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December 5, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Adoption of a Previously Approved Comprehensive Plan Map Amendment and Zone Change in File Nos. Z0197-24-ZAP and Z0198-24-CP. No County General Funds are involved.

| | | | |
|-------------------------------------|--|---------------------------|--------------|
| Previous Board Action/Review | Land Use Hearing - September 25, 2024 | | |
| Performance Clackamas | 1. Build public trust through good government. | | |
| Counsel Review | Yes | Procurement Review | No |
| Contact Person | Caleb Huegel | Contact Phone | 503-655-8362 |

EXECUTIVE SUMMARY: File Nos. Z0197-24-ZAP and Z0198-24-CP include a Comprehensive Plan map amendment from Unincorporated Community Residential (UCR) to Rural Commercial (RC), with a corresponding zone change from Rural Area Residential 1-Acre (RA-1) to Rural Commercial (RC), for approximately one acre of the 3.8-acre property located at 28712 SE Highway 212, described as T2S, R4E, Section 06BA, Tax Lot 00702, W.M.

A public hearing was held before the Planning Commission on August 26, 2024, at which the Commission voted 6-3 to recommend approval of the application with two amendments to the proposed conditions of approval, including:

- Reducing the “trip cap” from 400 to 200 average daily trips; and
- Ensuring that the zoning line does not cross a septic system.

Prior to the public hearing before the Board of County Commissioners, the applicant provided the county with a revised site plan demonstrating that:

- The zoning line would cross the “carport” portion of an existing storage structure, but the “carport” portion would be removed prior to final approval of the application;

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- All remaining structures would be at least 10 feet from the zoning line; and
- The zoning line would not cross an existing septic system.

Prior to the public hearing before the Board of County Commissioners, staff also consulted with both the county's and the applicant's traffic engineers to better understand the trip cap issue. As a result of those conversations, staff recommended that the Board retain the proposed condition of approval requiring a trip cap of 400 average daily trips, rather than the trip cap of 200 average daily trips recommended by the Planning Commission.

A public hearing was held before the Board of County Commissioners on September 25, 2024, at which the Board voted 3-0 to approve the application subject to the conditions recommended by staff and directed staff to draft an order and findings consistent with its decision. One of the conditions required the applicant, prior to final approval of the application, to provide the county with evidence that the "carport" portion of the structure has been demolished. The applicant has provided that evidence to the county.

An order implementing the Board's decision is attached, and findings are attached to the order.

RECOMMENDATION: Staff recommends the Board adopt the attached order and the findings attached thereto.

Respectfully submitted,



Caleb Huegel
Assistant County Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of a Comprehensive Plan Map Amendment and Zone Change Requested by James Kenney for a Portion of the Property Described as T2S, R4E, Section 06BA, Tax Lot 00705, W.M.



Board Order No.

Page 1 of 2

File Nos. Z0197-24-ZAP and Z0198-24-CP

WHEREAS, James Kenney made an application for a Comprehensive Plan map amendment from Unincorporated Community Residential (UCR) to Rural Commercial (RC), with a corresponding zone change from Rural Area Residential 1-Acre (RA-1) to Rural Commercial (RC), for approximately one acre of the 3.8-acre property located at 28712 SE Highway 212; described as T2S, R4E, Section 06BA, Tax Lot 00702, W.M.; and shown on Exhibit A, which is attached hereto and incorporated herein by this reference; and

WHEREAS, after appropriate notice, a public hearing was held before the Planning Commission on August 26, 2024, at which testimony and evidence were presented and at which the Commission voted 6-3 to recommend approval of the application with two amendments to the proposed conditions of approval, including (1) reducing the “trip cap” from 400 to 200 average daily trips and (2) ensuring that the zoning line does not cross a septic system; and

WHEREAS, prior to the public hearing before the Board of County Commissioners, the applicant provided the county with a revised site plan demonstrating that the zoning line would not cross a septic system or structure once a portion of a certain structure was demolished; and

WHEREAS, prior to the public hearing before the Board of County Commissioners, staff consulted with both the county’s and the applicant’s traffic engineers to better understand the trip cap issue and subsequently recommended that the Board retain the proposed condition of approval requiring a trip cap of 400 average daily trips, rather than the trip cap of 200 average daily trips recommended by the Planning Commission; and

WHEREAS, after appropriate notice, a public hearing was held before the Board of County Commissioners on September 25, 2024, at which testimony and evidence were presented and at which the Board voted 3-0 to approve the application subject to the conditions recommended by staff; and

WHEREAS, the Board adopts the findings shown in Exhibit B, which is attached hereto and incorporated herein by this reference; and

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BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of a Comprehensive Plan Map
Amendment and Zone Change Requested
by James Kenney for a Portion of the
Property Described as T2S, R4E, Section
06BA, Tax Lot 00705, W.M.



Board Order No.

Page 2 of 2

WHEREAS, the Board finds that the application, subject to the conditions of approval identified in Exhibit B, complies with the state and county criteria to change the Comprehensive Plan designation of one acre of the subject property from UCR to RC and to change the zoning designation of that portion of the property from RA-1 to RC;

NOW, THEREFORE, BE IT ORDERED that the requested Comprehensive Plan map amendment and zone change are hereby APPROVED subject to the conditions identified in Exhibit B.

DATED this 5th day of December 2024.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Board Order Exhibit A

Z0197-24-ZAP & Z0198-24-CP

Comprehensive Plan Map Amendment/Zone Change

Unincorporated Community Residential/Rural Area Residential, 1-acre (UCR/RA-1) to Rural Commercial (RC/RC)

