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PLANNING AND ZONING DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

PLANNING STAFF REPORT AND RECOMMENDATION TO THE PLANNING COMMISSION

SECTION 1- GENERAL INFORMATION

Planning File No: Z0373-17-CP, Z0374-17-Z

Report Author: Martha Fritzie, Sr. Planner/ Planning & Zoning Division, DTD

Hearing Date: Planning Commission – October 9, 2017
Board of County Commissioners – November 1, 2017

Report Date: October 2, 2017

Applicant: Stafford Investments, LP, PO Box 941, Lake Oswego, OR 97034

Owner: Stafford Investments Ltd Partnership, PO Box 941, Lake Oswego, OR 97034

Proposal: A Comprehensive Plan designation amendment from Rural (R) to Rural Commercial (RC); with a corresponding zone change from Rural Residential Farm Forest (RRFF-5) to Rural Commercial (RC) for 5.0 acres of land located on the northwest corner of SW Stafford Rd and I-205.

The primary uses allowed in the proposed RC zoning district are identified in Section 513 of the Clackamas County Zoning and Development Ordinance (ZDO) and include office and retail uses; commercial services including restaurants, construction contractors, maintenance and repair of equipment and vehicles; and certain wireless telecommunication facilities.

Property Location: At the northwest corner of the intersection of SW Stafford Road and I-205

Legal Description: T2S, R1E, Section 29A, Tax Lot(s) 01000, W.M.

Site Address: 20383 SW Stafford Rd, West Linn, OR 97068

Comprehensive
Plan Designation: Rural (R)

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

Total Area: 5.0 acres

SECTION 2 –RECOMMENDATION

Planning staff recommends denial of the Plan designation change from Rural (R) to Rural Commercial (RC) and corresponding zone change from Rural Residential Farm Forest (RRFF5) to Rural (RC).

This application does not satisfy all the applicable state, regional and county criteria for the proposed change in the Comprehensive Plan and zoning designation for the subject property. Specifically:

1. The property is located within a designated Urban Reserve area and both state law and the county's Comprehensive Plan policies prohibit the changing of the zoning designation to allow for new uses in a Reserve.
2. The property fails to meet the "historical commitment to commercial uses" criteria required by the county's Comprehensive Plan for a Rural Commercial (RC) designation (Policy 4.LL.3).
3. The applicant's traffic analysis is inadequate to conclude that the proposal meets the criteria under the Transportation Planning Rule (OAR 660-012-0060) that requires that a Plan or zone change not generate a significant impact on the transportation system, unless mitigation is proposed.

Recommended Conditions of Approval:

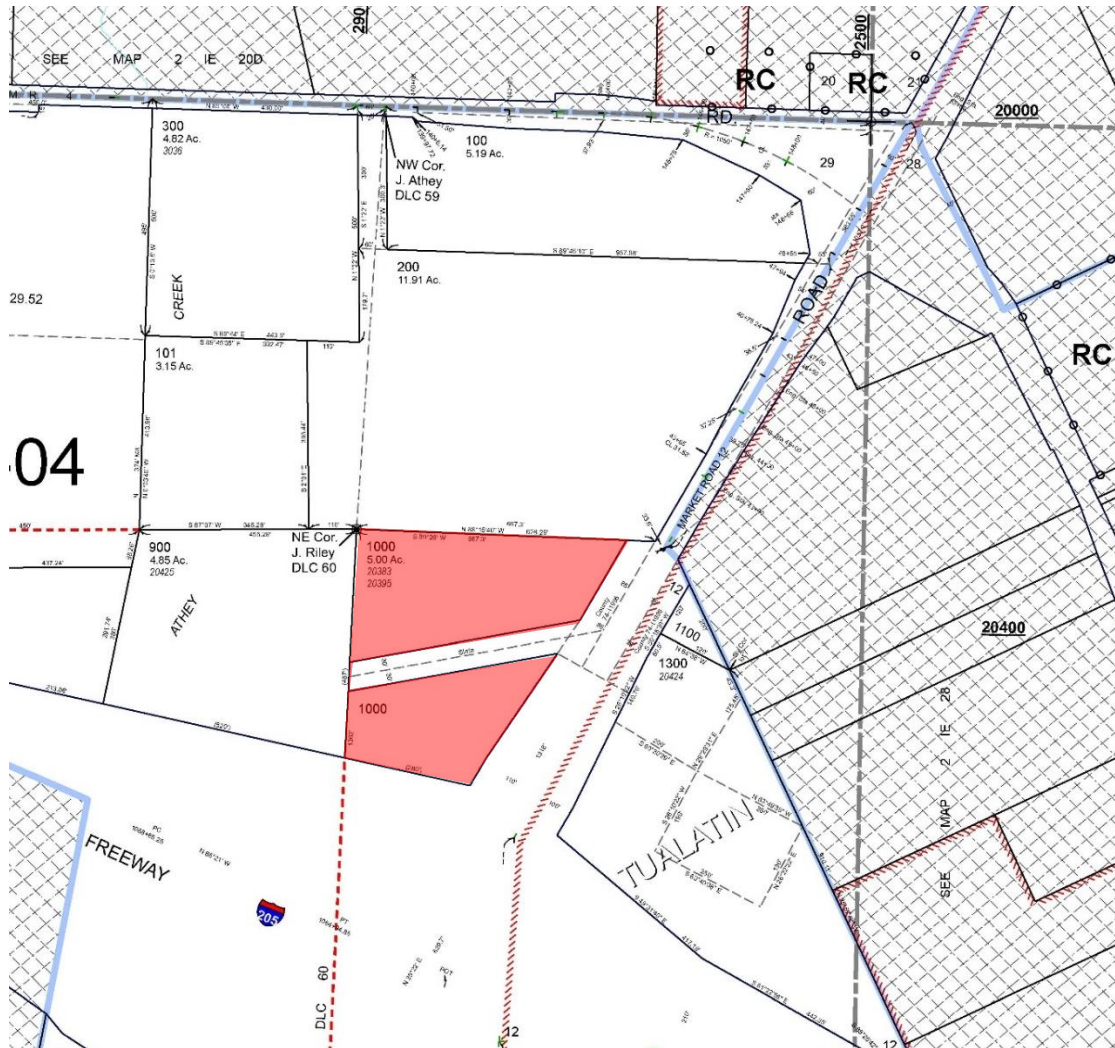
If this application is approved, the Planning Staff recommends the following conditions of approval:

1. The Planning Director shall change the official zoning map and Comprehensive Plan map to reflect the approved amendments.
2. The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

SECTION 3 – BACKGROUND INFORMATION AND LAND USE HISTORY

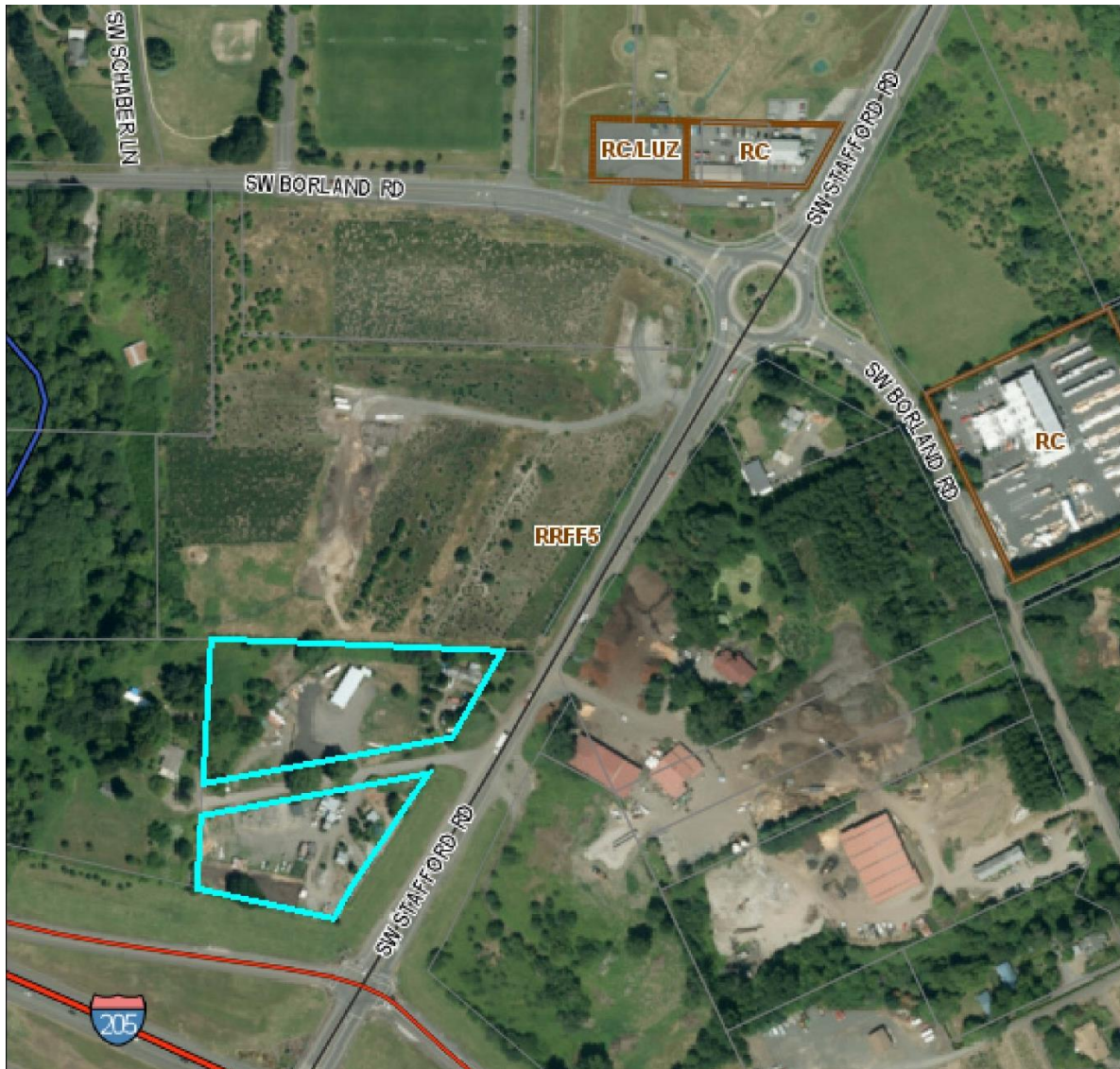
1. Site Description: The subject site includes a total of 5.0 acres and is located on the west side of SW Stafford Road, at the northwest corner of the intersection of I-205 and SW Stafford Road. It lies within a Rural Residential Farm Forest (RRFF-5) zoning district in an area designated Rural on the Comprehensive Plan. There are no wetlands, streams, creeks or other significant natural features on the subject property and the site is relatively flat, sloping less than 10 feet from east to west across the five acres.

