



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

01/23/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Eagle Point Plan Amendment
DLCD File Number 003-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, February 03, 2012

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

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

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Bunny Lincoln, City of Eagle Point
Angela Lazarean, DLCD Urban Planner
Josh LeBombard, DLCD Regional Representative
Thomas Hogue, DLCD Economic Development Policy Analyst
Angela Lazarean, DLCD Urban Planner
Bill Holmstrom, DLCD Transportation Planner

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FORM **2**

DLCD

Notice of Adoption

In person electronic mailed

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DEPT OF

JAN 17 2012

**LAND CONSERVATION
AND DEVELOPMENT**
For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **City of Eagle Point**

Local file number: **08/09-11ZC**

Date of Adoption: **11/15/2011**

Date Mailed: **1/13/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 8/17/2009

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The amendment changed the zoning from heavy commercial (C-2) to retail commercial (C-1). We are aware of the warning not to "see attached." Despite that, we direct you to the attached correspondence, which is necessary in this case, as it was approved as a stipulated judgment as a result of a petition for writ of mandamus, in which the City of Eagle Point was the defendant and the applicant/property owner was the relator.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **n/a**

to: **n/a**

Zone Map Changed from: **C-2**

to: **C-1**

Location: **Near the intersection of Linn and Hannon**

Acres Involved: **0**

Specify Density: Previous: **n/a**

New: **n/a**

Applicable statewide planning goals:

1 **2** **3** **4** **5** **6** **7** **8** **9** 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD File No. 003-09 (17772) [16899]

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

ODOT

Local Contact: **Mark Bartholomew, attorney for City** Phone: (541) 779-8900 Extension:
Address: 717 Murphy Road Fax Number: 541-779-5636
City: Medford Zip: 97504- E-mail Address: msb@roguelaw.com

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 **green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

HORNECKER, COWLING, HASSEN & HEYSELL, L.L.P.

Attorneys at Law

John R. Hassen
R. Ray Heysell
John W. Blackhurst
Adam T. Stamper*
Joseph E. Kellerman, LL.M.
James A. Wallan
Charles E. Bolen
Ryan J. Vanderhoof
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Mark S. Bartholomew
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717 Murphy Road
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January 13, 2012

OF COUNSEL

Robert L. Cowling
H. Scott Plouse
P. David Ingalls
***Robert D. Kaplan

Gregory T. Hornecker 1933-2009
B. Kent Blackhurst 1922-2007
Ervin B. Hogan 1927-2000

*Also admitted in California
**Also admitted in Idaho
***Admitted in Washington Only

DEPT OF

JAN 17 2012

**LAND CONSERVATION
AND DEVELOPMENT**

ATTENTION: Plan Amendment Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Dear Plan Amendment Specialist:

I am sending this letter, Form 2 DLCD Notice of Adoption, as well as the Petition for Alternative Writ of Mandamus and Stipulated Judgment Allowing Preemptory Writ of Mandamus.

The property was previously zoned C-2 (heavy commercial). The applicant/property owner filed an application for a zone change from C-2 to C-1, as well as a conditional use and site plan approval for a new Carl's Jr. Restaurant. The application was submitted on May 7, 2009 with the City of Eagle Point. It was deemed completed on June 30, 2009. The 120-day period expired on or before October 28, 2009. As a result of the City's failure to make a final decision prior to the expiration of the 120-day period, the applicant proceeded to take jurisdiction away from the City of Eagle Point and petitioned for a Writ of Mandamus. The Petition for Writ of Mandamus transferred jurisdiction to the Jackson County Circuit Court. After protracted negotiations between attorneys for both the City of Eagle Point and the applicant, it was determined in the best interest of the City of Eagle Point to stipulate to the issuance of a Preemptory Writ of Mandamus. The effect of the Preemptory Writ of Mandamus is the approval of the underlying application.

In reviewing your department's "Form 2," it is obvious that it is not geared towards this unique situation where an application was approved outside of the normal public hearing process. In any event, we have endeavored to complete Form 2 to the best of our abilities, but feel that this explanatory letter is necessary.

HORNECKER, COWLING, HASSEN & HEYSELL

January 13, 2012

Page 2

If you have any questions about this, please feel free to contact me.