Portion of taxlot 24E06BA 00705

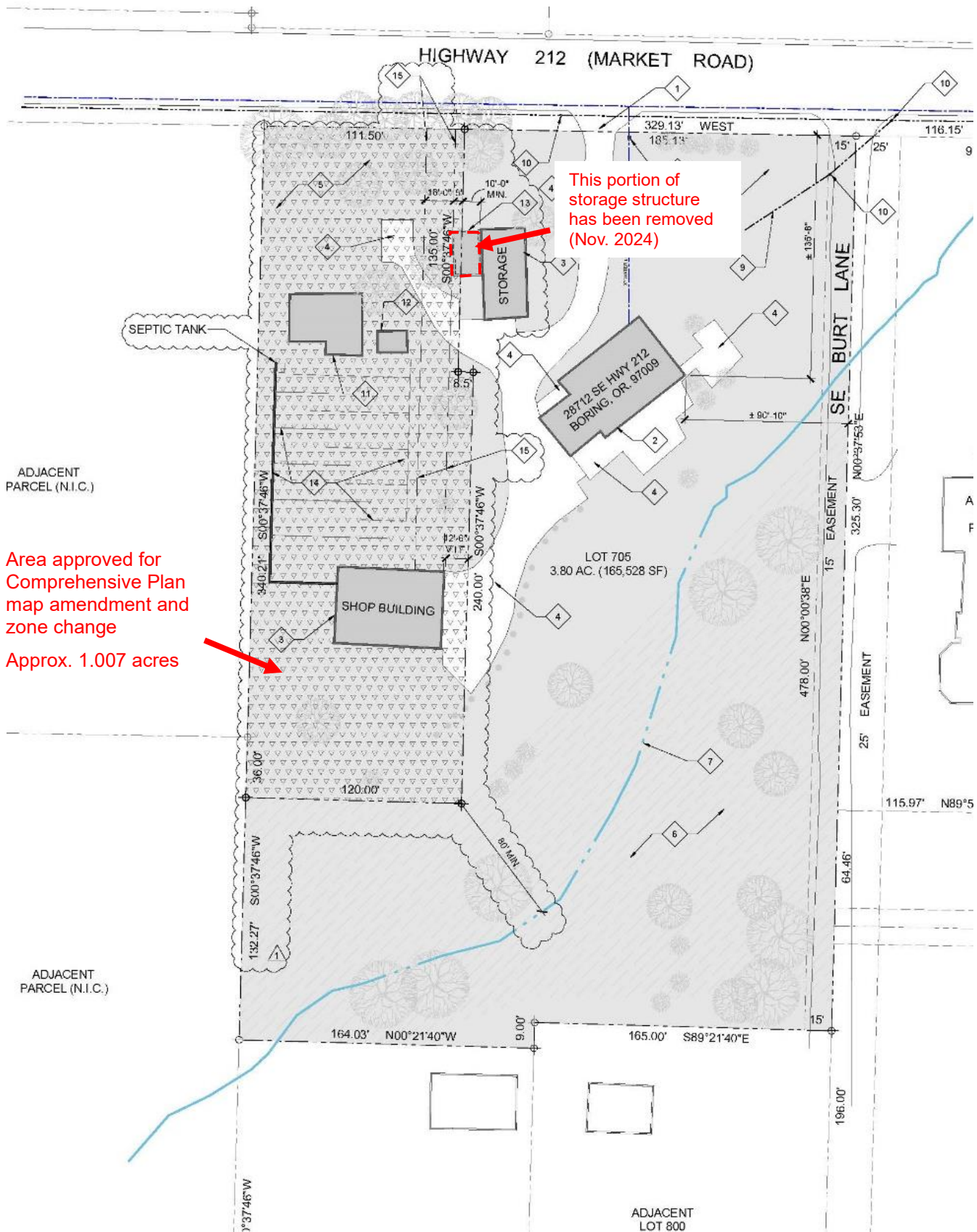


Exhibit B
Findings for File Nos. Z0197-24-ZAP and Z0198-24-CP:
Comprehensive Plan Map Amendment and Zone Change

SECTION I: GENERAL INFORMATION

PLANNING FILE NOS.: Z0197-24-ZAP and Z0198-24-CP

ADOPTION DATE: December 5, 2024

PROPOSAL: A Comprehensive Plan map amendment for approximately one acre of the subject property from Unincorporated Community Residential (UCR) to Rural Commercial (RC), with a corresponding zone change from Rural Area Residential 1-Acre (RA-1) to Rural Commercial (RC). No development is proposed with this application.

LOCATION: 28712 SE Hwy 212, Boring, OR, on the south side of Highway 212, approximately 1,200 feet (0.23 miles) east of its intersection with SE 282nd Ave.

T2S, R4E, Section 06BA Tax Lot 00705

APPLICANT(S): James Kenney

OWNER(S): James Kenney and Tammy Kenney

SUBJECT PROPERTY AREA: Approximately 3.8 acres, only 1.007 acres of which is proposed for this amendment.

CURRENT ZONING: Rural Area Residential 1-Acre (RA-1)

COMPREHENSIVE PLAN DESIGNATION: Unincorporated Community Residential (UCR)

COMMUNITY PLANNING ORGANIZATION: Boring CPO, Michael Fitz, fitz@staroilco.net

APPLICABLE APPROVAL CRITERIA: This application is subject to: Statewide Planning Goals; Clackamas County Comprehensive Plan; and Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 1202, and 1307.

SECTION II: CONCLUSION AND CONDITIONS OF APPROVAL

The Board of County Commissioners (the "Board") finds that this application satisfies all applicable state and County criteria to amend the County's Comprehensive Plan map for one acre of the subject property from UCR to RC and to rezone that portion of the property from RA-1 to RC. The Board **APPROVES** the application, subject to the following conditions:

1. Comprehensive Plan Map 4-07a, *Non-Urban Area Land Use Plan*, and all other maps of the Comprehensive Plan that include the subject property (tax lot 24E06BA 00705, with situs address 28712 SE Hwy 212, Boring) shall be amended to show the identified approximately one-acre portion of the subject property as having a Comprehensive Plan designation of RC.
2. The Clackamas County *Non-Urban Area Zoning Map* shall be amended to show the identified approximately one-acre portion of the subject property as having a zoning designation of RC.

3. The approximately one-acre area of the property zoned RC shall be subject to the following conditions:
 - a. The total of all development shall generate no more than 400 average daily trips.
 - b. A minimum lot size of one acre shall apply and no exceptions to the minimum lot size may be obtained.

SECTION III: OVERVIEW AND BACKGROUND

The subject property consists of one tax lot that contains roughly 3.8 acres and forms a rectangular area with approximately 330 feet of frontage on the south side of Highway 212. Burt Lane, a private road, runs along the eastern boundary of the subject site; there is a 15-foot wide easement along that property line to accommodate part of that road. Development on the subject property does not appear to take access off Burt Lane; rather, there is a single driveway providing direct access from the site to Highway 212.

The subject property is relatively flat, is outside of a mapped flood hazard area, and has no County-regulated mass-movement or soil hazard areas, nor historic landmarks. The property does contain an area mapped as within the Habitat Conservation Area District (HCAD), subject to ZDO Section 706. The HCAD runs from the northeast corner of the subject property, and diagonal to the southwest.

The applicant states that there are wetlands on the property but did not provide a delineation report. According to the state's wetland inventory, there are hydric soils present in the northeastern portion of the property—contained within the area identified as the HCAD—but the state's mapping identifies no jurisdictional wetlands on the site.

