



PLANNING & ZONING DIVISION

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

## CLACKAMAS COUNTY BOARD OF COMMISSIONERS

### LAND USE HEARING

September 15, 2021

9:30 AM

This public hearing will be conducted in person *and* virtually using the Zoom platform. If you wish to attend in person, the address is:

**2051 Kaen Rd, BCC Hearing Room—4<sup>th</sup> Floor, Oregon City**

The Zoom link to the public hearing and details on how to observe and testify online or by telephone are available on our website: <https://www.clackamas.us/meetings/bcc/landuse>.

All interested parties are invited to attend the hearing in person, online or by telephone and will be provided with an opportunity to testify orally, if they so choose. The staff report and drafts of the proposed amendments are available on our website at <https://www.clackamas.us/meetings/bcc/landuse>. Please direct all calls and correspondence to the staff member listed below.

### LAND USE HEARING

**File Nos.: Z0079-21-CP & Z0080-21-ZAP: SE Borges Road Comprehensive Plan Amendment and Zone Change**

**Applicants:** Clackamas County

#### **Proposal:**

Planning files Z0079-21-CP and Z0080-21-ZAP contain a proposed Comprehensive Plan Map Amendment from a Forest (F) to an Urban Low Density Residential (LDR) land use designation and a corresponding zone change from Timber (TBR) to Future Urban 10-acre (FU-10) or to Urban Low Density Residential (R-30), to facilitate future development of a single family residence on a vacant property.

**Staff Contact:** Melissa Ahrens, Senior Planner, 503-742-4519, [MAhrens@clackamas.us](mailto:MAhrens@clackamas.us)

*Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at least three (3) business days before the meeting at 503-742-4545 or email [Drenhard@clackamas.us](mailto:Drenhard@clackamas.us).*

¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?

P. 503.742.4500

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WWW.CLACKAMAS.US



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**Land Use Hearing Item  
Staff Report to the Board of County Commissioners**

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**File Number:** Z0079-21-CP, Z0080-21-ZAP, SE Borges Road, Damascus, Comprehensive Plan Amendment and Zone Change

**Staff Contact:** Melissa Ahrens, Planning and Zoning Division, 503-742-4519, mahrens@clackamas.us

**Board of County Commissioners Hearing Date:** September 15th, 2021

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**PROPOSAL:**

Planning files Z0079-21-CP and Z0080-21-ZAP contain a proposed Comprehensive Plan Map Amendment from a Forest (F) to an Urban Low Density Residential (LDR) land use designation and a corresponding zone change from Timber (TBR) to Future Urban 10-acre (FU-10 Zone) or to Urban Low Density Residential (R-30), to facilitate future development of a single family residence on a vacant property.

**Background:**

The subject site (tax lot 13E1128C 01200) is 7.89 acres in size and is located within the Portland Metropolitan Urban Growth Boundary, in the Damascus area on SE Borges Rd. (no site address). The subject site contains steep slopes in excess of 20% grade, regulatory wetlands, habitat conservation area, water quality resource area, and Statewide Planning Goal 5 resources. There is no building, electrical, septic, or mechanical permit history for the subject property. Building permit records and deed history indicates that the tax lot to the north (tax lot 13E28C 01100) and the subject tax lot were in common ownership at one time and were developed as a single tract when the residence was constructed on tax lot 01100 in the 1970s.

The applicant and her husband previously owned the adjacent tax lot that fronts SE Borges Road (tax lot 1100) and resided in the house on that property. The applicant and her husband sold that property in 2019 to the applicant's grandson. According to the applicant's testimony at the Planning Commission meeting, she currently lives with her husband in an accessory building on their grandson's property (tax lot 1100). The applicant stated that she just wants to get a house built for her and her husband (who needs medical assistance) to live in. After the Planning Commission meeting in follow up email discussions and an in person meeting the applicant was informed that they could likely receive approval for a temporary dwelling for care on tax lot 1100. The applicant was interested in pursuing that land use approval pathway and submitted an application for a temporary dwelling on 8/30/21 (File no. Z0407-21-STC). That application is currently pending a completeness determination.





**Comprehensive Plan Map Amendment and Zone Change:**

The applicant is proposing to change the subject property’s Comprehensive Plan designation from Forest to an Urban Low Density Residential land use designation and a corresponding zone change from Timber (TBR) to Future Urban 10-acre (FU-10 Zone), to facilitate future single family residential development. An alternate zoning of R-30 was also proposed in the application, which would also require a Low Density Residential designation. The subject property has a land use designation of Forest, however, because it is located within the UGB it is in the urban classification of Future Urban Study Area. Table 1 below illustrates the Comprehensive plan requirements for transitions between Future Urban Study Area and Future Urban.

**Table 1.**

□ Ch. 4, Land Use, Comp. Plan requirements

Comp. Plan Designation	Current		Proposal A		Proposal B
Urban Classification	Future Urban Study Area	→ Concept planning required	Future Urban	→ Urban services required	Immediate Urban
Land Use Designation	Forest		Low Density Residential		Low Density Residential
Zoning District	Timber (TBR)		Future Urban 10 acre FU-10		Urban low density residential R-30

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**RELATED PRIOR BCC ACTION:**

None.

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**PLANNING COMMISSION ACTION:**

A public hearing was held on August 9th, 2021, for Planning Commission consideration of the proposal. At that hearing, the Planning Commission voted unanimously to recommend denial, as originally recommended by staff. There was no public testimony; the applicant gave a short presentation on the applications. Approved minutes of the Planning Commission hearing are included in the BCC materials.

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**CPO RECOMMENDATIONS:**

The Damascus CPO is inactive.

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**SIGNIFICANT ISSUES:**

Three main categories of significant issues were raised at the Planning Commission hearing.

(1) *Damascus UGB landowners in planning limbo*

Metro’s 2002 Urban Growth Boundary (UGB) expansion brought the entire Damascus area into the UGB. The intent of this UGB expansion was to plan this area for urban facilities and services with the end goal of expanding housing opportunities, creating employment

concentrations, and developing livable urban communities in a compact form to preserve rural lands and natural resource lands that remained outside of the UGB. Urban planning efforts were initiated by the County and then were taken over by the City of Damascus when it was incorporated in 2004. When the City of Damascus disincorporated, urban planning efforts were halted. As a result, no urban planning for this area has been completed or formally adopted and the landowners in this area mostly retain rural and natural resource zoning designations, despite being within the UGB. This creates a variety of complications for these landowners when they seek to change land uses on their property, pursue new development of certain types, or seek approval of certain land uses that would normally be allowed in their zoning district. In this particular case, the property owner was unable to pursue a Template Test forest dwelling approval in the Timber zoning district (regulated by ZDO section 407), since the provisions for approval exclude properties within the Urban Growth Boundary.

The Planning Commission expressed sympathy for the difficult situation these landowners are in and wanted to know more about any concept planning that could be done for the area. County Planning staff explained that the County's stance, per the former BCC's direction, had been to leave urban planning for the area to cities and not pursue any County urban planning efforts for this area. The City of Happy Valley has begun some urban planning work for the western-most portion of the Damascus area. The County and City have been negotiating an Urban Growth Management Agreement (UGMA) for roughly half of the land area of Damascus. Per this agreement, which is expected to be executed this fall, the City would be responsible for urban planning of the Damascus area from the current city limits, east to roughly SE 222<sup>nd</sup>.

The subject property is within this proposed UGMA area; however, the timeframe for urban planning of the subject property is currently unknown.

*(2) Urban zoning inappropriate for this area*

Planning Commissioners discussed the rural, undeveloped location of this property, surrounded by natural resource zoning districts with large forested land and agricultural properties. Planning Commissioners noted that the current zoning is intended to prevent timber properties from being subdivided into a bunch of smaller parcels. Placing an urban zoning district in the middle of a natural resource zoning district was not seen as an appropriate solution for the Damascus property owners in this situation.

*(3) Lot by lot concept planning*

There was significant discussion about the idea of concept planning the Damascus area on a lot by lot basis vs. area wide concept planning. Commissioners asked Planning Staff why this property couldn't be used as a starting point for urban concept planning of Damascus. Planning staff explained that concept planning requirements stipulate area wide planning to integrate planning efforts for traffic, transportation, utilities, types of uses/developments, and services. To allow for urban planning on a lot by lot basis in the Damascus area could result in uncoordinated and disparate developments that inhibit the ability of Damascus to ultimately function as an urban area. Concept planning was required when Damascus was brought into the UGB to ensure the economic success and livability of the area. The UGB requirements to plan and develop Damascus as a Town Center with interconnected neighborhoods, employment centers, public services, and open space parks, linked by multi-modal transit opportunities, was adopted to create a desirable and thriving urban area for the benefit of current and future residents. Concept

planning on a lot by lot basis may benefit the individual property owner, but can interfere with and undermine urban planning efforts for a larger area.

As explained in the Planning Commission Staff report (No. 4 in the Board packet), in this situation the applicant did not take the stance that concept planning on a lot by lot basis was appropriate in this situation and did not submit any concept planning for the property. Instead they stated in their application that it was the County's responsibility to plan the area. As such, staff do not even have a concept plan that was developed for this property to review for consistency with the concept planning requirements of the Statewide Planning Goals, Metro Functional Plan and the County's Comprehensive Plan.

On 9/7/21 Planning staff received a comment letter from Metro, included in the exhibits in the Board packet, supporting Staff and the Planning Commission's recommendation of denial.

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**STAFF RECOMMENDATION:**

Staff recommends **DENIAL** of Z0079-21-CP, Z0080-21-ZAP by the Board of County Commissioners, as detailed in the Planning Commission staff report (No. 4 of the Board Packet) and as also recommended by the Planning Commission.

# Z0079-21-CP AND Z0080-21-ZAP: COMPREHENSIVE PLAN AMENDMENT AND ZONE CHANGE

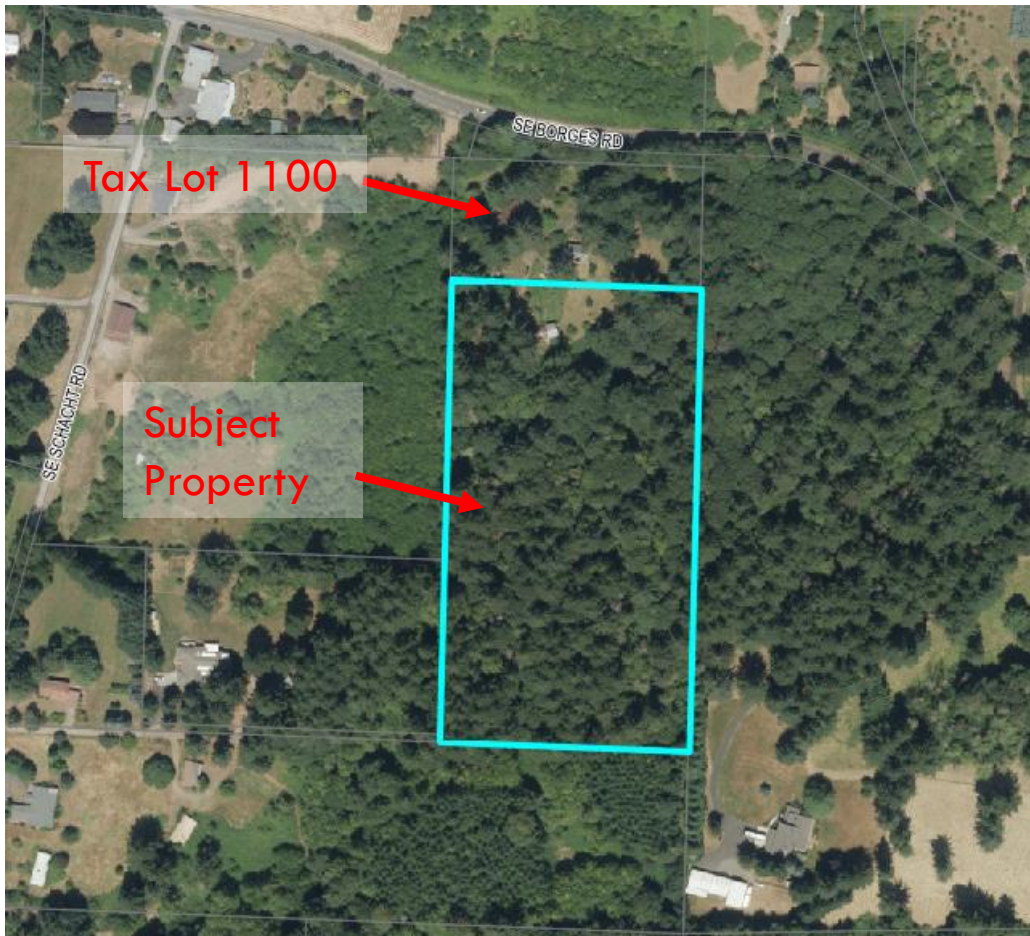


Board of County Commissioners Public Hearing  
September 15th, 2021



# SUBJECT PROPERTY

T1S, R3E, Section 28C Tax Lot 1200, off SE Borges Rd. Damascus



**Property Size:** 7.89  
acres

**Property Zoning:** Timber

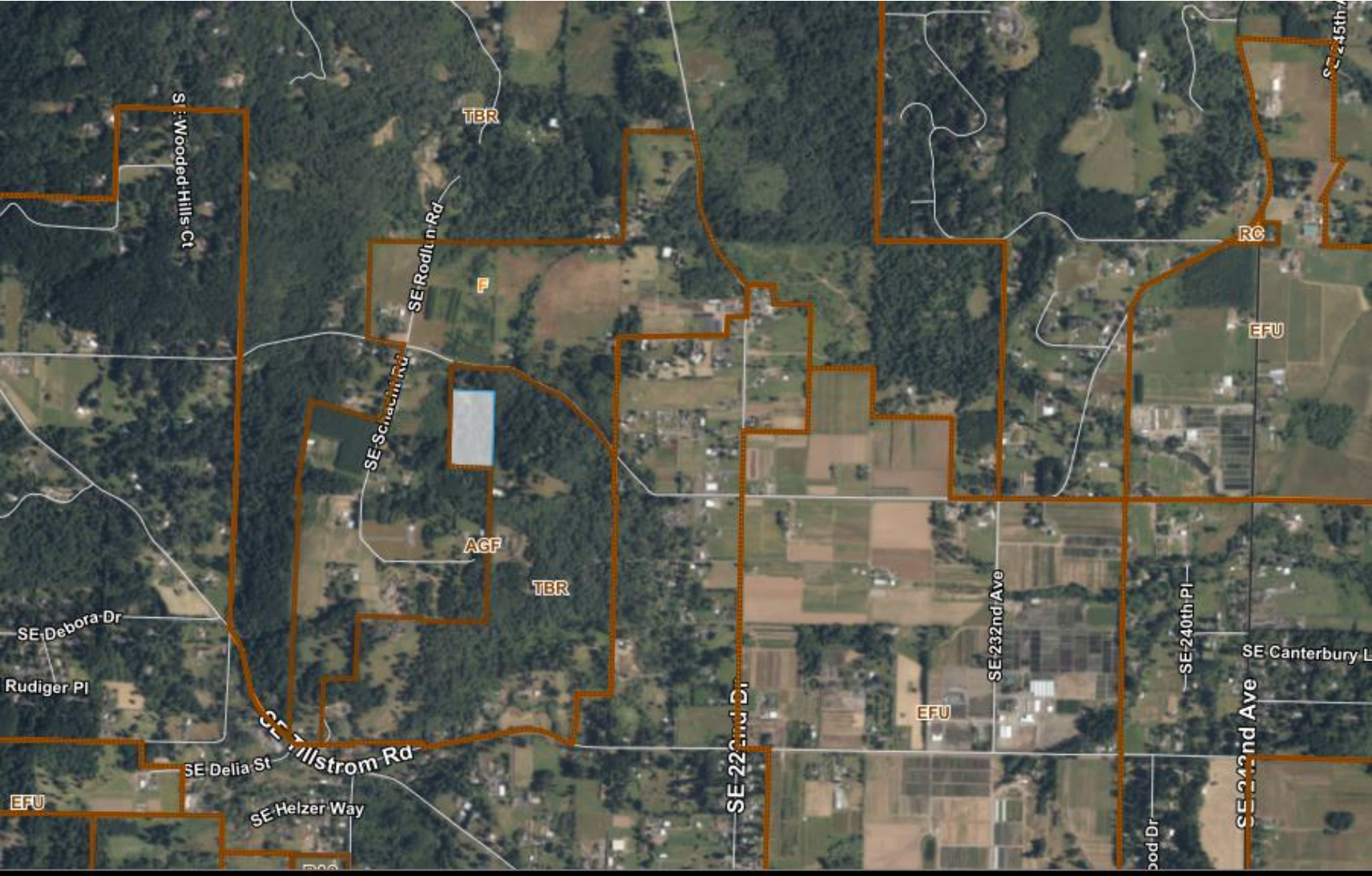
**Property Land Use  
Designation:** Forest

**Current Use:**  
None/vacant

Z0079-21-CP and Z0080-21-ZAP [2]



# ZONING BOUNDARY MAP



# PROPOSAL

## **Comprehensive Plan Amendment to change the land use designation from:**

Forest (F) → Low Density Residential (LDR)

## **Zone Change from:**

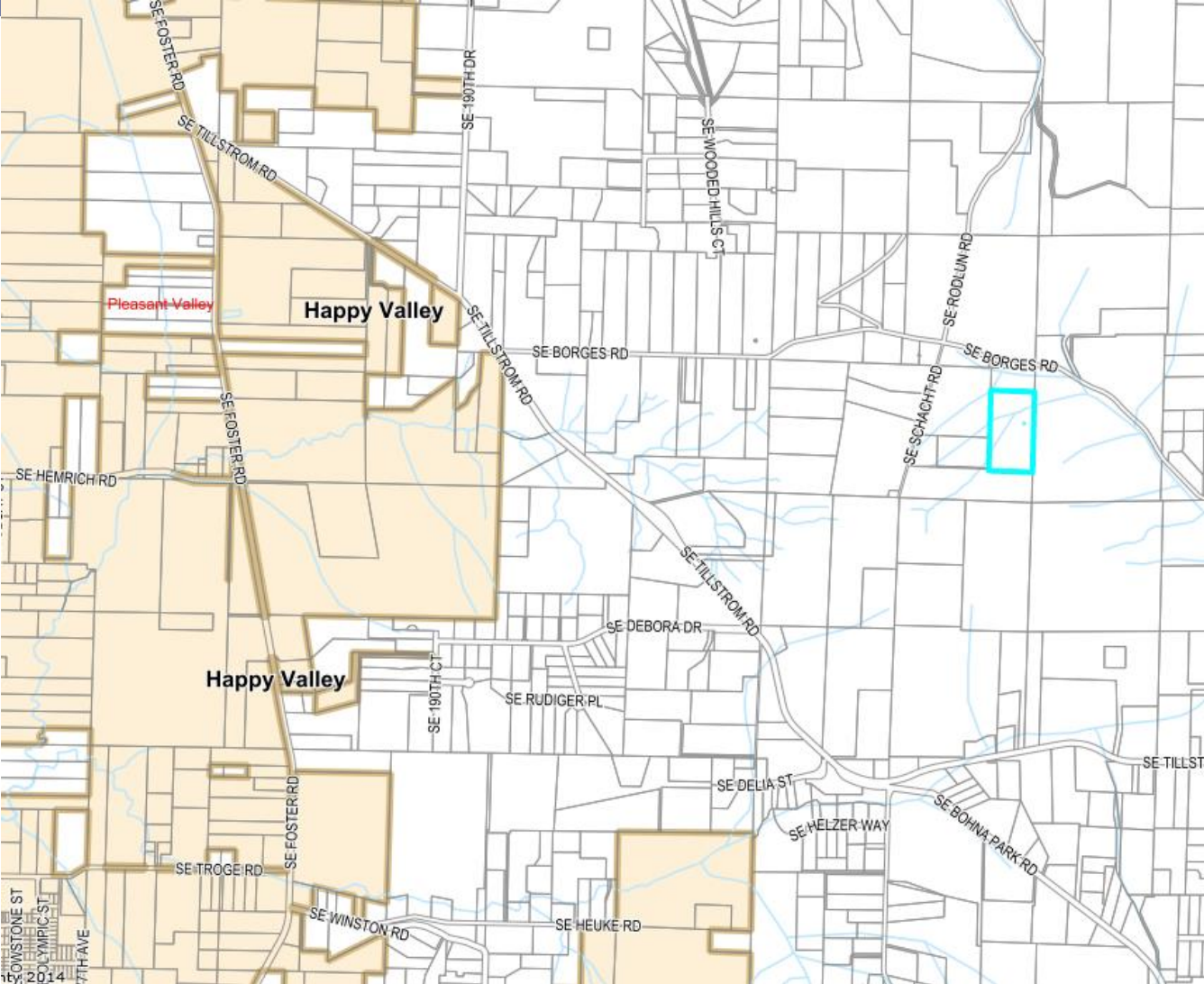
Timber (TBR) →                      Future Urban, 10 acre (FU-10)      **OR**

Low Density Residential, 30,000SF (R-30)

# NOTICING

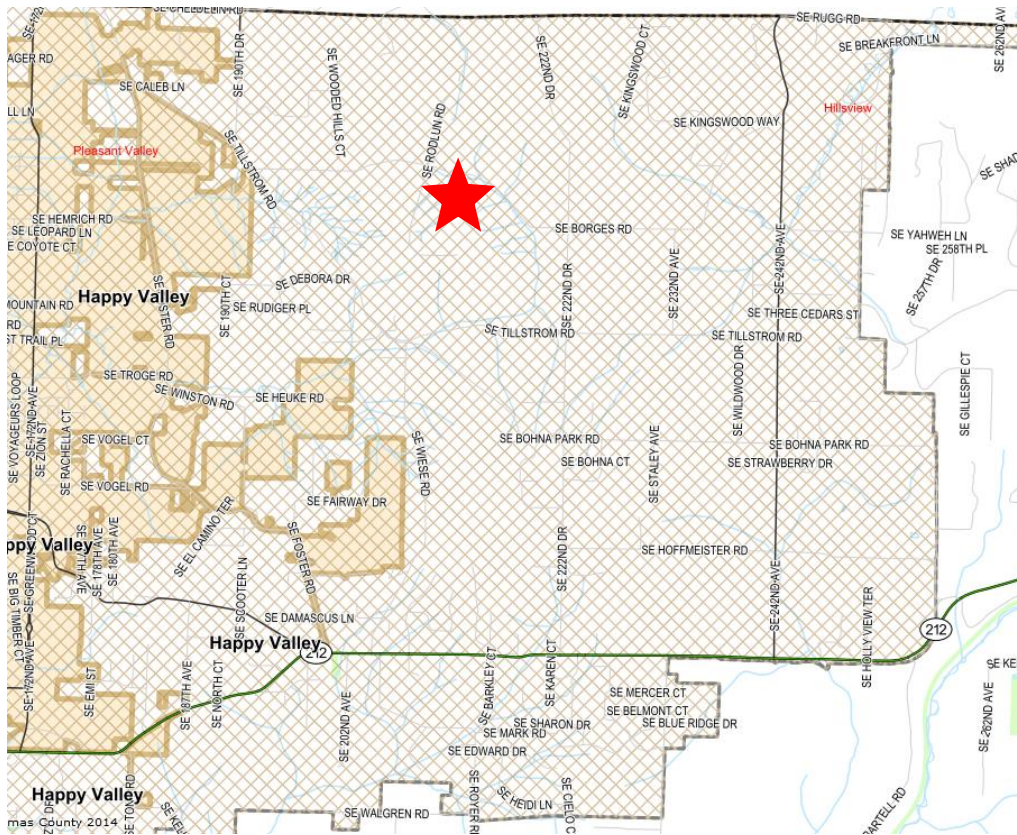
- Notice sent out for a Planning Commission Meeting and Board of County Commissioner's hearing: July 1st, 2021.
- Planning Commission meeting held August 9<sup>th</sup>.
- One comment letter from Metro received 9/7/21, expressing support for Planning staff and the Planning Commission's recommendation of denial.

# PROXIMITY TO CITY OF HAPPY VALLEY





# BACKGROUND



## Damascus area UGB:

→ CONCEPT PLANNING STILL REQUIRED

→ LOT BY LOT ZONING VS. CONCEPT PLANNING

# COMPREHENSIVE PLAN/ZDO COMPLIANCE

## □ Ch. 4, Land Use, Comp. Plan requirements

Comp. Plan Designation	Current		Proposal A		Proposal B
<b>Urban Classification</b>	Future Urban Study Area	<b>Concept planning required</b>	Future Urban	<b>Urban services required</b>	Immediate Urban
<b>Land Use Designation</b>	Forest		Low Density Residential		Low Density Residential
<b>Zoning District</b>	Timber (TBR)		Future Urban 10 acre FU-10		Urban low density residential R-30



# APPROVAL CRITERIA

## Comprehensive Plan Amendment:

- Statewide Planning Goals and applicable OARs
- Metro Urban Growth Management Functional Plan/Ordinance 02-969B
- County Comprehensive Plan

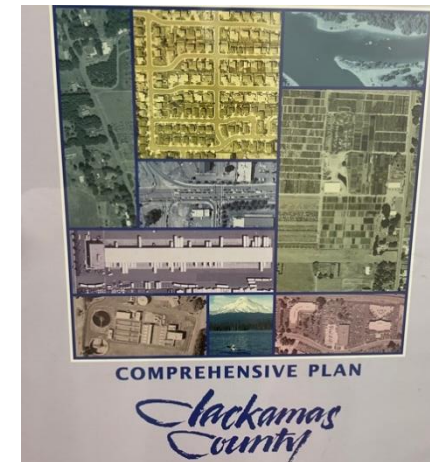
## Zone Change:

- 1202 Zone Changes, Processed as Type III
- Applicable criteria in 1202.03 General Approval Criteria

# STAFF RECOMMENDATION

STAFF RECOMMENDS **DENIAL** OF THE  
PROPOSED COMPEHENSIVE PLAN  
AMENDMENT AND ZONE CHANGE

Oregon's  
Statewide Planning  
Goals & Guidelines



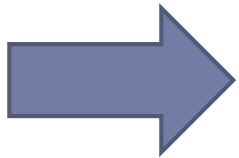
Z0079-21-CP and Z0080-21-ZAP [10]



# CONSISTENCY FINDINGS

Proposed Comprehensive Plan Amendment and Zone Change found **INCONSISTENT** with:

- 1) Statewide Planning Goals 2,5,6,7,10,11,12,14
- 2) METRO Functional Plan
- 3) County Comprehensive Plan Chapters 4, 5, 7, and 11
- 4) ZDO1202.03(A) for zone changes



**CONCEPT PLANNING  
REQUIRED**

# PLANNING COMMISSION RECOMMENDATION

Planning Commissioners voted unanimously to **DENY** the subject applications, per staff's recommendation. The following significant issues were raised:

- 1) Damascus UGB landowners in planning limbo
- 2) Urban zoning inappropriate for this area
- 3) Lot by lot concept planning

THANK YOU





**PLANNING COMMISSION STAFF REPORT**

This document represents the Planning and Zoning Staff findings and recommendations for a Type III Land Use Application for a Comprehensive Plan amendment and Zone Change as cited below.

**SUMMARY**

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**DATE:** August 2, 2021

**HEARING DATE:** August 9th, 2021 (Agenda Item Time: 6:30 pm)

**CASE FILE NO.:** Z0079-21-CP, Z0080-21-ZAP

**PROPOSAL:** The Clackamas County Planning Commission (PC) and the Board of County Commissioners (BCC) will hold public hearings to consider a proposed Comprehensive Plan Map Amendment from a Timber to an Urban Low Density Residential land use designation and a corresponding zone change from Timber (TBR) to Future Urban 10-acre (FU-10 Zone), to facilitate future development of a single family residence on a vacant property. The subject property is 7.89 acres in size and is located within the Portland Metropolitan Urban Growth Boundary, in the Damascus area on SE Borges Rd. (no site address).

**STAFF CONTACT(S):** Melissa Ahrens, (503) 742-4519, [mahrens@clackamas.us](mailto:mahrens@clackamas.us)

**LOCATION:** T1S, R3E, Section 28C Tax Lot 1200.

**APPLICANT(S):** Melva Murphy

**OWNER(S):** Melva Murphy

**TOTAL AREA:** Approximately 7.89 acres

**ZONING:** Timber (TBR)

**COMPREHENSIVE PLAN DESIGNATION:** Forest

**COMMUNITY PLANNING ORGANIZATION:** Damascus (Inactive)



**NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER:** ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

**OPPORTUNITY TO REVIEW THE RECORD:** The complete application file is available for review online by accessing the following link: <https://accela.clackamas.us/citizenaccess/> . If you are unable to access the file online, contact the staff person listed on the front page of this decision for assistance. Copies of all documents may be purchased at the rate of \$1.00 for the first page and 10-cents per page thereafter.

**APPLICABLE APPROVAL CRITERIA:** This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1202, Zone Changes, and the Comprehensive Plan. This application is being processed as a Type III Permit, pursuant to Section 1307. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

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**Attachments:**

- A. Submitted Application**
- B. Exhibits:**
  - 1. Notices*
  - 2. Tax Map*
  - 3. Site Plan*
  - 4. Metro Order 02-696B Excerpts*

## **I. STAFF RECOMMENDATION**

1. **DENIAL** of the Comprehensive Plan Map Amendment (File No. Z0079-21-CP) from Forest to Urban Low Density Residential.
2. **DENIAL** of the zone change (File No. Z0080-21-ZAP) from Timber (TBR) zone to Future Urban 10-acre (FU-10) zone and the alternate proposed zone of R-30.

Staff is recommending denial of the Comprehensive Plan Amendment and Zone Change based on the proposal's inconsistency with the following:

- Statewide Planning Goals 2,5,6,7,10,11,12,14
- Clackamas County Comprehensive Plan Chapters 4, 5, 7, and 11
- Zoning and Development Ordinance Section 1202.03(A)

This recommendation is based on the findings detailed in Sections II & III of this Staff Report.

## **II. COMPREHENSIVE PLAN AMENDMENT APPLICATION FINDINGS**

This application is subject to Statewide Planning Goals, Metro Urban Growth Management Functional Plan policies, requirements of Metro Ordinance 02-969B, Comprehensive Plan criteria, and ZDO Section 1202 policies. The Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO, the Comprehension Plan and statewide planning goals in conjunction with this proposal and make the following findings and conclusions:

### **A. Background and Proposed Comprehensive Plan Amendment**

#### Subject Site

The subject site (tax lot 13E28C 01200) is located within the Portland Metropolitan Urban Growth Boundary, and in the boundaries of the former City of Damascus. The subject tax lot is a legal lot of record, created by deed in 1972. The subject property is approximately 7.89 acres and is currently undeveloped except for an existing barn structure. The property is located to the south of a tax lot in separate ownership (13E28C 01100), which contains a single family residence and would provide access from SE Borges Rd. and residential water supply to the subject site through well rights and driveway access easements. The subject site contains steep slopes in excess of 20% grade, regulatory wetlands, habitat conservation area, water quality resource area, and Statewide Planning Goal 5 resources. There is no building, electrical, septic, or mechanical permit history for the subject property. Building permit records and deed history indicates that the tax lot to the north (tax lot 13E28C 01100) and the subject tax lot were in common ownership at one time and were developed as a single tract when the residence was constructed on tax lot 01100 in the 1970's.

Since the subject site was zoned Timber (TBR) on 7/20/94, no dwellings have been approved for the site. In 2019, the property owner applied to have a mapping analysis performed to see if the subject property would meet the Forest Template Test mapping requirements of Zoning and Development Ordinance (ZDO) Section 407 in order to obtain approval to build a dwelling. The results of the GIS mapping analysis indicated that a Forest Template Test approval would not be consistent with ZDO Section

406.05(D)(3) which prohibits lots of record or dwellings located within an urban growth boundary from counting towards satisfying the minimum number of lots of record to pass a template test. The applicant then submitted a pre-application conference request for a Comprehensive Plan and Zone Change in 2020 (Ref. file ZPAC0017-21). Following the pre-application conference with Planning staff, the applicant submitted the subject Comprehensive Plan amendment and zone change application. The applicant also submitted habitat conservation area and water quality resource area applications for development of a single family residence on site as required by the County's Zoning and Development Ordinance, which were approved but could only be vested upon approval of the subject Comprehensive Plan amendment and Zone change approvals.

**Figure 1: Property Aerial**



The applicant is proposing to change the Comprehensive Plan designation for the property from Forest to an Urban Low Density Residential land use designation (with a Future Urban land use classification) and a corresponding zone change from Timber (TBR) to Future Urban 10-acre (FU-10 Zone), to facilitate future single family residential development. An alternate zoning of R-30 was also proposed in the application, which would also require a Low Density residential designation, but with an Immediate Urban land use classification. The Low Density Residential Comprehensive Plan Designation is intended for those areas planned for and served by public services. Primary uses allowed within the proposed FU-10 zone are: detached single family dwellings, farm uses, fish or wildlife management programs, forest practices, manufactured dwellings, bus shelters, Conservation areas or structures, recreational uses government and privately owned, and utility carrier cabinets. Clackamas County Zoning and Development Ordinance (ZDO) Section 316 lists the primary permitted uses of the FU-10 zoning district, as well as conditional and prohibited uses. It also includes the dimensional standards, such as the minimum lot size requirement of 10 acres.

### **Service Providers:**

1. Water: The property would be served by a private well on tax lot 13E28C 01100, exempt from state water permit requirements.
2. Septic: The property has a feasibility statement signed by Clackamas County Septic staff stating the site can be accommodated by a septic system.
3. Fire Protection: Clackamas RFPD #1

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### Noticing

This application has been processed consistent with those procedures. Specifically, the County has provided notice to interested agencies, local governments and property owners within ½ mile of the subject property consistent with State law and Section 1307 of the ZDO. The notification to property owners, public notices and hearings will ensure an opportunity for citizens to participate in the land use process.

### Responses Received:

No formal comments have been received, however, emails and calls from nearby property owners were received by staff regarding the scope of the proposal and the implications for surrounding privately owned properties and the Damascus area in general. An email was also received from the Fair Housing Council of Oregon requesting to review the staff recommendation when available. Staff have also been communicating with Metro and DLCD via phone and email, however, no formal comments have been submitted at the time of this staff recommendation.

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### **B. Submittal Requirements**

Section 1307 and Subsection 1202.02 of the Zoning and Development Ordinance lists the information that must be included in a complete application for a Comprehensive Plan amendment and Zone Change.

This application includes a completed land use application form, site plan, application fee and completed supplemental application. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1307 and 1202.02 are included in the application. The application was submitted on February 23<sup>rd</sup>, 2021 and deemed incomplete on March 23<sup>rd</sup>, 2021. The



applicant submitted an incomplete response on May 26<sup>th</sup>, 2021 and the application was deemed complete that day. The submitted application is included as Attachment A to this staff recommendation. Notice was sent out for a Planning Commission Meeting and Board of County Commissioner’s hearing on July 1<sup>st</sup>, 2021.

**The submittal requirements of Subsection 1307 and 1202.02 are met.**

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### **C. Legal Issues Raised in Subject Application**

#### Clear and Objective Housing Standards

The submitted application references ORS 197.307(4) and ORS 215.416(4)(b)(A) starting on page 13 of the narrative document. The application asserts that these regulations require the County to approve housing developments if they comply with clear and objective standards in the County Comprehensive Plan or land use regulations. The application asserts that these regulations would allow for the County to approve a single family residence on the subject property despite the current Timber (TBR) zoning.

Staff would like to clarify that the clear and objective standards referenced would not be applicable to the subject property because the subject applications are for a Comprehensive Plan Amendment and a Zone Change, not for development of a residence. Additionally, the property is zoned TBR and that zoning designation does not list residential development as a primary permitted use, pursuant to state law for forest designated properties.

