 governing nonconforming uses to the application for a plan
22 amendment and zone change. We addressed and rejected similar arguments in
23 *Swyter v. Clackmas County*, 40 Or LUBA 166 (2001) and *Huff v. Clackamas*
24 *County*, 40 Or LUBA 264 (2001). In *Swyter*, the petitioner argued that the
25 county’s decision to approve a plan amendment and zone change that had the

1 effect of legalizing some illegal uses on the property was inconsistent with the
2 county’s provisions governing abandonment of nonconforming uses. We held:

3 “As the county correctly points out, different criteria are applied to
4 (1) establish the existence of a right to continue a nonconforming
5 use and (2) change a property’s comprehensive plan and zoning
6 map designations. Neither ORS 215.130(7)(a) nor ZDO 1206.02
7 are directly relevant in changing the comprehensive plan and
8 zoning map designations, and they certainly do not have the
9 prohibitive effect that petitioner argues they have.” *Swyter*, 40 Or
10 LUBA at 176.

11 In *Huff*, we held that “[n]othing in ORS 215.130 [the statute governing
12 nonconforming uses] pertains to or constrains a county’s ability to rezone land
13 to allow uses that, under preexisting zoning, might not be permitted as
14 nonconforming uses.” 40 Or LUBA at 273. We reach the same conclusions
15 here.

16 The fifth assignment of error is denied.

17 **SIXTH ASSIGNMENT OF ERROR**

18 In his sixth assignment of error, petitioner argues that the county’s
19 decision improperly fails to apply the building design and other development
20 standards in CCZO 1000 and the standards governing project size, landscaping,
21 and parking in CCZO 1100 to the uses existing on the subject property.
22 Intervenor responds that “[b]oth past and future development activities will be
23 subject to the appropriate permitting processes and development standards.”
24 Response Brief 20. Although we are not entirely sure what that response
25 means, petitioner has not demonstrated that CCZO 1000 and CCZO 1100 apply
26 to the proposed plan amendment and zone change, where no permits for
27 development are sought.

28 The sixth assignment of error is denied.

1 **SEVENTH AND TENTH ASSIGNMENTS OF ERROR**

2 CCZO 1202.01(E) provides that in order to approve the zone change, the
3 county must find that “[s]afety of the transportation system is adequate to serve
4 the level of development anticipated by the zone change.” Condition 2 requires
5 closure of the southern access point onto Highway 213. Record 39. Condition
6 3 requires intervenor to construct a new driveway near the north boundary of
7 the property “to achieve adequate intersection sight distance * * *.” Record 39.

8 During the proceedings before the board of county commissioners,
9 intervenor generally discussed the location of the new driveway as
10 approximately 100 feet from one of the existing access points to be closed.
11 However, the final decision approves the exact location of the new driveway as
12 shown in Exhibit B at Record 38. Record 37. Exhibit B appeared for the first
13 time as an attachment to the final decision.

14 In his seventh assignment of error and in a portion of his tenth
15 assignment of error, petitioner argues that the county committed a procedural
16 error when it accepted and relied on Exhibit B to approve the location of the
17 new driveway and determined that the new driveway means that the “[s]afety of
18 the transportation system is adequate” under CCZO 1202.01(E).⁵ Petitioner
19 argues that accepting that new evidence prejudiced his substantial right to
20 challenge the location of the new driveway as failing to satisfy CCZO
21 1202.01(E). Intervenor responds that Exhibit B is not evidence, and that even
22 if it is, the specific location of the driveway 100 feet to the north is not new

⁵ ORS 197.835(9)(a)(B) provides that LUBA may remand a decision where the local government “[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner.”

1 evidence because the relocation of the driveway was proposed by intervenor
2 during the proceedings below.⁶

3 We agree with petitioner that the county committed a procedural error
4 that prejudiced his substantial rights when it accepted Exhibit B after the record
5 was closed, and relied on Exhibit B and the location of the driveway to
6 conclude that CCZO 1202.01(E) is satisfied, where the exact location of the
7 driveway had not been determined prior to the close of the record. On remand,
8 the county must allow adequate opportunity to respond to that new evidence.

9 Also in a portion of his tenth assignment of error, petitioner argues that
10 the county's findings are inadequate to explain why the proposal satisfies
11 CCZO 1202.01(E), where the record contains evidence that a new access point
12 at the north end of the subject property will cause safety issues for the
13 properties located to the north and across Highway 213, and the county's
14 findings fail to address the issue. In response, intervenor points to evidence in
15 the record from intervenor's traffic engineers that the transportation system is
16 adequate and argues that the county is entitled to and did rely on intervenor's
17 experts to conclude that CCZO 1202.01(E) is satisfied.

18 We agree with petitioner that because an issue was raised regarding
19 whether a new driveway to the north complies with CCZO 1202.01(E), and the
20 findings fail to address the issue, remand is required.

21 CCZO 1202.01(A) provides that the zone change to RI must be
22 consistent with the comprehensive plan. In the final portion of his tenth
23 assignment of error, petitioner argues "[a]s explained throughout this brief, the

⁶ ORS 197.763(9)(b) defines "[e]vidence" to mean "facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision."

1 rezoning of part of the Property to Rural Industrial is inconsistent with
2 numerous comprehensive plan policies and goals.” Petition for Review 41.
3 We understand that argument to be derivative of petitioner’s second, third and
4 fourth assignments of error. We have sustained portions of petitioner’s second
5 and fourth assignments of error that challenge the applications’ consistency
6 with CCCP Section 1.0 and Section 3.0, and on remand the county will need to
7 address the bases for remand. Accordingly, it would be premature for us to
8 resolve the portion of the tenth assignment of error that argues that CCZO
9 1202.01(A) is not met with respect to those CCCP sections. We have denied
10 portions of petitioner’s second and fourth assignments of error, and his third
11 assignment of error, and accordingly the portion of the tenth assignment of
12 error that is derivative of those assignments of error is also denied.

13 The seventh assignment of error and a portion of the tenth assignment of
14 error are sustained.

15 **EIGHTH ASSIGNMENT OF ERROR**

16 The county’s final decision “limit[s] the uses of the site to the same as
17 the existing land uses. See Order Exhibit C, condition no 1.” Record 13.
18 Condition 1 provides:

19 “Future uses of the property are limited to those identified in Table
20 604-1: Permitted Uses in the RI District, paragraph ‘A.
21 Construction and Maintenance Contractors,’ as of the effective
22 date of this order; except that building movers shall not be a
23 permitted use.” Record 39 (Emphasis in original).

24 In a portion of his eighth assignment of error, petitioner argues that the
25 county’s findings are inadequate because the portion of the decision limiting
26 the uses to “the same as the existing land uses” is inconsistent with condition
27 1’s authorization of *all* of the uses listed in CCZO Table 604-1, paragraph A,

1 except for building movers, because many of the uses listed in Table 604-1,
2 paragraph A do not currently exist on the property.⁷

3 Intervenor does not provide any meaningful response to the argument.
4 We agree with petitioner that the decision’s limit on uses of the subject
5 property to those uses that currently exist on the property appears to be
6 inconsistent with condition 1’s allowance of all uses specified in paragraph A,
7 where some of the uses in paragraph A do not currently exist on the property.
8 Remand is required for the county to clarify which uses, if any, the site is
9 limited to and revise condition 1, if necessary, to reflect those limits.

10 The remaining portion of the eighth assignment of error challenges the
11 county’s decision under the Transportation Planning Rule at OAR 660-012-
12 0060, and we address it below in our resolution of the ninth assignment of
13 error.

14 The eighth assignment of error is sustained, in part.

15 **NINTH ASSIGNMENT OF ERROR**

16 OAR 660-012-0060, the Transportation Planning Rule (TPR), provides
17 that if a plan amendment would “significantly affect” an existing or planned

⁷ CCZO Table 604-1, paragraph A provides the following uses are permitted in the RI zone:

“A. Construction and Maintenance Contractors

“This category includes contractors engaged in construction and maintenance of buildings and their component parts (e.g., roofing, siding, windows), fencing, decking, building systems (e.g., plumbing, electrical, mechanical), landscaping, and infrastructure (e.g., roads, utilities). Also included are excavation contractors, building movers, pest control services, and janitorial services.”

1 transportation facility, the local government must put in place measures to
2 mitigate the impacts.⁸

⁸ OAR 660-012-0060 provides, in relevant part:

“(1) If an amendment to * * * 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 * * *. A plan or land use regulation amendment significantly affects a transportation facility if it would:

“ * * * * *

“(c)(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

“(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below * * *:

“ * * * * *

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

1 **A. Performance of Affected Facilities**

2 As relevant here, a plan amendment would “significantly affect” a
3 transportation facility if, within the relevant planning period, the amendment
4 would degrade the performance level of a facility that is otherwise projected
5 not to meet applicable performance standards. Intervenor’s traffic impact
6 analysis (TIA) estimated current traffic generated from the subject property
7 from intervenor’s current business and residential uses, and compared that
8 traffic to traffic that could be generated from the most intensive reasonably
9 developable uses allowed in the RI zone. Intervenor’s TIA concluded that the
10 traffic generated by the new uses would worsen, or accelerate, a projected
11 failure at the end of the planning period of the left turn movement at the
12 intersection of Highway 213 and Henrici Road.⁹ Record 440. Accordingly,
13 the TIA concluded that the plan amendment will have a significant effect on
14 left turning vehicle movement at the intersection of Highway 213 and Henrici
15 Road. The TIA recommended that the significant effect could be mitigated
16 with the design and installation of a two-stage left turn lane on Highway 213
17 south of Henrici Road. The county imposed Condition 6, requiring that in the
18 future intervenor install the two-stage left turn lane, and concluded that with
19 the condition of approval, the “significant effects” would be fully mitigated.
20 OAR 660-012-0060(2)(d); *see* n 8.

⁹ The county’s Transportation System Plan (TSP) projects that at the end of the planning period in 2035, even without an increase in traffic from the plan amendment, that left turn movement will operate at 98 percent of capacity, and that intersection would fail to meet ODOT’s allowable volume to capacity ratio of 75 percent. Record 440.

1 Intervenor’s TIA also concluded that with the plan amendment the
2 westbound approach from the subject property southbound onto Highway 213
3 would accelerate a failure of that approach and cause it to operate above
4 ODOT’s allowable volume to capacity ratio sooner than it would otherwise,
5 and recommended the addition of a southbound left turn lane for the westbound
6 approach from the subject property onto Highway 213. The county imposed
7 Condition 4, requiring that in the future intervenor install a southbound left
8 turn lane on the subject property, and Condition 5, requiring that as warranted,
9 a second southbound left turn lane be installed.

10 In his ninth assignment of error, petitioner first argues that intervenor’s
11 analysis improperly measures the increase in traffic between the current zone
12 and the new zone by measuring traffic generated from existing uses on the
13 property that are not authorized under the current zoning or approved as a non-
14 conforming use. According to petitioner, “[h]ad the correct baseline been used,
15 the increase in traffic * * * would have been much greater, and would likely
16 trigger a significant impact finding under OAR 660-012-0060.” Petition for
17 Review 39. That argument is puzzling, because as explained above, the county
18 *did* find that the increased traffic under the RI zone would significantly affect
19 two transportation facilities, and pursuant to OAR 660-012-0060(2)(d)
20 imposed conditions intended to mitigate that significant effect.

21 Nonetheless, petitioner is correct that the county has not established that
22 traffic generated by the *current* industrial uses of the property—many of which
23 are illegal and unapproved under the RRFF-5 zoning—is an appropriate means
24 of establishing the baseline to determine whether the redesignation to RI
25 “significantly affects” a transportation facility within the meaning of OAR 660-
26 012-0060(1). The relevant question posed by OAR 660-012-0060(1) is

1 whether the *rezone from RRFF-5 to RI* significantly affects one or more
2 transportation facilities in one or more of the ways described in OAR 660-012-
3 0060(1). A straightforward means to answer that question is to compare the
4 most traffic-generative use reasonably allowed in the RRFF-5 zone with the
5 most traffic-generative use reasonably allowed in the RI zone. Comparing the
6 amount of traffic generated by the *current* uses of the property with the most-
7 traffic generative use allowed in the RI zone does not answer the question
8 posed by OAR 660-012-0060(1), and may in fact provide misleading answers,
9 unless the current uses of the property happen to be the most traffic-intensive
10 uses allowed in the RRFF-5 zone, which is not the case. As explained, most of
11 the current industrial uses of the property are not allowed in the RRFF-5 zone
12 at all, and those current industrial uses include unlawful and unapproved
13 expansions of a nonconforming use. Because the traffic generated by current
14 industrial use of the property, which includes a business that employs 40
15 workers, almost certainly exceeds the traffic generated by the largely
16 residential uses allowed under the RRFF-5 zone or the verified scope of the
17 lawful nonconforming use, the county's approach may significantly
18 underestimate the size or extent of the significant affect of the zone change to
19 RI, and potentially the size or type of mitigation required under OAR 660-012-
20 0060(2) to offset that significant effect. For example, had the traffic analysis
21 properly compared traffic generated under RRFF-5 zone with traffic generated
22 under the RI zone, it is possible that additional transportation facilities may be
23 significantly affected, or more extensive mitigation be required or required
24 sooner. Remand is necessary for the county to make that determination.

