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March 3, 2022

Board of County Commissioners  
Clackamas County

Members of the Board:

**Adoption of Previously Approved  
Comprehensive Plan Map Amendment and Zone Change Application**

<b>Purpose/Outcomes</b>	Amend the Clackamas County Comprehensive Plan map and zoning designation
<b>Dollar Amount and Fiscal Impact</b>	<i>None identified</i>
<b>Funding Source</b>	<i>N/A</i>
<b>Duration</b>	<i>Indefinitely</i>
<b>Previous Board Action</b>	<i>Board of County Commissioners (“Board” or “BCC”) held a public hearing on September 15, 2021, at which time the BCC voted to approve the application, and directed staff to draft the Board Order and the findings of fact, both of which are included with this report.</i>
<b>Strategic Plan Alignment</b>	<i>1. Build public trust through good government.</i>
<b>Contact Person</b>	<i>Nate Boderman, 503-655-8364</i>
<b>Contract No.</b>	<i>None</i>

**BACKGROUND:**

Z0079-21-CP and Z0080-21-ZAP include a Comprehensive Plan map amendment from a Forest to a Low Density Residential land use designation and a corresponding zone change from Timber (TBR) to either Future Urban 10-acre (FU-10) or Urban Low Density Residential (R-30), 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).

A public hearing was held on August 9, 2021 for Planning Commission consideration of the proposed Comprehensive Plan map and zoning designation changes. The Planning Commission voted 8-0 to recommended denial of the proposal, as recommended by staff.

On September 15, 2021 a public hearing was conducted before the BCC to consider the Comprehensive Plan map and zoning designation changes, during which the BCC orally voted

3-2 to approve the application. Specifically, the BCC approved a change to a Low Density Residential land use designation and a corresponding zone change to Future Urban 10-acre (FU-10). The proposed alternate R-30 zoning designation was denied.

The Board then directed staff to draft a Board Order and findings consistent with its decision. A copy of the Board Order implementing the oral decision, and findings and conclusions to be adopted by the Board has been attached.

**RECOMMENDATION:**

Staff recommends the Board approve the Board Order and the findings and conclusions which are attached thereto.

Respectfully submitted,

Nate Boderman  
Assistant County Counsel

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

In the Matter of a Comprehensive  
Plan Amendment and Zone Map Amendment  
proposed by Melva Murphy  
on vacant property with no address, tax lot  
T1S, R3E, Section 28C Tax Lot 1200 W.M.



Order No. \_\_\_\_\_  
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File Nos.: Z0079-21-CP and Z0080-21-ZAP

This matter coming regularly before the Board of County Commissioners, and it appearing that Melva Murphy made an application for a Comprehensive Plan map amendment from a Forest to a Low Density Residential land use designation and a corresponding zone change from Timber (TBR) to either Future Urban 10-acre (FU-10) or Urban Low Density Residential (R-30), to facilitate future development of a single family residence on a 7.89- acre property described as T1S, R3E, Section 28C Tax Lot 1200 W.M., and;

**Whereas**, it further appearing that after appropriate notice a public hearing was held before the Planning Commission on August 9, 2021 at which testimony and evidence was presented, and that, at this hearing, the Commission, unanimously recommended denial of this request; and

**Whereas**, it further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on September 15, 2021, at which testimony and evidence were presented, and that, at that hearing, a decision was made by the Board, by the vote of 3-2 to approve the Comprehensive Plan amendment from Forest to Low Density Residential and zone change from TBR to FU-10, ,as identified in Order Exhibit A and B, which are attached to this order and incorporated herein by reference. The Board denied the zone change from Timber (TBR) to Urban Low Density Residential (R-30) that was proposed as an alternate zone in the application.

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

1. The applicant requests approval of a Comprehensive Plan map amendment from a Forest to a Low Density Residential land use designation and a corresponding zone change from Timber (TBR) to either Future Urban 10-acre (FU-10) or Urban Low Density Residential (R-30), for the area identified in Order Exhibit A.
2. This Board adopts as its findings and conclusions the *Findings of Fact for Z0079-21-CP and Z0080-21-ZAP* document attached hereto and incorporated herein as Order Exhibit B, which finds the Comprehensive Plan amendment from Forest to Low Density Residential and zone change from TBR to FU-10 to be in compliance with the applicable criteria.