Very truly yours,

HORNECKER, COWLING, HASSEN
& HEYSELL, L.L.P.

A handwritten signature in blue ink, appearing to read "Mark B.", with a long horizontal flourish extending to the right.

MARK S. BARTHOLOMEW

MSB:lvw
Enclosures

RECEIVED
AND
FILED

10 MAR 12 11 54 AM

TRIAL COURT ADMINISTRATOR

DOCKETED BY _____

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JACKSON

STATE OF OREGON EX REL; DEVELOP-
CO. INC., an Oregon corporation; and
EAGLE POINT MINI STORAGE, LLC, an
Oregon limited liability company,

Relators,

v.

CITY OF EAGLE POINT, OREGON,

Defendant.

CASE No.

101224 Z9

PETITION FOR ALTERNATIVE
WRIT OF MANDAMUS

On the Petition of DEVELOP-CO. INC. and EAGLE POINT MINI STORAGE,
LLC ("Relators"), who are the parties beneficially interested, the State of Oregon alleges:

1.

Relator DEVELOP-CO. INC., is an Oregon corporation with its principal place of
business and registered office located in Lane County, Oregon.

2.

Relator EAGLE POINT MINI STORAGE, LLC is an Oregon limited liability
company with its principal place of business and registered office located in Jackson

FOSTER DENMAN, LLP
Attorneys at Law
3521 East Barnett Road
P.O. Box 1667 • (541) 770-5466
Medford, Oregon 97501

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County, Oregon. Relator EAGLE POINT MINI STORAGE, LLC owns the property known as Map 361W03B, Tax Lot 404.

3.

Defendant CITY OF EAGLE POINT, OREGON (hereinafter the "City") is a city organized and existing under the laws of the State of Oregon with its principal offices located at 17 Buchanan Avenue, Eagle Point, Oregon.

4.

On May 7, 2009, Relator DEVELOP-CO. INC. filed an Application with the City for a zone change and conditional use permit and site plan review, City Planning File No. 08/09-11:ZCH/CUP/SPR (Carl's Jr.) ("Application"). After the Application was submitted, the City asked for additional information. Relator DEVELOP-CO., INC. provided the additional information requested by the City. The City again asked for additional information. In that second request for additional information, the City failed to acknowledge information already submitted by Relator DEVELOP-CO., INC. Because Relator DEVELOP-CO., INC. believed it had already provided all of the information requested in the second request for information, Relator DEVELOP-CO., INC. chose to exercise its rights to deem the application complete. Accordingly, on June 30, 2009, Relator DEVELOP-CO. INC., by and through its agent, Jay Harland, notified the City in writing that none of the requested information would be provided. By virtue of Mr. Harland's letter of June 30, 2009, a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference thereto, the Application was deemed complete pursuant to ORS 227.178(2)(c) as of June 30, 2009.

FOSTER DENMAN, LLP
Attorneys at Law
3521 East Barnett Road
P.O. Box 1667 • (541) 770-5466
Medford, Oregon 97501

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5.

Pursuant to ORS 227.179, if the governing body of the City does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the applicant may apply in the Circuit Court of the county where the application was filed for a Writ of Mandamus to compel the governing body to issue the approval.

6.

The 120-day period expired on or before October 28, 2009. The City has not taken final action on the Application to this date, and the applicant is entitled to file for a Writ of Mandamus pursuant to ORS 227.179, compelling the City to approve the Application.

7.

Because approval of the Application would not violate the substantive provisions of the City's Comprehensive Plan or Land Use Regulations as defined in ORS 197.015, Relators are entitled to approval pursuant to ORS 227.179. Pursuant to ORS 227.178(8), Relators are entitled to a refund of either the unexpended portion of the Application fees or deposits previously paid by the Relators, or fifty percent (50%) of the total amount of such fees or deposits, whichever is greater.

8.

Pursuant to ORS 34.210(2), Relators are entitled to recover their attorneys' fees, costs and disbursements incurred herein.

///

FOSTER DENMAN, LLP
Attorneys at Law
3521 East Barnick Road
P.O. Box 1667 • (541) 770-5466
Medford, Oregon 97501

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9.

