



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

July 24, 2007

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Clackamas County Plan Amendment
DLCD File Number 003-03



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: August 9, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Meg Fernekees, DLCD Regional Representative
Steve Oulman, DLCD Transportation Planner
Mike McCallister, Clackamas County

<paa> yl

FORM 2

DEPT OF DLCD NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18

JUL 19 2007

LAND CONSERVATION
AND DEVELOPMENT

(See reverse side for submittal requirements)

20994-02-CP
20795-02-Z
20796-02-CP
(If no number, use none)

Jurisdiction: CLACKAMAS Local File No.: 20796-02-CP

Date of Adoption: 7-12-07 Date Mailed: 7-17-07
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 3-14-03

- Comprehensive Plan Text Amendment
 - Comprehensive Plan Map Amendment
 - Land Use Regulation Amendment
 - Zoning Map Amendment
 - New Land Use Regulation
 - Other: PAPA
- (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write see Attached.≡

COMP PLAN AMENDMENT FROM LIGHT INDUSTRIAL TO GENERAL COMMERCIAL. ZONE CHANGE FROM I-2 TO C-3. AMENDMENT TO URBAN GROWTH CONCEPT MAP II-8 TO REMOVE "INDUSTRIAL" DESIGNATION. PAPA APPLICATION TO REMOVE A WETLAND FROM THE "SIGNIFICANT" GOAL 5 INVENTORY

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write same.≡ If you did not give notice for the proposed amendment, write AN/A.≡

SAME

Plan Map Changed from: INDUSTRIAL to GENERAL COMMERCIAL

Zone Map Changed from: I-2 to C-3

Location: CLACKAMAS AREA/HWY 212 CORRIDOR Acres Involved: 24.55 ACRES

Specify Density: Previous: N/A New: N/A

Applicable Statewide Planning Goals: 1, 2, 5, 6, 9, 11 & 12

Was an Exception Adopted? Yes: No:

DLCD File No.: 003-03(12740)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing?** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: NORTH CLACK SCHOOL

DIST, ODOT, DSL, METRO

Local Contact: MIKE Mc CALLISTER Area Code + Phone Number: 503-353-4522

Address: 9101 SE SUNNIBROOK BLVD City: CLACKAMAS OR

Zip Code+4: 97015 Email Address: mikem@co.clackamas.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

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

In the Matter of a Comprehensive
Plan Amendment and Zone Change
for Welkin Engineering/Terry
Emmert

ORDER NO. 2007-334
(Page 1 of 2)

File No.: Z0794-02-CP / Z0795-02-Z / Z0796-02-CP

This matter coming regularly before the Board of County Commissioners, and it appearing that Welkin Engineering/Terry Emmert made application for a Comprehensive Plan map amendment, zone change and Post Acknowledgement Plan Amendment involving a wetland on property described as T2S, R2E, Section 11A, Tax Lots 700, 780, 1200, 1202, 1300, W.M., located on the northwest corner of Hwy. 212/224 and SE 142nd Avenue intersection; and

It further appearing that planning staff, by its report dated October 21, 2003, recommended denial of the application; and

It further appearing that the Planning Commission, at its October 27, 2003 meeting, recommended denial of the application; and

It further appearing that after appropriate notice public hearings were held before the Board of County Commissioners on December 5, 2003 and January 14, 2004, at which testimony and evidence were presented, and that a preliminary decision was made by the Board on February 5, 2004;

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

1. The applicant has requested three separate approvals from this Board; (1) a Comprehensive Plan map amendment from Light Industrial to General Commercial, which also requires a related amendment to the Urban Growth Management Plan map; (2) a zone change from I-2 to C-3; (3) a Post Acknowledgment Plan Amendment adopting a new ESEE analysis and program to allow development on the wetland on the property (at some points in the process this application has been treated as a request to remove the wetland from the Goal 5 inventory of significant resource wetlands; this approval does not make that amendment to the inventory, but rather adopts the new ESEE analysis to allow development in the wetland area).
2. These applications comply with the relevant Statewide Goals, administrative rules, Comprehensive Plan provisions and Zoning and Development Ordinance requirements for the reasons stated in the attached Findings of Fact and Conclusions of Law.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
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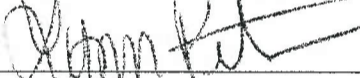
ORDER NO. 2007-334
(Page 2 of 2)

File No.: Z0794-02-CP / Z0795-02-Z / Z0796-02-CP

NOW, THEREFORE, IT IS HEREBY ORDERED
that the requested applications are granted, subject to the six conditions of approval attached.

DATED this 12th day of July, 2007.

BOARD OF COUNTY COMMISSIONERS



Vice-Chair



Recording Secretary

LAND USE - BOARD ORDER COVER SHEET

In the Matter of a Comprehensive Plan Amendment and Zone
Change for Welkin Engineering/Terry Emmert

File Nos.: Z0794-02-CP / Z0795-02-Z / Z079602-CP

Hearing Date(s): December 3, 2003, January 14, 2004, January 28,
2004, February 5, 2004

Minutes: Yes

Board Order Signed: July 12, 2007 2007-334

Sent to Parties: July 16, 2007

Terry W. Emmert c/o Michele Matesi
Jeff Bennett
Richard Benner, Metro
Sonya Kazen, ODOT
Barbara Kemper
Michael J. Lilly
Recording
Planning, Doug McClain, Mike McCallister
Counsel
File

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

In the Matter of a Comprehensive
Plan Amendment and Zone Change
for Welkin Engineering/Terry
Emmert

ORDER NO. 2007-334
(Page 1 of 2)

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**BEFORE THE BOARD OF COUNTY COMMISSIONERS
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ORDER NO. 2007-334
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DATED this 12th day of July, 2007.

BOARD OF COUNTY COMMISSIONERS



Vice-Chair



Recording Secretary

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Comprehensive Plan Amendments and Zone Change
for Highway 212 Commercial Center**

Applicant: Terry W. Emmert
File Nos.: Z0794-02-CP / Z0795-02-Z / Z0796-02-CP
Hearing Dates: October 27, 2003 (PC), December 3, 2003
Approval Date: February 5, 2004

I. INTRODUCTION AND BACKGROUND

A. Nature of Application

On November 8, 2002, Terry W. Emmert ("Applicant") filed applications for comprehensive plan and zoning map amendments that would change the designation of 25.22 acres of property from Light Industrial to General Commercial. The Applicant also submitted a concurrent application to amend the county's Goal 5 program by adopting a new ESEE analysis that would allow development of approximately 10.46 acres of wetlands that are mapped on the county's Goal 5 inventory of significant resources.

The subject property consists of five tax lots, containing a total of 25.22 acres. The subject property is designated Light Industrial on the comprehensive plan map, and zoned I-2 (Light Industrial). The northeast corner of the property is developed with a single family dwelling. The remainder of the property is vacant and undeveloped. The topography is generally very level. The property has frontage on both State Highway 212, designated as a major arterial, and SE 142nd Avenue, designated as a minor arterial. Tax lots 700, 780 and 1300 contain approximately 10.46 acres of wetlands identified in the North Urban Wetland Inventory as a significant Goal 5 resource.

Adjacent properties to the north and northeast are designated Urban Low Density Residential and Resource Protection and are zoned R-15. Both properties directly to the north are vacant. The subject property is bordered on the east by SE 142nd Avenue. The area across 142nd Avenue is designated Light Industrial and zoned I-2. The property located on the NE corner of Hwy 212 and 142nd Avenue is developed with a mini-storage facility. The property just to the north of the mini-storage facility is developed with a single family dwelling and accessory buildings.

The subject property is bordered on the south by Hwy 212. The property across the Highway is zoned MR-1 and is developed with two large manufactured home parks (Shadowbrook and Riverbend). The adjacent properties to the west are designated Light Industrial and zoned I-2. These properties are developed with various small industrial uses and outdoor storage yards. Commercial operations front the north side of Hwy 212 and comprise the majority of the uses extending from the subject property's western boundary to I-205.

The subject property is bisected by the proposed Sunrise Corridor. The Sunrise Corridor is identified as a needed transportation improvement on Table V-1 of the comprehensive plan. The general alignment of the Sunrise Corridor is identified on Map V-1a of the Comprehensive Plan. Clackamas County commenced a Supplemental Environmental Impact Statement (SEIS) in the fall of 2003 to determine the final alignment of the Sunrise Corridor.

With respect to the potential impact of the Sunrise Corridor on this proposal, the Board, with input from County Counsel, has elected to condition the applicant's ability to secure a building permit for the proposed development upon the identification by ODOT of the preferred alternative alignment for the Corridor, or until February 5, 2007, whichever occurs earlier.

B. Procedural Background

The Clackamas County Planning Commission held a public hearing on October 27, 2003 to receive public testimony and evidence about the applications. The Planning Commission voted to recommend denial of the applications.

The Clackamas County Board of Commissioners held a duly noticed public hearing on December 3, 2003 to receive public testimony and evidence. At the close of the hearing, the Board ordered the record held open for two consecutive seven-day periods for submittal of new evidence and rebuttal of such evidence, and then allowed the applicant a final seven days (until December 24, 2003) to submit final written argument. The Board deliberated and voted to approve the applications at its meeting on February 5, 2004.

All written submittals, exhibits, and records of testimony are on file at the Clackamas County Department of Transportation and Development. At the beginning of the public hearing on December 3, 2004, County Counsel Mike Judd made the declaration required by ORS 197.763(1). The Board disclaimed any ex parte contacts, bias or conflicts of interest.

II. COMPLIANCE WITH APPROVAL CRITERIA

The Board, having duly considered relevant evidence from affected and interested parties, finds that the Applicant has sustained the burden of proof with respect to complying with or having the ability to comply with the applicable approval criteria, in part through the implementation of the conditions of approval recited herein.

A. Comprehensive Plan Map Amendment from Light Industrial to General Commercial

The comprehensive plan map amendment application is subject to and must be consistent with the Statewide Planning Goals and related administrative rules, applicable comprehensive plan policies, and applicable provisions of the Metro Functional Plan.

1. Consistency with Statewide Planning Goals

This section of the findings addresses compliance with the applicable Statewide Planning Goals.

Goal 1 – Citizen Involvement

Generally, Goal 1 requires every city and county to develop and implement a citizen involvement program. As LUBA has recognized, Goal 1 does not provide due process protections, nor does it dictate the conduct of local government hearings. *Dobson v. Polk County*, 22 Or LUBA 701 (1992). Rather, the manner in which local government hearings are conducted and the procedural requirements for such hearings are governed by statute. (See ORS Chapter 227). Where notice of a hearing has been provided and public testimony considered, LUBA has found no Goal 1 violation. *Chambers v. Josephine County*, 13 Or LUBA 180 (1985).

The county has an acknowledged citizen involvement program and an acknowledged process for securing citizen input on all proposed plan amendments. The application was processed consistently with the procedures adopted by the comprehensive plan and by the Clackamas County Zoning and Development Ordinance ("ZDO"). The application was processed consistently with the notification requirements in ZDO Section 1300, including notice to nearby property owners, notice in the local newspapers, notice to affected agencies, and the two Community Planning Organizations in the area, namely, Clackamas CPO and Sunnyside United Neighbors CPO. The county held duly noticed public hearings before the planning commission and the Board in compliance with all applicable county procedures and with the statutory procedures required under ORS 197.763.

