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**Date:** November 1, 2016

**To:** Board of County Commissioners, Clackamas County

**From:** Martha Fritzie, Senior Planner  
Nathan Boderman, Assistant County Council

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

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Staff is providing this memorandum to clarify an issue raised at the October 26, 2016 land use hearing for the proposed response to a LUBA remand of a previously approved Comprehensive Plan map change and accompanying zone change. Specifically, the issue is whether the newly amended version of OAR 660-004-0018 applies to this application.

At the hearing, testimony was submitted asserting that the version of OAR 660-004-0018 that existed at the time of the application must be used rather than the recently revised version of that rule. Although the testimony did not specifically state why, it is assumed that the reference is to what is commonly referred to as the “fixed goal post rule” found in ORS 215.427 (3), which provides that if the application was complete when submitted or is made complete with 180 days, only the standards and criteria existing on the date the application was submitted govern.

While this is generally true, LUBA has previously determined that the “fixed goal post rule” established by ORS 215.427(3) does not apply to an application for a zone change where (1) that application for a zone change is part of, or submitted concurrent with, an application for a comprehensive plan amendment, and (2) the zone change is requested to implement the requested comprehensive plan amendment rather than as a separate request that could be approved independently of the requested comprehensive plan map amendment. *Friends of the Applegate v. Josephine County*, 44 Or LUBA 786 (2003); *Setniker v. Polk County*, 244 Or. App. 618 (2011). Therefore, it is not necessary for the applications being reviewed under Z0490-13 and Z0491-13, which include both a comprehensive plan amendment and a zone change, to be resubmitted in order to be considered under the current version of OAR 660-004-0018, as suggested at the hearing.