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

In the Matter of a Comprehensive  
Plan Amendment and Zone Map Amendment  
proposed by Melva Murphy  
on vacant property with no address, tax lot  
T1S, R3E, Section 28C Tax Lot 1200 W.M.



Order No. \_\_\_\_\_  
Page 2 of 2

File Nos.: Z0079-21-CP and Z0080-21-ZAP

**NOW THEREFORE, the Clackamas County Board of Commissioners do hereby order** that the requested Comprehensive Plan Amendment for the Urban Low Density Residential (LDR) land use designation and Zone Map Amendment for the Future Urban 10-acre (FU-10) zone are hereby APPROVED, and the Zone Map Amendment for the Urban Low Density Residential R-30 zone is DENIED, for the area identified in Order Exhibit A, as described in Findings of Fact for Z0079-21-CP and Z0080-21-ZAP in Order Exhibit B which are attached to this order and incorporated herein by reference.

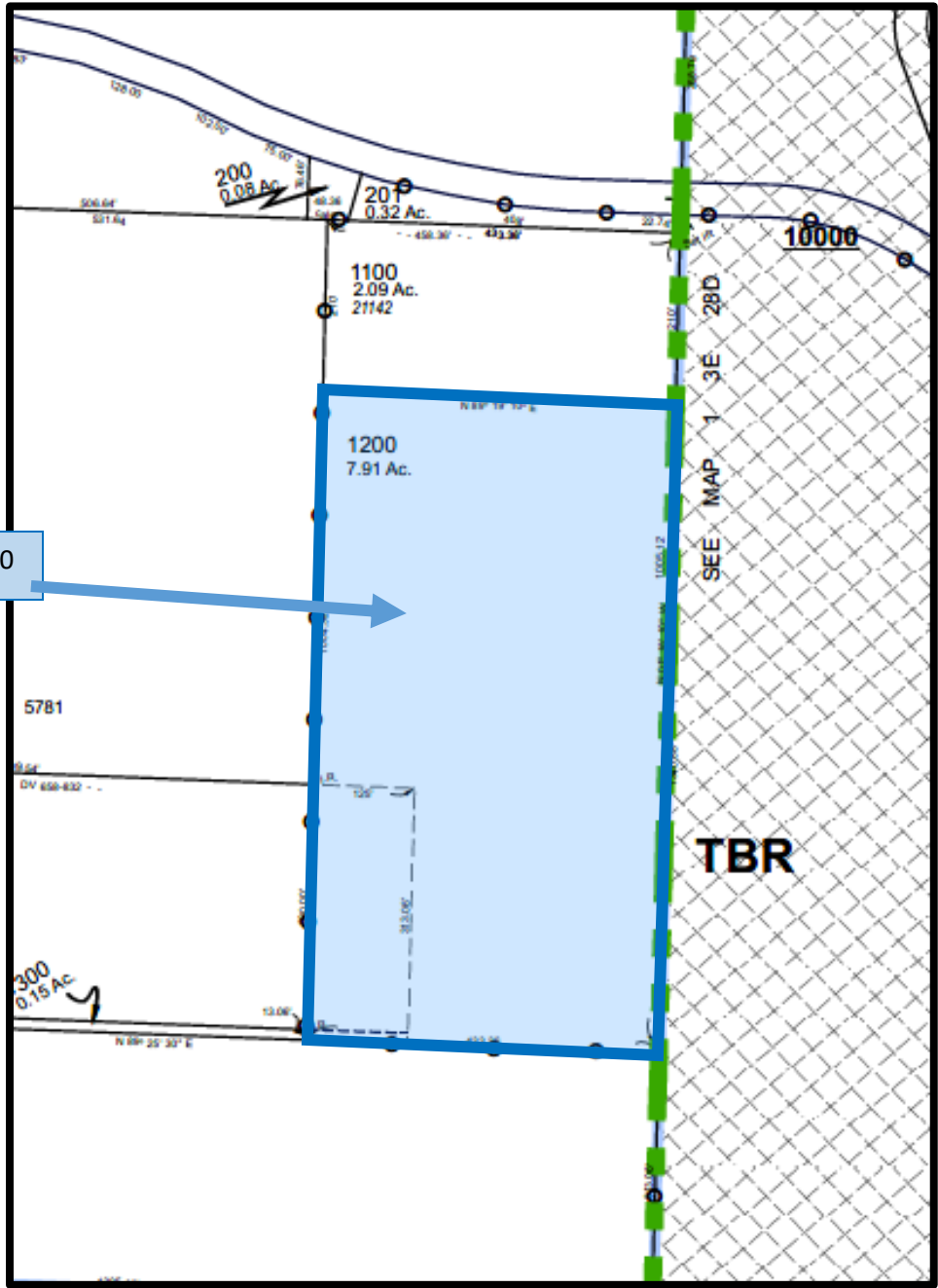
DATED this 3rd day of March, 2022

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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

**Board Order Exhibit A:  
Z0079-21-CP and Z0080-21-ZAP  
Comprehensive Plan/Zoning Designation Amendment  
(Forest/TBR to Low Density Residential/FU-10)**



Tax Lot 13E28C 01200



**FINDINGS OF FACT FOR Z0079-21-CP & Z0080-21-ZAP:  
COMPREHENSIVE PLAN AMENDMENT AND ZONE CHANGE**

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

**PROPOSAL:** Comprehensive Plan map amendment from a Forest to a Low Density Residential land use designation and a corresponding zone change from Timber (TBR) to either Future Urban 10-acre (FU-10) or Urban Low Density Residential (R-30), 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).

**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

**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.

**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 ZDO 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.

**APPEAL OF THIS DECISION:** Any person who presented evidence, argument, or testimony as part of the record may appeal this decision by filing a notice of intent to appeal with the Oregon Land Use Board of Appeals (LUBA). Filing appeals are governed by the provisions of Oregon Revised Statutes 197.830 and Oregon Administrative Rule 661-010-0015. A notice of intent to appeal shall be filed with LUBA on or before the 21<sup>st</sup> day after the date the decision sought to be reviewed is mailed to parties. A notice of intent to appeal may be filed by mail with LUBA at the following address: 775 Summer Street NE, Suite 330, Salem, Oregon 97301-1283. Further information on filing appeals and the related process can be found by referencing the statutes and administrative rules referenced above, or by visiting LUBA’s website at <https://www.oregon.gov/luba/Pages/Frequently-Asked-Questions.aspx>.