The site is bordered on the east by SW Stafford Road and to the south by I-205 and divided into two portions by a roughly horizontal right-of way that provides vehicular access to the property immediately west of the subject property, which is developed with a single-family dwelling.



Properties in the vicinity of the subject are primarily zoned RRFF-5 and developed with rural residences and agricultural operations; a large church and a school approximately one-quarter mile to the north/northwest; and a nursery/landscape supply use across SW Stafford Road. Approximately one-quarter mile to the north/northeast, near the intersection of Stafford and Borland Roads are two small areas of Rural Commercial (RC) zoning that are developed with commercial uses (a bar/saloon, general store and lumber store).

The subject site currently contains one (1) single-family dwelling; a nursery and landscape supply business; and a landscape contracting business. Historic uses and past land use approvals are discussed in #2, below.



2. History of Land Use applications and Approvals:

As noted in Exhibit 3, the subject property has an extensive history of land use files (beginning with the letter “Z” and violation files beginning with the letter “V”). Those files pertinent to this application are summarized below. It should be noted that most of the violation files are not pertinent and all have been resolved, except V00314-14, which this application attempts to resolve with the proposed zone change.

1. File Nos. Z0352-87, Z0039-90, Z0205-92 and Z0207-91: Home occupation permit for electrical contractor “*with shop used to warehouse material – no public sales*”.

Associated with this temporary permit was “one orange-colored utility van with “bubble” lights on top and one lg. truck with “scissors” bucket.” The home occupation approvals included the use of approximately 1,000 square feet of an accessory structure space for the storage of materials. The business apparently closed sometime around 1993, after the last renewal of the home occupation permit expired.

2. File No. Z1798-97: A conditional use permit application to add storage, “weathering” and retail sales of landscaping rock in conjunction with an existing plant nursery on the property. This application was denied; however, the reason for the denial was that the Hearings Officer determined that a conditional use permit was not needed – that the proposed use was an allowed accessory use under the RRFF-5 zoning.

In this decision it is noted that the property comprises a commercial nursery: *The southern portion of the subject property will apparently be (or perhaps already has been) placed in nursery stock, while the northern portion will apparently utilize various existing structures for the nursery business and maintenance.*

The proposal in this file was to establish and maintain a facility in the northwest corner of the property for the storage and “weathering” of landscaping rock in conjunction with the existing nursery, as well as for the storage of other related landscaping materials. The “raw” (“unweathered”) rock was to be obtained from a nearby rural area and there would be no surface excavation at the property itself with respect to the proposed use. It was estimated that the rock itself will comprise approximately two percent of the subject property and will likely generate less than ten percent of the applicants’ revenues. In this case the Hearing’s Officer made two important findings:

- 1) A nursery is a primary “farm” use in the RRFF-5 zone: *There exists little question that the Applicant's primary business constitutes a "nursery", as defined in ZDO Section 202. The Hearings Officer concludes -albeit with some hesitation - that the language in ZDO Section 309 proves sufficiently broad to describe Applicant's nursery business. Staff confirmed that the County has historically acquiesced in that result and interpretation, primarily because nursery activities commonly occur in rural areas.*
 - 2) Incidental sales of landscape supply materials are an allowed accessory use to the “primary” nursery in the RRFF-5 zone: *Thus, Applicant's existing nursery operations comprise the requisite "primary" use, the Hearings Officer finds that the proposed use on the subject property falls within the definition of "accessory building or use" in ZDO Section 202, and further finds that the proposed use comprises a recognized and commercially-viable use "customarily incidental" to the primary nursery business, and, therefore qualifies as an "accessory" use allowed outright under the circumstances pursuant to ZDO Section 309.04(8)[now ZDO Section 316.03].*
3. File Nos. Z0696-06 and Z0776-07: Both provided a temporary (one-year) permit for a “use otherwise not allowed” in the RRFF-5 zoning district. Specifically, the permits

allowed for the storage of equipment and supplies used by ODOT for I-205 improvements. This storage was approved for the southern portion of the property and, as noted in the file: *No permanent structures will be needed nor built with regards to this application... There will be no additional graveled road/parking added to the existing areas now on the property. There will be no additional use of this part of the property for other than storage of equipment and supplies and the vehicles used in the I205 project.* This use was removed from the property sometime before 2009, upon expiration of the temporary permits.