1 **B. Conditions 4, 5 and 6**

2 Conditions 4, 5, and 6 require in relevant part that “with each future
3 proposed phase of development” intervenor must submit a traffic analysis to
4 (1) address the need for a future southbound left turn lane at the intersection of
5 Highway 213 and the new driveway, (2) address the need to widen the future
6 southbound left turn lane to two lanes that access Highway 213, and (3)
7 address the need for left-turn lane improvements at the Highway 213/Henrici
8 Road intersection. Depending on the results of the traffic analysis, intervenor
9 may be required to provide and pay for transportation improvements to mitigate
10 the effects of its development. Record 39. The decision explains that the
11 county adopted Conditions 4, 5 and 6 to mitigate the effects of the plan
12 amendment to demonstrate that the proposal meets the TPR. Record 18.

13 In portions of his eighth and ninth assignments of error, we understand
14 petitioner to argue that conditions 4, 5 and 6 are inadequate to mitigate the
15 effects of the plan amendment on the affected transportation facilities, because
16 the conditions do not explain the circumstances that would trigger the new
17 traffic study and required improvements.

18 The conditions require that “with each future proposed phase of
19 development” the applicant must submit a traffic analysis to address the need
20 for improvements. From that language, if there is never a “future proposed
21 phase of development” then the traffic analysis and mitigation required by the
22 industrial use of the property allowed under the RI zone will never be
23 triggered, and the traffic impacts from the plan amendment and zone change
24 will never be mitigated. Accordingly, we agree with petitioner that conditions
25 4, 5 and 6 are inadequate to mitigate the significant effect of the zone change.
26 While conditions with timing elements are an acceptable method of mitigation

1 of traffic impacts, so that required improvements are built only when needed,
2 under these conditions there may never be a trigger to evaluate whether the
3 mitigation that is required by the plan amendment and zone change needs to be
4 constructed.

5 The eighth and ninth assignments of error are sustained.

6 The county's decision is remanded.

7 Bassham, Board Member, concurring.

8 I concur with the majority opinion in all respects, but write separately to
9 note an important issue regarding OAR 660-004-0018 that the parties do not
10 squarely confront and LUBA's opinion does not resolve.

11 Under the first assignment of error, the majority opinion first concludes
12 that, as currently written, OAR 660-004-0018(2)(a) and (b) are conjunctive,
13 rather than disjunctive, requirements. I agree with that conclusion. While
14 making (2)(a) and (b) conjunctive does not make much sense and probably was
15 not the intent of the 2011 amendments, LUBA should not attempt to correct
16 that problem by interpretation. If LCDC did not intend (2)(a) and (b) to be
17 conjunctive, LCDC is the most appropriate body to fix that problem.

18 The majority opinion next concludes under OAR 660-004-0018(2)(a)
19 that the scope of "existing" uses does not include illegal or unapproved uses
20 that were not authorized or recognized in the 1980 exception. I also agree with
21 that conclusion.

22 Finally, the majority opinion concludes that the county's findings under
23 OAR 660-004-0018(2)(b)(A) through (C) are adequate to demonstrate
24 compliance with those standards. I agree with respect to OAR 660-004-
25 0018(2)(b)(B) and (C). Those standards are concerned with impacts on

1 adjoining or nearby resource lands, and there is no dispute that no resource
2 lands are adjacent or nearby.

3 However, the county’s findings are arguably inadequate to address OAR
4 660-004-0018(2)(b)(A), which requires a finding that “[t]he rural uses, density,
5 and public facilities and services will maintain the land as ‘Rural Land’ as
6 defined by the goals, *and are consistent with all other applicable goal*
7 *requirements.*” (Emphasis added). The county’s findings address the first
8 clause of OAR 660-004-0018(2)(b)(A) regarding maintaining the land as rural
9 land, but do not address the second clause, emphasized above, regarding
10 consistency with all other applicable goal requirements.

11 Petitioner argues generally that the proposed industrial uses require new
12 exceptions to Goals 3 and 4. Intervenor disputes generally that Goals 3 and 4
13 continue to apply to the subject property at all. However, neither party ties
14 those arguments to the language in OAR 660-004-0018(2). Specifically,
15 petitioner does not fault the county for failing to address the requirement that
16 the proposed use be “consistent with all other applicable goal requirements,” or
17 argue that that language requires the county to determine whether the proposed
18 industrial uses are consistent with Goals 3 and 4. Because the issue is not well
19 joined or briefed, I cannot fault the majority opinion for not addressing that
20 issue. Nonetheless, it is an important question whether Goals 3 and 4 continue
21 to apply to the property, and whether in rezoning the property to allow new
22 uses not recognized in the original exception OAR 660-004-0018(2)(b)(A)
23 requires the county to consider whether the new uses are consistent with Goals
24 3 and 4. LUBA should take up that question in the next appropriate case, or
25 even better LCDC should consider amendments to clarify its intent.

1 OAR 660-004-0018 does not provide a clear answer to the question, and
2 unfortunately the case law on this point is muddled. OAR 660-004-0018(1)
3 provides that “[e]xceptions to one goal or a portion of one goal do not relieve a
4 jurisdiction from remaining goal requirements and do not authorize uses,
5 densities, public facilities and services, or activities other than those recognized
6 or justified by the applicable exception.” It is clear under this language that an
7 exception to Goal 3 does not allow a local government to zone the exception
8 area to allow new uses that are inconsistent with another goal for which no
9 exception is taken, such as Goal 4 or 14. In rezoning the exception area to
10 allow new uses, OAR 660-004-0018(2)(b)(A) requires the local government to
11 evaluate whether the new uses are consistent with “other goal requirements,”
12 including goals for which no exception has been taken, and if the answer is no,
13 then that standard is not met and the rezone will require a new reasons
14 exception to the applicable goal requirements.

15 However, it is less clear that OAR 660-004-0018(2)(b)(A) requires a
16 local government to assess whether new uses proposed for a Goal 3 exception
17 area must be evaluated to determine whether those new uses not recognized in
18 the exception are consistent with Goal 3 requirements. Under OAR 660-004-
19 0018(1), a goal exception to a portion of a goal does not relieve the local
20 government from remaining goal requirements and only authorizes those uses
21 recognized or justified in the exception, which suggests that a Goal 3 exception
22 for a particular use, say rural residential, does not relieve the local government
23 from the obligation to consider whether new uses are consistent with the
24 remaining Goal requirements. On the other hand, it is possible to read OAR
25 660-004-0018(2)(b)(A) to apply only to those goals for which no exception
26 was taken, and an exception to Goal 3 for a particular use means that Goal 3 no

1 longer applies to the subject property with respect to any new uses that would
2 otherwise be prohibited by Goal 3. That is apparently the understanding that
3 the county operated under in the present case.

4 Until fairly recently, LUBA’s cases have held that Goal 3 continues to
5 apply to a Goal 3 exception area as to those uses not justified or recognized in
6 the exception, and that in rezoning the exception area to allow new uses under
7 OAR 660-004-0018(2) and its earlier iterations the local government must
8 consider whether the new uses are consistent with Goal 3. *See, e.g., Allm v.*
9 *Polk County*, 13 Or LUBA 257, 271-73 (1985) (rezoning a Goal 3 exception
10 area justified on rural residential uses, to allow new commercial uses, required
11 a new Goal 3 exception under an earlier version of OAR 660-004-0018);
12 *Schultz v. Yamhill County*, 15 Or LUBA 87, 93-96 (1986) (under OAR 660-
13 004-0018 a new Goal 3 exception is necessary to rezone property for industrial
14 uses, where the exception area was justified based on rural residential uses);
15 *Geaney v. Coos County*, 34 Or LUBA 189, 201 (1998) (a new Goal 3 exception
16 is necessary to rezone an exception area justified on rural residential uses to
17 allow new commercial uses).

18 In 1998, OAR 660-004-0018(2)(b) was amended into its current form,
19 adding new requirements but retaining the requirement that the proposed uses
20 be “consistent with all other applicable goal requirements.” The requirement
21 that the proposed uses be “consistent with all other applicable goal
22 requirements” was formerly the *only* requirement in OAR 660-004-
23 0018(2)(b)(A), but as amended that language was placed rather obscurely at the
24 end of OAR 660-004-0018(2)(b)(A). Perhaps due to that obscure placement,
25 LUBA cases after 1998 typically omit that language in paraphrasing OAR 660-
26 004-0018(2)(b)(A), and have never discussed it.

1 In 2002 LUBA issued two opinions that can be misread to stand for the
2 proposition that Goal 3 no longer applies to a Goal 3 exception area, and that
3 no Goal 3 exception is ever required to rezone a Goal 3 exception area to allow
4 new uses inconsistent with that goal. In *Friends of Yamhill County v. Yamhill*
5 *County*, 41 Or LUBA 247 (2002), the county took a Goal 3 exception for rural
6 residential use, and planned the exception area for Very Low Density
7 Residential (VLDR), but retained the existing resource zoning. Later the
8 county approved a rezone of the property to VLDR, the zone that implemented
9 the VLDR plan designation. LUBA rejected the petitioner’s argument that the
10 rezone required a new Goal 3 exception, concluding that nothing in OAR 660-
11 004-0018(2) required a new Goal 3 exception in those circumstances. The
12 basis for that conclusion is obvious: of course no new Goal 3 exception is
13 necessary to rezone an exception area to allow rural residential uses *already*
14 *recognized and justified in the exception*. However, as the author of that
15 opinion I must confess that our conclusion was stated in broader terms that can
16 be read to suggest that no new Goal 3 exception would *ever* be required to
17 allow new uses in a Goal 3 exception area, under any circumstances.

18 Shortly thereafter, we issued *Doty v. Coos County*, 42 Or LUBA 103,
19 *rev’d and rem’d on other grounds*, 185 Or App 233, 59 P3d 50 (2002), which
20 involved a proposal to rezone a Goal 3 exception area that was justified for
21 industrial uses to a Recreation zone, which would allow a new recreation use
22 prohibited in the industrial zone. The petitioner argued that because a new use
23 not justified in the exception was proposed, a new Goal 3 exception was
24 necessarily required. Citing to *Friends of Yamhill County v. Yamhill County*,
25 we correctly rejected that argument, concluding that OAR 660-004-0018(2)
26 provides the standards for determining whether the new use is allowed subject

1 to the existing exception. On appeal, the Court of Appeals affirmed on that
2 point, agreeing with LUBA that a mere change in use does not trigger the
3 obligation to take a new Goal 3 exception, and that OAR 660-004-0018(2)
4 provides the standards for determining whether a new exception is required.
5 Specifically, the Court concluded that if the OAR 660-004-0018(2) standards
6 are not met that “the basis for the physically developed or committed lands
7 exception evaporates with an incompatible proposed use, and a new rationale
8 for not applying the otherwise applicable resource goal becomes necessary.”
9 185 Or App at 243.

10 Unfortunately, our opinion in *Doty* also stated flatly that “a change in
11 uses allowed on land that is already subject to an irrevocably committed or
12 physically developed exception does not require a new exception to Goal 3.”
13 42 Or LUBA at 113. That statement, properly understood, is correct: a change
14 in use does not automatically require a new Goal 3 exception. As we explained
15 later in the opinion, and as the Court concluded, whether a new exception is
16 required is determined by compliance with the standards in OAR 660-004-
17 0018(2). But the above-quoted language can be understood to stand for the
18 broad proposition—one that the county and intervenor appeared to operate
19 under in the present case—that Goal 3 no longer applies to a Goal 3 exception
20 area taken to justify a specific type of use prohibited by the goal, and that no
21 evaluation of whether the proposed uses are consistent with Goal 3 is ever
22 necessary under OAR 660-004-0018(2).

23 I believe that that broad proposition is incorrect, and that Goal 3
24 continues to apply to a Goal 3 exception area (except as to uses recognized or
25 justified in the exception), and that OAR 660-004-0018(2)(b)(A) requires the
26 county to evaluate whether proposed new uses not justified in the exception are

1 consistent with Goal 3, among other applicable goals. If the answer to that
2 question is no, then all of the standards in OAR 660-004-0018(2)(b) are not
3 met, and pursuant to OAR 660-004-0018(3) the local government may be
4 required to take a reasons exception to Goal 3 or other applicable goals.

5 In the appropriate case where that issue is squarely presented, I would so
6 hold.

7 Holstun, Board Member, concurring.

8 I do not agree with one aspect of the majority’s reasoning in the first
9 assignment of error. With three members of this Board interpreting OAR 660-
10 004-0018 somewhat differently, LCDC may want to determine which of the
11 three views expressed in this opinion, if any, reflect its intent in adopting the
12 most recent version of OAR 660-004-0018, so that it may amend the rule to
13 more clearly express that intent.