Goal 2 – Land Use Planning

Goal 2 requires that local comprehensive plans be internally consistent and likewise consistent with the Goals and that implementing ordinances be consistent with acknowledged comprehensive plans. Goal 2 also requires that land use decisions be coordinated with affected jurisdictions and that they be supported by an adequate factual base.

The county comprehensive plan and zoning and development ordinance, as well as the Goals and applicable statutes, provide policies and criteria for the evaluation of comprehensive plan amendments. Compliance with these measures ensures an adequate factual base for approval of the amendment. As discussed elsewhere in these findings, the proposed amendment is consistent with the comprehensive plan and the Goals. By demonstrating such compliance, the amendments satisfy the consistency element of Goal 2.

The county is required under ORS 197.610 to forward a notice of proposed plan amendments to Department of Land Conservation and Development (DLCD) at least 45 days before the first evidentiary hearing on adoption. The requisite notice was provided to DLCD. Notice was also provided to the Oregon Department of Transportation (ODOT) and Metro. Under Goal 2, the county is not required to accommodate all of the concerns of interested governmental agencies, but the county must respond in its findings to the legitimate concerns of affected agencies by illustrating that the factual record supports a finding of compliance with the goals. The concerns expressed by affected agencies regarding the proposed amendment are addressed elsewhere in these findings.

Notice of the application was also provided to the following agencies and governments for comments: City of Happy Valley, North Clackamas School District, Clackamas County Service District #1, Clackamas County Fire District #1, Clackamas County Economic Development Division, Division of State Lands, and the Oregon Economic and Community Development Department. The Board finds that the county has complied with Goal 2 in reviewing these applications.

Goal 3 – Agricultural Lands

Goal 3 is not applicable to this application.

Goal 4 – Forest Lands

Goal 4 is not applicable to this application.

Goal 5 – Open Space, Scenic and Historic Areas, Natural Resources

The subject property contains approximately 10.46 acres of wetlands that are listed on the county's Goal 5 inventory of significant wetland resources. The proposed plan and zoning map amendments from industrial to commercial do not affect the status of the wetlands as a protected Goal 5 resource. The Applicant has submitted a concurrent application for a comprehensive plan amendment to adopt a new ESEE analysis that would allow development of the wetland areas consistent with the new commercial designation. The Board's findings regarding the adoption of a new ESEE analysis under Goal 5 are included in Section II (C) at page 35, below.

Goal 6 – Air, Water, and Land Resources Quality

The purpose of Goal 6 is to maintain and improve the quality of the air, water and land resources of the state. Generally, Goal 6 requires that development comply with applicable state and federal air and water quality standards. In the context of a plan amendment, Goal 6 requires that the applicant demonstrate that it is reasonable to expect that applicable state and federal environmental quality standards can be met. Applicable state and federal requirements regarding air, water and land resources are either implemented through the standards adopted by the ZDO and applicable development standards, or imposed and enforced by state or federal agencies. Because the proposal does not authorize any specific development at this time, there can be no direct impact to air, water or land resources. When development occurs on the subject property, all such development must necessarily comply with local, state and federal regulations protecting air, water and land resources. The Board finds that the amendment is consistent with Goal 6.

Goal 7 – Areas Subject to Natural Hazards

Goal 7 requires that development subject to damage or that could result in loss of life not be planned or located in known areas of natural hazards and disasters without appropriate safeguards. The goal also requires that plans be based on an inventory of known areas of natural disaster and hazards. No part of the subject property contains steep slopes, floodplains, or other known or inventoried natural hazards. The Board finds that Goal 7 is not applicable to the application.

Goal 8 – Recreational Needs

The proposed amendment does not involve any designated recreational or open space lands, and would not affect access to any significant recreational uses in the area. The Board finds that Goal 8 is not applicable to the application.

Goal 9 – Economic Development

Goal 9 requires that local comprehensive plans and policies be based on inventories of areas suitable for increased economic growth and activity after taking into consideration a number of factors, including necessary support facilities, current market forces and location relative to markets. Goal 9 specifically requires that comprehensive plans for urban areas shall, among other things, include an analysis of the community economic pattern and provide for at least an adequate supply of sites of suitable sizes, type, locations and service levels for a variety of industrial and commercial uses consistent with the plan policy. The county's comprehensive plan and implementing ordinances complied with Goal 9 when the county's comprehensive plan was acknowledged by LCDC. However, new plan amendments must also comply with the Goal 9 administrative rules set forth in OAR Chapter 660, Division 9, which require an economic opportunities analysis (EOA) to be performed as part of any proposed redesignation of more than two acres of land to or from commercial or industrial. The specific requirements of the Goal 9 rule are addressed below.

As required by OAR 660-009-0010(4), when a jurisdiction changes its plan designation for land in excess of two acres to or from commercial or industrial use, it must address all applicable planning requirements and:

- (a) Demonstrate that the proposed amendment is consistent with the parts of its acknowledged comprehensive plan that address the requirements of division 9; or
- (b) Amend its comprehensive plan to explain the proposed amendment, pursuant to OAR 660-009-0015 thru 660-009-0025; or
- (c) Adopt a combination of the above, consistent with the requirements of division 9.

In satisfaction of (b) above and the Goal 9 administrative rules, the applicant has submitted an economic opportunities analysis (EOA) dated October 30, 2003 prepared by Hobson Ferrarini Associates, which addresses each of the specific requirements of OAR 660-009-0015. The applicant has also submitted two additional memoranda from Hobson Ferrarini, also dated October 30, 2003, which provide a public need analysis for retail space in Clackamas County and a summary of Hobson Ferrarini's economic findings regarding the proposed plan amendment. The EOA is summarized as follows:

(1) Review of National and State and Local Trends. This section of the Goal 9 rule requires that the EOA identify the major categories of industrial and commercial uses that could reasonably be expected to locate or expand in the planning area based

on available information about national, state and local trends. The applicant's EOA indicates that the national economic base is shifted from industrial based employment to commercially based employment over the past four decades and that, though less pronounced, economic trends in Oregon largely mirror those national trends. Finally, for local trends, the applicant's EOA finds that over 83% of Clackamas County's forecasted employment growth over the next decade will be in the commercial sectors, reflecting the same economic trends as identified for the nation and the state.

(2) Site Requirements. This section of OAR 660-009-0015 requires that the EOA must identify the types of sites that are likely to be needed by industrial and commercial uses which might expand or locate in the planning area. The applicant's EOA correctly identifies the types and sites that are likely to be needed by industrial and commercial uses, both as to size and locational features.

(3) Inventory of Industrial and Commercial Lands. This section requires an inventory of vacant and significantly under utilized lands within the planning area which are designated for industrial or commercial use. The applicant's EOA complies with this section by providing an updated inventory based upon data obtained from Metro's 2002-2022 Urban Growth Report. As a General Commercial (GC) development, the subject property will assist in filling a much needed demand for the 909,560 square feet of GC needed locally in this subregion of Clackamas County. Approving this plan amendment will supply the Sunnyside Subarea with almost 1/4 of the C-3 void and significantly reduce vehicle miles traveled (VMTs) by redirecting traffic away from the I-205 interchanges, thus reducing vehicle trips attempting to travel to the currently available retail locations.

(4) Assessment of Community Economic Development Potential. This section of the rule requires that the EOA must estimate the types and amounts of industrial and commercial development likely to occur in the planning area based upon the information generated in response to the prior section. The applicant's EOA provides the required analysis, and reaches the following conclusions:

- Clackamas County does not have enough commercial land to meet the forecasted retail needs of the primary market area over the next twenty years.
- Clackamas County has a shortage of industrial land that will likely be depleted within one year.
- The proposed plan amendment and remediation efforts will help alleviate the shortage of retail and industrial land by adding buildable commercial and industrial land into the county's inventory, thereby

benefiting the residents of Clackamas County, providing a more efficient use of land within the UGB, and reducing pressure on the local transportation system.

The purpose of the Goal 9 rule is to determine if the county has an adequate supply of land to provide for the types and amounts of industrial and commercial development likely to occur in the 20-year planning period. The rule provides the county with significant discretion for determining whether the methodology, assumptions, analysis and conclusions in the EOA are sufficient to warrant the requested plan map amendment. The Board approves the Hobson Ferrarini analysis, and specifically adopts and incorporates by reference the methodology, findings and conclusions contained in the EOA.

The cost to develop the property industrially exceeds what the I-2 market is capable of bearing. Staff cites as one basis for objecting to the applicant's EOA that the assumed value of wetlands is unrealistic. The cost of the property is currently \$5.25/sf, and this is not an assumed land cost. The value of the property at \$5.25/sf was confirmed at the hearing by Mike McCallister by way of comment from Greg Jenks of the County's Economic Development Team. The cost estimate for making this site shovel ready by removing the wetlands is \$3.34/sf, as analyzed by Welkin Engineering using RS Means – Heavy Construction Cost Data, 2000, "the construction industry source for pricing site development projects." This brings the price up to \$8.29/sf, which is well above the price point for sensitivity of industrially zoned property.

Conventionally, employment land has been deemed to be industrial land. When a parcel of land is constrained by economic or environmental restraints, it is appropriate to evaluate the potential upzone of the property to remove these restrictions that are preventing development in order to increase the economic viability of the parcels for the community and for underdeveloped commercial and industrial properties throughout the state. This comes from the mandate in House Bill 3557 (July 3, 2001 – Sec. 1b. A-K)/Senate Bill 467.

As previously stated, Goal 9 is "to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens." OAR 660-0015-0000(9). OAR 660-009-000, 660-009-010, and 660-009-015 –025 implement the requirements of ORS 197.712(2)(a)-(d)¹, and

¹ ORS 197.712(2) requires that Comprehensive Plans and Land Use Regulations (a) include an analysis of the community's economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends,

outline the standards and criteria to achieve compliance with Goal 9. The Board finds that this proposal actually brings the county into greater conformity with ORS 197.707(712, 717) as well as with Goal 9, the Goal 9 Rule and the county's comprehensive plan. ODOT argues that the applicant's EOA is not sufficient to warrant the requested map amendments. The Board has found that the EOA does warrant such an amendment as explained above in the Section regarding Chapter 4. In the interest of addressing the stated staff concerns regarding the compliance of the EOA with OAR 660-009-015-025, the Board supplements the reasoning detailed in Chapter 4 with the following analysis.

County planning staff concluded that the EOA contained certain assumptions and analysis which were not adequate to support the change in the plan designation from Light Industrial to Commercial. Specifically staff argued that the fact there is an inadequate supply of industrial land in the local study area, the county and the region in and of itself warrants denial of the proposed use. The EOA demonstrates an available industrial base of 453 acres of industrial land, and 97% of the supply is in parcels less than 10 acres. (See EOA, page 14).

Staff concludes that because the subject site contains more than 10 acres, it is imperative to maintain and increase the limited and insufficient inventory of industrial land in the county. This conclusion ignores the fact that the subject site contains less than 10 acres of buildable industrial land due to site development constraints. The EOA, Metro and county analysis all point to the same conclusion – the land on the subject site, in the county, while zoned industrial, is unsuited for industrial purposes.