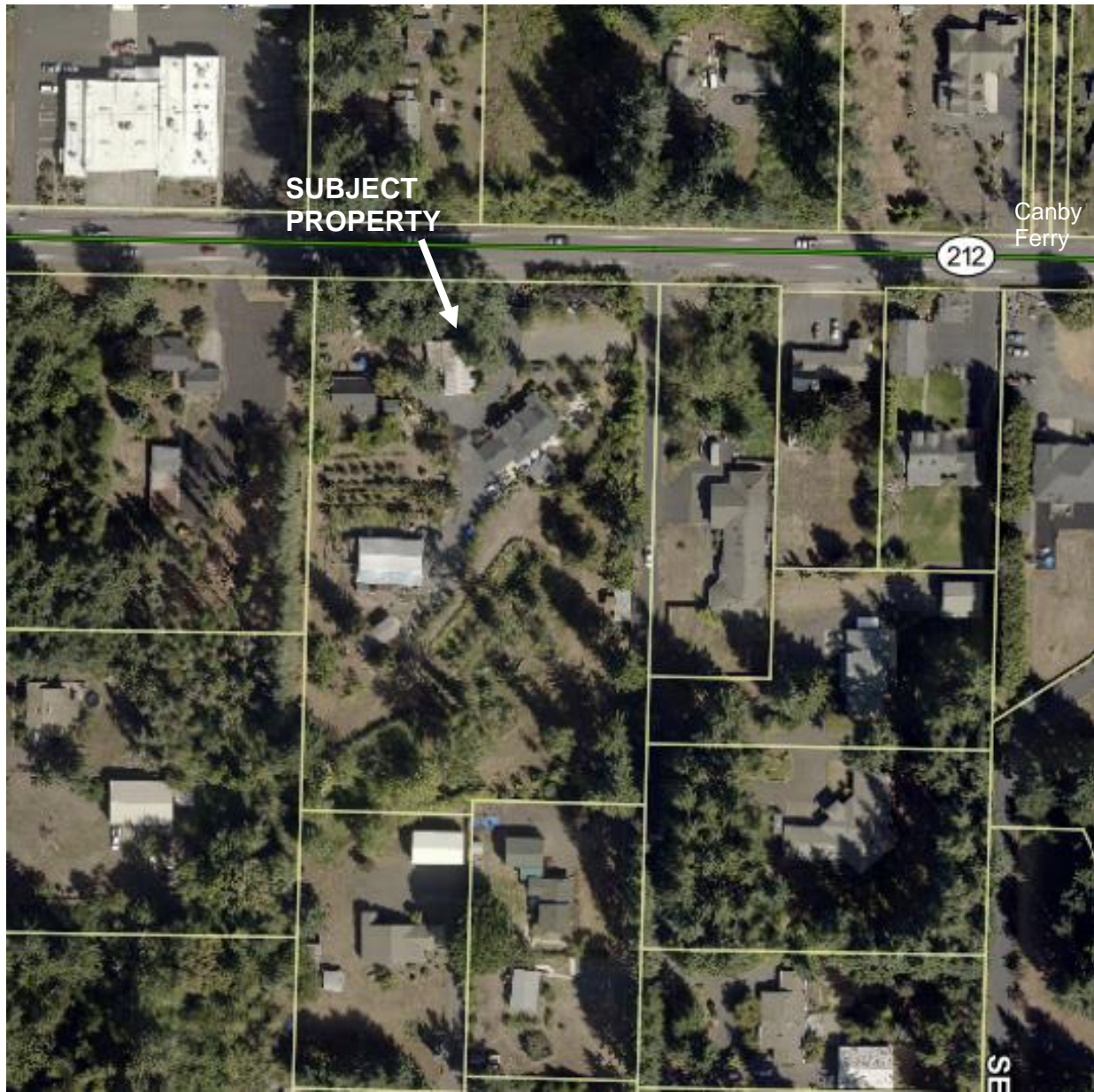
According to aerial photography, building permit history, Assessor's data, and the applicant's narrative, the subject property appears to currently have the following improvements:

- Two single-family dwellings, one built circa 1930 and one built in 2018 (as a replacement dwelling for a 1986 manufactured dwelling on the property—which itself was permitted as a replacement dwelling for a circa 1963 manufactured dwelling on the property);¹
- A small well house;
- Two storage buildings, one described as a “pole building” and the other a storage building that resulted from the conversion/decommissioning of the 1986 manufactured dwelling on the site; and
- A relatively large amount of treed and landscaped area.

Per ZDO Section 316, the minimum lot size in the RA-1 zone is one acre. Therefore, under its current zoning, the subject site could potentially be divided into three lots, each with one dwelling, meaning the total allowed density on the subject site would be three dwellings.

¹ The Board is making no formal determination with this application about whether the two dwellings on the site constitute a legal, non-conforming use.

Subject Property and Vicinity (2023 Aerial Photo)



Source: Clackamas County GIS, PlanMap

The subject property is within the unincorporated community of Boring. Per Chapter 4 of the County's Comprehensive Plan, unincorporated communities are "settlements located outside urban growth boundaries in which concentrated residential development is combined with limited commercial, industrial, or public uses. Unincorporated Communities may have limited public facilities and services." Unincorporated communities were designated and adopted into the County's Comprehensive Plan per OAR chapter 660, division 22, and include lands that are, by definition, exception lands, which are not subject to Goals 3 (Agriculture) and 4 (Forest).

The rules that guide planning and zoning of unincorporated communities establish four types of communities: urban unincorporated communities (the largest examples), rural communities (smaller and predominantly residential), rural service centers (predominantly commercial or industrial), and

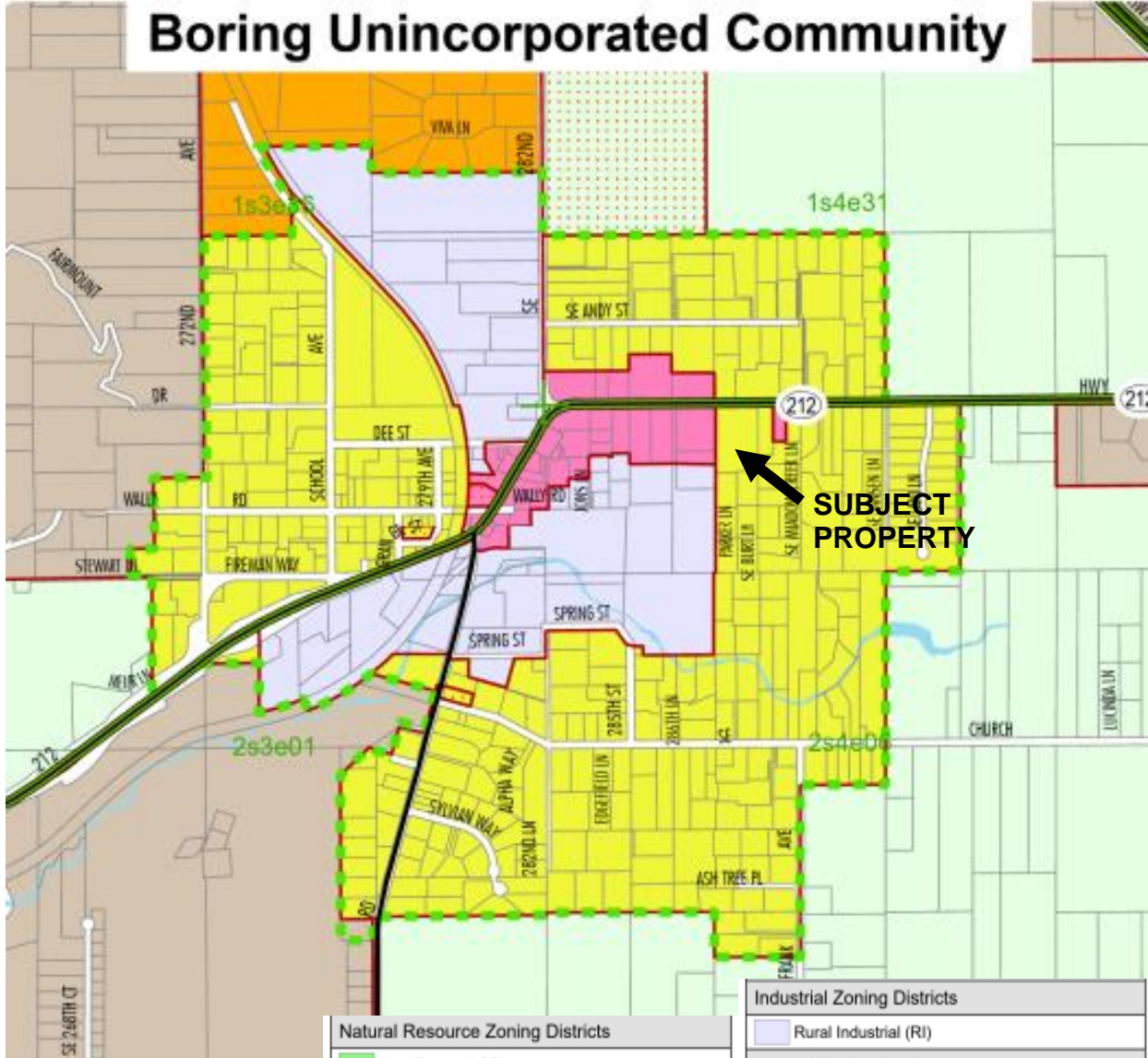
resort communities (primarily for recreation). The unincorporated community of Boring is considered a "rural community."