#### Unconstitutional Taking

The application narrative states on page 11 that Ms. Murphy seeks approval to redesignate and rezone her property as a means to avoid an unconstitutional taking of her private real property. The application narrative goes on to assert that the subject property’s TBR zoning “creates a situation where there is no economically beneficial use of the subject property”.

Staff would like to clarify that the TBR zone allows for a multitude of other uses that allow for economic benefit of a subject property. Specific uses that are possible in the TBR zone include: farming and farm uses such as raising livestock and growing farm crops, forest uses including timber harvesting, private accommodations for fishing and fee based hunting, mining, wireless telecommunication facilities, cemeteries, private parks and campgrounds, public parks, firearms training facility, outdoor mass gatherings, and forest management research and experimentation facilities. The Planning Commission and Board of County Commissioners are not a court and may not ultimately adjudicate whether their actions constitute a taking or whether a taking claim is “ripe”, however, staff will address the applicant’s taking claim to help provide background for the decision makers and the public. Staff is assuming that the unconstitutional taking of property that the applicant asserts in the subject narrative is referencing Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003. This is known as a categorical, total, per se, or “Lucas” takings, which occurs when a regulation deprives an owner of all economically beneficial use of the property. Courts have generally been very strict about when they apply this test. If any economically beneficial use remains after application of the regulation, even if the value of that use is a very small percentage of the value of the property absent the regulatory restriction, a Lucas taking has not occurred. In general, Lucas situations are rare, since there are usually many pathways to allow some type of economically beneficial use of property at the local level. The TBR zoning does not allow for residences



as a primary permitted use and there has never been a land use application approved on the property for a residence. The subject applications are for a proposed Comprehensive Plan and Zone Change, not a template test application for a single family residence, so Staff concludes that a denial of the applicant's proposal to change the Comprehensive Plan designation and zoning designation would not constitute an unconstitutional taking. If the applicant is asserting that the TBR zoning itself, which has not changed since initially applied to the property in 1994, is a regulatory taking, then staff would further clarify that an approval of the proposed Comprehensive Plan Amendment and Zone change would not be necessary in order to address an unconstitutional taking from initial application of the TBR zoning.

Staff would also like to clarify that the application of the UGB to the property in 2002 and the current proposal for a Comprehensive Plan and Zone change are two separate sets of regulations from a regulatory takings perspective.

#### **D. Statewide Planning Goal Consistency**

**Goal 1: Citizen Involvement:** To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

This is a quasi-judicial land use application. The Clackamas County Comprehensive Plan and Section 1307 of the Zoning and Development Ordinance (ZDO) contain adopted and acknowledged procedures for citizen involvement and public notification. This application has been processed consistent with the notification requirements in Section 1307 including notice to individual property owners within ½ mile feet of the subject property, notice in the local newspaper, and notice to affected agencies, and dual interest parties. **The proposal is consistent with Goal 1.**

**Goal 2; Land Use Planning:** To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 requires coordination with affected governments and agencies. Notice of this application has been provided to the following agencies and governments for comments; Clackamas County RFPD #1, City of Happy Valley, Department of State Lands, Oregon Department of Transportation, Metro and the Department of Land Conservation and Development (DLCDD). The subject property is not located within any Urban Growth Management Areas (UGMA) of any nearby or surrounding cities. The property is not located in a designated urban or rural reserve area. Therefore, this application does not affect any other adopted City Comprehensive Plans. The subject property is located within the Urban Growth Boundary, per Metro's Ordinance 02-969B, so no Goal 4 or 14 exception would be required for the proposed Comprehensive Plan amendment, pursuant to the Goal 2 exception process.

Goal 2 requires that all land use actions be consistent with the acknowledged Comprehensive Plan and other 'plans'<sup>1</sup>, which in this case includes the Metro Urban Growth Management Functional Plan

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<sup>1</sup> Per Statewide Planning Goal 2 "Plans" is defined as follows: "*Plans -- as used here encompass all plans which guide land-use decisions, including both comprehensive and single-purpose plans of cities, counties, state and federal agencies and special districts.*"

(UGMFP) and Regional Framework Plan, including the 2040 Growth Concept. Metro Ordinance 02-969B, which was adopted as part of Metro's Code when the UGB was expanded in 2002 to include the subject property, is also considered a part of the 'plans' reviewed as part of Goal 2 planning goal consistency. Since the proposed Comprehensive Plan amendment and zone change are not consistent with applicable sections of the Metro UGMFP, the Regional Framework Plan/2040 Growth Concept or Metro Ordinance 969B, as detailed in the findings in Section E of this staff recommendation, the requirements of Statewide Planning Goal 2 would not be met. **The proposed Comprehensive Plan amendment is not consistent with Statewide Planning Goal 2.**

**Goal 3; Agricultural Land:** To preserve and maintain agricultural lands.

The subject property is located within an acknowledged urban area on the County Comprehensive Plan map. This proposal does not include any land planned or zoned for Agricultural uses. **Goal 3 is not applicable.**

**Goal 4; Forest Land:** To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture.

While the subject property is zoned Timber and is land planned or zoned for Forest uses, Goal 4 does not apply due to the property's inclusion in the Urban Growth Boundary. **Goal 4 is not applicable.**

**Goal 5; Open Spaces, Scenic and Historic Areas, and Natural Resources:** To conserve open space and protect natural and scenic resources.

Goal 5 protects areas of scenic and natural value, and Clackamas County has mapped one such feature, a Butte, on part of the subject property. The Butte is part of the Boring volcanic field and is included as a scenic Goal 5 resource. Although the Comprehensive Plan does not define the term 'Butte', Chapter 3 of the Comprehensive Plan specifies policies to protect "areas of high visual sensitivity and/or unique natural features", which the buttes in the Boring volcanic field would generally fall under. Additionally, there are regulatory wetlands/riparian corridors on site, wildlife habitat, and groundwater resources on site that are regulated by Statewide Planning Goal 5. While the subject Comprehensive Plan Amendment and Zone change is proposed for development of a single residence that would be sited to avoid impacts to Goal 5 resources, Planning Staff look to the requirements for statewide Planning Goal 5 consistency in Metro's Ordinance 02-969B that would apply to a Comprehensive Plan Amendment for the property. Specifically, Condition I.G of Exhibit M requires compliance with the provisions of Metro's Functional Plan Title 3 and Title 11 when an amendment to the County's Comprehensive Plan and zoning ordinance is proposed to implement the UGB. The subject application has not demonstrated compliance with applicable sections of Title 3 or Title 11 of Metro's Urban Growth Management Functional Plan that would be applicable for a Comprehensive Plan amendment proposed to implement the UGB (refer to section E of this staff recommendation for additional findings). Under Metro's Title 11, current County land use regulations will remain in place until new plan provisions and land use regulations to allow urbanization of the Damascus area are adopted. The proposed Comprehensive Plan amendment

application did not demonstrate consistency with Title 3 requirements of the UGMFP and Title 11 planning requirements. **The proposed Comprehensive Plan amendment is not consistent with Goal 5.**

**Goal 6; Air, Water and Land Resources Quality:** To maintain and improve the quality of the air, water and land resources of the state. The County Comprehensive Plan and ZDO contain adopted implementing regulations to protect the air, water and land resources. The County also has implementing regulations to accommodate all waste and process discharges in order to protect watersheds, airsheds and land resources. The subject property contains regulatory wetlands and riparian corridors and mapped Title 3 and Title 13 habitat conservation area and water quality resource area is present on site. While the subject Comprehensive Plan Amendment and Zone change is proposed for development of a single residence that would be sited to avoid impacts to Goal 6 resources, Planning Staff look to the requirements for statewide Planning Goal 6 consistency in Metro's Ordinance 02-969B that would apply to a Comprehensive Plan Amendment for the property. Specifically, the Ordinance states that each local government responsible for an area added to the UGB must complete the planning requirements of Title 11, Urban Growth Management Functional Plan, including compliance with the water quality provisions of Title 3 of the UGMFP (refer to section E of this staff recommendation for additional findings). When an amendment to the County's Comprehensive Plan and zoning ordinance is proposed to implement the UGB, compliance with applicable sections of Title 3 or Title 11 of Metro's Urban Growth Management Functional Plan would be required. Under Metro's Title 11, current County land use regulations will remain in place until new plan provisions and land use regulations to allow urbanization of the Damascus area are adopted. The proposed Comprehensive Plan amendment application did not demonstrate consistency with Title 3 requirements of the UGMFP and Title 11 planning requirements. **The proposed Comprehensive Plan amendment is not consistent with Goal 6.**

**Goal 7; Areas Subject to Natural Disasters and Hazards:** To protect life and property from natural disasters.

The subject property is not located within any designated floodplain area, however, the site contains steep slopes. While the subject Comprehensive Plan Amendment and Zone change is proposed for development of a single residence that would be sited to avoid impacts to Goal 7 hazards, Planning Staff look to the requirements for statewide Planning Goal 7 consistency in Metro's Ordinance 02-969B that would apply to a Comprehensive Plan Amendment for the property. Specifically, the Ordinance states that each local government responsible for an area added to the UGB must complete the planning requirements of Title 11, Urban Growth Management Functional Plan, including compliance with the erosion control provisions of Title 3 of the UGMFP. When an amendment to the County's Comprehensive Plan and zoning ordinance is proposed to implement the UGB compliance with applicable sections of Title 3 or Title 11 of Metro's Urban Growth Management Functional Plan would be required ((refer to section E of this staff recommendation for additional findings). Under Metro's Title 11, current County land use regulations will remain in place until new plan provisions and land use regulations to allow urbanization of the Damascus area are adopted. The proposed Comprehensive Plan amendment application did not demonstrate consistency with Title 3 requirements of the UGMFP and Title 11 planning requirements. **The proposed Comprehensive Plan amendment is not consistent with Goal 7.**

**Goal 8; Recreational Needs:** To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate to provide for the siting of necessary recreational facilities including destination resorts.

This proposal does not involve any designated recreational or open space lands, affect access to any significant recreational uses in the area, or involve the siting of a destination resort. This proposal will have no impact on the recreational needs of the County or State. **Goal 8 is not applicable.**

**Goal 9; Economic Development:** "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens."

This Goal is intended to ensure Comprehensive Plans contribute to a stable and healthy economy in all regions of the state. Goal 9 also requires the County to provide for an adequate supply of sites of suitable sizes, types, locations, and services for a variety of industrial and commercial uses consistent with plan policies.

OAR 660-009 (Industrial and Commercial Development) implements Goal 9. Pursuant to OAR 660-009-0010(1) the requirements and standards in OAR 660-009 are only applicable to areas within urban growth boundaries, which includes the subject property. However, OAR-660-009 would not apply to the subject Comprehensive Plan amendment because the proposed amendment would not change the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or another employment use designation to any other use designation. **Goal 9 is not applicable.**

**Goal 10; Housing:** "To provide for the housing needs of citizens of the state."

This Goal requires local jurisdictions to provide for an adequate number of needed housing units and to encourage the efficient use of buildable land within urban growth boundaries. OAR 660-007 and 660-008 defines the standards for determining compliance with Goal 10. OAR 660-007 addresses the housing standards inside the Portland Metropolitan Urban Growth Boundary. OAR 660-008 addresses the general housing standards.

The subject property is located inside of the Portland Metropolitan Urban Growth Boundary and OAR 660-007 and OAR 660-008 are applicable to this proposal. OAR 660-007-0060 requires the following for Comprehensive Plan Amendments:

*(2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:*

*(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or*

*(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.*

OAR 660-007-035 density requirement stipulate that Clackamas County must provide for a density of eight or more dwelling units per net buildable acre. This proposal would only involve one single family residence, which would not meet the density requirements of OAR 660-007-0060. A concept plan that

includes the subject property would also have to make findings that the proposed land use designation and zoning meets the 'Inner Neighborhood' designation of Metro's 2040 Growth Concept, required by Tile 11 planning and the other requirements of Metro Ordinance 02-969B. Metro Ordinance 02-969B was adopted in order to expand housing opportunities within the UGB, however, the subject Damascus area has never had a comprehensive plan amendment adopted to implement the urban growth boundary.

In summary, the subject property was included in the UGB with the intent to meet Goal 10 requirements for an efficient use of buildable land within urban growth boundaries. In order to meet the intent of Goal 10 (sections A and B for Planning and Implementation) and applicable sections of OAR 660-007 and 008 a concept plan that would effectuate the UGB would be required for the subject urban property, prior to any Comprehensive Plan amendment to change the land use designation. **The proposed Comprehensive Plan amendment is not consistent with Goal 10.**

**Goal 11; Public Facilities and Services:** "To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."

This Goal provides guidelines for cities and counties in planning for the timely, orderly and efficient arrangement of public facilities and services, such as sewer, water, solid waste and storm drainage. The Goal requires these public facilities and services to be provided at levels necessary and suitable for urban and rural uses, as appropriate. OAR 660-011 implements the requirements of Goal 11.

Planning Staff look to the requirements for statewide Planning Goal 11 consistency in Metro's Ordinance 02-969B that would apply to a Comprehensive Plan Amendment for the property. Specifically, the Ordinance states that each local government responsible for an area added to the UGB must complete the planning requirements of Title 11, Urban Growth Management Functional Plan, including compliance with the conditions IIA(1) and IIA(4) of Exhibit M. These specific conditions of exhibit M require adoption of transportation and public facility plans for the Damascus area, as well as specific phasing and timing of service provisions to allow the emergence of town centers in the Damascus area. When an amendment to the County's Comprehensive Plan and zoning ordinance is proposed to implement the UGB compliance with applicable sections of Ordinance 02-969B and Title 11 of Metro's Urban Growth Management Functional Plan would be required (refer to section E of this staff recommendation for additional findings). Title 11 planning for the Damascus area is required in advance of a Comprehensive Plan Amendment that would implement the UGB to ensure that the timing of urbanization contributes to the success of the designated town center. Approval of the subject Comprehensive Plan Amendment in advance of any planning for public service connection as and facilities would be in conflict with the UGMFP and the Regional Framework/2040 Concept, and therefore in conflict with Statewide Planning Goal 11. Specifically, under Metro's Tile 11 of the UGMFP, current County land use regulations will remain in place until new plan provisions and land use regulations to allow urbanization of the Damascus area are adopted. The proposed Comprehensive Plan amendment application did not demonstrate consistency with the applicable conditions of Exhibit M of the Metro Ordinance or the requirements of the UGMFP Title 11 planning requirements. **The proposed Comprehensive Plan amendment is not consistent with Goal 11.**



**Goal 12; Transportation:** “To provide and encourage a safe, convenient and economic transportation system.”

Oregon Administrative Rule (OAR) 660-012 (Transportation Planning Rule) implements Statewide Planning Goal 12. OAR 660-012-0060 applies to any plan map amendment which significantly affects a transportation facility. OAR 660-012-0060(1) requires any amendments to a functional plan, acknowledged comprehensive plan or a land use regulation (including a zoning map) which significantly affects an existing or planned transportation facility to put in place measures as provided in OAR 660-012-0060(2) unless the amendment is allowed under OAR 660-012-0060(3), (9) or (10).

Pursuant to OAR 660-012-0060(1) a plan or land use regulation amendment is deemed to significantly affect a transportation facility if it;

- a. *Changes the functional classification of an existing or planned transportation facility;*
- b. *Changes standards implementing a functional classification; or*
- c. *Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluation projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*
  - 1. *Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
  - 2. *Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan or;*
  - 3. *Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

Compliance with OAR 660-012-0060(1) can be achieved by one or a combination of the following;

- a. *Adopting measures that demonstrate the allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.*
- b. *Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.*
- c. *Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.*



*d. Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.*

*providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, of the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.*

The applicant included a Traffic Impact Analysis Memo in the submitted application addressing the impacts from this proposal. The analysis evaluated ‘reasonable worst case scenario’ traffic allowed in the existing TBR zoning district and in the proposed FU-10 and R-30 zoning district, specifically looking at the impact adjacent roadways. The TIA memo, completed by Clemow associates LLC, concludes that the proposed comprehensive plan designation of TBR is not expected to have a significant impact on the surrounding transportation system and that the TPR requirements are satisfied. The report also concludes that the full development on the site under the proposed FU-10 or R30 zoning could generate up to 132 new net daily trips and a maximum of 10 net new peak hour trips.

Clackamas County Engineering staff has reviewed the submitted Traffic Impact Analysis Memo and concurs with the conclusions in the application submittal that there will be no significant impact on the transportation system as a result of the proposed Comprehensive Plan Amendment and zone change due to the minimal level of traffic increases anticipated from the Comprehensive Plan/Zone change. However, Statewide Planning Goal 12 and OAR 660-012 require compliance with the County’s Comprehensive Plan and the Transportation System Plan, which is Chapter 5 of the Comprehensive Plan. Chapter 5 of the Comprehensive Plan, in turn, requires compliance with the Urban Growth Management Functional Plan for urban areas of the County, as follows:

*5.A.6 Urban Coordinate with Metro and local governments to implement the Regional Transportation Plan (RTP), Regional Transportation Functional Plan (RTFP), Urban Growth Management Functional Plan (UGMFP), and local transportation plans.*

The proposed Comprehensive Plan amendment would be implementing the UGB and would need to be found consistent with Metro’s Functional Plan, which was amended in 2002 to by Ordinance 02-969B. Specifically, the Title 11 planning required would include development of a conceptual transportation plan and urban growth diagram, with the general locations of arterial, collector, and essential local streets for the area. Since the Tile 11 planning for transportation has not occurred, pursuant to Tile 11 of the UGMFP and the conditions of approval in Exhibit M of the Metro Ordinance (reference section E of this staff recommendation for additional findings), the proposed Comprehensive Plan amendment cannot be found consistent with the transportation planning rule or Goal 12. **The proposed Comprehensive Plan amendment is not consistent with Goal 12.**

**Goal 13; Energy Conservation: To conserve energy.**

This proposal will have no impact on any known or inventoried energy sites or resources. There are no planning or implementation measures under this Goal applicable to this application. **Goal 13 is not applicable.**

**Goal 14; Urbanization:** To provide for an orderly and efficient transition from rural to urban land uses.

The subject property is located inside the Portland Metropolitan UGB. This proposal does not involve a change in the location of the UGB, a conversion of rural land to urban land, or urbanizable land to urban land. The property is not located within a designated urban or rural reserve areas. Goal 14 consistency findings were included in the Metro Order 02-969B when the subject property was brought into the UGB. The proposed Comprehensive Plan Amendment would not be increasing the intensity of use that was anticipated for the area in the Goal 14 consistency findings in the UGB expansion order. However, Goal 14 also requires that Comprehensive Plans and implementation measures are required for urban development in the UGB in advance of and until public facilities and services are available or planned, per the section of Goal 14 below:

**Urbanizable Land**

Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

Since there are no public facilities and services planned or available to the subject property, Goal 14 would require appropriate concept planning to maintain the potential for planned urban development as part of any Comprehensive Plan amendment for the subject UGB area. **The proposed Comprehensive Plan amendment is not consistent with Goal 14.**

**Goal 15: Willamette River Greenway:** To protect, conserve, enhance and maintain the natural scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

The subject property is not located within the Willamette River Greenway. **Goal 15 is not applicable.**

**Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes) and Goal 19 (Ocean Resources).**

**Goals 16, 17, 18 and 19 are not applicable in Clackamas County.**

**E. Compliance with the Metro Urban Growth Management Functional Plan and Metro Ordinance 02-969B**

**Metro Urban Growth Management Functional Plan Background**

In 1997 the Metro Council adopted the regional framework plan that created an integrated set of regional planning policies that directs Metro's efforts to manage growth and its impact. Included in the Regional

Framework Plan in the 2040 Growth Concept. Metro policies contained in the framework plan and the 2040 growth concept were aggregated into the eight (8) 2040 fundamentals which were adopted by the Metro Council in 2000. The 2040 fundamentals summarize the goals contained in Metro's growth management policies. Metro Ordinance 02-969B, which brought the subject property into the UGB, changed and added to Metro's growth management policies in the form of amendment and additions to the Regional Framework Plan. The Ordinance also changed the Metro Code in the form of amendments to the Urban Growth Management Functional Plan.

Metro's Urban Growth Management Plan and 2040 Growth Concept reference a 2040 Growth Concept Map. This map has evolved over time, however, when the subject property was brought into the UGB in 2002 the designation applied was 'inner neighborhood', defined as: Residential areas accessible to jobs and neighborhood businesses with smaller lot sizes. The current 2040 growth map combines inner and outer neighborhoods into one 'Neighborhoods' designation. The neighborhoods were intended to be planned and developed in conjunction with the regional and town centers of the Damascus area and Metro's Regional Framework Plan was amended by Ordinance 02-969B to require such planning.

### **Metro Ordinance 02-969B**

The Metro ordinance that brought the entire Damascus area into the UGB was Ordinance 02-969B. It also included other areas of Clackamas County as well as areas of other Counties in the Metro area. Since the land area being brought into the UGB through the ordinance was so large and disparate, the Metro ordinance organized the lands into study areas for legal consistency findings, conditions of approval and the alternatives analysis. The specific property was included in Study Area 13, which included 1,576 acres of land (see exhibit 5 of Attachment B). The Metro Ordinance required Statewide Planning Goal, Metro Regional Functional Plan and Regional Transportation plan consistency findings to bring the subject property into the UGB, which included a statement that "The Council concluded that the overall consequences of urbanization of these lands are acceptable, especially given the protections in place in the RFP and Metro Code for sensitive resources. Through mitigation measures required by the Conditions of approval in Exhibit M, the Council believes it can achieve compatibility between urbanization of the land added to the UGB and adjacent land outside of the UGB." As such, the conditions of approval in Exhibit M of the Order form the basis for Statewide Planning Goal consistency for the subject property's inclusion in the UGB. Specific legal consistency findings for Study Area 13 (which included the subject property) are included on Page 5 of Exhibit P of the Ordinance. The consistency findings for this study area reference the conditions of Exhibit M as necessary for compliance with Statewide Planning Goals. Exhibit M is part of the Metro Ordinance that brought the property into the UGB and would be considered part of the 'Plans' the County needs to find consistency with for these applications, per Statewide Planning Goal 2. Therefore, in order for the subject Comprehensive Plan and Zone change to be compliant with Statewide Planning Goals 2, Goal 5, Goal 11, Goal 12, and Goal 14, the conditions of Exhibit M would need to be met. The conditions of Exhibit M remain unsatisfied and as such, the Comprehensive Plan Amendment and Zone Change would not be compliant with all applicable Statewide Planning Goals, Metro's Urban Growth Management Functional Plan or the Regional Framework and 2040 Growth Concepts, as detailed below.

### **Exhibit M to Metro Ordinance 02-969B**

Exhibit M adopted general and study area specific conditions on UGB expansion areas. The general conditions applicable to the subject land use applications include the following:

**Exhibit M to Ordinance No. 02-969B  
Conditions on Addition of Land to UGB**

**I. General Conditions Applicable to All Land Added to UGB**

A. The city or county with land use planning responsibility for a study area included in the UGB shall complete the planning required by Metro Code Title 11, Urban Growth Management Functional Plan (“UGMFP”), section 3.07.1120 (“Title 11 planning”) for the area. Unless otherwise stated in specific conditions below, the city or county shall complete Title 11 planning within two years. Specific conditions below identify the city or county responsible for each study area.

B. The city or county with land use planning responsibility for a study area included in the UGB, as specified below, shall apply the 2040 Growth Concept design types shown on Exhibit N of this ordinance to the planning required by Title 11 for the study area.

C. The city or county with land use planning responsibility for a study area included in the UGB shall apply interim protection standards in Metro Code Title 11, UGMFP, section 3.07.1110, to the study area.

[...]

E. Each city or county with land use planning responsibility for a study area included in the UGB shall adopt provisions in its comprehensive plan and zoning regulations – such as setbacks, buffers and designated lanes for movement of slow-moving farm machinery - to ensure compatibility between urban uses in an included study area and agricultural practices on adjacent land outside the UGB zoned for farm or forest use.

[...]

G. In the application of statewide planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) to Title 11 planning, each city and county with land use planning responsibility for a study area included in the UGB shall comply with those provisions of Title 3 of the UGMFP acknowledged by the Land Conservation and Development Commission (“LCDC”) to comply with Goal 5. If LCDC has not acknowledged those provisions of Title 3 intended to comply with Goal 5 by the deadline for completion of Title 11 planning, the city or county shall consider any inventory of regionally significant Goal 5 resources adopted by resolution of the Metro Council in the city or county’s application of Goal 5 to its Title 11 planning.

**II. Specific Conditions for Particular Areas**



A. Study Areas 6 (partial), 10 (partial), 11, 12, 13, 14, 15, 16, 17, 18 and 19 (partial)

1. Clackamas and Multnomah Counties and Metro shall complete Title 11 planning for the portions of these study areas in the Gresham and Damascus areas as shown on Exhibit N within four years following the effective date of this ordinance. The counties shall invite the participation of the cities of Gresham and Happy Valley and all special districts currently providing or likely to provide an urban service to territory in the area. If a portion of the area incorporates or annexes to the City of Happy Valley or the City of Gresham prior to adoption by Clackamas and Multnomah Counties of the comprehensive plan provisions and land use regulations required by Title 11, the Metro Council shall coordinate Title 11 planning activities among the counties and the new city pursuant to ORS 195.025.
2. In the planning required by Title 11, subsections A and F of section 3.07.1120, Clackamas and Multnomah Counties shall provide for annexation to the TriMet district of those portions of the study areas whose planned capacity for jobs or housing is sufficient to support transit.
3. In the planning required by Title 11, Clackamas County shall ensure, through phasing or staging urbanization of the study areas and the timing of extension of urban services to the areas, that the Town Center of Damascus, as shown on the 2040 Growth Concept Map (Exhibit N) or comprehensive plan maps amended pursuant to Title 1 of the UGMFP, section 3.07.130, becomes the commercial services center of Study Areas 10 and 11 and appropriate portions of Study Areas 12, 13, 14, 17 and 19. Appropriate portions of these study areas shall be considered intended for governance by a new City of Damascus. The Damascus Town Center shall include the majority of these areas' commercial retail services and commercial office space. Title 11 planning for these areas shall ensure that the timing of urbanization of the remainder of these areas contributes to the success of the town center.
4. In the planning required by Title 11, Clackamas and Multnomah Counties shall provide for separation between the Damascus Town Center and other town centers and neighborhoods centers designated in Title 11 planning or other measures in order to preserve the emerging and intended identities of the centers using, to the extent practicable, the natural features of the landscape features in the study areas.

The County and Metro have not completed Title 11 planning for the subject study area, as such, the interim protection measures for the UGB in I.B. above (included in the subject Metro ordinance as Exhibit L and formally adopted as part of the Metro Code) apply to the subject property. Specifically, the Metro Functional Plan interim protection measures (Section 3.07.1110 of the Metro Code) prohibit the County from approving any land use regulation or zoning map amendment to the subject property that would allow higher residential density than allowed by acknowledged provisions in effect prior to the adoption of the UGB amendment. In their application materials the applicant asserts on page 7 of the submitted narrative that "Prior to the adoption of the subject site to the UGB in 2002, the property was capable of a template test approval, which would allow one single family residence." There is no evidence of a template test approval ever having been submitted for or approved with the County for the subject property. Additionally, the application materials provide no evidence that would suggest that prior to 2002 the property would have met all the criteria for a forest template test, per the TBR zoning requirements at the time. Staff do not have evidence to reach a conclusion that the property would have qualified for development of a single family residence prior to the expansion of the UGB in 2002.

Without a template test approval for a TBR zoned property, no residential development would have been authorized by the County's ZDO, so the residential density allowed on the property would have been zero before the UGB expansion. **As such, the proposed Comprehensive Plan Amendment and Zone Change to allow for a higher residential density than the current TBR zoning district would not be consistent with Metro Code interim protection measure 3.07.1110(A), Exhibit L and Exhibit M of the Metro Ordinance 02-969B.**

The other applicable policies of Exhibit M of the subject Metro ordinance deal with Title 11 planning requirements in General, and specifically to the Damascus UGB study areas. The County started to implement these Title 11 planning requirements in the Damascus/Boring concept plan, however, this plan was never formally adopted and is not considered to legally satisfy the requirements of Exhibit M of the subject Metro ordinance or Metro's Title 11 planning requirements in general.

Planning staff have been coordinating with Metro staff in advance of this staff recommendation and have received informal feedback that a property specific concept plan could potentially be used to satisfy the Title 11 planning requirements per Metro's Ordinance 02-969B. Planning staff defer to Metro to formally allow for this process in lieu of the Title 11 planning requirements referenced in the Ordinance.

The applicant was informed in the pre-application and completeness determination process that Metro had indicated that a concept plan may be a potential pathway, however, they did not submit a site specific concept plan for the proposed development. Any concept plan for the site would need to comply with Metro Ordinance 02-969B requirements, Metro's UGMFP Title 11 planning requirements in Section 3.07.1120 of the UGMFP, and Regional Framework/2040 Growth Concept requirements.

**As such, considering the evidence on record for the subject applications, staff finds that the subject Comprehensive Plan amendment and zone change is not consistent with the applicable requirements of Exhibit M (specifically, Exhibit M- I.A, B, C, E, G and II.A, 1-5) of Ordinance 02-969B.**

#### **F. Compliance with Clackamas County Comprehensive Plan 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 one specific policy in this Chapter applicable to this application.

*Policy 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 Clackamas County Comprehensive Plan and ZDO have adopted and acknowledged procedures for citizen involvement. This application has been processed consistent with those procedures. Specifically, the County has provided notice to the property owners within ½ mile of the subject property, interested agencies and other interested parties and published public notices in the newspaper consistent with State law and Section 1307 of the ZDO. The Citizen's Planning Organization in the area (Damascus) is inactive. The Planning Commission and Board of County Commissioners will also hold one or more



public hearings, as necessary, consistent with Section 1307 of the ZDO. These public mailings, notices and hearings will ensure an opportunity for citizens to participate in the land use process. **This application is consistent with Chapter 2.**

**Chapter 3; Natural Resources and Energy:** The purpose of this Chapter is to provide for the planning, protection and appropriate use of the County's land, water and air resources, mineral and aggregate resources, wildlife habitats, natural hazard areas and energy sources.

This Chapter contains eight (8) Distinct Sections addressing; 1) Water Resources; 2) Agriculture; 3) Forests; 4) Mineral and Aggregate Resources; 5) Wildlife Habitats and Distinctive Resource Areas; 6) Natural Hazards; 7) Energy Sources and Conservation and; 8) Noise and Air Quality. Each of these Sections is addressed below.

*Policies that are not applicable:*

Agriculture: This application does not involve any land planned or zoned for Agricultural uses. There are no policies in this Section of the Comprehensive Plan applicable to this proposal.

Forests: This application involves land planned for forest use, however, due to the property's inclusion in the UGB there are no policies in this Section of the Comprehensive Plan applicable to this proposal.

Mineral and Aggregate Resources: The subject property is not identified on the "Inventory of Mineral and Aggregate Resource Sites" in Table III-2 of the Comprehensive Plan. There are no policies in this Section of the Comprehensive Plan applicable to this proposal.

Energy Sources and Conservation: There are no policies in this Section applicable to this application.

Noise and Air Quality: There are no policies in this Section applicable to this application

The proposed Comprehensive Plan amendment application did not demonstrate consistency with Title 3 requirements of the UGMFP and Title 11 planning requirements.

*Applicable Policies:*

There are regulated river and stream corridors, Habitat Conservation Area, and Water Quality Resource Areas on the subject property. The subject property is also located in a Limited or Critical Groundwater Area identified by the Oregon Department of Water Resources. Steep slopes in excess of 20% grade are present on a significant part of the property and would be considered a Natural Hazard area by the Comprehensive Plan. The property also contains scenic and distinctive resources, designated as 'Buttes' included on Map III-2 of the Comprehensive Plan. The subject Butte on the property would be considered a distinctive resource area in the Comprehensive Plan and is a Statewide Planning Goal 5 inventoried resource.

Regarding the regulated river or stream corridors, Habitat Conservation Area, and Water Quality Resource Areas the proposed Comprehensive Plan Amendment to Low Density Residential designation would be consistent with the applicable policies in Ch. 3 of the Comprehensive Plan. Although the property is in a Groundwater Limited Area and lacks public water service, the State Watermaster for the area provided feedback in the application stating that residential well water use on the property would be consistent with the allowable exempt water uses in the area despite the groundwater limited designation. Any future development on steep slopes on the property would be regulated by the steep slope review

required in the County's ZDO. As such, the proposed Comprehensive Plan Amendment and Zone change would be consistent with the applicable policies of Chapter 3.

**This application is consistent with Chapter 3.**

**Chapter 4; Land Use:** This Section of the Comprehensive Plan provides the definitions for urban and rural land use categories, and outlines policies for determining the appropriate Comprehensive Plan land use designation for all lands within the County.

This Chapter contains three distinct Sections addressing; 1) Urbanization; 2) Urban Growth Concepts; and 3) Land Use Policies for the following Land Use Plan designations; Residential, Commercial, Industrial, Open Space and Floodplains, Unincorporated Communities, Rural Commercial, Rural Industrial, Rural, Agriculture and Forest. Each of these Sections is addressed below.

Urbanization Section and Urban Growth Concept Policies. This Section of the Plan outlines policies guiding land use in Immediate Urban Areas, Future Urban Areas, Future Urban Study Areas, Urban Reserve Areas and Population. The subject property is within an urban growth boundary and is classified as future urban study area.

The Urban Growth Concept policies in this Section of the Plan are intended to implement the Region 2040 Growth Concept Plan. It is the purpose of Title 1 of Metro's Urban Growth Management Functional Plan to accomplish the regional policies and the regional framework plan by requiring each City and County to maintain or increase its housing capacity. See Metro Plan, Section 3.07.110.

The subject property was added to the UGB in 2002, through Metro Ordinance 02-969B. Upon inclusion in the UGB the subject property was considered to be in the 'Future Urban Study Area' land use classification. Future Urban Study Areas are defined in Ch. 4 of The Comprehensive Plan as follows:

*"Areas brought within the Urban Growth Boundary for which the required planning has not yet been completed. The intent is to identify the areas where Title 11 of the Urban Growth Management Functional Plan and Metro code specify that concept planning and other requirements must be completed before other Urban Growth Concept design types and urban plan designations can be applied." [...]*

And;

*"Future urban study areas are lands that have been brought into an urban growth boundary but for which urban plan designations have not been applied. Planning will be conducted to determine urban plan designations and apply future urban zoning."*

In order to move out of this classification and into a Future Urban Area classification, which would allow for the Low Density Residential land use designation, the subject property would need to meet the following requirements in Policy 4.D.

#### **4.D Future Urban Study Area Policies**

The following policies apply to Future Urban Study Areas:

- 4.D.1 Conduct a planning process consistent with the policies of Chapter 11 of this Plan, that coordinates with affected service providers, agencies, and jurisdictions, and meets pertinent state, regional and local requirements.
- 4.D.2 In the Portland Metropolitan Urban Area, develop Comprehensive Plan designations that are consistent with Regional Urban Growth Goals and Objectives and the Regional Urban Growth Management Functional Plan, including Title 11, and the following.

When areas are brought into the Urban Growth Boundary, the following actions shall be undertaken:

- 4.D.2.1 Control premature development (before services are available) within the Portland Metropolitan Urban Growth Boundary by applying a 20-acre minimum lot size to lands within the boundary that have the following plan designations: Unincorporated Community Residential, Rural Commercial, Rural Industrial, and Rural.
  - 4.D.2.2 The County shall enter into discussion with nearby cities, agencies that provide public facilities and services, and area citizens, to determine how services and governance will be provided for the area.
  - 4.D.2.3 Agreements shall be developed with affected cities and service providers to cooperate in development of a Concept Plan for the area, and to consider the Concept Plan in development of future Plans.
  - 4.D.2.4 A Concept Plan shall be developed meeting state and regional requirements. Opportunity shall be provided to citizens and affected public agencies to participate in the development of the Concept Plan. In the Damascus area, the Damascus Concept Planning Study Report shall be used to provide background information and guidance for the Concept Planning process.
- 4.D.3 Develop and adopt urban comprehensive plan designations that meet applicable state planning requirements and balance County planning goals adopted in the Comprehensive Plan. This will convert Future Urban Study Areas to Future Urban or Immediate Urban areas.
  - 4.D.4 During development of Comprehensive Plan provisions pursuant to Title 11 of the Urban Growth Management Functional Plan, consider the feasibility of providing and funding adequate infrastructure.

