



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

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Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

### NOTICE OF ADOPTED AMENDMENT

August 1, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Warrenton Plan Amendment  
DLCD File Number 001-06



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.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: August 16, 2006**

This amendment was submitted to DLCD for review 45 days 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 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.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Matthew Crall, DLCD Transportation Planner  
Laren Woolley, DLCD Regional Representative  
Carol Parker, City of Warrenton

<paa> ya/

# 2 Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

DEPT OF  
JUL 27 2006  
LAND CONSERVATION  
AND DEVELOPMENT  
For DLCD Use Only

Jurisdiction: Warrenton Local file number: RZ-06-4

Date of Adoption: July 11, 2006 Date Mailed: July 26, 2006

Date original Notice of Proposed Amendment was mailed to DLCD: February 27, 2006

- |  |   |
|--|---|
| <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: _____                     |

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

Rezone tax lots from residential to commercial

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME".  
If you did not give Notice for the Proposed Amendment, write "N/A".

SAME

Plan Map Changed from: N/A to: N/a

Zone Map Changed from: R-10 to: C-1

Location: T.8, R.10, S.27BC/TLS800,2500,2501,2502,2504 Acres Involved: 8.9 +/-

Specify Density: Previous: 10,000<sup>2600</sup> sq. ft New: na

Applicable Statewide Planning Goals: 1-19

Was an Exception Adopted?  YES  NO

DLCD File No.: 001-06(15043)

Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) 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

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

DLCD, ODOT, Clatsop County

Local Contact: Carol Parker Phone: (503) 861-0920 Extension: \_\_\_\_\_

Address: PO Box 250 City: Warrenton

Zip Code + 4: 97146 - Email Address: planningdirector@ci.warrenton.or.u

## ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

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

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **maru.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 1095-A

Introduced by Commissioner: Mark Kujala

Amending the City of Warrenton Zoning designation map to reflect the rezoning of Tax Lots 2500, 2501, 2502, 2504, and 2600 located in Township 8, Range 10, Section 27BC. The revisions are to the zoning map designation on the subject properties from Residential to General Commercial as shown on exhibit B and Adopting Findings of Fact.

WHEREAS, certain changes are necessary to revise, update and amend the Warrenton Zoning map (exhibit B); and

WHEREAS, Home Depot (applicant) and Martin Nygaard (property owner) have requested rezoning these tax lots 2500, 2501, 2502, 2504, and 2600 located in Township 8, Range 10, Section 27BC; and

WHEREAS, the Warrenton City Commission received the Planning Commission's recommendation on this matter, and conducted a public hearing on June 13, 2006, closed the public hearing on that date; and

WHEREAS, the Warrenton City Commission has determined to approve this application and adopt the Findings of Fact, described in Exhibit 'A' (attached hereto and incorporated by reference) and amending the Zoning Designation Map described in Exhibit 'B' (attached hereto and incorporated by reference).

NOW, THEREFORE, The City of Warrenton ordains as follows:

Section 1: The City of Warrenton Zoning Designation Map described in Exhibit 'B' is amended.

Section 2: This ordinance shall become a final land use decision upon its second reading, enactment, and its signing by the Mayor.

Section 3: This ordinance shall become effective thirty (30) days from the date of its adoption.

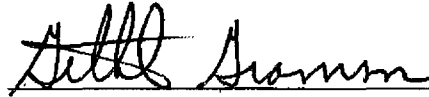
Section 4: If any article, section, subsection, phrase, clause, sentence or word in this ordinance shall, for any reason, be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of the ordinance but shall be confined to the article, section, subdivision, clause, sentence or word so held invalid or unconstitutional.

First Reading: June 27, 2006

Second Reading: July 11, 2006

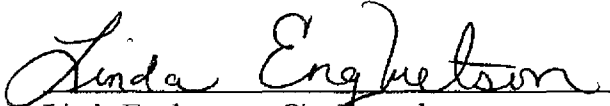
ADOPTED by the City Commission of the City of Warrenton, Oregon, this 11th day of July, 2006.

APPROVED



Gil Gramson, Mayor

ATTEST:



Linda Engbretson, City Recorder

Date the City mailed the Notice of Decision to parties with standing and to the Department of Land Conservation and Development on the required form:

# EXHIBIT

'A'

**CITY OF WARRENTON  
CITY COMMISSION CHAMBERS  
CITY HALL**

**IN THE MATTER OF AN APPLICATION  
FOR THE HOME DEPOT REZONE  
FOR TAX LOTS 2500, 2501, 2502, 2504, ABD 2600  
IN TOWNSHIP 8, RANGE 10, SECTION 27BC.**

**CITY OF WARRENTON FILE NO. RZ-06-4,  
HOME DEPOT REZONE.**

**AMENDED FINDINGS OF FACT AND  
CONCLUSION OF LAW**

**I. REQUEST**

This application ("Home Depot rezone") is a request by The Home Depot USA, Inc. (the "Applicant") and Martin Nygaard (property owner) for approval of a rezone application pursuant to the Warrenton Development Code sections 4.1.6, 4.7, and 4.13, Comprehensive Plan, Statewide Planning Goals, Oregon Revised Statutes, and Oregon Administrative Rules, on approximately 8.9 acres located between Dolphin Avenue, Highway 101 and the Highway 104 Spur. The requested rezone changes the subject property from Intermediate Density Residential (R-10) to Commercial (C-1).