14 OAR 660-004-0018, which is attached as an appendix to this opinion, is
15 not easy reading. But if you work your way through the text of the rule, it is
16 relatively clear that the rule authorizes several options for planning and zoning
17 exception lands. The OAR 660-004-0018(2) options are authorized following
18 adoption of a “built” or “committed” exception, based on existing development
19 on the property that renders it impractical to plan and zone that property for the
20 uses allowed by applicable goals. Most “built” or “committed” exceptions are
21 taken to plan and zone for uses that are not allowed by Goal 3 (Agricultural
22 Lands) and Goal 4 (Forest Lands).¹⁰

¹⁰ OAR 660-004-0018 that is set out in the Appendix talks about “uses, densities, public facilities and services, or activities[.]” For brevity in this concurrence I refer to all five of those things as “uses.”

1 The second sentence of OAR 660-004-0018(1) states that a built or
2 committed exception does not authorize planning or zoning a property for uses
3 other than those uses justified by the exception. However, two sentences after
4 that sentence, OAR 660-004-0018(1) states that the rule in fact does authorize
5 planning and zoning a “built” or “committed” exception area for additional
6 uses in limited circumstances.¹¹ Those limited circumstances are set out in
7 OAR 660-004-0018(2)(b) through (d).

8 This Board has interpreted OAR 660-004-0018(2)(a) through (d), as it
9 was worded before the 2011 rule amendments, to give local governments four
10 options. *Landwatch Lane County v. Lane County*, 56 Or LUBA 408, 414
11 (2008) (“OAR 660-004-0018(2) requires plan and zoning designations applied
12 to developed and committed exception areas to limit uses, density, and public
13 facilities and services to those that meet at least one of four requirements.”).
14 Two of those options, OAR 660-004-0018(2)(a) and (b), apply generally; two
15 of those options, OAR 660-004-0018(2)(c) and (d), apply in special, specified
16 circumstances.

¹¹ Those sentences in OAR 660-004-0018(1) are set out below:

“Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. * * * 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.”

1 Under the first option, OAR 660-004-0018(2)(a), a local government
2 may apply “plan and zone designations [to] limit uses * * * to those [uses]
3 * * * [t]hat are the same as the existing land uses on the exception site[.]”

4 Under the second option, OAR 660-004-0018(2)(b), a local government
5 may apply “plan and zone designations [to] limit uses * * * to those * * * [t]hat
6 meet the * * * requirements [of OAR 660-004-0018(2)(b)(A) through (C)].” In
7 other words, the second option provides a limited opportunity to plan and zone
8 a “developed” or “committed” exception site for uses beyond those that exist
9 on the site at the time of the exception, which were used to justified the
10 exception, so long as the limitations imposed by OAR 660-004-0018(2)(b)(A)
11 through (C) are satisfied. *Doty v. Coos County*, 42 Or LUBA 103, 114 (2002),
12 *rev’d and rem’d on other grounds* 185 Or App 233, 59 P3d 50 (2002); *Leonard*
13 *v. Union County*, 15 Or LUBA 135, 138 (1986).

14 The third and fourth options, OAR 660-004-0018(2)(c) and (d), apply in
15 special circumstances (unincorporated communities and industrial development
16 respectively). If a local government wishes to plan and zone an exception area
17 for uses that do not comply with at least one of the four subsections of OAR
18 660-004-0018(2), a reasons exception is required under OAR 660-004-0018(3)
19 and (4). *Doty v. Coos County*, 185 Or App 233, 243, 59 P3d 50 (2002).

20 The majority opinion changes this past operation of the rule in two fairly
21 significant respects, based entirely on a 2011 amendment to OAR 660-004-
22 0018(2) that replaced the conjunction between OAR 660-004-0018(2)(c) and
23 (d) from “or” to “and.” If that word-change between OAR 660-004-0018(2)(c)
24 and (d) is interpreted to make OAR 660-004-0018(2)(a) and (b) conjunctive, as
25 today’s majority opinion does, LUBA’s prior understanding of the rule is
26 changed in at least two significant respects. First, planning and zoning for uses

1 beyond those that justified the “developed” or “committed” exception is no
2 longer possible under OAR 660-004-0018(2)(b)—even if the standards set out
3 there can be met—because those *additional* “uses” would necessarily fail to
4 satisfy OAR 660-004-0018(2)(a). Second, even planning and zoning for the
5 uses that justified a built or committed exception is not possible, unless the
6 standards set out at OAR 660-004-0018(2)(b)(A) through (C) are met. If
7 planning and zoning for the existing uses cannot be shown to comply with
8 OAR 660-004-0018(2)(b)(A) through (C), presumably, under the majority
9 opinion, a reasons exception under OAR 660-004-0018(3)-(4) would be
10 required to plan and zone the built or committed exception area for the uses
11 that justified the built or committed exception. I believe that gives the change
12 in the conjunction separating OAR 660-004-0018(2)(c) and (d) an unwarranted
13 meaning that is inconsistent with the stated purpose of OAR 660-004-0018. I
14 would note that ironically the change in conjunction between OAR 660-004-
15 0018(2)(c) and (d) clearly *does not* have the effect of making subsections (c)
16 and (d) of OAR 660-004-0018(2) conjunctive requirements. The text of each
17 of those subsections identifies the circumstances where each of those
18 subsections of OAR 660-004-0018(2) apply, and the applicability of those two
19 subsections of OAR 660-004-0018(2) is unaffected by the conjunction that
20 separates them. Subsections (a) through (d) of OAR 660-004-0018(2) can be
21 read as a series of options whether the conjunction separating OAR 660-004-
22 0018(2)(c) and (d) is “or” or “and.” I would continue to interpret OAR 660-
23 004-0018 as a series of separate planning and zoning options, despite the 2011
24 conjunction change.

25 The other concurring opinion would significantly limit the OAR 660-
26 004-0018(2)(b) option, based on what I believe to be a misreading of some

1 language in OAR 660-004-0018(2)(b)(A). That language requires that the
2 “rural uses” authorized by OAR 660-004-0018(2)(b) “must be consistent with
3 all other applicable goal requirements[.]” The concurrence would require a
4 reasons exception to plan and zone the exception area for any “uses” other than
5 the presumably rural residential uses that were identified to justify the built or
6 committed exception, and would require a reasons exception here to authorize
7 rural industrial uses. But that language only implicates other “*applicable* goal
8 requirements” after a built or committed exception to Goals 3 or 4 or other
9 goals is approved. For example, if a property is a site with significant
10 inventoried Goal 5 resources, the planning and zoning would have to comply
11 with Goal 5, notwithstanding a built or committed exception to Goals 3 and 4.
12 But once a built or committed exception to Goals 3 and 4 has been approved to
13 plan and zone agricultural or forest land for uses that are not authorized by
14 Goals 3 and 4—in this case rural residential use with five acre minimum lot
15 sizes—I do not believe a reasons exception to Goals 3 and 4 is necessary to
16 plan and zone that land for rural industrial use, provided the standards set out
17 in ORS 660-004-0018(2)(b)(A) through (C) are met. Interpreting OAR 660-
18 004-0018(2)(b)(A) in the way the other concurring opinion does limits the
19 applicability of OAR 660-004-0018(2)(b) in a way that I believe is inconsistent
20 with the text of OAR 660-004-0018(2)(b)(A) and inconsistent with one of the
21 main purposes of OAR 660-004-0018.

22 For reasons that I need not get into here, I agree with the majority and
23 concurring opinions that approving a “built” or “committed” exception to
24 Goals 3 and 4, at least conceptually, does not mean the committed land ceases
25 to be agricultural land or forest land and does not mean Goals 3 and 4 are
26 entirely inapplicable to the exception land. The built or committed exception

1 simply authorizes a local government to plan and zone the exception area for
2 uses that those goals would otherwise not permit. It is OAR 660-004-
3 0018(2)(b) that in turn authorizes local governments to plan and zone the
4 exception area for additional uses beyond the existing uses, provided the
5 standards set out at OAR 660-004-0018(2)(b)(A) through (C) are met. I do not
6 agree with the concurring opinion’s suggestion that the “consistent with all
7 other applicable goals” language in OAR 660-004-0018(2)(b)(A) necessitates a
8 finding that those additional uses are consistent with Goal 3 or 4 or necessitates
9 a reasons exception if they are not consistent with Goals 3 or 4—again, so long
10 as the standards set out at OAR 660-004-0018(2)(b)(A) through (C) are met.

Appendix

OAR 660-004-0018

Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 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, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

(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; and

- 1 (C) The rural uses, density, and public facilities and
2 services are compatible with adjacent or nearby
3 resource uses;
- 4 (c) For uses in unincorporated communities, the uses are
5 consistent with OAR 660-022-0030, “Planning and Zoning
6 of Unincorporated Communities”, if the county chooses to
7 designate the community under the applicable provisions of
8 OAR chapter 660, division 22; and
- 9 (d) For industrial development uses and accessory uses
10 subordinate to the industrial development, the industrial
11 uses may occur in buildings of any size and type provided
12 the exception area was planned and zoned for industrial use
13 on January 1, 2004, subject to the territorial limits and other
14 requirements of ORS 197.713 and 197.714.
- 15 (3) Uses, density, and public facilities and services not meeting
16 section (2) of this rule may be approved on rural land only under
17 provisions for a reasons exception as outlined in section (4) of this
18 rule and applicable requirements of OAR 660-004-0020 through
19 660-004-0022, 660-011-0060 with regard to sewer service on rural
20 lands, OAR 660-012-0070 with regard to transportation
21 improvements on rural land, or OAR 660-014-0030 or 660-014-
22 0040 with regard to urban development on rural land.
- 23 (4) “Reasons” Exceptions:
- 24 (a) When a local government takes an exception under the
25 “Reasons” section of ORS 197.732(1)(c) and OAR 660-
26 004-0020 through 660-004-0022, plan and zone
27 designations must limit the uses, density, public facilities
28 and services, and activities to only those that are justified in
29 the exception.
- 30 (b) When a local government changes the types or intensities of
31 uses or public facilities and services within an area
32 approved as a “Reasons” exception, a new “Reasons”
33 exception is required.

1 (c) When a local government includes land within an
2 unincorporated community for which an exception under
3 the “Reasons” section of ORS 197.732(1)(c) and OAR 660-
4 004-0020 through 660-004-0022 was previously adopted,
5 plan and zone designations must limit the uses, density,
6 public facilities and services, and activities to only those
7 that were justified in the exception or OAR 660-022-0030,
8 whichever is more stringent.

LAND USE – BOARD ORDER COVER SHEET

In the Matter of an amendment to a previously approved Comprehensive Plan Amendment and Zone Map Amendment for the Bruce Goldson, Theta, LLC

File Nos.: Z0490-13-CP, Z0491-13-Z

Hearing Date(s): February 26 and March 12, 2014

Minutes: Yes

Board Order Signed: June 12, 2014 Order No. 2014-46

Sent to Parties: July 8, 2014

DLCD

Mardel Anderson
Robert Anderson
Michael Ard
Don Bancroft
Steven Bray
Seth Brumley
Kenya Cruz
Robert Fleming
Jim and April Gardiner
Bruce Goldson
Tom Hester
Adrian Holmes
Jerry Kennedy
Brian King

Jeff Kleinman
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Jan and Robert Maughiman
Scott McConnachie
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David Phillips
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Planning – Jennifer Hughes, Mike McCallister
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File



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DEVELOPMENT SERVICES BUILDING
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NOTICE OF DECISION

Comprehensive Plan Map Amendment

Clackamas County Board of County Commissioners

On **June 12, 2014**, the Board of County Commissioners adopted a final order approving a Comprehensive Plan amendment and zone map amendment change for **Bruce Goldson, Theta, LLC.**:

File No. Z0490-13-CP, Z0491-13-Z
Board Order No. 2014-46

The full text of this order may be reviewed at the Clackamas County Planning Department, 150 Beaver Creek Rd., Oregon City, OR 97045. Monday through Friday between the hours of 8:00 AM and 3:00 PM.

This action may be appealed to the Land Use Board of Appeals pursuant to ORS 197.830 – 197.845 by filing a notice of intent to appeal within 21 days of the mailing of this notice, in the form and manner, and with the filing fee and deposit, prescribed by the rules of the Board.



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
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Assistants

CERTIFICATE OF MAILING

I hereby certify that the enclosed Board Order No. 2014-46, Local File No. Z0490-13-CP and Z0491-13-Z was deposited in the mail on July 8, 2014

Signed: _____

Cheryl J. Cornelison, Administrative Assistant
Clackamas County Counsel's Office
(503) 655-8619



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.:

Received:

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See OAR 660-018-0040). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: Clackamas County

Local file no.: **Z0490-13-CP/Z0491-13-Z**

Date of adoption: 6/12/14

Date sent: 7/8/14

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 12/3/13

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

NO

Local contact (name and title): Mike McCallister, Planning Director

Phone: 503-742-4522

E-mail: MikeM@clackamas.us

Street address: 150 Beaver Creek Rd.