4. File No. V0326-08: A violation file, citing “operating landscaping business”. In 2008, the County had a policy – referred to as the “10 year policy” - whereby the county would not enforce a violation if it could be proven to have existed for the previous 10 years without a complaint and without involving any life-safety issues. In closing a file under this policy, it was understood that the violation was not abated and any subsequent complaints could be enforced.

It appears that this violation file was closed based on the “10-year policy”, an action which, again, does not abate or legalize the violation, it simply meant that the County was not going to proceed with enforcement actions that time. Supposedly, the property had been “in use” with this business since September 1997.

The “10-year policy” was repealed by the Clackamas County Board of Commissioners on October 29, 2009.

5. File No. V0315-14: A violation file that is still pending, which cites two commercial businesses on the property – a commercial landscape supply business and a landscape contracting and maintenance business - presumably the same businesses that existed on the property in 2008, when the previous violation file was closed. As determined in Z1798-97, the nursery and accessory use of a small amount of landscape supplies is an allowed use under the RRFF-5 zoning; the landscape contracting and maintenance business, however, is not allowed under the RRFF-5 zoning. The applicant is attempting to resolve this violation with this proposed Comp Plan/zone change to Rural Commercial (RC), which would allow for the landscape contracting and maintenance business.

3. Service Providers:

- a. Sewer: The subject property is not located in a public or private sewer district. Sewage disposal is accommodated by an on-site sewage disposal system.
- b. Water: The subject property is not located in a public or private water district.
- c. Surface Water: The subject property is not located in surface water district. Surface and storm water is regulated pursuant to Section 1008 of the ZDO.
- d. Fire Protection: Tualatin Valley Fire District

4. Responses Requested:

- a. Cities of West Linn, Lake Oswego, Rivergrove, and Tualatin
- b. Tualatin Valley Fire District

- c. Oregon Department of Transportation (ODOT)
 - d. Stafford-Tualatin Valley CPO
 - e. Stafford Hamlet
 - f. DTD, Traffic Engineering
 - g. Dept. of Land Conservation and Development (DLCD)
 - h. Metro
 - i. Property Owners within 500'
5. CPO/ Hamlet Recommendation: The subject property is located within the Stafford- Tualatin Valley Community Planning Organization (CPO) and within the Stafford Hamlet boundaries. Neither the CPO, not the Hamlet has submitted a recommendation or comments on this proposal.
6. Attachments and Exhibits: The submitted application, including the applicant's narrative and maps, is attached to this Staff Report. See Exhibit List following the last page of this report for additional information and any comments received.

SECTION 4 – ANALYSIS AND FINDINGS

This proposal is subject to the relevant Statewide Planning Goals; Oregon Revised Statutes (ORS); Oregon Administrative Rules (OARs); Metro's Urban Growth Management Functional Plan; County Comprehensive Plan (Plan) policies, and the County's Zoning and Development Ordinance (ZDO).

1. Urban Reserve Designation

As illustrated in Exhibit 2, the subject property is located within Portland Metropolitan area Urban Reserve, designated pursuant to OAR 660, Division 27. This designation was originally adopted into the County's Comprehensive Plan on August 25, 2010 and into Metro's Urban Growth Management Functional Plan (UGMFP) on June 3, 2010. Metro has made subsequent re-adoptions of the Reserves map, but none have included revisions to the mapped Reserve areas in Clackamas County (changes were limited to Washington County). Title 14 of Metro's UGMP contains the Reserves map that is currently effective; it was adopted in October 2014.

With the 2010 adoption of the Reserves map (Map 4-9) into the County's Plan, policies were included into the Plan that effectively prohibit changes to Comprehensive Plan and zoning designations within the adopted Urban and Rural reserve areas that would allow or uses different than what a property's current zoning would allow. These policies were adopted under specific direction from OAR 660-027-0070.

The applicant in this proposal argues that the subject property is not designated yet as an Urban Reserve because *the area had been the subject of a land use appeal and is presently depicted as a subject to dispute on the Metro Urban Reserves Map...* and that Map 4-9 of the County's Comprehensive Plan *is invalid as is was not amended to reflect the disputed nature of the Urban Reserves in the Stafford area.* The applicant further asserts that because Metro's

“Urban and Rural Reserves” map applicable at the time of the filing of this application designates the subject property and the surrounding Stafford area as “unresolved areas remanded to LCDC,” ...Map 4-9 is in error and should not be enforced, and, therefore, any Comprehensive Plan goals related to the Urban Reserve areas would not be applicable.