Relators have no plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, Relators petition the Court to issue its Writ directed to Defendant commanding as follows:

1. Immediately after receiving the Writ to approve Relators' Application; or in the alternative,
2. To appear before this Court or a judge thereof at a specified time and place to show cause why it has not done as commanded; and further,
3. To return the Writ then and there, with its certificate annexed, showing it has done as commanded or showing cause for its omission to do so;
4. To refund to Relators either the unexpended portion of the Application fees or deposits previously paid by Relators, or 50% of the total amount of such fees or deposits, whichever is greater; and
5. To pay Relators' attorneys' fees, costs and disbursements incurred herein.

DATED this 12th day of March, 2010.

FOSTER DENMAN, LLP
Attorneys at Law
3521 East Barnett Road
P.O. Box 1667 • (541) 770-5466
Medford, Oregon 97501

FOSTER DENMAN, LLP
Attorneys for Relators

By: 

Timothy L. Jackle, OSB 982601
Of Attorneys for Relators
DEVELOP-CO. INC. and EAGLE POINT
MINI STORAGE, LLC
Telephone: (541) 770-5466
Facsimile: (541) 770-6502
E-Mail: tjackle@fosterdenman.com

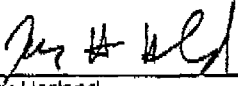
Exhibit "1"**Memorandum**

To: Bunny Lincoln, Planner
Date: 06/30/09
Subject: Car's Jr. Application

CSA Planning, Ltd
4407 Brownridge, Suite 101
Medford, OR 97504
Telephone 541.778.0588
Fax 541.778.0114
Jay@CSAplanning.net

It is with some frustration, we find it is necessary to state that no additional information will be provided at this time and request the application be deemed complete. The information requested in the June 26, 2009 letter is already in the submitted TIA. The west site access at Linn Road, is fully analyzed throughout the TIA, see page 33 of the TIA for example. The south site access at Hannon Drive was counted and the volumes were so low for a right-in right-out access that level of service analysis was not detailed in the TIA because the volumes could only operate at LOS A. For these reasons, substantial evidence was provided with the initial application demonstrating that adequate transportation facilities are available to serve the site and addressing the locations for which no analysis was asserted by the City.

CSA Planning, Ltd.



Jay Harland
Principal

cc. File

FORM 1

DLCD NOTICE OF PROPOSED AMENDMENT

This form must be received by DLCD at least 45 days prior to the first evidentiary hearing
per ORS 197.610, OAR Chapter 660 - Division 18
and Senate Bill 543 and effective on June 30, 1999.
(See second page for submittal requirements)

Jurisdiction: CITY OF EAGLE POINT Local File No. 08/09-11: ZCH (CARL'S JR.)
(If no number, Use none)

Date of First Evidentiary Hearing: OCTOBER 20, 2009 Date of Final Hearing: NOVEMBER 10, 2009
(Must be filled in) (Must be filled in)

Date this proposal was sent or mailed:
(Date mailed or sent to DLCD)

Has this proposal previously been submitted to DLCD? Yes No Date:

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use regulation | <input type="checkbox"/> Other:
(Please Specify Type of Action) |

Briefly Summarize the proposal. Do not use technical terms. Do not write "See Attached.":

Plan Map Changed from: N/A to: N/A
Zone Map Changed from: C2 - HEAVY COMMERCIAL to: C-1 RETAIL COMMERCIAL
Location: LINN @ HANNON ROADS Acres Involved: .71
Specified Change in Density: Current: Proposed: N/A