All the properties surrounding the subject site are also within the unincorporated community of Boring. Properties directly to the west of the subject property are zoned RC and Rural Industrial (RI), and one property approximately 115 feet east of the subject property is also zoned RC. All other immediately adjacent properties are zoned RA-1.

The general area around the subject site is developed with a mix of single-family residential, commercial, industrial, and institutional uses, including a fire station across the street and a post office, bank, and several retail and commercial businesses nearby.

The subject property is also located within an area designated as an urban reserve. Urban reserves are areas that lie outside of an urban growth boundary (UGB) and have been designated as the highest priority for inclusion in the UGB when additional urban land is needed in the future.

Boring Unincorporated Community



Natural Resource Zoning Districts

- Ag / Forest (AGF)
- Exclusive Farm Use (EFU)
- Timber (TBR)

Residential Zoning Districts

- Farm Forest 10-Acre (FF-10)
- Rural Residential Farm Forest 5-Acre (RRFF-5)
- Rural Area Residential 2-Acre (RA-2)
- Rural Area Residential 1-Acre (RA-1)
- Future Urban 10-Acre (FU-10)

Commercial Zoning Districts

- Rural Commercial (RC)

Industrial Zoning Districts

- Rural Industrial (RI)

Special Zoning Districts

- Limited Use Zone (LUZ)
- Historic District (HD) Overlay
- Historic Landmark (HL) Overlay
- Mineral and Aggregate Overlay (MAO)

Boundaries

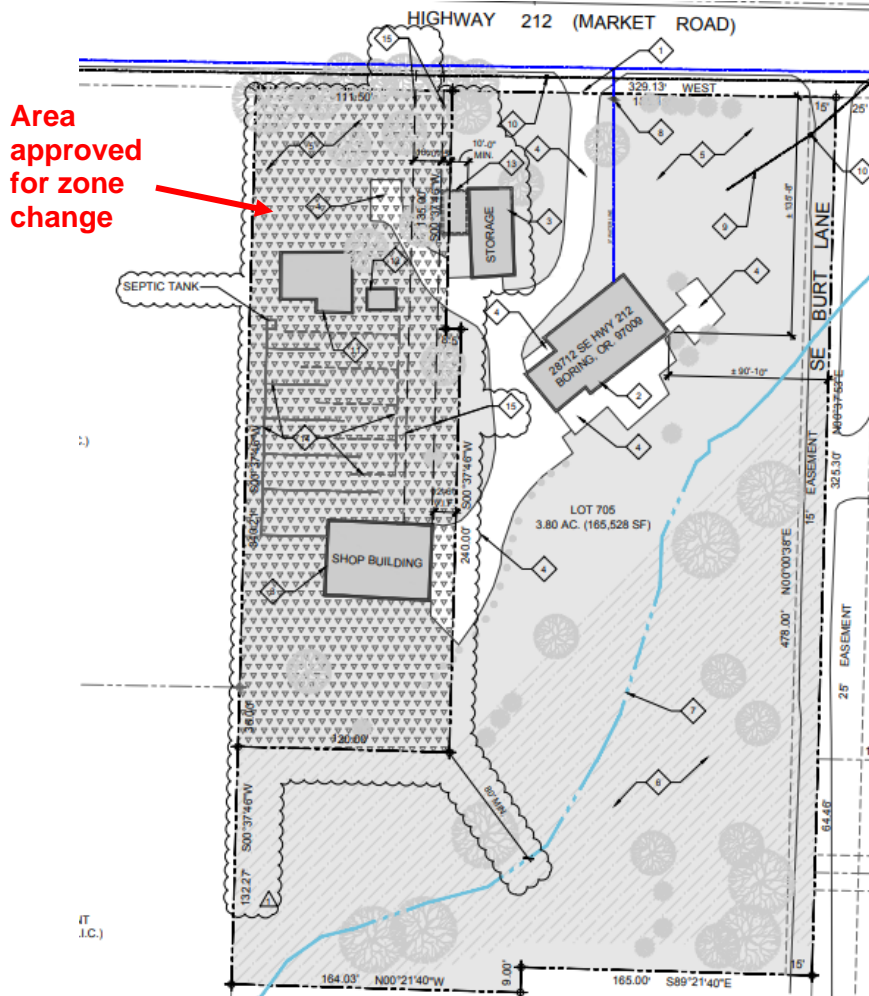
- Clackamas County
- Urban Growth Boundary
- Unincorporated Community
- Mt. Hood National Forest
- City Boundaries

This amendment would change the Comprehensive Plan map and zoning designation for approximately one acre of the 3.8-acre parcel. The portion proposed for the change is in the northwest corner of the site and has approximately 111.5 feet of frontage on Highway 212.

The original site plan provided in the application indicated that the zoning line would cross through an existing structure. Staff noted at the Planning Commission hearing that the exact placement of the line would need to be adjusted to avoid that structure, or the structure itself would need to be removed. The Planning Commission also expressed concern about whether the zoning line would cross a septic system and recommended including a condition requiring that the zoning line also not cross the septic system.

The applicant provided a revised site plan, illustrated below, which demonstrates the following:

- The area proposed to be changed to the RC designation contains at least one acre (as required by the zone change criteria);
- The zoning line would cross the “carport” portion of an existing storage structure, but the “carport” portion would be removed prior to final approval of the application;
- All remaining structures would be at least 10 feet from the zoning line; and
- The zoning line would not cross the existing septic system.



Notice: This application has been processed consistent with the County notice requirements in ZDO Section 1307, *Procedures*, and with state notice requirements. Specifically, the County has provided notice to interested agencies, local governments, and property owners within 2,640 feet of the subject

property. Notice to property owners, public notices, and hearings ensure an opportunity for citizens to participate in the land use process.

The only comments received have been from the Oregon Department of Transportation (ODOT) and County engineering staff regarding the applicant's traffic study. ODOT noted that the traffic study recommended that vehicle trips generated from the site be limited to no more than 400 average daily trips. ODOT stated that it supported a condition of approval for this "trip cap." County engineering staff stated that they also concur with the traffic study's findings and would support the trip cap. County engineering staff provided additional comments after the Planning Commission hearing, confirming the justification for the trip cap of 400 average daily trips.

The local Community Planning Organization (CPO), the Boring CPO, did not provide any comments to County planning staff. The application does, however, contain a letter, dated February 15, 2024, stating that the applicant had informed the CPO of their intention to apply for this zone change and that the CPO members had voted unanimously in support of the application.

Public Hearings: Two public hearings were held to consider the proposal to change the Comprehensive Plan and zoning designations.