The proposed Comprehensive Plan Amendment and Zone change does not comply with the requirements of Policy 4.D since a planning process consistent with Chapter 11 of the Comprehensive Plan has not been completed and State and Metro planning requirements have not been met, as detailed in sections D and E of this staff recommendation. Specifically, Title 11 planning for the Damascus area is required in advance of a Comprehensive Plan Amendment that would implement the UGB and allow the County to reclassify the property out of 'Future Urban Study Area'. Approval of the subject Comprehensive Plan Amendment without the required Title 11 planning and associated condition of the Metro Ordinance 02-



969B would be in conflict with the UGMFP and the Regional Framework/2040 Concept, and therefore in conflict with the Chapter 4 of the Comprehensive Plan.

As discussed in section E of this staff recommendation, if Metro were to find that site specific concept planning was a potential pathway for implementing the UGB and requirements of Metro Order 02-969B then the applicant would still need to demonstrate that the concept plan met the requirements of Policy 4.D of the Comprehensive Plan, and in turn the requirements of the UGMFP and the Regional Framework/2040 Growth Concept. In terms of consistency with the 2040 Growth Concept, the subject property was initially designated ‘Inner neighborhood’ on the 2040 Growth Concept Map. Metro’s Ordinance 02-969B defines inner neighborhood as “*Residential Areas accessible to jobs and neighborhood businesses with smaller lot sizes*” (reference Exhibit 5 in Attachment B). This designation in the Ordinance was distinct from the ‘outer neighborhoods’ designation, which was defined as “*Residential neighborhoods farther away from large employment centers with large lot sizes and lower densities*”. Policy 4.D.2.4 also requires that any concept plan developed for the Damascus Area use the *Damascus Concept Planning Study Report* as guidance and background. The subject *Damascus Concept Planning Study Report* was developed by Clackamas County prior to the incorporation of the former City of Damascus, however, it was never formally adopted. The submitted application asserts that concept planning is the county’s responsibility and no site specific concept plan addressing the planning requirements of Policy 4.D of the Comprehensive Plan for the site was submitted. Additionally, at the time of this staff recommendation Metro has not provided any formal comment. **As such, the subject Comprehensive Plan amendment and Zone change cannot be found consistent with the requirements of Policy 4.D, so the property could not be moved out of the Future Urban Study Area classification.**

Land Use Plan Designations. The subject property is currently designated Forest in the Comprehensive Plan. The proposed amendment is to change the land use plan designation to a Low Density Residential designation and corresponding zoning of Future Urban 10 acre (FU-10). The proposed alternative in the application is to change the classification to an immediate urban classification with a corresponding zoning of R-30. As such, the policies of the Chapter 4 section 4.R Low Density Residential Policies, and the definitions of Immediate Urban and Future Urban apply.

**Immediate Urban Areas:** Immediate urban areas are lands that are within urban growth boundaries, are planned and zoned for urban uses, and meet at least one of the following conditions:

- Served by public facilities, including sanitary sewage treatment, water, storm drainage, and transportation facilities;
- Included within boundaries of cities or within special districts capable of providing public facilities and planned to be served in the near future; or
- Substantially developed or surrounded by development at urban densities.

**Future Urban Areas:** Future urban areas are lands within urban growth boundaries but outside immediate urban areas. Future urban areas are planned to be provided with public facilities, but currently lack providers of those facilities. Future urban areas are substantially underdeveloped and will be retained in their current use to ensure future availability for urban needs. Future urban areas are planned for urban uses but zoned for large-lot, limited development.

The subject property is not served by public facilities, is not within a City or special district capable of providing public facilities planned to be served in the near future, and is not surrounded by development

at urban densities or substantially developed. The submitted application stated (on Page 11 of the submitted narrative) that the subject property meets the Comprehensive Plan requirements of a Future Urban classification because Policy 4.D.3 has been met. Policy 4.D.3 states:

- 4.D.3 Develop and adopt urban comprehensive plan designations that meet applicable state planning requirements and balance County planning goals adopted in the Comprehensive Plan. This will convert Future Urban Study Areas to Future Urban or Immediate Urban areas.

Planning staff did not receive any type of concept planning for the subject property that would effectuate the UGB as part of the subject application. No other Comprehensive Plan designations have been developed or adopted for this area that would meet applicable state planning requirements (see section D and E of this staff recommendation for additional findings). The County had started to concept plan the Damascus area after UGB adoption in 2002, however, no plan or corresponding land use designations and zoning were ever adopted.

Regarding the question of whether the subject property could meet the Comprehensive Plan classification of immediate Urban (or Future Urban) and the corresponding designation of Low Density Residential, the applicant only references Comprehensive Plan Policy 4.R.1.1, which states:

**4.R Low Density Residential Policies**

- 4.R.1 The following areas may be designated Low Density Residential if any of the following criteria are met:
  - 4.R.1.1 Areas where a need for this type of housing exists.
  - 4.R.1.2 Areas which are currently developed at low density and where little need exists for redevelopment.
  - 4.R.1.3 Areas where transportation is limited to collectors and local streets.
  - 4.R.1.4 Areas where sensitivity to the natural environment or natural hazards indicates a reduced density.

The submitted application relies on the assertion, without any supporting evidence in the application, that the subject property is consistent with Policy 4.R.1.1 to demonstrate compliance with the Low Density Residential land use designation. However, the application does not address the property's compliance with the classification of Immediate Urban that would be required for any change to Low Density Residential. Additionally, the findings in this staff recommendation for Goal 10 and Chapter 11 of the Comprehensive Plan explain why one single family residence on the subject property would not meet state density requirements or goals of the UGB expansion. Comprehensive Planning and implementation measures would be required to determine what type of urban development is needed on the subject property, consistent with Metro Ordinance 02-969B, state law, and the County's Comprehensive Plan. As such, policy 4.R.1 is not met.

Specifically, since the subject property is not planned to be provided with public services and is not yet planned for urban uses, the subject property cannot meet the definition of either the Immediate Urban or the Future Urban classification and cannot meet the requirements of Policy 4.D to move out of the Future Urban Study Area classification. Therefore, the proposed Comprehensive Plan designation of Low Density Residential would not be consistent with the Comprehensive Plan.

In conclusion, the proposed land use designation of Low Density Residential and zoning of FU-10 or alternate R-30 zoning requires a classification of Future Urban or Immediate Urban, respectively, and the subject property is only able to meet the Future Urban Study Area, as such, the proposed Comprehensive Plan amendment and Zone Change would not comply with Chapter 4 of the Comprehensive Plan. **The proposed Comprehensive Plan amendment and zone change is not consistent with Chapter 4.**

**Chapter 5; Transportation:** This Chapter outlines policies addressing all modes of transportation.

Based on the submitted traffic analysis and trip generation estimates the proposed zone change would be consistent with OAR 660-012-0060(1) and would not significantly affect the transportation facility, since it does not exceed the thresholds or triggers for project conditioning or modification as described in OAR 660-012-0060(1)(a)-(c). However, Chapter 5 Policy 5.A.6 of the Comprehensive Plan also requires compliance with the Urban Growth Management Functional Plan for urban areas of the County. Since the Tile 11 planning for transportation has not occurred, pursuant to Tile 11 of the UGMFP and the conditions of approval in Exhibit M of the Metro Ordinance (reference section E and Goal 12 in section D of this staff recommendation for additional findings), the proposed Comprehensive Plan amendment cannot be found consistent with Chapter 5 of the Comprehensive Plan. **The proposed Comprehensive Plan amendment and zone change is not consistent with Chapter 5.**

**Chapter 6; Housing:** The purpose of the Housing element of the Plan is to, “Provide opportunities for a variety of housing choices, including low and moderate income housing, to meet the needs, desires, and financial capabilities of all Clackamas County residents to the year 2010.” This Chapter includes a variety of policies regarding housing choices, affordable housing, neighborhood quality, urban infill, multifamily residential housing, common wall units, mobile homes and density bonuses for low cost housing and park dedication. Specifically, Policy 6.A.1 is applicable to the proposed Comprehensive Plan Amendment/Zone Change and states:

*6.A Housing Choice Policies*

*6.A.1 Encourage development that will provide a range of choices in housing type, density, and price and rent level throughout the urban areas of the County.*

The proposed Comprehensive Plan Amendment and zone change would allow for development of one single family residence and would be consistent with the policies of Ch. 6 to allow for more housing opportunities. **The proposed Comprehensive Plan amendment and zone change application is consistent with Chapter 6.**

**Chapter 7; Public Facilities and Services:** The goal of the Public Facilities and Services Chapter is to ensure an appropriate level of public facilities and services are necessary to support the land use designations in the Comprehensive Plan, and to provide those facilities and services at the proper time to serve the development in the most cost effective way. The Public Facilities Section of this Chapter includes policies regarding Sanitary Sewage Treatment, Water, Storm Drainage, Solid Waste and Street Lighting. The introduction to Chapter 7 states that:

*This chapter addresses, in part, the requirements of the Land Conservation and Development Commission’s (LCDC’s) Goal 11, also known as Oregon Administrative Rule 660, Division 11. It requires planning for sanitary sewage treatment, water, storm drainage and transportation.*



*Adequate levels of those public facilities and services must be available before urban levels of development can be built in a manner consistent with the land use designations in this Plan.*

The subject property is not served by any public water or sewer service and there is no plan for service connections to be made and constructed. Title 11 planning for the Damascus area is required in advance of a Comprehensive Plan Amendment that would implement the UGB to ensure that the timing of urbanization contributes to the success of the designated town center. Approval of the subject Comprehensive Plan Amendment in advance of any planning for public service connection as and facilities would be in conflict with the UGMFP and the Regional Framework/2040 Concept, and therefore in conflict with Statewide Planning Goal 11 and the intent of Chapter 7 of the Comprehensive Plan, as stated above. (See also the findings in this staff recommendation for Statewide Planning Goal 11.)

**The subject Comprehensive Plan amendment and Zone Change is not consistent with Chapter 7.**

**Chapter 8; Economics:** The goal of the Economics element of the Plan is to "Establish a broad-based, stable and growing economy to provide employment opportunities to meet the needs of the County residents." This Chapter contains 4 Sections related to; 1) Existing Industry and Business; 2) New Industry and Business; 3) Coordination; and 4) Target Industries. There are no policies in this Section of the Chapter applicable to this application. **Chapter 8 is not applicable.**

**Chapter 9; Open Space, Parks, and Historic Sites:** The purpose of this Chapter of the Plan is to protect the open space resources of the County, to provide land, facilities and programs which meet the recreation needs of County residents and visitors, and to preserve the historical, archaeological, and cultural resources of the County. The subject property does not include any lands designated as open space or park land. There are no designated Historic Landmarks, Historic Districts or Historic Corridors on or adjacent to the subject property. **Chapter 9 is not applicable.**

**Chapter 10; Community Plan and Design Plans:** This Chapter of the Comprehensive Plan includes the Mt. Hood Community Design Plan, Kruse Way Design Plan, Sunnyside Village Plan, Clackamas Industrial Area and North Bank of the Clackamas River Design Plan, Clackamas Regional Center Area Design Plan, Sunnyside Corridor Community Plan, and Mcloughlin Corridor Design Plan.

The subject property is not located within the boundary of any Community Plan or Design Plan area. **Chapter 10 is not applicable.**

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

Chapter 11 requires coordination with affected governments and agencies. Notice of this application has been provided to the following agencies and governments for comments; Clackamas County RFPD #1, City of Happy Valley, Department of State Lands, Oregon Department of Transportation, Metro and the Department of Land Conservation and Development (DLCD). The subject property is not located within any Urban Growth Management Areas (UGMA) of any nearby or surrounding cities. The property is not located in a designated urban or rural reserve area. Therefore, this application does not affect any other adopted City Comprehensive Plans, however, the City of Happy Valley was noticed also as a courtesy.

This is a quasi-judicial Comprehensive Plan map amendment and public notice was provided consistent with applicable policies of Chapter 11. The Planning Commission and Board of County Commissioners will review this application through one or more public hearings. Notice of the hearings have been published in the local newspaper and advertised consistent with all ZDO notice requirements. The property owners within 1/2 mile of the subject property were notified as required in Section 1307 of the ZDO. DLCDC and other agencies and interested parties were notified of the application on July 1st, 2021, 35 days prior to the first scheduled public hearing before the Planning Commission on August 9th, 2021.

Policies applicable to the subject proposal include 11.B.1, which states:

*“Ensure that the Comprehensive Plan and County ordinances meet the goals of LCDC, the Region 2040 Urban Growth Management Functional Plan and the Metro Framework Plan.”*

Based on the findings in Section D, E and F of this staff recommendation the proposed Comprehensive Plan amendment and Zone Change is not consistent with all of the LCDC Statewide Planning Goals, the Region 2040 Urban Growth Management Functional Plan and the Metro Framework Plan. **The proposed Comprehensive Plan Amendment and Zone Change is not consistent with Chapter 11.**

### **III. ZONE CHANGE FINDINGS**

The zone change criteria are listed in Section 1202 of the Clackamas County Zoning and Development Ordinance (ZDO). Section 1202.03 lists the approval criteria for a zone change as follows

**1. 1202.03(A)** *The proposed zone change is consistent with the applicable goals and policies of the Comprehensive Plan.*

As detailed in Sections II.D and II.E and II.F above, the proposed Comprehensive Plan Amendment and Zone Change is not consistent with applicable policies of the County’s Comprehensive Plan.

Specifically, the proposed Zone Change would not be consistent with Chapter 4, 5, 7 or 11 of the Comprehensive Plan. Chapters 8, 9, and 10 are not applicable.

**Based on these findings, the proposed zoning designation change is not consistent with 1202.03(A).**

**2. 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.*

As explained in 1202.03(A), the proposed zone change, which would allow for one home, would not be consistent with applicable provisions of the Comprehensive Plan. However, if the proposed zone change was found consistent with 1202.03(A) and specifically the requirements of Chapter 4 for a Future Urban land use classification and corresponding land use designation of Low Density Residential to allow for an FU-10 zoning, the property could rely on the proposed septic system and well water use for services. The alternate proposed zone change of R-30, and required land use classification of immediate urban would require public services for the property and would not allow for the proposed private septic and well service uses. **As such, the proposed FU-10 zoning would be consistent with Policy 1202.03(B), however, the proposed alternate zoning of R-30 would not be consistent with policy 1202.03(B).**

**3. 1202.03(C)** *The transportation system is adequate and will remain adequate with approval of the proposed zone change [...].*

As explained in 1202.03(A), the proposed zone change, which would allow for one home, would not be consistent with applicable provisions of the Comprehensive Plan. However, if the proposed zone change was found consistent with 1202.03(A) then a zone change of either FU-10 or R-30 could meet the transportation system adequacy requirements of Section 1202.03(C), as follows below.

The applicant included a Traffic Impact Analysis Memo in the submitted application addressing the impacts from this proposal. The analysis evaluated ‘reasonable worst case scenario’ traffic allowed in the existing TBR zoning district and in the proposed FU-10 and R-30 zoning district, specifically looking at the impact adjacent roadways. The TIA memo, completed by Clemow associates LLC, concludes that the proposed comprehensive plan designation of TBR is not expected to have a significant impact on the surrounding transportation system and that the TPR requirements are satisfied. The report also concludes that the full development on the site under the proposed FU-10 or R30 zoning could generate up to 132 new net daily trips and a maximum of 10 net new peak hour trips.

Clackamas County Engineering staff has reviewed the submitted Traffic Impact Analysis Memo and concurs with the conclusions in the application submittal that there will be no significant impact on the transportation system as a result of the proposed zone change due to the minimal level of traffic increases anticipated from the Comprehensive Plan/Zone change. **The proposed zone change is consistent with 1202.03(C).**

**4. 1202.03(D)** *Safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.*

As explained in 1202.03(A), the proposed zone change, which would allow for one home, would not be consistent with applicable provisions of the Comprehensive Plan. However, if the proposed zone change was found consistent with 1202.03(A) then a zone change of either FU-10 or R-30 could meet the transportation safety requirements of Section 1202.03(D), as follows below.

The applicant included a Traffic Impact Analysis Memo in the submitted application addressing the impacts from this proposal. The analysis evaluated ‘reasonable worst case scenario’ traffic allowed in the existing TBR zoning district and in the proposed FU-10 and R-30 zoning district, specifically looking at the impact adjacent roadways. The TIA memo, completed by Clemow associates LLC, concludes that the proposed comprehensive plan designation of TBR is not expected to have a significant impact on the surrounding transportation system’s safety and that the TPR requirements are satisfied. The report also concludes that Borges Rd. and the surrounding intersections are considered relatively safe and no further evaluation of safety deficiencies was necessary.

Clackamas County Engineering staff has reviewed the submitted Traffic Impact Analysis Memo and concurs with the conclusions in the application submittal that there will be no significant impact on the transportation system’s safety as a result of the proposed zone change due to the minimal level of traffic increases anticipated from the Comprehensive Plan/Zone change. **The proposed zone change is consistent with 1202.03(D).**

**PLANNING COMMISSION  
MINUTES**

August 9, 2021

Meeting held via Zoom meeting online

Commissioners present: Gerald Murphy, Thomas Peterson, Brian Pasko, Louise Lopes, Michael Wilson, Steven Schroedl, Carrie Pak.

Commissioners absent: Tammy Stevens, Kevin Moss.

Staff present: Jennifer Hughes, Martha Fritzie, Melissa Ahrens, Darcy Renhard.

Commission Vice-Chair Murphy called the meeting to order at 6:35 pm.

General public testimony not related to agenda items: none.

Commissioner Murphy opened the public hearing for Z0079-21-CP and Z0080-21-ZAP, a quasi-judicial hearing for a proposed Comprehensive Plan amendment and corresponding Zone Change. The Board of County Commissioners will hear this proposal on September 15, 2021, and will make a final decision on the proposal following the hearing.

Melissa Ahrens presented a PowerPoint outlining the background and proposal of the amendments.

The subject property is 7.89 acres just off SE Borges Road in the Damascus area. The current zoning is Timber (TBR) and the current land use designation is Forest (F). The applicant is proposing to change the zoning to either Future Urban, 10-acre (FU-10) or Low Density Residential, 30,000 sf (R-30) and to change the land use designation to Low Density Residential (LDR). The property is vacant at this time and is not in use except for an existing barn.

In 2002, Metro ordinance 02-969B brought the entire Damascus area into the Urban Growth Boundary (UGB), including this property. Subsequent changes to the ordinance added to Metro's growth management policies with amendments and additions to the Regional Framework Plan, 2040 Growth Concept Map, and the Urban Growth Management Functional Plan (UGMFP). Even though the County had initiated concept planning following the 2002 UGB expansion, when the City of Damascus incorporated, County planning efforts ceased and no other concept planning that would meet Metro's requirements occurred.

Ordinance 02-969B added the subject property to Metro's 2040 Growth Concept Map as an "inner neighborhood". Properties with this designation in the Damascus area were intended to be planned and developed in conjunction with the regional and town centers of the Damascus urban area. Ordinance 02-969B added protections that restricted Comprehensive Plan amendments and zone changes until concept planning could be completed. Specifically, the protection measures (Section 3.07.1110 of the Metro Code) prohibit the County from approving any land use regulation or zoning map amendment to the property that would allow higher density than what was allowed prior to the adoption of the UGB amendment.

The legal standards for a Comprehensive Plan Amendment consist of the Statewide Planning Goals, applicable OARs, Metro ordinances, and the County's Comprehensive Plan. For a zone change, it is Section 1202 of the County's Zoning & Development Ordinance.

Staff has found that the proposed Comp Plan Amendment is inconsistent with Statewide Planning Goals, Metro Ordinances, the Clackamas County Comprehensive Plan, and the zone change requirements. The Metro UGMFP prohibits the County from approving any land use regulation or zoning map amendment to this property that would allow a higher residential density than what was allowed by the provisions in effect prior to the adoption of the UGB amendment.

The current zoning on the property is TBR, which is a natural resource district and does not allow residences as a primary permitted use. The proposed zoning options, FU-10 or R-30, would allow for a higher residential density. The applicant asserts that the property was able to meet the requirements of a template test approval prior to being adopted into the UGB in 2002. Staff found no evidence of a template test ever being submitted or approved by the County for the subject property. Additionally, there is no evidence that shows the property would have met all of the criteria for a template test approval prior to 2002. There is no evidence for staff to determine that the property would have qualified for a single family residence prior to the expansion of the UGB in 2002. Without a template test approval for a property with TBR zoning, no residential development would have been able to be approved by the County, which means that the residential density allowed on the property would have been zero prior to the UGB expansion. Therefore, the proposed Comprehensive Plan amendment and Zone Change asking for a higher residential density is not consistent with Metro Code interim protection measure 3.07.1110(A) and Metro Ordinance 02-969B.

Planning staff have coordinated with Metro staff on this proposal and have received informal feedback that a concept plan specific to this property could potentially be used to satisfy the Title 11 requirements per Metro's Ordinance. This would also remove the interim protection measures as previously discussed. This would need to be approved through Metro to formally allow this process. The applicant was informed during the pre-application and the completeness determination process that Metro had indicated this may be a potential pathway, but the applicant did not submit a site-specific concept plan for the proposed development. Therefore, staff finds that the proposed Comprehensive Plan Amendment and zone change is not consistent with the applicable requirements or Ordinance 02-969(B) and associated sections of the UGMFP.

There are numerous Statewide Planning Goals that apply to the subject proposal. These mirror the urban planning requirements in Metro's ordinances. Subsequently, staff finds that the lack of concept planning for the subject property and the larger Damascus area is the main reason that the proposal is also inconsistent with the County's Comprehensive Plan and Statewide Planning Goals 2, 5, 6, 7, 10, 11, 12, and 14.

Even though the proposal would place the new single family residence in a way to avoid impacts to Goal 5, 6, and 7 resources, Planning Staff refer to the requirements for consistency within Metro's Ordinance 02-969(B) that would apply to a Comprehensive Plan Amendment on this property. The applicant has not demonstrated compliance with the applicable sections of Title 3 or Title 11 of Metro's UGMFP (see Section E of the staff recommendation). All of the Statewide Planning Goals have requirements that relate to the concept planning for urban areas, which is applicable to the subject property. The County's Comprehensive Plan implements and mirrors Statewide Planning Goals for the most part, which is why this application is inconsistent as previously described.

In order to move the property out of its' current classification and into the Future Urban Area classification (which would allow the LDR land use designation), the subject property would need to meet the requirements of Comp Plan Policy 4.D., which requires a planning process consistent with Chapter 11 of the Comprehensive Plan. Because the proposal cannot be found to be consistent with the requirements of Policy 4.D, the property cannot be moved into the Future Urban Area classification. The property's classification

also cannot be moved to Immediate Urban (for an R-30 designation) until public services and facilities are available to the property. Since these services are not currently available to the property, the proposed Comprehensive Plan Amendment and zone change is inconsistent with the requirements for Future Urban and Immediate Urban land use classifications, as well as the corresponding FU-10 and R-30 zoning.

If the property were to somehow meet the requirements for Future Urban classification and corresponding designation of LDR to allow for FU-10 zoning, the property would be able to rely on the proposed septic system and well water for services. The alternate proposed zone change to R-30 and required land use classification of Immediate Urban would require public services on the property and would not allow use of the proposed private septic and well services. The proposed FU-10 zoning would be consistent with Policy 1202.03(B), but the proposed alternate zoning of R-30 would not.

Clackamas County Transportation Engineering staff have reviewed the submitted Traffic Impact Analysis and concur with the conclusions that there would be no significant impact to the transportation system or safety as a result of the proposed zone change. The proposed Comp Plan and zone change are consistent with 1202.03(c) and (D).

Commissioner Wilson asked why the single piece of property couldn't be considered as the starting point for concept planning in this area. Melissa explained that the idea is to plan an area as an integrated whole for traffic, transportation, utilities, types of uses, and services. What seems like a simple request for one house may actually open up some bigger and more technical issues from a planning perspective. Commissioner Pasko asked if the fact that Damascus is no longer an incorporated community plays a role in whether or not this property can be developed. Martha Fritzie said that when the area was originally brought into the UGB, it was not an incorporated city. When the city incorporated, they took over the responsibility of planning this area. They were not successful in ever getting a concept plan adopted within the incorporated area. Then when they disincorporated and Damascus was no longer a city the same rules remained, it is just different jurisdictions who oversee them. Happy Valley has already annexed some areas that used to be Damascus. They have also embarked on developing a concept plan, but it has not been adopted yet. They have some interest in adding more area to their urban growth management plan, possibly out to 222<sup>nd</sup>, but at the moment they are focused more on the western area of Damascus. Building the infrastructure is extremely expensive and takes a significant amount of time. This is still a fairly rural property. It has been zoned TBR since it was purchased by Mr. Murphy in 1979. Commissioner Murphy pointed out the tremendous value that this property holds for the natural habitat in the Rock Creek area. Commissioner Wilson's biggest concern is that this proposal does not meet 8 of the 19 applicable standards.

**Melva Murphy, applicant**- Mrs. Murphy began working with a contractor to build a house on the property so that she has an appropriate place to take care of her husband. The contractor never pulled the necessary permits but proceeded with excavating and removing trees, which resulted in a Code Enforcement violation. Mrs. Murphy has paid thousands of dollars at this point and still is not able to build a house on the single acre that they want. She was not aware that the property was zoned TBR and that she couldn't build a house. Their second piece of property that already has a house was sold so that they had enough money to build a house to accommodate her husband's wheelchair.

Commissioner Wilson asked if any of the timber on the property had been harvested. Mrs. Murphy replied that it has just been growing for the last 40 years, other than those that were harvested to clear the site for the house and a few more that were deemed as dangerous. Commissioner Pasko said that houses are in some cases allowed on TBR zoned properties, but wonders if the issue is the location of this property. Melissa explained that there are pathways for approval of a single family residence on TBR property, but it



has to be outside of the UGB. This property is inside the UGB. Mrs. Murphy previously submitted an application for a template test, but Planning staff determined that the property would not qualify for a template test since it is inside the UGB. A lot of the surrounding properties are also zoned TBR, with a mix of AG/Forest. The intent of the TBR zoning is to maintain the property for timber harvesting, it isn't necessarily to protect the trees. There are conservation areas on the property that have their own restrictions, but the areas of the property outside of the conservation areas were originally intended to maintain timber harvesting. The property originally had a residence on it, but when it was split and sold off, the remaining parcel was left without any type of residential allowance. Mrs. Murphy asked if building a second residence on the smaller property would be feasible if they used the existing septic system. Her grandson lives on the second property. Commissioner Murphy stated that this meeting is to discuss the Comp Plan and Zone Change, we can't answer that question in this hearing. That being said, the Planning Commission is very sympathetic to Mrs. Murphy's situation. Melissa offered to discuss other potential options with Mrs. Murphy outside of the hearing.

Mrs. Murphy waived the additional 7-day period to submit additional testimony.

Chair Murphy closed the public hearing and the meeting moved into deliberations.

Commissioner Wilson said that although he is a proponent of personal property rights, and Mrs. Murphy has valid issues, he has not seen any argument addressing the issues that do not meet the Statewide Planning Goals. Commissioner Pasko expressed his sympathy to the situation that Mr. and Mrs. Murphy are in. That being said, he is not in favor of placing an urban designation in the middle of an area that is zoned timber and agriculture is the appropriate solution. Commissioner Pak noted that in Washington County, there have been smaller areas that have been concept planned to an extent that the property owners now have opportunities to develop in an organized manner. This has taken extensive resources to accomplish though. In the near future there needs to be some conversation from the County about how to get this area planned that will allow property owners to move forward with developing their land. Although Commissioner Peterson is reluctant to vote for denial of this proposal, he agrees with Commissioner Pak in that whoever is responsible for getting this concept plan done needs to have a fire lit under them. Commissioner Pasko agrees, but he also thinks that the zoning here is appropriate. The current zoning is intended to prevent timber property from being subdivided into a bunch of smaller parcels. Commissioner Pak stated that the whole idea behind concept planning is to designate certain areas for density and to protect other areas from development. Developing a concept plan for this area should be a high priority for the County, or whoever is in charge of planning for this area. Commissioner Lopes agrees with Commissioner Pasko. The situation that Mr. and Mrs. Murphy are in is very unfortunate, but we have to administer the Statewide Planning Goals and the Comprehensive Plan. Commissioner Murphy said that this particular area has a lot of hoops and complicated issues to work through.

Commissioner Wilson moved to recommend denial of Z0079-21-CP and Z0080-21-ZAP to the Board of County Commissioner as recommended by staff, with the additional recommendation that the BCC seriously consider the property rights of this applicant. There was no second.

Commissioner Pasko and Jennifer Hughes discussed what other options might be available to Mr. and Mrs. Murphy, but those would have to be addressed outside of this meeting.

There are several issues with the concept planning for this area. The first is that the County has decided that they are not going to be the urban service providers for new urban areas. That function should be fulfilled by cities. When Damascus disincorporated, this meant that the most likely scenario is that areas would start to

annex into the City of Happy Valley. There is also a lack of funding and staff to develop a concept plan. The third issue is whether or not there would be any more success in developing a concept plan in the Damascus area than there was in the past. Most of the people who live in this area do not want to be annexed into Happy Valley and do not want to see an increase in density.

Commissioner Pasko moved to recommend to the BCC denial of Z0079-21-CP and Z0080-21-ZAP as recommended by staff. Commissioner Schroedl seconded. (*Ayes=7; Nays=0. Motion passes.*)

The Planning Commission as a whole wish to emphasize to the Board of County Commissioners that this was a very difficult situation, both for the Planning Commission to address and for the property owner. There are property owners that are being denied their rights to build on their property by “goals” and rules that we are bound by. The planning for the Damascus needs to be a higher priority than it has been. Commissioner Pasko pointed out that there were years and years where the City of Damascus attempted to adopt a concept plan, but failed because the property owners out there refused to get behind it. Commissioner Peterson suggested putting it on the Long Range Planning Work Program. At least get it on the radar. Commissioner Murphy said that this is always going to be an important part of the urban area as far as absorbing storm water and runoff and providing a greenbelt. Martha stated that Happy Valley does have plans to expand out to 222<sup>nd</sup>, which would include the area where this property is located. We don’t have any particular timeline from them, but it would appear that this property is within their area for future development.

Our next hearing is on August 23<sup>rd</sup> which is for Martha’s package on Phase 1 of the Housing Strategies. There is nothing currently scheduled for September.

There being no further business, the meeting was adjourned at 8:55 pm.



**Clackamas County Planning and Zoning Division  
Department of Transportation and Development**

Development Services Building  
150 Beaver Creek Road | Oregon City, OR 97045  
503-742-4500 | zoninginfo@clackamas.us  
www.clackamas.us/planning

**LAND USE APPLICATION**

**DEEMED COMPLETE**

ORIGINAL DATE SUBMITTED:

FILE NUMBER:

APPLICATION TYPE:

The Planning and Zoning Division staff deemed this application complete for the purposes of Oregon Revised Statutes (ORS) 215.427 on:

Staff Name

Title

**Comments:**

**Check one:**

The subject property is located inside an urban growth boundary. The 120-day deadline for final action on the application pursuant to ORS 215.427(1) is:

The subject property is not located inside an urban growth boundary. The 150-day deadline for final action on the application pursuant to ORS 215.427(1) is:



**Clackamas County Planning and Zoning Division  
Department of Transportation and Development**

Development Services Building  
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503-742-4500 | [zoninginfo@clackamas.us](mailto:zoninginfo@clackamas.us)  
[www.clackamas.us/planning](http://www.clackamas.us/planning)

## **NOTICE OF INCOMPLETE APPLICATION**

FILE NUMBER: Z0079-21-CP; Z0080-21-ZAP APPLICATION TYPE: Comprehensive Plan Amendment/Zone Change STAFF CONTACT: <a href="mailto:Mahrens@clackamas.us">Mahrens@clackamas.us</a> ; 503-742-4519 DATE OF APPLICATION SUBMITTAL: February 23, 2021 180 DAYS FROM DATE OF APPLICATION SUBMITTAL: August 20 <sup>th</sup> , 2021 DATE DEEMED INCOMPLETE : March 23 <sup>rd</sup> , 2021 DATE OF CERTIFIED MAILING OF THIS NOTICE: March 23 <sup>rd</sup> , 2021
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### **MISSING INFORMATION REQUIRED FOR A COMPLETE APPLICATION:**

1. Findings demonstrating adequate on-site water service. Pursuant to the requirements of Statewide Goal 6, Section 1307.07(C)(1)(c), Chapter 3, and Chapter 4 of the County's Comprehensive Plan, please submit information regarding the status and location of the following:
  - (a) Water service. Assuming a well is located on the property, please provide information as to the well's location and functionality. Additionally, please provide water rights information from the state, if available, or exemption information, if usage is under 5,000 gallons/day. Please clarify if there is more than one well that serves the property.
2. ZDO Consistency Findings
  - (a) Consistency with 1202.03 (B) through (D) for both proposed FU-10 and R30 zone change scenario
3. Comprehensive Plan Consistency Findings
  - (a) For the proposed R30 zone change option, please address consistency with Comprehensive Plan Policy 4.R.2
  - (b) The subject property is currently considered 'Future Urban Study Area' by the Comprehensive Plan and to make findings that it fits into the definition of 'Future Urban' instead (and the corresponding FU-10 zone), compliance with Policy 4.D.1 and 4.D.3 of the Comprehensive Plan would need to be addressed for a complete application. Specifically, how can the proposed land use designation change meet the definition of 'Future urban Areas' (areas are planned to be provided with public facilities, but currently lack providers of those facilities)? To the County's knowledge there has been no concept plan or master plan completed and adopted for this area, so, since the definition of 'Future Urban Area' requires that the area be planned for urban uses and public facilities/services, we would need the application to address compliance with this requirement for the conversion of 'Future Urban Study Area' to 'Future Urban Areas'. Please note that there are no adopted Damascus residential zones (see p.11-12 of application)- the Metro BLI simply represents assumptions

that were necessary for modeling future growth in the area, however, the BLI is not an acknowledged urban plan for this area.

- (c) The subject property is located within a Groundwater Limited Area per County Maps and, as such, the application would need to include consistency findings with Comprehensive Plan Policy 29.3 in Chapter 3 and with Statewide Planning Goal 5 for groundwater resources. (Areas designated as “Groundwater Limited Areas” by the Oregon Water Resources Commission are significant Goal 5 resources, pursuant to Oregon Administrative Rules Section 660-23-140.) Specifically, the application would need to provide information as to how the proposed Comp. Plan Amendment/Zone Change will not result in a detrimental impact on the long-term sustainability of the groundwater resource.
- 4. Traffic Impact Study. The traffic study did not evaluate the potential highest use, which is 11 SFR through the R30 zone change proposal, so for a complete application it would need to be revised to address traffic impacts from the zone change at its most intense possible use. To address the zone change approval criteria 1202.03(C) and (D) please also revise the traffic study to include a sight distance assessment, which is a safety concern. Specifically, if there is limited sight distance, the analysis needs to address the difference in safety concerns between an access that serves one house and one that serves 11 houses.

## **IMPORTANT**

**Your application will be deemed complete, if, within 180 days of the date the application was first submitted, the Planning Division receives one of the following:**

- 1. **All of the missing information; or**
- 2. **Some of the missing information and written notice from you (the applicant) that no other information will be provided; or**
- 3. **Written notice from you (the applicant) that none of the missing information will be provided.**

**If any one of these options is chosen within 180 days of the date of the initial submittal, approval or denial of your application will be subject to the relevant criteria in effect on the date the application was first submitted.**



## NOTICE

Your application will be considered Void if, on the 181<sup>st</sup> day after the date the application was first submitted, you have been mailed this notice and have not provided the information requested in Options 1 – 3 above. In this case, no further action will be taken on your application.