The CPO submitted written comments to the board dated December 17, 2003 stating that the county's economic needs for suitable commercial and/or industrial lands can be ignored. This is wrong as a matter of law. There can be no dispute that these laws require the county to have an adequate supply of serviceable, adequately located and sized land (unconstrained so as to be suitable) for economic purposes. ODOT's planning staffers claim the Sunrise Corridor DEIS says there is industrial and commercial land for businesses. There is no evidence in the record that such land is suitable for commercial or industrial purposes and suitability in type and size, and

(b) contain policies concerning the economic development opportunities in the community, (c) provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies, and (d) provide for compatible uses on or near sites zoned for specific industrial and commercial uses.

serviceability is the relevant inquiry² under the county plan policies dealing with economic uses, with the Goal 9 rule, and with state statutes dealing with economic uses.

ODOT states in its December 18, 2003 memo that Metro might add "2000 acres of net buildable acres of industrial sites" and that this will take care of the county's needs for industrial land. ODOT's assertion about what Metro might do is not substantial evidence to support a decision that no more industrial land is needed. ODOT's statements do not address the undisputed fact that Clackamas County is badly in need of more commercially zoned land. The proposal adds commercial land. ODOT's position is apparently that more buildable industrial land is not needed and therefore the fact that the subject Highway 212/224 site is unsuitable as industrial land is irrelevant.

The ODOT position actually lends further support for the application here. The application takes unsuitable, inefficient industrially zoned land and proposed to convert it to indisputably needed commercial land. Furthermore, while ODOT's assertion regarding the future potential County gain of 2000 industrial acres would resolve the issue of an inadequate supply of industrial land, it does nothing to resolve the undisputed conclusion that the County also needs commercial land, which this proposal provides.

The inevitability of the expansion of the UGB is found by the Board to negate the concern of Staff that the EOA relies on the Capps Road acquisition by the applicant when considering the potential impact of reduction in industrial land due to the applicant's plan to mitigate the loss by, in effect, "trading" industrial land for currently undeveloped and highly constrained industrial land. Regardless of whether the Capps Road site is ultimately developed by the applicant or by a separate interested party, the Board finds that the issue of "lost industrial land" is not one of significance because the majority of the industrial land on the subject site is not buildable and because the expansion of the UGB will mitigate the concerns regarding the deficit of industrial land in the area.

² Goal 9 and paragraph (c) of ORS 197.712(c) require a local government to not only maintain an inventory of suitable commercial and industrial sites with regard to total acreage, but also with regard to size, type, location and service levels, to provide for "a variety of industrial and commercial uses consistent with plan policies". *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670 (1995).

Furthermore, Metro's own 10/21/03 (see generally Exhibit 86) memorandum actually lends support to the proposition that the subject site does not meet the needed characteristics of suitable industrial land in that a minimum of 10 acres of developable land is generally required to meet these purposes, not the least of which is offering the best opportunities for family wage jobs. This proposal represents an efficient use of scarce economic zoned unplanned land. The Metro memorandum also notes that the conversion of industrially zoned land to other economic purposes is deemed beneficial to the region where the land is not appropriately characterized as an RSIA. A commercially productive subject site flows from the fact that the proposal exists in an area that is now devoted principally to commercial or at the very least mixed uses rather than industrial uses, and therefore does not have the possibility of conflicting with the few industrial uses surrounding the site so as to force a relocation of any industrial use.

Specifically, the subject site provides no genuine opportunity for the siting of an industrial use. There is evidence that at present the property would be designated by Metro as Tier 1D industrial site meaning that even Metro's tier system would recognize it is the lowest possible grade of industrial land with virtually no industrial value. At present with the fast track of the 300-acre Rock Creek industrial area located within one mile from the site, the Board's concern is that the subject site would continue to be a severely underutilized sizeable parcel which has alternate development potential which is not an acceptable use of land within the Urban Growth Boundary.

Somewhat inconsistent with opponent's stated industrial objective of protecting the scarce industrial land from encroachment is the claiming of the desire to protect the marginal wetlands on the property. The foreseeable construction of the Sunrise Corridor, based on the current proposed alignment which was adopted in 1996 and which is undergoing a revision process, results in ODOT tentatively condemning a significant portion of the subject site as well as a huge swath of industrially zoned and economic-use developed land existing on Hwy 212.

While these findings reach no conclusion regarding and do not consider the applicant's proposed re-alignment of the Sunrise Corridor in connection with this decision, it is noteworthy that ODOT engineers do consider the proposed re-alignment worthy of extensive consideration and in fact, have signaled a preference for a northern alignment in substantially the form submitted by the applicant in the most recent Sunrise Project discussions. This point is made to illustrate support for the positive economic development considerations that flow from the proposal, in that the current preferred alignment of the Sunrise Corridor, if chosen in the SEIS, will save industrial jobs as well as acres of industrially zoned, economically productive land.

The unsupported assertion that businesses can expand elsewhere provides no assurance or evidence that this is feasible. In fact, evidence from area business people establish that such expansions can not be counted on because there is simply no suitable buildable land to go to in Oregon within 50 miles of the subject site.

House Bill 3557 acknowledges the changing nature of commercial and industrial uses and its implication for long range land use planning. (Ex.34, Section 1b, e-h). Metro notes the positive aspects of converting industrial land that is constrained into non-industrial uses, such as allowing commercial uses to provide retail services for industrial employees providing opportunities for infra and redevelopment of aging industrial areas and flexibility of these that may provide the margin for industrial profitability (Ex. 40). Metro in fact describes some reasons not to designate particular land as regionally significant industrial land. One reason would be if the land is bordered by residential uses, as is the case with the subject property.

It is unlikely the area will expand or be maintained over time because of the conflicts that already exist with the residential uses as well as existing non-conforming uses which make it further unlikely that the conflict between these will diminish and that over time the area might be better zoned for employment uses.

HB 3557 legislation was intended to help ensure that Oregon communities are providing sufficient buildable commercial and industrial land within the UGB. The fact that there is a shortage of industrial vacant land in the Clackamas County area does not negate the fact that there is also a shortage of commercial land. HB 3557 is designed to ensure that local governments are ensuring sufficient amounts of both industrial and commercial land. Comparing the anticipated demand for commercial and industrial land with the supply of buildable sites and public services available involves estimating that anticipated demand is a function of expected commercial and industrial employment growth and the applicant's EOA utilizes this methodology.³

Further support for rezoning this property to commercial can be found in the Sufficiency of Commercial and Industrial Land in Oregon study (Exhibit 34), wherein it is noted that distinguishing between commercial and industrial uses is less critical than it was 20 years ago because commercial and light industrial activities have many

³ Goal 9 does not obligate local governments to adopt decisions ensuring specific uses will be approved. "Rather, the local government's decision must demonstrate that it considered the impact of its decision on broad categories of commercial and industrial uses in light of competing policy objectives." *Home Depot, Inc. v. City of Portland*, 37 Or LUBA 870 (2000).

similarities. This report also notes that a range of non-industrial jobs as a proportion to total jobs utilizing industrial lands was 32% in mixed use and light industrial uses.

As required by state law, we must determine whether reasonable alternatives exist to supply the needs of the residents in an area prior to expanding the UGB. The unused industrial land has not been counted toward the supply of developable land. This is appropriate given the objective to find reasonable alternatives wherever possible prior to expanding the UGB. Rezoning these parcels hence works toward simultaneously protecting the Urban Growth Boundary and allowing for economic viability rather than economic constraint on vacant and undevelopable industrial parcels of land.

Staff expressed considerations involving the applicant's ESEE and its reliance on the EOA, writing that the economic assumptions contained in the EOA for the mitigation of wetlands are "not feasible". The Staff does not identify how these assumptions are not feasible, other than to note that at the time of the Staff Report, the proposed wetland mitigation plan had been denied by the Army Corps of Engineers. (Exhibit 29). The application will be re-submitted to the Army Corps of Engineers, and more importantly, staff concerns are alleviated by the condition requiring approval of any mitigation plan by the Division of State Lands or the Army Corps of Engineers.

The Board finds that this application is consistent with Goal 9.

Goal 10 – Housing

Goal 10 requires local governments to provide for an adequate number of needed housing units and to encourage the efficient use of buildable land within urban growth boundaries. The proposed amendment does not affect residentially-zoned property, and the Board finds that Goal 10 is not applicable to this application.

Goal 11 – Public Facilities and Services

Goal 11 creates guidelines for the timely, orderly and efficient provision of public facilities and services such as sewer, water, solid waste and storm drainage. The subject property is located within Clackamas County Service District #1, which provides sewer and storm drainage facilities in the area. The property is located within the Clackamas River Water District, which provides water service in the area. The existing sewer, storm drainage and water services and facilities are established in this area consistent with adopted service plans. The final design and improvements to the systems will be determined during review of future development proposals, which will ensure that the facilities are designed according to adopted facility plans and are appropriate to serve urban uses. The subject property is located in an area that is

developed and serviced with an orderly and efficient arrangement of public facilities and services adequate to serve urban commercial development. The Board finds that the proposed amendment is consistent with Goal 11.

Goal 12 – Transportation

Goal 12 requires local governments to provide and encourage a safe, convenient and economic transportation system. LUBA has found that Goal 12 is satisfied by either establishing that there is a safe and adequate transportation system to serve the development under the proposed map designations, or that the development of the property under the proposed designations will not create greater or different transportation demands and impacts than development under the existing, acknowledged designations. *ODOT v. Clackamas County*, 27 Or LUBA 141 (1994).

The applicant's traffic consultant Lancaster Engineering prepared a traffic impact analysis ("TIA") dated February 2003. The TIA provides an assessment of the traffic impact of the proposed comprehensive plan amendment and zone change and resulting commercial shopping center development on the nearby transportation system. Supplemental memoranda from Lancaster Engineering were submitted on December 2, 2003 and December 9, 2003. Additional technical memoranda addressing transportation issues were submitted by Balzhiser and Hubbard Engineers on December 3, 2003, December 10, 2003 and December 17, 2003.

The applicant's TIA and supplemental memoranda establish that if the proposed shopping center is developed on the subject property, intersections within the study area will operate at acceptable levels of service (for city and county intersections) and volume to capacity ratios (for ODOT facilities), assuming that the proposed Sunrise Corridor Expressway is constructed. The applicant's traffic engineers therefore also concluded that the proposed plan and zoning map amendments would not "significantly affect a transportation facility" within the meaning of the Transportation Planning Rule ("TPR"), which implements Goal 12.

ODOT and other opponents of the map amendments questioned the conclusions of the applicant's traffic studies, and objected based on concerns that the nearby state and county transportation facilities are not actually adequate to support the proposed development. ODOT argued that: (1) impacts on the area transportation facilities would be significantly higher with commercial development than with industrial development allowed under the existing zoning; (2) consideration of plan and zoning map amendments would not be appropriate until the requirements for the Sunrise Corridor project had been determined; and (3) that "upzoning the parcels now, even if development were conditioned to be delayed until the final EIS may raise the cost of the Sunrise Corridor Project."