- August 26, 2024: A public hearing was held before the Planning Commission. The applicant's team and one neighbor were the only parties who provided testimony. The neighbor expressed concerns about potential implications for his property, but he was not opposed to the proposal. The Planning Commission voted 6-3 to recommend approval of the application with two amendments to the proposed conditions of approval, including:
 - Reducing the trip cap from 400 to 200 average daily trips; and
 - Ensure that the zoning line does not cross the septic system.
- September 25, 2024: A public hearing was held before the Board. The applicant's team was the only party who provided testimony. The Board voted 3-0 to approve the application subject to the conditions recommended by staff, which included a trip cap of 400 average daily trips.

SECTION IV: FINDINGS

This application is subject to the following provisions:

- A. The Statewide Planning Goals;
- B. The Clackamas County Comprehensive Plan; and
- C. ZDO Sections 202, 1202, and 1307.

These provisions, and the applicant's preliminary findings, have been reviewed. Compliance with the applicable regulations is discussed below. ZDO Sections 202 and 1307 provide only definitions and procedural requirements that do not warrant separate written findings in this report.

A. Statewide Planning Goals

GOAL 1 – CITIZEN INVOLVEMENT

Statewide Planning Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process" and requires the County to have a citizen involvement program with certain features.

This application proposes only to amend the County's Comprehensive Plan map and zoning map. Even if it is approved, the County's acknowledged citizen involvement program would not change.

ZDO Section 1307, Procedures, contains acknowledged procedures for citizen involvement and public notice of quasi-judicial applications. This application has been processed consistent with those requirements, including providing notice to: property owners within 2,640 feet of the subject property; the Department of Land Conservation and Development (DLCD); Metro; the Boring CPO; and other interested agencies. Notice of the application and its public hearings has also been published in the newspaper and on County websites.

Before the Board decided on this application, there were two public hearings with opportunities for interested parties to testify. The public has also been given the opportunity to provide written comments, and all comments provided have been included in the record.

The relevant requirements of Statewide Planning Goal 1 are satisfied.

GOAL 2 – LAND USE PLANNING

Goal 2 requires the County to have and to follow a comprehensive plan and implementing regulations. Comprehensive plans and implementing regulations must be consistent with the statewide planning goals, but Goal 2 also provides a process by which exceptions can be made to certain goals.

This amendment to the County's Comprehensive Plan maps, including Map 4-07a, would not change the County's land use planning process. Even with this amendment, the County will continue to have a comprehensive plan and consistent implementing regulations. This report outlines how this amendment is consistent with applicable policies of the County's acknowledged Comprehensive Plan. The applicant does not request an exception to any statewide planning goal, nor is an exception required for this amendment.

The relevant requirements of Statewide Planning Goal 2 are satisfied.

GOAL 3 – AGRICULTURAL LANDS

Goal 3 requires the County to identify farmland, designate it as such on its Comprehensive Plan maps, and zone it Exclusive Farm Use (EFU).

The County has already satisfied these requirements. This application does not propose to change the Comprehensive Plan or zoning designation of any farmland, nor does it propose a change in any allowed land use in the EFU zone. The subject property is within an urban reserve and is currently zoned for residential development, not agriculture.

Statewide Planning Goal 3 is not applicable.

GOAL 4 – FOREST LANDS

Goal 4 requires the County to identify forest lands, designate it as such on Comprehensive Plan maps, and zone it consistently with state rules.

The County has already satisfied these requirements. This application does not propose to change the Comprehensive Plan or zoning designation of any forest land, nor does it propose a change in any allowed land use in the County's forest zones (i.e., Ag/Forest and Timber). The subject property is within an urban reserve and is currently zoned for residential development, not forest uses.

Statewide Planning Goal 4 is not applicable.

GOAL 5 – NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

Goal 5 requires the County to adopt programs that will protect an area's natural resources and will conserve scenic, historic, and open space resources for present and future generations. It requires an inventory of natural features, groundwater resources, energy sources, and cultural areas, and it encourages the maintenance of inventories of historic resources.

This amendment would not change the County's acknowledged inventories or programs for the protection of such resources. While the subject property does contain an area mapped as within the HCAD, approval of this application would not itself authorize any development or change the applicability of ZDO Section 706, Habitat Conservation Area District, to future development on the property.

The relevant requirements of Statewide Planning Goal 5 are satisfied.

GOAL 6 – AIR, WATER, AND LAND RESOURCES QUALITY

Goal 6 instructs the County to consider the protection of air, water, and land resources from pollution and pollutants when developing its Comprehensive Plan.

This amendment would not change the County's acknowledged Comprehensive Plan policies or implementing regulations regarding Goal 6 resources, nor would it modify the mapping of any protected resource.

The relevant requirements of Statewide Planning Goal 6 are satisfied.

GOAL 7 – AREAS SUBJECT TO NATURAL HAZARDS

Goal 7 requires the County to address Oregon's natural hazards.

This amendment would not change the County's acknowledged Comprehensive Plan policies or implementing regulations regarding natural disasters and hazards, nor would it modify the mapping of any hazard. As noted previously, the subject site is flat, has no mapped mass-movement or soil hazard areas, and is not in a mapped flood hazard area.

Statewide Planning Goal 7 is not applicable.

GOAL 8 – RECREATIONAL NEEDS

Goal 8 requires the County to plan for the recreational needs of its residents and visitors.

This amendment would not change the County's acknowledged Comprehensive Plan policies or implementing regulations regarding recreational needs, nor would it modify the mapping of any recreational resource.

Statewide Planning Goal 8 is not applicable.

GOAL 9 – ECONOMIC DEVELOPMENT

The purpose of Goal 9 planning is to provide adequate opportunities throughout Oregon for a variety of economic activities vital to the health, welfare, and prosperity of Oregonians.

Goal 9 is implemented by OAR chapter 660, division 9. Pursuant to OAR 660-009-0010(1), the requirements of division 9 apply only within UGBs. As noted, the subject property is not within a UGB. Therefore, Goal 9 is not applicable to this amendment. Nonetheless, this amendment would further Goal 9 by providing a small developable commercial site in an area that is well-served by the transportation system, thereby increasing economic opportunities within the county.

This amendment is consistent with Goal 9.

GOAL 10 – HOUSING

The purpose of Goal 10 is to meet housing needs.

Goal 10 recommends that the County’s Comprehensive Plan (including its maps) “be developed in a manner that ensures the provision of appropriate types and amounts of land” within UGBs for housing; it also advises that areas planned for residential development “be necessary and suitable for housing that meets the housing needs of households of all income levels.” And, like Goal 9, Goal 10 is only directly applicable to areas within UGBs.

Nonetheless, the Board finds that the potential loss of one dwelling is negligible in relation to the county’s housing stock, particularly in light of the numerous recent efforts by the County to allow for more housing units within the Portland Metro UGB—a more appropriate place for housing because of better access to urban goods and services and transportation options. Furthermore, the portion of the site to be rezoned already contains a dwelling. The applicant has not stated an intent to remove that dwelling and, in fact, the RC zone allows for a dwelling as an accessory use, making it highly unlikely that there would be any loss of dwellings to the county’s housing stock.

This amendment is consistent with Statewide Planning Goal 10.

GOAL 11 – PUBLIC FACILITIES AND SERVICES

The purpose of Goal 11 is to ensure that local governments plan and develop a timely, orderly, and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. Goal 11 is implemented by OAR chapter 660, division 11.

This amendment would not change any adopted facilities plans or implementing regulations. The subject site is currently served by public water but not by public sewer. The applicant has provided statements of feasibility from the subject site’s water and stormwater service providers. The statements attest that there are already adequate services available to the properties to accommodate rural commercial uses, or that adequate services could be made available concurrent with future commercial development.