City: Oregon City

Zip: 97045

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

NA

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- | | | | |
|-------------------|---------------------|-------------|------------------------------------------------|
| Change from Rural | to Rural Industrial | 8.15 acres. | A goal exception was required for this change. |
| Change from | to | acres. | A goal exception was required for this change. |
| Change from | to | acres. | A goal exception was required for this change. |
| Change from | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address): 32E16D 1000-1002, 1100-1101 20646/20666 S. Hwy 213, O.C.

The subject property is entirely within an urban growth boundary *NA*

The subject property is partially within an urban growth boundary *NA*

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

NA

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from RRRF-5	to RI	Acres: 8.15
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address): 32E16D 1000-1002, 1100-1101 20646/20666 S. Hwy 213, O.C.

List affected state or federal agencies, local governments and special districts: ODOT, City of Oregon City, Clackamas County Fire District #1

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

FILED

JUN 17 2014

Sherry Hall
Clackamas County Clerk

In the Matter of a Comprehensive
Plan Amendment and Zone Map
Amendment from Bruce Goldson,
Theta, LLC, on property described
as T3S R2E Section 16D, Tax Lots
1000, 1001, 1002, 1100 and 1101



ORDER NO. 2014-46
(Page 1 of 2)

File Nos.: Z0490-13-CP and Z0491-13-Z

This matter coming regularly before the Board of County Commissioners, and it appearing that Bruce Goldson, Theta, LLC made application for a Comprehensive Plan Amendment from Rural to Rural Industrial and a corresponding zoning map amendment from RRFF-5 (Rural Residential Farm Forest 5-Acre) to RI (Rural Industrial) on property described as T3S R2E Section 16D, Tax Lots 1000, 1001, 1002, 1100 and 1101, located approximately 0.20 miles south of the intersection of S. Highway 213 and S. Henrici Road and more commonly referred to as 20646 & 20666 S. Highway 213, Oregon City, Oregon 97045.

It further appearing that the planning staff, by its report dated January 20, 2014, recommended approval of the application with conditions of approval; and

It further appearing that after appropriate notice a public hearing was held before the Planning Commission on January 27, 2014, at which testimony and evidence was presented, and that the Commission, by the vote of 5-3, recommended denial of this request at their February 10, 2014 meeting; and

It further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on February 26, 2014 at which testimony and evidence were presented, and that a decision was made by the Board, by the vote of 3-2, on March 12, 2014 to approve the application, with the Comprehensive Plan Amendment and Zone Map Amendment limited to that area identified in Order Exhibit B, which is attached to this order and incorporated herein by reference.

Based on the evidence and testimony presented this Board makes the following findings and conclusions:

1. The applicant requests approval of a Comprehensive Plan Amendment from Rural to Rural Industrial and a corresponding zoning map amendment from RRFF-5 (Rural Residential Farm Forest 5-Acre) to RI (Rural Industrial).
2. This Board adopts as its findings and conclusions the *Findings and Conclusions* document attached hereto and incorporated herein as Order Exhibit A, which finds the application to be in compliance with the applicable criteria.

Clackamas County Official Records
Sherry Hall, County Clerk
Commissioners' Journals
Agreements & Contracts

2014-0815

06/17/2014 11:09:39 AM

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a Comprehensive
Plan Amendment and Zone Map
Amendment from Bruce Goldson,
Theta, LLC, on property described
as T3S R2E Section 16D, Tax Lots
1000, 1001, 1002, 1100 and 1101



ORDER NO. 2014 - 46
(Page 2 of 2)

File Nos.: Z0490-13-CP and Z0491-13-Z

NOW THEREFORE, IT IS HEREBY ORDERED that the requested Comprehensive Plan Amendment and Zone Map Amendment is hereby APPROVED, limited to that area identified in Order Exhibit B, and subject to the conditions of approval as contained in Order Exhibit C, which is attached to this order and incorporated herein by reference.

DATED this 12th day of June, 2014

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Order Exhibit A - Findings and Conclusions

File No. Z0490-13-CP and Z0491-13-Z

GENERAL INFORMATION:

Applicant: Bruce Goldson, Theta LLC, PO Box 1345, Lake Oswego, OR 97035

Owner: Doris M. Hickman Trustee, 20666 S. Molalla Ave., Oregon City, OR 97045

Proposal: Comprehensive Plan Map Amendment from Rural to Rural Industrial. Corresponding zone change from RRFF-5 (Rural Residential Farm Forest 5-Acre) to RI (Rural Industrial).

Location: Approximately 0.20 miles south of the intersection of S. Highway 213 and S. Henrici Road

Legal Description: T3S, R2E, Section 16D, Tax Lots 1000, 1001, 1002, 1100, & 1101

Site Address: 20646 & 20666 S. Highway 213, Oregon City, Oregon 97045

Comprehensive Plan Designation: Rural

Zone: RRFF-5

Total Area Involved: Approximately 8.15 acres

BACKGROUND INFORMATION, SITE AND AREA DESCRIPTION AND SERVICE PROVIDERS

Background Information:

1. Site Description: The subject property is approximately 8.15 acres and consists of two "legal lots of record." Tax lots 1000 and 1101 combined form one legal lot of record. Tax lots 1100, 1001 and 1002 combined form one legal lot of record. The property is developed with two single family dwellings, three accessory buildings, a sport court, parking and circulation areas, two driveways to Hwy. 213, landscaping and large groves of trees. The property is fairly level. The property has approximately 440' of frontage on Hwy. 213, which is designated as a major arterial. A slatted cyclone fence borders the south side of the property adjacent to Quail Crest Lane.

2. Surrounding Conditions: All adjacent properties to the north, east, south and west on the west side of Highway 213 are zoned RRFF-5. This area consists of parcels ranging from approximately 2 acres to 40 acres in size. Most of the parcels are developed with single-family dwellings, with large wooded areas.
3. Service Providers:
 - a. Sewer: The subject property is not located in a public or private sewer district. Sewage disposal is accommodated by an on-site sewage disposal system.
 - b. Water: The subject property is located within Clackamas River Water District.
 - c. Surface Water: The subject property is not located in surface water district. Surface and storm water is regulated pursuant to Section 1008 of the ZDO.
 - d. Fire Protection: Clackamas County RFPD #1.

HISTORY OF LAND USE APPLICATIONS

1. Prior Land Use Applications on Tax Lot 1000 and 1101:

- a. May 15, 1991 Letter (No Planning File) (See Record Exhibit 5 including 1991 aerial photo): Recognized "Kimes Specialties" business. A two person business to install, wire and weld hitches on RV's and trailers. The business was approved to be operated out of a 1,248 square foot building located behind the single family dwelling.
- b. File No. Z0629-91-E and Appeal File No. Z0841-91-A (See Record Exhibit 6): Planning Director approval of an Alteration of a Nonconforming Use. Planning Director approval recognized prior nonconforming use (Kimes Specialties) and authorized expansion to operate a construction business and storage of construction vehicles and equipment for a paving business. Allowed both businesses to operate on site. Application materials indicate the number of employees would increase from 2 to 22. Approved site plan makes reference to storing vehicles in a 110' x 270' area or about ½ acre. Application indicates parking area for vehicles and equipment will be improved. The application indicates the use will include 6 dump trucks, 3 trailers, rollers, back hoe, pickups and job trailers. The Planning Director decision include findings which state: "Large vehicles currently are stored on the property. There is sufficient area behind the house to store the equipment out of view." The decision recognized the existing access to Molalla Avenue (now Hwy. 213). The decision included two conditions:
 - i. *The construction vehicles shall be parked in an area where they are not visible from the highway.*
 - ii. *There shall be no access onto Quail Terrace.*

The Planning Director decision was appealed to the Land Use Hearings Officer. On appeal, the County Hearings Officer upheld the Planning Director decision with the same conditions, with the exception that the original Kimes Specialties use was modified to including welding hitches on RV's and trailers but not wiring hitches or construction of trailers.

- c. File No. Z0018-95-E/A (See Record Exhibit 7): Planning Director approval to expand a nonconforming uses to add a 4,200 square foot shop building to be used for the repair of construction vehicles and equipment and for minor welding of hitches on trailers and RV's.

The Planning Director decision was appealed. On appeal, the County Hearings Officer reversed the Planning Directors decision and denied the application. The Hearings Officer's reason for denial was that *"the application in File no. Z0629-91-E/Z0841-91-A requests approval only for the parking and storage of the construction vehicles and equipment, and makes no mention of repair or maintenance of those vehicles or equipment. Repair and maintenance cannot be considered inherent in, or accessory to, the parking and storage of construction vehicles and equipment, as the vehicle and equipment repair and maintenance creates the potential for significant additional adverse impacts to the neighborhood from noise, fumes and extended hours or operation."*

2. **Prior Land Use Applications on Tax Lot 1100, 1001 and 1002:**

- a. File No. Z0797-97-I (See Record Exhibit 8): Planning Director decision to determine if a nonconforming use has been established on the property and the nature and extent of the protected nonconforming use if established on the subject property. The Planning Director determined that:

- i. A nonconforming use has been established and continued for auto, RV and light truck repair and incidental vehicle sales in conjunction with the shop constructed in 1963. The shop constructed in 1973 was built and used for the business without the proper land use permit and is therefore not a protected nonconforming use. The regular use of the property for the storage and repair of heavy trucks and construction equipment is not a part of the protected nonconforming use and was established without the proper land use permit.

The Planning Directors decision was appealed to the Land Use Hearings Officer. On appeal the Hearings Officer confirmed and in part approved the Planning Directors decision which found and a protected nonconforming use for the following:

- i. The repair of automobiles and the installation of trailer hitches conducted solely in the small shop / garage on the subject property and was operated as a part-time

business by Kenneth Miller, without other employees.

ii. The second larger shop building was constructed after 1979 and is not protected as a nonconforming use or structure.

iii. There is no nonconforming use established for the sale of vehicles from the subject property.

iv. The current use of the subject property for the repair and maintenance of heavy construction vehicles and equipment represents an alteration or expansion of the protected nonconforming use, and is not protected.

- b. File No. Z0322-98-E (See Record Exhibit 9): Planning Director denial of an alteration / change of a nonconforming use to allow use of an existing shop building (30' x 72') for the maintenance and repair of heavy equipment and trucks used in a paving and construction business. The Planning Directors decision was appealed to the Land Use Hearings Officer. The Hearings Officer denied the appeal and upheld the Planning Directors denial. The Hearings Officer decision was appealed to the Land Use Board of Appeals (LUBA). At the request of the parties, LUBA remanded the decision back to the County (i.e. LUBA did not render an opinion). On remand, the County Hearings Officer again denied the appeal and upheld the Hearings Officers decision.

**SECTION 1- COMPREHENSIVE PLAN MAP AMENDMENT
FROM RURAL TO RURAL INDUSTRIAL**

PART 1. COMPLIANCE WITH STATEWIDE PLANNING GOALS:

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

This is a quasi-judicial land use application. The Clackamas County Comprehensive Plan and Section 1300 of the Zoning and Development Ordinance (ZDO) contain adopted and acknowledged procedures for citizen involvement and public notice. This application has been processed consistent with the requirements in Section 1300 including notice to individual property owners within 500 feet of the subject property, notice in the local newspaper, and notice to affected agencies, dual interest parties and to the Hamlet of Beavercreek. Two public hearings were conducted before the Clackamas County Planning Commission on January 27, 2014 and February 10, 2014 and two public hearings were conducted before the Board of County Commissioners on February 26, 2014 and March 12, 2014. The public notice to individual property owners, agencies and interested parties, the local neighborhood association and notice in the newspaper as well as the four public hearings before the Planning Commission and Board of County Commissioners provided an opportunity for citizen involvement

and input consistent with this Goal.

This application is consistent with Goal 1.

- B. **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.*

Goal 2 requires coordination with affected governments and agencies. Notice of this application was provided to the following agencies and governments for comments; City of Oregon City, Oregon City School District #62, Clackamas County RFPD #1, Clackamas River Water District, Oregon Dept. of Transportation (ODOT), and the Department of Land Conservation and Development (DLCD).

The subject property is not located within a Urban Growth Management Area (UGMA) of any city. The property is not located in a designated urban or rural reserve area. Therefore, this application will not affect the Comprehensive Plan of any city.

Goal 2 requires that all land use actions be consistent with the acknowledged Comprehensive Plan. The background information and findings provided by the applicant and within this report, and comments received from agencies and interested parties provide an adequate factual base for rendering a final decision consistent with the County Comprehensive Plan.

This application is consistent with Goal 2.

- C. **Goal 3; Agricultural Land:** *To preserve and maintain agricultural lands.*

The subject property is located within an acknowledged exception area designated Rural on the County Comprehensive Plan map. The subject property is not considered Agricultural land as defined in the Statewide Planning Goals or County Comprehensive Plan.