**II. PROCEDURAL STATUS**

Following notice of a public hearing as required by the applicable Warrenton Development Code section and ORS Chapter 197, the Planning Commission held a public hearing on April 19, 2006. Oral and written testimony was received from the Applicant, the Applicant's attorney Glenn Amster, and engineering firm JRH. Testimony was received from Laren Woolley (DLCD Field representative), Daniel Kearns (attorney for Peter Ettro), Michael Robinson (attorney for Ocean Crest Chevrolet), David Warren (ODOT), Valerie Grigg-Devis (ODOT), Craig Dean (ODOT), and Dennis Faletti.

The Planning Director issued a staff report dated April 14, 2006, which included background information, approval criteria, applicable Warrenton Code standards and Comprehensive Plan policies, and several attachments, including the Applicant's narrative, plans, and traffic impact report. The staff report contains a recommendation for approval for the "Home Depot" tax lots referenced therein.

The Planning Commission granted a request for a continuance from Mr. Kearns and continued the hearing until April 26, 2006. At the continued hearing, Mr. Kearns submitted written comments objecting to the application. No other parties testified in opposition to the application at the continued hearing. The Planning Commission closed the public hearing and the record at the conclusion of the public hearing on April 26, 2006. Based on the record before it, the Planning Commission moved to approve the application and passed the motion to approve unanimously.

Following notice of public hearing required by the applicable Warrenton Development Code sections and ORS Chapter 197, the City Commission held a public hearing on June 13, 2006. The Planning Director issued a staff report dated June 5, 2006, which included applicable approval criteria, Statewide Planning Goals, and

Comprehensive Plan policies. The Planning Commission Chair, Steve Hawks forwarded the Planning Commission recommendation to the City Commission with a summary of the Planning Commission's action, including a response to Daniel Kearns' objections to the proposal on the grounds of alleged reduced transportation mobility. The City Commission moved to approve the application and passed the motion unanimously.

### III. FINDINGS IN RESPONSE TO RAISED ISSUES

Daniel Kearns submitted a letter dated April 26, 2006 stating that the Home Depot rezone is in violation of the Comprehensive Plan Policies (included by reference below) for the following reasons:

- a) **Home Depot rezone will isolate TL 2400 as a virtual island of residentially zoned land surrounded by commercially zoned land.** Mr. Kearns fails to substantiate this claim that the Home Depot rezone would force TL 2400 to become an island of residentially zoned land or that TL 2400 will have little hope of qualifying for a zone change to commercial. First, there is nothing to preclude owners of the tax lots referenced in Mr. Kearns' April 26 letter from applying for one or more zone change applications. The assumptions made about permissible access points or approval/denial of future proposals can be only speculated until a specific proposal is identified. Second, TL 2400 is directly adjacent to approximately 20 other residentially zoned tax lots totaling approximately 11 acres in size, not including additional residential tax lots west of the Highway 104 Spur. TL 2400 is directly adjacent to a large group of residential lots (larger in acreage than the Home Depot rezone) and thus is not an "isolated" small area of land singled out and placed in a different zone from that of neighboring property ("spot zoned"), as Mr. Kearns asserts. The Home Depot rezone thus does not violate Comprehensive Plan policies by isolating Tax Lot 2400 or precluding future commercial rezone of TL 2400.
- b) **Home Depot rezone will absorb all vehicle capacity in the surrounding intersections and make it impossible for surrounding residentially zoned parcels to obtain commercial access onto Alternate Highway 101.** Mr. Kearns has failed to substantiate this claim with an analysis of any surrounding intersections or proposed site access locations. The Applicant's professional traffic engineer, JRH Engineering, conducted a Transportation Impact Analysis, which shows that all transportation facilities affected by the Home Depot project will operate at accepted mobility rates throughout the planning horizon. This analysis includes not only the anticipated traffic to be generated by the Home Depot rezone, but also includes all adopted Comprehensive Plan growth through the planning horizon to the year 2022. JRH Principal Engineer, Jim Hanks, further pointed out that by providing a signal at the new intersection of Highway 101 and Dolphin Lane, the Home Depot project may actually provide greater opportunity for complementary growth in the future than what currently exists because of the planned signal phasing. As a matter of policy, each applicant is required to mitigate impacts of his or her own development. As future development is proposed in the area, including potential development of Mr. Ettro's property for commercial purposes, there is nothing to preclude future development from implementing additional transportation improvements that will ensure additional commercial development will meet mobility standards. The Home Depot rezone thus does not violate Comprehensive Plan policies by absorbing all vehicle capacity in surrounding intersections or precluding future commercial access points.
- \* c) **City Commission finds the Planning Commission recommendation (dated June 5, 2006) to include a condition to the approval of the rezone.** This condition is a written agreement between Home Depot, ODOT, and Ocean Crest Chevrolet for an alternative method of mitigation. A written agreement from ODOT (dated June 6, 2006) outlines the alternative method of mitigation, which states: "the left turn movement from eastbound Hwy 104 Spur to northbound Hwy 101 shall be prohibited through the construction of a concrete island and right turn acceleration lane similar in design to the east side of that intersection. The left turn movement from northbound Hwy 101 to westbound Hwy 104 Spur shall continue to remain. Design and construction shall meet current