**Applicant or authorized representative, please check one of the following and return this notice to: Clackamas County Planning Division; 150 Beaver Creek Road, Oregon City, Oregon, 97045**

- I am submitting the required information (attached); or.
- I am submitting some of the information requested (attached) and no other information will be submitted; or
- I will not be submitting the requested information. Please accept the application as submitted for review and decision.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name



**Clackamas County Planning and Zoning Division  
Department of Transportation and Development**

Development Services Building  
150 Beaver Creek Road | Oregon City, OR 97045

503-742-4500 | [zoninginfo@clackamas.us](mailto:zoninginfo@clackamas.us)  
[www.clackamas.us/planning](http://www.clackamas.us/planning)

## **NOTICE OF INCOMPLETE APPLICATION**

FILE NUMBER: Z0079-21-CP; Z0080-21-ZAP  
APPLICATION TYPE: Comprehensive Plan Amendment/Zone Change  
STAFF CONTACT: [Mahrens@clackamas.us](mailto:Mahrens@clackamas.us); 503-742-4519  
DATE OF APPLICATION SUBMITTAL: February 23, 2021  
180 DAYS FROM DATE OF APPLICATION SUBMITTAL: August 20<sup>th</sup>, 2021  
DATE DEEMED INCOMPLETE : March 23<sup>rd</sup>, 2021  
DATE OF CERTIFIED MAILING OF THIS NOTICE: March 23<sup>rd</sup>, 2021

---

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2. **Some of the missing information and written notice from you (the applicant) that no other information will be provided; or**
3. **Written notice from you (the applicant) that none of the missing information will be provided.**

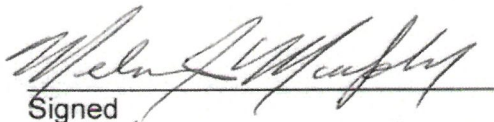
**If any one of these options is chosen within 180 days of the date of the initial submittal, approval or denial of your application will be subject to the relevant criteria in effect on the date the application was first submitted.**

NOTICE

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Applicant or authorized representative, please check one of the following and return this notice to: Clackamas County Planning Division; 150 Beavercreek Road, Oregon City, Oregon, 97045

- I am submitting the required information (attached); or.
- I am submitting some of the information requested (attached) and no other information will be submitted; or
- I will not be submitting the requested information. Please accept the application as submitted for review and decision.

  
Signed

5-26-2021  
Date

Melva I. Murphy  
Print Name





ENVIRONMENTAL  
MANAGEMENT  
SYSTEMS, INC.

OR: 503-353-9691

FAX: 503-353-9695

WA: 360-735-1109

[www.envmgtsys.com](http://www.envmgtsys.com)

4080 SE International Way  
Suite B-112  
Milwaukie, OR 97222

May 25<sup>th</sup>. 2021

Clackamas County Planning and Zoning Division  
Dept. of Transportation and Development  
Attn: Melissa Ahrens  
150 Beaver Creek Road  
Oregon City, OR 97045

REGARDING: Response to Notice of Incomplete Application  
CP Amendment/Zone Change, File # Z0079-21-CP, Z0080-21-ZAP  
(no situs) adj to 21142 SE Borges Road, Damascus, OR 97089  
T: 1S, R: 3E, Sec 28C, TL: 01200, Ac: 7.91

Dear Melissa,

The missing information required for a complete application for the Comprehensive Plan Amendment and Zone Change Application submitted by Melva Murphy on February 23<sup>rd</sup>, 2021 is outlined below. Please also find attached an email correspondence with the Oregon Department of Water Resources District 20 Water Master, results of a flow test conducted on the existing well, and a revised Traffic Impact Study.

**1. Findings demonstrating adequate on-site water services.**

Water will be provided by a well located on the adjoining property to the north, 21142 SE Borges Rd, T: 1S, R: 3E, SEC: 28C, TL: 1100. The location of the well is shown on the site plan that was included with the Comprehensive Plan Amendment / Zone Change application (HCA Development Site Plan, dated 02/22/2021).

On April 12<sup>th</sup>, 2021, a flow test on the well was conducted by Steve's Pump Service Inc. and the flow rate was found to be 16 gallons per minute. It was recommended that the water line to the new home be accessible in case a storage or booster system is needed in the future. Attached are the results of the flow test from Steve's Pumping Service

Environmental Management Systems, Inc. (EMS) has contacted the Oregon Water Resources Department for information about water rights or exemption information for the well. According to the District 20 Watermaster, Amy Landvoigt, the proposal likely follows under exempt use for the well. Please see the attached email between Ms. Landvoigt and Emma Eichhorn from EMS.



## **2. ZDO Consistency Findings**

### *Zoning and Development Ordinance 1202.03(B)*

The proposed development of a single family residence does not have a need for public sanitary sewer, or surface water management, or potable water. Onsite wastewater treatment is feasible (see Clackamas County SE044820) and the new homesite will obtain water from a well on the adjacent property to the north (21142 SE Borges Rd). Surface water can be managed onsite without causing flooding on the site or neighboring properties. A traffic impact study prepared by Clemow and Associates has concluded that the existing transportation system is adequate and will remain adequate with approval of either the FU-10 or R-30 zone change, and that the safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.

## **3. Comprehensive Plan Consistency Findings**

### *Comprehensive Plan Policy 4.R.2*

The most appropriate zone for the site under policy 4.R.2 is R-30. Much of the site is on slopes over 20 percent, and some steep slopes might be subject to slippage. Land with slopes of 20 percent and over shall be considered for R-10 through R-30. Areas in close proximity to trip generators such as jobs, shopping centers, or cultural activities shall be considered for smaller zoning districts. The city center of Damascus is approximately 2.25 miles from the site, so the site is not in close proximity to trip generators, or within walking distance to public transit. The nearest public transit stop is near 172<sup>nd</sup> and Sunnyside Rd, which is almost 3 miles from the site. Further, the site is located in an area which has historically developed on large lots where little vacant land exists and it should remain zoned consistent with the existing development pattern.

### *Comprehensive Plan Policy 4.D.1 and 4.D.3*

Development of the planning process required by 4.D.1 is the responsibility of Clackamas County, and there has been no concept plan or master plan completed and adopted for this area. As discussed on pages 6 and 7 of NARRATIVE SUPPORTING REQUEST FOR PERMIT TO BUILD A HOME AND IN THE ALTERNATIVE FOR PLAN AMENDMENT / ZONE CHANGE, dated 24 February 2021, Goal 2 (Land Use Planning) of the Statewide Planning Goals is satisfied so long as the county provides affected governmental units with notice and an opportunity to express comments and complies with any directly applicable Metro requirements. Metro policies apply to the UGB within which the subject property is located. The Metro functional plan (3.07.1130) states:

“Until land use regulations that comply with section 3.07.1120 become applicable to the area, the city or county responsible for planning the area added to the UGB shall not adopt or approve a land use regulation or zoning map amendment that allows higher residential density in the area than allowed by regulations in effect at the time of addition of the area to the UGB.”

The proposal is to convert to zoning designation of the lot to FU-10, which would allow the construction of one single family dwelling. This does not allow a dwelling

density that is greater than that which was allowed at the time the property was added to the UGB.

*Comprehensive Plan Policy 29.3*


The subject property is in a groundwater limited area, and Policy 29.0 in Chapter 3 of the County's Comprehensive Plan addresses the protection of groundwater supplies in all rural, agricultural, and forest areas. The site is within the UGB, so by the definition this policy does not apply. If the proposed zone change to FU-10 or R-30 are approved, regulations are required of all development and land divisions in areas classified by the State of Oregon as a groundwater limited area, critical groundwater area or other area where new groundwater appropriations are restricted by the State of Oregon, to promote long-term sustainability of groundwater supplies. The site will be served by an existing on well on the adjacent property. As mentioned previously, Goal 11 requires that urban public facilities be planned in UGBs at levels suitable for needs. At present, there is no need for a public water service and no plan to provide them, however that might be necessary for future development as a means to protect the groundwater supply.

**4. Traffic Impact Study**

A traffic impact study has been conducted that addresses the highest potential use, which is 11 single family residences through the R30 zone change proposal. A sight distance assessment has also been conducted to evaluate safety concerns for the access. Please see the enclosed Traffic Impact Study, prepared by Clemow and Associates (May 24<sup>th</sup>, 2021). The report concluded that the proposed rezoning will not have significant transportation system impacts, and that Borges Rd and the nearby intersections are considered relatively safe.

The information and statements in this letter are true and accurate to the best our knowledge. Neither Environmental Management Systems, Inc. nor the undersigned have any economic interest in the project. If you have any questions or need additional information, please contact me at 503-353-9691.

Sincerely,



Emma Eichhorn, REHS  
Environmental Management Systems Inc.

**Enclosed:**

Email correspondence w/ Amy Landvoigt, District 20 Watermaster  
Flow test and recommendations from Steve's Pumping Service Inc.  
Traffic Impact Study, Clemow & Associates, Revised May 24, 2021

## Emma Eichhorn

---

**From:** LANDVOIGT Amy J \* WRD <Amy.J.Landvoigt@oregon.gov>  
**Sent:** Wednesday, May 12, 2021 11:15 AM  
**To:** Emma Eichhorn  
**Subject:** RE: Exemption Information

Hi Emma,

Thanks! That helps me. I emailed the contact at the county letting her know that this likely falls within the allowed exempt use from a well. If my email to her does not serve as proof then we'll figure out another way to get it moving forward.

Thanks,

Amy Landvoigt  
Oregon Water Resources Department  
District 20 Watermaster  
(503) 312-1743  
10722 SE Hwy 212  
Clackamas, OR 97015



---

**From:** Emma Eichhorn <Emma@envmgtsys.com>  
**Sent:** Wednesday, May 12, 2021 9:34 AM  
**To:** LANDVOIGT Amy J \* WRD <Amy.J.Landvoigt@oregon.gov>  
**Subject:** RE: Exemption Information

Hi Amy,

The well currently serves a single family residence. It is regular household use. There is a lawn and maybe a small garden that they might irrigate, but it is not a farm or anything so I don't think it is enough to put then over 5,000 gallons per day. The owner would like to build another house on the lot to the south which they also own, and use the existing well to serve the new house.

Thank you for your help!  
Emma

Emma Eichhorn, REHS  
Environmental Management Systems, Inc.  
[emma@envmgtsys.com](mailto:emma@envmgtsys.com)  
503-353-9691  
4080 SE International Way Suite B112  
Milwaukie, OR 97222



# STEVE'S PUMP SERVICE INC.

PO BOX 547  
BORING, OR 97009  
503-658-3051 FAX 503-658-6854  
CCB#38208

email: [stevespumpservice@comcast.net](mailto:stevespumpservice@comcast.net)

## INVOICE

Invoice Number: 2104074  
Invoice Date: Apr 14, 2021  
Page: 1

**Due upon receipt**

Sales Rep: DN

County: C

**Bill To:**

Murphy Melva  
21142 SE Borges Road  
Damascus, OR 97089

Well site: 21142 SE Borges Road  
Boring, OR 97009

5038306734 Brandon  
5038032674 Melva  
[mmelvajeana@aol.com](mailto:mmelvajeana@aol.com)

Quantity	Description	Unit Price	Amount
1.50	4/12/21 Dan Run quick flow test. Pump puts out 16 gpm. Recommend customer have water line accessible in new home in case a storage/booster system is needed in the future. Labor	150.00	225.00

**Labor Warranty Info:** Repairs: 90 days - New Installs: 1 year

DUE ON RECEIPT - LATE CHARGE of 5% on unpaid balance.  
We gladly accept VISA, MC, & Discover. A 2% convenience fee will be charged.

It was a pleasure to be of service. Please call if you have any further questions.

**Due upon receipt**

<b>TOTAL INVOICE</b>	\$ 225.00
LESS DEPOSIT:	0.00
<b>AMOUNT DUE:</b>	<b>\$ 225.00</b>



August 4, 2020, **Revised May 24, 2021**

Clackamas County Department of Transportation and Development  
Attention: Christian Snuffin and Melissa Ahrens  
150 Beaver Creek Road  
Oregon City, Oregon 97045

Re: **Melva Murphy Comprehensive Plan Map Amendment and Zone Change – Clackamas County, Oregon**  
*Traffic Impact Study (TIS)*

Clackamas County File Numbers Z0079-21-CP and Z0080-21-ZAP  
C&A Project Number 20200603.00

Dear Mr. Snuffin and Ms. Ahrens,

This Traffic Impact Study (TIS) supports a proposed Clackamas County Comprehensive Plan Map Amendment and Zone Change for the subject property contemplated during the March 3, 2020 Pre-Application conference (File Number ZPAC0017-20). The following items are specifically addressed:

1. Property Description and Proposed Land Use Actions
2. Trip Generation
3. Safety Analysis
4. Sight Distance Analysis
5. Summary

## **1. PROPERTY DESCRIPTION AND PROPOSED LAND USE ACTIONS**

The subject property is located south of 21142 SE Borges Road, in the unincorporated city of Damascus, Oregon, and is described as tax lot 1200 on Clackamas County Assessors Map 13E28C. The property is 7.89 acres in size and is currently developed with one building (a barn) with one direct access to SE Borges Road. The property location is illustrated in the attached site plan.

The subject property is located within the Metro Urban Growth Boundary (UGB). Proposed actions include a land use designation change from Clackamas County Forest (F) to Low-Density Residential (LDR) or Future Urban (FU), with a corresponding zone designation change from Timber (TBR) to Urban Low-Density Residential (R-30) or Future Urban-10 (FU-10) allowing for the construction of up to 11 single-family residences.



Per Clackamas County Zoning and Development Ordinance (ZDO) 1202.03(C) and (D), a transportation analysis is necessary to address Transportation Planning Rule (TPR) criteria outlined in Oregon Administrative Rule (OAR) 660 012-0060. Separately, Clackamas County staff have also requested:

- A safety analysis of the adjacent segment of Borges Road and the nearest major intersection(s).
- A sight distance analysis at the property access to Borges Road.

## 2. TRIP GENERATION

The Comprehensive Plan Amendment and Zone Change land use actions require a TIS to address TPR requirements, including a comparison of reasonable worst-case development scenarios in both the proposed and current zone designations. Scenario assumptions are as follows:

TABLE 1 – REASONABLE WORST-CASE DEVELOPMENT ASSUMPTIONS			
Zone Designation	Property Size	Reasonable Worst-Case Development	
		Assumption	Size
<b>Proposed</b>			
Urban Low-Density Residential (R-30) or Future Urban 10-Acre (FU-10)	7.89 Acres	Per Clackamas County ZDO Section 316, up to 11 single-family residential dwellings are allowed. Assume 11 dwellings.	11 DUs
<b>Current</b>			
Timber (TBR)	7.89 Acres	Per Clackamas County ZDO Section 406, only farm and forest uses are allowed, including farm use as defined in ORS 215.203 and marijuana production consistent with ZDO Section 841. Assume indoor marijuana production use, with two (2) employees generating 2 PM peak hour trips and 4 daily tips.	2 Employees

For the proposed zone designation, reasonable worst-case development trip generation is estimated using the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, 10<sup>th</sup> Edition data. For the current zone designation, trip generation is conservatively assumed to be two (2) site exiting trips during the PM peak hour. Trip generation is as follows:

TABLE 2 – REASONABLE WORST-CASE DEVELOPMENT TRIP GENERATION						
Land Use	ITE Code	Size	Daily Trips	PM Peak Hour Trip Generation		
				Enter	Exit	Total
<b>Proposed R-30 or FU-10 Zone Designation</b>						
Single-Family Detached Housing	210	11 DUs	136	7	5	12
<b>Current TBR Zone Designation</b>						
Indoor Marijuana Production	—	—	(4)	(0)	(2)	(2)
<b>Change in Trip Generation with Zone Change</b>			<b>132</b>	<b>7</b>	<b>3</b>	<b>10</b>

As identified in the table above, proposed R-30 or FU-10 zone designation development generates an additional 132 daily and 10 PM peak hour trips over TBR zone designation development.

As identified in the Clackamas County Roadway Standards, Section 295.2.b – *Requirement for a Traffic Impact Study*, “A TIS to address traffic capacity is not required where the proposed development will generate less than twenty vehicle trips in any peak hour unless to address specific safety issues identified by the County. The need for a TIS is at the discretion of the Road Official.”

While not directly applicable, it is further noted the Oregon Highway Plan, Action 1F.5, states:

*“For purposes of evaluating amendments to transportation system plans, acknowledged comprehensive plans and land use regulations subject to OAR 660-12-0060... [t]he threshold for a small increase in traffic between the existing plan and the proposed amendment is defined in terms of the increase in total average daily trip volumes as follows:*

- *Any proposed amendment that does not increase the average daily trips by more than 400...”*

Noting the proposed land use action generates fewer than 10 additional PM peak hour trips and 400 average daily trips, any transportation system impacts resulting from the “small increase” in traffic are considered *de minimus*, and a TIS to address traffic capacity is not necessary for TPR evaluation purposes.

### **3. SAFETY ANALYSIS**

Crash data for the entire length of Borges Road, including the terminal intersections, were obtained from the Oregon Department of Transportation (ODOT) for five years from January 1, 2015 through December 31, 2019. Crash locations are shown in Figure 1 and detailed crash data is attached for reference.

Based on the crash data, there are no recorded crashes near the subject property and there are very few crashes for the entire study period, further noting there have been no recorded crashes during the last three years. As such the roadway and intersections are considered relatively safe and no further evaluation of safety deficiencies is necessary.

### **4. ACCESS AND ROADWAY DESCRIPTION**

The existing property access is located on the south side of Borges Road. In this location, there are several horizontal curves on Borges Road, further noting the property access is located on the outside of a large radius curve. There is no significant vertical curvature; however, there is an approximate 4% downgrade on Borges Road from west to east. The access approach has an approximate 5% upgrade.

The posted speed on Borges Road is 40 MPH.

The property access location is depicted in the attached Figures.

## 5. SIGHT DISTANCE ANALYSIS

### 1. Description

Intersection sight distance is evaluated based on requirements identified in the *2020 Clackamas County Roadway Standards* Section 240 – Sight Distance and the current American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets*.

**Intersection sight distance (ISD)** is the distance a motorist on the minor road (or site access) can see approaching vehicles on the major road before their line of sight is blocked by an obstruction near the intersection. The driver of a vehicle approaching or departing from a stopped position at an intersection should have an unobstructed view of the intersection, including any traffic control devices, and sufficient lengths along the intersecting roadway to permit the driver to anticipate and avoid collisions. Examples of obstructions include crops, hedges, trees, parked vehicles, utility poles, or buildings. Additionally, the horizontal and vertical alignment of the roadway approaching the intersection can reduce the sight triangle of vehicles navigating the intersection.

It is important for approaching motorists on the major road to see side street vehicles, and for minor road motorists to see approaching major road vehicles before entering the intersection.

**Stopping sight distance (SSD)** is the necessary distance for drivers on the major road traveling at or near a particular speed to stop before reaching a stationary object in their path to avoid a collision. This may require a major road vehicle to stop or slow to accommodate the maneuver by a minor road vehicle. Although sight distances exceeding the SSD are desirable, in all cases for safe operations, if the ISD cannot be provided for the minor roadway/access, SSD should be provided for the major roadway.

### 2. Analysis

Per *2020 Clackamas County Roadway Standards* Section 250.1.2.c.1 the roadway design speed is assumed to be the existing posted regulatory speed which is 40 MPH.

Per *2020 Clackamas County Roadway Standards* Section - 240.4, ISD was measured from a driver's eye height of 3.5 feet and 14.5 feet from the edge of the nearest travel lane to an object height of 3.5 feet above the roadway surface, consistent with Clackamas County Standard Drawing T300 which is attached for reference. SSD was measured from a driver's eye height of 3.5 feet to an object height of 2.0 feet above the roadway surface.

Because there is a constant 4% downgrade on Borges Road (from west to east) at the access approach, the intersection sight distance requirements were adjusted by multiplying the requirement by the appropriate AASHTO adjustment factor. In this case, 1.1 for a -4% grade and 0.9 for a +4% grade.

In the project vicinity, sight distance is limited by horizontal roadway curvature both east and west of the access and by vegetation. All sight distance field measurements are shown in attached Figures 2 and 3 and are summarized in the following table.

TABLE 3 – SIGHT DISTANCE – 21142 SE BORGES ROAD						
Movement Direction	Sight Direction	Roadway Speed (MPH)	Sight Distance			
			Recommended (ft)		Available (ft)	Recommended Met?
			0% Grade	±4% Grade		
<b>Intersection Sight Distance (ISD)</b>						
Left-Turn from Stop (NB Site to WB Borges)	To the West	40	445	490 <sup>1</sup>	515	Y
	To the East	40	385	350 <sup>2</sup>	395	Y
Right-Turn from Stop (NB to EB Borges)	To the West	40	385	425 <sup>1</sup>	515	Y
Left-Turn from Major Road (WB Borges to SB Site)	To the West	40	325	360 <sup>1</sup>	360	Y
<b>Stopping Sight Distance (SSD)</b>						
Westbound Borges	To the West	40	305	275 <sup>2</sup>	330	Y
Eastbound Borges	To the East	40	305	335 <sup>1</sup>	395	Y

<sup>1</sup> Sight distance requirement has been multiplied by 1.1 to adjust for a -4% grade.

<sup>2</sup> Sight distance requirement has been multiplied by 0.9 to adjust for a +4% grade.

As identified in the table above, and Figures 2 - 3, ISD and SSD are met for all turning movements. It is further noted that vegetation should be maintained in the sight triangles to preserve ISD.

## 6. SUMMARY

Based on materials presented in this TIS for the proposed Clackamas County Comprehensive Plan Map Amendment and concurrent Zone Change, the proposed R-30 or FU-10 zone designation development, the proposed rezoning will not have a significant transportation system impact and additional transportation analysis is not necessary to address Transportation Planning Rule (TPR) criteria outlined in Oregon Administrative Rule (OAR) 660 012-0060 or Clackamas County Zoning and Development Ordinance (ZDO) criteria.

Based on the safety analysis contained in the letter, Borges Road and the nearby intersections are considered relatively safe, and no further evaluation of safety deficiencies is necessary.

Based on the sight distance analysis contained in this letter, intersection and stopping distance requirements are met for all turning movements. It is further noted that vegetation should be maintained in the sight triangles to preserve intersection sight distance.

Sincerely,

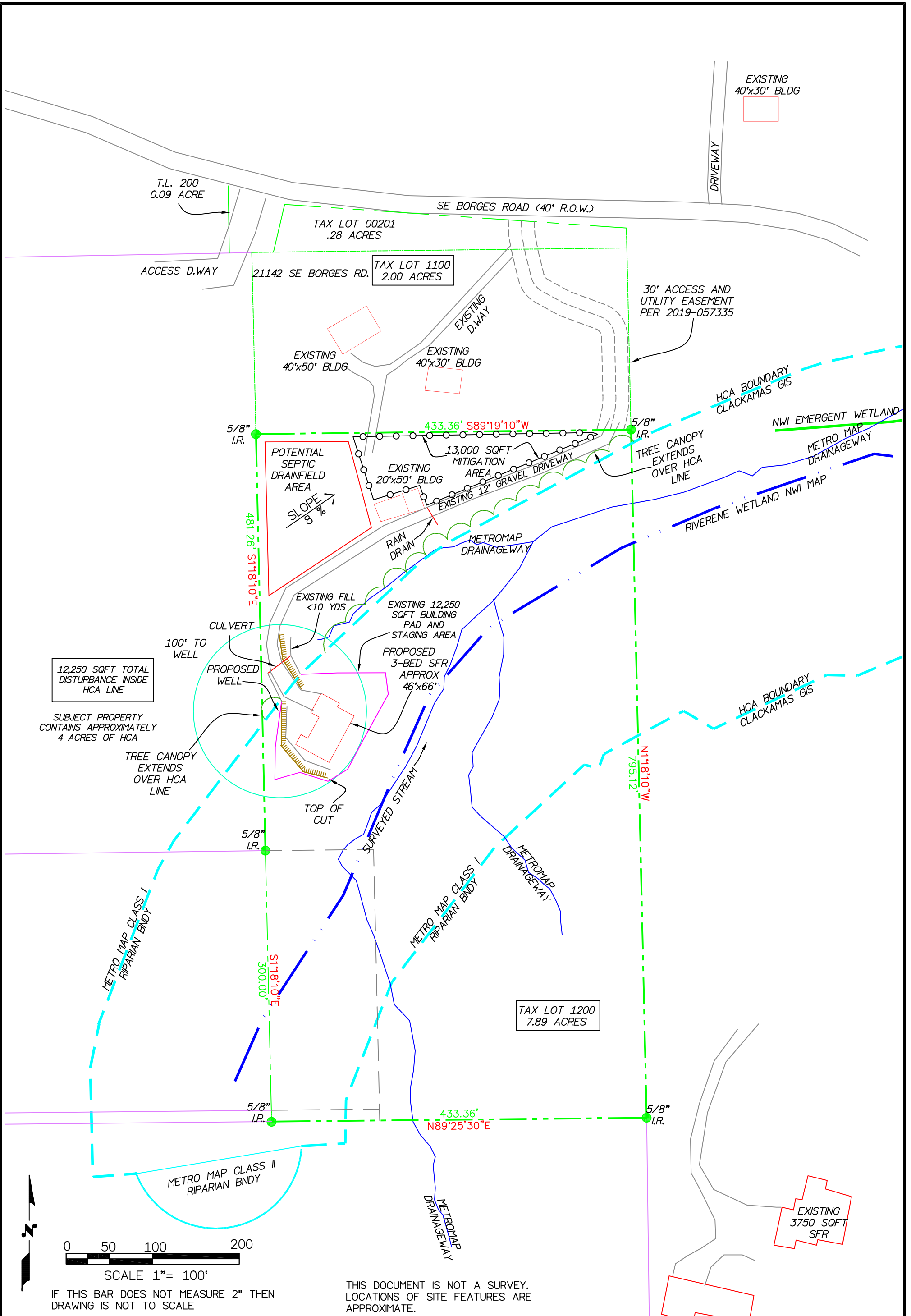


Christopher M. Clemow, PE, PTOE  
Transportation Engineer

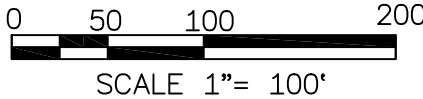


Attachments: Site Plan  
Crash Data  
Clackamas County Standard Drawing T300  
Figure 1 – Crash Locations and History  
Figures 2 and 3 – Intersection and Stopping Sight Distance

c: Emma Eichorn  
Wendie Kellington



12,250 SQFT TOTAL DISTURBANCE INSIDE HCA LINE  
 SUBJECT PROPERTY CONTAINS APPROXIMATELY 4 ACRES OF HCA



IF THIS BAR DOES NOT MEASURE 2" THEN DRAWING IS NOT TO SCALE

THIS DOCUMENT IS NOT A SURVEY. LOCATIONS OF SITE FEATURES ARE APPROXIMATE.

4080 SE International Way  
 Suite B112  
 Milwaukie, OR 97222

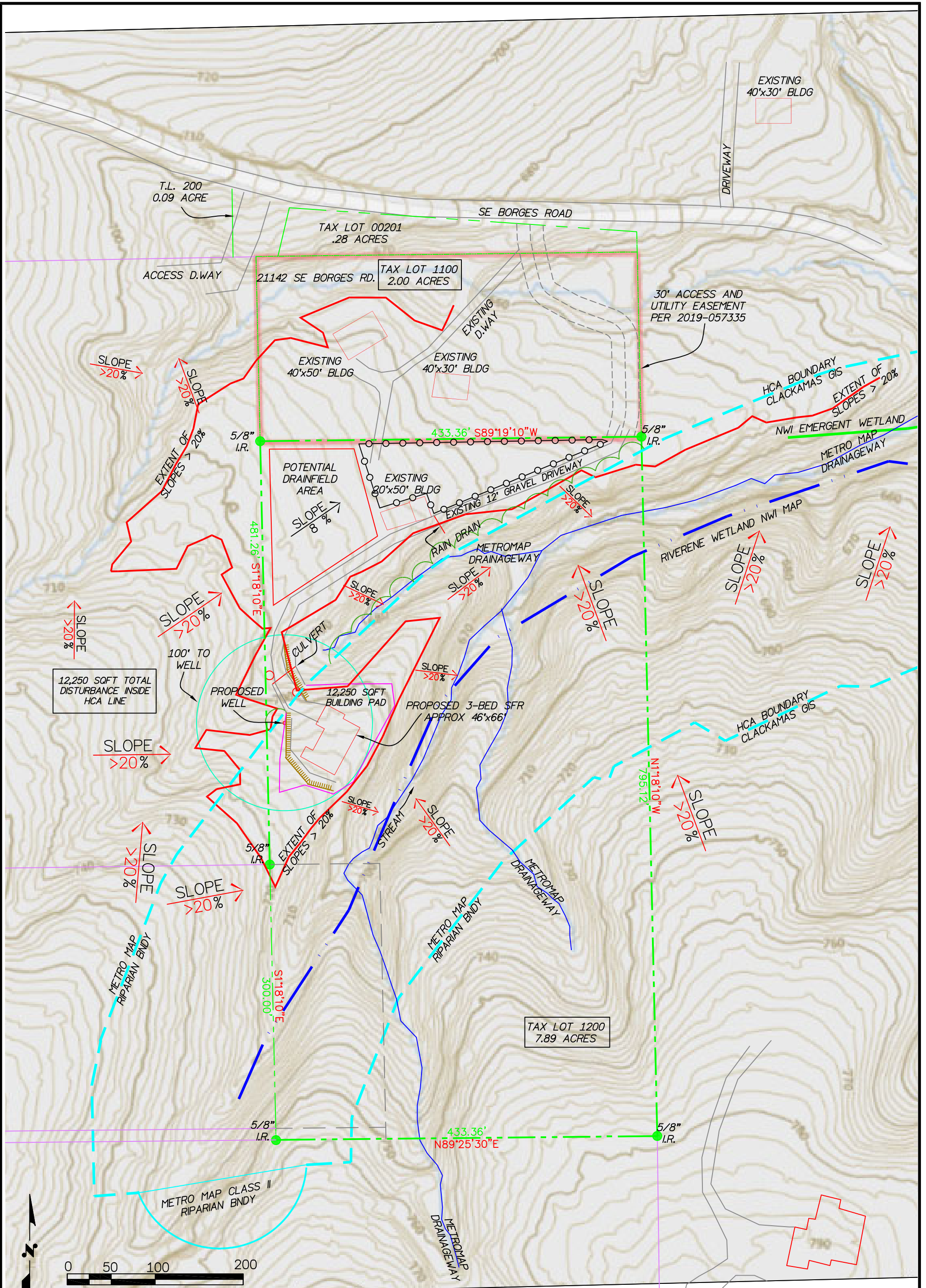
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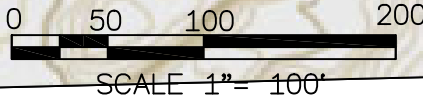
**EMS**

CHECKED BY:	Melva Murphy (19-0165)	1 of 4
DRAWN BY:	T.1S, R.3E, Sec.28C, T.L. 01200	1-31-2020
	Site Plan- Overview	Scale: 1" = 100'





12,250 SQFT TOTAL DISTURBANCE INSIDE HCA LINE



IF THIS BAR DOES NOT MEASURE 2" THEN DRAWING IS NOT TO SCALE

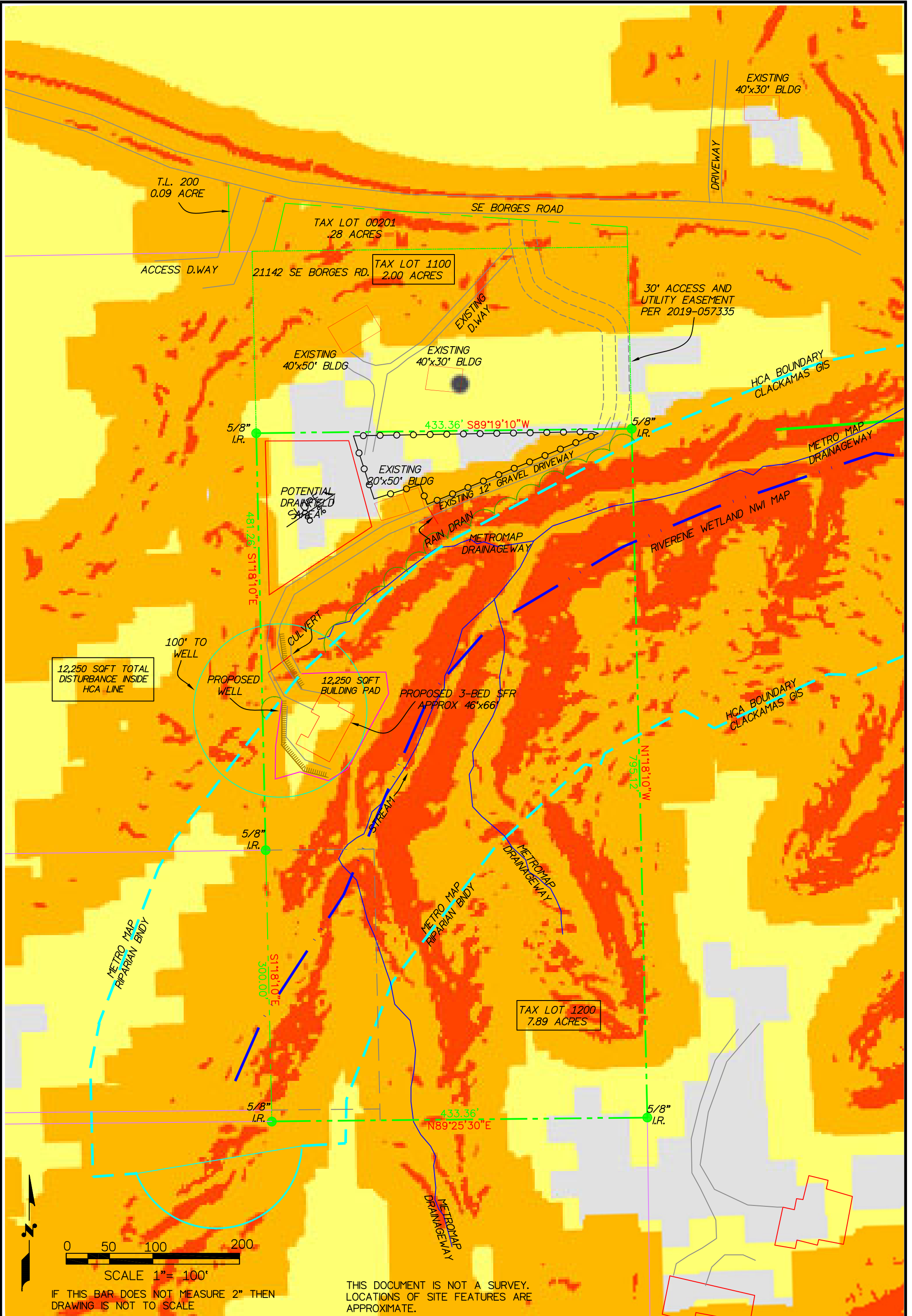
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CHECKED BY:	Melva Murphy (19-0165)	2 of 4
DRAWN BY:	T.1S, R.3E, Sec.28C, T.L. 01200	1-31-2020
	Site Plan- Contours and Slopes	Scale: 1"= 100'



12,250 SQFT TOTAL DISTURBANCE INSIDE HCA LINE

100' TO WELL

12,250 SQFT BUILDING PAD

PROPOSED 3-BED SFR APPROX 46'x66'

TAX LOT 1200 7.89 ACRES



SCALE 1" = 100'

IF THIS BAR DOES NOT MEASURE 2" THEN DRAWING IS NOT TO SCALE

THIS DOCUMENT IS NOT A SURVEY. LOCATIONS OF SITE FEATURES ARE APPROXIMATE.