The relevant portions of Statewide Planning Goal 11 are satisfied.

GOAL 12 – TRANSPORTATION

The purpose of Goal 12 is to provide and encourage a safe, convenient, and economic transportation system. It requires the County to create a transportation system plan (TSP) that considers all relevant modes of transportation.

Goal 12 is implemented by OAR chapter 660, division 12, commonly referred to as the Transportation Planning Rule (TPR). When an amendment to the County’s Comprehensive Plan map or zoning map is proposed, OAR 660-012-0060 requires an analysis of whether the proposed amendment would “significantly affect” an existing or planned transportation facility, and whether it is necessary to update transportation facility plans to accommodate such effects. The TPR defines what it means to “significantly affect” a transportation facility.

The applicant has provided a traffic study, prepared by a licensed engineering firm, Ard Engineering, dated December 4, 2023. The traffic study addresses TPR requirements and includes a comparison of the reasonable worst-case traffic impacts caused by potential development of approximately one acre of the subject property under the property’s current RA-1 zoning to the reasonable worst-case traffic impacts of future development under the proposed RC zoning. Key findings from the traffic study include:

- *“It is anticipated that the proposed zone change may significantly impact the operation of the surrounding transportation system under the reasonable worst case development scenario” However, any proposed amendment that does not increase the average daily trips by more than 400 falls beneath the threshold for a “small increase” in traffic and would also fall below the standard of “significant impact,” as per Policy 1F5 of the Oregon Highway Plan (OHP).*
- *“Based on the trip generation analysis, an unrestricted zone change to RC would result in an increase of up to 2,788 average daily trips, which is well above the threshold designated as a small increase in traffic. However, the actual proposed use of the property [a drive-through coffee ‘kiosk’] falls below the 400-trip threshold identified in the Oregon Highway Plan. While an unrestricted zone change would likely result in a significant effect on the transportation system requiring a detailed analysis and mitigation application of a trip cap on the subject property would allow the desired development to proceed while ensuring that future development will not result in a significant effect on the surrounding transportation system. Accordingly, a trip cap of 400 average daily trips is proposed for the one-acre parcel zoned ‘RC.’”*

Both ODOT and County engineering staff provided comments, concurring with these conclusions and noting support for a trip cap of 400 average daily trips.

As conditioned, the relevant requirements of Statewide Planning Goal 12 are satisfied.

GOAL 13 – ENERGY CONSERVATION

Goal 13 encourages comprehensive plans to consider lot size, siting controls, building height, density, and other measures to help conserve energy.

This amendment would not change the County’s acknowledged Comprehensive Plan policies or implementing regulations regarding energy conservation.

The relevant requirements of Statewide Planning Goal 13 are satisfied.

GOAL 14 – URBANIZATION

The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside UGBs, to ensure efficient use of land, and to provide for livable communities.

The subject property is not located within a UGB and is in a designated urban reserve. As detailed in Section IV(B), because the subject property is currently exception land, a zone change that would “allow new uses” may be allowed if certain conditions are met, including no smaller lot sizes. This amendment would meet all the required conditions if the minimum lot size in the RC zone is limited to one acre. Limiting the minimum lot size in this way will serve two purposes:

1. *It will be no different than the existing minimum lot size and, therefore, will have no impact on the ability to orderly and efficiently transition from rural to urban land; and*
2. *It will allow this amendment to meet criteria in the Oregon Administrative Rules and the County’s Comprehensive Plan that are required for the zone change.*

The relevant requirements of Statewide Planning Goal 14 are satisfied.

GOAL 15 – WILLAMETTE RIVER GREENWAY

The purpose of Goal 15 is to “protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River as the Willamette River Greenway.”

The subject property is approximately 12 miles from the Willamette River and is not located in the Willamette River Greenway. This amendment would not change the County's acknowledged Comprehensive Plan policies or implementing regulations regarding the Willamette River Greenway.

Statewide Planning Goal 15 is not applicable.

GOAL 16 – ESTUARINE RESOURCES; GOAL 17 – COASTAL SHORELANDS; GOAL 18 – BEACHES AND DUNES; GOAL 19 – OCEAN RESOURCES

Statewide Planning Goals 16 through 19 are not applicable to Clackamas County.

B. Clackamas County Comprehensive Plan

The County's Comprehensive Plan includes goals and policies that must be considered when evaluating proposed amendments. This section of the report outlines how this amendment is consistent with the applicable goals and policies.

Chapter 2, Citizen Involvement: The purpose of this chapter is to promote citizen involvement in the governmental process and in all phases of the planning process.

There is only one policy in this chapter applicable to this application:

- 2.A.1 Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representation, not only of property owners and County wide special interests, but also of those within the neighborhood or areas in question.

The Comprehensive Plan and ZDO include acknowledged procedures for citizen involvement. This application has been processed consistent with those procedures. Specifically, the County has provided notice to interested agencies, local governments, and nearby property owners, consistent with state law and ZDO Section 1307, which implements the public notice policies of Chapter 2. Notice to property owners, public notices, and hearings ensure an opportunity for citizens to participate in the land use process.

This amendment is consistent with Chapter 2.

Chapter 4, Land Use: This chapter includes the definitions for urban and rural land use categories and provides policies for determining the appropriate Comprehensive Plan designation for all lands within the county.

This chapter contains sections addressing (1) Urbanization, (2) Urban Growth Concepts, and (3) land use policies for each designation. The land use policies for the proposed designation are addressed below.

Rural Commercial

Rural Commercial lands "are those that are outside urban growth boundaries and that are suitable based on specific factors for commercial development on a rural scale." The following policies apply to Rural Commercial lands.

- 4.KK.1 The Rural Commercial plan designation may be applied in non-urban areas to provide for commercial uses that are necessary for, and on a scale commensurate with, rural development.

*The subject property is in a non-urban area (outside a UGB). The commercial uses that are allowed in an RC area, per ZDO Section 513, are those that have been determined appropriate for rural areas and commensurate with rural development. In addition, rural commercial development on the subject site would be limited to a scale even smaller than most other RC-zoned sites in the county because of the trip cap that is necessary to address impacts to the transportation system. **This policy is met.***

- 4.KK.2 The Rural Commercial (RC) zoning district implements the Rural Commercial plan designation.

*This amendment would change both the Comprehensive Plan designation and the zoning designation to RC. **This policy is met.***

- 4.KK.3 Areas may be designated Rural Commercial when either the first or both other criteria are met:

4.KK.3.1 Areas shall have an historical commitment to commercial uses; or

4.KK.3.2 Areas shall be located within an Unincorporated Community; and

4.KK.3.3 The site shall have direct access to a road of at least a collector classification.

*The subject property does not have a historical commitment to commercial uses (it currently contains residential uses), but, as discussed, the subject site is located within an unincorporated community. The subject site has frontage on and direct access to Highway 212, a road designated as a principal arterial in the County's Comprehensive Plan (Map 5-4b). A principal arterial is a higher road classification than a collector. **This policy is met.***

Urban Reserve

Through the proposed Comprehensive Plan map amendment and zone change, new uses would be allowed within one the County's designated urban reserves. Therefore, the following policies apply to this amendment:

- 4.E.1.5 Lands within a designated Urban Reserve area shall continue to be planned and zoned for rural uses in a manner that ensures a range of opportunities for the orderly, economic and efficient provision of urban services when these lands are included in the Urban Growth Boundary. Planning and zoning shall be done in a manner consistent with OAR 660-021-0000 and the Metro Code, in areas where Metro has jurisdiction.

