



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

11/30/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Happy Valley Plan Amendment
DLCD File Number 005-09

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.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, December 11, 2009

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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Michael Walter, City of Happy Valley
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative
Bill Holmstrom, DLCD Transportation Planner

<paa> YA/ph

FORM 2

DLCD

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



Jurisdiction: City of Happy Valley

Local file number: LDC-03-09

Date of Adoption: November 17, 2009

Date Mailed: November 20, 2009

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: September 30, 200

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".
Adoption on remand from land use Board of Appeals of text amendments to comprehensive plan and development code to establish the Rock Creek Mixed Employment (RC-ME) District and adoption of comprehensive plan and zoning map amendments to assign the RC-ME district to approximately 146 acres of property.

Does the Adoption differ from proposal? Please select one

NO

Plan Map Changed from: Exclusive Farm Use (Clackamas County)

to: Rock Creek-Mixed Employment

Zone Map Changed from: Exclusive Farm Use

to: Rock Creek-Mixed Employment

Location: (Clackamas County)

Acres Involved: +/-146

Specify Density: Previous: NW of the intersection of Oregon 224/SE 162nd Avenue

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

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

DLCD file No. 005-09 (17863) [15856] Remand

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

METRO

Local Contact: Michael Walter	Phone: (503)783-3839	Extension:
Address: 16000 SE Misty Drive	Fax Number: 503-658-5174	
City: Happy Valley	Zip: 97086	E-mail Address: michaelw@ci.happy-valley.or.us

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 Complete Copies (documents and maps) 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. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
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 now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

CITY OF HAPPY VALLEY
ORDINANCE NO. 395

AN ORDINANCE ADOPTING THE "ROCK CREEK MIXED EMPLOYMENT COMPREHENSIVE PLAN"; ADOPTING CONGRUENT COMPREHENSIVE PLAN AND DEVELOPMENT CODE TEXT AMENDMENTS, INCLUDING AMENDMENTS PROPOSED IN RESPONSE TO LUBA 2008-123; AND, AMENDING OFFICIAL MAP EXHIBIT 11 OF THE CITY OF HAPPY VALLEY LAND DEVELOPMENT ORDINANCE NO. 97, AS AMENDED – COMPREHENSIVE PLAN MAP AMENDMENT/ZONE CHANGE FROM CLACKAMAS COUNTY EXCLUSIVE FARM USE (EFU) TO CITY ROCK CREEK MIXED USE EMPLOYMENT (RC-ME) FOR SPECIFIC PROPERTIES AND DECLARING AN EMERGENCY.

THE CITY OF HAPPY VALLEY ORDAINS AS FOLLOWS:

WHEREAS, Application CPA-03-08/LDO-03-08 was initiated by a public-private partnership between the City of Happy Valley and Providence Health & Services – Oregon to adopt the "Rock Creek Mixed Employment Comprehensive Plan"; amend and augment existing Comprehensive Plan and Development Code text; and, amend the Development District Map (Official Map Exhibit 11 of Ordinance 97) by applying City RC-ME zoning to the properties known as Clackamas County Assessor Map Nos. 22E12A: Tax Lots 200, 304, 800, 801, 900 and 1000 and 22E12D: Tax Lots 200, 400, 500 and 600 as illustrated within Exhibit "A"; and,

WHEREAS a hearing was held before the City of Happy Valley Planning Commission on May 13, 2008; and a subsequent hearing was held before the City Council on June 3, 2008; and,

WHEREAS, the Planning Commission unanimously recommended that said "Rock Creek Mixed Employment Comprehensive Plan" be implemented based on the submitted materials; that the Comprehensive Plan and Development Code Text Amendments be implemented; and that the Development District Map be amended as recommended in the Staff Report to the Planning Commission dated May 13, 2008; and the City Council unanimously approved Ordinance No. 376 adopting the Planning Commission recommendations on June 3, 2008 and,

WHEREAS, the Council's decision was appealed to the Oregon Land Use Board of Appeals (LUBA); the Court of Appeals (which upheld the LUBA decision); and the State Supreme Court (which refused to hear the appeal) and thus the jurisdiction in this matter has been transferred back to the City Council to address LUBA 2008-123; and,