In order to alleviate such concerns, and to fully mitigate the potential traffic impact of the proposed map amendments, the applicant proposed limiting the size of any future commercial development on the site to allow no more trip generation from the commercial site than would be allowable under the existing industrial zoning.

The Board agrees with the applicant's proposed solution, and conditions this approval on the requirement that the county will not approve any development of a shopping center greater than 269,260 square feet until either the Sunrise Corridor Unit One is constructed and the county agrees with a licensed traffic engineer that the Corridor can safely and adequately accommodate new primary trips from the subject property, or until a traffic study conducted by a licensed professional traffic engineer approved by the county demonstrates that the new trips reasonably expected from any commercial use or uses would not exceed the number of new trips reasonably likely to occur with the proposed development.

Also, in order to mitigate stated concerns regarding the cost to purchase the future Sunrise Corridor right-of-way if its alignment goes through the subject property, the Board's approval of the applications includes a condition limiting any future potential condemnation purchase price of any of the subject property needed (including remainder property) for the Sunrise Corridor right of way to the value of the property under I-2 zoning, binding all future property owners and regardless of the designated zoning status at the time of the condemnation.

Specific relevant transportation-related issues raised by ODOT as summarized in (1) above are addressed below.

While testifying before the Board, ODOT employees, while acknowledging that no site plan was yet on the table, and based on several assumptions by ODOT, spoke at length regarding issues appropriate for the site development review component of the process, such as queuing and signalized site access, etc.

As explained by Ms. Freitag, part of the reason ODOT was recommending denial of the proposal was for the following reasons:

“ODOT does not feel that the analysis (provided by Lancaster) accurately portrays the operation of the intersection.”(December 3, 2003 Land Use Minutes, page 56). Evaluation of Lancaster submission indicates a significant addition of traffic over and above background traffic, (Id).

Applicant submitted a TIA with an Addendum as well as an additional Trip Generation Capture Study. Letters from the ODOT transportation planners identified as Exhibits 19 and 36 respond to those submissions as follows: the site is adjacent to Hwy 212/224 and as such is classified as having statewide urban significance, and is a

freight route on the national highway system. The access spacing standard is 990 feet and the ODOT mobility standard is 0.99 volume to capacity ("v/c") ratio. The ODOT analysis under Clackamas County Zoning and Development Ordinance was incomplete at that time based on additional traffic analysis requested from the applicant.

Subsequent to the October 16, 2003 staff report and prior to the close of the open record period, the applicant submitted additional traffic analyses from both Lancaster Engineering and Balzhiser and Hubbard Engineers. Both engineers have written reports certified with their stamps, explaining the proposal has no greater functional transportation impact than if the property were developed under the existing zoning worst case analysis and as county and ODOT standards require. (See December 3, 10, and 17 Technical Memoranda from Balzhiser Hubbard and December 2 and 9 reports from Lancaster Engineering).

Under OAR 660-012-0060(1)(c)(A) [formerly (2)(d)] of the TPR, a plan amendment would "significantly affect" a transportation if it would reduce the level of service of that facility below the minimum identified acceptable level of service, e.g. "(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;...". Under the Oregon Highway Plan, this is based on volume to capacity ratios rather than the Level of Service standards. (See Oregon Highway Plan, Policy 1F, Highway Mobility Standards, Table 7). The ODOT submittal dated December 17, 2003 refers to claims of exceeding LOS or delay of service as the new basis for ODOT's discomfort with the proposal. However, the OHP makes LOS and delay of service irrelevant to ODOT facilities. The only relevant issue on ODOT facilities is the v/c ratio, which the applicant has established will be met or can feasibly be met under the proposal. ODOT's complaints that v/c is "barely" satisfied is not a standard or criterion. The issue is meeting the v/c and the proposal has demonstrated it does so, with the conditions imposed by the Board.

The maximum volume to capacity ratio allowed under the OHP is .99. The reports from both Lancaster and Balzhiser Hubbard indicate a maximum volume to capacity ratio of .99 or less for all intersections affected by the development, and ODOT acknowledges that the engineering reports indicate a volume to capacity ratio that meets ODOT's mobility standard of .98.

While all of the traffic engineering analysis relied upon by the applicant was prepared by qualified traffic engineers who have placed their engineering stamps on their reports to support their analyses, ODOT's analyses are the product of planners and not traffic engineers. Specifically, neither Ms. Kazen nor Ms. Freitag are traffic engineers and have never stated to the contrary. As such, in light of conflicting

evidence regarding transportation capacity issues, the Board elects to rely on the evidence provided by the applicant's traffic engineers. The Board finds the evidence presented in the traffic impact analysis and supplemental memoranda prepared by two licensed engineers more persuasive than the opinions of ODOT planning staff. The Board finds that the proposal does not significantly affect any of the relevant transportation facilities under 660-012-0060(1)(c)(A).

A map amendment that, as conditioned, would not permit development that would add more traffic to the transportation system than could be added under the existing zoning before the text amendment does not "significantly affect" the transportation facility under OAR 660-012-0060. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000). As conditioned by the Board, the proposed development will not add any more traffic to the transportation system than could be added under the existing I-2 zoning, and the TPR is therefore satisfied.

The proposed zoning is anticipated to generate 56 more new trips than current zoning, which is a miniscule amount of additional traffic and will not cause such an increase in traffic on Hwy 212 or on local streets as to be inconsistent with the function of the street as a whole. As concluded in the Balzhiser Hubbard Technical Memorandum dated December 10, 2003: "This 56-trip difference is not significant to the traffic analysis for the proposed zone change—either trip generation, v/c ratios, LOS or queuing. Therefore, it can be assumed the traffic impacts from the plan amendment and zone change are not materially different from the existing zoning and do not of themselves cause a significant effect on any affected transportation system for either the existing or planned (Sunrise Corridor) roadway systems." Even if the Board were to find that the proposal violates the TPR because it significantly affects an existing or planned transportation facility, the Board finds that the non-degradation standard of 660-012-0060(3) is applicable to this proposal. This finding is supported by ample evidence submitted into the record by Balzheizer and Hubbard. The state highway is already performing below the minimum acceptable performance standard identified in the TSP or Comprehensive Plan, in the absence of the amendment the planned transportation facilities will not be adequate to achieve consistency with the identified function, capacity or performance standard for the facility by the end of the planning period, and the proposed development will not degrade further the performance of the facility by the time of the development due to mitigation of impact through conditions. This amendment does not involve property located in an interchange area and while ODOT has not provided a written statement that the proposed mitigation and/or improvement measures would be sufficient to avoid further degradation to the performance of the affected state highway, ODOT has been provided notice of the proposed amendment and has had opportunity to submit a statement into the record of the local government proceeding.

The Board has conditioned its approval of the proposed amendments to satisfy ODOT's capacity-related concerns by imposing a limitation on the intensity of commercial uses on the site that will not exceed the total trip generation under worst-case development for the existing industrial zone.

Other issues raised specifically by ODOT include the following:

Applicant has not proved that proposed signalized site access would not adversely impact the highway intersection at 142nd. Assumed signalized site access demonstrates excessive queuing. The dual eastbound left turn lanes will not be able to adequately serve the demand under either (of ODOT's assumed) highway site access scenario.

With respect to access, ODOT stated in its December 10, 2003 memoranda in opposition to the proposal the argument that "the applicant has not provided evidence into the record that construction of an access to SE 136th would be feasible, therefore we cannot accept this access scenario." However, in the December 10, 2003 technical memorandum issued by Balzhiser and Hubbard, it is noted that:

"The applicant has determined that the property does have the right to access 136th and that it is feasible for such access to be constructed. Therefore, it is appropriate to assume a percentage of site-generated traffic will use 136th as a point of access. Based on materials contained in analyses prepared by Lancaster, it could be expected as much as 40% of the site generated traffic would use 136th rather than other points of access. Thus, if 136th is assumed to be a point of access, queues from other site access points, including those at the Highway 212/224 and 142nd Avenue intersection, will be proportionally reduced below the levels identified in this memorandum and in Lancaster analyses. Because the traffic analyses noted above do not assume the subject property accessing 136th, site generated traffic is assumed to use either the right-in/right out access onto Hwy 212/224 or the access on 142nd. This conclusion rests on a very conservative assumption and it should be recognized that site generated traffic volumes and associated queue lengths at the Hwy 212/224-142nd Avenue intersection will be less than predicted." (Balzhiser technical memorandum, December 10, 2003, page 2).

ODOT also argued that signal timing was not contemplated at the 120 second signal cycle ODOT demanded. The applicant responded by offering a condition of approval to ensure ODOT's 120-second signal cycle was observed. Then ODOT objected to that. Specifically in its unsigned December 18, 2003 memo ODOT complains: "ODOT does not support a condition of approval that specifies the signal timing for future traffic analysis. At the time of specific development proposal,

ODOT will specify the signal timing and parameters under current conditions to be utilized in a traffic impact analysis.” (ODOT December 18, 2003 memo page 10.)

The Board notes that both studies prepared by the applicant’s engineers did utilize the 120-second signal standard. However, the County code, in conjunction with the applicant’s licensed professional engineers, (and not ODOT) will establish the parameters for the applicant’s TIA for any specific development proposal.

In the ODOT December 18, 2003 memo, ODOT claims that a new document (the NCHRP Synthesis) says 300 trips per hour per left turn lane are all the trips per hour that a left turn lane can accommodate. This is not what this document says and is in fact wrong.

Recall, the applicant’s engineering analyses prove that the worst case trip analysis shows the double left turn lane at 142nd Ave. can safely and adequately accommodate all left turning movements while also maintaining ODOT’s preferred signal cycle lengths, and while not creating queues that back up and impair access into the subject property.⁴

Specifically, the materials submitted by ODOT from the NCHRP Synthesis 225 are consistent with materials presented by Balzhiser & Hubbard Engineers and those quoted from the Highway Capacity Manual. NCHRP materials indicate, "multiple turn lanes should be considered when volumes exceed: 600 vph for triple left-turn lanes." HCM materials indicate, "The number of lanes required on an approach depends on a variety of factors, including signal design. In general, enough main roadway lanes should be provided to prevent the total of the through plus right-turn volume (plus left-turn volume if present) from exceeding 450 veh/h/ln. This is a very general suggestion. Higher volumes can be accommodated on major approaches if a substantial portion of available green time can be allocated to the subject approach. If the number of lanes is unknown, the foregoing value [450veh/h/ln] is a reasonable starting point for analysis."

Materials contained in the December 17, 2003 Balzhiser & Hubbard technical memorandum identify intersections in the Portland area carrying more than 600 vph in dual left-turn lanes. It is further anticipated the 142nd/Highway 212-224

⁴ Queue space can be increased by the applicant in a development proposal by simply moving the site access a greater distance from 142nd. It is also worthwhile to point out that the applicant has provided evidence that is not seriously controverted that there is sufficient space for queuing such that there is no reasonable expectation of any interference with any site access and the highway intersection.

intersection will be able to carry more than 600 vph in the dual eastbound left-turn lanes. This conclusion is supported by analysis submitted into the record by both Balzhiser & Hubbard and Lancaster Engineering. Because the south leg of the intersection is anticipated to carry a small amount of traffic, a significant percentage of the signal cycle time can be allocated to the eastbound left-turn movement.