Applicable Statewide Planning Goals: 9, 11, 12

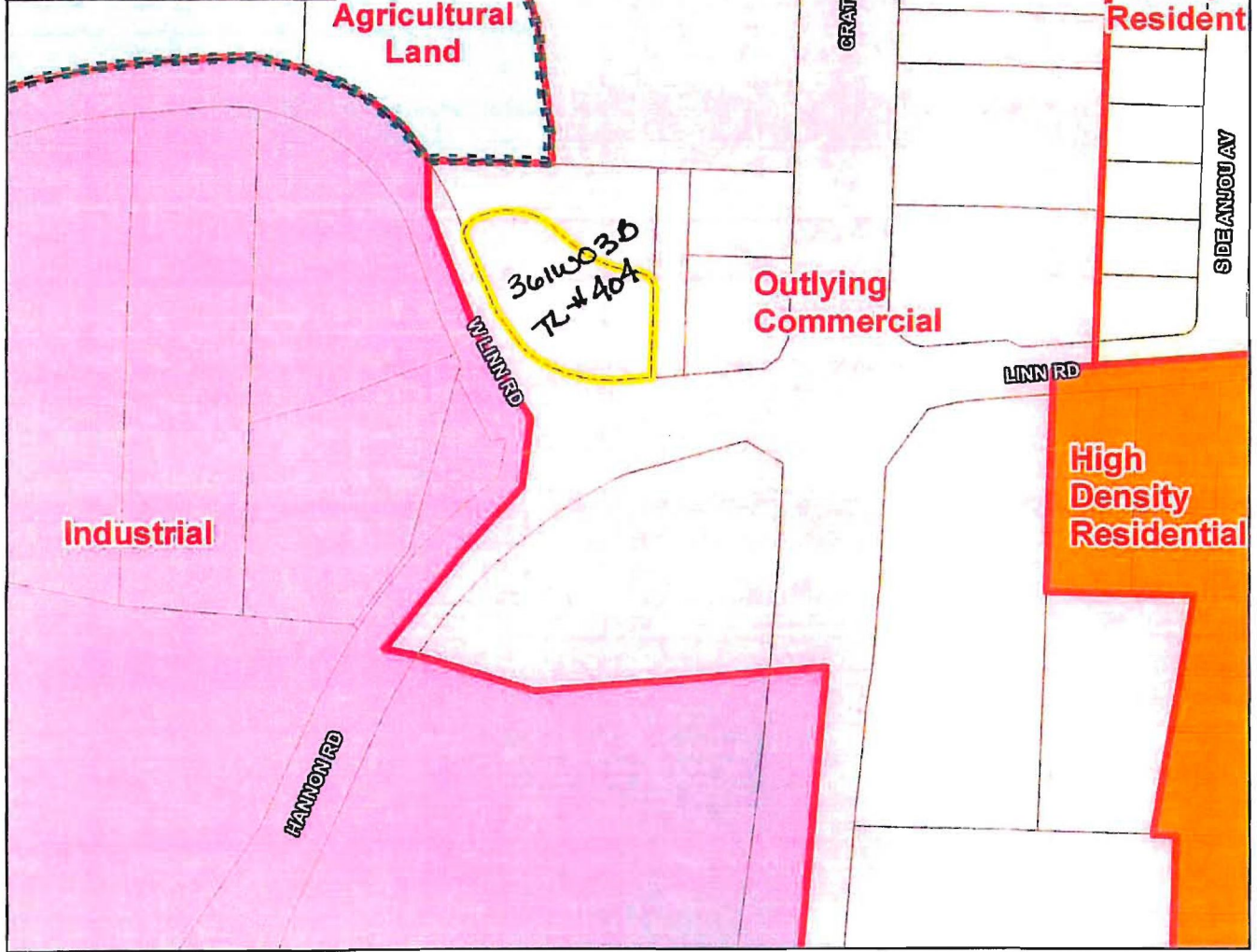
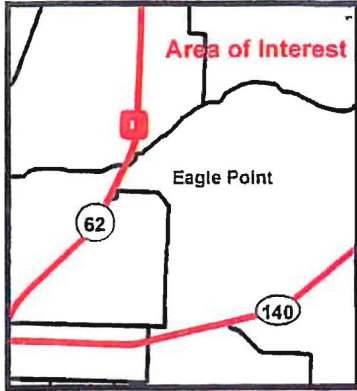
Is an Exception Proposed? Yes No

Will this Amendment affect the areas in unincorporated Washington County where the Code applies? Yes No

Affected State or Federal Agencies, Local Governments or Special Districts: ODOT

Local Contact: BUNNY LINCOLN Area Code + Phone Number: 541-826-4212
Address: P.O. Box 779 City: EAGLE POINT
Zip Code + 4: 97524-0779 Email Address: bunnylincoln@cityofeaglepoint.org

DLCD No:



Legend

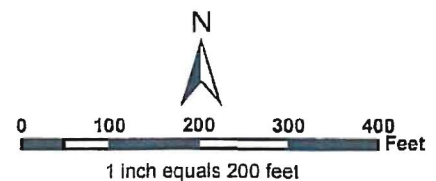
- Subject Property
- UGB
- Comprehensive Plan**
- Industrial
- High Density Residential
- Medium Density Residential
- Outlying Commercial
- Agriculture (County)

Comprehensive Plan Map

36-1W-03B-404
West Linn Road
Eagle Point, OR



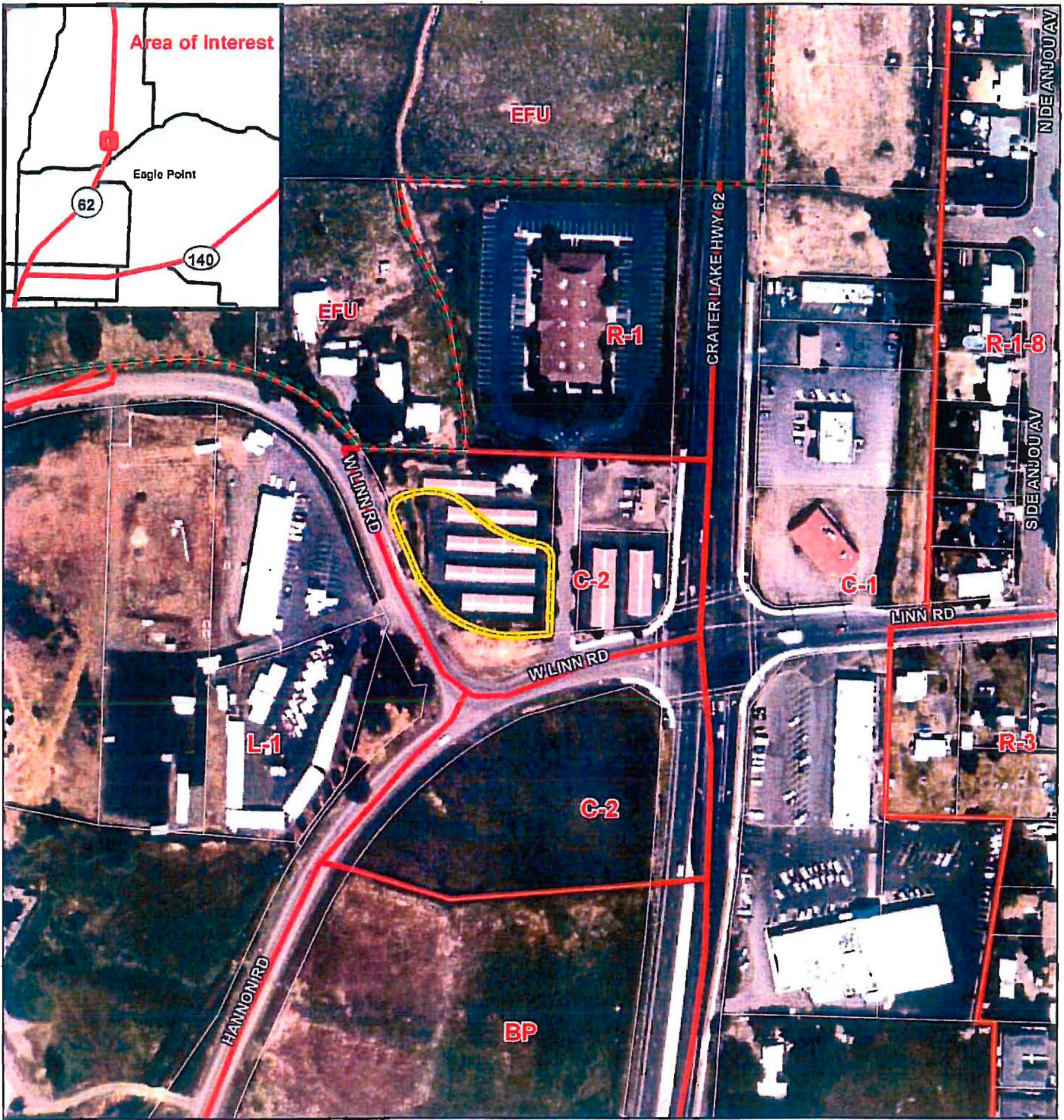
CSA Planning, Ltd.