WHEREAS, the City Council of the City of Happy Valley, Oregon, has determined that it is reasonable, necessary and in the public interest to adopt the "Rock Creek Mixed Employment Comprehensive Plan"; incorporate the proposed Comprehensive Plan and Development Code Text Amendments (as amended by File No. LDC-03-09); and, revise the Development District Map and upholds the Planning Commission's recommendation pursuant to the findings within the Staff Report to the Planning Commission dated May 13, 2008; the "Findings of Fact and Conclusions of Law for City of Happy Valley Ordinance No. 376"; and, the "Corrected Findings of Fact" within File No. LDC-03-09.

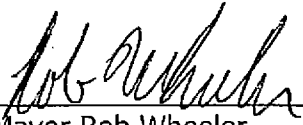
NOW, THEREFORE, based on the foregoing,

THE CITY OF HAPPY VALLEY ORDAINS AS FOLLOWS:

- Section 1. The City of Happy Valley declares that the RC-ME district be applied to the ten properties described in Exhibit "A".
- Section 2. The City of Happy Valley declares that the proposed Comprehensive Plan Policy be added to the City's Comprehensive Plan; and that the proposed amendments to Title 16 of the City's Municipal Code be amended as set forth as part of Exhibit "B" and are fully incorporated herein.
- Section 3. The City of Happy Valley declares that the Findings of Fact included within the Staff Report to the Planning Commission dated May 13, 2008; the "Findings of Fact and Conclusions of Law for City of Happy Valley Ordinance No. 376; and, the "Corrected Findings of Fact" included within the Staff Report to the City Council dated November 17, 2009 are hereby adopted in conjunction with this Ordinance.
- Section 4. An emergency is declared to exist and as provided by Section 32 of the Happy Valley City Charter this Ordinance takes effect on November 17, 2009.


READ for the first time at the regular meeting of the City Council of the City of Happy Valley, Oregon, on November 17, 2009 and read for the second time on November 17, 2009, and adopted by a unanimous vote of the members of the City Council of the City of Happy Valley, Oregon.

CITY OF HAPPY VALLEY



Mayor Rob Wheeler

ATTEST:



Marylee Walden, City Recorder

Mayor
Honorable Rob Wheeler



Interim City Manager
Jason A. Tuck

STAFF REPORT TO THE CITY COUNCIL

**DEVELOPMENT CODE TEXT AMENDMENTS TO SECTION 16.25.005 (ROCK CREEK
MIXED EMPLOYMENT DISTRICT) BASED ON LUBA ORDER
NO. 2008-123**

FILE NO. LDC-03-09

(ROCK CREEK MIXED EMPLOYMENT COMPREHENSIVE PLAN)

November 17, 2009

I. GENERAL INFORMATION

Applicant: City of Happy Valley

Property Owners: 15 different subject properties make up an approximately 146-acre geographic region.

Development Dist.: A new development district is proposed.

Proposal: Create a new Rock Creek Mixed Employment (RC-ME) development district; incorporate the development district within the Comprehensive Plan; and, apply the development district legislatively to all annexed properties within the subject area.

Discussion: On July 1, 2008, the City Council approved Local File No. CPA-03-08/LDO-03-08, which adopted the original version of the proposed RC-ME district. The City provided Notice of Adoption to the State Department of Land Conservation and Development ("DLCD") on July 2, 2008. The City's adoption of CPA-03-08/LDO-03-08 was appealed to the State Land Use Board of Appeals ("LUBA"). On January 30, 2009, in LUBA No. 2008-123, LUBA remanded the matter to the City to address the following:

*"(1) Notice to DLCD pursuant to ORS 197.610; and,
(2) Whether CPA-03-08 limits commercial retail
uses to those appropriate in type and size to serve*

16000 SE Misty Drive
Happy Valley, Oregon 97086
Telephone: (503) 783-3800 Fax: (503) 658-5174
Website: www.ci.happy-valley.or.us

Preserving and enhancing the safety, livability and character of our community

the needs of businesses, employees, and residents of the employment area in accordance with Metro Code 3.07.440"

The Court of Appeals of Oregon affirmed LUBA's decision without opinion (A141350, May 2009), and the Supreme Court of Oregon denied the subsequent Petition for Review (S057468, September 17, 2009).