With respect to this issue, the applicant is incorrect. The Urban and Rural Reserves map in effect at the time of this application is Map 4-9 in the County’s Comprehensive Plan and the “Title 14, Urban Growth Boundary” map (see Exhibit 2) found in Title 14 of the Metro Urban Growth Management Functional Plan (UGMFP). The map that the applicant is referring to, which identifies the Stafford area Urban Reserves and “unresolved areas remanded to LCDC” is a map developed by Metro and posted on their website for reference purposes. Further, the Court’s decision did not have the effect of “un-designating” the Urban and Rural Reserve areas; rather it has delayed “acknowledgement” of the decision.

Indeed, OAR 660-018-0085 and ORS 197.625 clearly contemplate this type of situation and provide direction to jurisdictions regarding the interim period between adoption of a Plan amendment and acknowledgement of that amendment.

OAR 660-018-0085 (Acknowledgement of a Change to a Plan or Land Use Regulation)

(1) Pursuant to ORS 197.625, an adopted change to a comprehensive plan or a land use regulation is deemed to be acknowledged when the local government has complied with the requirements of ORS 197.610 and 197.615, the applicable requirements of this division, and either:

(a) The 21-day appeal period set out in ORS 197.830(9) has expired and a notice of intent to appeal has not been filed; or

(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms the decision.

(2) Pursuant to ORS 197.625(3), prior to acknowledgment of an adopted change to an acknowledged comprehensive plan or a land use regulation as provided in section (1) of this rule, the adopted change is effective at the time specified by local government charter or ordinance. [emphasis added]

197.625 Acknowledgment of comprehensive plan or land use regulation changes; application prior to acknowledgment.

(1) A local decision adopting a change to an acknowledged comprehensive plan or a land use regulation is deemed to be acknowledged when the local government has complied with the requirements of ORS 197.610 and 197.615 and either:

(a) The 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of intent to appeal has not been filed; or

(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms the decision.

(2) If the local decision adopting a change to an acknowledged comprehensive plan or a land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the comprehensive plan or the land use regulation, as modified, is deemed to be acknowledged upon the date the decision of the board or the decision of an appellate court becomes final.

(3) Prior to acknowledgment of a change to an acknowledged comprehensive plan or a land use regulation:

(a) The change is effective at the time specified by local government charter or ordinance; and

(b) If the change was adopted in substantial compliance with ORS 197.610 and 197.615, the local government shall apply the change to land use decisions, expedited land divisions and limited land use decisions unless a stay is granted under ORS 197.845. [emphasis added]

Based on these regulations, it is clear that the County's Plan policies related to the Portland Metropolitan area Urban and Rural Reserves, which were adopted in 2010 but have yet to be acknowledged are none-the-less in effect and the County is required to regulate to these policies.

To that end, the County's Comprehensive Plan specifically prohibits the County from changing the Plan designation and/or the zoning district designation of a property located within a designated Urban Reserve to "*allow for uses not allowed at the time of designation....*" (Policy 4.E.2.3). Therefore, this application must be denied based on that fact alone.

Further analysis of criteria applicable to this proposal finds additional cause to recommend denial of this application, as discussed below. Staff sees no benefit responding to inapplicable portions of the Statewide Planning Goals and Metro's Urban Growth Management Functional Plan (UGMFP) and County Comprehensive Plan policies and has instead culled through the language and addresses only provisions relevant to this proposal.

2. Statewide Planning Goals and Guidelines

- a. Goal 1: Citizen Involvement. The zone change and map amendment does not propose to change the structure of the county's citizen involvement program. Section 1307 of the Zoning and Development Ordinance (ZDO) contains adopted and acknowledged procedures for citizen involvement and public notification for legislative actions. This application has been processed consistent with the notification requirements in Subsection 1307.11, including public notice to local media sources and newspapers. Notice of the proposed amendment was provided to the relevant Community Planning Organization, all property owners within 500 feet of the subject properties and a list of interested parties and agencies. Also, notice of the Planning Commission and Board of County Commissioners hearings was published in the newspaper and posted on the county's website. The Department of Land Conservation and Development (DLCD) was notified of this proposal, but no response has been received.

The relevant requirements of Statewide Planning Goal 1 are related provisions of the ZDO have been satisfied.

- b. Goal 2: Land Use Planning. The zone change and map amendment does not propose to change the county's land use planning process. The county will continue to have a comprehensive land use plan and implementing regulations that are consistent with the plan. No exceptions from the Goals are required.

Goal 2 requires coordination with affected governments and agencies. Notice of this application has been provided to potentially affected agencies and governments.

Goal 2 also requires that all land use actions be consistent with the acknowledged Comprehensive Plan. As noted above and again in Subsection 4 of this Staff Report, this proposal is not consistent with the Urban Reserve policies and the Rural Commercial policies in the County's Comprehensive Plan.