*By changing an acre of the subject site from RA-1 to RC, the site will continue to be planned and zoned for rural uses—rural commercial rather than rural residential. As discussed below, it will be necessary to impose a minimum lot size of one acre on the RC portion of the site; this condition will ensure that the zone change is consistent with the relevant Oregon Administrative Rules and, by retaining the same minimum lot size as currently exists on the site, it will also ensure that the land remains available for the orderly provision of services if it is included in a UGB. **This policy is met.***

4.E.2.3 The County shall not amend the Comprehensive Plan or Zoning and Development Ordinance or the Comprehensive Plan Map or zoning designations:

4.E.2.3.1 To allow within Urban Reserve areas, new uses that were not allowed on the date the Urban Reserve areas were designated, except those uses authorized by amendments to the Oregon Revised Statutes or Oregon Administrative Rules enacted after designation of Urban Reserve areas.

4.E.2.3.2 To allow within Urban Reserve areas, the creation of new lots or parcels smaller than allowed on the date Urban Reserve areas were designated, except as authorized by amendments to the Oregon Revised Statutes or Oregon Administrative Rules enacted after designation of Urban Reserve areas.

For the following reasons, the Board finds that it is possible to allow for these new uses because of the exceptions allowed under OAR 660-027-0070, Planning of Urban and Rural Reserves:

- *Policy 4.E.2.3 was adopted into the County's Comprehensive Plan and became effective August 25, 2010. At that time, OAR 660-027-0070 did not include any exceptions to the prohibition to allowing new uses.*
- *Beginning in October 2010, the Land Conservation and Development Commission (LCDC) adopted several amendments to this rule including various exceptions to the prohibition. Because these exceptions were adopted after the County's policy was adopted, it is possible to apply them directly from the Oregon Administrative Rules.*
- *The current language of OAR 660-027-0070(5) is included below, with the Board's findings associated with each section.*

(5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in an urban or rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the subject property as urban or rural reserves, in order to authorize an alteration or expansion of uses or lot or parcel sizes allowed on the land under the exception provided:

This amendment would allow new uses on lands within an urban reserve and within the unincorporated community of Boring. As noted previously, unincorporated communities include lands that are, by definition, exception lands, which are not subject to Goals 3 (Agriculture) and 4 (Forest). This rule allows for the alteration or expansion of uses on exception lands within an urban or rural reserve in certain circumstances. Although the rule does not explicitly define "alteration or expansion," based on the legislative history of the rule, the Board concludes that the rule was intended to allow the alteration or expansion not just of a discrete "use" in an exception area but of "the uses" that are allowed in the exception area, provided the criteria in subsections (a) to (d) are met.

(a) The alteration or expansion would comply with the requirements described in ORS 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;

This amendment would allow new uses only in an existing exception area, not on land zoned for farm, forest, or mixed farm and forest use. This criterion is not applicable.

- (b) The alteration or expansion conforms to applicable requirements for exceptions and amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws;

This amendment would allow for an expansion of uses in a certain exception area. OAR 660-004-0018(2) specifies that, within exception areas, “all plan and zone designations shall limit uses, density and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable (d).” In this case, (c), included below, is applicable:

- (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, “Planning and Zoning of Unincorporated Communities”, if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22[.]

The relevant portions of OAR 660-022-0030 are included below:

- (1) For rural communities, resort communities and urban unincorporated communities, counties shall adopt individual plan and zone designations reflecting the projected use for each property (e.g., residential, commercial, industrial, public) for all land in each community. Changes in plan or zone designation shall follow the requirements to the applicable post-acknowledgment provisions of ORS 197.610 through 197.625.
- (4) County plans and land use regulations may authorize only the following new commercial uses in unincorporated communities:
 - (a) Uses authorized under Goals 3 and 4;
 - (b) Small-scale, low impact uses;
 - (c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.

First, this amendment has been processed consistent with the post-acknowledgement provisions of ORS 197.610 through 197.625, including the required public notices and public hearings.

Second, within the unincorporated community of Boring, all properties are zoned to reflect existing or projected uses of the property. Changing a portion of the subject property to RC would reflect the proposed use of a drive-through coffee shop on the site, a use that is allowed under ZDO Section 513, Rural Commercial.

Finally, by amending the zoning of the subject property, the county would be allowing “new commercial uses” within this unincorporated community. As noted, the use proposed by the applicant is a drive-through coffee “kiosk.” This use would be small-scale and would serve

both the surrounding community as well as people passing through the area. Even if the site is ultimately developed with something different than what the applicant currently envisions, it would meet the standards under OAR 660-022-0030(4) because:

- Any new development in the RC portion of the site would need to comply with the allowed uses, development standards, and maximum size limits in the RC zone; and*
- Development on the site will be kept particularly small-scale because of the trip cap that will be imposed on this zone change.*

This criterion is met.

- (c) The alteration or expansion would not expand the boundaries of the exception area unless such alteration or expansion is necessary in response to a failing on-site wastewater disposal system; and

This amendment would not alter or expand the boundaries of an exception area. This criterion is met.

- (d) An alteration to allow creation of smaller lots or parcels than was allowed on the land under the exception complies with the requirements of OAR chapter 660, division 29.

The current zoning of the subject site (RA-1) would allow for lots as small as one acre in size. The RC zone does not have a minimum lot size in the area of the subject property, and the reference to OAR chapter 660, division 29, does not apply to commercial zones. Therefore, this amendment can only meet this criterion and Policy 4.E.2.3.2 if there is a minimum lot size of one acre imposed on the RC portion through a condition of approval. Further, because ZDO Section 1012 allows an exception to the minimum lot size for the division of a parcel along certain Comprehensive Plan designation boundaries, the RC portion of the subject site must contain at least one acre. As conditioned, this criterion is met.

*For all the above reasons, the Board finds that the proposed Comprehensive Plan map amendment and zone change is consistent with the exceptions listed under OAR 660-027-0070. **Policy 4.E.2.3 is met.***

Unincorporated Communities

4.II.8 Limit commercial uses to:

- 4.II.8.1 Uses authorized under Statewide Planning Goals 3 and 4;
- 4.II.8.2 Small-scale, low-impact uses as defined in OAR 660-022-0030(10); and
- 4.II.8.3 Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.

*This policy is identical to the language in OAR 660-022-0030. As discussed above, proposed development on the acre of the subject site that would be rezoned to RC would meet these standards. **This policy is met.***

- 4.II.1 Encourage commercial and industrial uses to locate in Unincorporated Communities to provide employment opportunities to residents of the communities and the surrounding non-urban area.

*This amendment would provide an opportunity for the development of a small commercial use within the unincorporated community of Boring, which could provide for employment opportunities for local residents. **This policy is met.***

This amendment is consistent with Chapter 4.

Chapter 5, Transportation: This chapter provides policies addressing all modes of transportation and contains eight sections including (1) Foundation and Framework; (2) Land Use and Transportation; (3) Active Transportation; (4) Roadways; (5) Transit; (6) Freight, Rail, Air, Pipelines and Water Transportation; (7) Finance and Funding; and (8) Transportation Projects and Plans.