Pursuant to ORS 197.610 and LUBA's Order, the City provided the attached, revised Notice of Proposed Amendment to advise DLCD of the City's consideration of LDC-03-09 (the amended version of the original proposed Development Code language) and the date of this hearing. In addition, the City re-sent (due to the large gap in time between hearings) the attached Measure 56 Notice to all affected property owners.

Below is the text of LDC-03-09, which though re-formatted to meet the City's revised code structure, is identical to the original version found in CPA-03-08/LDO-03-08 considered by the City in 2008, with the exception of the proposed amendments identified with the **bold, underline** indications in Table 16.25.005-1 and the ensuing footnote, which represent the City's response to the direction provided in the LUBA Remand.

Conclusion and Recommendation:

Local File No. LDC-03-09 represents final adoption of the Rock Creek Mixed Employment Comprehensive Plan, which has seen extensive legal attention and review. Staff recommends that the City Council approve LDC-03-09 and provide final adoption of the amendments to the RC-ME zoning district per the LUBA Remand in two readings this evening (i.e. declare an emergency). In addition, staff notes that the included Ordinance No.395, details the final adoption of related Local File No. CPA-03-08/LDC-03-08 (the original land use file) which includes the final changes to the City's "one-map" system (Comprehensive Plan Map Amendment/Zone Change) - assigning the RC-ME Comprehensive Plan Designation/Zoning District to all the annexed properties within the subject area.

Attachments:

- A. Original Planning Commission Staff Report dated May 13, 2008, including Findings of Fact
- B. Findings of Fact and Conclusions of Law for City of Happy Valley Ordinance No. 376
- C. Updated Notice Materials

D. Public Comments

1. E-Mail dated October 28, 2009 from Jennifer Connelly, DLCD Representative, forwarded by Michael Robinson, Perkins Coie
2. E-Mail dated October 28, 2009 from Ray Valone, Metro Principal Planner, forwarded by Michael Robinson, Perkins Coie
3. Letter dated October 30, 2009 from Michael Robinson, Esq. on behalf of Providence Health Systems – Oregon.

E. Ordinance No. 395

II. PROPOSED AMENDMENTS TO RC-ME DISTRICT CODE SECTION (AS PER DIRECTION PROVIDED BY LUBA REMAND)

"16.25.005 Rock Creek Mixed Employment (RC-ME) District.

A. Purpose. The Rock Creek Mixed Employment (RC-ME) District permits land uses with high job densities that provide stable, family-wage employment within the City. This zone provides a mix of uses that are compatible with nearby residential, institutional and commercial uses and provide a buffer between residential and more formally "light industrial" areas to the east. Permitted uses in the Rock Creek Mixed Employment District include office, creative arts, small-scale manufacturing, research and development, and medical centers. Commercial uses are limited to those serving the primary uses of the district. A limited number of residential uses, including pre-existing dwelling units, are permitted by right.

B. Permitted Uses. Table 16.25.005 -1 identifies the land uses that are allowed in the RC-ME District.

Table 16.25.005-1 Rock Creek Mixed Employment (RC-ME) Permitted Uses

P=Permitted; C=Conditional Use; X=Prohibited

Land Use	RC-ME
Residential	
<i>Pre-existing dwellings. Preexisting dwellings may be allowed to remodel or expand and shall not be subject to the provisions of Chapter 16.72¹</i>	<i>P</i>
<i>Home occupations in pre-existing dwellings</i>	<i>P</i>
<i>Dwelling, multifamily—Senior housing</i>	<i>C²</i>
Commercial—Retail¹⁰	
<i>Commercial day care</i>	<i>C</i>
<i>Indoor health and recreation facilities, such as racquetball court, gymnasiums, health and exercise spas, swimming pools, and similar uses and associated facilities</i>	<i>C</i>
<i>Parking lot (when not an accessory use)</i>	<i>X</i>
<i>Restaurant—Full service</i>	<i>P³</i>
<i>Retail—Sales</i>	<i>P⁹</i>
<i>Retail—Personal services</i>	<i>P⁴</i>
Commercial—Office	
<i>Professional and administrative offices</i>	<i>P</i>
<i>Medical office buildings</i>	<i>P</i>