The relevant requirements of Statewide Planning Goal 2 have not been satisfied.

- c. Goal 12: Transportation: Goal 12 is implemented by Oregon Administrative Rules Chapter 660, Division 12, the Transportation Planning Rule (TPR). Regulations described in the TPR are largely directed at the development of a jurisdiction's Transportation System Plan (TSP) as a whole or at a land use regulation and land use changes that affect the transportation system.

However, OAR 660-012-0060 outlines the TPR requirements that are applicable in consideration of a proposed change in Comprehensive Plan and zoning designations. This section requires that a proposed change not significantly affect an existing or planned transportation facility unless mitigation measures are put into place.

As discussed in more detail in Subsection 4 (Comprehensive Plan Policies) of this Staff Report (and Exhibit 4 - ODOT comments), the traffic analysis provided by the applicant is not sufficient to determine whether the zone change will have a significant effect on the transportation system.

The relevant requirements of Statewide Planning Goal 12 have not been satisfied.

Staff finds that this application is not consistent with all applicable Statewide Planning Goals.

3. Metro Urban Growth Management Functional Plan:

The subject property is located within the Metro service district boundary and within a Metro Urban Reserve and therefore the Metro Urban Growth Management Functional Plan (UGMFP) is applicable. However, most of the requirements in the UGMFP pertain only to areas that are already within the Portland Metropolitan Urban Growth Boundary (PMUGB). The only section that contains regulation related to this property are found in *Title 11*.

Planning for New Areas.

Title 11 of the UGMFP generally contains direction for jurisdictions who are responsible for planning new areas for urban development and contains regulations related to planning for Urban Reserve areas. This section contains only direction of concept planning of Urban Reserve areas, and therefore contains nothing that is inconsistent with this application.

This application is consistent with the applicable requirements in Metro's Urban Growth Management Functional Plan.

4. County Comprehensive Plan Policies

- a. Chapter 11 (The Planning Process): This section of the Comprehensive Plan (Plan) contains a section titled *City, Special District and Agency Coordination*. The Oregon Department of Transportation, the Oregon Department of Land Conservation and Development, several special service districts and all cities within the county are on a standing list to receive notice of all proposed amendments. This level of notification furthers the goals and policies of this section of the Plan.

Chapter 11 of the Plan also contains a section entitled *Amendments and Implementation*. This section contains procedural standards for Plan amendments, requires the Plan and the ZDO to be consistent with Statewide Planning Goals and Guidelines and Metro's Urban Growth Management Functional Plan, and requires the ZDO to be consistent with the Plan. Policy 3.0 establishes the procedural standards. The process followed for Z0373-17-CP and Z0374-17-Z is in compliance with these standards. Specifically, notice was mailed to potentially affected Community Planning Organizations and Hamlets at least 35 days before the scheduled public hearing, and the Department of Land Conservation and Development, ODOT, and nearby cities were provided with an opportunity to review and comment on the proposed amendments. Advertised public hearings are scheduled before the Planning Commission and the Board of County Commissioners to consider the proposed amendments.

This applicable policies in Chapter 11 are met.

- b. Chapter 4 (Land Use): This section of the Plan includes the definitions of urban and rural land use categories and outlines policies for determining the appropriated Comprehensive Plan land use designations for all lands within the County.

Urban Reserve Policies

Relevant policies relating to the Urban Reserve designation follow:

- 4.E.1. *The following policies apply to Urban Reserve areas established pursuant to OAR 660, Division 27, as shown on Map 4-9:*

- 4.E.2.1 *The County shall not amend the Comprehensive Plan or Zoning and Development Ordinance or the Comprehensive Plan Map or zoning*

designations:

- a. *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.*
- b. *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.*

As discussed previously, the subject property is located within an adopted Urban Reserve area. As such, the zoning of this property cannot be changed to allow new uses and therefore cannot be changed to the requested Rural Commercial zoning district, which allows a wide range of commercial uses not currently allowed on the property under the current RRFF-5 zoning.

This policy is not met.

Rural Commercial Policies

Chapter 4 of the Plan contains several policies that address the designation of land for urban uses, and specifically for high density residential uses. Policies 4.LL.1 through 4.LL.4 in the Land Use Section of Chapter 4 of the Comprehensive Plan identify the policies applicable to the Rural Commercial (RC) designation.

4.LL.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 located outside of the Metro urban growth boundary (PMUGB) and boundary and is considered a non-urban area. The Rural Commercial (RC) Plan designation and implementing RC zoning district limits the type and scale of uses which are appropriate for rural development. The property is not located in a public water, sewer, or surface water district. Those services are not proposed or necessary to support the proposed Rural Commercial plan designation. Services to the area include garbage service and sheriff patrol services. The public facilities and services are appropriate to maintain the rural character of the area. If all other criteria are met, the subject could be designated as RC based on this policy.

