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
Christine Kosinski
Lawrence Mack
Jan and Robert Maughiman
Scott McConnachie
David Peterson
David Phillips
Gary Rheinsburg
David Stankovic
Tammy Stevens
Deborah Swanson
Richard Vial
Tom Wilke
Miriam Wright

Planning – Jennifer Hughes, Mike McCallister
Counsel
File

CLACKAMAS
COUNTY

MIKE MCCALLISTER
LAND USE AND ZONING MANAGER

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

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 Beavercreek 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.

CLACKAMAS
COUNTY

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

Kimberley Ybarra
Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
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 S. Cornelison

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

DLCD FORM 2

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 1was 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 Beavercreek Rd. City: Oregon City Zip: 97045-

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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 RRFF-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:

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. **<u>Prior Land Use Applications on Tax Lot 1100, 1001 and 1002</u>:**

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.*

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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.

1. 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 polices 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 form 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 of 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. <u>Policy 3.0(b):</u> *"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

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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 RRFF-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 pursunt 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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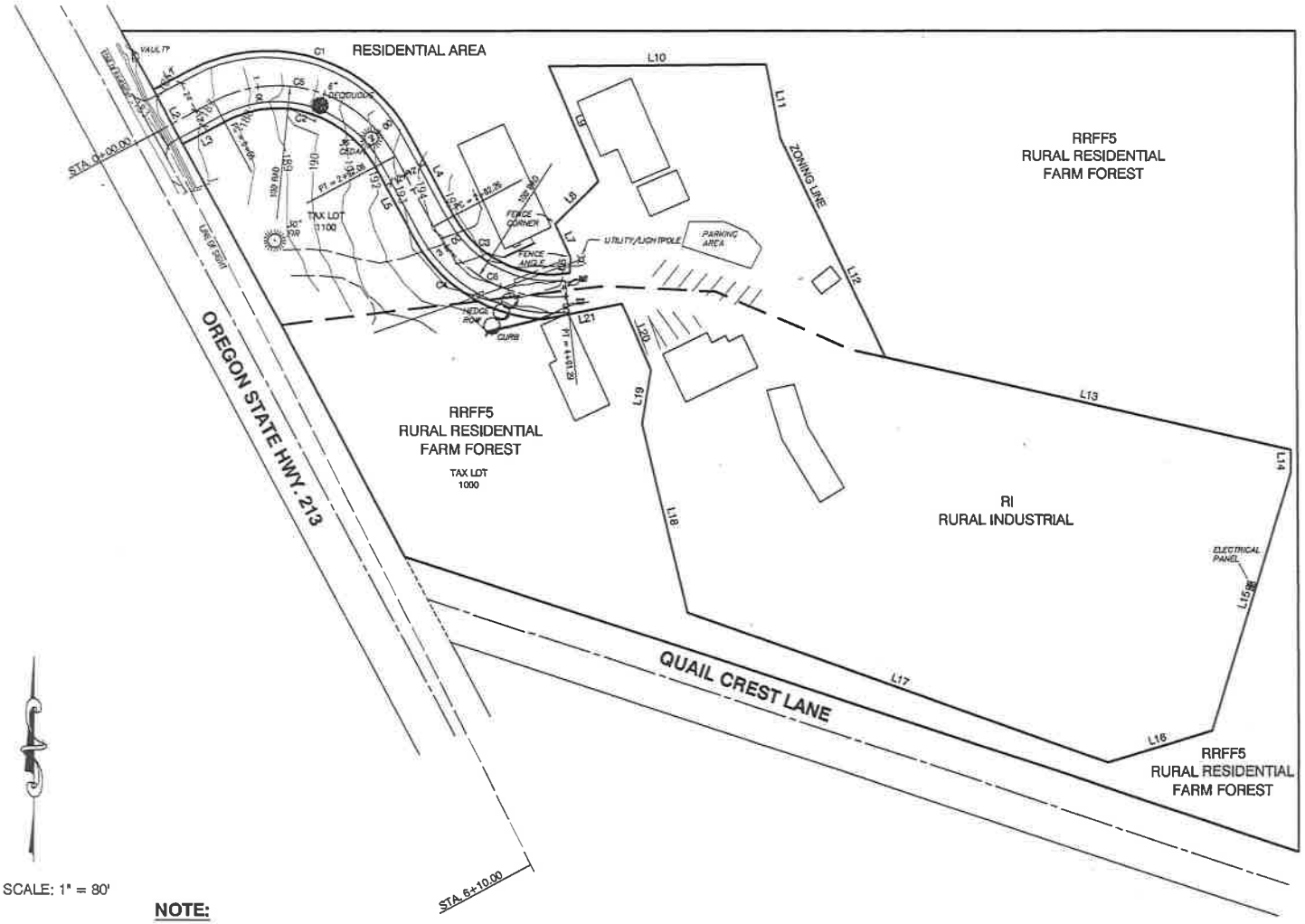
This criterion can be met.

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 TABLE		
LINE	LENGTH	BEARING
L1	32.00	N61°43'00"E
L2	46.00	S28°17'00"E
L3	35.00	N61°43'00"E
L4	69.18	N28°17'00"W
L5	50.18	N28°17'00"W
L6	11.61	S04°31'08"W
L7	27.48	S24°50'49"E
L8	45.40	S45°09'09"W
L9	94.02	S23°10'57"E
L10	162.00	N89°20'00"E
L11	56.04	S10°54'01"E
L12	162.04	S25°23'30"E
L13	309.65	S77°20'17"E
L14	18.73	N00°15'18"W
L15	199.96	N16°57'49"E
L16	81.50	N73°06'35"E
L17	332.17	S70°29'50"E
L18	143.43	S13°45'29"E
L19	40.42	S09°46'09"W
L20	53.49	S23°51'22"E
L21	59.87	N78°44'16"E

CURVE TABLE		
CURVE	LENGTH	RADIUS
C1	188.50	120.00
C2	130.38	83.00
C3	102.89	83.00
C4	119.61	117.00
C5	157.08	100.00
C6	119.03	100.00

SCALE: 1" = 80'

NOTE:

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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 12, 1968
BRUCE D. GOLDSON
851

EXPIRES: 06/30/2015

2011-54

EXHIBIT B

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

Theta, llc
ENGINEERING - SURVEYING - PLANNING
PO Box 1345
Lake Oswego, Oregon 97035
503/481-8822
email: thetaeng@comcast.net

Hal's 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.