Land Use	RC-ME
Industrial	
<i>Industrial services—Fully enclosed</i>	<i>P⁵</i>
<i>Industrial services—Not enclosed</i>	<i>X</i>
<i>Manufacturing and production—Fully enclosed</i>	<i>P</i>
<i>Manufacturing and production—Not enclosed</i>	<i>X</i>
<i>Fabrication</i>	<i>P</i>
<i>Research and development activities</i>	<i>P</i>
<i>Laboratories</i>	<i>P</i>
<i>Repair, finishing, and testing</i>	<i>P</i>
<i>Assembly</i>	<i>P</i>
<i>Distribution activities</i>	<i>P⁶</i>
<i>Warehousing and freight movement</i>	<i>P⁶</i>
Institutional	
<i>Basic utilities</i>	<i>P</i>
<i>Colleges</i>	<i>C²</i>
<i>Emergency services facilities</i>	<i>P</i>
<i>Medical centers</i>	<i>P</i>
<i>Heliport</i>	<i>C</i>
<i>Postal service facilities</i>	<i>P⁶</i>
<i>Public parks and open space—Pedestrian amenities</i>	<i>P</i>
<i>Public parks and open space—Parks and recreation facilities</i>	<i>C</i>
<i>Public parks, usable open space</i>	<i>P</i>
Other	
<i>Agriculture—Animals, when -existing use as of June 1, 2008</i>	<i>P</i>
<i>Agriculture—Animals, when accessory to a permitted industrial use</i>	<i>X</i>
<i>Agriculture—Animals, when new use</i>	<i>X</i>
<i>Agriculture—Nurseries and similar horticulture, when existing use as of June 1, 2008</i>	<i>P</i>
<i>Transportation facilities (operation, maintenance, preservation, and construction in accordance with the City's Transportation System Plan)</i>	<i>P</i>
<i>Wireless telecommunication facilities: Wireless telecommunication facilities are subject to the requirements of Section 16.44.020 (Wireless Communication Facilities)</i>	<i>P</i>
<i>Any accessory use or structure, not otherwise prohibited, that the Planning Official or designee finds to be customarily accessory and incidental to a permitted use</i>	<i>P</i>
<i>Any use that the Planning Official or designee finds to be similar to one or more of those specified above</i>	<i>P/C</i>
NOTES:	
¹ "Pre-existing" single-family dwellings, as defined for the RC-ME District, are those structures that existed prior to June 1, 2008.	
² Assisted living and senior housing may include a range of housing type including single-family detached, single-family attached, assisted-living multifamily units, and congregate care facilities permitted on a single property to provide for a variety of dwelling units and continuous care for seniors of varying levels of health and independence.	
³ Drive-through facilities are not permitted.	
⁴ Maximum building size of twenty thousand (20,000) gross square feet.	
⁵ Outdoor storage or outdoor fleet storage not permitted.	
⁶ Permitted as an accessory use—May not exceed twenty (20) percent of the total site area.	

Land Use	RC-ME
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⁷ Use limited to public and nonprofit institutions providing technology, health sciences or creative arts education and job training. No dormitories permitted.

⁸ Fleet parking or mail processing centers not allowed. Permitted use limited to direct consumer services.

⁹ Retail sales uses may not exceed sixty thousand (60,000) square feet of gross lease area in a single building; or commercial retail uses with a total of more than sixty thousand (60,000) square feet of retail sales area on a single lot or parcel; or, on contiguous lots or parcels, including those separated only by transportation right-of-way.