The evidence in the record establishes that the anticipated double left turn lanes can safely and adequately accommodate anticipated trips to serve potential development proposals for the subject property.

Regarding the 142nd/Highway 212-224 intersection, as previously noted in the December 10 and 17, 2003 Balzhiser & Hubbard technical memoranda, Clackamas County and ODOT anticipate the 2020 background, eastbound left-turn traffic volume to be 635 vph. This volume is based on ODOT model materials prepared for the Sunrise Corridor. The analysis prepared by Lancaster and Balzhiser & Hubbard assumes dual left-turn lanes. Operational analyses indicate this infrastructure will provide adequate v/c ratios thru 2020.

This same dual left-turn lane infrastructure assumption would indicate receiving lanes on the north leg of the intersection would also have to be constructed to accept the turning traffic. This is consistent with the fact that Clackamas County's and ODOT's assumption set should contemplate all infrastructures necessary to accommodate anticipated background traffic volumes. In any case, all of the necessary turning and receiving lanes should be constructed with this assumption, a lane utilization assumption of 50/50 is appropriate.

Therefore, the Board accepts the analysis provided by Balzhiser and Lancaster on this issue. We note that while the county concurrency ordinance is not relevant to the initial application, the applicant is subject to concurrency via the conditions of approval.

The Board concludes that the proposed amendments, as conditioned, are consistent with Goal 12 and the TPR.

Goal 13 – Energy Conservation

The proposed amendment will have no impact on any known or inventoried energy sites or resources. The Board finds that Goal 13 is not applicable to this application.

Goal 14 – Urbanization

The subject property is located within the UGB and is currently designated for urban uses. The proposed amendment does not involve a change in the location of the UGB or a conversion of rural land to urban land. The Board finds that Goal 14 is not applicable to this application.

Goals 15 – 19

Goals 15 through 19 apply to the Willamette River Greenway and the Oregon Coast, and are therefore not applicable to this application.

2. Consistency with Comprehensive Plan Policies

This section of the findings addresses compliance with applicable policies in the county comprehensive plan.

Chapter 1: Introduction

This chapter of the plan includes a general introduction to the plan and describes how to use the plan; it does not include any goals or policies that are applicable to a quasi-judicial plan amendment.

Chapter 2: Citizen Involvement

The comprehensive plan and ZDO contain adopted and acknowledged procedures for citizen involvement. This application has been processed consistently with those procedures. Specifically, the county provided notice to the two CPOs in the area, to property owners within 300 feet of the subject property, and also published public notices in the newspaper consistent with state law and ZDO Section 1302. The county held public hearings before the planning commission and the board of commissioners, which provided citizens with an opportunity to participate in the land use process.

Chapter 3: Natural Resources and Energy

The purpose of Chapter 3 is to provide for the planning, protection and appropriate use of the county's land, water and air resources, mineral and aggregate resources, wildlife habitats, natural hazard areas and energy sources. Only the section of Chapter 3 addressing water resources is applicable to the present application.

Water Resources. This section identifies policies applicable to river and stream corridors, principal river conservation areas, stream conservation areas, wetlands and groundwater. With respect to the river and stream corridors and principal river and stream conservation area policies, there is no dispute in the record

that the proposed plan amendment to change the map designation from Light Industrial to General Commercial does not affect the status, change the protection of, or otherwise affect the existing resource. Nevertheless, the western portion of the subject property is traversed by Sieben Creek, which is designated as a Small Stream on the River and Stream Conservation Area (RSCA) maps and regulated under Section 704 of the ZDO.

In connection with the application regarding the identified wetlands on the site (File No. Z0796-02-CP), the applicable policies in this section of the comprehensive plan have been evaluated by the Board and the findings related to those sections and the compliance with or anticipated compliance with those policies will be addressed more fully when analyzing the applicable Goal 5 criteria below.

The subject property contains wetlands identified in the North Urban Wetland Inventory as a significant Goal 5 resource. These wetlands are also identified on the Title 3 map adopted by Metro. There is no dispute that the proposed comprehensive plan amendment to change the map designation from Light Industrial to General Commercial does not affect the status, change the protection of, or otherwise affect the existing Goal 5 wetlands. Here again, however, the applicant has submitted a plan amendment application under the Goal 5 rule that includes a new ESEE analysis that would allow development of the wetland areas. The findings related to the specific policies in this section of the plan, in addition to the Title 3 requirements and the compliance with or anticipated compliance with those policies, are addressed below with regard to that separate application.

The Board finds that the proposed map amendments are consistent with Chapter 3 of the comprehensive plan.

Chapter 4: Land Use

Chapter 4 of the comprehensive plan provides the definitions for urban and rural land use categories, and outlines policies for determining the appropriate land use designation for all lands within the county. Sections of Chapter 4 applicable to this proposal are the Urbanization, Urban Growth Concept, and Land Use Policies applicable to Residential, Commercial and Industrial uses.

1. Urbanization. The urbanization section of the plan outlines policies guiding land use in Immediate Urban Areas. The subject property is located within the Metro Urban Growth Boundary, and satisfies the definition of "immediate urban area." The subject property is located within the boundaries of the Clackamas County Service District No. 1 and Clackamas River Water District, which are capable of providing sewer, water and storm water facilities. The property is also directly

adjacent to State Hwy 212, a major regional transportation facility. The Board finds the subject property is located within the UGB and is already part of the urban area.

2. Urban Growth Concept Policies. Because the subject property is located in the Urban Growth Boundary it is subject to the requirements of the Metro Functional Plan. Title 4 of the MFP regulates retail uses in Employment and Industrial Areas. The Urban Growth Concept Policies in the Land Use Section of the CP implement Section 3.07.420(A) of the Metro Functional Plan, which is found in Title 4 and prohibits retail uses larger than 60,000 square feet of gross leasable area per building or business in Industrial Areas.

The Urban Growth Policies Section of the plan identifies the subject property as an "Industrial Area" in part to comply with the requirements of the Metro Functional Plan. Policy 7.0 of the Urban Growth Concept Section applies the Industrial Area Design Type designation (as shown on Map IV-8) and sub-policy 7.1 of the plan mirrors the language in Section 3.07.420(A) of the Metro Functional Plan by prohibiting retail uses larger than 60,000 square feet of gross leasable area per building or business. The applicant is requesting that the industrial designation be removed from the subject property, which would require an exception to Title 4 of Metro's Functional Plan.

The Board finds that approval of this application can be in compliance with Chapter 4 through the condition requiring the county to apply to Metro for an exception to Title 4, because if the county applies to Metro for an exception to Title 4, and the exception is approved, the Industrial Area Design Type designation will be removed, and Policy 7 of this chapter will not be applicable to the proposal. Therefore the amendment will be consistent with the Urban Growth Concept Policies of Chapter 4 and consistent with the Metro Functional Plan via an exception to Title 4 or corresponding map amendment.

3. Land Use Plan Designations. The subject property is planned Light Industrial, and is proposed to be changed to General Commercial. Therefore, the plan designation policies for the Light Industrial and General Commercial sections of Chapter 4 must be reviewed and considered. Having weighed all policies, as discussed in detail below, the Board finds that the most suitable zoning designation for the subject property is General Commercial.

a. General Commercial Plan Policies

Policy 34.0 of the Commercial Section identifies the criteria that must be considered in order for the General Commercial Plan designation to be applied to an area. The Commercial Plan designation may be applied when either the first or all of the other criteria are met. Each criterion is addressed below.

(i) Areas having an historical commitment to commercial uses

The plan does not provide a definition of the term "area" in order to help determine what property should be included in an analysis of this plan policy. The subject property is developed currently with a single family dwelling. No commercial uses exist on the subject site. Immediately adjacent to the subject site to the east the land is currently zoned Light Industrial. Adjacent to the west the land is also zoned Light Industrial. The property is bordered on the north by Low Density Residential and bordered on the south by Highway 212; directly south of Highway 212 the property is designated Medium Density Residential. The property is located within the Clackamas Industrial Area design plan area, which has been planned and zoned for industrial uses for more than 20 years.

The Board acknowledges the current light industrial designation of the Clackamas Industrial Area design plan area, but notes that a 2000 survey submitted by the applicant reveals that the area to the west of the subject property is predominantly commercial in nature, and that close to 69% of the businesses located along the Highway 212 corridor west of the subject property extending to I-205 were retail uses at that time. (Exhibit 67). It is also estimated that this amount of commercial use has increased in the past four years. This Exhibit was entered into the record to specifically rebut the Staff Report findings that the area did not have an historical commitment to commercial uses, and subsequent to submittal into the record, was not disputed by city staff or any other opponent of the proposal. The Board finds this evidence highly persuasive and determines that the policy requiring an historical commitment to commercial uses has been satisfied by the applicant.

(ii) Areas necessary to serve the shopping needs of county residents

Policy 34.0(b) of the General Commercial section of Chapter 4 of the comprehensive plan requires that the area be necessary to serve the shopping needs of county residents. In the staff report dated October 21, 2003, county staff requested the applicant to respond to the following issues: (a) whether the 73-acre Happy Valley Town Center commercial property was considered in the applicant's EOA, and if not, what affect that Town Center would have on the EOA; and (b) what effect the approval of a big box retailer along the Highway 224 corridor just west of I-205 would have on the EOA.

Steve Ferrarini, the author of the applicant's EOA, testified before the Board in response to the inquiries from staff. He testified that the Happy Valley Town Center commercial property had been considered in the EOA: "Given the size and character of the proposed retail center, the primary market area for the subject extends approximately three miles...." (EOA, Page 12). Mr. Ferrarini also testified that the

impact of a big box retailer along the Highway 224 corridor just west of I-205 would have no impact on the EOA, as the primary market area was defined as extending three miles from the subject site, whereas the location of the old Levitz big box outdistanced the primary market area. Mr. Ferrarini also testified before the Board that the EOA had demonstrated a 20% leakage from the Sunnyside Subregion. The Board finds that this was a conservative estimate when compared to that offered by the findings testified to by Paul Simmons from Winco, e.g. a 44% leakage from the trade area was identified by Hamilton Resources. The Board finds the evidence in the Ferrarini analysis regarding market leakage persuasive.

The Clackamas CPO argued that there are sufficient commercial services in the region, but offered no rebuttal to the evidence in the record submitted by the applicant that demonstrates a need for approximately 42 acres of commercial land. This conclusion by the applicant resulted after an analysis of more than 56 commercially zoned vacant parcels larger than one acre, none of which could meet this the purpose of this project. The study found there was a significant leakage of shoppers out of the area and providing for the needs of the residents within the Sunnyside Subregion would reduce 5,241,000 miles traveled on the subregion roads per year. The reports of three different experts all conclude that in the county the commercial market is significantly underserved. These analyses and conclusions are found in the Metro Report cited in the EOA, in the EOA itself and in the testimony of the Winco Foods Vice President which refers to an independent assessment of leakage that resulted in an even higher percentage than the applicant's estimated (44% vs. 20%, p.11 and Exhibit 2 – Goal 9 Analysis).