Testimony was received opining that an Exception to Statewide Goal 3 and 4 is required for this application. The Board disagrees and finds that a Goal 3 and / or Goal 4 Exception is not required for the following reasons:

1. The subject property is designated "Rural" on the Comprehensive Plan map. An Exception to the Statewide Planning Goals was completed by the County and acknowledged by LCDC to designate the property Rural when the County adopted the Comprehensive Plan in 1980.

2. The Rural Section of the Comprehensive Plan (page IV-57) states "Rural lands are exception lands."

3. The proposal is consistent with OAR 660-004-0018 because:

a. The Board has limited the uses of the site to the same as the existing land uses. See Order Exhibit C, condition no. 1. The applicant has proposed to continue the existing uses on the property. No new uses have been identified or proposed that require further analysis to determine if they are “rural” in nature.

b. The County’s Rural Industrial Plan designation and implementing RI zoning district has recently been amended and acknowledged to be in compliance with the Statewide Planning Goals 11 and 14.

c. The findings addressing Statewide Planning Goals 11 and 14 demonstrate the rural uses, density and public facilities will maintain the land as rural land. The property is not located in a public sewer or surface water district. The Rural Industrial Plan designation will not require or allow the extension of public sewer to the property. The existing uses and limited future uses contemplated for the property will not require the provision of or extension of additional public services and facilities. The record demonstrates the rural uses, density and public facilities will not commit adjacent or nearby resource lands to other uses because there are no resource lands in adjacent to or close to the subject property.

4. The Board specifically adopts the additional findings in Record Exhibits 28, 29, 34 and 35 in support of this issue.

Goal 3 is not applicable.

- D. **Goal 4; Forest Land:** *To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

The subject property is located within an acknowledged exception area designated Rural on the County Comprehensive Plan map. The subject property is not considered Forest land as defined in the Statewide Planning Goals or County Comprehensive Plan.

See findings under Goal 3, addressing the need for an Exception to Statewide Planning Goal 4, which are specifically incorporated herein.

Goal 4 is not applicable.

- E. **Goal 5; Open Spaces, Scenic and Historic Areas, and Natural Resources:** *To conserve open space and protect natural and scenic resources.*

Goal 5 resources include open space areas, scenic and historic resources and other natural features. Chapter 3 (Natural Resources and Energy) and Chapter 9 (Open

Space, Parks and Historic Sites) of the Clackamas County Comprehensive Plan identifies significant Goal 5 resources within the County.

There are no outstanding cultural areas, historic areas or structures, natural areas, open space, scenic areas, wilderness areas, wetlands, habitat conservation areas, rivers or streams, natural hazards, potential or approved Oregon recreation trails or other significant Goal 5 resources identified in the Comprehensive Plan located on the subject property.

Goal 5 is not applicable.

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

The County Comprehensive Plan and ZDO include adopted implementing regulations to protect the air, water and land resources. The County also has implementing regulations to accommodate all waste and process discharges in order to protect watersheds, airsheds and land resources. These regulations will be applied to any future development proposals on the property and to ensure the protection of the affected air, water and land resources.

Opponents argued this proposal will increase surface water runoff to adjacent properties on the opposite (west side) of Hwy. 213. The applicant submitted evidence from a licensed engineer demonstrating that adequate surface water facilities, including DEQ approved treatment facilities are in place to accommodate surface water runoff and treatment. See Record Exhibit 1. The Board agrees with the testimony submitted from the licensed engineer.

This application is consistent with Goal 6.

- G. **Goal 7; Areas Subject to Natural Disasters and Hazards:** *To protect life and property from natural disasters.*

The subject property is not located within any designated floodplain area. According to the Department of Geology and Mineral Industries (DOGAMI) maps the property does not contain any steep slopes or natural hazards (landslide topography, local slump, earth flow, mudflow or debris flow areas).

Goal 7 is not applicable.

- H. **Goal 8; Recreational Needs:** *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate to provide for the siting of necessary recreational facilities including destination resorts.*

This proposal does not involve any designated recreational or open space lands, affect access to any significant recreational uses in the area, or involve the siting of a

destination resort. Opponents have argued this proposal will impact traffic access to the nearby County Golf Course (Stone Creek Golf Course). The Board finds there is substantial evidence in the record from ODOT and County Traffic Engineering which demonstrate, that this proposal, as conditioned, will not have a significant effect on the State or County transportation system. This proposal will have no impact on the recreational needs of the County or State.

Goal 8 is not applicable.

- I. **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."*

This Goal is intended to ensure Comprehensive Plans contribute to a stable and healthy economy in all regions of the state. Goal 9 also requires the County to provide for an adequate supply of sites of suitable sizes, types, locations, and services for a variety of industrial and commercial uses consistent with plan policies.

OAR 660-009 (Industrial and Commercial Development) implements Goal 9. Pursuant to OAR 660-009-0010(1) the requirements and standards in OAR 660-009 are only applicable to areas within urban growth boundaries. Therefore OAR 660-009 is not applicable.

For the area outside of the urban growth boundary, the Board finds this proposal will increase the inventory of land and the size, type and location of sites suitable for rural industrial uses.

This application is consistent with Goal 9.

- J. **Goal 10; Housing:** *"To provide for the housing needs of citizens of the state."*

This Goal requires local jurisdictions to provide for an adequate number of needed housing units and to encourage the efficient use of buildable land within urban growth boundaries. OAR 660-007 and 660-008 defines the standards for determining compliance with Goal 10. OAR 660-007 addresses the housing standards inside the Portland Metropolitan Urban Growth Boundary. OAR 660-008 addresses the general housing standards.

The subject property is located outside of the Portland Metropolitan Urban Growth Boundary. Therefore, OAR 660-007 is not applicable to this proposal. This proposal will have no affect on the inventory of rural housing because there are two existing dwellings on the site, one on Tax lot 1000 and the other on Tax lot 1100. The property is currently developed at the maximum density allowed under the existing RRFF-5 zoning. The existing dwellings may be maintained on the property under the proposed RI zoning.

This application is consistent with Goal 10.

- K. **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.”*

This Goal provides guidelines for cities and counties in planning for the timely, orderly and efficient arrangement of public facilities and services, such as sewer, water, solid waste and storm drainage. The Goal requires these public facilities and services to be provided at levels necessary and suitable for urban and rural uses, as appropriate. OAR 660-011 implements the requirements of Goal 11.

OAR 660-011-0060 and OAR 660-011-0065 regulates the provisions for, and the extension of sewer and water service to rural lands, respectively. The subject property is not located within a public sewer district. The subject property is located in the Clackamas River Water District which is currently providing water service to the site for residential and other business activities. The subject property is not located in a public or private surface water district.

The property is located within the service boundaries of Clackamas County RFPD #1, Oregon City Garbage Company and Clackamas County Sheriff's District.

This proposal will not require the extension of any new public facilities to support rural industrial uses. Sewage disposal will continue to be provided by an on-site sewage disposal system. Storm and surface water drainage is subject to the requirements in Section 1008 of the Clackamas County Zoning and Development Ordinance and will require on-site detention and treatment.

The County's Rural Industrial Plan designation and implementing RI zoning district has recently been amended and acknowledged (September 9, 2013) to be in compliance with Statewide Planning Goal 11 and Goal 14 (Urbanization). This demonstrates that the types and scale of allowed uses under the Rural Industrial Plan designation will maintain the rural character. In addition, the property is located outside the urban growth boundary, designated urban reserve area and has limited public facilities available to serve new uses.

Policy 7.0 in the Rural Section of the Plan supports the expansion or development of public facilities only when consistent with maintaining the rural character of the area. This Comprehensive Plan policy will ensure that the public facilities and services in the area will not commit adjacent or nearby lands to uses other than “Rural” uses and will be compatible with other adjacent and nearby resource uses.

This application is consistent with Goal 11.

- L. **Goal 12; Transportation:** *“To provide and encourage a safe, convenient and economic transportation system.”*

1. Oregon Administrative Rule (OAR) 660-012 (Transportation Planning Rule) implements Statewide Planning Goal 12.
2. OAR 660-012-0060 applies to plan and land use regulations. OAR 660-012-0060(1) requires any amendments to a functional plan, acknowledged comprehensive plan or a land use regulation (including a zoning map) which would significantly affect an existing or planned transportation facility to put in place measures as provided in OAR 660-012-0060(2) unless the amendment is allowed under OAR 660-012-0060(3), (9) or (10).
3. Pursuant to OAR 660-012-0060(1) a plan or land use regulation amendment significantly affects a transportation facility if it would;
 - a. *Change the functional classification of an existing or planned transportation facility;*
 - b. *Change standards implementing a functional classification; or*
 - c. *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
 1. *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
 2. *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan or;*
 3. *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*
4. Compliance with OAR 660-012-0060(1) can be achieved by one or a combination of the following;
 - a. *Adopting measures that demonstrate the allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.*

- b. *Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.*
 - c. *Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.*
 - d. *Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.*
 - e. *Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, of the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.*
5. The applicant has submitted a Traffic Impact Analysis (TIA) (Part of Record Exhibit 1) addressing the impacts from this proposal. The impact area for this application includes the intersections of Hwy. 213 at Henrici Road and Hwy. 213 at the site access. Both these intersections are State facilities and under the jurisdiction of the State of Oregon (ODOT). Opponents raised a number of issues related to the scope of the TIA, assumptions regarding worst case scenario traffic, capacity and safety issues. In response, those issues were addressed in an addendum to the TIA by the applicant's traffic engineer. See Record Exhibit 32. The Board finds the addendum to the TIA and ODOT's response to the TIA demonstrates this proposal, with conditions, can satisfy the Oregon Highway Plan and the Transportation Planning Rule.
 6. The conditions of approval included in Order Exhibit C will ensure this proposal does not degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan.
 7. The DTD Traffic Engineering Division reviewed this proposal and found there are no County transportation facilities which will be impacted by this proposal.

This application is consistent with Goal 12.

M. **Goal 13; Energy Conservation:** *To conserve energy.*

This proposal will have no impact on any known or inventoried energy sites or resources. There are no planning or implementation measures under this Goal applicable to this application.

Goal 13 is not applicable.

N. **Goal 14; Urbanization:** *To provide for an orderly and efficient transition from rural to urban land uses.*

The subject property is located outside of the Metropolitan urban growth boundary (UGB), including the Oregon City UGB. This proposal does not involve a change in the location of the UGB, a conversion of rural land to urban land, or urbanizable land to urban land. The property is not located within a designated urban or rural reserve areas. There are no planning or implementation measures under this Goal applicable to this application. The findings under Statewide Planning Goal 11 also demonstrate that the proposed Rural Industrial Plan designation and limited public facilities and services will maintain the land as rural land.

This application is consistent with Goal 14.

O. **Goal 15; Willamette River Greenway:** *To protect, conserve, enhance and maintain the natural scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The subject property is not located within the Willamette River Greenway.

Goal 15 is not applicable.

P. **Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes) and Goal 19 (Ocean Resources).**

Goals 16, 17, 18 and 19 are not applicable in Clackamas County.

PART 2 . COMPLIANCE WITH CLACKAMAS COUNTY COMPREHENSIVE PLAN POLICIES:

A. **Chapter 1; Introduction:** This Chapter describes the purpose of the Comprehensive Plan and how to use the Plan.

This Chapter does not include any Goals or Policies applicable to a quasi-judicial land use application.

Chapter 1 is not applicable.

- B. **Chapter 2; Citizen Involvement:** The purpose of this Chapter is to promote citizen involvement in the governmental process and in all phases of the planning process.

There is one policy in this Chapter applicable to this application.

Policy 1.0; Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representation, not only of property owners and County wide special interests, but also of those within the neighborhood or areas in question.

The Clackamas County Comprehensive Plan and ZDO have adopted and acknowledged procedures for citizen involvement. This application has been processed consistent with those procedures. Specifically, the County provided notice to the Citizen's Planning Organization in the area (Hamlet of Beavercreek), to property owners within 500 feet of the subject property, and published public notices in the newspaper consistent with State law and Section 1302 of the ZDO. The Planning Commission and Board of County Commissioners held four public hearings to provide opportunities for citizen participation. The notification to property owners, public notices and hearings provided and opportunity for citizens to participate in the land use process.

This application is consistent with Chapter 2.

- C. **Chapter 3; Natural Resources and Energy:** The purpose of this Chapter is to provide for the planning, protection and appropriate use of the County's natural resources and energy.

This Chapter contains eight (8) Sections addressing; 1) Water Resources; 2) Agriculture; 3) Forests; 4) Mineral and Aggregate Resources; 5) Wildlife Habitats and Distinctive Resource Areas; 6) Natural Hazards; 7) Energy Sources and Conservation and; 8) Noise and Air Quality. Each of these Sections is addressed below.