This policy can be met.

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

If the Comprehensive Plan Amendment is approved on all or a portion of the subject property, the RC zoning district is the only zone designation that can be applied to the

property to implement the Rural Commercial plan designation.

This policy can be met.

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

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

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

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

The subject property is not located within an Unincorporated Community; therefore this proposal must qualify under 4.LL.3.1 and have an historical commitment to commercial uses.

The applicant asserts that the both the subject site and the surrounding area do have an historical commitment to commercial uses. With regard to the surrounding area, the applicant notes that the “Wanker’s Corner” area, at the intersection of SW Borland and SW Stafford Roads, has historical and existing commercial uses that serve the surrounding rural community, including *a general store/post office, bar/saloon, offices, lumber yard, gas station (since closed...)* and that the area around the subject *also has a variety of major institutional uses that service the area, including 4 schools and 5 churches*. The applicant further asserts that the property across SW Stafford Road from the subject had been zoned Rural Commercial at one time, which is not accurate, and cites several other commercial-type businesses along SW Borland Road, which Staff has no knowledge of where, if at all, these exist.

Staff does recognize that there are a few commercial uses nearby, including two small areas that have commercial zoning since 1979 and are developed with a bar/saloon, general store and a lumber store. However, no other properties in the vicinity have or ever have had commercial zoning. And while there are indeed institutional uses nearby (several churches and schools) and a commercial nursery/landscape products business across the street from the subject site, those are all uses allowed in the RRFF-5 zone under appropriate permitting, and do not commit either those specific properties or the larger “area” to commercial use. In fact the only areas committed to commercial uses in the vicinity of the subject are those few properties that are already zoned Rural Commercial near the intersection of SW Borland and SW Stafford Roads.

Further, for the purposes of assessing a potential zone change on a specific property and applying the Plan policy requiring an “area” to have an historical commitment to a specific type of use, Staff finds and the Board of County Commissioners has historically found that the appropriate “area” for consideration is the subject property or properties. In *Ooten vs. Clackamas County (LUBA no. 2014-069)*, the Land Use Board of Appeals (LUBA) confirmed this interpretation, noting that LUBA must defer to the County Commissioner’s interpretation of their own codes unless it is

implausible and that the Board's interpretation of "area" to include only the subject property(ies) is not implausible nor inconsistent with any express language in the county's Plan or land use regulations.

With regard to the historic uses on the property subject to this proposal constituting an "historic commitment to commercial uses," Staff finds the following:

1. The applicant asserts in his narrative that the original use of the subject property was a dairy farm, but the property was reduced in size fairly significantly for the construction of the I-205 freeway in the 1970's and that a portion of the property *"into the mid 1980's to ongoing maintenance programs for the surrounding freeway system."* These assertions may or may not be true, as they are not supported with any evidence; however, given the temporary nature of such uses (as demonstrated by a similar use in 2006-2007) and the fact that for more than three decades since that time, the property has clearly been used for residential and farm-related uses that are allowed under the RRFF-5 zoning, these purported uses in the 1980's clearly did not commit the property to a commercial use.
2. A home occupation does not commit a property to commercial uses. Section 202 of the County's Zoning and Development Ordinance (ZDO) defines a "home occupation" as an *occupation or business activity which results in a product or service; is conducted, in whole or in part, in a dwelling and/or an accessory building normally associated with primary uses allowed in the underlying zoning district; is conducted by at least one family member occupying the dwelling; and is clearly subordinate to the residential use of the subject property...* The fact that there was an approve home occupation for an electrical contractor for several years on the subject property does not commit the property to a commercial use.
3. A temporary use such as that approved in 2006-2007 for ODOT to use a portion of the property for storage of construction materials during highway construction also does not commit a property to a commercial use; it is essentially making a short-term exception to the allowed list of uses found in the zoning regulations.
4. Section 202 of the County's Zoning and Development Ordinance (ZDO) defines a "commercial use" as *the use of land and/or structures for the conduct of retail, service, office, artisan, restaurant, lodging, daycare, entertainment, private recreational, professional, and similar uses.*

While there is certainly a commercial component to the nursery and landscape supply sales, it has been determined that the nursery use and the accessory sales of landscape rock and supplies are allowed "farm" uses on the subject property under the RRFF-5 zone (see Z1798-97). The types of uses contemplated in the county's definition of "commercial use" are clearly much more intensive and broad than what has been occurring on the subject site and even if one were to consider the retail sales for landscape rock as a committed commercial use, according to the 1997 land use application, this use encompasses approximately

2% of the property, thus clearly not constituting a “commitment” of the property to a commercial use.

5. The landscape contracting and maintenance business that was subject to the 2008 violation and the 2014 violation appears to be the only documented commercial use on the property. Based on the violation information from 2008, this business may have been operating since 1997; however, this business is not operating legally on the property and the only thing known about the scale of the business is that it is not operating on the entire property, as there are several other legal uses on the property. Therefore, this illegal commercial use does not constitute an “historical commitment” of the property to a commercial use.