Additional retail land in the subject site area is needed because the area surrounding the subject site has been one of the fastest growing parts of the Portland Metro area. According to the U.S. Census, the population within the primary market area has increased approximately 50% between 1990 and 2000. This number far exceeds the growth in Clackamas County as a whole or the Portland metropolitan area as a whole during that same time period. The average annual growth rate between, 1990-2000 were as follows: the Portland metropolitan area grew at a rate of 2.3 percent, Clackamas County grew as a whole at the rate of 2.14% whereas the subject site's primary market area grew at the rate of 4.9%.

The comprehensive retail needs analysis demonstrates there is an inadequate supply of retail land to meet the needs of the rapidly growing residential areas surrounding the subject site. This analysis also demonstrates demand from the nearby households can support approximately 1.5 million square feet of retail space compared to an existing supply of 600,367 square feet. This indicates an additional 85 acres of retail land is needed. Metro acknowledges that commercial development is sometimes necessary on industrial sites with significant development constraints.

This policy is acknowledged in the most recent analysis of industrial land needs and regional industrial lands study, which is contained in Exhibit 2.

The subject site is better suited for retail development as well because that sort of development requires the amount of visibility offered at the subject site and industrial users do not require that sort of visibility. Since the industrial designation was originally placed on the site, the area surrounding the subject property has evolved from a mainly rural area to a sizeable residential community and mixed use area. To have a full complement of services to be a complete community including additional retail services. The addition of these services at the local level would help to create community units that are the cornerstone of the Metro 2040 Growth Concept Plan, which encourages small town centers which in turn create employment opportunities in a local market area to then connect to the regional centers by road and transit.

The Board also adopts by reference the conclusions in the applicant's EOA regarding available and needed vacant industrial and commercial lands, and specifically finds that the Clackamas County Sunnyside Subregion currently faces a commercial land deficit of approximately 42 acres. The Board finds that the Primary Market Area defined by the EOA is appropriate, given that "Evaluating the demand and supply of retail land in all of Clackamas County would not identify local need, just as vacant land in Sandy would be poorly positioned to serve the needs of residents living in the subject's market area." (EOA, page 12).

Based on the above-referenced evidence in the record, and the three memoranda prepared by Hobson Ferrarini Associates dated October 30, 2003 (including the EOA), the Board concludes that there is substantial evidence in the record to support a finding that there is a demonstrated need for commercial land.

(iii) Areas having access to a street of at least a major arterial classification or transit trunk route. Siting should not result in significant traffic increase on local streets serving residential areas.

The street system surrounding this site is more than adequate for the project purpose. The proposed development would have direct access onto Highway 212, which is designated as a major arterial, and the connecting sections of SE Hubbard to SE 142nd Avenues are minor arterials. The Lancaster TIA indicates that the proposed development would draw 13,518 weekday trips to the site. Given the market need for this development, it is probable that most of the trips coming to this site would otherwise be trips crossing I-205 and impacting the Highway 212/224 and Sunnyside Road Interchanges. According to the Trip Capture Analysis performed by Lancaster

and Associates, while the proposed development will attract new trips, it will not actually produce new trips on the surrounding roadway network. This is because the residents and employees in this market area are currently driving outside of the area to shop. The new development will "capture" those trips which are already in the system, thereby reducing vehicle miles traveled. Reducing 10,000 VMT's across the I-205 interchanges would greatly improve the quality of life for all county residents. Both intersections at Highway 212 with SE Hubbard and SE 142nd Avenue, will function adequately with minor improvements. Therefore overall, the proposed development would reduce trips on local streets throughout the Sunnyside Subarea.

(iv) Areas which do not increase an existing commercial strip or create new strips.

There is no definition of "commercial strip" in the comprehensive plan or ZDO. However, the Urban Land Institute has defined strip commercial as follows: "Strip commercial development is not a shopping center. Strip commercial can be a string of commercially zoned lots developed independently, or a string of retain commercial stores on a single site where there is not anchor tenant and no central management, and where tenant mix results from leasing to available tenants with good credit, not from planning and executing a leasing program." As concluded in the Hobson Ferrarini analysis, the proposed development would provide a commercial center with the appropriate width and depth for the intended purpose in the Sunnyside Subarea. This center could not be characterized as a commercial strip center, or an extension of a strip center.

(v) Areas where adverse effects, such as traffic and noise, will have a minimal effect on adjacent neighborhoods or can be minimized through on-site improvements.

Chapter 34.0(e) requires that commercial uses exist in areas where adverse effects such as traffic and noise will have a minimal effect on adjacent neighborhoods or can be minimized through on-site improvements. County staff argued that comments from ODOT indicated the existing and planned transportation system would not be adequate to support development allowed under the proposed Commercial plan designation. As concluded by the Board in the portion of these findings addressing Goal 12, approval of the requested map amendments with the attached conditions of approval will not result in more than a minimal effect on adjacent neighborhoods, because the resulting traffic impacts will be no more significant that would be allowed under existing zoning.

a. Light Industrial Plan Policies

Policy 13 of the Industrial Section of the Chapter 4 contains the criteria that must be considered in order for the Light Industrial Plan Designation to be applied to an area. After reviewing all of the criteria for both the General Commercial and Light Industrial policies, the Board concludes that, on balance, the policies favor designation of the subject property for commercial uses.

(i) Areas having an historical commitment to industrial uses.

Properties to the north and northeast of the subject property are designated Urban Low Density Residential and Resource Protection and zoned R-15. The area across Hwy 212 to the south is designated MDR, zoned MR-1, and is currently in residential use. The subject property is developed with a single family dwelling, and has never been developed with industrial uses. Although the properties to the east and west of the subject property are *zoned* industrial, the property to the east is occupied by a mini-storage facility. The absence of any significant level of actual industrial uses in the immediate area leads the Board to conclude that the area does not have a "historical commitment" to industrial uses.

(ii) Areas with sites large enough for several industries to cooperatively design an industrial park.

Policy 13.0(d) considers whether the area is large enough for several industries to cooperatively design an industrial park. The subject property consists of 24.55 acres, 42% of which are wetlands. As concluded by the Hobson Ferrarini analysis, and supported by other evidence in the record, the current value of industrial land in the area will not support industrial development on the subject property due to the prohibitive cost of mitigating the resulting loss of wetlands on the site. The market can hardly bear the cost to mitigate the subject property at commercial land values, albeit the economic feasibility more palatable than attempting to justify the cost to develop industrially. Therefore, while the area is arguably large enough to accommodate an industrial park in the absence of the significant site constraints resulting from the wetlands, the Board finds that the site conditions and current economic value of industrial lands require a conclusion the property is best suited for commercial rather than industrial uses.

Chapter 5: Transportation

In addition to the findings set forth below, the Board expressly adopts and incorporates by reference all of the findings set forth in Section II A (Goal 11 Analysis) at page 14 above regarding the consistency of the proposed amendments with Goal 12 and the TPR.

Chapter 5 contains six 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.

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. The policies in this section are not applicable to this application.

2. Transportation Demand Management. This section of Chapter 5 outlines strategies to achieve efficiency in the transportation system by reducing demand. The policies in this section are not applicable to this application.

3. Parking. This section of Chapter 5 outlines policies for parking standards to meet the region 2040 Growth Concept Plan, the TPR, and DEQ's Air Quality Maintenance Plan. The policies in this section are not applicable to this application.

4. Transit. This section of Chapter 5 outlines policies for accommodating transit services and facilities. Highway 212 is designated as a primary bus route in the comprehensive plan. However, the policies in this section are not applicable to this application.

5. Pedestrian and Bicycle Facilities. This section of the chapter outlines policies for providing pedestrian and bicycle facilities. Map V-7a of the comprehensive plan indicates that Highway 212 is developed with an existing bikeway consistent with policies 6.0 and 9.0. The remaining policies in this chapter are not applicable to this application.

6. Freight, Rail, Air, Pipeline and Water Transportation. This section of Chapter 5 outlines policies applicable to these various modes of movement of people and goods. The policies in this section are not applicable to this application.

The Board finds that the proposed amendments are consistent with Chapter 5.

Chapter 6: Housing

The purpose of the Housing element of the comprehensive 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."

The proposed amendments do not involve a request to amend the plan map to or from a residential designation, and therefore will have no effect on the housing choices, inventory or land needs of the county residential land base. The Board finds that Chapter 6 is not applicable to this application.

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 as 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.

Chapter 7 policies require a coordinated review of development applications with the appropriate sewer, stormwater and water service providers to ensure that approval of a development application is not granted without adequate facilities being available. Although this application is not a development application, Chapter 7 requires a finding that there are adequate public facilities and services to support the proposed land use designation. The record includes comments from all relevant service districts and providers indicating that adequate public facilities and services can be provided to support the proposed commercial use of the subject property.

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." Specific policies that are potentially applicable to the proposed amendments are addressed below. In addition to the findings set forth below, the Board expressly adopts and incorporates by reference all of the findings set forth in Section II A (Goal 9 Analysis) above at page 6 regarding the consistency of the proposed amendments with Goal 9. The Board finds that the economic analyses submitted by Hobson Ferrarini, supplemented by testimony at the hearings, demonstrate compliance with the requirements of OAR Chapter 660, Division 9, and also with Chapter 8 of the comprehensive plan.

Policy 1.1 "Protect established industrial and commercial areas from encroachment by incompatible land uses." The subject property is located in an industrially-zoned area that already includes commercial development. There are limited industrial uses in the immediate vicinity of the subject property. The Board notes that a 2000 survey submitted by the applicant reveals that the area to the west of the subject property is predominantly commercial in nature, and that close to 69% of the businesses located along the Highway 212 corridor west of the subject property extending to I-205 were retail uses at that time. (Exhibit 67). It is also estimated that this amount of commercial use increased in the next four years. The Board finds that

the proposed commercial development would not be an "incompatible land use." Unlike residential development, for example, commercial development is not inherently incompatible with industrial uses. Also, as conditioned by the Board the proposed development will be of a scale and intensity that will not generate any more traffic than an industrial use under the existing I-2 zoning.

Policy 1.2 "Encourage maintenance of sufficient vacant lands to provide room for the future expansion or relocation of the county's industry and business." As concluded by the applicant's EOA and related materials submitted by Hobson Ferrarini, there is a significant shortage of available commercial land in the county. The applicant's EOA provides an updated inventory based upon data obtained from Metro's 2002-2022 Urban Growth Report. The proposed commercial development would assist in filling a much needed demand for the 909,560 square feet of GC needed locally in this subregion of Clackamas County. Approving this plan amendment will supply the Sunnyside Subarea with almost 1/4 of the C-3 void and significantly reduce vehicle miles traveled (VMTs) by redirecting traffic away from the I-205 interchanges, thus reducing vehicle trips attempting to travel to the currently available retail locations.