- I. **Water Resources:** This Section of the Chapter identifies policies applicable to River and Stream Corridors, Principal River Conservation Areas, Stream Conservation Areas, Habitat Conservation Areas, Water Quality Resource Areas, Wetlands and Groundwater.
 - a. **River and Stream Corridors and Principal River and Stream Conservation Area Policies:** There are no river or stream corridors identified on the River and Stream Conservation Area map located on the subject property.
 - b. **Habitat Conservation Areas:** The subject property is not located in a Habitat Conservation Area.

- c. Water Quality Resource Areas: The subject property is not located in a Water Quality Resource Area.
- d. Wetlands: There are no wetlands identified on the National Wetland Inventory or other adopted wetland inventories on the subject property.
- e. Groundwater: The subject property is not located in a Limited or Critical Groundwater Area.

There are no policies applicable to this proposal.

- 2. Agriculture: This application does not involve any land planned or zoned for agricultural uses. There are no policies applicable to this proposal.
- 3. Forests: This application does not involve any land planned or zoned for forest uses. There are no policies applicable to this proposal.
- 4. Mineral and Aggregate Resources: The subject property is not identified on the "Inventory of Mineral and Aggregate Resource Sites" in Table III-2 of the Comprehensive Plan. There are no policies applicable to this proposal.
- 5. Wildlife Habitats and Distinctive Resource Areas: There are no significant wildlife habitats or scenic areas identified on Map III-2 of the Comprehensive Plan located on or near the subject property. There are no policies applicable to this proposal.
- 6. Natural Hazards: This Section of the Chapter identifies policies applicable to floodplains, natural and geologic hazards, steep hillsides and areas with limiting soil characteristics such as shrink-swell soils, compressed soils, etc.

The subject property is not located within a designated floodplain. According to the DOGAMI maps, there are no natural or geologic hazards, steep slopes or other natural hazards located on the subject property. There are no policies applicable to this proposal.

- 7. Energy Sources and Conservation: There are no policies applicable to this application.
- 8. Noise and Air Quality. There are no policies applicable to this application.

This application is consistent with Chapter 3.

- D. **Chapter 4; Land Use**: *This Section of the Comprehensive Plan includes the definitions for urban and rural land use categories, and outlines policies for determining the appropriate Comprehensive Plan land use designation for all lands within the County.*

This Chapter contains three Sections addressing; 1) Urbanization; 2) Urban Growth Concepts; and 3) Land Use Policies for the each Land Use Plan designation. Each

Section is addressed below.

1. Urbanization Section. This Section of the Plan outlines policies guiding land use in Immediate Urban Areas, Future Urban Areas, Future Urban Study Areas, Urban Reserve Areas and Population Coordination.

The subject property is not within an urban growth boundary, immediate urban area, future urban area, future urban study area or urban reserve area. There are no policies applicable to this application.

The Urbanization policies are not applicable.

2. Urban Growth Concept Policies. The Urban Growth Concept policies in this Section of the Plan are intended to implement the Region 2040 Growth Concept Plan. The subject property is not located within the boundaries of the Region 2040 Concept Plan identified on Map IV-8 of the Comprehensive Plan.

The Urban Growth Concept policies are not applicable.

3. Land Use Plan Designations. The subject property is currently designated Rural on the Comprehensive Plan map. The proposed amendment is to change the land use plan designation to Rural Industrial. The Rural plan policies and Rural Industrial plan policies are applicable to this application.

The remaining policies pertaining to the Residential, Commercial, Industrial, Open Space and Floodplains, Unincorporated Communities, Rural Commercial, Agriculture and Forest land use plan designations in this Section of the plan are not applicable.

The Rural and Rural Industrial plan policies are evaluated in Part 3 of this report.

Based on the findings in Part 3 and 4 of this report the Board finds the existing Rural plan designation is appropriate on a portion of the property and the proposed Rural Industrial plan designation is appropriate on a portion of the subject property. The site plan included in Order Exhibit B delineates the Rural and Rural Industrial plan designations adopted by the Board.

- E. Chapter 5; Transportation: *This Chapter outlines policies addressing all modes of transportation.*

This Chapter contains six (6) Sections addressing; 1) Roadways; 2) Transportation Demand Management; 3) Parking; 4) Transit; 5) Pedestrian and Bicycle Facilities and; 6) Freight, Rail, Air, Pipelines and Water Transportation. Each of these Sections is addressed below.

1. Roadways. The purpose of this Section is to create and maintain a safe, continuous County-wide road system that accommodates movement by all modes. The adopted

County Roadway Standards are also used to ensure a safe and adequate road system.

A. Policy 14.0, Access Standards are applicable to this application.

- i. Policy 14.0: *Plan and control access onto roads within the County, as shown on Table V-5, for urban areas and according to the American Association of State Highway and Transportation Officials (AASHTO) guidelines for rural areas, for both new and existing uses, and coordinate with the Oregon Department of Transportation for access control on state highways. Access standards need to be applied in a flexible manner that maintains reasonable access to property when access cannot be denied.*

The subject property has frontage on State Hwy. 213, which is classified as a major arterial. This highway is under the jurisdiction of the Oregon Department of Transportation (ODOT). Access to the property is subject to the requirements of ODOT and the Oregon Highway Plan. The subject property has two driveways which provide direct access to Hwy. 213. The record demonstrates that neither driveway meets minimum sight distance standards to the south of the subject property due to a horizontal curve. The applicant has identified an alternate location for the driveway to the north of the existing driveways which meets minimum sight distance standards and agreed to close the two existing driveways. The proposed driveway complies with minimum sight distance standards and the applicant has agreed to a condition to construct the new driveway within one year of final approval. A corresponding condition of approval is included requiring removal of the existing northerly and southerly driveways. This condition will ensure the access location to the subject property for both the rural residential and rural industrial uses satisfies AASHTO minimum safety guidelines.

This policy can be met.

2. Transportation Demand Management. This Section outlines strategies to achieve efficiency in the transportation system by reducing demand and vehicle miles traveled.

There are no policies applicable to this application.

3. Parking. This Section of the Chapter outlines policies for parking standards to meet the Region 2040 Growth Concept Plan, Transportation Planning Rule and DEQ's Air Quality Maintenance Plan.

There are no policies applicable to this application.

4. Transit. This Section of the Chapter outlines policies for accommodating transit services and facilities.

There are no policies applicable to this application.

5. Pedestrian and Bicycle Facilities. This Section of the Chapter outlines policies for providing pedestrian and bicycle facilities.

There are no policies applicable to this application.

6. Freight, Rail, Air, Pipelines and Water Transportation. This Section of the Chapter outlines policies applicable to these various travel modes of movement of people and goods.

There are no policies applicable to this application.

This proposal is consistent with Chapter 5.

- F. **Chapter 6; Housing:** *The purpose of the Housing element of the Plan is to, "Provide opportunities for a variety of housing choices, including low and moderate income housing, to meet the needs, desires, and financial capabilities of all Clackamas County residents to the year 2010."*

This Chapter includes a variety of policies regarding housing choices, affordable housing, neighborhood quality, urban infill, multifamily residential housing, common wall units, mobile homes and density bonuses for low cost housing and park dedication.

There are no policies applicable to this application.

Chapter 6 is not applicable.

- G. **Chapter 7; Public Facilities and Services:** *The goal of the Public Facilities and Services Chapter is to ensure an appropriate level of public facilities and services are necessary to support the land use designations in the Comprehensive Plan, and to provide those facilities and services at the proper time to serve the development in the most cost effective way.*

The Public Facilities Section of this Chapter includes policies regarding Sanitary Sewage Treatment, Water, Storm Drainage, Solid Waste and Street Lighting. The policies regarding Sanitary Sewage Treatment and Street Lighting are not applicable because the property is not located within a public sewer or street lighting district. (Sewage disposal is accommodated by an on-site sewage disposal system. The applicant will be required to demonstrate the property is suitable for an on-site sewage system to accommodate any future uses).

Policies 19.0 - 26.0 under the Storm Drainage Section include a number of policies requiring new development to provide storm drainage, water quality and erosion control plans. This proposal will not impact any public storm drainage facilities. The

subject property is not located within a public storm water / storm drainage district. Therefore, storm drainage, water quality and erosion control is regulated pursuant to Section 1008 of the Clackamas County Zoning and Development Ordinance. The standards in Section 1008 require all new development to maintain and improve water quality, minimize runoff and mitigate offsite impacts. These standards are adequate to ensure protection of groundwater, surface water and nearby Beavercreek.

Opponents raised issues about off-site storm drainage impacts from the site on downstream properties across Hwy. 213. In response, the applicant provided a storm drainage analysis which indicates the storm water from the parking and roadway surfaces are collected in catch basins and directed to a DEQ approved utility vault to collect solids and oils from the site. The Board finds this is substantial evidence demonstrating this proposal does or can satisfy County surface water requirements.

Policy 17.0 requires water service purveyors to provide water services for non-urban areas at levels appropriate for non-urban uses. The subject property is currently located in the Clackamas River Water District which provides water service to existing uses on site.

The Public Services Section of this Chapter includes policies regarding Fire, Law Enforcement, Education and County Government. The property is located within Clackamas County Fire District #1. All new development will require review and approval by the Clackamas County Fire District #1 consistent with Policy 1.0. The Clackamas County Sheriff Department provides law enforcement services in the area. This proposal will have no additional impact on the schools district (educational facilities) because no new housing is proposed. The policies regarding County Government are not applicable to this proposal.

This application is consistent with Chapter 7.

- H. **Chapter 8; Economics:** *The goal of the Economics element of the Plan is to "Establish a broad-based, stable and growing economy to provide employment opportunities to meet the needs of the County residents."*

This Chapter contains 4 Sections related to; 1) Existing Industry and Business; 2) New Industry and Business; 3) Coordination; and 4) Target Industries.

There are no policies applicable to this application.

Chapter 8 is not applicable.

- I. **Chapter 9; Open Space, Parks, and Historic Sites:** *The purpose of this Chapter of the Plan is to protect the open space resources of the County, to provide land, facilities and programs which meet the recreation needs of County residents and visitors, and to preserve the historical, archaeological, and cultural resources of the County.*

The subject property is not designated as open space or park land. There are no Historic Landmarks, Historic Districts or Historic Corridors on or adjacent to the subject property.

Chapter 9 is not applicable.

- J. **Chapter 10; Community Plan and Design Plans:** *This Chapter of the Comprehensive Plan includes the Mt. Hood Community Design Plan, Kruse Way Design Plan, Sunnyside Village Plan, Clackamas Industrial Area and North Bank of the Clackamas River Design Plan, Clackamas Regional Center Area Design Plan, Sunnyside Corridor Community Plan, and McLoughlin Corridor Design Plan.*

The subject property is not located within the boundary of any Community Plan or Design Plan area.

Chapter 10 is not applicable.

- K. **Chapter 11; The Planning Process:** *The purpose of this Chapter is to establish a framework for land use decisions that will meet the needs of Clackamas County residents, recognize the County's interrelationships with its cities, surrounding counties, the region, and the state, and insure that changing priorities and circumstances can be met.*

In the City, Special District and Agency Coordination Section of this Chapter, Policy 1.0, is applicable. In the Amendments and Implementation Section of this Chapter, Policy 1.0 and 3.0 are applicable.

1. City, Special District and Agency Coordination Section

Policy 1.0; Participate in interagency coordination efforts with federal, state, Metro, special purpose districts and cities. The County will maintain an updated list of federal, state and regional agencies, cities and special districts and will invite their participation in plan revisions, ordinance adoptions, and land use actions which affect their jurisdiction or policies.

Notice of this application was provided to the following agencies and governments for comments; City of Oregon City, Oregon City School District #62, Clackamas County Fire District #1, ODOT, and DLCD. This notice and advertised public hearings before the Planning Commission and Board of County Commissioners provided an adequate opportunity for interagency coordination of this plan amendment and demonstrates compliance with this policy.

This policy is met.

2. Amendments and Implementation Section

- a. Policy 1.0; *Assure that the Comprehensive Plan and County ordinances meet the goals of LCDC, the Region 2040 Urban Growth Management Functional Plan and the Metro Framework Plan.*”

Based on the findings in Part 1 of this report this proposal is consistent with all of the LCDC Statewide Planning Goals. The Region 2040 Urban Growth Management Functional Plan and Metro Framework Plan are not applicable to this application because the property is located outside the Metro UGB and service district.

This policy is met.

- b. Policy 3.0; *Amend the Comprehensive Plan pursuant to the following procedures and guidelines (listed in subpolicies 3.1 through 3.6).*

This is a quasi-judicial Comprehensive Plan map amendment and is subject to subpolicies 3.1, 3.3 and 3.4.

1. Subpolicy 3.1; *A map amendment may be initiated only by the Board of County Commissioners, the Planning Commission, the Planning Director, or the owner of the property for which a change is requested.*

The property is currently owned by Doris M. Hickman Trustee. The Land Use Application form has been signed by Doris M. Hickman, authorizing filing of the application.

This policy is met.