## **I. BOARD DECISION**

1. **APPROVAL** of the Comprehensive Plan map amendment (File No. Z0079-21-CP) from Forest to Low Density Residential<sup>1</sup>
2. **APPROVAL** of the zone change (File No. Z0080-21-ZAP) from Timber (TBR) District to Future Urban 10-acre (FU-10) District with the following conditions:
  - A. Only one dwelling unit is allowed on the subject property. The allowed dwelling unit may be either a detached single-family dwelling or a manufactured dwelling. No accessory dwelling unit is permitted.
  - B. No institutional, commercial, or industrial uses that were not also allowed in the TBR District in 2002, prior to the UGB expansion, are permitted to occur on the subject property.
3. **DENIAL** of the zone change from Timber (TBR) to Urban Low Density Residential (R-30).

This decision is based on the findings detailed in Sections II & III.

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

The Board has reviewed the Statewide Planning Goals, the Metro Urban Growth Management Functional Plan policies, the requirements of Metro Ordinance 02-969B, applicable Comprehensive Plan policies, and ZDO Section 1202 criteria in conjunction with this proposal and make the following findings and conclusions:

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<sup>1</sup> With a Comprehensive Plan Chapter 4 urban land use classification of Future Urban.

## **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. 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 406 in order to obtain approval to build a dwelling. A GIS mapping analysis shows the property would meet the mapping requirements of ZDO Subsection 406.05(D)(3) for a forest dwelling approval; however, since the ZDO prohibits lots of record or dwellings located within an urban growth boundary from counting towards satisfying the minimum number of lots of record and dwellings to pass a template test, a forest dwelling could not be approved on the property. The applicant then submitted a pre-application conference request for a Comprehensive Plan amendment 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 applications. 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 ZDO, which were approved but could only be vested upon approval of the subject Comprehensive Plan amendment and zone change applications.