Based on the above findings, the subject property does not meet the criteria for a Rural Commercial designation.

This policy is not met.

4.LL.4. Implement dimensional and development standards to address compatibility, function, and aesthetics.

If approved, any proposed development would be required to meet development standards, including design review standards, in the Zoning & Development Ordinance (ZDO). Those standards have been found to be consistent with Comprehensive Plan policies for Rural Commercial development.

This policy can be met.

- c. Chapter 5 (Transportation): This section of the Plan identifies transportation needs and priorities to guide the development and maintenance of a multi-modal transportation system in the county.

Integration of Land Use and Transportation Policies: Policies 5.F.1-5.F.7 in Chapter 5 (Transportation) of the Comprehensive Plan identify policies related to the ensuring a strong relationship between land use and transportation planning in the county.

Policy 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).

After reviewing the applicant’s traffic analysis, Staff finds that it is not possible to determine if the proposed zone change will have a significant effect on the transportation system because the analysis utilizes erroneous assumptions with which to complete the analysis. OAR 660-012-0060 requires that:

- (1) *If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing*

or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) Change standards implementing a functional classification system; or*
- (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

As noted by LUBA (*Ooten v. Clackamas County*, LUBA No.2014-069, p.25), *a straightforward means to answer that question is to compare the most traffic-generative use reasonably allowed in the [existing] RRFF-5 zone with the most traffic-generative use reasonably allowed in the [proposed] zone. To do this, the applicant's' traffic study provides as a baseline for the comparison, the potential traffic generation from a "government-owned recreation center". While this is listed as a primary use, development on privately-owned property in the RRFF-5 zone typically includes a single-family dwelling and associated accessory uses and/or farming uses.*

As noted in the September 26, 2017 letter from the ODOT (see Exhibit 4): *ODOT has permitting authority for this facility and an interest in assuring that the proposed zone change/comprehensive plan amendment is consistent with the identified function, capacity and performance standard of this facility.*

The Kittelson and Associates August 24, 2017 memo recommends implementing a trip cap to ensure the rezone complies with the Transportation Planning Rule (TPPR) 660-012-0060. The number of trips would be based on the "level associated with the existing zoning allowable development." The memo identifies government-owned recreational community center as the "reasonable worst case" development for the existing RRFF-5 zoning.

While ODOT is in agreement that a trip cap based on the "reasonable worst case" development under existing zoning would meet the intent of the TPR, ODOT does not agree that a government-owned recreational community center is a "reasonable worst case". Only government owned recreational uses are permitted outright in the RRFF-5 zone. Since the property is not owned by a government body, it is not reasonable that the private property's "reasonable worst case development" should be based on the

assumption that the property is publicly owned. Private recreational uses are only allowed as a conditional use....

Planning Staff concurs with this analysis. Indeed, staff that was consulted in the County Parks Department are not aware of any instances in Clackamas County where a government-owned recreational use has been located on privately-owned property. While theoretically, this situation could occur, it does not appear to be a reasonable option, presumably for both financial and legal reasons.

As such, Staff finds that the applicant's traffic study likely significantly underestimates the size or extent of the significant effect of the zone change to Rural Commercial. Therefore this application does not comply with the requirements in the Transportation Planning Rule.

This policy is not met.

4. County Zoning & Development Ordinance (ZDO) Criteria

This application is subject to the zone change criteria in Section 1202 of the Clackamas County Zoning and Development Ordinance (ZDO). ZDO Section 1202.03 states that a zone change shall be subject to the following standards and criteria:

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

As discussed in detail in Subsection 4 (Comprehensive Plan Policies), the proposal is not consistent with all the applicable criteria in the county's Comprehensive Plan found in Chapters 4, 5, and 11, including policies relating to Urban Reserves, transportation impacts, and criteria for designating land as Rural Commercial (RC).

This criterion is not met.

- b. **Section 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."*

The subject property is not located in a public sanitary sewer, or surface water district, nor would there be there a need to extend these services to support the proposed RC zoning district. Sewer service will be accommodated by an on-site sewage disposal system. Surface water will be accommodated by on-site detention or other facilities approved under Section 1008 of the ZDO as administered by the DTD, Engineering Division.

This criterion is met.

- c. **Section 1202.03(C):** *“The transportation system is adequate and will remain adequate with approval of the proposed zone change. For the purpose 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.*

As noted above, after reviewing the applicants’ traffic analysis, Staff finds that the traffic analysis submitted by the applicant is insufficient to determine if the proposal meet this standard.

This criterion is not met.

- d. **Section 1202.03(D):** *“Safety of the transportation system is adequate to serve the level of development anticipated by the zone change.”*

As noted above, after reviewing the applicants’ traffic analysis, Staff finds that the traffic analysis submitted by the applicant is insufficient to determine if the proposal meet this standard.

This criterion is not met.