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CHECKED BY:

DRAWN BY:

Melva Murphy (19-0165)

T.1S, R.3E, Sec.28C, T.L. 01200

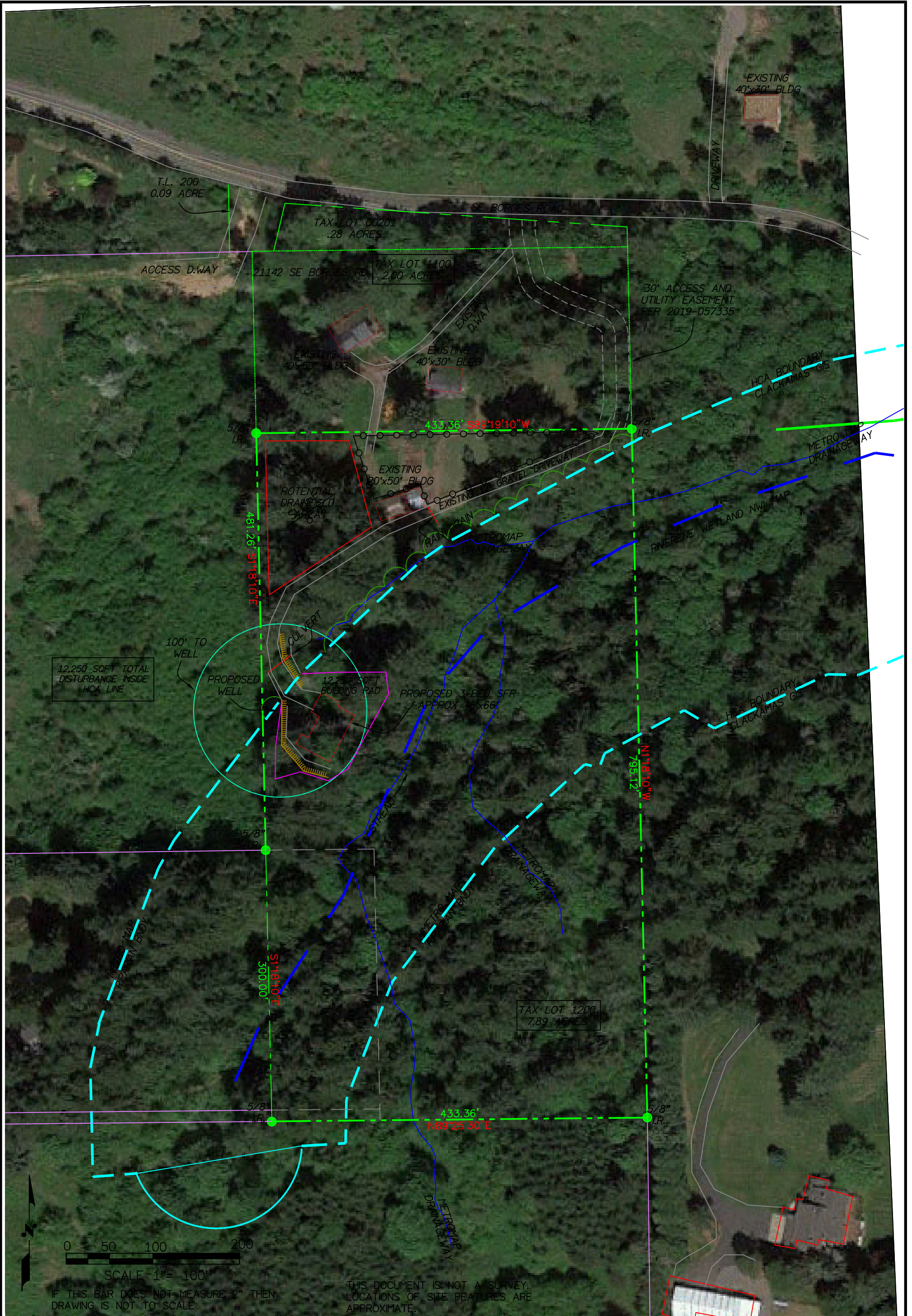
Site Plan- Slido Map

3 of 4

1-31-2020

Scale: 1" = 100'





12,250 SQFT TOTAL DISTURBANCE INSIDE HCA LINE

100' TO WELL

PROPOSED WELL

12,250 SQFT BUILDING PAD

PROPOSED 3-BED SFR APPROX 48x66'

TAX LOT 1200  
7.89 ACRES

0 50 100 200

SCALE 1" = 100'

IF THIS BAR DOES NOT MEASURE 2" THEN DRAWING IS NOT TO SCALE

THIS DOCUMENT IS NOT A SURVEY. LOCATIONS OF SITE FEATURES ARE APPROXIMATE.

CHECKED BY:

Melva Murphy (19-0165)

4 of 4

DRAWN BY:

T.1S, R.3E, Sec.28C, T.L. 01200

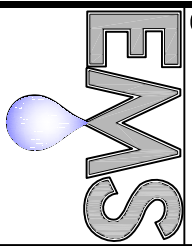
1-31-2020

Site Plan- Aerial

Scale: 1" = 100'

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**CRASH HISTORY BY LOCATION (2015 - 2019)**

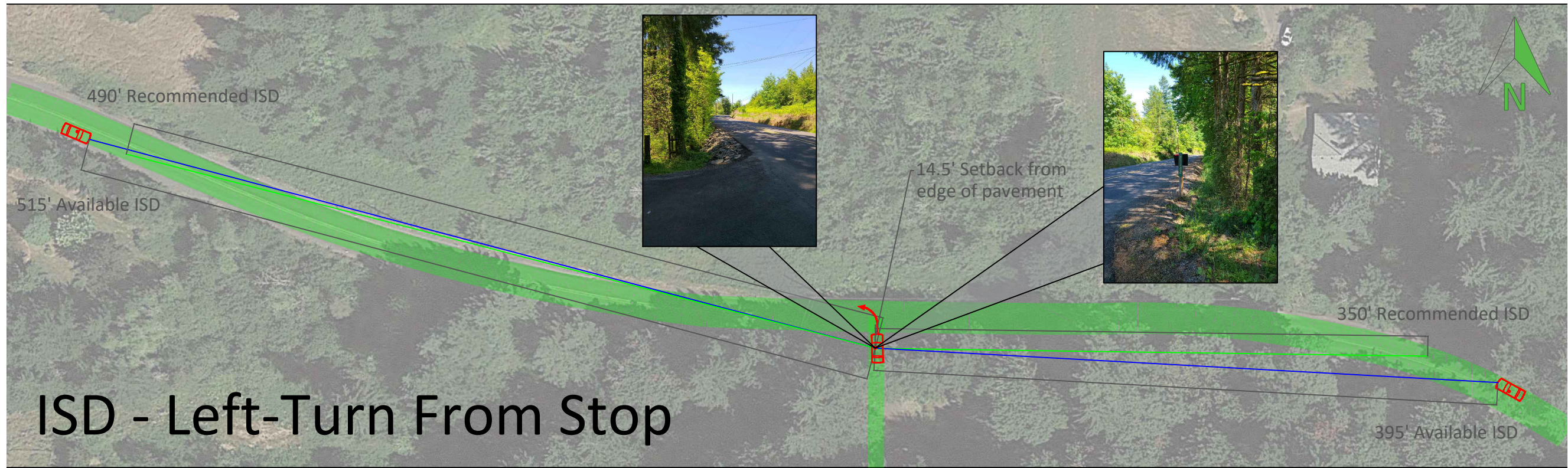
Melva Murphy Comprehensive Plan Amendment and Zone Change, Damascus (Clackamas County), Oregon

Project No. 20200603.00

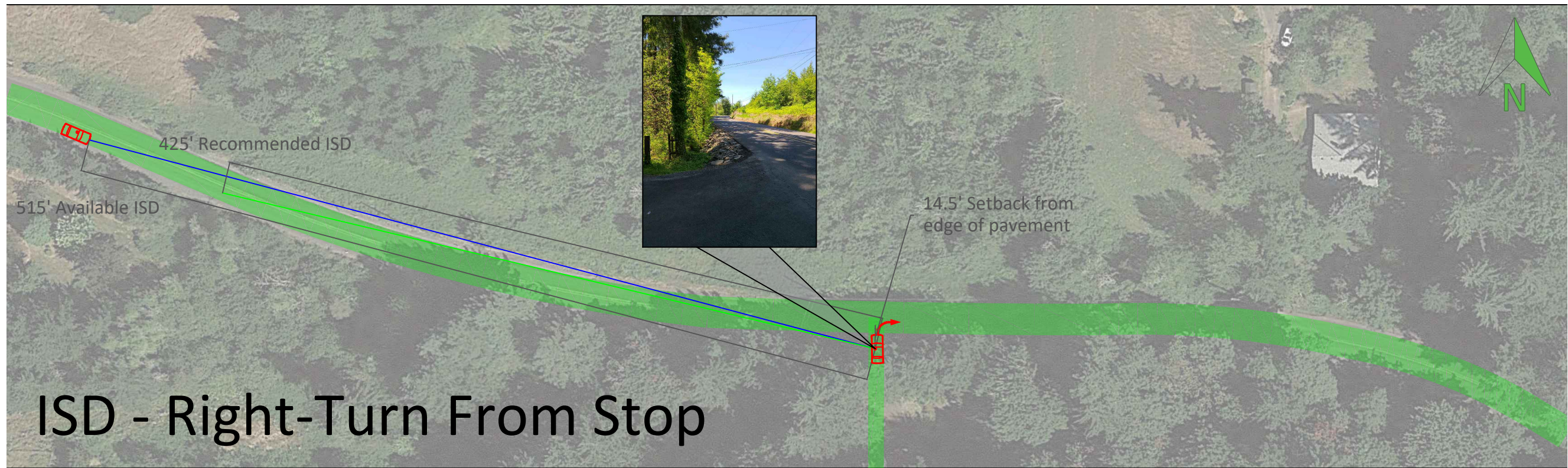
**FIGURE**

**1**



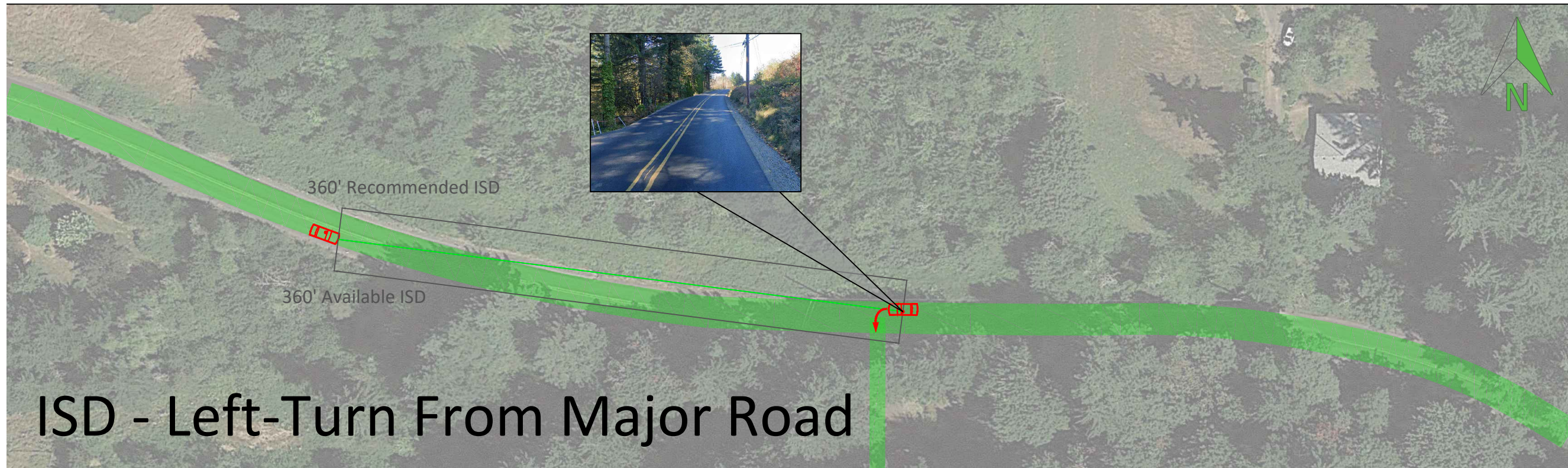


ISD - Left-Turn From Stop



ISD - Right-Turn From Stop

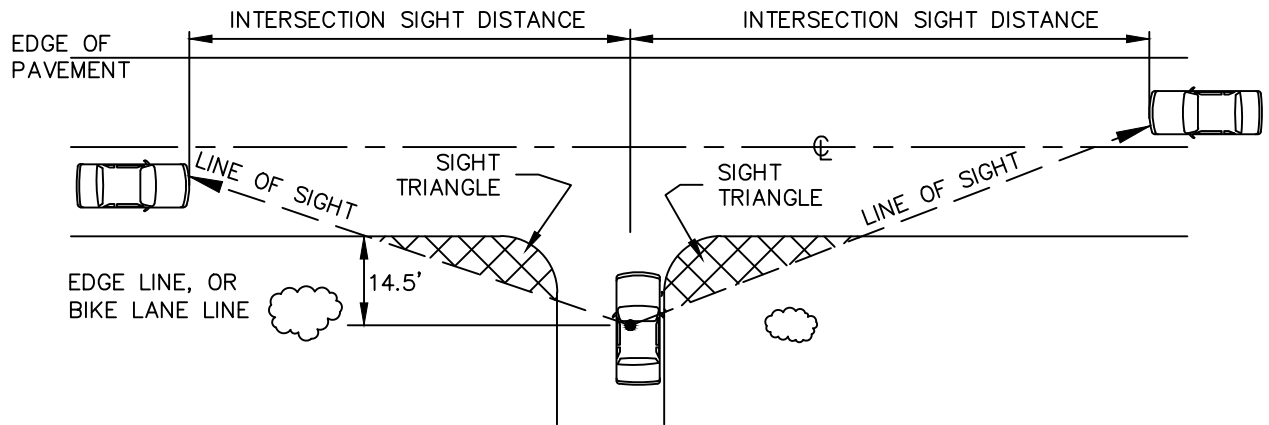




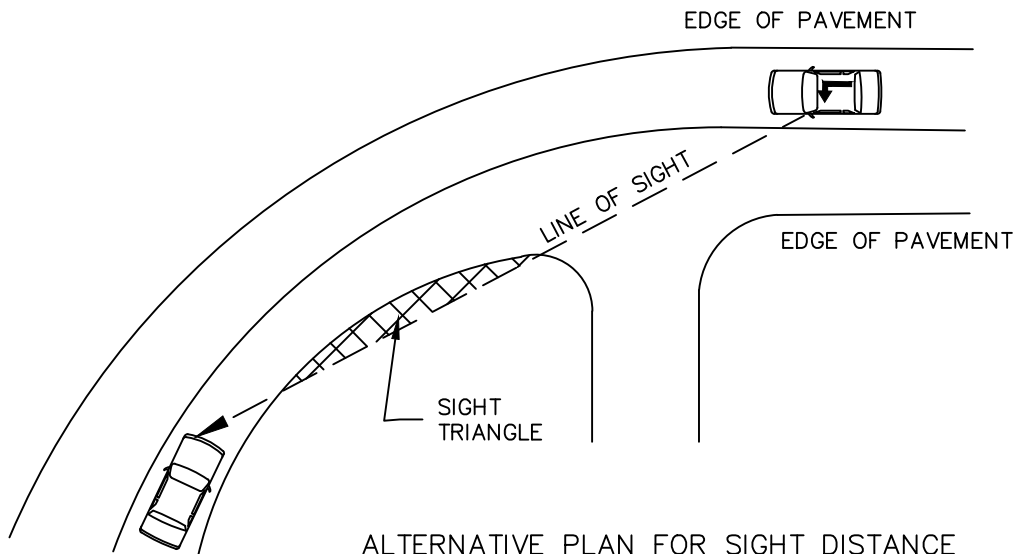









TYPICAL PLAN FOR SIGHT DISTANCE



ALTERNATIVE PLAN FOR SIGHT DISTANCE

NOTES

1. THIS DETAIL DOES NOT ADDRESS VERTICAL SIGHT DISTANCE REQUIREMENTS.
2. SIGHT DISTANCE IS GENERALLY MEASURED 14.5' FROM THE EDGE OF THE TRAVEL LANE.
3. REFER TO SECTION 240 FOR MORE INFORMATION OR EXCEPTIONS.
4. VISUAL OBSTRUCTIONS WITHIN THE SIGHT DISTANCE TRIANGLE SHALL BE REMOVED.

REVISION	DATE	BY	DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT	APPROVAL DATE: 2/1/13	SCALE: N.T.S.	STANDARD DRAWING
TXT, NOTES UPDATE	1/30/13	RN				
			150 BEAVERCREEK ROAD OREGON CITY, OR 97045		<b>HORIZONTAL SIGHT DISTANCE ALONG COUNTY ROADWAYS</b>	<b>T300</b>



**Planning and Zoning**  
**Department of Transportation and Development**  
 Development Services Building  
 150 Beaver Creek Road | Oregon City, OR 97045  
 503-742-4500 | zoninginfo@clackamas.us  
 www.clackamas.us/planning

**STAFF USE ONLY**

RECEIVED

Feb 23 2021

Clackamas County  
 Planning & Zoning Division

Staff Initials: \_\_\_\_\_ File Number: \_\_\_\_\_

Land use application for:

**COMPREHENSIVE PLAN MAP AMENDMENT  
 & ZONE CHANGE**

**Application Fee: \$7,790**

(+ \$120 if an expanded notification area is required by ZDO Section 1307)

APPLICANT INFORMATION			
Applicant name: Melva Murphy	Applicant email: mmelvajejan@aol.com	Applicant phone: 503-803-2674	
Applicant mailing address: 21142 SE Borges Rd	City: Damascus	State: OR	ZIP: 97089
Contact person name (if other than applicant): Emma Eichhorn	Contact person email: emma@envmgtsys.com	Contact person phone: 503-353-9691	
Contact person mailing address: 4080 SE International Way Suite B112	City: Milwaukie	State: OR	ZIP: 97222

PROPOSAL	
Brief description of proposal: Construction of single family residence, private well, and onsite wastewater treatment system	Pre-application conference file number: <b>ZPAC0017-20</b>

SITE INFORMATION		
Site address: No situs, adjacent to 21142 SE Borges Rd, Damascus, OR 97089	Comprehensive Plan designation: Natural Resource	Zoning district: TBR
Map and tax lot #: Township: <u>1S</u> Range: <u>3E</u> Section: <u>28C</u> Tax Lot: <u>1200</u> Township: _____ Range: _____ Section: _____ Tax Lot: _____ Township: _____ Range: _____ Section: _____ Tax Lot: _____	Land area: 7.89 Ac	
Adjacent properties under same ownership: Township: <u>1S</u> Range: <u>3E</u> Section: <u>28C</u> Tax Lot: <u>1100</u> Township: _____ Range: _____ Section: _____ Tax Lot: _____		

Printed names of all property owners: <i>Melva S Murphy</i>	Signatures of all property owners: <i>Melva S Murphy</i>	Date(s): 2-20-21
I hereby certify that the statements contained herein, along with the evidence submitted, are in all respects true and correct to the best of my knowledge.		
Applicant signature: <i>Melva S Murphy</i>		Date: 2-20-21



## A. Complete a pre-application conference:

You must attend a pre-application conference with Planning and Zoning staff before filing this application. [Information about the pre-application conference](#) process and a request form are available from the Planning and Zoning website.

## B. Review applicable land use rules:

This application is subject to the provisions of [Section 1202, Zone Changes](#) of the [Clackamas County Zoning and Development Ordinance](#) (ZDO).

It is also subject to the ZDO's definitions, procedures, and other general provisions, as well as to the specific rules of the subject property's zoning district and applicable development standards, as outlined in the ZDO.

## C. Turn in the following:

- Complete application form:** Respond to all the questions and requests in this application, and make sure all owners of the subject property sign the first page of this application. Applications without the signatures of *all* property owners are incomplete.
- Application fee:** The cost of this application is **\$7,790, plus a \$120 notification surcharge if an expanded notification area is required by ZDO Section 1307**. Payment can be made by cash, by check payable to "Clackamas County", or by credit/debit card with an additional card processing fee using the [Credit Card Authorization Form](#) available from the Planning and Zoning website. Payment is due when the application is submitted. Refer to the FAQs at the end of this form and to the adopted [Fee Schedule](#) for refund policies.
- Vicinity map:** Provide a map of the area around the property, drawn to scale, that shows the uses and location of improvements on adjacent properties and properties across any road.
- Site plan:** Provide a site plan (also called a plot plan). A [Site Plan Sample](#) is available from the Planning and Zoning website. The site plan must be accurate and drawn to-scale on paper measuring no larger than 11 inches x 17 inches. The site plan must illustrate all of the following (when applicable):
  - Lot lines, lot/parcel numbers, acreage/square footage of lots, and contiguous properties under the same ownership;
  - All existing and proposed structures, fences, roads, driveways, parking areas, and easements, each with identifying labels and dimensions;
  - Setbacks of all structures from lot lines and easements;
  - Significant natural features (rivers, streams, wetlands, slopes of 20% or greater, geologic hazards, mature trees or forested areas, drainage areas, etc.); and
  - Location of utilities, wells, and all onsite wastewater treatment facilities (e.g., septic tanks, septic drainfield areas, replacement drainfield areas, drywells).
- Service Feasibility Determinations:** Request that the property's water provider, sanitary sewer provider, and surface water management authority, as applicable, each complete a [Preliminary Statement of Feasibility](#) and include those completed statements with your application. If the proposed development will be served by an onsite wastewater treatment system (e.g., a septic system), include an approved Site Evaluation or Authorization Notice from the [Septic & Onsite Wastewater Program](#) attesting to the feasibility of your proposal.
- Transportation impact study:** Refer to the information provided at the pre-application conference regarding the need for a transportation impact study. Include a copy of any required study with your application submittal.
- Any additional information or documents advised of during the pre-application conference**



**D. Answer the following questions:**

1. What Comprehensive Plan designation are you requesting for the subject property?

Requested Plan designation: Urban Low Density Residential

2. What zoning district designation are you requesting for the subject property?

Requested zoning district: Future Urban 10-acre (FU-10)

3. If the zoning designation you requested in response to Question 2 cannot be approved because the property doesn't meet the approval criteria, would you like an alternate zoning district designation to be considered?

NO

YES, and the alternate zoning district designation(s) I would like is/are:

R-30

4. Are you filing this Comprehensive Plan Map amendment and zone change application with another application (e.g., an application for a partition or subdivision)?

NO, this application is being filed alone.

YES, this application is being filed with another application. That other application requests the following:

\_\_\_\_\_

## D. Respond in a narrative:

Your application submittal must include a narrative that fully responds to the following. Due to the technical nature of these requirements, guidance on how best to respond will be provided during the required pre-application conference.

1. How is your proposal consistent with applicable Statewide Planning Goals?
2. How is your proposal consistent with the applicable goals and policies of the County's [Comprehensive Plan](#)?
3. If relevant, how is your proposal consistent with Metro's Urban Growth Management Functional Plan?
4. If development under the proposed zone would need public services (sanitary sewer, surface water management, and water), could the need be accommodated with the implementation of the applicable service provider's existing capital improvement plan? The cumulative impact of the proposed zone change and development of other properties under existing zoning designations must be considered.
5. Explain how the transportation system is adequate and will remain adequate with approval of the proposed zone change. This explanation should take into consideration the following:
  - a. "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*.
  - b. Conduct the evaluation of transportation system adequacy pursuant to the Transportation Planning Rule (Oregon Administrative Rules 660-012-0060).
  - c. Assume that the subject property is developed with the primary use, allowed in the proposed zoning district, with the highest motor vehicle trip generation rate.
  - d. The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards.
  - e. The adequacy standards apply to all roadways and intersections within the impact area of the proposed zone change. The impact area is identified based on the Clackamas County Roadway Standards.
  - f. A determination of whether submittal of a transportation impact study is required is made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.
  - g. (d) through (f) above do not apply to roadways and intersections under the jurisdiction of the State of Oregon. Instead, motor vehicle capacity calculation methodology, impact area identification, and transportation impact study requirements are established by the

ODOT Transportation Analysis Procedures Manual for such roadways and intersections.

6. Explain how the safety of the transportation system is adequate to serve the level of development anticipated by the proposed zone change.



## FAQs

### **What is a Comprehensive Plan Map amendment and zone change?**

All land in the County has been divided into mapped Comprehensive Plan designations, each of which corresponds to one or more zoning districts. A Comprehensive Plan Map amendment and zone change results in a property switching from one Comprehensive Plan Map designation and zoning district to another designation and zoning district, which may change allowed uses, minimum lot size, and other development standards.

### **What is the permit application process?**

Comprehensive Plan Map amendments and zone changes that are *not* related to the Historic Landmark, Historic District, and Historic Corridor overlay district are subject to a “Type III” land use application process, as provided for in [Section 1307](#) of the ZDO. Type III decisions include notice to owners of nearby land, the Community Planning Organization (if active), service providers (sewer, water, fire, etc.), and affected government agencies, and are reviewed at public hearings before the Planning Commission and the Board of County Commissioners (BCC). If the application is approved, the applicant must comply with any conditions of approval identified in the decision. The County’s decision can be appealed to the Oregon Land Use Board of Appeals (LUBA).

### **What is needed for the County to approve a land use permit?**

Comprehensive Plan Map amendments and zone changes *may* be permitted after an evaluation of applicable standards by staff, the Planning Commission, and the BCC. The applicant is responsible for providing evidence that their proposal does or can meet those standards. In order to address the standards, the information requested in this application should be as thorough and complete as possible. A permit will only be approved or denied after a complete application is received and reviewed. The BCC approves an application only if it finds that the proposal meets the standards or can meet the standards with conditions.

### **How long will it take the County to make a decision about an application?**

A final decision on an application for a Comprehensive Plan Map amendment and zone change is generally issued within 24 weeks (168 days) of when we deem the application to be complete. However, these applications are often highly complex and may take longer to process.

### **If an application is submitted and then withdrawn, will a refund be given?**

The fee for this application includes a \$1,050 fee for review by the Hearings Officer, which will be fully refunded if the application is withdrawn before the hearing occurs. If a submitted Type III application is withdrawn before it is publicly noticed, 75% of the portion of the application fee paid that is not the Hearings Officer review fee (i.e., the remainder) will be refunded. If a submitted application is withdrawn after it is publicly noticed, but before a staff recommendation is issued, 50% of the remainder will be refunded. No refund on the remainder will be given after a staff recommendation is issued.

### **Who can help answer additional questions?**

For questions about the County’s land use permit requirements and this application form, contact Planning and Zoning at [503-742-4500](tel:503-742-4500) or [zoninginfo@clackamas.us](mailto:zoninginfo@clackamas.us). You can also find information online at the Planning and Zoning website: [www.clackamas.us/planning](http://www.clackamas.us/planning).

*Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or [drenhard@clackamas.us](mailto:drenhard@clackamas.us).*

**503-742-4545:** ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод?  
翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?



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SYSTEMS, INC.

OR: 503-353-9691  
FAX: 503-353-9695  
WA: 360-735-1109

[www.envmgtsys.com](http://www.envmgtsys.com)

4080 SE International Way  
Suite B-112  
Milwaukie, OR 97222

**NARRATIVE SUPPORTING REQUEST FOR PERMIT TO BUILD A HOME AND IN  
THE ALTERNATIVE FOR PLAN AMENDMENT / ZONE CHANGE**

**Subject Site Location:  
T: 1S, R: 3E, Sec: 28C, TL: 01200  
(no situs) SE Borges Road  
Damascus, OR 97089**

**Prepared for:  
Melva Murphy**

**Prepared by:  
Environmental Management Systems, Inc.  
4080 SE International Way  
Suite B112  
Milwaukie, OR 97222  
503-353-9691**

**February 24<sup>th</sup>, 2021**





OR: 503-353-9691

FAX: 503-353-9695

WA: 360-735-1109

www.envmgtsys.com

4080 SE International Way

Suite B-112

Milwaukie, OR 97222

## REQUEST FOR A PERMIT TO ALLOW MS. MURPHY TO DEVELOP HER HOME

ORS 197.307(4) and ORS 215.416(4)(a)

Housing legislation first adopted in 2017 and updated in 2019, establish that the County is not free to deny Ms. Murphy the right to build her home on her property. ORS 197.307(4) says that the County may only apply “clear and objective standards” to Ms. Murphy’s request to place a home on her property. ORS 215.416(4)(b)(A) imposes the following requirement on the County:

“A county may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including but not limited to clear and objective design standards contained in the county comprehensive plan or land use regulations.”

The County is bound by these standards and may not apply standards that are inconsistent with state law. *DLCD v. Lincoln County*, 144 Or App 9, 13 (1996); *Keicher v. Clackamas County*, 175 Or App 633, 640 (2001); *see also, Multi/Tech Engineering Services, Inc. v. Josephine County*, 37 Or LUBA 314, 321-23 (1999) (cannot apply code provisions that are inconsistent with statute).

A standard is not clear and objective when the local code fails to define key terms and that failure can lead to divergent or discretionary conclusions with different consequences, as here, the provision requires the application of judgment or evaluation. *Home Builders Association of Lane County v. City of Eugene*, 41 Or LUBA 370, 393-94 (2002). A standard is not clear and objective when it can plausibly be interpreted in more than one way that would lead to different results (*Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015), *aff’d* 275 Or App 557 (2015), *rev den* 359 Or 667 (2016); *Tirumali v. City of Portland (Tirumali II)*, 169 Or App 241, 246 (2000)) or if it requires the exercise of policy or legal judgment. *Brodersen v. City of Ashland*, 49 Or LUBA 710, 721 (2005). The use of multiple, undefined terms, which have no plain inherent meaning, cannot be said to be clear and objective. A standard that requires some explanation as to what terms mean is not “clear and objective. *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014).

There is nothing clear and objective about the standards that apply to a “Forest Lot of Record Dwelling” or a “Forest Template Dwelling.” Right out of the box, the standards and criteria that apply to a both are not clear and objective.





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Forest Lot of Record Dwelling Standards and Criteria are not Clear and Objective.

ZDO Table 406-1 allows Forest Lot of Record Dwellings “subject to ZDO 406.5(A)(3), (4) (5) and (D)(2).” Ms. Murphy is willing to sign the deed restriction in ZDO 406.05(A)(3); and (4) just says she can transfer her approval and so is not even a standard. ZDO 406.05(A)(5) talks about what happens when road access is provided by either the Oregon Department of Forestry, or the federal BLM or USFS. None of these apply.

ZDO 406.05((D)(2), for Forest Lot of Record Dwellings, however, is not clear and objective and may not be applied. *Walter v. City of Eugene*, 73 Or LUBA 356, *aff'd* 281 Or App 461 (2016) (under city corollary to new housing statutes, a city is not allowed to apply ambiguous 19-lot rule).; *and see Warren v. Washington County*, 78 Or LUBA 375, 384-86 (2018), *aff'd* 296 Or App 595, (2019). Because Ms. Murphy meets the only applicable clear and objective standards, the County is required to approve her application for her home. *Id.*

ZDO 406.05((D)(2) contains eleven different standards and only one of them, (D)(2)(b), is clear and objective, the rest are not clear and objective and may not be applied. (D)(2)(b) requires that the lot of record was acquired by the “present owner” “prior to January 1, 1985.” The Murphy’s acquired the subject parcel in 1979, easily meeting this standard. Other(D)(2) standards are not clear and objective and may not be applied.

For example, (D)(2)(a) requires a showing that the “lot of record” was “lawfully created” prior to January 1, 1985. The meaning of “lawfully created prior to 1985” is unclear to anyone. Moreover, no one knows, and the standard does not say, what you had to do prior to 1985 to “lawfully create” the “lot of record.” Further, it is not subject to reasonable dispute that the term “lawfully created” itself, regardless of the date of creation, is not clear and objective. And worst of all, is the county definition of “lot of record”:

“LOT OF RECORD: A lot, parcel, other unit of land, or combination thereof, that conformed to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed or contract creating the lot, parcel or unit of land was signed by the parties to the deed or contract; except:

1. Contiguous lots under the same ownership when initially zoned shall be combined when any of these lots, parcels or units of land *did not satisfy the lot size requirements of the initial zoning district*, excluding lots in a recorded plat.



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2. A unit of land created solely to establish a separate tax account, or for mortgage purposes, that *does not conform to all zoning and Subdivision Ordinance requirements and applicable Comprehensive Plan provisions, in effect on the date when a recorded separate deed, tax account or contract creating it was signed by the parties to the deed or contract*, unless it is sold under the foreclosure provisions of Chapter 88 of the Oregon Revised Statutes.” (Emphases supplied.)

None of the italicized standards are clear and objective. The county does not even publish its standards in effect in any year except the current one.

(D)(2)(c) is not clear and objective because the county definition of “tract” is not clear and objective and, in fact, is gibberish:

“Tract: One or more contiguous lots of record under the same ownership. Notwithstanding the preceding definition, as used in Sections 706, Habitat Conservation Area District, 709, Water Quality Resource Area District, 1012, Lot Size and Density, 1013, Planned Unit Developments, and 1105, Subdivisions, Partitions, Replats, Condominium Plats, and Vacations of Recorded Plats, a tract is a unit of land (other than a lot or parcel) created by a subdivision, partition, or replat.”

The standard first looks to the definition of “lot of record” which we explain above is not a clear and objective term. Moreover, the property is in a “Habitat Conservation Area” and so the standards of that zone apply (which are not clear and objective) and the definition of tract under the above definition devolves to “a unit of land (*other than a lot or parcel*) created by subdivision, partition or replat.” (Emphasis supplied.) This is gibberish. If a tract is a “unit of land” other than a lot or parcel but must have been created by subdivision or partition – which only results in a “lot or parcel” it is impossible to ascertain what this term means.

(D)(2)(d) is not clear and objective because it again refers to the definition of “tract.”

(D)(2)(e) is not clear and objective because it requires a showing that the “property is not capable of producing 5,000 cubic feet per year of commercial tree species.” The term “capable of producing” is not clear and objective.

(D)(2)(g) requires that the dwelling not be “prohibited by this Ordinance or the Comprehensive Plan or any other provision of law.” Obviously, these terms are not clear and objective. We do





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not go through the other standards, which suffer from similar deficits under the requirement that they be clear and objective.

Forest Template Dwelling Standards and Criteria is not Clear and Objective.

(D)(3) regarding Forest Template Dwelling Approval is not Clear and Objective as Required.

As is problematic for a Forest Lot of Record Dwelling, (D)(3)(a) refers to figuring out what is a "tract" a term that is not clear and objective but actually pure gibberish where there is a Habitat Conservation Area.

(D)(3)(b) refers to unclear terms "tract" and "lot of record."

(D)(3)(d) requires that the "lot of record" be "lawfully created", neither of which are clear and objective.

(D)(f)(i) – (iii) template test standards are uniformly not clear and objective. No purpose is served in explaining the obvious.