Policy 1.6 "Consider impacts on established commercial areas prior to approving plan changes for major new commercial areas. High priority should be given to retaining the viability of affected downtowns." The applicant's EOA demonstrates there is a local need in the study area for major retail development. As explained in testimony by Mr. Ferrarini at the hearing in response to inquiries from staff, the Happy Valley Town Center commercial property was considered in the EOA. Mr. Ferrarini also testified that the impact of a big box retailer along the Highway 224 corridor just west of I-205 would have no impact on the EOA, as the primary market area was defined as extending three miles from the subject site, whereas the location of the old Levitz big box outdistanced the primary market area.

Policy 2.1 "Provide sufficient industrial land of four different types [including] ... Light Industrial designations..." Under the circumstances of this application, and the lack of suitability of the subject property for industrial use given the site constraints, the Board has weighed the policies and concludes that the need for commercial land outweighs the need for industrial land, and therefore the proposed map amendments result in a better application of the plan policies.

As concluded in the EOA, if the developable portion of the existing I-2 site could develop at a 0.3 floor-area ratio, this would result in approximately 104,000 square feet of industrial buildings. However, the cost of developing the 8 acre portion of the property for industrial buildings yields \$15.63/sf in land costs amortized for the entire site, which makes the development of this property as an industrial site, fiscally

impossible when the market rate for I-2 is \$5.25/sf. The mitigation costs of developing the wetlands would not significantly increase the industrial development value of this property, because of the high mitigation costs. Given the cost of land coupled with the cost of mitigation, without including the employment remediation site, the land cost alone for the mitigated site would be in excess of \$9.00/square foot, which is a commercial-retail development rate for land and 71% higher than the market price for industrial land in the region.

An abundance of evidence has been placed into the record regarding the classification or non-classification of the subject property as a Metro-defined Regionally Significant Industrial Area. Planning staff recommended that the Board disregard this information for purposes of evaluating the proposal and these particular policies given that neither Clackamas County nor Metro has officially designated any land along Highway 212 as regionally significant. (Exhibit 64). The Board agrees with staff in this regard, and finds that the property contained within the subject site is not considered regionally significant industrial land, is largely constrained and essentially undevelopable. The Board finds unpersuasive the contentions that rezoning this piece of property to the more appropriate commercial designation will seriously deplete the industrially zoned acreage in the area, or that Statewide Planning Goal 9 or Chapter 8 of the comprehensive plan prevent the county from changing the map designation on the subject property to a commercial designation.

As demonstrated by the applicant's EOA, there is a shortage of commercial land in the county, the region, and the Sunnyside Subregion (EOA p.5). The subject property lies within the Metro UGB. It makes sense to utilize undeveloped land to its fullest potential within the UGB, in the interests of not further expanding the UGB. There are two competing policies at issue. There is a shortage of Industrial land in the county, and the region as well. On the other hand, there is also a shortage of commercial land, particularly retail, due to the rapidly increasing incidence of residential and non-conforming commercial uses in the area.

Because Chapter 8 of the comprehensive plan directs that both commercial and industrial lands be preserved and in areas where other uses should not encroach, it is not reasonable to analyze the two uses as if they are necessarily conflicting. It cannot be seriously disputed that industrial areas would be unable to thrive without the provision of sufficient commercial services within a reasonable radius. The commercial services in the Sunnyside Subregion are currently inadequate.

In summary, the Board finds that the proposal is consistent with both Chapter 8 of the comprehensive plan and Statewide Planning Goal 9. The Board finds that approval of the proposal helps to effectuate the goals of Chapter 8 and of Goal 9 in that converting the land to commercial use will help to "establish a broad-based,

stable and growing economy" and as well provides an opportunity in the Sunnyside subregion for "a variety of economic activities."

Chapter 11: The Planning Process

The purpose of Chapter 11 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. The subject property is located within Metro's jurisdiction. The property is not located within any dual interest area or Urban Growth Management Area of any nearby cities.

Policy 1.0 sets out to 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.

Because staff found that the proposal is not consistent with Statewide Planning Goals 2, 9 and 12, or with the requirements of the Metro Functional Plan, it found that the proposal is inconsistent with this policy. The Board has already found that the proposal can be consistent with the Metro Functional Plan if the County's application to Metro for an amendment to Title IV which, if granted, would remove the Industrial Area Design Type designation.

The Board also finds, as analyzed above, that the application is consistent with Chapter 8 of the Comprehensive Plan and related Goals 9 and 11, respectively, and as analyzed above, is consistent with Statewide Planning Goal 12, OAR 660-012-060, and related transportation Zoning and Development Ordinances. As a result of these findings, this proposal is consistent with Chapter 11 of the Clackamas County Comprehensive Plan.

The Board has also found that the proposal is consistent with Statewide Planning Goal 2, as it is or can be with conditions in compliance with all chapters of the Comprehensive Plan, including Chapter 5, which will in large part be analyzed below in Section (f) of this discussion section.

B. Zone Change From I-2 to C-3 and Compliance with Zone Change Criteria in Section 1202 of the ZDO.

To effectuate the requested zone change from I-2 to C-3, the applicant must establish compliance with ZDO Section 1202. The applicable criteria are addressed below.

1. ZDO 1202.01(A). A zone change may be approved if the applicant provides evidence substantiating that approval of the request is consistent with the Comprehensive Plan. As previously and thoroughly analyzed in this discussion section, the Board finds that the application is consistent or can be consistent with the conditions imposed with the Clackamas County comprehensive plan.

2. ZDO Section 1202.01(B). The applicant must establish that the need for public sanitary sewer, surface water management and/or water service 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 located within the UGB and in an immediate urban area. Any development proposed on this property will require public sanitary sewer, surface water management and water service. The subject property is located within Clackamas County Service District No. 1, which provides public sanitary sewer and storm drainage services in the area. The Water and Environment Services staff has indicated that the sewer and storm drainage facilities are adequate to support uses allowed under the proposed Commercial plan designation. (See Exhibit 11).

The subject property is located in the Clackamas River Water District. The applicant has provided adequate evidence that the water districts capital improvement plans are adequate to support uses allowed under the proposed General Commercial Plan designation. (See Exhibit 39).

3. ZDO Section 1202.01(C). The zone change will not impact the transportation system such that a roadway as planned in the 20-year capital improvement plan is impacted in the same manner contemplated under the "significantly affect" standard of the TPR. As concluded above in the findings addressing Goal 12, the proposed zone change, as conditioned, will not significantly affect a transportation facility.

4. ZDO Section 1202.01(D). Safety of the transportation system is adequate to serve the level of development anticipated in the zone change. As concluded in the findings set forth above regarding Goal 12, the proposed zone change, as conditioned, will have no impacts above those that would be generated by industrial use on the site.

The Board finds that the amendment will have no more impact on the transportation system than is contemplated in relevant transportation and other planning documents under the existing zoning for the property. The proposal will limit any development in the new C3 zoning district to no more new trip impact than "worst case" new trips attributable to existing uses in the existing industrial zone until

such time as the Sunrise Corridor is build and capable of serving the subject property. The applicant has offered and this proposal is conditioned upon limiting square footage of a shopping center to a level of equivalent trips that ensures this will be the case.

The Board finds that the conclusions of the two independent engineering analyses adequately support the finding that the safety of the transportation system is adequate to serve the level of development anticipated by the zone change.

5. ZDO Section 1202.01(2)(E). Development based on a zone change granted pursuant to this section shall be subject to Section 1022. This is not an approval criterion applicable to a zone change application, rather only an informational statement to notify the applicant that any future development proposal must comply with the Concurrency standards in ZDO Section 1022.

C. Plan Amendment to the County's Goal 5 Program Allowing Development on Significant Wetland Area.

The Applicant has submitted a Post Acknowledgement Plan Amendment (PAPA) application under the Goal 5 rule to amend the county's Goal 5 program based on a new ESEE analysis for a significant wetland area.

The Board's approval of this application is conditioned in order to comply with the Metro Functional Plan, in that the approval of the amendments will not be effective until Metro approves an exception to Title 3 or otherwise authorizes removal of the wetland on the property from its Water Quality and Flood Management Area Map and the Army Corps of Engineer and/or Division of State Land approves filling of the wetland or a wetland mitigation plan for the property or both.

This application is subject to the applicable policies in the Clackamas County Comprehensive Plan and OAR Chapter 660, Division 23 (Procedures and Requirements for Complying with Goal 5). Goal 5 establishes a comprehensive planning process that requires a local government to (1) inventory the location, quality and quantity of listed resources within its territory (2) identify conflicting uses for the inventoried resources (3) determine the ESEE consequences of the conflicting uses and (4) develop programs to achieve the goal of resource protection.

The subject property contains wetlands identified in the North Urban Wetland Inventory (NUWI) as a significant Goal 5 resource. The NUWI also includes an ESEE analysis which allows limited conflicting uses including commercial/industrial uses on the wetland resource. (See Exhibit 5). This ESEE analysis specifically allows for mitigation of up to 5.5 acres of impacted wetlands for conflicting uses, *e.g.* commercial/industrial.

The applicant has submitted a new ESEE analysis addressing all of the applicable requirements of OAR 660-023-0040 and specific requirements for wetlands in OAR 660-023-0100. Within the context of the ESEE decision process, a local government may decide that both the resource site and the local uses are important compared to each other and based on the ESEE analysis the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent. OAR 660-023-0040(5)(b). A decision to prohibit or limit some or all conflicting uses for a particular site may be consistent with Goal 5 provided that the decision is supported by the ESEE analysis.

OAR 660-023-0040(5) requires local governments to determine whether to allow or limit conflicting uses for significant resource sites basing its decision on the ESEE analysis performed, and may decide that both the resource site and the conflicting uses are important and that conflicting uses should be allowed in a limited way to protect the resource site to a desired extent.

Based on the analysis presented by the applicant in the ESEE analysis and evidence in the record regarding conflicting uses, the Board finds that the economic, social, environmental and energy consequences warrant a revision to the county's Goal 5 program allowing, with limitations, conflicting uses on the site with mitigation to offset lost wetland functions. The Board agrees with the applicant's analysis concluding that conflicting uses should be allowed with limitations requiring mitigation, and that such mitigation shall be acceptable to the Department of State Lands and the Army Corps of Engineers. In support of this amendment to the Goal 5 program, the Board specifically adopts and incorporates by reference the applicant's ESEE analysis dated February 27, 2003.

In response to the social consequences analysis provided by the applicant, county staff argued that the identified Social Consequence of substantial savings for residents of the Sunnyside Subregion area due to decreased driving time and fuel savings was irrelevant given its conclusion in Section 2 of its Report that the transportation system is not adequate to support the proposed commercial zoning and associated development. "This will result in congestion and an inefficient transportation system."

The testimony is unequivocal at present that all of the residents and other shoppers in the subject area have to travel long distances and unnecessarily out of their way to the Clackamas Town Center and Sunnyside for their shopping needs. Without the proposal this problem is slated only to get worse. This puts enormous local trip pressure on the congested Highway 212/224/Hwy 205, Sunnyside, and the Highway 212/224 and 82nd Street intersections.