**Figure 1: Property Aerial**



*Source: Clackamas County Aerial 2018*

The applicant is proposing to change the Comprehensive Plan land use designation for the property from Forest to Low Density Residential and a corresponding zone change from Timber (TBR) to Future Urban 10-acre (FU-10), 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 Comprehensive Plan land use designation. Since the proposed FU-10 zoning or R-30 zoning are both urban zones, the County's Comprehensive Plan Chapter 4 also requires that the urban land use classifications are considered for consistency purposes. The FU-10 zoning would require a Future Urban land use classification and the R-30 zoning would require an Immediate Urban land use classification. Table 1 clarifies how urban land use classifications relate to the proposed zoning designations.

TABLE 1.

Comp. Plan Designation	Current	Proposal A	Proposal B
<b>Urban Classification</b>	Future Urban Study Area	Future Urban	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

Proposal A for FU-10 zoning (Low Density Residential Comprehensive Plan designation, Future Urban classification, and FU-10 zoning) is intended for those areas that are planned for urban services but where such services will be provided at some point in the future. Proposal B for R-30 zoning (Low Density Residential Comprehensive Plan designation, Immediate Urban classification and R-30 zoning) is intended for those areas planned for and currently 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. 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 for the creation of new lots.

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 site evaluation signed by Clackamas County Onsite Wastewater Program staff stating the site can be accommodated by an onsite wastewater treatment system.
3. Fire Protection: Clackamas RFPD #1

## Noticing

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. Notice for the Planning Commission hearing and the Board of County Commissioners' hearing was provided on July 1, 2021.

## **B. Submittal Requirements**

Section 1307 and Subsection 1202.02 of the Zoning and Development Ordinance list 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 Section 1307 and Subsection 1202.02 are included in the application. The application was submitted on February 23, 2021 and deemed incomplete on March 23, 2021. The applicant submitted a response to the incomplete notice on May 26, 2021, and the application was deemed complete that day.

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

## **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 TBR zoning.

The cited ORS provisions are not applicable because the subject applications are for a Comprehensive Plan amendment and a zone change, not for development of a residence.

### Unconstitutional Taking

The application narrative states on page 11 that the applicant seeks approval to redesignate and rezone the subject property as a means to avoid an unconstitutional taking of 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".

The Board assumes that the unconstitutional taking of property that the applicant asserts 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 zone allows for a multitude of other uses that allow for an economically beneficial use of the 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 fact that the TBR zone allows for an economically beneficial use of the subject property is enough, by itself, to overcome the applicant's claim that there has been an unconstitutional taking of private real property. That the TBR zoning does not allow for residences as a primary permitted use without land use approval, and there has never been a land use application approved on the property for a residence, is not particularly relevant to the applicant's claim here.

The applicant's argument appears to imply that it is the restrictions found in the TBR zoning regulations, which has not changed significantly since initially applied to the property in 1994, which triggered a regulatory taking. If this is indeed the applicant's point, then in addition to finding that the applicant retains economically beneficial use of her property, the Board further finds that the time has long since passed and any applicable statute of limitations would have expired, barring the applicant's claim. Applicant's argument that approval of the proposed Comprehensive Plan Amendment and Zone change would remedy an unconstitutional taking is meaningless where there is no taking in the first place, or where the applicant is barred from arguing as much. In this case, any decision to deny the proposed Comprehensive Plan amendment and zone change would not constitute an unconstitutional taking. While the Board of County Commissioners is not a court and may not ultimately adjudicate whether the County's actions constitute a taking or whether a taking claim is "ripe," the Board finds that it is not likely that any such takings argument would be successful, even if properly alleged.