Habitat Conservation Area Standards are not Clear and Objective as Required

The County applies a "Habitat Conservation Area District" overlay to the subject property. It is not clear and objective to even understand if this provision applies or whether property is exempt from its terms. Moreover, if it applies, then a report is required that meets the terms of ZDO 706.09 the requirements for which are not clear and objective. For example, (E)(1) requires that the "bankfull stage" of rivers or streams be figured out; and that wetlands be delineated "consistent with methods accepted by the Oregon Division of State Lands and the Army Corps of Engineers. Who knows what those two agencies have "accepted." (E)(2) requires identifying the "vegetative cover status" of all areas within a certain distance of "bankfull streams" and "wetlands" and "flood areas." That is not clear and objective. (E)(2)(b) says you do not have to figure all this out if the property at issue was "developed lawfully" on a certain dates. That is not clear and objective. (E)(3) is not clear and objective that requires one "Determine whether the degree that the land slopes upward from all streams, rivers, and bodies of open water on or within 200 feet of the subject property is greater than or less than 25 percent." (E)(4) is not clear and objective requiring "Using Table 706-1 and the data identified pursuant to Subsections 706.09(E)(1) through (3), identify all Class I and II riparian areas on the subject property. The riparian class may vary within a single property." (E)(5)(a) is not clear and objective regarding an "upward adjustment" that "shall be made" is the "Metro 2040 Design Type designation" has



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changed from certain non-clear and objective categories. (E)(6) is not clear and objective requiring " Use Table 706-2 to cross-reference habitat class with urban development value in order to categorize identified HCA as High, Moderate, or Low HCA." Finally, and these are just examples, the ZDO 706.10 HCA permit requirements are not clear and objective. None of the County's HAC requirements may lawfully be applied to Ms. Murphy's application for her home.

### **ALTERNATIVE ONLY REQUEST FOR COMPREHENSIVE PLAN AMENDMENT**

The proposed plan amendment and zone change is sought only in the alternative to Ms. Murphy's request for a permit to build her home as explained above. Thus without waiver she demonstrates the following demonstrating a plan amendment to a more proper zone should have been pursued by the County long ago and she easily meets all standards

### **Statewide Planning Goals**

Because the subject property is located inside the existing UGB, there are no Goal 11 or Goal 14 issues. Potentially applicable planning goals are Goal 1 (Citizen Involvement); Goal 2 (Land Use Planning); Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces); Goal 6 (Air, Water and Land Resources Quality); Goal 7 (Areas of Natural Hazards); Goal 10 (Housing) Goal 12 (Transportation); (Goal 13 (Energy Conservation).

Goal 1 is satisfied by the county following its acknowledged citizen involvement program. The proposal will be processed under existing county procedures for quasi-judicial plan amendments. Therefore, so long as the county adheres to its citizen involvement program, Goal 1 is satisfied.

Goal 2 is satisfied so long as the county provides affected governmental units with notice and an opportunity to express comments and complies with any directly applicable Metro requirements. The county's quasi-judicial procedures ensure this will happen. Goal 2 also requires goal exceptions be taken where needed and outlines the standards and processes that apply to goal exceptions. No goal exceptions are needed for the proposal.

Metro policies apply to the UGB within which the subject property is located. The Metro functional plan (3.07.1130) states:

*"Until land use regulations that comply with section 3.07.1120 become applicable to the area, the city or county responsible for planning the area added to the UGB shall not adopt or approve a land use regulation or zoning map amendment that allows higher residential density in the area than*





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*allowed by regulations in effect at the time of addition of the area to the UGB.”*

Prior to the addition of the subject site to the UGB in 2002, the property was capable of a template test approval, which would allow one single family residence. The proposed zone, FU-10, would permit no more than one single family residence. The county has determined that were the property not in the UGB, that it would meet the template dwelling test. Therefore, the proposal does not allow a dwelling density that is greater than that which was allowed at the time the property was added to the UGB.

Goal 2 is satisfied.

Goal 5 protects areas of scenic and natural value, and Clackamas County has mapped one such feature, a butte, in the vicinity of the subject site which is a part of the Boring Volcanic Field. We note that though the county plan does not define the term “butte”, chapter 3 of the comprehensive plan specifies policies to protect “areas of high visual sensitivity and/or unique natural features”, which the buttes of the Boring Volcanic Field would generally fall under. This proposed plan amendment/zone change and the development of the proposed single dwelling does not substantially alter the existing landscape in any way that affects the butte. The dwelling is proposed to be built on a relatively low lying, moderately sloping portion of the site. Additionally, the site exists at a relative low point between the several buttes in the vicinity of the site. These facts ensure that the proposed dwelling has no impact on any view of the butte.

Further, protected riparian habitat exists at the site, in the area surrounding an intermittent tributary of Rock Creek. While accidental impacts from vegetation clearing occurred prior to the owner’s knowledge of the protected habitat, development plans have been adjusted to allow for development to occur outside of the protected riparian areas. Details of the development within the context of the Habitat Conservation Area (HCA) can be found within the enclosed HCA Development Permit Application.

The subject property also has a Clackamas County “Habitat Conservation Area” which covers about 4 acres of the subject property. This is designed to implement Metro’s Title 13. How the Metro Title 13 HCA provisions, that the County’s HCA provisions implement apply, is uncertain. This is because the subject property was in the UGB on January 1, 2002 and there are separate Metro Code provisions that apply to such parcels. See Metro Code 3.07.1330(H)(1)(a); (5)(e).

The proposal complies with Goal 5.



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Goal 6 applies to the county in the development of its plan and zoning ordinances. As explained in this narrative, the proposal complies with all county plan and zoning ordinance provisions. This is so in large part because the development density is one residence, which has no appreciable impact on air, water or land resources quality. If the property was outside of the UGB, the county acknowledges that the proposed residence could be built as a template dwelling. Goal 6 is met.

Goal 7 requires the county to address natural hazards and areas subject to natural disaster in its plan. The county plan identifies areas of steep slopes (>20%) and geologic hazards on the site. The areas of the subject property composed of slopes that are greater than 20% are situated in the central area of the subject property along the stream and drainageways. No development is proposed on the steep slopes, or in the landslide hazard area of the property – both the residence and access driveway avoid these areas.

Moreover, the proposed dwelling will meet all county fire standards.

#### 406.08(B)(3) Additional Fire-Siting Standards for New Dwellings:

- The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract.
  - The dwelling is proposed to be located within Clackamas County Fire District #1, nearest Damascus Station #19.
- The dwelling shall have a fire retardant roof.
  - This specification can easily be incorporated into the house plans, however with the proposed zone change, it will no longer be required
- The dwelling will not be sited on a slope greater than 40%.
  - The dwelling is proposed on slopes of approximately 10-15%, maximum
- If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.
  - This specification can easily be incorporated into the house plans, however with the proposed zone change, it will no longer be required

Goal 7 is met.

Goal 10 requires the county to assure that it provides a variety of housing options to all of its citizens. The proposed dwelling is for Ms. Murphy so that she may be close to her children who live nearby, as she ages. The subject property is relied upon by the acknowledged Metro Buildable Lands Inventory (BLI) /Housing Needs Analysis (HNA) to deliver single family residential housing to the region:





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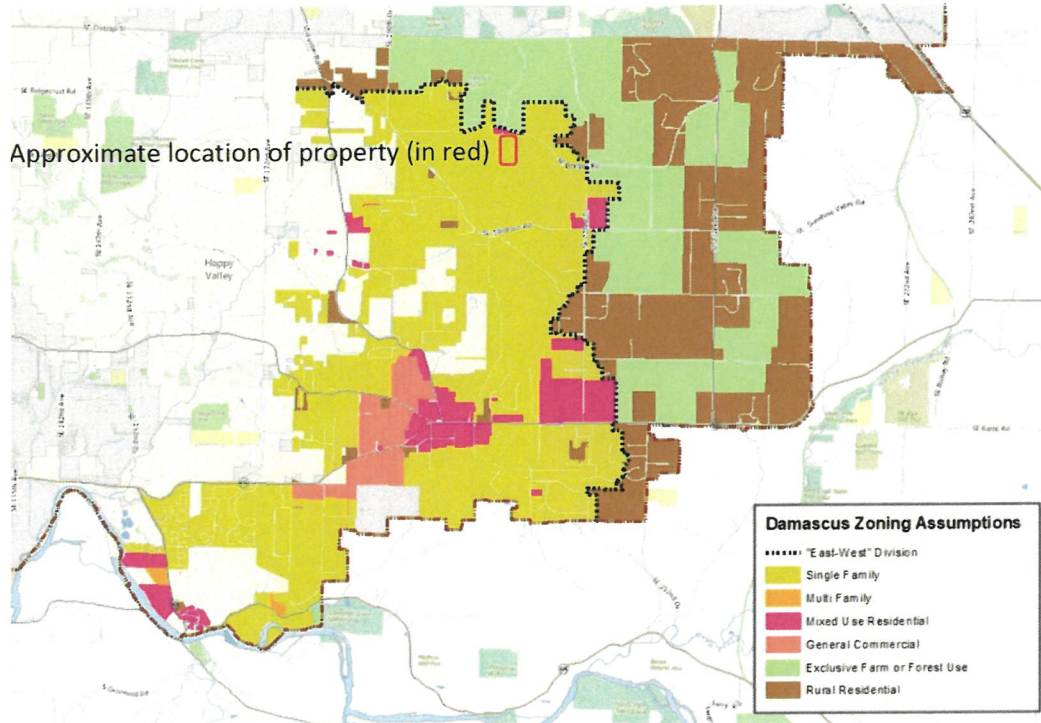
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It is not clear why Clackamas County has adopted a plan and zone designation for the subject property that is inconsistent with the Metro UGB.

Under its current plan designation, the property is prohibited from providing *any* housing. Thus, the current plan designation of the subject property is inconsistent with Goal 10. Approving the proposal to make the property capable of delivering the home that Ms. Melva needs is consistent with its status as land within the UGB. Goal 10 is satisfied only if the county approves the proposal.

Goal 11 requires that urban public facilities be planned in UGBs at levels suitable for needs. At present, there is no need for urban services and no plan to provide them. Eventually the county and the City of Happy Valley will comply with Goal 11 in the subject area. But until they do so, Goal 11 does not demand that urban facilities or services be provided to the proposed single dwelling. Moreover, the county cannot refuse to authorize Ms. Murphy's home on the basis that there are no public facilities available to her property. First, Goal 11 goes not require any urban facilities be provided. If it did, no template dwelling could ever be approved, and we know that is not right. Second, Ms. Murphy cannot be conditioned or denied on this basis. IN this regard, in *Carver v. City of Salem*, 42 Or LUBA 305, *aff'd* 184 Or App 503 (2002), LUBA held that a city must apply the *Dolan* analysis to conditions of approval requiring dedication of land (there,



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the requirement was to dedicate one acre for a park), regardless of whether the developer chooses to develop in an underserved area. LUBA held that the choice to develop in an underserved part of the city is not the equivalent of a waiver of the developer's constitutional rights under *Dolan*. Further, LUBA decided that SDC credits are not adequate "just compensation" because the amount of the SDC credits (1) do not relate to fair market value of the property taken, (2) does not include any severance damages to the remainder of the parcel and (3) does not ensure the owner will receive compensation in fact. Consistently, *Hill v. City of Portland*, 293 Or App 283 (2018) from the Oregon court of appeals and *Koontz v. St. Johns River Water Management Dist.*, 570 US 595 (2013) from the US Supreme Court, together hold that denial of proposed development or conditions of approval requiring the installation or payment of public improvements are unconstitutional if they are not based upon proportional impacts of a proposed development. Together these cases hold that it does not matter that a code requires improvements, if the code demands improvements that are not roughly proportional to the impacts of the development, then they cannot be required. See also *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). The record establishes that the proposed dwelling can be served by a water well and septic. See Clackamas County site evaluation report SE044820. Moreover, the Clackamas County sheriff serves the area, it is in the Centennial school district and within Clackamas County Fire District #1. Goal 11 is met.

Goal 12 requires that the proposed plan amendment either not "significantly affect" a transportation facility or demonstrate compliance with the Transportation Planning Rule (TPR) OAR 660-012-0060. As is clear from the TIA in the record supporting this proposal, the proposed amendment does not have a "significant effect" on a transportation facility. The one home that is proposed certainly does not add traffic trips not already contemplated by existing zoning which allows intensive logging and trips associated with large logging trucks. The proposal complies with Goal 12.

Goal 13 requires that land must be managed and controlled so as to maximize the conservation of all forms of energy. The proposed plan amendment and development of the property does not negatively affect the energy conservation of the region as property within the UGB is intended and expected to be used for housing.

Goal 14 requires that land in UGBs be available for urbanization. The proposed plan designation is consistent with Goal 14.





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## County Comprehensive Plan

### Chapter 4

The site meets the definition of a Future Urban Study Area, and compliance with policy 4.D.3 demonstrates that the proposal is consistent with the definition of Future Urban, and thus the change of the comprehensive plan designation to Urban Low Density Residential, and the zone to FU-10. This proposal aims to demonstrate compliance with applicable state planning requirements and county planning goals.

Currently, as a matter of state law, the subject property is considered urbanizable urban land because it is located within the UGB. The current zoning (TBR) and comprehensive plan designation of Natural Resource is inappropriate for this urban area. A zone of FU-10 and comprehensive plan designation of urban low density residential would bring the county into compliance with the expectations of the UGB for this property. The plan designation of urban low density and FU-10 zone is appropriate because it allows economically beneficial use of Ms. Murphy's property but maintains it as unavailable for intensive urban use until such time as urban services, such as public water and sewer, are available. The FU-10 zoning would help ensure immediate land needs are met (see Buildable Lands Inventory (BLI)), while appropriately planning for future urban land needs by preventing premature development. The site acreage, 7.89, can be developed with a single dwelling notwithstanding the FU\_10 zone's 10-acre minimum as it would simply be considered legally nonconforming.

The site should be designated as low density residential due to its compliance with policy 4.R.1. (4.R.1 The following areas may be designated Low Density Residential if any of the following criteria are met: 4.R.1.1 Areas where a need for this type of housing exists.) According to the Metro BLI, single family housing is needed in the immediate and future term.

### Justification

As a means to allow an economically beneficial use of her property to enable her to have the home she requires and by extension to avoid an unconstitutional taking of her private real property, Ms. Murphy seeks approval to redesignate and rezone her property to plan and zone designations consistent with the property's status as being situated inside the UGB.

The subject property is too small for any economically beneficial timber related use. After HCA set asides, steep slope prohibitions and stream setbacks, there is no part of the subject property capable of an economically viable commercial timber harvest. Furthermore, any such timber use



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is contrary to the Metro Buildable Lands Inventory and HNA and the adopted Damascus “Residential” zone that also applies to the subject property. There is no other economically beneficial use of the subject property that is allowed in the TBR zone. Accordingly, the application of the County’s TBR zone creates a situation where there is simply no economically beneficial use of the subject property. While the subject property would otherwise qualify for a template dwelling, it cannot qualify for the sole reason that it cannot meet the threshold test of being situated outside of the UGB. OAR 660-0006-027(5(a)). The Clackamas County Zoning and Development Ordinance (ZDO) implements this administrative rule and requires the so-called “Template Test” be satisfied before any dwelling can be established on the subject property. The subject property cannot satisfy the Template Test because it is situated within the Urban Growth Boundary.

Accordingly, in order to develop the subject site with a detached, single family dwelling that could be established in the TBR zone if only the subject property were not situated within the UGB, she seeks to Designate the subject property as “Residential” and to zone it Future Urban 10 acre (FU-10). The proposed dwelling shall meet all the required setbacks and standards in the ZDO.

In addition to the pre-application conference site plan requirements, the attached site plans address the general requirements of ZDO section 706, which applies to the FU-10 zone.

The only other alternative to the proposed plan amendment and zone change is for the County to not apply the standard that forecloses counting dwellings inside the UGB and approve a forest template dwelling application. See *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 235 (2009) (where road standard requires dedication of property interest that is not “roughly proportional” to the impacts of the proposed development, County is free not to impose such requirement for road dedication and allow a developer to improve a substandard local street to less than full collector standards); accord *Dudek v. Umatilla County*, 187 Or App 504 (2003). There are currently at least 15 dwellings within the 160-acre template used for the Forest Template Test Analysis dated June 19, 2019. Construction of one additional single-family residence, whether or not a zone change occurs, meets all other template test standards. Allowing a single dwelling on the subject property also is consistent with the regional HNA and BLI because the subject property remains available for more dense housing when more urban zoning and infrastructure reach the site.

The property is within the disincorporated City of Damascus. The nearest alternative City – Happy Valley – has adopted Policy 19-19 that forecloses annexation of property within the City of Damascus and also forecloses annexations of property that is not “adjacent to the existing city



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limits.” The subject property, being both in the disincorporated City of Damascus and also not “adjacent” to Happy Valley, cannot annex to that city.

The only options are either this plan amendment and zone change or the County not applying the template test to foreclose counting property in the UGB. We look forward to a cooperative resolution of this matter. If you have any questions regarding this request, please contact me at 503-353-9691.

Sincerely,

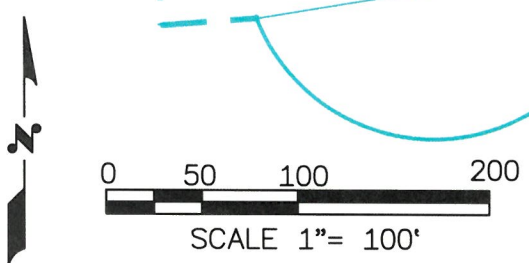
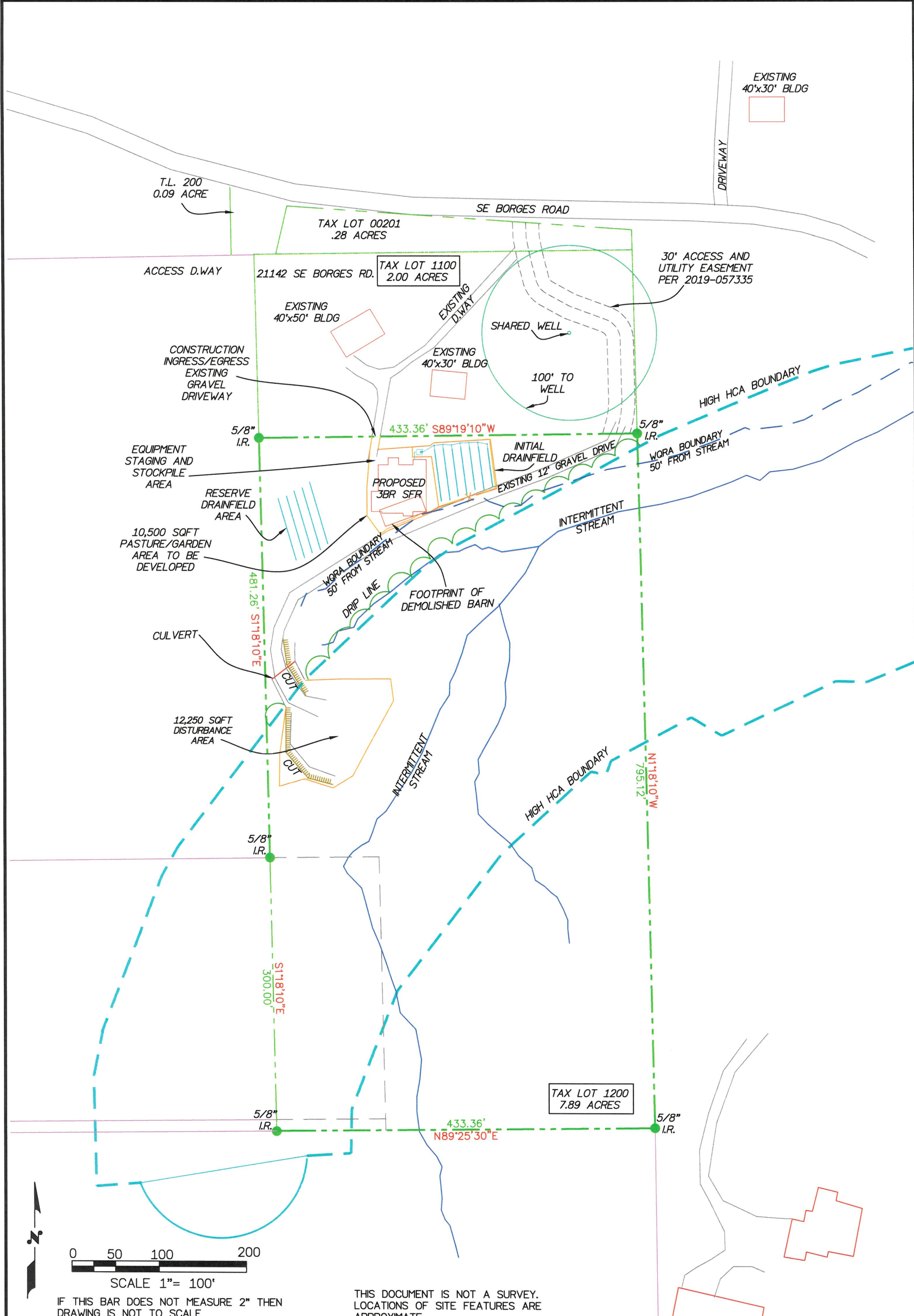
A handwritten signature in blue ink, appearing to read "Emma Eichhorn". The signature is fluid and cursive, written in a professional style.

Emma Eichhorn, REHS

ENVIRONMENTAL MANAGEMENT SYSTEMS, Inc.

CC: Wendie L. Kellington, Esq., Kellington Law Group PC





IF THIS BAR DOES NOT MEASURE 2" THEN DRAWING IS NOT TO SCALE

THIS DOCUMENT IS NOT A SURVEY. LOCATIONS OF SITE FEATURES ARE APPROXIMATE.

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	DRAWN BY:	T.1S, R.3E, Sec.28C, T.L. 01200	02/22/2021
		HCA DEVELOPMENT SITE PLAN	Scale: 1" = 100'



SITE





DAN JOHNSON  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

December 9, 2020

Bruce Johnson Construction, LLC  
djohnson@jconstllc.com

IMPORTANT DOCUMENT – PLEASE READ CAREFULLY  
This is not a septic construction permit.

**Site:** Township 1S Range 3E Section 28C Tax Lot 1200  
No Situs

**Application Number:** SE044820

**Results:** Approved

To whom it may concern:

Onsite Wastewater Systems program staff have completed an evaluation at the property referenced above. The site that was prepared for this evaluation was found suitable for an Onsite Wastewater treatment system. A detailed report of this investigation is enclosed. Current minimum design standards for a FOUR bedroom single family residence are also included. This office can provide updated standards (fees may apply) for alternative developments or updated minimum standards as required by rule.

If you have any questions, feel free to contact me at 503-793-5011.

Sincerely,

Aaron Dennis, WWS  
Soil Scientist, Senior

Enclosures:  
General Site Evaluation Information  
Field Sheet  
Construction Detail Sheet  
Minimum Setback Requirements

CC:

phone: 503-742-4740

fax: 503-742-4550

[www.clackamas.us/septic](http://www.clackamas.us/septic)



### General Site Evaluation Information

Please note that this approval is site specific to the area tested and does not address the feasibility of locating the system elsewhere on the property. The enclosed diagram indicates the limited area that appears suitable for this type of system. Please refer to the enclosed diagram for specifics concerning the dimensions and/or special conditions of the approved site.

Site evaluation report review. An applicant may request the Oregon Department of Environmental Quality to review a site evaluation report issued by an agent. The application for review must be submitted to the department in writing within 60 days after the site evaluation report issue date and must include the site evaluation review fee in OAR 340-071-0140(2). The department will review and approve or disapprove the site evaluation report.

This approval will remain valid until the system is installed and approved. Technical rule changes which take place after the date of this letter will not invalidate this approval, except that construction standards may be changed to meet codes applicable at the time of permit issuance. However, if conditions on this or adjacent properties are changed in any manner which would prohibit issuance of a permit because of a conflict with the applicable State rules, this approval will then be considered null and void. **Modifications to the approval area including logging, filling, cutting, or grading may render this approval invalid.** Check with this Department before conducting any of this work in the approval area.

The approval of this property and the conditions set forth in this letter in no way waives requirements as may be set by the zoning of the area. A permit to construct a system on this property will be subject to the review and approval of the County Planning Department. This Approval in no way waives any requirements set forth by other government agencies.

## **Minimum design requirements for an onsite wastewater treatment system**

Work in the vicinity of the absorption area shall begin when unsaturated soils conditions are found to a depth of at least six inches below the bottom of the absorption facility

### **Tank:**

- The septic tank will have a minimum liquid capacity of 1,000 gallons, and shall be equipped with ONE watertight riser(s) to the surface. (SEE NOTE 2)
  - a. An effluent lift pump may be required as part of this system.

### **Drainfield:**

A standard absorption trench is one option for this site. Please reference enclosed site map and OAR 340-071-0220 for comprehensive construction details. (SEE NOTE 1)

### **Conditions:**

- Keep traffic, such as vehicles, heavy equipment, or livestock off the drainfield and replacement area.
- No part of the system can be installed within any utilities, right of way, or access easement.
- Maximum number of bedrooms shall be FOUR.
- A replacement system layout meeting the minimum standards contained herein is required See attached field site map for approval area locations

**NOTE 1: SOME ALTERNATIVE DRAIN MEDIA PRODUCTS ALLOW FOR DIFFERENT CONSTRUCTION STANDARDS. CONSULT INSTALLERS GUIDE OR THIS OFFICE WITH QUESTIONS**

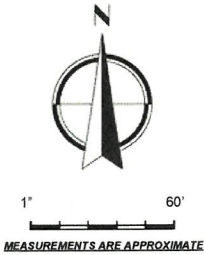
**NOTE 2: SOME SYSTEMS MAY REQUIRE A DIFFERENT TANK SIZE THAN INDICATED CONSULT INSTALLERS GUIDE OR THIS OFFICE WITH QUESTIONS**



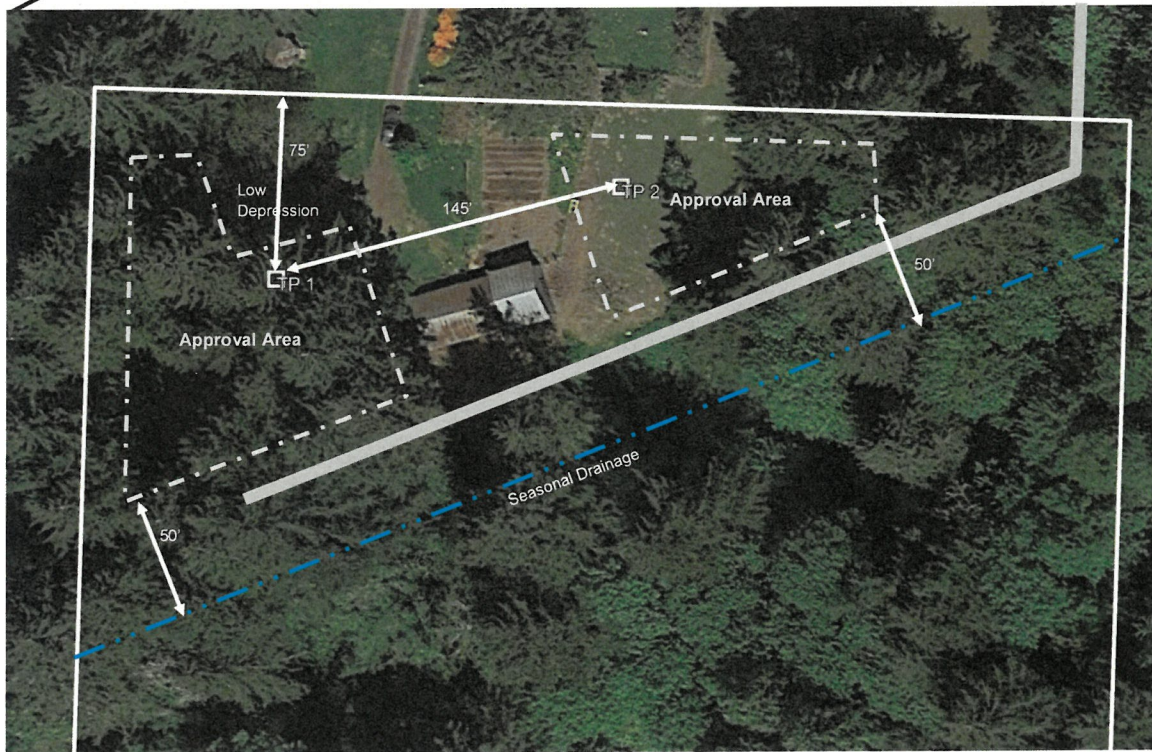
**TABLE 1**  
**OAR 340-071-0220**  
**MINIMUM SEPARATION DISTANCES**

Items Requiring Setback	From Subsurface Absorption Area Including Replacement Area	From Septic Tank and Other Treatment Units, Effluent Sewer and Distribution Units
1. Groundwater Supplies and Wells.	*100'	50'
2. Springs: <ul style="list-style-type: none"> <li>• Upgradient.</li> <li>• Downgradient.</li> </ul>	50' 100'	50' 50'
**3. Surface Public Waters: <ul style="list-style-type: none"> <li>• Year round.</li> <li>• Seasonal.</li> </ul>	100' 50'	50' 50'
4. Intermittent Streams: <ul style="list-style-type: none"> <li>• Piped (watertight not less than 20' from any part of the onsite system).</li> <li>• Unpiped.</li> </ul>	20' 50'	20' 50'
5. Groundwater Interceptors: <ul style="list-style-type: none"> <li>• On a slope of 3% or less.</li> <li>• On a slope greater than 3%:  <ul style="list-style-type: none"> <li>• Upgradient.</li> <li>• Downgradient.</li> </ul> </li> </ul>	20' 10' 50'	10' 5' 10'
6. Irrigation Canals: <ul style="list-style-type: none"> <li>• Lined (watertight canal).</li> <li>• Unlined:  <ul style="list-style-type: none"> <li>• Upgradient.</li> <li>• Downgradient.</li> </ul> </li> </ul>	25' 25' 50'	25' 25' 50'
7. Manmade Cuts Down Gradient in Excess of 30 Inches (top of downslope cut): <ul style="list-style-type: none"> <li>• Which Intersect Layers that Limit Effective Soil Depth Within 48 Inches of Surface.</li> <li>• Which Do Not Intersect Layers that Limit Effective Soil Depth.</li> </ul>	50' 25'	25' 10'
8. Downgradient Escarpments: <ul style="list-style-type: none"> <li>• Which Intersect Layers that Limit Effective Soil Depth.</li> <li>• Which Do Not Intersect Layers that Limit Effective Soil Depth.</li> </ul>	50' 25'	10' 10'
9. Property Lines.	10'	5'
10. Water Lines.	10'	10'
11. Foundation Lines of any Building, Including Garages and Out Buildings.	10'	5'
12. Underground Utilities.	10'	—
* 50-foot setback for wells constructed with special standards granted by WRD.		
**This does not prevent stream crossings of pressure effluent sewers.		

Owner Murphy SE0 44820  
 Township 1S Range 3E Section 28C Tax Lot 1200 Acreage 7.89  
 Soil Scientist Aaron Dennis, WWS Weather Partly Sunny, 46F Date 8 December 2020



Cascade Series Soil



Approved for Standard Denied due to \_\_\_\_\_  
 Proposed Facility FOUR bedroom SFR Septic/Dosing/Holding Tank Capacity 1000 gallons  
 Leach lines per 150gpd 125 lineal feet Total required 375 Drain field Distribution Serial  
 Burial Depth 25 Max 24 Min Groundwater Interceptor \_\_\_\_\_ Depth \_\_\_\_\_ Gravel Water Supply Well

Comments: New SFR to be placed in general vicinity of old barn location. Area has been recently logged, care must be taken when removing stumps and/or clearing slash piles.

**Test Pit 1      Slope: 5% NE**

**N: 45.44944**

**W: 122.44595**

Depth	Texture	Color	Redox/Conc	Consistency (Moist)	Structure	Roots	H2O, ESD, Conditions associated with saturation, etc.
0-7	SiL	7.5yr 3/2		Fr	2mgr	3 vf-c	
7-28	SiL	7.5yr 3/4		Fr	2fsbk	2 m-c	
28-48	SiL	7.5yr 4/4	f, 2 <sub>L</sub> F 10yr 4/2 rmx, 7.5yr 5/6 f3m	Fr	2msbk	1 m	CAS
48-60	SiL	7.5yr 4/4	c, 2 <sub>L</sub> D 10yr 5/2 rmx, 7.5yr 5/6 f3m	Fi	Mass w/ fractures		ESD

**Test Pit 2      Slope: 5% ENE**

**N: 45.44954**

**W: 122.44542**

0-10	SiL	7.5yr 3/2		Fr	2mgr	2 vf	
10-25	SiL	7.5yr 3/4		Fr	2fsbk	1 vf-m	
25-42	SiL	7.5yr 4/4	f, 2 <sub>L</sub> F 10yr 4/2 rmx, 7.5yr 5/6 f3m	Fr	2msbk		CAS
42-54	SiL	7.5yr 4/4	c, 2 <sub>L</sub> D 10yr 5/2 rmx, 7.5yr 5/6 f3m	Fi	Mass w/ fractures		ESD

**Test Pit 3      Slope:**

**N:**

**W:**


**Test Pit 4      Slope:**

**N:**

**W:**


**Test Pit 5      Slope:**

**N:**

**W:**


**Test Pit 6      Slope:**

**N:**

**W:**






August 4, 2020

Clackamas County Department of Transportation and Development  
Attention: Christian Snuffin and Melissa Ahrens  
150 Beaver Creek Road  
Oregon City, Oregon 97045

Re: **Melva Murphy Comprehensive Plan Map Amendment and Zone Change – Damascus, Oregon**  
*Transportation Impact Study (TIS)*

Clackamas County File Number ZPAC0017-20  
C&A Project Number 20200603.00

Dear Mr. Snuffin and Ms. Ahrens,

This Transportation Impact Study (TIS) supports a proposed Clackamas County Comprehensive Plan Map Amendment and Zone Change for the subject property contemplated during the March 3, 2020 Pre-Application conference (File Number ZPAC0017-20). The following items are specifically addressed:

1. Property Description and Proposed Land Use Actions
2. Trip Generation
3. Safety Analysis
4. Summary

## **1. PROPERTY DESCRIPTION AND PROPOSED LAND USE ACTIONS**

The subject property is located south of 21142 SE Borges Road, Damascus, Oregon, and is described as tax lot 1200 on Clackamas County Assessors Map 13E28C. The property is 7.89 acres in size and is currently developed with one building (a barn) with one direct access to SE Borges Road. The property location is illustrated in the attached site plan.

The subject property is located within the Metro Urban Growth Boundary (UGB) and is also within the Damascus city limits. The City of Damascus plan and zone designations are not at issue.

Proposed actions include a land use designation change from Clackamas County Forest (F) to Low-Density Residential (LDR) or Future Urban (FU), with a corresponding zone designation change from Timber (TBR) to Urban Low-Density Residential (R-30) or Future Urban-10 (FU-10) allowing for the construction of up to 11 single-family residences. Notwithstanding development potential, the property owner only wishes to construct one single-family residence and will accept a condition restricting property development to such until the property is either annexed to the City of Happy Valley or the City of Damascus begins processing land use applications. Accordingly, the proposed zone designation development is assumed to be one single-family residence.



Per Clackamas County Zoning and Development Ordinance (ZDO) 1202.03(C) and (D), a transportation analysis is necessary to address Transportation Planning Rule (TPR) criteria outlined in Oregon Administrative Rule (OAR) 660 012-0060. Clackamas County staff have also requested a safety analysis of the adjacent segment of Borges Road and the and the nearest major intersection(s).