Source: Jackson County GIS Services

Exhibit 4

April, 2009



Legend

-  Subject Property
-  Tax Lots
-  Zoning
-  UGB

* Zoning boundaries current. Aerial taken in 2005. Substantial construction has occurred in this area since 2005.

April 2009

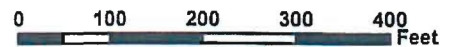
Zoning on Aerial Photo Map

36-1W-03B-404
 West Linn Road
 Eagle Point, OR



CSA Planning, Ltd. Source: City of Eagle Point and Jackson County GIS Services

Exhibit 3



1 inch equals 200 feet

me

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JUDICIAL COURT ADMINISTRATOR
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR JACKSON COUNTY

STATE OF OREGON EX REL; DEVELOP-
CO, INC., an Oregon corporation; and
EAGLE POINT MINI STORAGE, LLC, an
Oregon limited liability company;

Relators,

v.

CITY OF EAGLE POINT, OREGON;

Defendant.

Case No. 101224Z9

STIPULATED PEREMPTORY WRIT OF
MANDAMUS

TO: CITY OF EAGLE POINT, OREGON

Based on the stipulation of the parties, below, you are hereby commanded to immediately
upon receipt of this writ:

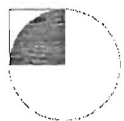
1. Approve Relator Develop-Co, Inc.'s rezoning application, City File No. 08/09-
11:ZCH, to change the zoning designation of the property described in the application (the
"Property") from Heavy Commercial (C-2) to Retail Commercial (C-1);

2. Approve Relator Develop-Co, Inc.'s site plan and conditional use permit
application for the Property, City File No. 08/09-12:SPR/CUP, subject to the conditions set forth
in the attached Exhibit A; and

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EXHIBIT A

1. The City of Eagle Point shall issue sign permits for the project signage in accordance with the submitted plans or such other signage configuration as otherwise complies with the City of Eagle Point Zoning Ordinance.
2. Prior to issuance of a building permit, the applicant's civil engineer shall submit plans to the City of Eagle Point Public Works and Oregon Department of Transportation for the design of the extension of the existing median in West Linn Road to approximately the location where the double yellow striping currently ends east of the intersection of West Linn Road and Hannon Drive. Approval of said plans by the City of Eagle Point shall not be unreasonably withheld.
3. Prior to issuance of a building permit, the applicant's civil engineer shall submit plans to City of Eagle Point Public Works for the design of the new concrete sidewalk on the western boundary of the project. Approval of said plans by the City of Eagle Point shall not be unreasonably withheld.
4. Prior to occupancy, landscaping shall be installed in accordance with the submitted plans or such other landscaping as otherwise complies with the City of Eagle Point Zoning Ordinance; substitution of species for those specified in the landscape plan with alternative varieties may be made where the substitution is approved by the applicant's registered landscape architect.
5. Prior to occupancy, the applicant shall construct the median described in Condition 2 above and the sidewalk described in Condition 3, above; following construction the applicant shall provide the City with as-built plans.
6. Prior to occupancy, site improvements other than those described in the above conditions that are depicted on the submitted plans shall be constructed in a manner substantially consistent with the submitted plans, including, but not limited to, the condition that the restaurant shall be originally constructed in a manner substantially consistent with the design drawings set forth in Exhibit 6 of the subject application and the attached Exhibit A1.



VARVITSIOTIS
ARCHITECTURE PC

151 W. 7TH AVENUE, SUITE 405 EUGENE, OREGON 97401
PHONE (541) 342-1795 FAX (541) 687-1356

Carls Jr.
Eagle Point

Varvitsiotis Architecture | February 27th, 2008

Ex. A1



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DEPT OF

JAN 17 2012

LAND CONSERVATION
AND DEVELOPMENT



HORNECKER COWLING
HASSEN & HEYSELL, LLP

717 Murphy Road
Medford, OR 97504
www.roguelaw.com

ATTENTION: Plan Amendment Specialist
Department of Land Conservation and
Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540