#### **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 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 decisions 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 (DLCD). The subject property was not located within any Urban Growth Management Areas (UGMA) of any nearby or surrounding cities when the application was filed, however, it has since been added to the Happy Valley UGMA. 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 is 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>2</sup>, which in this case includes the Metro Urban Growth Management Functional Plan (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 consistency. However, in this case, the proposed Comprehensive Plan amendment to LDR and zone change to FU-10 are consistent with the Metro Functional Plan interim protection measures (Section 3.07.1110 of the Metro Code). Specifically, interim protection measure 3.07.1110 (A) prohibits 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. 3.07.1110 (B) and (D), restricts the institutional, industrial, and commercial uses allowed on the property to only those that were also allowed in 2002 on the property, prior to the UGB expansion. Since a single family dwelling could have been approved on the property, prior to its inclusion in the UGB in 2002, through a forest dwelling template test land use decision, the density allowed with the zone change to FU-10, as conditioned, is not any greater than would have been permitted on the property in 2002, prior to the UGB expansion. Conditions of approval 2.A and 2.B would restrict development on the property to just one single-family dwelling and would limit institutional, commercial and industrial uses to only those that were also allowed in the TBR zone in 2002. As such, the Board finds that the proposed Comprehensive Plan amendment to Low Density Residential and zone change to FU-10, as conditioned, comply with Metro's UGMFP, the Regional Framework Plan/2040 Growth Concept and Metro Ordinance 969B, as detailed in the findings in Section E. **The proposed Comprehensive Plan amendment is 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

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<sup>2</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."

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 and 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, wildlife habitat, and groundwater resources on site that are regulated by Statewide Planning Goal 5. However, the requirements of Goal 5 are already implemented by the County's Comprehensive Plan and Zoning and Development Ordinance, and any residential development on site, allowed by the proposed Comprehensive Plan amendment and zone change to FU-10, would be required to comply with provisions to protect Goal 5 resources as part of the development review and building permit process. **The proposed Comprehensive Plan amendment is 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. 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, and requirements of Goal 6 are already implemented by the County's Comprehensive Plan and Zoning and Development Ordinance. Any residential development on site, allowed by the proposed Comprehensive Plan amendment and zone change to FU-10, would be required to comply with provisions to protect Goal 6 resources as part of the development review and building permit process. **The proposed Comprehensive Plan amendment is 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. 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, and the requirements of Goal 7 are already implemented by the County's Comprehensive Plan and Zoning and Development Ordinance. Any residential development on site, allowed by the proposed Comprehensive Plan and Zone change to FU-10, would be required to comply with provisions to protect Goal 7 resources as part of the

development review and building permit process. **The proposed Comprehensive Plan amendment is 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 define 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 County's Comprehensive Plan, specifically Chapter 6 Housing, has already been acknowledged by the State as consistent with applicable OARs, and the proposed Comprehensive Plan amendment and zone change would not change the residential density on the property from what was allowed prior to the UGB expansion.

Ultimately, additional planning for housing at urban densities will be required for the Damascus area; however, the proposed Comprehensive Plan Amendment and zone change to FU-10, as conditioned, are consistent with the Metro Functional Plan interim protection measures (Section 3.07.1110 of the Metro Code) that apply until urban planning is completed. Specifically, interim protection measure 3.07.1110 (A) prohibits 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. Since a single-family dwelling could have been approved

on the property, prior to its inclusion in the UGB in 2002, through a forest dwelling template test land use decision, the density allowed with the zone change to FU-10 , as conditioned, is not any greater than would have been permitted on the property in 2002, prior to the UGB expansion. Conditions of approval 2.A and 2.B would restrict development on the property to just one single-family dwelling and would limit institutional, commercial and industrial uses to only those that were also allowed in the TBR zone in 2002. As such, the Board finds that the Comprehensive Plan amendment and zone change to FU-10, as conditioned, are consistent with Metro’s UGMFP, the Regional Framework Plan/2040 Growth Concept, Metro Ordinance 969B, Statewide Planning Goal 10 and applicable OARs. **The proposed Comprehensive Plan amendment is 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.