The proposal provides the opportunity to avoid such trips continuing to further congest this area and enabling local shopping trips to occur in the subject area, rather than having to make long distance trips out of the local area, saving 5,241,000 VMT's per year. As such, under the proposal, local residents can make local trips for shopping. This in turn is consistent with Metro's RFP, Title 4 which provides the policy "To protect the capacity and efficiency of the region's transportation system for movement of goods and services." The proposal does so far better than leaving the land fallow and providing for no shopping opportunities in the subject area to serve the shopping needs of the citizens in this area, forcing them to compete with truck traffic on needed highway space to get to shopping elsewhere in very crowded parts of the region. The capture analysis for the proposal establishes that the proposal removes 5,241,000 vehicle miles per year from the SS roads per year, equating to over 4,200 hours of additional family time, and a savings of over 10,000 barrels (320,000 gallons) of gas and reduced emissions. The Board finds this evidence persuasive and not disputed and has already found that the transportation system is adequate to support the proposed commercial zoning and associated development.

Staff believes that the economic impacts of establishing a substantial commercial development and removal of the wetlands on site will result in substantial economic impact to the cost of public monies spent on the Sunrise Corridor. The record indicates this industrial land is valued at approximately \$5.25/square foot. Commercial land is valued at \$10.00 –12.00/square foot, an increase of approximately \$5-7.00/square foot. If the Sunrise Corridor requires condemnation of the entire 25 acres, the cost of right-of-way will increase by over \$5 million (using \$10.25/square foot). That figure does not include any subsequent costs for improvements constructed on the property, relocation costs, etc.

Nothing in the record suggests that any potential alignment of the Sunrise Corridor would require taking of "the entire 25 acres". In fact, under the preferred proposed alignment in existence in December of 2004, it was anticipated that only two acres of wetlands would need to be mitigated to accommodate the Sunrise Corridor. As stated earlier, the alignment of the potential Sunrise Corridor is by no means final. A northern alignment such as the applicant suggests demonstrates a savings of approximately \$17 million in right-of-way acquisition costs, plus almost as much in construction costs. Even ODOT has agreed that the current alignment does not work with Damascus included in their analysis, confirming this through a feasibility analysis that we study a separated Highway 212- Sunrise Corridor alignment, as we did. As proposed, if the value of this site is considered in the preferred alignment acquisition framework, only ±1,490 sf of this site will be acquired for the Sunrise Corridor (see attached Sunrise Corridor plan). At \$10.43/sf purchase price for the shovel ready commercial land, this equates to ±\$15,000 in acquisition costs, ±\$7,500 more than if the site was zoned I-2. (See Exhibit 2, Goal 9 Analysis,

p.3, Ferrarini and Associates, referencing land values.) The Board finds that the increase in cost under the proposed scenario which is now more likely to be the final scenario is more than offset by the earlier stated economic benefits realized by a more prudent alignment as proposed by the applicant.

Staff argued that other alternatives are available for mitigating some of the wetlands on site. "For example, all the wetlands could be mitigated and consolidated on the western portion of the site. The remaining lands could be maintained for industrial uses." As discussed in the hearing, all of the land costs above, individually or combined, exceed what the I-2 market is capable of bearing. But not the commercial market as Paul Simmons of Winco so aptly explained. Ergo, it's not the resource that is the sole functional constraint for the property. The fact is to have any synergy, marketability or be economically valuable, the entire site and not just 5.67 acres must be developed. Therefore, the request is to create development potential for the entire project, which unfortunately can't be developed as I-2, with or without the constraints. (See Exhibit 2, Goal 9 Analysis, p.3, Ferrarini and Associates.)

County Staff, ODOT and others argued that it is simply not feasible to mitigate wetland impacts. For example, the subject property is traversed by Sieben Creek and is identified as a Small Stream on the River and Stream Conservation Area Map, and as such, is a Goal 5 protected Resource. First of all, as Applicant's (Exhibit 2), submission has pointed out, if it is feasible for a creek to be crossed for the alignment ODOT wants, then the same creek can feasibly be crossed for development of the subject property. In ODOT's final submission the agency representatives claimed the applicant had made no showing it was feasible to cross the stream to obtain a vehicular crossing to 135th. This is wrong; ODOT's own evidence of its own feasibility to obtain such permission is evidence enough that such a crossing is feasible if the applicant needs to wishes to pursue it. (See Exhibit 2). Additionally, the argument regarding the stream as a Goal 5 resource becomes moot once the County applies for an exception to Title 3, given that approval of the proposal is conditioned upon the removal of the Goal 5 protected resource status.

Staff states that the ACOE initial denial of the applicant's mitigation plan should be a basis for concluding that it is not feasible to mitigate wetland impacts. The Board notes that if ODOT can feasibly gain permission to fill wetlands on the subject property, then surely the applicant can feasibly obtain such permission as well. This argument in any event is moot given that the applicant is subject to ACOE and/or DSL approval in connection with any wetland fill and mitigation plan and the Board's approval of the PAPA is contingent upon that approval.

The ACOE denial letter indicates the proposed project would result in environmental consequences by causing more than minimal adverse impacts to

aquatic resources and would affect water quality. The Clackamas River Basin Council also does not support the removal of the wetlands because the environmental and social benefits outweigh the economic benefits. However, the Board finds that the applicant's wetland scientist, Dr. Martin Schott, has successfully rebutted these arguments in his December 4 and December 12 submittals to the board, respectively.⁵

Dr. Schott is of the opinion that "it is feasible for this wetland fill permit to be approved." (Exhibit 78, December 4 letter to Michael McCallister from Martin Schott.) The letter goes on to state: "The hydrology of the wetland is primarily from perched conditions, and its primary source of water comes from rainfall...both the high clay content and the compaction prevent water from infiltrating into the soil, and rainwater sits on the surface until it either flows off-site, or evaporates. Since the site is relatively flat, most of the water evaporates...". "There is a common misconception that most wetlands contribute to the ground water. While there are a few wetlands that do contribute to the ground water, most wetlands are discharge points, where the water comes up to the surface, or the water sits on the surface. In this case the primary discharge is by surface ditches, and evaporation, and does not contribute to recharging the ground water."

Dr. Schott also responded to the contention that the wetlands removed pollutants from the development upslope from the site as follows: "Since all the development upslope of the site are relatively new, they all have their own storm water and water quality functions. These facilities drain directly to the creek, and cannot reach the wetlands. There is no direct connection between the wetlands and Sieben Creek. Sieben Creek was channelized, and doesn't flood into the wetlands. In addition, the eastern tax lot has a ditch along the northern portion of the lot, which prevents any upslope water from entering the wetland."

Finally, Dr. Schott rebutted evidence submitted by the Oregon Department of Fish and Wildlife that "Sieben Creek supports various wildlife species including fish listed under the Endangered Species Act, including Chinook salmon". Dr. Schott's December 12, 2003 letter to Mike McCallister states that the 6 to 8 weirs located between Hwy 212 and the Clackamas River create effective fish barriers and effectively prevent fish from reaching Hwy 212, where the culvert is another effective fish barrier. Dr. Schott has concluded that the creek/corridor does not have any endangered species using most of the stream. The letter acknowledges that Sieben Creek used to have a steelhead run, but that this had been eliminated due to the

⁵ The Board finds Dr. Schott's experience and education in the wetlands science field persuasive, particularly in light of his extensive and long-time experience with the subject site.

numerous changes over the years. “First, the creek was relocated to its current location, where it has a very steep gradient down to the river”. Second, because of the small dams referenced above and the box culvert under Highway 212, endangered steelhead cannot get to the project site. Dr. Schott concludes that the best wildlife habitat is upstream from the project area, and that the “proposed mitigation calls for returning the stream to more natural conditions, with a high quality buffer.”

The Board finds, however, that the applicant’s proposal amends County Plan Wetland Inventory to change from 9.9 or 8.42 (depending on whether county or applicant analysis is used) acres of low quality and functional value, impacted wetlands on the subject property to 15.8 acres of wetland on high quality mitigation property located adjacent to Clackamas River.

The County’s current plan designation for the subject property is industrial use. As stated previously, it is inconsistent with these industrial objectives to also claim some desire to protect the marginal wetlands on the property. A viable solution is to create wetlands on land zoned for EFU and near the Clackamas River that can genuinely serve wetland purposes as well as wildlife purposes.

It has not been seriously disputed that the status quo is a poor use of the public’s and county’s investment in transportation and other infrastructure in the area and a poor location for protection of “wetland” values at the expense of Goal 9 (economic) values. As explained in other submissions, the wetlands on the subject Highway 212/224 property do not percolate, do not drain to Seiben Creek and essentially provide no wetland benefits for the public or the environment.

D. Conclusion

Based on the above-stated findings, the Board approves the requested amendments to its plan map, zoning map, and Goal 5 program, subject to the attached conditions of approval.

**CONDITIONS OF APPROVAL
EMMERT PLAN AMENDMENT**

1. If any of the subject property is required for construction of the Sunrise Corridor, the applicant is entitled to payment for that property at its fair market value with I-2 zoning, rather than the C-3 zoning put in place by this approval. The I-2 zoning will also be used to determine any loss in value of subject property not acquired for, but whose value is depreciated by, such acquisition. This provision does not apply to structures on the subject property, or to any property that any governmental agency might seek to acquire after construction of the Sunrise Corridor. Approval of this comprehensive plan amendment and zone change will not be effective until the applicant provides the county with a written agreement, acceptable to county counsel, agreeing to this condition and binding any future owners of the subject property.

2. No building permit for the subject property shall be issued until either February 5, 2007, or the identification by ODOT of the preferred alternative for the alignment of Unit 1 of the Sunrise Corridor, whichever comes first.

3. Approval of the PAPA removing the wetland from the County Goal 5 Urban Wetland Inventory will not be effective until Metro approves an exception to Title 3 or otherwise authorizes removal of the wetland on the property from its Water Quality and Flood Management Area Map and the Army Corps of Engineers and/or the Division of State Lands approves filling of the wetland or a wetland mitigation plan for the property or both. The county agrees to submit the application to Metro and that the applicant (Terry Emmert or his successor) may be a co-applicant with the County to the extent allowed by Metro. The application will be submitted within a reasonable time after the applicant prepares and submits to the county a Metro application package.

4. Approval of the amendment to the Comprehensive Plan Urban Growth Concept Map will not be effective until Metro approves an exception to Title 4 or approves a corresponding change to its Title 4 map. The county agrees to submit the application to Metro and that the applicant (Terry Emmert or his successor) may be a co-applicant with the county to the extent allowed by Metro. The application will be submitted within a reasonable time after the applicant prepares and submits to the County a Metro application package.

5. Development of the property is subject to the concurrency requirements of ZDO Section 1022 in effect at the time of an application to which they apply.

6. County approval will not be granted for a shopping center in excess of 269,260 square feet of leasable space until the Sunrise Corridor Unit One or other

alternative traffic mitigation serving the subject property is constructed that a traffic engineer states, and the county agrees, will safely and adequately accommodate new primary trips from the subject property; provided, however, the applicant shall be allowed to apply and obtain permission for such other commercial use or uses on the subject property sooner if a transportation study by a licensed professional engineer, approved by the county, demonstrates that the new trips reasonably expected from such other commercial use or uses do not exceed the number of new trips reasonably likely to occur with a 269,260 square foot shopping center or no more than 715 new primary trips during the weekday PM peak hour. Nothing in this condition is intended to foreclose the normal application of the county's concurrency provisions.