¹⁰ **Consistent with the purpose of the RC-ME district, new and expanded commercial uses are only permitted if they are of a type and size appropriate to serve the needs of businesses, employees, and residents of the employment area.**

C. Master Plan Required. Within the RC-ME District, uses will provide high densities of employment. This district encourages creative development patterns that achieve these densities in a well-planned, urban environment. Development on sites of ten (10) acres or larger shall require preparation of a master plan pursuant to Section 16.25.005(E) of this Chapter. On sites smaller than ten (10) acres, the preparation of a master plan shall be optional. However, if a master plan is not prepared, the development shall be subject to Chapter 16.62 (Land Use Review and Design Review). As part of the Design Review application, the applicant shall provide a traffic impact analysis (TIA) as required by the City Engineer. The traffic impact analysis shall be consistent with the requirements of OAR 660-012-0060(1)–(3) and the requirements of Section 16.25.005(E)(4)(b)(ix) of this section. Development will not be approved prior to submission and review of this analysis.

D. Development Standards.

- 1. Compliance Required. All of the applicable development standards contained in the underlying zoning district, except where the applicant has obtained variances pursuant to Chapter 16.71 (Variances), or adjustments in accordance with the RC-ME master plan process as contained in Section 16.25.005(E).*
- 2. Development Standards. Development in the RC-ME District shall comply with all of the development standards in the table below and all other applicable standards in this title, except as modified through the RC-ME master plan provisions in Section 16.25.005(E)(4)(b)(iv).*

Table 16.25.005-2 Development Standards for RC-ME District

Standard	RC-ME
<i>Residential density (maximum)</i>	NA
<i>Lot size (minimum)</i>	1 acre ¹
<i>Lot width (minimum)</i>	100 ft.
<i>Lot depth (minimum)</i>	100 ft.
<i>Minimum/maximum floor area ratio (FAR)</i>	Maximum of 2:1 unless increased through a master plan
<i>Landscape/open space (minimum)</i>	15% net developable area shall be landscaped. Up to 1/3 of the required landscaped area may be used for active or passive recreational use or pedestrian amenities. Examples include walking/running paths, play areas, plazas, picnic areas, water quality facilities, open recreational facilities and natural existing landscaping
<i>Low impact development standards</i>	Plans for implementation of low impact development strategies including pervious pavement; infiltration swales; green roofs; landscaping; habitat protection; and, protection of natural resources
<i>Building setbacks² (minimum):</i> <i>Front</i> <i>Rear (abutting a nonresidential district)</i> <i>Rear (abutting a residential district)</i> <i>Side (abutting a nonresidential district)</i> <i>Side (abutting a residential district)</i>	None ² None 50 ft. None ³ 50 ft.
<i>Building setbacks (maximum)</i> <i>Front</i> <i>Rear</i> <i>Side</i>	None None None
<i>Building height (maximum)</i>	Established through master plan except for a maximum height of 70 ft. within 100 ft. of an abutting residential district.
NOTES:	
¹ Legal lots of record of less than one acre created prior to the adoption of these regulations shall be conforming for purposes of development.	
² There is no minimum front yard setback, except in cases where the front yard is abutting a highway or expressway, where the required front yard setback shall be fifty (50) feet, or an arterial, where the minimum front yard setback shall be twenty (20) feet.	
³ When abutting a nonresidential district, minimum side yard setback shall be fifty (50) feet when abutting a highway or expressway and twenty (20) feet when abutting an arterial.	