Ultimately, planning for urban public facilities and services will be required for the Damascus area; however, the proposed Comprehensive Plan Amendment and zone change to FU-10, as conditioned, are consistent with the Metro Functional Plan interim protection measures (Section 3.07.1110 of the Metro Code) that apply until urban planning is completed. Specifically, interim protection measure 3.07.1110 (A) prohibits 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. Since a single-family dwelling could have been approved on the property, prior to its inclusion in the UGB in 2002, through a forest dwelling template test land use decision, the density allowed with the zone change to FU-10 , as conditioned, is not any greater than would have been permitted on the property in 2002, prior to the UGB expansion. Conditions of approval 2.A and 2.B would restrict development on the property to just one single-family dwelling and would limit institutional, commercial and industrial uses to only those that were also allowed in the TBR zone in 2002. As such, the Board finds that the Comprehensive Plan amendment and zone change to FU-10, as conditioned, are consistent with Metro’s UGMFP, the Regional Framework Plan/2040 Growth Concept, Metro Ordinance 969B and Statewide Planning Goal 11. **The proposed Comprehensive Plan amendment is 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 to adjacent roadways. The TIA memo, completed by Clemow Associates LLC, concludes that the proposed Comprehensive Plan designation of LDR 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 R-30 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 to FU-10 due to the minimal level of traffic increases anticipated.

**The traffic impact analysis demonstrates compliance with the requirements of Goal 12 and the Board finds that the proposed Comprehensive Plan amendment and zone change to FU-10, as conditioned, is 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 area. 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 increase the intensity of use that was anticipated for the area in the Goal 14 consistency findings in the UGB expansion order.

The proposed Comprehensive Plan Amendment and zone change to FU-10, as conditioned, are consistent with the Metro Functional Plan interim protection measures (Section 3.07.1110 of the Metro Code) that apply until urban planning is completed. Specifically, interim protection measure 3.07.1110 (A) prohibits 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. Since a single-family dwelling could have been approved on the property, prior to its inclusion in the UGB in 2002, through a forest dwelling template test land use decision, the density allowed with the zone change to FU-10, as conditioned, is not any greater than would have been permitted on the property in 2002, prior to the UGB expansion. Conditions of approval

2.A and 2.B would restrict development on the property to just one single-family dwelling and would limit institutional, commercial and industrial uses to only those that were also allowed in the TBR zone in 2002. As such, the Board finds that the Comprehensive Plan amendment and zone change to FU-10, as conditioned, are consistent with Metro’s UGMFP, the Regional Framework Plan/2040 Growth Concept, Metro Ordinance 969B and Statewide Planning Goal 14. **As such, the Board finds that the Comprehensive Plan amendment and zone change to FU-10, as conditioned, are 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 Code Interim Protection Measures, Chapter 3 of the Urban Growth Management Functional Plan**

### 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.

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.

The County and Metro have not completed the concept planning for the subject study area required by Metro's Urban Growth Management Functional Plan Chapter 11. As such, the interim protection measures (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. Prior to the adoption of the subject site to the UGB in 2002, the property was capable of a template test approval for a forest dwelling, which would have allowed one single-family residence on the property. This determination is based off of a mapping analysis performed by staff. As such, the pre-UGB expansion residential density would have been one single-family dwelling for the property. Likewise, the proposed FU-10 zoning district would only allow for one single-family residence. However, since the property is within the Urban Growth Boundary, an accessory dwelling unit (ADU) would be permitted in the FU-10 zoning district per the County's current ZDO. As such, the Board is conditioning the FU-10 zone change

approval to prohibit the development of an ADU on the subject property so that the residential density remains the same as what was allowed on the property prior to the 2002 UGB expansion.

Regarding 3.07.1110 (B) and (D), the Board is adopting condition of approval 2.B to limit the institutional, industrial, and commercial uses allowed on the property to only those that were also allowed in 2002 on the property, prior to the UGB expansion.

Regarding 3.07.1110 (C), the property is already undersized relative to the minimum lot size of 10 acres in the FU-10 zone, so no further partitioning of the property would be allowed pursuant to the current FU-10 zoning regulations in ZDO Section 316.