2. Subpolicy 3.3; *All proposed Comprehensive Plan amendments are to be considered at advertised public hearings before the Planning Commission, in accordance with state law and County requirements.*

The Planning Commission and Board of County Commissioners considered this application through a series of four public hearings. Notice of the hearings were published in the local newspaper and advertised consistent with all ZDO notice requirements.

This policy is met.

3. Subpolicy 3.4; *If the proposed amendment is quasi-judicial, property owners will be notified as required. The Community Planning Organization in the affected area shall be notified at least 35 days prior to the first hearing.*

The property owners within 500 feet of the subject property were notified as required in Section 1303 of the ZDO. The Hamlet of Beavercreek was notified of the application on December 2, 2013, approximately 42 days prior to the first scheduled public hearing before the Planning Commission.

This policy is met.

This application has been processed consistent with Chapter 11.

PART 3. EVALUATION OF THE RURAL AND RURAL INDUSTRIAL COMPREHENSIVE PLAN POLICIES IN THE LAND USE CHAPTER (CHAPTER 4).

The Land Use Chapter of the Comprehensive Plan contains specific policies for determining the appropriate Comprehensive Plan land use designation for property. The Board finds it is feasible and common for a particular property to meet the policies and criteria for more than one land use Plan designation. In order to determine the most appropriate Plan designation, an evaluation of the policies for both the Plan designation being requested (Rural Industrial) as well as the existing Plan designation policies (Rural) is appropriate in order to weigh and balance any competing policies. The Board adopts the following findings with respect to the Rural and Rural Industrial Plan policies:

- A. **Rural Plan Policies:** The Rural Section of the Land Use Chapter of the Plan identifies the criteria which must be satisfied in order for the Rural Plan designation to be applied to an area. *“Rural lands are exception lands, as defined in Oregon Administrative Rules 660-004-005(1), that are outside urban growth boundaries and Unincorporated Communities and are suitable for sparse settlement, such as small farms, woodlots, or acreage home sites. They lack public facilities or have limited facilities and are not suitable, necessary, or intended for urban, agricultural, or forest use.”*

The Goals of the Rural Section of the Plan are: 1) *To provide a buffer between urban and agricultural or forest use;* 2) *To perpetuate the rural atmosphere while maintaining and improving the quality of the air, water, and land resources;* and 3) *To conserve open space and protect wildlife habitat.*

1. Policy 1.0 in Chapter 4 of the Rural Section of the Land Use Chapter of the Plan identifies the criteria which must be satisfied in order for the Rural Residential Plan designation to be applied to an area.
- i. Policy 1.0: *Areas may be designated Rural if they are presently developed, built upon or otherwise committed to sparse settlement or small farms with limited, if any, public services available.*

This policy does not identify what "Areas" should be used or how it should be defined in the evaluation of this plan policy or any other plan policies

where the word "Areas" is used. The word "Areas" is not defined in the Comprehensive Plan or Zoning and Development Ordinance (ZDO). The Planning Commission and Board of County Commissioners have made various interpretations of this word to include just the subject property, a more broadly defined area around the subject property or both. The determination has been made on a case-by-case basis considering the merits of each application. The record includes two LUBA cases (*Swyter and Guest*; see Record Exhibits 26 and 27) which clearly provide this Board broad discretion to identify the appropriate "area." In both LUBA cases, the Board determined the "subject property" to be the appropriate "area" for evaluating this application. The Board finds the same in this case.

- ii. The findings addressing the Rural Industrial Plan Policy 3.0 in paragraph B below are incorporated in addressing this policy.
- iii. A portion of the lot of record consisting of tax lots 1000 and 1101 is committed to industrial uses and the remainder of the property is committed to residential uses and accessory uses (septic tank / drain field and landscaping) consistent with this policy.
- iv. The lot of record consisting of tax lots 1100, 1001 and 1002 is developed with a single family dwelling, 1,000 square foot accessory building approved for a small auto repair business, 2,000 square foot accessory building, septic tank / drain field, driveway to Hwy. 213, landscaping and large grove of trees. With the exception of the driveway to Hwy. 213 which provides access to industrial uses on tax lots 1000 and 1101 and the 1,000 square foot building which has been used for the repair of automobiles, equipment and machinery, the existing Rural Residential plan designation is appropriate on this property.
- iv. Public facilities to both lots of record are limited to public water provided by Clackamas River Water District. The subject property is not located in a public sewer or water district.
- v. Based on the above findings, the Board finds the subject property is the appropriate "area" to consider in evaluating this policy because it is the property included in the application. There is substantial evidence in the record demonstrating that the property has a historical commitment to both residential and industrial uses. A portion of the property is developed and has historically been committed to single family residential uses and accessory uses. The subject property has limited public facilities and services. The property is not suitable, necessary, or intended for urban uses because urban services are not available or planned and the property is located outside the urban growth boundary. The property is not suitable, necessary or intended for agricultural or forest use because it is located in

an approved exception area and is substantially committed to residential and industrial uses.

Policy 1.0 is met for a portion of the subject property committed to rural residential uses.

- B. **Rural Industrial Plan Policies:** The Rural Industrial Section of the Land Use Chapter of the Plan identifies the criteria which must be satisfied in order for the Rural Industrial Plan designation to be applied to an area.

The Goals of the Rural Industrial Section of the Plan are: 1) *To provide for the continuation of industrial uses in non-urban areas having an historical commitment to such uses.* 2) *To provide for the industrial redevelopment of abandoned or diminished mill sites.* 3) *To implement the goals and policies of this Plan for industrial development in Unincorporated Communities.*

1. **Policy 1.0:** *“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.”*

The subject property is located outside of the Metro UGB and service district boundary and is considered a non-urban area. The Rural Industrial Plan designation and implementing RI zoning district limits the type and scale of uses which are appropriate for rural development. Public services to the site are limited to public water provided by the Clackamas River Water District. The property is not located in a public sewer or surface water district. Those services are not proposed or necessary to support the proposed Rural Industrial plan designation. Services to the area include garbage service and sheriff patrol services. The public facilities and services are appropriate to maintain the rural character of the area.

Opponents raised issues about the compatibility of rural industrial uses and conflicts with the rural character of the area. The Board finds the Rural Industrial plan designation is a rural zone. The existing industrial uses of the property, which have existed for over 45 years is part of the rural character of this area. Furthermore, the Rural Industrial Plan policies contemplate rural industrial uses in rural areas of the County because the policies are intended to recognize areas historically committed to industrial uses.

This policy is met.

2. **Policy 2.0:** *“The Rural Industrial (RI) zoning district implements the Rural Industrial plan designation.”*

The Board finds that the Rural Industrial Plan designation is appropriate on a portion of the subject property. The RI zoning district is the only zone designation that can be applied to the property to implement the Rural Industrial plan

designation. The findings in this report, demonstrate the Rural Industrial plan designation is appropriate on the portion of the subject property identified in Order Exhibit B because that area is historically committed to rural industrial uses. Therefore the RI zoning district should be applied to that same area to implement the Rural Industrial plan designation.

This policy can be met.

3. Policy 3.0: "Areas may be designated Rural Industrial when the *first, the second, or both of the other criteria are met:*"
 - a. Policy 3.0(a): "Areas shall have an historical commitment to industrial uses.
 - i. The Board finds that the subject property is the appropriate "area" of consideration for evaluating this policy for the same reasons identified under Policy 1.0 in the Rural Section of the Comprehensive Plan. The term "areas" includes the parcels / property which are this application. Opponents argued that the effect of defining the subject property as the "area" result in illegal "spot zoning" and is inconsistent with the comprehensive plan. The Board finds the purpose of Policy 3.0(a) is in fact to recognize the historical use of properties and apply the appropriate plan and zone designations.
 - ii. The subject property was originally zoned R-20 on December 14, 1967. The current RRFF-5 zoning was applied to the subject property on June 19, 1980.
 - iii. The information in the background section of this report titled "HISTORY OF LAND USE APPLICATIONS" provides a basis for evaluating this policy.
 - iv. The lot of record consisting of tax lot 1000 and 1101 is 3.84 acres. This property is developed with a single family dwelling built in 1958, a sport court, 1,248 square foot building, paved and graveled parking and circulation areas, and a driveway to Hwy. 213 (south driveway). The , remainder of the site consists of landscaping and groves of trees along the west, south and eastern edges of the property.

The 1,248 square foot building has been used and approved for industrial uses for over 45 years. The rear portion of the property, located behind the 1,248 square foot building, has been used and approved for a construction / paving business for the storage of construction equipment and vehicles for approximately 22 years. The paving / construction business is considered an industrial use. The driveway to Hwy. 213 provides access to the single family dwelling, both industrial businesses and the industrial use (auto repair, etc) authorized in the small building on tax lot 1100. Approximately 1.5 to 2 acres of the 3.84 acre site is developed and committed to industrial

uses.

- v. The lot of record consisting of tax lot 1100, 1001 and 1002 is 4.31 acres. This property is developed with a single family dwelling built in 1955, a small shop building (approx. 1,000 square feet constructed in 1963) and a large shop building (approx. 2,000 square feet constructed sometime after 1979), paved parking area behind these two buildings (used for employee parking for the industrial uses on tax lot 1000), graveled parking and circulation areas on the rear of the property (used for storage of equipment and materials used for the industrial uses on tax lot 1000), a driveway to Hwy. 213 (north driveway). The remainder of the site consists of landscaping and large groves of trees. Approximately 8 RVs and vehicles are stored and listed for rent or sale along the frontage of Hwy. 213.

The 1,000 square foot accessory building has been used and approved for a part-time auto repair business for over 45 years. Although the building occupies only a small portion of the subject property, the Board finds the building is recognized as a nonconforming use for the repair of automobiles which represents a historical industrial use of the property. The existing northerly driveway on the property is currently and has historically been used for access to the business in this building.

- vi. Opponents argued that the property has a history of land use violations and those uses cannot be used to justify a “historical commitment” of the property. However, the Board is not relying on the history of violations or alleged violations, rather on evidence in previous approved land use decisions recognizing legal nonconforming use and other evidence in the record.
- vii. Additionally, the Board finds that the criteria for a nonconforming use application is different than the approval criteria for a Comprehensive Plan amendment. While the prior decisions approving or denying nonconforming use applications are evidence in this matter, those decisions are not the sole basis for determining whether or not the property has a historical commitment to industrial uses.
- viii. Based on the above findings, the Board finds subject property is the appropriate “area” to consider in evaluating this policy. The findings demonstrate that a portion of a portion of the subject property has an historical commitment to industrial uses.
- j. Policy 3.0(b): *“The site shall be an abandoned or diminished mill site, as defined in the Zoning and Development Ordinance, provided that only the portion of the site that was improved for the processing or manufacturing of wood products may be designated Rural Industrial.”*

There is no evidence in the record of an abandoned or diminished mill site on any portion of the subject property.

This policy is not met.

- k. Policy 3.0(c): *“Areas shall be located within an Unincorporated Community; and”*

The subject property is not located within the boundaries of an Unincorporated Community.

This policy is not met.

- l. Policy 3.0(d): *“The site shall have direct access to a road of at least an arterial classification.”*

The subject property has frontage on State Highway 213, which is designated as a major arterial road. Both lots of record have direct access to an arterial road.

This policy is met.

4. Summary: The Board finds that a portion of the subject property satisfies Policy 3.0(a) because the site has been historically committed to an industrial use. The remaining Policies (3.0 b, c and d) do not have to be met because Policy 3.0(a) is satisfied.

Policy 3.0 is met for a portion of the subject property which has an historical commitment to industrial uses.

PART 4. SUMMARY OF FINDINGS AND CONCLUSIONS FOR THE COMPREHENSIVE PLAN AMENDMENT

- A. Parts 1-3 in Section 1 of this report address all the policies, standards and criteria found to be applicable to this proposal. These policies and standards range from being very general (i.e. Statewide Planning Goals) to more specific in nature (i.e. Plan Designation Policies). The Board has weighed and balanced all these policies to determine most appropriate plan designation on the subject property and finds:
- B. The Rural Industrial Plan designation is the most appropriate plan designation on a **portion** of the site (as depicted in Order Exhibit B) for the following reasons:
1. The findings in Part 1 demonstrate the Rural Industrial Plan designation complies with the Statewide Planning Goals and in particular:
- a. Goal 9 because it will add to the supply, size, type and location of land for rural

- industrial uses.
- b. Goal 10 because it will not reduce the amount of land for rural housing in the County.
 - c. Goal 11 because the property has limited public services and facilities which will ensure the property is maintained as “rural” land and;
 - d. Goal 12 because the capacity and safety of the transportation system is adequate with conditions imposed on this approval to construct certain capacity and safety improvements.
2. A portion of the subject property meets Rural Industrial Plan Designation Policy 3.0(a) because the property is historically developed with industrial uses.
 - a. The property includes three recognized nonconforming uses, two established prior to 1967 the other in 1991.
 - b. In combination, the nonconforming uses authorize a range of industrial uses including auto repair in a 1,000 square foot building, a 1,248 square foot building for welding and trailer repair and the outside storage of equipment and vehicles for a construction and paving business.
 - c. The 1991 approval authorized a broad range of construction vehicles and equipment, paving of the parking and circulation areas and up to 22 employees.
 3. The property has two existing driveways which provide direct access to Hwy. 213 a major arterial road, which have historically provided access to the industrial uses on the subject property.
 4. A condition of approval will require removal of both existing driveways and construction of a new driveway in conformance with ODOT and AASHTO standards. This will improve access to the site by increasing driveway spacing along Hwy. 213, improve sight distance to minimum ODOT standards and improve the new driveway to accommodate two way traffic and truck movements. This will result in a safer transportation system.
 5. The existing public facilities and services are adequate to support the Rural Industrial Plan designation. No new public facilities or services are proposed or required to support rural industrial development on the property.
 6. There are no wetlands, floodplains, rivers or streams or other natural environmental features located on the property. The physical characteristics of the site are suitable for rural industrial uses.