ODOT standards. All mitigation at the 101/104 intersection shall be completed after the completion of required improvements to Hwy 101/Dolphin Lane intersection and within six months the issuance of a certificate of occupancy for Home Depot.” The City Commission deems this condition to the rezone approval this language satisfies the Planning Commissions condition and shall be made a condition of the rezone.

- d) **Commercial Lands section in Article 3 anticipates that all of the area surrounding Home Depot will be converted to commercial for a regional shopping center.** The referenced commercial policy #3 in Article 3.320 does not specify particular tax lots or general area earmarked for rezone to commercial. Rather, the policy states that a regional shopping center “*may be allowed as a conditional use in the General Commercial district near U.S. Highway 101 or East Harbor Drive...*” This policy does not specify or anticipate that the entire area around the Home Depot site will be converted to commercial zoning for a regional shopping center. Compliance with this policy thus is not contingent on including TL 2400 and other residentially zoned areas in a rezone application. The Home Depot rezone therefore does not violate this policy.

Referenced Comprehensive Plan Policies: 20.310.(3), Plan Review and Update, 2.230 (1) Urban Development, 3.200 (1) , (2), (3), and (5) Commercial Lands, 8.320 (1) Street Design, 8.330 (1) and (5) Street Width, Access and Parking Design, 9.310 (1), (2), (4) City Economy.

As part of the original application, the Applicant demonstrated compliance with the above applicable Comprehensive Plan policies. Further, staff report findings and Planning Commission recommendations support the Applicant’s findings that the Home Depot rezone is in compliance with applicable Comprehensive Plan policies.

#### **IV. INCORPORATION OF APPLICATION AND STAFF REPORT.**

The City Commission hereby incorporates by reference the staff reports dated April 14, 2006 and June 13, 2006 including any attachments or exhibits. In the event of any conflict between the incorporated documents and these findings, these findings shall control.

#### **V. APPLICABLE APPROVAL CRITERIA.**

For the reasons contained in the incorporated documents, the City Commission finds that the Applicant has satisfied the applicable approval criteria for approval of a rezone application. The record contains no contrary evidence.

#### **VI. CONCLUSION**

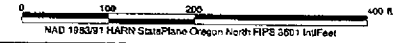
The City Commission hereby **ADOPTS and APPROVES** this amended Findings of Fact and Conclusions of Law for Home Depot’s application for a rezone subject to the condition set forth in finding “c” above.

EXHIBIT

'B'

T8N R10W SEC 27BC WM  
CLATSOP COUNTY

Scale 1:1200



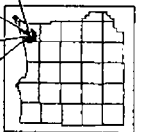
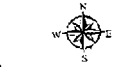
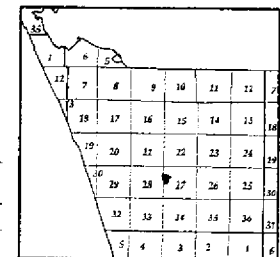
NAD 1983/91 HARN StatePlane Oregon North FIPS 2801 Unit: Feet

Cancelled  
Accounts:

- 214.1
- 24.1
- 24.2
- 24.3
- 24.4
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- 25.4
- 25.5
- 25.6
- 25.7
- 25.8
- 25.9

Orezone property  
to Commercial  
from Residential

Exhibit  
"B"



This map was prepared for assessment purposes only using Clatsop County data. The data is maintained by Clatsop County and subject to governmental authority. Clatsop County is not responsible for any errors, omissions, or misrepresentation.

March 15, 2006

8.10.27BC

Martin Nygaard  
PO Box 100  
Warrenton, Oregon 97146

7-26-06  
mailing  
applicant +  
prop. owner

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Lane Powell Attorneys  
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Seattle, Wash 98101

Brad Smith  
Galloway & Romero  
5350 DTC Parkway  
Greenwood Village, Colorado 80111

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