## 2. TRIP GENERATION

The Comprehensive Plan Amendment and Zone Change land use actions require a TIS to address TPR requirements, including a comparison of reasonable worst-case development scenarios in both the current and proposed zone designations. Scenario assumptions are as follows:

TABLE 1 – REASONABLE WORST-CASE DEVELOPMENT ASSUMPTIONS			
Zone Designation	Property Size	Reasonable Worst-Case Development	
		Assumption	Size
<b>Current</b>			
Timber (TBR)	7.89 Acres	Per Clackamas County ZDO Section 406, only farm and forest uses are allowed, including farm use as defined in ORS 215.203 and marijuana production consistent with ZDO Section 841. Assume indoor marijuana production use, with two (2) employees.	2 Employees
<b>Proposed</b>			
Urban Low-Density Residential (R-30) or Future Urban 10-Acre (FU-10)	7.89 Acres	Per Clackamas County ZDO Section 316, up to 11 single-family residential dwellings are allowed; however, the applicant will accept a condition restricting property development to one single-family residence. Assume one dwelling.	1 DU

For the current zone designation, reasonable worst-case development trip generation is conservatively assumed to be two (2) site exiting trips during the PM peak hour. For the proposed zone designation, which is limited to one single-family dwelling, trip generation is estimated using the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, 10<sup>th</sup> Edition data. Trip generation is as follows:

TABLE 2 – REASONABLE WORST- CASE DEVELOPMENT TRIP GENERATION					
Land Use	ITE Code	Size	PM Peak Hour Trip Generation <sup>1</sup>		
			Enter	Exit	Total
<b>Current TBR Zone Designation</b>					
Indoor Marijuana Production	—	—	0	2	2
<b>Proposed R-30 or FU-10 Zone Designation</b>					
Single-Family Detached Housing	210	1 DU	1	0	1
<b>Change in Trip Generation with Zone Change</b>			<b>1</b>	<b>(2)</b>	<b>(1)</b>

<sup>1</sup> Trip generation estimated using the *Average Rate* for ITE Code 210 per recommended practice in the ITE *Trip Generation Handbook*, 3<sup>rd</sup> Edition.

As identified in the table above, proposed R-30 or FU-10 zone designation development, limited to one single-family residence, generates fewer PM peak hour trips than TBR zone designation reasonable worst-case development. Because there is a PM peak hour trip reduction, the proposed rezoning will not have a transportation system impact and additional analysis is not necessary for TPR evaluation purposes.

### 3. SAFETY ANALYSIS

Crash data for the entire length of Borges Road, including the terminal intersections, were obtained from the Oregon Department of Transportation (ODOT) for five years from January 1, 2015 through December 31, 2019. Crash locations are shown in Figure 1 and detailed crash data is attached for reference.

Based on the crash data, there are no recorded crashes near the subject property and there are very few crashes for the entire study period, further noting there have been recorded crashes during the last three years. As such the roadway and intersections are considered relatively safe and no further evaluation of safety deficiencies is necessary.

### 4. SUMMARY

Based on materials presented in this TIS for the proposed Clackamas County Comprehensive Plan Map Amendment and concurrent Zone Change, the proposed R-30 or FU-10 zone designation development, limited to one single-family residence, generates fewer PM peak hour trips than TBR zone designation reasonable worst-case development.

Because there is a PM peak hour trip generation reduction, the proposed rezoning will not have a transportation system impact and additional transportation analysis is not necessary to address Transportation Planning Rule (TPR) criteria outlined in Oregon Administrative Rule (OAR) 660 012-0060 or Clackamas County Zoning and Development Ordinance (ZDO) criteria.

Based on the safety analysis contained in the letter, Borges Road and intersections are considered relatively safe and no further evaluation of safety deficiencies is necessary.

Sincerely,



Christopher M. Clemow, PE, PTOE  
Transportation Engineer

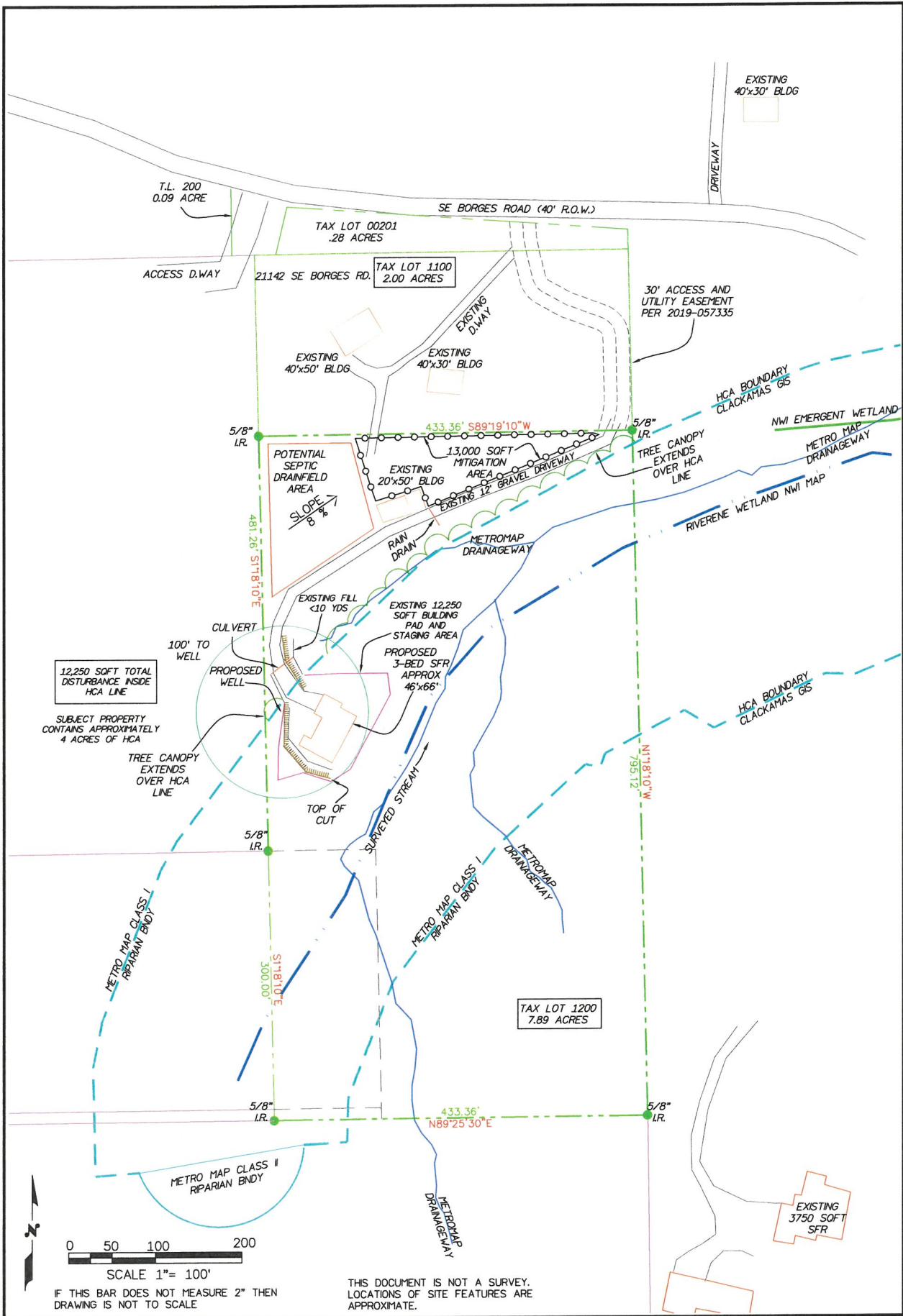
Attachments: Site Plan  
Figure 1 – Crash Locations and History  
Crash Data

c: Robert Goodwin  
Wendie Kellington



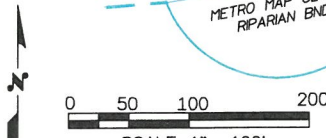
RENEWS 31 DEC 2021





12,250 SOFT TOTAL DISTURBANCE INSIDE HCA LINE  
 SUBJECT PROPERTY CONTAINS APPROXIMATELY 4 ACRES OF HCA

TAX LOT 1200  
 7.89 ACRES



IF THIS BAR DOES NOT MEASURE 2" THEN DRAWING IS NOT TO SCALE

THIS DOCUMENT IS NOT A SURVEY. LOCATIONS OF SITE FEATURES ARE APPROXIMATE.

<p>4800 SE Hemlock Way          Rainier, OR 97122</p>	DEEDED BY: Melva Murphy (19-0165)	1 of 4
	DRAWN BY: T.1S, R.3E, Sec.28C, T.L. 01200	1-31-2020
	Site Plan- Overview	Scale: 1" = 100'



**CRASH HISTORY BY LOCATION (2015 - 2019)**

Melva Murphy Comprehensive Plan Amendment and Zone Change, Damascus (Clackamas County), Oregon

Project No. 20200603.00



1582 Feters Loop  
Eugene, Oregon 97402  
541-579-8315

**clemow**  
ASSOCIATES LLC  
cclemow@clemow-associates.com

**FIGURE**

**1**







Archived: Monday, August 2, 2021 11:57:14 AM  
From: [DLCD Plan Amendments](#)  
Sent: Thu, 1 Jul 2021 09:17:48  
To: Ahrens, Melissa  
Subject: Confirmation of PAPA Online submittal to DLCD  
Sensitivity: Normal

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**Warning: External email. Be cautious opening attachments and links.**

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**Clackamas County**

Your notice of a proposed change to a comprehensive plan or land use regulation has been received by the Oregon Department of Land Conservation and Development.  
Local File #: Z0079-21-CP and Z0080-21-ZAP  
DLCD File #: [003-21](#)  
Proposal Received: 7/1/2021  
First Evidentiary Hearing: 8/9/2021  
Final Hearing Date: 9/15/2021  
Submitted by: [mahrens@clackamas.us](mailto:mahrens@clackamas.us)

If you have any questions about this notice, please reply or send an email to [plan.amendments@dcd.oregon.gov](mailto:plan.amendments@dcd.oregon.gov).

Exhibit 1- Notices  
Z0079-21-CP and Z0080-21-  
ZAP

Page 1 of 5



# PamplinMediaGroup

## -Ad Proof-

This is the proof of your ad, scheduled to run on the dates indicated below. Please proofread carefully, and if changes are needed, please contact Charlotte Allsop prior to deadline at (971) 204-7706 or callsop@pamplinmedia.com.

<p><b>Date:</b> 07/01/21 <b>Account #:</b> 138159 <b>Reference #:</b> <b>Company Name:</b> CLACKAMAS CO. PLANNING &amp; ZONING DIVISION <b>Contact:</b> DARCY RENHARD <b>Address:</b> 150 BEAVERCREEK RD OREGON CITY  <b>Telephone:</b> (503) 742-4545 <b>Fax:</b></p>	<p><b>Ad ID:</b> 208308 <b>Start:</b> 07/06/21 <b>Stop:</b> 07/07/21  <b>Total Cost:</b> \$140.15 <b>Ad Size:</b> 6.611 <b>Column Width:</b> 1 <b>Column Height:</b> 6.611  <b>Ad Class:</b> 1204 <b>Phone #</b> (971) 204-7706 <b>Email:</b> callsop@pamplinmedia.com</p>
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### Run Dates:

Gresham Outlook 07/07/21

**NOTICE OF PUBLIC HEARINGS  
SCHEDULED ON A PROPOSED CLACKAMAS COUNTY  
COMPREHENSIVE PLAN AMENDMENT FROM TIMBER TO URBAN  
LOW DENSITY RESIDENTIAL AND CORRESPONDING ZONE  
CHANGE FROM TIMBER (TBR ZONE) TO FUTURE URBAN  
10-ACRE (FU-10 ZONE)**

The Clackamas County Planning Commission (PC) and the Board of County Commissioners (BCC) will hold public hearings to consider a proposed Comprehensive Plan Map Amendment from a Timber to Urban Low Density Residential land use designation and a corresponding zone change from Timber (TBR) to Future Urban 10-acre (FU-10 Zone), to facilitate future development of a single family residence on a vacant property. The subject property is 7.89 acres in size and is located in the Damascus area on SE Borges Rd. (Tax Lot 13E28C 01200).

The proposal, which is in File Nos. Z0079-21-CP and Z0080-21-ZAP, is available at: <http://www.clackamas.us/planning/zdoproposed.html>. The public may review and comment on the proposed amendments before and/or at the public hearings.

**Planning Commission Public Hearing**  
6:30 p.m., Monday, August 9th, 2021

**Board of Commissioners Public Hearing**  
9:30 a.m., Wednesday, September 15th, 2021

Please note that the Planning Commission hearing for these combined land use applications will be held virtually using the Zoom platform and Zoom access information is provided below. The Board of County Commissioners hearing for these combined land use applications will be publically accessible in person and potentially also available virtually via the Zoom platform, please check the links below for updated information about how to access the hearings.

**PLANNING COMMISSION HEARING ACCESS:**

One week prior to the hearing, a Zoom link to the public hearing and details on how to observe and testify online or by telephone will be available on our website:

<https://www.clackamas.us/planning/planning-commission>

**BOARD OF COUNTY COMMISSIONERS HEARING ACCESS:**

In Person: At the Board of County Commissioners Hearing Room, 2051 Kaen Road, Oregon City, 97045.

If available on Zoom: One week prior to the hearing, a Zoom link to the public hearing and details on how to observe and testify online or by telephone will be available on our website:

[www.clackamas.us/meetings/bcc/landuse](http://www.clackamas.us/meetings/bcc/landuse)

For more information: Melissa Ahrens, 503-742-4519, [mahrens@clackamas.us](mailto:mahrens@clackamas.us)

Publish July 7, 2021

OL208308



**Clackamas County Planning and Zoning Division  
Department of Transportation and Development**

Development Services Building  
150 Beavercreek Road | Oregon City, OR 97045

503-742-4500 | [zoninginfo@clackamas.us](mailto:zoninginfo@clackamas.us)  
[www.clackamas.us/planning](http://www.clackamas.us/planning)

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**NOTICE OF PUBLIC HEARINGS BEFORE THE PLANNING COMMISSION AND THE BOARD OF COUNTY COMMISSIONERS ON A PROPOSAL IN YOUR AREA**

**Date of Mailing of this Notice:** July 1st, 2021

**Notice Sent To:** Applicant, applicable cities/special districts/government agencies, and property owners within ½ mile of subject property

*Please note that the Planning Commission hearing for these combined land use applications will be held virtually using the Zoom platform. The Board of County Commissioners hearing for these combined land use applications will be publically accessible in person and may also be available virtually via the Zoom platform, please check the links below for updated information about how to access the hearings.*

**PLANNING COMMISSION HEARING:**

**Hearing Date & Time:**

Monday, August 9th, 2021, at 6:30pm

**How to Attend:**

One week prior to the hearing, a Zoom link to the public hearing and details on how to observe and testify online or by telephone will be available on our website: <https://www.clackamas.us/planning/planning-commission>

**BOARD OF COUNTY COMMISSIONERS HEARING:**

**Hearing Date & Time:**

Wednesday, September 15th, 2021, at 9:30am

**How To Attend:**

In Person: At the Board of County Commissioners Hearing Room  
**2051 Kaen Road, Oregon City, 97045.**

If available on Zoom: One week prior to the hearing, a Zoom link to the public hearing and details on how to observe and testify online or by telephone will be available on our website:

[www.clackamas.us/meetings/bcc/landuse](http://www.clackamas.us/meetings/bcc/landuse)

**Planning File Number:** Z0079-21-CP & Z0080-21-ZAP

**Applicant:** Melva Murphy

**Proposal:** The Clackamas County Planning Commission (PC) and the Board of County Commissioners (BCC) will hold public hearings to consider a proposed Comprehensive Plan Map Amendment from a Timber to an Urban Low Density Residential land use designation and a corresponding zone change from Timber (TBR) to Future Urban 10-acre (FU-10 Zone), to facilitate future development of a single family residence on a vacant property. The subject property is 7.89 acres in size and is located within the Portland Metropolitan Urban Growth Boundary, in the Damascus area on SE Borges Rd. (no site address).

**Subject Tax Lot:** T1S, R3E, Section 28C Tax Lot 1200.

**Property Owners:** Melva Murphy

**Area of Subject Tax Lots:** Approximately 7.89 acres

**Current Zoning:** Timber (TBR)

**Approval Criteria:** Clackamas County Zoning and Development Ordinance Sections 1202 and 1307; Clackamas County Comprehensive Plan; Statewide Planning Goals; Oregon Administrative Rules Chapter 660, Divisions 18 and 24.

***NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.***

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email [DRenhard@clackamas.us](mailto:DRenhard@clackamas.us).

503-742-4696: ¿Traducción e interpretación? |Требуется ли вам устный или письменный перевод? |翻译或口译? |Cán Biên dịch hoặc Phiên dịch? |번역 또는 통역?

### HOW TO OBTAIN ADDITIONAL INFORMATION

**Staff Contact:** Melissa Ahrens (Tel: 503-742-4519, Email: [mahrens@clackamas.us](mailto:mahrens@clackamas.us))

A copy of the entire application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for review. Hard copies of documents will be provided at reasonable cost. You may inspect or obtain these materials by:

1. Emailing or calling the staff contact (see above);
2. Visiting the Planning & Zoning Division (at the address shown at the top of the first this notice) during regular business hours, which are Monday through Thursday, 8AM to 4PM.
3. Going to the Clackamas County web page: <http://www.clackamas.us/planning/zdoproposed.html>

#### Community Planning Organization for Your Area:

The following recognized Community Planning Organization (CPO) has been notified of this application and may develop a recommendation. You are welcome to contact the CPO and attend their meeting on this matter, if one is planned. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact the Citizen Involvement Office at 503-655-8552. **CPO: Damascus (Inactive)**

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### HOW TO SUBMIT TESTIMONY AND ACCESS THE HEARINGS FOR THIS APPLICATION

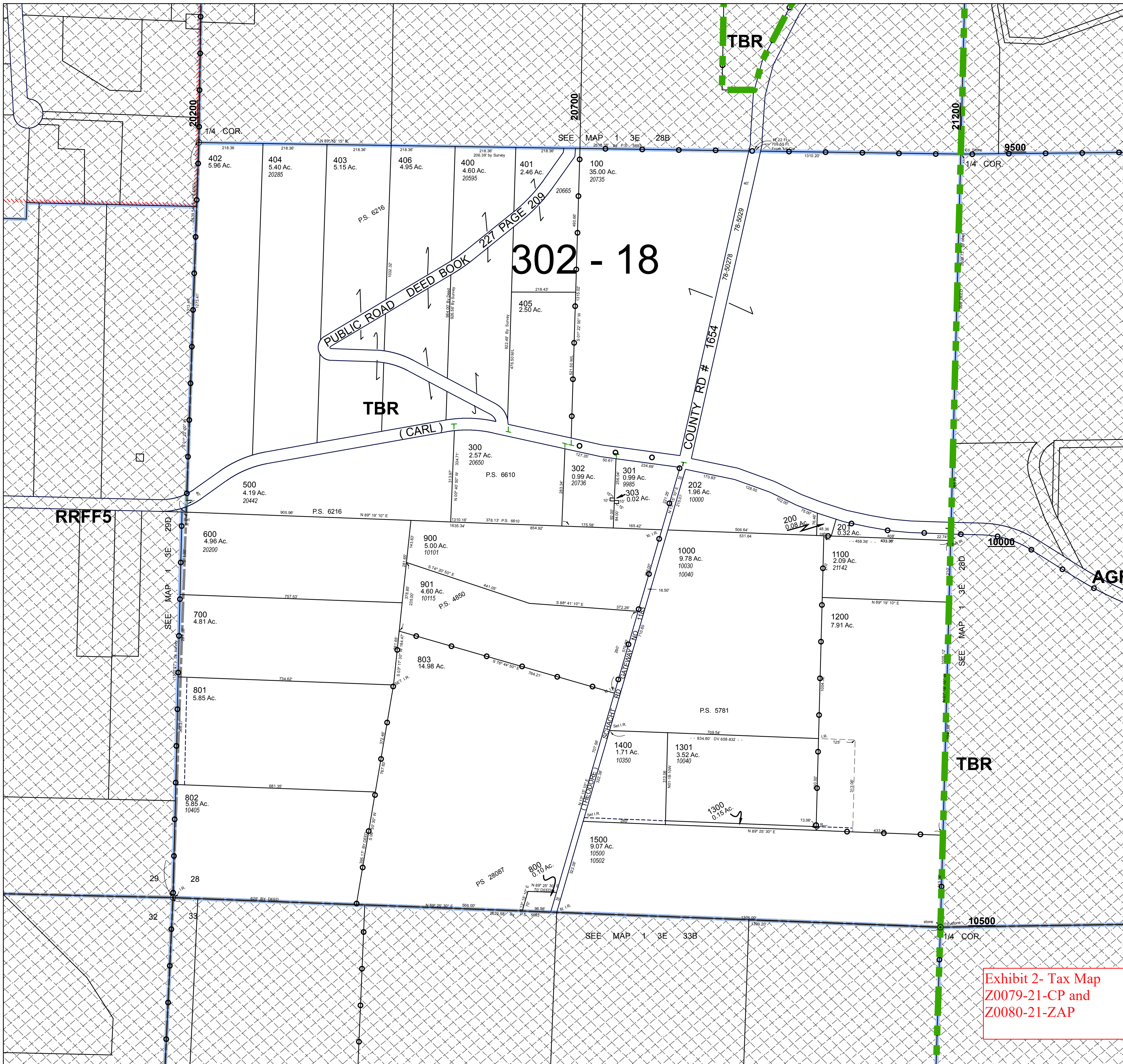
- All interested parties are invited to attend the hearings, remotely online or by telephone for the Planning Commission hearing, and in person for the Board of County Commissioners Hearing, and will be provided with an opportunity to testify orally, if they so choose. Audience members will be invited to express their desire to provide testimony at the beginning of the hearing. Specific instructions for the virtual Planning Commission Hearing will be available online at <http://www.clackamas.us/planning/zdoproposed.html>. Specific instructions for the in person Board of County Commissioners Hearing will be available online at [www.clackamas.us/meetings/bcc/landuse](http://www.clackamas.us/meetings/bcc/landuse).
  - Written testimony received by July 30th, 2021, will be considered by staff prior to the issuance of the staff report and recommendation on this application. However, written testimony will continue to be accepted until the record closes, which may occur as soon as the conclusion of the Board of County Commissioners' hearing.
  - Written testimony may be submitted by email, fax, or regular mail. Please include the case file numbers (Z0079-21-CP & Z0080-21-ZAP) on all correspondence and address written testimony to the staff contact who is handling this matter (Melissa Ahrens).
  - Testimony, arguments, and evidence must be directed toward the approval criteria identified on the first page of this notice. Failure to raise an issue in person at the hearing or by letter prior to the close of the record, or failure to provide statements or evidence sufficient to afford the Board of County Commissioners and the parties involved an opportunity to respond to the issue, precludes an appeal to the Oregon Land Use Board of Appeals based on that issue.
  - Written notice of the Board of County Commissioners' decision will be mailed to you **if you submit a written request and provide a valid mailing address.**
- 

### PROCEDURE FOR THE CONDUCT OF THE HEARING

The following procedural rules have been established to allow orderly public hearings:

1. The length of time given to individuals speaking for or against an item will be determined by the Chair presiding over the hearing prior to the item being considered.
2. A spokesperson representing each side of an issue is encouraged.
3. Prior to the conclusion of the hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The Planning Commission or the Board of County Commissioners may either continue the hearing or leave the record open for additional written evidence, arguments or testimony.
4. The Planning Commission will make a recommendation to the Board of County Commissioners on the application. The Board of County Commissioners is the final decision-maker for Clackamas County on this matter.





- Parcel Boundary
- - - Private Road ROW
- - - Historical Boundary
- + + + Railroad Centerline
- █ TaxCodeLines
- ▭ Map Index
- WaterLines
- Land Use Zoning
- ▨ Plats
- Water
- ⊙ Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- - - DLC Line
- - - Meander Line
- - - PLSS Section Line
- ⊗ Historic Corridor 40'
- ⊗ Historic Corridor 20'

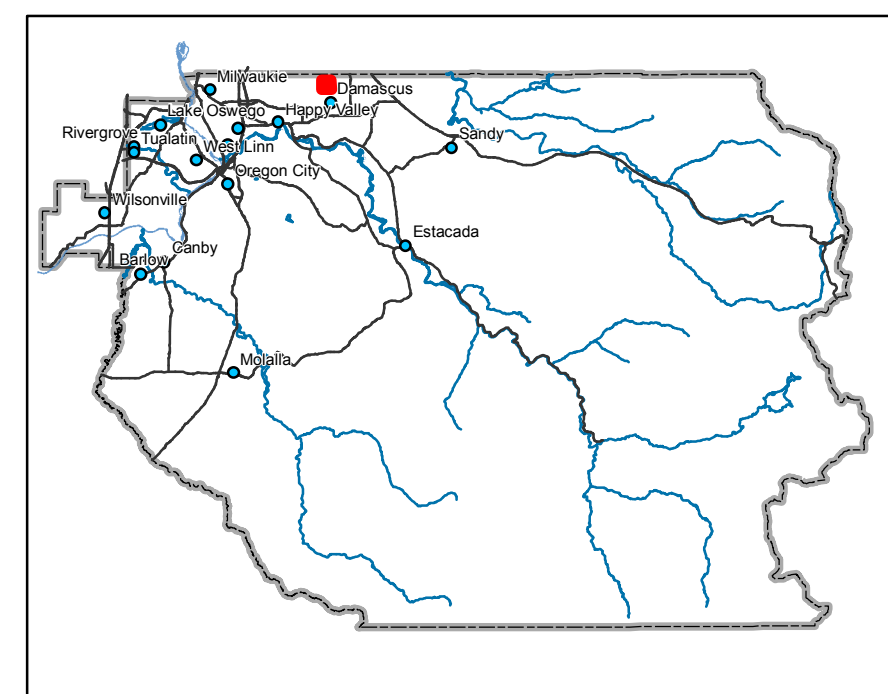


Exhibit 2- Tax Map  
Z0079-21-CP and  
Z0080-21-ZAP

THIS MAP IS FOR ASSESSMENT  
PURPOSES ONLY



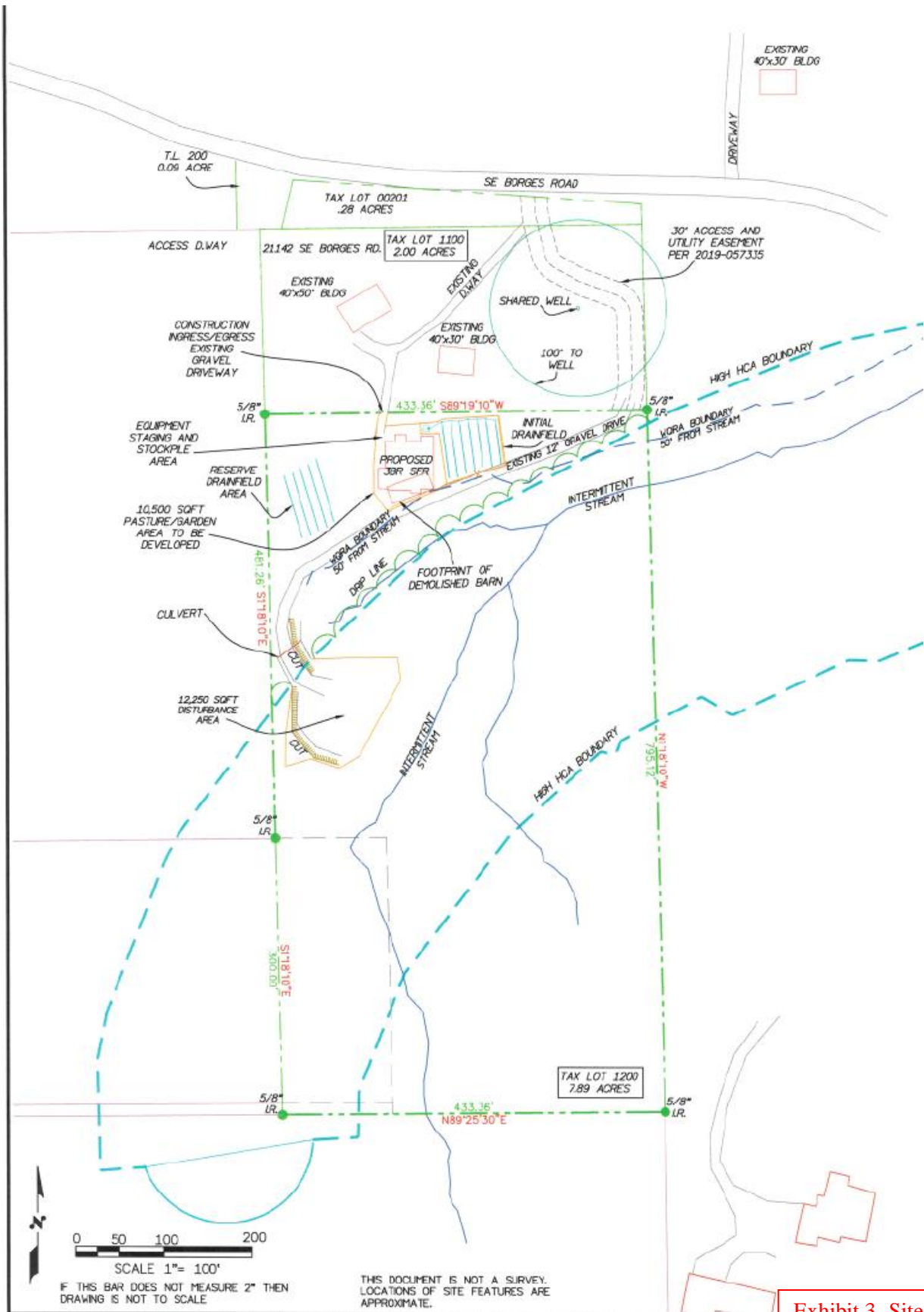


Exhibit 3- Site Plan  
Z0079-21-CP and  
Z0080-21-ZAP

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE )  
METRO URBAN GROWTH BOUNDARY, ) ORDINANCE NO. 02-969B  
THE REGIONAL FRAMEWORK PLAN AND )  
THE METRO CODE IN ORDER TO )  
INCREASE THE CAPACITY OF THE )  
BOUNDARY TO ACCOMMODATE ) Introduced by the Community Planning  
POPULATION GROWTH TO THE YEAR ) Committee  
2022 )

WHEREAS, state law requires the Metro Council to assess the capacity of the urban growth boundary (“UGB”) every five years and, if necessary, increase the region’s capacity to accommodate a 20-year supply of buildable land for housing; and

WHEREAS, the Council and the Land Conservation and Development Commission agreed that the Council would undertake the assessment and any necessary action to increase the capacity of the UGB as part of the state’s periodic review process; and

WHEREAS, Task 2 of the periodic review work program calls for completion of the same assessment of capacity and increase in capacity, if necessary, by December 20, 2002; and

WHEREAS, the Council determined a need for 220,700 new dwelling units to accommodate the forecast population increase of 525,000 and for 14,240 acres to accommodate the forecast employment increase of 355,000 jobs for the three-county metropolitan region by the year 2022; and

WHEREAS, the Council determined that the existing UGB has the capacity to accommodate 177,300 new dwelling units and 9,315 acres for new jobs; and

WHEREAS, policy measures to protect Industrial Areas within the existing UGB can accommodate additional new jobs; and

WHEREAS, policy measures to strengthen Regional and Town Centers as the hearts of the region’s communities can accommodate an additional 6,000 units of needed housing; and

WHEREAS, expansion of the UGB in the Damascus, Gresham, Oregon City, West Linn, Wilsonville, Sherwood, Tigard, Beaverton, King City, Hillsboro, Cornelius, Bethany and Portland areas can accommodate the balance of this needed housing and land for new jobs; and

WHEREAS, the Council consulted its Metropolitan Planning Advisory Committee and the 24 cities and three counties of the metropolitan region and considered their comments and suggestions prior to making this decision; and

WHEREAS, Metro conducted five public workshops in locations around the region to provide information about alternative locations for expansion of the UGB and to receive comment about those alternatives; and

WHEREAS, Metro published, on August 25, 2002, notice of public hearings before the Council on the proposed decision in compliance with Metro Code 3.01.050; and

WHEREAS, the Metro's Community Planning Committee and the Metro Council held public hearings on the proposed decision on October 1, 3, 10, 15, 22, 24, and 29 and November 21, 2002, and considered the testimony prior to making this decision; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

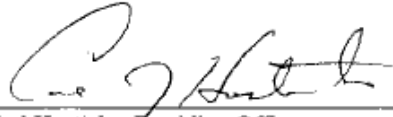
1. Title 1, Requirements for Housing and Employment Accommodation, of the Urban Growth Management Functional Plan ("UGMFP") is hereby amended as indicated in Exhibit A, attached and incorporated into this ordinance, in order to ensure that the UGB continues to provide capacity to accommodate housing and employment growth.
2. Policy 1.16 is hereby added to the Regional Framework Plan ("RFP"), as indicated in Exhibit B, attached and incorporated into this ordinance, in order to protect residential neighborhoods pursuant to Measure 26-29, enacted by voters of the district on May 21, 2002.
3. Title 12, Protection of Residential Neighborhoods, as set forth in Exhibit C, attached and incorporated into this ordinance, is hereby adopted as part of the UGMFP in order to implement Policy 1.16 of the RFP to protect residential neighborhoods pursuant to Measure 26-29.
4. Policies 1.4.1 and 1.4.2, as indicated in Exhibit D, and the accompanying map of Regionally Significant Industrial Areas, as indicated on Exhibit E, are hereby added to the RFP, both exhibits attached and incorporated into this ordinance, in order to increase the efficiency of the use of land within the UGB for industrial use.



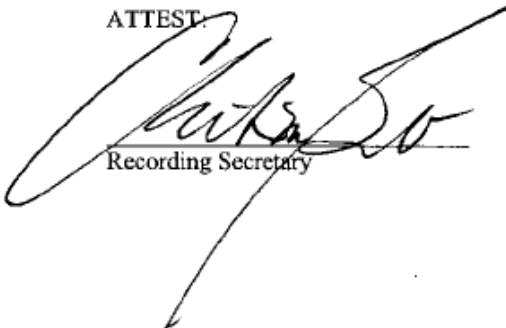
5. Title 4, Industrial and Other Employment Areas, of the UGMFP is hereby amended as indicated in Exhibit F, attached and incorporated into this ordinance, in order to implement Policies 1.4.1 and 1.4.2 of the RFP to increase the efficiency of the use of land within the UGB for industrial use.
6. Policy 1.15 is hereby added to the RFP, as indicated in Exhibit G, attached and incorporated into this ordinance, in order to increase the efficiency of the use of residential land within the UGB as it existed prior to adoption of this ordinance and within areas added to the boundary by this ordinance.
7. Title 6, Regional Accessibility, of the UGMFP, is hereby re-titled as Central City, Regional Centers, Town Centers and Neighborhood Centers and amended, as set forth in Exhibit H, attached and incorporated into this ordinance, in order to implement Policy 1.15 of the RFP by strengthening the roles of centers as the hearts of the region's communities and to improve the efficiency of land use within centers.
8. Performance measures are hereby adopted, as set forth in Item 1 in Appendix A, "Performance Measures to Evaluate Efforts to Improve Land Use Efficiency", to evaluate the progress of efforts to achieve the 2040 Growth Concept and of actions taken in this ordinance to improve the efficiency of the use of land within the UGB.
9. Policy 1.9 is hereby added to the RFP, as indicated in Exhibit J, attached and incorporated into this ordinance, in order to ensure, to the extent practicable, that expansion of the UGB will enhance the roles of Regional and Town Centers in the region.
10. Chapter 3.01 of the Metro Code, Urban Growth Boundary and Urban Reserve Procedures, is hereby amended, as indicated in Exhibit K, attached and incorporated into this ordinance, in order to implement Policy 1.9 of the RFP and to clarify the authority of the Metro Council to place conditions on addition of territory to the UGB.
11. Section 3.07.1110 of Title 11, Urban Growth Boundary Amendment Urban Reserve Plan Requirements, of the UGMFP, is hereby amended as indicated in Exhibit L, attached and incorporated into this ordinance, in order to protect land added to the UGB as Regionally Significant Industrial Area from incompatible use during the planning for urbanization of the land.
12. The Metro UGB is hereby amended to include all or portions of the Study Areas, shown on Exhibit N and more precisely identified in the Alternatives Analysis Report, Item 6 in Appendix A, subject to the conditions set forth in Exhibit M, both exhibits attached and incorporated into this ordinance, in order to accommodate housing and employment that cannot be accommodated within the UGB as it existed prior to adoption of this ordinance.