To address consistency with interim protection measures A, B, and D, the Board has added conditions of approval 2.A and 2.B onto the Comprehensive Plan amendment and zone change that would restrict development on the property to just one single-family dwelling and would limit institutional, commercial and industrial uses to only those that were also allowed in the TBR zone in 2002. Consistency with C is demonstrated above. **Therefore, the proposed Comprehensive Plan amendment and zone change to FU-10, as conditioned, are consistent with the Metro Code interim protection measures in 3.07.1110, and the Comprehensive Plan amendment and zone change to FU-10 would be consistent with Ordinance 02-969B.**

**The proposed zone change to R-30 would not be consistent with the interim protection measures since it would increase the residential density on the property and allow for future property divisions under 20 acres in size, inconsistent with interim protection measures A and C above. As such, the Board is denying the R-30 zone change.**

## **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 Community Planning Organization in the area (Damascus) was inactive at the time notice of this application was provided. The Planning Commission and Board of County Commissioners held public hearings, as required pursuant to Section 1307 of the ZDO. These



public mailings, notices and hearings ensured 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 prior to its inclusion in the UGB, however, there are no policies in this Section of the Comprehensive Plan applicable to land within the UGB.

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

*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 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 is 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, meaning water will be provided by a domestic well, the State Watermaster for the area confirmed 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 steep slope

review, as required by Section 1002 of 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 Chapter 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 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 'Future Urban Study Area' land use classification was applied to the property. 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."*

Generally, moving out of this classification and into a Future Urban Area classification, which would allow for the Low Density Residential land use designation, requires compliance with Comprehensive Plan 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.

Land Use Plan Designations. The subject property is currently designated Forest in the Comprehensive Plan. Proposal A for FU-10 zoning (Low Density Residential Comprehensive Plan designation, Future Urban classification, and FU-10 zoning) is intended for those areas that are planned for urban services at some point in the future. Proposal B for R-30 zoning (Low Density Residential Comprehensive Plan designation, Immediate Urban classification and R-30 zoning) is intended for those areas planned for and currently served by public services.



Since the proposed FU-10 zoning or R-30 zoning are both urban zones, the County's Comprehensive Plan Chapter 4 also requires that the urban land use classifications are considered for consistency purposes. The FU-10 zoning would require a Future Urban land use classification and the R-30 zoning would require an Immediate Urban land use classification. The Comprehensive Plan requirements for each urban land use classification needed for zone change proposals A and B are included below:

### **Proposal A- FU-10 Zoning**

**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.

### **Proposal B- R-30 Zoning**

**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.

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 substantially developed or surrounded by development at urban densities. As such, Proposal B for the R-30 zoning would not be consistent with the requirements of the County's Comprehensive Plan Chapter 4. **The Board finds that the proposed Comprehensive Plan amendment to Immediate Urban and zone change to R-30 is inconsistent with Chapter 4.**

Regarding Proposal A for the FU-10 zoning, the Board finds that the proposed Comprehensive Plan Amendment and zone change, as conditioned, are allowed under Metro Code 3.07.1110 (interim protection measures) of Metro Ordinance 02-969B. Since Proposal A for FU-10 zoning is consistent with the UGB planning requirements of the Metro Code, the change in urban classification to Future Urban can be found consistent with Policy 4.D of Chapter 4 of the Comprehensive Plan, as well as the remainder of applicable Chapter 4 policies. As such, the subject property can be moved out of the Future Urban Study Area classification and into the Future Urban classification, which will support the proposed change to LDR and FU-10. **The proposed Comprehensive Plan amendment to Future Urban and LDR and zone change to FU-10, as conditioned, is consistent with Chapter 4.**

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

The applicant included a Traffic Impact Analysis (TIA) 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 districts, specifically looking at the impact to adjacent roadways. The TIA memo, completed by Clemow Associates LLC, concludes that the proposed Comprehensive Plan designation of LDR 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 R-30 zoning could generate up to 132 new net daily trips and a maximum of 10 net new peak hour trips.