E. Master Plan Requirements Specific to the RC-ME District.

- 1. Purpose. The purpose of the RC-ME Master Plan is to allow large-scale, multi-phased developments to obtain approval of several projects at one time within the RC-ME District. The RC-ME Master Plan process allows the review authority to evaluate the cumulative impacts associated with the full-build out of the over-all development, to ensure that the impacts of such development are mitigated to the extent practicable and to coordinate the provision of future infrastructure.*
- 2. Applicability. These provisions shall apply to all development on parcels ten (10) acres in size or larger within the RC-ME District and may be used voluntarily for parcels smaller than ten (10) acres.*
- 3. Components of RC-ME Master Plans and Detailed Phasing Plans.*
 - a. Concept Master Plan. A proposed plan for development of the site at full build-out of the concept plan that contains the approximate building envelopes by use within a conceptual framework including pedestrian, bicycle and vehicular circulation, open space/natural resource and on-site utility plans. The concept plan also includes minimum and maximum development standards; architectural, landscaping and pedestrian design standards; building and landscaping materials lists; low-impact development strategies; and other information that will illustrate planned development. The plan also shall include a phasing plan and proposed schedule of development. For each phase of development and at full build-out, the applicant shall identify the total square footage by type of use; development density; parking and traffic generation; on-site utility requirements; and required off-site capital improvements for roads and other public infrastructure. A detailed traffic impact analysis (TIA) detailing traffic volumes at each phase of development and at full build-out is required. In addition, a detailed stormwater management plan and report for each phase of the development and at full build-out is required, that will illustrate how the site will implement stormwater management and not adversely impact watershed health.*
 - b. Detailed Phasing Plans. At the time of development of each phase of development, the applicant shall present a detailed development plan including but not limited to the maximum size, location and use of specific buildings; size and location of parking facilities; building and parking structure elevations; location and design of on-site pedestrian, bicycle and vehicle circulation; design and location of open space and natural resource protection; and detailed utility plan. The applicant also shall confirm traffic impacts for the phase originally identified in the overall TIA required at the time of the concept plan approval. The proposed development shall substantially conform to the architectural and site design standards approved in the concept master plan.*
- 4. RC-ME Concept Master Plan Submittal Requirements.*
 - a. Existing Conditions Plan.*
 - i. Legal description of all parcels on the proposed site within the applicant's ownership or control.*
 - ii. Vicinity Map that Identifies Abutting Uses. For the purposes of these regulations, "abutting" means those properties sharing one or more property lines with the subject site.*
 - iii. Zoning map that identifies base and overlay zoning designations for the proposed site and abutting properties.*

iv. Site description for all property in the applicant's ownership and /or control including the following information provided in narrative, tabular and/or graphic formats:

(A) Topography and natural resources including 100-year floodplain (pursuant to Chapter 16.35); drainage patterns and courses; wetlands, rivers, springs and other water bodies; significant stands of trees and individual trees with a caliper greater than six inches as measured four feet above grade; natural resources, pursuant to Chapter 16.34; and natural hazards such as steep slopes (pursuant to Chapter 16.32). The application must include information consistent with Section 16.32.080, Required maps, studies and reports;

(B) Inventory of Goal 5 resources, including natural, cultural, historic and/or archeological resources on the site, if any;

(C) Existing building inventory including use, location and size, noting whether any existing buildings will be retained and incorporated into the final build-out of the site;

(D) Location and size of all public and private utilities on and immediately abutting the site including water, sanitary sewer, stormwater retention/treatment facilities, and electrical, telephone and data transmission lines; and

(E) Location of all public and private easements.

v. Detailed description of the existing roadway system within and adjacent to the site including:

(A) Street classification of all internal and adjacent streets;

(B) Transit service availability;

(C) Baseline traffic impact study within the vicinity of the site prepared by a licensed civil engineer to include information as required by the City Engineer; and

vi. Description and evaluation of capacity of existing infrastructure on and in the vicinity of the site.

b. Concept Master Plan.

i. A proposed plan for development of the site at full build-out at the conceptual level including:

(A) Master plan boundary;

(B) Approximate location and building envelopes by use;

(C) Pedestrian, bicycle and vehicular circulation plan;

(D) Open space/natural resource plan;

(E) On-site utility plan;

(F) Conceptual stormwater plan, including preliminary drainage report; on-site infiltration plan; water quality plan; and, landscaping and other measures designed to reduce overall stormwater runoff using low-impact development techniques and strategies;

(G) Conceptual low impact development plan that details how effective impervious areas have been minimized, including demonstration of low-impact development strategies such as

innovative street designs, pervious pavement, on-site infiltration, retention of native species, maximization to the extent possible of existing tree canopy, utilization of bio-swales in off-street parking areas, etc.

ii. Phasing plan and tentative schedule that establishes the likely order in which the site will develop. Such a phasing plan is presented for purposes of estimating roadway and public utility capacity, with the understanding that phases may be developed out of order and that timing is approximate.

iii. Calculations for each phase and at total build-out of the following:

(A) Gross and net acreage, with the latter including deductions for public streets, natural resource corridors and other non-private development activities;

(B) Maximum number of employees and anticipated number of patient and related visits on typical weekday;

(C) Maximum development area, as expressed in gross square feet.