There is only one policy in this chapter applicable to this application:

- 5.F.6 Require changes in land use plan designation and zoning designation to comply with the Transportation Planning Rule [Oregon Administrative Rules (OAR) 660-012-0060].

The applicant's traffic study, which was completed by a licensed engineer, finds that the County's existing and planned transportation system is not expected to be adequate to serve an "unlimited" zone change to RC, but this amendment could comply with the TPR if the number of daily trips that development on the property generates is "capped" at 400. A condition of approval has been included to limit future development to this level of daily traffic generation.

ODOT and County engineering staff concur with the findings from the traffic study.

As conditioned, this amendment is consistent with Chapter 5.

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

There is only one policy in this chapter applicable to this application:

- 11.A.1 Participate in interagency coordination efforts with federal, state, Metro, special purpose districts and cities. The County will maintain an updated list of federal, state and regional agencies, cities and special districts and will invite their participation in plan revisions, ordinance adoptions, and land use actions which affect their jurisdiction or policies.

Notice of this application has been provided to all appropriate agencies and parties, and advertised public hearings before the Planning Commission and the Board have provided an adequate opportunity for interagency coordination on this proposed Comprehensive Plan map amendment, demonstrating compliance with this policy.

This amendment is consistent with Chapter 11.

C. Clackamas County Zoning and Development Ordinance (ZDO)

Section 1202, *Zone Changes*, provides standards, criteria, and procedures under which a change to the County's zoning map (*i.e.*, a zone change from RA-1 to RC) may be approved. The Board has reviewed the subsections of Section 1202 relevant to this application and makes the following findings.

Section 1202.02, Submittal Requirements

Section 1202.02 lists the information that must be included in a complete application for a zone change.

The application was submitted on May 15, 2024, and deemed complete on June 10, 2024.

Section 1202.03, General Approval Criteria

Section 1202.01 states that a zone change may be allowed, after a hearing conducted pursuant to Section 1307, if the applicant provides evidence substantiating that the following criteria, found in Section 1202.03, are met.

Subsection 1202.03(A): The proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan.

Findings against the relevant Comprehensive Plan policies are detailed in Section IV(B) of this report. Based on those findings and the findings provided by the applicant, the Board finds that this amendment is compliant with all relevant goals and policies in the Comprehensive Plan.

This amendment is consistent with Subsection 1202.03(A).

Subsection 1202.03(B): If development under the proposed zoning district designation has a need for any of the following public services, the need can be accommodated with the implementation of the applicable service provider's existing capital improvement plan: sanitary sewer, surface water management, and water. The cumulative impact of the proposed zone change and development of other properties under existing zoning designations shall be considered.

Development that could occur under the proposed RC zoning designation would not have access to or need public sewer. The subject property is not located in a public sanitary sewer district and an onsite septic system would be required for development on the site.

The development would have access to public water, provided through the Boring Water District. The applicant has submitted a signed Preliminary Statement of Feasibility dated March 6, 2024, indicating that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage, and distribution.

This amendment is consistent with Subsection 1202.03(B).

Subsection 1202.03(C): The transportation system is adequate and will remain adequate with approval of the proposed zone change. For purposes of this criterion:

1. Adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluation Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area.

2. The evaluation of transportation system adequacy shall be conducted pursuant to the Transportation Planning Rule (Oregon Administrative Rules 660-012- 0060).
3. It shall be assumed that the subject property is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate.
4. The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.
5. The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed zone change. The impact area shall be identified pursuant to the Clackamas County Roadway Standards.
6. A determination regarding whether submittal of a transportation impact study is required shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.
7. Notwithstanding Subsections 1202.03(C)(4) through (6), motor vehicle capacity calculation methodology, impact area identification, and transportation impact study requirements are established by the ODOT Transportation Analysis Procedures Manual for roadways and intersections under the jurisdiction of the State of Oregon.

Subsections 1202.03(C)(1) to (7) define what is meant by an “adequate” transportation system. The applicant’s traffic study, which was completed by a licensed engineer, finds that the County’s existing and planned transportation system is not expected to be adequate to serve an “unlimited” zone change to RC, but this amendment could comply with the TPR if the number of daily trips that development on the property generates is “capped” at 400. A condition of approval has been included to limit future development to this level of daily traffic generation.

Both ODOT and County engineering staff concur with the findings of the traffic study. As noted by County engineering staff, “The technical memo adequately addressed ZDO 1202.03, subsection (C) (transportation system adequacy) by demonstrating that a trip cap of 400 daily site trips would result in no significant effect under the TPR.”

As conditioned, this amendment is consistent with Subsection 1202.03(C).

Subsection 1202.03(D): Safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.

The applicant’s traffic study includes an analysis of the safety of the transportation system, which included consideration of “crash data for the site frontage and an additional 500 feet in each direction.” Based on the crash data, the traffic study concludes:

- *“Based on the historical crash data, there are no evident safety concerns within the site frontage under existing conditions;” and*
- *“Further, based on the crash history and turn-lane warrant analysis it is anticipated that future development of the commercial property with a coffee kiosk will not result in the need for significant safety improvements at the site access location on Oregon Highway 212.”*

As noted by County engineering staff, the traffic study “adequately addressed ZDO 1202.03, subsection (D)—safety adequacy. The crash history did not reveal elevated crash frequency or severity in the vicinity of the site and no safety mitigations are recommended.”

However, one of the Planning Commissioners brought up a concern about the traffic study’s discussion of whether a left-turn lane would be warranted for safety reasons. The left-turn lane discussion in the traffic study is based on the assumed development of a coffee kiosk, which has been noted by the applicant as the likely future development, and which is expected to generate 180 daily trips, rather than the 400 proposed in the trip cap. The traffic study noted that “the volume of westbound left-turning traffic is just below the threshold at which a turn lane should be considered...” The Planning Commissioner’s concern was that, if a development came closer to generating 400 daily trips, then it would trigger the need for a left-turn lane.

As a result of this concern, the Planning Commission’s recommendation to approve the proposed Comprehensive Plan map amendment and zone change included a reduced trip cap of 200 daily trips (rather than the 400 daily trips that the applicant’s traffic study recommended).

County planning staff asked County engineering staff to further review and address the left-turn lane analysis and proposed trip caps. County engineering staff provided additional comments and concluded that there may not be a solid basis for reducing the trip cap below the proposed 400 daily trips due to the following:

- *Simply meeting the ODOT left-turn volume criteria does not automatically mean that a left-turn lane should be built. Rather, the left-turn criteria are intended to identify the threshold above which a left-turn lane may be considered.*
- *In some cases, a left-turn lane into an individual property (rather than a continual left-turn lane along a portion of a road) may actually create additional safety concerns on a highway. Generally, left-turn lanes are not to be constructed for private accesses in rural areas unless the siting criteria are met and installation of a left-turn lane will not create additional safety concerns on the highway.*
- *Highway 212, in the vicinity of the subject site, is a two-lane highway in a rural community with densely spaced private and public accesses and no left-turn lanes. Based on ODOT’s procedural and design manuals, it appears unlikely that ODOT would require, or even allow, the installation of a left-turn lane for this private development in isolation.*

As such, staff recommended, and the Board agreed, to retain the trip cap of 400 daily trips, rather than the trip cap of 200 daily trips recommended by the Planning Commission.

This amendment is consistent with Subsection 1202.03(D).