13. The Metro UGB is hereby amended to include those lands described in the Technical Amendments Report and accompanying maps, Item 7 in Appendix A, to make the UGB coterminous with nearby property lines or natural or built features in order to make the UGB function more efficiently and effectively.
14. Appendix A, attached and incorporated into this ordinance, is hereby adopted in support of the amendments to the UGB, the RFP and the Metro Code in sections 1 through 12 of this ordinance. The following documents comprise Appendix A:
  1. Performance Measures to Evaluate Efforts to Improve Land Use Efficiency
  2. Regional Employment Forecast 2000 to 2030
  3. 2002-2022 Urban Growth Report: Residential Land Need Analysis
  4. 2002-2022 Urban Growth Report: An Employment Land Need Analysis
  5. Map Atlas Memorandum and Maps
  6. 2002 Alternative Analysis Study
  7. Technical Amendments Report
  8. Housing Needs Analysis
15. The Findings of Fact and Conclusions of Law in Exhibit P, attached and incorporated into this ordinance, explain how the supporting documents described in section 14 of this ordinance demonstrate that the amendments to the UGB, the RFP and the Metro Code in sections 1 through 11 of this ordinance comply with state law and the RFP.

ADOPTED by the Metro Council this 5<sup>th</sup> day of December, 2002.

  
\_\_\_\_\_  
Carl Hosticka, Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

**Exhibit A to Ordinance No. 02-969B**

**TITLE 1: REQUIREMENTS FOR HOUSING AND EMPLOYMENT ACCOMMODATION**

3.07.130 Design Type Boundaries Requirement

For each of the following 2040 Growth Concept design types, city and county comprehensive plans shall be amended to include the boundaries of each area, determined by the city or county consistent with the general locations shown on the 2040 Growth Concept Map:

[...]

Inner Neighborhoods--Residential areas accessible to jobs and neighborhood businesses with smaller lot sizes are inner neighborhoods.

Outer Neighborhoods--Residential neighborhoods farther away from large employment centers with larger lot sizes and lower densities are outer neighborhoods.

(Ordinance No. 97-715B, Sec. 1.)

\*\*\*\*\*

**Exhibit A:** Amends Metro Code (UGMFP Title 1 related to housing and employment accommodation) to ensure that the UGB continues to provide capacity to accommodate housing and employment growth.

## Exhibit G to Ordinance No. 02-969B

### New Regional Framework Plan Policy on Centers

#### 1.15 Centers

The success of the 2040 Growth Concept depends upon the maintenance and enhancement of the Central City, Regional and Town Centers, Station Communities and Main Streets as the principal centers of urban life in the region. Each Center has its own character and is at a different stage of development. Hence, each needs its own strategy for success.

Metro shall develop a regional strategy for enhancement of Centers, Station Communities and Main Streets in the region. The strategy shall recognize the critical connection between transportation and these design types, and integrate policy direction from the Regional Transportation Plan. The strategy shall place a high priority on investments in Centers by Metro and efforts by Metro to secure complementary investments by others. The strategy shall include measures to encourage the siting of government offices and appropriate facilities in Centers and Station Communities. Metro shall work with local governments, community leaders and state and federal agencies to develop an investment program that recognizes the stage of each Center's development, the readiness of each Center's leadership, and opportunities to combine resources to enhance results. To assist, Metro shall maintain a database of investment and incentive tools and opportunities that may be appropriate for individual Centers.

\*\*\*\*\*

**Exhibit G:** Adds new policy on Centers to RFP and directs Metro to develop a regional strategy to enhance 2040 Centers.



**Exhibit K to Ordinance No. 02-969B**

**CHAPTER 3.01: URBAN GROWTH BOUNDARY AND URBAN RESERVE PROCEDURES**

**3.01.040 Metro Conditions of Approval**

(a) Land added to the UGB by legislative amendment pursuant to 3.01.015 or by major amendment pursuant to 3.01.025 shall be subject to the Urban Growth Boundary area comprehensive plan requirements of Title 11 of the Urban Growth Management Functional Plan (Metro Code section 3.07.1110 et seq.).

(b) Unless a comprehensive plan amendment has been previously approved for the land pursuant to 3.01.012(c), when it adopts a Legislative or major amendment adding land to the UGB, the Council shall take the following actions:

[...]

- (5) The Council may adopt text interpretations of the requirements of Urban Growth Management Functional Plan (Metro Code Chapter 3.07) and in particular, Title 11 thereof (Metro Code section 3.07.1110 et seq.) that shall be applicable to the required City or County comprehensive plan amendments. These interpretations may address special land needs that are the basis for the amendment but otherwise such interpretations shall not impose specific locational development requirements. Text interpretations may include determinations that certain provisions of Title 11 are not applicable to specific areas because of the size or physical characteristics of land added to the Urban Growth Boundary.

\*\*\*\*\*

**Exhibit K:** Amends Metro Code (UGMFP) to implement policy contained in Exhibit J above and clarify the authority of the Metro Council to place conditions on lands added to UGB.

## **Exhibit L to Ordinance No. 02-969B**

### **TITLE 11: PLANNING FOR NEW URBAN AREAS**

#### 3.07.1110 Interim Protection of Areas Brought into the Urban Growth Boundary

After inclusion of an area within the UGB and prior to the adoption by all local governments with jurisdiction over an area brought into the UGB of amendments to comprehensive plans and implementing land use regulations that comply with 3.07.1120, the local government shall not approve of:

- A. Any land use regulation or zoning map amendments specific to the territory allowing higher residential density than allowed by acknowledged provisions in effect prior to the adoption of the UGB amendment;
- B. Any land use regulation or zoning map amendments specific to the territory allowing commercial or industrial uses not allowed under acknowledged provisions in effect prior to the adoption of the UGB amendment;
- C. Any land division or partition that would result in the creation of any new parcel which would be less than 20 acres in total size;
- D. In an area identified by the Metro Council in the ordinance adding the area to the UGB as a Regionally Significant Industrial Area:
  - 1. A commercial use that is not accessory to industrial uses in the area; and
  - 2. A school, church or other institutional or community service use intended to serve people who do not work or reside in the area.

\*\*\*\*\*

**Exhibit L: Amends Metro Code (UGMFP) to protect land added to UGB as Regionally Significant Industrial Areas from incompatible use during the planning for urbanization.**

**Exhibit M to Ordinance No. 02-969B  
Conditions on Addition of Land to UGB**

**I. General Conditions Applicable to All Land Added to UGB**

A. The city or county with land use planning responsibility for a study area included in the UGB shall complete the planning required by Metro Code Title 11, Urban Growth Management Functional Plan ("UGMFP"), section 3.07.1120 ("Title 11 planning") for the area. Unless otherwise stated in specific conditions below, the city or county shall complete Title 11 planning within two years. Specific conditions below identify the city or county responsible for each study area.

B. The city or county with land use planning responsibility for a study area included in the UGB, as specified below, shall apply the 2040 Growth Concept design types shown on Exhibit N of this ordinance to the planning required by Title 11 for the study area.

C. The city or county with land use planning responsibility for a study area included in the UGB shall apply interim protection standards in Metro Code Title 11, UGMFP, section 3.07.1110, to the study area.

D. In Title 11 planning, each city or county with land use planning responsibility for a study area included in the UGB shall recommend appropriate long-range boundaries for consideration by the Council in future expansion of the UGB or designation of urban reserves pursuant to 660 Oregon Administrative Rules Division 21.

E. Each city or county with land use planning responsibility for a study area included in the UGB shall adopt provisions in its comprehensive plan and zoning regulations – such as setbacks, buffers and designated lanes for movement of slow-moving farm machinery - to ensure compatibility between urban uses in an included study area and agricultural practices on adjacent land outside the UGB zoned for farm or forest use.

F. Each city or county with land use planning responsibility for a study area included in the UGB shall apply Title 4 of the UGMFP to those portions of the study area designated Regionally Significant Industrial Area ("RSIA"), Industrial Area or Employment Area on the 2040 Growth Concept Map (Exhibit N). If the Council places a specific condition on a RSIA below, the city or county shall apply the more restrictive condition.

G. In the application of statewide planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) to Title 11 planning, each city and county with land use planning responsibility for a study area included in the UGB shall comply with those provisions of Title 3 of the UGMFP acknowledged by the Land Conservation and Development Commission ("LCDC") to comply with Goal 5. If LCDC has not acknowledged those provisions of Title 3 intended to comply with Goal 5 by the deadline for completion of Title 11 planning, the city or county shall consider any inventory of regionally significant Goal 5 resources adopted by resolution of the Metro Council in the city or county's application of Goal 5 to its Title 11 planning.

H. Each city and county with land use planning responsibility for a study area included in the UGB shall provide, in the conceptual transportation plan required by Title 11, subsection 3.07.1120F, for bicycle and pedestrian access to and within school sites from surrounding area designated to allow residential use.

**II. Specific Conditions for Particular Areas**

A. Study Areas 6 (partial), 10 (partial), 11, 12, 13, 14, 15, 16, 17, 18 and 19 (partial)

1. Clackamas and Multnomah Counties and Metro shall complete Title 11 planning for the portions of these study areas in the Gresham and Damascus areas as shown on Exhibit N within four years following the effective date of this ordinance. The counties shall invite the participation of the cities of Gresham and Happy Valley and all special districts currently providing or likely to provide an urban service to territory in the area. If a portion of the area incorporates or annexes to the City of Happy Valley or the City of Gresham prior to adoption by Clackamas and Multnomah Counties of the comprehensive plan provisions and land use regulations required by Title 11, the Metro Council shall coordinate Title 11 planning activities among the counties and the new city pursuant to ORS 195.025.
2. In the planning required by Title 11, subsections A and F of section 3.07.1120, Clackamas and Multnomah Counties shall provide for annexation to the TriMet district of those portions of the study areas whose planned capacity for jobs or housing is sufficient to support transit.
3. In the planning required by Title 11, Clackamas County shall ensure, through phasing or staging urbanization of the study areas and the timing of extension of urban services to the areas, that the Town Center of Damascus, as shown on the 2040 Growth Concept Map (Exhibit N) or comprehensive plan maps amended pursuant to Title 1 of the UGMFP, section 3.07.130, becomes the commercial services center of Study Areas 10 and 11 and appropriate portions of Study Areas 12, 13, 14, 17 and 19. Appropriate portions of these study areas shall be considered intended for governance by a new City of Damascus. The Damascus Town Center shall include the majority of these areas' commercial retail services and commercial office space. Title 11 planning for these areas shall ensure that the timing of urbanization of the remainder of these areas contributes to the success of the town center.
4. In the planning required by Title 11, Clackamas and Multnomah Counties shall provide for separation between the Damascus Town Center and other town centers and neighborhoods centers designated in Title 11 planning or other measures in order to preserve the emerging and intended identities of the centers using, to the extent practicable, the natural features of the landscape features in the study areas.
5. If, prior to completion by Clackamas County of Title 11 planning for the Damascus Area, the county and Metro have determined through amendment to the 2000 Regional Transportation Plan to build the proposed Sunrise Corridor, the county shall provide for the preservation of the proposed rights-of-way for the highway as part of the conceptual transportation plan required by subsection G of section 3.07.1120 of Title 11.

\*\*\*\*\*

**Exhibit M: Adopts general and specific conditions on UGB expansion areas**



# Metro Report

**Appendix A**  
Item 3  
Ordinance 02-969 B

## 2002-2022 **Urban Growth Report:** A Residential Land Need Analysis

August 2002  
Updated December 2002



**METRO**  
PEOPLE PLACES  
OPEN SPACES

Study Area 13		Gross Vacant Buildable Acres 812	
Total Acres	1,576	Dwelling Unit Capacity	3,065
Total Developed Acres	418	Employment Acres	185
Total Constrained Acres	325	Resource Land Acres	992
Title 3 Acres	55	Percent Tree Canopy Cover	40%
Upland Steep Slope Acres	271		

**General Site Description:** Study Area 13 is approximately 1,576 acres. It is situated immediately south of the Gresham City limits and the Pleasant Valley Area. Southeast Foster Road, which defines the edge of Study Area 14, borders it on the west. The southern boundary consists of parcel lines running along the approximate axis of SE Borges Road. The eastern boundary is SE 222<sup>nd</sup> Drive, and the boundary of Study Area 12. The center of this study area is approximately four miles south of Gresham's downtown center. Approximately 210 acres of the northern section of this study area is in Multnomah County; the rest is in Clackamas County. This area has been designated as Inner Neighborhood and Industrial. The total study area is approximately 1,576 acres, while the vacant buildable portions of the study area comprise approximately 812 acres.

**Parcelization, Building Values, Development Patterns:** This study area contains about 300 tax lots. About two-thirds of them have improvement values, though only about five have improvement values above \$250,000. About 15 percent of the tax lots in this study area are smaller than one acre in size, and about 70 percent of all the tax lots are smaller than five acres. Some agricultural activities appear to be occurring in the eastern and western portions of the area, consisting mainly of field crops. Non-residential land uses include stables, construction, repair and remodeling, excavating and lodging. Mining and aggregate uses do not occur in this study area.

**Physical Attributes (Power lines, Easements, Airport Fly-over Zones):** Available data does not suggest the existence of power lines or other public easements running through this area. There is no evidence of significantly high air traffic noise over this area.

**Public Services Feasibility:** The study area falls within several jurisdictions for public services. The area's relatively large size may allow for more efficient servicing. However, the area also contains multiple drainage basins, which may be a consideration in providing services. The following conditions apply:

- **Water:** The Sunrise Water Authority appear willing to accept the area within its service area if necessary. This study area would be moderately difficult to serve. Infrastructure improvements are needed to develop the area, otherwise, existing facilities may suffer from new development.
- **Sewer:** Clackamas County Water Environment Services appears willing to accept the study area within its service area if necessary. This study area would be moderately difficult to serve due to the existence of steep slopes, which could increase construction difficulty and create some operational problems. Infrastructure improvements will be needed to prevent overburdening existing facilities in the vicinity.

- **Stormwater:** Clackamas County Water Environment Services appears willing to accept the study area within its service area if necessary. This area would be easy to serve for storm sewers, though some limited improvements and extensions of lines are to be expected, both inside and outside the UGB.

### **Agricultural Analysis**

**Zoning:** This area includes exception land and resource land, a small portion of which is in Multnomah County and zoned as CFU (219 acres). Clackamas County has zoned the remainder of the study area's resource land as TBR or AGF (662 acres) and EFU (116 acres) and the exception land as RRFF5. The 116 acres of EFU land is contiguous to a 106-acre section of EFU land in Study Area 14. To the north is the UGB. To the east is exception land and resource land zoned EFU and TBR in Study Area 12. To the south is exception land and resource land zoned EFU, AGF and TBR in Study Area 10. To the west is exception land and a small pocket of resource land zoned EFU in Study Area 14.

**Current Agricultural Activity:** The largest portion of resource land within Study Area 13 is surrounded on all sides by exception land when combined with the resource land to the south and east in Study Areas 10 and 12. The majority of this land is forested with a minor amount of nursery and field crops. A number of these forested parcels are publicly owned open space. The EFU land on the western edge of the study area contains rural residences with some forest and pastures. The directly adjacent EFU land in Study Area 14 contains nursery and field crops. To the east is Study Area 12 that contains adjacent resource land that is forested with some nursery land to the south. The resource land directly to the south in Study Area 10 is mostly forested with large expanses of nursery land further south. There are a number of nursery operations on exception land in Study Areas 10 and 12.

**Compatibility:** Urbanization of this area may result in a significant increase in traffic on SE Tillstrom, SE Borges Road, and SE 222<sup>nd</sup> Drive, which could impede the normal movement of farm equipment and supplies and affect the transport of agricultural goods produced on the agriculture lands to the south. Issues relating to safety, vandalism, and liability, as well as complaints due to noise, odor, and the use of pesticides and fertilizers would be exacerbated by the proximity of new development to these farming operations. Urbanization may also have a great impact on the resource land within the area that is forested that currently provides a natural barrier between existing farm practices and rural residential subdivisions. Three streams flow through this area, Kelley Creek to the north to Johnson Creek while Rock Creek and a tributary flow south to the Clackamas River. Urbanization of this area would result in an increase in impervious surface that may diminish water quality and increase the potential for flooding on Rock Creek through downstream agriculture areas. Urbanization would also bring development near the EFU land to the southeast, which may affect the value of these agriculture lands by encouraging land banking and speculation and inhibiting the ability of farmers to acquire parcels of land needed for agricultural production.

### **Environmental Social Energy Economic Analysis**

#### **General Character of the Area**

This area is characterized by large areas of steep sloped-forested land generally located in the center and south of the study area. A number of streams flow through the area in ravines formed by the steep slopes.

**Environmental**

Kelly Creek and two small tributaries flow west through the top portion of the area for approximately 1.7 miles. Rock Creek and a tributary flow through the lower portion of the area for one-half and 1.5 miles, respectively. There are three small isolated wetlands totaling 1.1 acres dispersed in the study area. There is a very large area of steep slopes located in the central portion of the study area. Metro owns 23 open space parcels totaling approximately 207 acres in this area of steep slopes. There are two other significant locales of steep slopes, one in the northern section and one in the southern section; both associated with stream corridors. Kelly Creek is identified as a riparian corridor in Multnomah County's inventory of significant Goal 5 resources and impact areas in the *draft* West of Sandy River Plan. There is a large area of riparian and wildlife habitat south of this stream segment and upland areas north of the stream also identified in the plan. Metro's draft Goal 5 Fish and Wildlife Habitat Inventory identifies 57 percent of the study area land in the proposed inventory. Urbanization of this area may impact these streams and steep slope areas as outlined in the introduction to the ESEE analysis and also may inhibit the ability of these natural areas to provide species habitat and other ecological functions.

**Social Energy Economic**

See Appendix A.



**Exhibit P to Ordinance No. 02-969B  
Findings of Facts, Conclusions of Law**

**I. General Findings for Task 2 Decision**

[...]

F. Water Quality

Each local government responsible for an area added to the UGB must complete the planning requirements of Title 11, Urban Growth Management Functional Plan (UGMFP), including compliance with the water quality provisions of Title 3 of the UGMFP.

G. Areas Subject to Natural Disasters and Hazards

The Council has excluded environmentally constrained areas from the inventory of buildable land (see UGRs) and from its calculation of the housing and jobs capacity of each study area (see Alternatives Analysis). Each local government responsible for an area added to the UGB must complete the planning requirements of Title 11, Urban Growth Management Functional Plan (UGMFP), including compliance with Title 3 of the UGMFP on floodplains and erosion control.

\*\*\*\*\*

**Exhibit P:** Findings of Fact and Conclusions of Law explaining how support documents demonstrate that amendments to Metro Code, RFP and UGB comply with state law and RFP

## **II. Specific Findings for Particular Areas**

### **A. Gresham and Damascus Area, Study Areas 6 (partial), 10 (partial), 11, 12, 13, 14, 15, 16, 17, 18 and 19 (partial)**

These findings address ORS 197.298; ORS 197.732(1)(c)(B), (C) and (D); Goal 2, Exceptions, Criteria (c)(2), (3) and (4); Oregon Administrative Rules (OAR) 660-004-0010(1)(B)(ii), (iii) and (iv); OAR 660-004-0020(2)(b), (c) and (d); Goal 5; Goal 11; Goal 12; Goal 14, Factors 3 through 7; Metro Code 3.01.020(b)(3) through (7) and 3.01.020(d); Metro RFP Policies 1.2, 1.3, 1.4, 1.6, 1.7 and 1.11; and Regional Transportation Plan Policies 2.0, 3.0, 4.0 and 14.0.

The Gresham and Damascus study areas (herein called “the Damascus area”) include all or portions of Study Areas 6, 10, 11, 12, 13, 14, 15, 17, 18 and 19, as shown on the Exhibit N map. The Council includes this land within the UGB for three principal reasons. First, the Council wants to accommodate as much housing and employment on exception land as possible, to avoid urbanization of farm and forest land. Second, the Council wants to accommodate a significant portion of the region’s overall need for land for employment on the east side of the region to improve the jobs/housing ratio, currently “housing rich” and “jobs poor.” Third, the Council wants urbanization in this area to support the Gresham Regional Center, the Rockwood Town Center and the Damascus Town Center in a manner consistent with the 2040 Growth Concept. Including the Damascus area in the UGB will bring development that will help pay for infrastructure for these communities and the Inner and Outer Neighborhoods that surround them.

The Damascus area includes 10,027 acres of exception land. The Council includes this exception land in the Damascus area because it is the highest priority for inclusion in the UGB under ORS 197.298(1) and because the Council wants to protect the region’s agricultural industry. Reluctantly, the Council includes 3,352 acres of resource land in the Damascus area because it is intermingled with the exception land. The Council considered maps and analysis of the area produced by the City of Gresham and Clackamas County. The maps and analyses allow comparison between the location of needed sewer, water, storm water and transportation facilities if the resource land is included, and their location if the resource land is excluded. From these analyses the Council concludes that it must include the resource land in the Damascus area because urban services must pass through the resource land in order to provide the services to the exception land in the area.

If the resource land were excluded, the exception land in the Damascus area could not urbanize efficiently. The area as a whole could not produce communities with employment opportunities and the fiscal resources commercial and industrial development provide for urban services. For this reason, the Council concludes that it must include the resource land in the Damascus area in order to maximize the efficiency of urbanization of the exception land.

Finally, without the intermingled resource land, the exception land would accommodate far fewer households and jobs. Metro would have to look to exception lands or resource land in other locations to accommodate the households and jobs not accommodated here.

[...]

## 2. Orderly Services

The Council considered whether public facilities and services could be provided in an orderly and economic fashion to the Damascus area. The Council relied upon the Water, Sewer and Stormwater Feasibility Analysis and the Transportation Services Feasibility Analysis contained in its Alternatives Analysis (Appendix A, Item 6) for its determination that these services can be provided to the Damascus area in an orderly and economic manner. The Council also considered maps showing likely public service facility layouts provided by the City of Gresham and Clackamas County, and the vision produced by the Damascus Area Design Workshop. The Council further considered more detailed analysis of serviceability from the City of Gresham indicating that the city can provide services to the northern portion of the Damascus area (Study Areas 6 and 12 north of the Multnomah County line) immediately and the remainder of the study areas within the watershed of Johnson Creek within five years of inclusion within the UGB. Condition IIA(1) of Exhibit M calls for transportation and public facility and service plans within four years after the effective date of this ordinance. Condition IIA(4) calls for phasing and timing of service provision to allow the emergence of town centers in the Damascus area.

The Alternatives Analysis sets forth the likely service provider for sewer, water and storm-water services and assigns a serviceability rating for each study area within the Damascus area. Serviceability generally ranges from "moderate" to "easy" to serve.(Table A-3) and compares favorably with exception areas not included (such as outlying Study Areas 5, 9, the excluded portion of 10, 29, 30, 36 and 52).

Transportation services will be difficult to provide in parts of the Damascus area due to the varied topography. However, Metro's 2000 Regional Transportation Plan (RTP) anticipated inclusion of the Damascus area within the UGB. The RTP's "Priority System" of planned transportation facilities, for which funding is expected, shows how the region will provide transportation services to the area. The City of Gresham provided more detailed analysis of serviceability showing that it will be easier to provide transportation services to the Damascus area than indicated in the Alternatives Analysis.

## 3. Efficiency

The Council considered whether the Damascus area could be urbanized in an efficient manner. The Council relied the same information on provision of essential services mentioned above. This information convinced the Council that the area can urbanize efficiently, achieving the housing and job density targets associated with the 2040 Growth Concept design types assigned to the Damascus area.

The Council recognizes that the Damascus area, characterized by pockets of small parcels, hilly topography, riparian and floodplain areas and limited transportation services, cannot achieve the overall densities that might be achieved on large tracts of flat resource land adjacent to the UGB. The Council, however, has compared the efficiency of urbanizing the Damascus area not with flat farmland, but with other exception lands. In that comparison, the Council concludes that it better

achieves Goal 14 to include the exception land in the Damascus area because that area offers a better opportunity to urbanize fully, efficiently, economically and to establish a complete community of housing, employment and community services than does any other large area of exception land (such as Study Areas 5, 8, 9, 29, 30, 36 or 53 ) or than a large number of small areas of exception land along the fringe of the UGB (such as 59 through 67, 69-71, 77-80 and 82).

The Council also concludes that adoption of RFP Policy 1.5 (Exhibit G), new Title 6 (Centers) of the UGMFP (Exhibit H), and the Centers Strategy (Appendix A, Item 3) will not only increase the efficiency of urbanization within the UGB as it stood before Ordinance No. 02-969, but also within the Damascus area, given the design types (including a Town Center) assigned to the area by this ordinance. Adoption of RFP Policies 1.4.1 and 1.4.2 (Exhibit D) and revision of Title 4 of the UGMFP (Exhibit F), both dealing with Regionally Significant Industrial Areas (RSIAs), will increase the efficiency of urbanization within the UGB as it stood prior to this ordinance and within the Damascus area.

#### 4. Consequences

The Council considered the consequences of urbanization on the people and land of the Damascus area. The area is characterized geographically by hills, valleys and streams. It is characterized socially by rural residences, small farms and woodlots and several small-town concentrations of businesses and community services. The Alternatives Analysis and materials presented to the Council during public hearings offer the information and analysis upon which the Council relied in its consideration of the consequences of urbanization.

Urbanization will affect all characteristics of the Damascus area. The social effects of urbanization are unavoidable. Some of these effects could be avoided by urbanizing resource land. But the Council wants to minimize the urbanization of resource land, so it has compared the social consequences among optional exception areas. The Council concludes that the social effects of urbanizing the Damascus area will be less adverse than urbanization of any of the large exception areas (such as Study Areas 5, 8, 9, 29, 30, 36 or 53) or of a large number of smaller exception areas along the fringe of the UGB (such as 59 through 67, 69-71, 77-80 and 82) because the Damascus area offers the best opportunity to establish a complete community of housing, employment and community services and an orderly, economic and efficient network of sewer, water, storm-water and transportation infrastructure. Land designated for employment, especially RSIAs, offers the best choice for substantial employment opportunities on the east end of the region with the least impact on commercial agriculture.

Environmental consequences are also unavoidable, as noted in the Alternatives Analysis. They range from "high" to "moderate" to "low." There are study areas in other parts of the region not included in the UGB where consequences of urbanization fall lower on the range. But these areas are scattered across the region and cannot accommodate the larger number of dwelling units and jobs, or the balance of housing and jobs, that the Damascus area can accommodate. In order to find sufficient capacity on other lands for the housing and jobs that this area can accommodate, the Council would have to include resource land and other exception land with more adverse consequences.

The Damascus Area Design Workshop showed how urbanization of the area could minimize adverse environmental consequences in the area. It is unlikely that the measures considered in the workshop could be undertaken in other large or small exception areas because the measures require a concentration of urban development in the buildable areas in order to reduce the effects



of urbanization on unbuildable areas, such as streams, riparian areas, wetlands and steep slopes (to provide the funds, transfer of development rights opportunities, etc.). The Council further considered that Title 3 of the UGMFP and the conditions in Exhibit M will apply to the Damascus area to protect the streams, wetlands, floodplains and steep slopes of the area.

Adverse economic and energy consequences of urbanization in the Damascus area are “moderate” to “low.” The Council concludes that, notwithstanding the noted adverse consequences, the positive consequences of accommodating urbanization in a complete fashion – housing, employment and community services and an orderly, economic and efficient network of sewer, water, storm-water and transportation infrastructure – outweigh the more adverse economic and energy consequences of scattering this development along the perimeter of the UGB and urbanizing resource land.

#### 5. Compatibility

The Agricultural Compatibility Analysis shows that the study areas that comprise the Damascus area are moderately to highly compatible with nearby agriculture. The included resource land in Area 11 borders excluded resource land on the south side of Area 11. Evaluation of compatibility for this area (Alternatives Analysis, Appendix A, Item 6, p. A-25) determined that it is “moderate”, meaning that there is some incompatibility. Ordinance No. 02-969 of the Task 2 decision imposes Condition IE upon urbanization of this part of Area 11 in order to reduce conflict and improve compatibility between urban use on the included land and agricultural use on the excluded land to the south.

The included resource land in Study Areas 12 and 13 borders exception land that is included in the UGB. Urbanization of these lands will have no significant adverse effect upon excluded resource land. This ordinance designates the included portion of Study Area 6 for industrial use, generally more compatible with agricultural activities. The ordinance imposes Condition IE upon urbanization of Area 6 to reduce conflict and improve compatibility between urban use on the included land and agricultural use on the excluded land to the south. An included portion of Study Area 12 borders designated forest land to the east. Condition IE also applies to Area 12.

#### 6. Natural and Cultural Resources

Metro’s alternatives analysis addresses the Goal 5 resources protected in the Damascus area by Multnomah and Clackamas Counties in their acknowledged comprehensive plans. The counties will be responsible for protecting inventoried Goal 5 resources in the area when they amends their comprehensive plans and zoning ordinances to implement expansion of the UGB. Condition IIA(2) of Exhibit M requires the counties to consider Metro’s inventory of Goal 5 resources in their application of Goal 5 to the Damascus area. Title 3 (Water Quality, Flood Management and Fish and Wildlife Conservation) of the UGMFP requires Clackamas County to protect water quality and floodplains in the area. Title 11 of the UGMFP, section 3.07.1120G, requires the counties to protect fish and wildlife habitat and water quality. Title 11, section 3.07.1110, protects the status quo in the interim period of county planning for the area.

The counties’ inventories of Goal 5 resources protected by land use regulations include one mining (aggregate) site, Kelly Creek in Study Area 13, Johnson Creek in Study Area 12, one upland habitat site and historic buildings in Study Areas 12, 17 and 19. Under Metro’s Title 11, current county land use regulations will remain in place until the counties adopt new plan

provisions and land use regulations to allow urbanization of the Damascus area, at which time the responsible local government will apply Goal 5 to these resources. Urbanization may affect the inventoried sites. If so, the local governments will determine whether to limit urbanization near the sites, or to re-evaluate their earlier decisions to protect the sites.

#### 7. Public Utilities and Services

Under statewide Planning Goal 11, Metro is responsible for coordination of the preparation of public facility plans within the district. Metro will fulfill this responsibility through implementation of Title 11 of the UGMFP, which (1) prohibits Multnomah and Clackamas Counties from upzoning and from dividing land into resulting lots or parcels smaller than 20 acres until the counties revise their comprehensive plans and zoning ordinances to authorize urbanization of land Metro brings into the UGB; and (2) requires the counties to develop public facilities and services plans and urban growth diagrams with the general locations of necessary public facilities such as sanitary sewers, storm sewers and water lines for the Damascus area. Metro and the counties began this work with the evaluation of the serviceability of the Damascus area in the Alternatives Analysis and consideration of how to provide services as part of the analysis required to satisfy ORS 197.298(3)(c) and Goal 14, factors 3 and 4.

#### 8. Transportation

Metro has responsibility to ensure that its Task 2 decision for the Damascus area does not significantly affect a transportation facility or allow uses that are inconsistent with the identified function, capacity and performance standards of transportation facilities. Metro fulfills this responsibility through implementation of Title 11 of the UGMFP, which (1) prohibits Multnomah and Clackamas Counties from upzoning and from land divisions into resulting lots or parcels smaller than 20 acres in the area until the counties revise their comprehensive plans and zoning ordinances to authorize urbanization of land Metro brings into the UGB; and (2) requires the counties to develop conceptual transportation plans and urban growth diagrams with the general locations of arterial, collector and essential local streets for the area. Metro and the counties began this work with the evaluation of the serviceability of the Damascus area in the Alternatives Analysis and consideration of how to provide services as part of the analysis required to satisfy ORS 197.298(3)(c) and Goal 14, factors 3 and 4.

Metro's 2000 Regional Transportation Plan (RTP) anticipated inclusion of the Damascus area within the UGB. The plan's "Priority System" of planned transportation facilities shows improvements planned for the area to serve anticipated growth. Condition IIA(6) of Exhibit M calls for protection of the rights-of-way for the Sunrise Highway, the most significant improvement in the Priority System for the area.

#### 9. Regional Framework Plan

The Council has included the Damascus area as the best option before it to comply with state planning laws and the policies of the RFP. Taking this land into the UGB allows Metro to accommodate a large number of jobs and housing units in an integrated and complete community with the least impact on agriculture in the three-county area. The area will not only provide employment opportunities for new residents of the Damascus area, but also improve the ratio between jobs and housing in the east side of the region.

The Council has applied conditions (Exhibit M) to the addition of the Damascus area to ensure full consideration of the affordability of housing in light of anticipated employment opportunities. The conditions also require measures to ensure the emergence of distinct communities, including the designated Damascus Town Center. The conditions make reference to Title 11 of the Urban Growth Management Functional Plan (UGMFP), which requires the counties and, possibly, a newly incorporated city, to plan for concentrations of housing that will support an efficient arrangement of public facilities and services, including transportation.

10. Regional Transportation Plan

Through its Joint Policy Committee on Transportation, Metro has coordinated transportation planning and funding of transportation improvements with local governments in the region. The Regional Transportation Plan adopted a "Priority System" of improvements through the year 2020. The Priority System includes the most critical improvements needed to implement the 2040 Growth Concept. Among the improvements are the "East Multnomah County Transportation Projects" and the "Pleasant Valley and Damascus Transportation Projects" that will provide the basic transportation services to the area (pages 5-49 to 5-57). Figures 1.4, 1.12, 1.16, 1.17, 1.18 and 1.19 of the RTP show how the region's street design, motor vehicle, public transportation, freight, bicycle and pedestrian systems will extend into the Damascus area.



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**Roger A. Alfred, Senior Assistant Attorney**

September 7, 2021

The Honorable Tootie Smith  
Chair, Clackamas County  
Clackamas County Board of Commissioners  
2051 Kaen Road  
Oregon City, OR 97045

EXHIBIT 5- Metro  
Comment Letter  
Z0079-21-CP, Z0080-21-  
ZAP

Page 1 of 2

Re: Z0079-21-CP and Z0080-21-ZAP

Dear Chair Smith and Commissioners:

Metro submits these comments in support of the Clackamas County Planning Commission's unanimous recommendation to deny the above-referenced applications. The property at issue was part of Metro's 2002 urban growth boundary expansion and was included within the City of Damascus prior to its disincorporation.

As described in the county's detailed August 2, 2021 staff report, land use planning for areas added to the UGB is governed in part by Title 11 of Metro's Urban Growth Management Functional Plan. Title 11 includes section 3.07.1130, which creates "interim protections" for areas after they are added to the UGB but before a comprehensive plan is adopted. Those protections prohibit the adoption of any zoning map amendment that would allow higher residential density for an area than was allowed by the regulations in effect at the time the area was added to the UGB.

As also noted in the staff report, the 2002 Metro Ordinance that brought the Damascus area into the UGB adopted conditions of approval for the expansion area, including a condition that specifically requires "the city or county with land use planning responsibility" for the Damascus area to apply the interim protection standards in Title 11 (the condition references section 3.07.1110; however, since 2002 the standards have been renumbered as 3.07.1130). Because the Damascus City Council was unable to agree on adopting a comprehensive plan and the city subsequently disincorporated, section 3.07.1130 now applies to the county and prohibits the requested map amendments because they would allow higher density than the regulations in effect when the property was added to the UGB.

For the reasons described in the August 2, 2021 staff report, the inconsistency of this application with the conditions of approval attached to Metro Ordinance No. 02-969B and applicable provisions of Metro's Title 11 also cause the application to be inconsistent with relevant Clackamas County Comprehensive Plan Policies, Statewide Planning Goals, and the applicable zone change criteria in Section 1202 of the County Zoning and Development Ordinance.

After a lengthy saga, the disincorporation of the City of Damascus was finally declared valid by the Oregon Supreme Court almost exactly a year ago. Metro recognizes this has created a



challenging situation for Clackamas County with regard to future urban planning and the provision of urban services in that area. The Metro planning department is open to working with county staff to identify potential solutions that could guide future development in this part of the region.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Alfred', with a stylized flourish at the end.

Roger A. Alfred