(D) Maximum total floor-to-area (FAR) ratio;

(E) Maximum building coverage, as expressed in percentage of total net developable area;

(F) Minimum open space, as expressed in percentage of total net developable area;

(G) Total number of employee and visitor parking spaces required.

iv. Minimum and maximum development standards, including but not limited to and as appropriate:

(A) Minimum and maximum lot size;

(B) Minimum and maximum building setbacks;

(C) Maximum height, which may vary throughout the site;

(D) Maximum FAR at full build-out;

(E) Maximum building coverage at full build-out;

(F) Minimum open space requirements at full build-out;

(G) Minimum and maximum vehicular and bicycle parking ratios by use;

(H) Minimum number of loading bays.

v. Design standards including but not limited to:

(A) Architectural design standards, including design illustrations and building materials boards;

(B) Landscaping, including design standards and standardized plant list. Native plant materials are preferred where practicable;

(C) Pedestrian facilities, including development standards, materials and street furniture;

(D) Bicycle parking facilities, including specifications;

(E) Signage plan including prototypical examples, color palette and materials board;

(F) Low-impact development design standards.

vi. Graphic illustrations of proposed development at full build-out, including but not limited to:

- (A) Density "block" and other three-dimensional concept studies;*
- (B) Illustrative color "typical" street perspectives that portray the proposed architectural style and urban design elements to be used throughout the development, in recognition that these are still conceptual in nature.*

vii. Goal 5 resource protection plan, if needed.

viii. Public utility capacity analyses/infrastructure plans for each phase and total build-out, as required by the City Engineer.

ix. Traffic impact analysis (TIA) for each phase and total build-out, as required by the City Engineer. The traffic impact analysis shall be sufficient to demonstrate compliance with OAR 660-012-0060(1)–(3). Development of the site will not be approved without this analysis. The traffic impacts will be reviewed against, and any mitigation must be consistent with, the function, capacity and performance standards of affected transportation facilities. The following criteria apply only when compliance with the Transportation Planning Rule is deferred to the master plan stage, in which case the TIA shall identify whether the plan or proposed development significantly affects a transportation facility by:

- (A) Changing the functional classification of an existing or planned transportation facility;*
- (B) Changing the standards implementing the street classification system;*
- (C) Allowing types or levels of development that would result in levels of travel or access that are inconsistent with the level of service of a transportation facility;*
- (D) Reducing the performance of a transportation facility below the minimum acceptable performance standard identified in the City of Happy Valley Transportation System Plan; or*
- (E) Reduce the performance of a transportation facility that is otherwise performing below the minimum acceptable performance standard identified in the City Transportation System Plan.*

x. A proposed Concept Master Plan or Detailed Phasing Plan that will significantly affect a transportation facility must ensure that the proposed uses or development are consistent with the identified function, capacity and performance standards of the transportation facility by:

- (A) Limiting the proposed uses or development to be consistent with the function, capacity, and performance standards of the transportation facility;*
- (B) Altering densities or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or*
- (C) Providing or improving transportation facilities sufficient to support the proposed uses or development.*