Clackamas County Engineering staff reviewed the submitted TIA memo and concurs with the conclusions that there will be no significant impact on the transportation system as a result of the proposed Comprehensive Plan amendment and zone change to FU-10 due to the minimal level of traffic increases anticipated. The traffic impact analysis demonstrates compliance with the requirements of Goal 12 and Chapter 5 of the Comprehensive Plan and the Board finds that **the proposed Comprehensive Plan amendment and zone change to FU-10, as conditioned, is consistent with Goal 12.**

**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.*

As conditioned, the proposed Comprehensive Plan Amendment and zone change to FU-10 would allow for development of one single-family residence and would be consistent with the policies of Ch. 6 to allow for housing opportunities. **The proposed Comprehensive Plan amendment and zone change to FU-10 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 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.*

Under the proposed zone change to FU-10, and as conditioned, development of the site will be limited to one single-family dwelling, related residential accessory uses, farming, and forestry, all of which are allowed under the current zoning or would have been allowed by the current zoning when the subject property was added to the UGB in 2002. Commercial, industrial and institutional development would be limited to those allowed prior to the UGB expansion in 2002. These uses are, in essence, rural uses that can be served by onsite wastewater disposal to the extent consistent with state law, well water to the extent permitted by state law, and rural standards for surface water management administered by the county. **The proposed Comprehensive Plan amendment and zone change to FU-10 is consistent with Chapter 7.**

**The County's Comprehensive Plan Chapter 4 would require the R-30 zone to have public services already in place and available to serve the subject property. As such, the Board cannot find that the R-30 zoning district proposed in Proposal B would be consistent with Chapter 7 since no public utilities are available at the property. The proposed zone change to R-30 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 (DLCDD). The subject property is located within the

Urban Growth Management Area (UGMA) of Happy Valley, but was only recently added after the date of noticing for this application. The property is not located in a designated urban or rural reserve area.

This is a proposal for a quasi-judicial Comprehensive Plan amendment and zone change, and public notice was provided consistent with applicable policies of Chapter 11. The Planning Commission and Board of County Commissioners held public hearings, as required, and notice of the hearings was 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. The Department of Land Conservation and Development (DLCD) and other agencies and interested parties were notified of the application on July 1, 2021, 35 days prior to the first scheduled public hearing before the Planning Commission on August 9, 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 Sections D, E and F of these findings of fact, the proposed Comprehensive Plan amendment and zone change to FU-10 is 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 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). Subsection 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, II.E and II.F, above, Proposal B for a zone change to R-30 is not consistent with applicable policies of the County’s Comprehensive Plan. Specifically, the proposed zone change would not be consistent with Chapters 4 and 7 of the Comprehensive Plan. As such, the proposed R-30 zoning would not meet the requirements of Subsection 1202.03(A).

Alternatively, Proposal A for the FU-10 zoning district, as conditioned, is consistent with the applicable policies of the Comprehensive Plan.

**As such, based on the consistency findings in Sections II.D, II.E and II.F, above, the proposed zoning designation change to FU-10, as conditioned, is 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.*

The proposed zone change to FU-10, as conditioned, would allow for one home. The subject property can rely on the proposed onsite wastewater treatment 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. **As such, the proposed FU-10 zoning is inconsistent with Subsection 1202.03(B); however, the proposed alternate zoning of R-30 is not.**

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

The applicant included a Traffic Impact Analysis (TIA) 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 districts, specifically looking at the impact to adjacent roadways. The TIA memo, completed by Clemow Associates, LLC, concludes that the proposed zoning is not expected to have a significant impact on the surrounding transportation system. The report also concludes that the full development on the site under the proposed FU-10 or R-30 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 TIA memo and concurs with the conclusions 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. **The proposed zone change to FU-10 is consistent with Subsection 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.*

The applicant included a Traffic Impact Analysis (TIA) 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 districts, specifically looking at the impact to adjacent roadways. The TIA memo, completed by Clemow Associates, LLC, concludes that the proposed zone change is not expected to have a significant impact on the surrounding transportation system’s safety.. Based on the crash data they reviewed for the entire length of Borges Rd. from 2015 to 2019, there were no recorded crashes near the subject property and very few crashes for the entire study period. The report concluded 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 TIA memo and concurs with the conclusions that safety of the transportation system is adequate to serve the level of development as a result of the proposed zone change due to the minimal level of traffic increases anticipated. **The proposed zone change to FU-10 is consistent with Subsection 1202.03(D).**