SECTION 2- ZONE CHANGE FROM RRF5-5 TO RI

PART 1: COMPLIANCE WITH SECTION 1202 OF THE ZDO

- A. The zone change criteria are listed in Section 1202 of the Clackamas County Zoning

and Development Ordinance (ZDO). Section 1202.01 states that the Hearings Officer (Board of County Commissioners) shall allow a zone change, after a hearing conducted pursuant to Section 1300, if the applicant provides evidence substantiating the following criteria:

1. **Section 1202.01(A):** *Approval of the zone change is consistent with the Comprehensive Plan.*

Based on the findings in Parts 1-3 and as summarized in Part 4 of this report, the Rural Industrial plan designation is consistent with the Comprehensive Plan on a portion of the subject property. The proposed RI zoning district (Section 604 of the ZDO) implements the Rural Industrial Plan designation. Therefore, the proposed RI zoning district is consistent with the Comprehensive Plan designation. The Board finds all the other applicable Comprehensive Plan policies are addressed in these findings and on balance support the Rural Industrial Plan designation on a portion of the property.

This criterion is met.

2. **Section 1202.01(B):** *If development under the new zoning district designation has a need for public sanitary sewer, surface water management, and/or water service, it can be accommodated with the implementation of service providers' existing capital improvement plans. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.*

The subject property is not located in a public sanitary sewer, or surface water district, nor is there a need to extend these services to support the proposed RI zoning district. Sewer service will be accommodated by an on-site sewage disposal system. Surface water will be accommodated by on-site detention or other facilities approved under Section 1008 of the ZDO as administered by the DTD, Engineering Division.

The property is located within the Clackamas River Water District which currently provides adequate public water to the subject property.

This criterion is met.

3. **Section 1202.01(C):** *The transportation system is adequate, as defined in Subsection 1007.09(D), and will remain adequate with approval of the zone change. Transportation facilities that are under the jurisdiction of the State of Oregon are exempt from Subsection 1202.01(C). For the purpose of this criterion:*
 - a. **Section 1202.01(C)(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 land use application is submitted.*

- b. Section 1202.01(C)(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*
- c. Section 1202.01(C)(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.*
- d. Section 1202.01(C)(4): *Transportation facility capacity shall be calculated pursuant to Subsection 1007.09(E).*
- e. Section 1202.01(C)(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.*

The adequacy of the transportation system has been addressed under the discussion of Statewide Planning Goal 12 and the implementing Transportation Planning Rule. The impacts from this proposal on the transportation system are limited to Hwy. 213 which is a State transportation facility. Transportation facilities under the jurisdiction of the State of Oregon are exempt from this criteria. The DTD, Traffic Engineering Division has submitted comments in the record indicating this proposal will not affect the capacity of any County transportation facilities. The Board adopts the findings of the DTD Engineering Division as set forth in Record Exhibit 39.

This criterion is not applicable.

- 4. Section 1202.01(D): *The proposal, as it relates to transportation facilities under the jurisdiction of the State of Oregon, complies with the Oregon Highway Plan.*

The adequacy of the State transportation system has been addressed under the discussion of Statewide Planning Goal 12 and the implementing Transportation Planning Rule. Based on those findings, there is substantial evidence in the record demonstrating this proposal complies with the Oregon Highway Plan. Those findings are adopted by reference to address this criterion. The Board finds that conditions of approval related to capacity and safety improvements at the Henrici Road / Hwy. 213 intersection and site access / Hwy. 213 intersection recommended by the Oregon Department of Transportation are warranted to comply with the minimum requirements of the Oregon Highway Plan.

This criterion can be met.

- 5. Section 1202.01(E): *Safety of the transportation system is adequate to serve the level of development anticipated by the zone change.*

The subject property has two driveways which provide direct access to State Hwy. 213. Both driveways have inadequate sight distance to the south on Hwy. 213. The inadequacy of the site distance was raised by opponents as an issue. The applicant has proposed to remove both driveways and construct one new driveway further north. ODOT has determined that there is a suitable location to construct a driveway and meet minimum sight distance standards. See record Exhibit 34. The report from Lancaster Engineering (Record Exhibit 32) demonstrates that if the south driveway is closed and the north driveway is moved approximately 100 feet, adequate sight distance will be met consistent with ODOT standards. A condition is included in this approval requiring removal of the existing driveways and construction of one new driveway meeting ODOT standards. The specific location of the single driveway is identified in the plan in Order Exhibit B. Order Exhibit B demonstrates the minimum sight distance of 610 feet is met at the proposed driveway location, which is consistent with the Lancaster Engineering recommendations and ODOT safety standards to accommodate safety for all types and levels of traffic associated with the conditional zone change.

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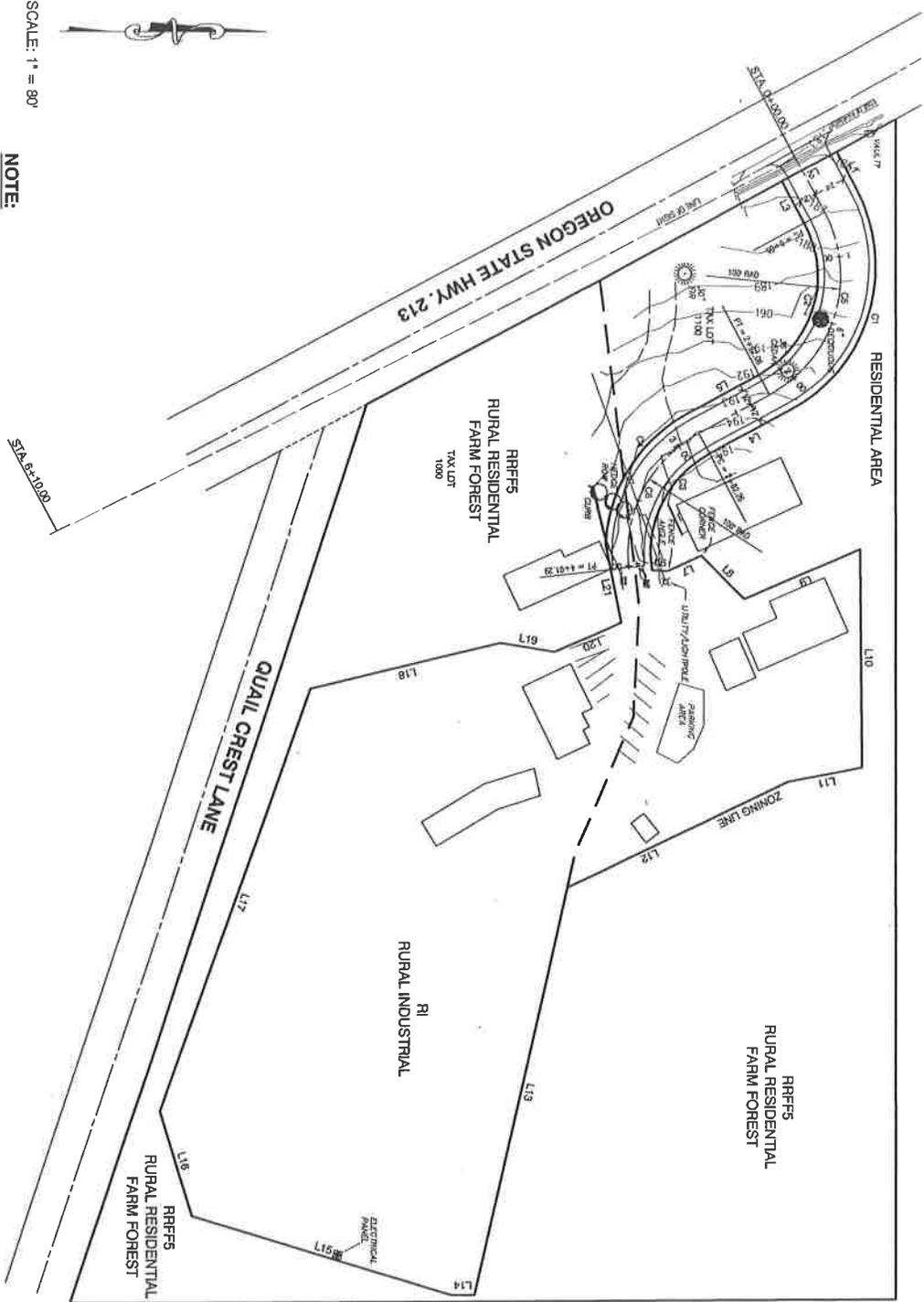
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This criterion can be met.

PART 2. SUMMARY OF ZONE CHANGE CRITERIA:

This application satisfies or can satisfy all the criteria in Section 1202.01 of the ZDO with a condition of approval requiring timely closure of the existing driveways and construction of new driveway in compliance with ODOT standards.



LINE	LENGTH	BEARING
L1	32.00	N81°43'00"E
L2	48.00	S28°12'00"E
L3	35.00	N81°43'00"E
L4	69.18	N28°12'00"W
L5	60.18	N28°12'00"W
L6	11.51	S04°31'08"W
L7	27.48	S24°50'49"E
L8	45.40	S45°09'08"W
L9	94.02	S23°10'57"E
L10	163.00	N89°20'00"E
L11	58.04	S10°54'01"E
L12	182.04	S25°23'30"E
L13	309.85	S77°20'17"E
L14	18.73	N00°15'18"W
L15	199.98	N16°57'48"E
L16	81.50	N73°08'35"E
L17	332.17	S70°29'50"E
L18	143.43	S13°45'29"E
L19	40.42	S09°45'08"W
L20	53.49	S23°51'22"E
L21	59.87	N78°41'18"E

CURVE	LENGTH	RADIUS
C1	188.50	120.00
C2	130.38	83.00
C3	102.89	83.00
C4	119.81	117.00
C5	187.08	100.00
C6	119.03	100.00

REGISTERED
PROFESSIONAL
LAND SURVEYOR
BRUCE D. GOLDSON
51
OREGON
JULY 12, 1968

EXPIRES: 06/30/2015

EXHIBIT B

DESIGNED: BGS
DRAWN: BUS
SCALE: 1" = 80'
DATE: APRIL 2014
FILE: Hals Const Exhibit D

Thetacore
ENGINEERING - SURVEYING - PLANNING
P.O. Box 1346
Las Olivos, Oregon 97035
503/461-4822
email: thetacore@comcast.net

Hals Construction
20666 Highway 213
Oregon City, Oregon

Clackamas County Land Use Application
Z0490-13-CP, Z0491-13-Z

Exhibit C- Conditions of Approval

File No. Z0490-13-CP and Z0491-13-Z

1. Future uses of the property are limited to those identified in Table 604-1: Permitted Uses in the RI District, paragraph “A. Construction and Maintenance Contractors,” as of the effective date of this order; except that building movers shall not be a permitted use.
2. The applicant shall design and construct improvements that permanently close the existing southernmost driveway to Highway 213 in accordance with ODOT standards within six months of approval.
3. The applicant shall design and construct improvements that relocate the existing northernmost driveway to Highway 213 in accordance with ODOT standards to achieve adequate intersection sight distance within one year of approval.
4. With each future proposed phase of development, the applicant shall submit a traffic analysis to address the need for a southbound left turn lane at the intersection of Highway 213 and the site access. As recommended by ODOT and as warranted, the applicant shall design and construct a southbound left turn lane according to ODOT standards.
5. With each future proposed phase of development, the applicant shall submit a traffic analysis to address the need to widen their site access at Highway 213 to two outbound travel lanes. As warranted, the applicant shall design and construct a second outbound site access travel lane according to ODOT and County standards.
6. With each future proposed phase of development, the applicant shall submit a traffic analysis to address the need for improvements at the Highway 213/Henrici Road intersection. If a proposed phase generates any new traffic during the weekday PM peak hour, the applicant shall design and construct a two way left turn lane or acceleration lane on Highway 213 south of Henrici Road in accordance with ODOT standards. If a proposed phase does not generate new traffic during the weekday PM peak hour, the applicant shall not be required construct improvements to the Highway 213/Henrici Road intersection with that particular phase.