5. *RC-ME Detailed Phasing Plan submittal requirements.*
 - a. *Detailed Phasing Plan of Subsequent Phases. The following information shall be required for each Detailed Phasing Plan:*
 - i. *Schedule for initiating and completing construction of phase;*
 - ii. *Anticipated utilization at completion of the phase, including the total number of employees, daily visitors and other indicators of full utilization of the structure(s) within the phase;*
 - iii. *Detailed description of all proposed development presented in narrative, tabular and/or graphic formats as follows:*
 - (A) *Description of new buildings anticipated, including size, location, approximate footprint and use,*
 - (B) *All other site improvements including new surface and structured parking facilities; bicycle parking facilities; on-site pedestrian, bicycle and vehicular circulation; transit stops; pedestrian/transit amenities; and open space and landscaped areas,*
 - (C) *The location of new and/or expanded existing public and private infrastructure including water, sanitary sewer, stormwater retention/treatment facilities, and electrical, telephone and data transmission lines,*
 - (D) *Landscaping plan,*
 - (E) *Goal 5 resource protection plan, if required,*
 - (F) *Sign plan,*
 - (G) *Lighting plan,*
 - (H) *Grading and erosion control plans,*
 - (I) *Stormwater plan,*
 - (J) *Low-impact development strategy plan;*
 - iv. *Building elevations;*
 - v. *Summary of development intensity at completion of the phase including average FAR and lot coverage for the development area and for the site as a whole;*
 - vi. *Calculation of minimum vehicular and bicycle parking spaces based on parking ratios established in the Concept Master Plan;*
 - vii. *Reconfirmation of traffic impacts associated with completion of the phase first described in the TIA prepared for the Concept Master Plan;*
 - viii. *Neighborhood communication and coordination plan to ensure that the applicant implements an on on-going process for communicating and problem resolution with neighbors;*
 - ix. *Narrative that demonstrates how the Detailed Phasing Plan for the specific project or groups of projects within a phase are consistent with the phase as conceptually approved in the Concept Master Plan. If there is some aspect of the phase that does not comply, the applicant may request a Detailed Phasing Plan modification as described in Section 16.25.005(H).*

6. *RC-ME Concept Master Plan and Detailed Phasing Plan Approval Process.*
 - a. *Initial Approval.* The initial application for a Concept Master Plan shall be reviewed as a quasi-judicial action at a public hearing before the Planning Commission and subsequently, with regard to architectural standards, by the Design Review Board, pursuant to the requirements of this section and using the approval criteria contained in Section 16.25.005(E)(7) below. The application also may include a request for a use that is permitted conditionally in Table 16.12.005-1 subject to the requirements of Chapter 16.64 of this title. As part of the review process for the Concept Master Plan, the Design Review Board shall consider alternative design standards for institutional development in the Rock Creek Mixed Employment Area in lieu of the "Happy Valley Style" design standards that govern the design of development elsewhere in the City.
 - b. *Detailed Phasing Plans.* Prior to construction of one or more projects within a phase of development approved in the Concept Master Plan, the applicant shall submit a Detailed Development Plan that contains all of the information listed in the submittal requirements for review and approval by the Planning Official or designee, using the approval criteria in Section 16.25.005(E)(7). This review shall be undertaken in lieu of the City's formal Design Review process.
 - c. *Concurrent Review.* An applicant may submit applications for initial review of the Concept Master Plan and review of the first and subsequent Detailed Phasing Plan(s) to be reviewed concurrently. In this case, the Detailed Phasing Plan for one or more phases of development shall be reviewed at the public hearing before the Planning Commission and Design Review Board at which the Concept Master Plan is reviewed. The Detailed Phasing Plan shall require no further review, providing the phase is built out in a manner that is substantially consistent with that which was approved.
7. *RC-ME Concept Master Plan and Detailed Phasing Plan Approval Criteria.*
 - a. *Concept Master Plan.* An application for a Concept Master Plan must demonstrate compliance with the following criteria:
 - i. *Content.* The Concept Master Plan must contain all of the components required in Section 16.25.005(E)(4).
 - ii. *Compliance With all Applicable Standards.* The proposed development and uses must comply with all applicable standards of this title, except where modifications are being approved as part of the Concept Master Plan.
 - iii. *Traffic System Capacity.* There is either sufficient capacity in the transportation system to safely support the development proposed in all future phases, or there will be adequate capacity by the time each phase of development is completed, as demonstrated by a TIA that conforms with the requirements of Section 16.25.005(E)(4)(b).
 - iv. *Availability of Public Services.* There is either sufficient capacity for public services such as water supply, police and fire services, and sanitary waste and stormwater disposal, to support adequately the development proposed in all future phases, or there will be adequate capacity available by the time each phase of development is completed.
 - v. *Protection of Designated Resources.* Resources such as historic landmarks, significant trees and sensitive natural resources identified on the

City's Goal 5 inventories are protected and enhanced in compliance with the regulations in this and other titles of the Happy Valley Municipal Code.

vi. Internal Design Compatibility With Adjacent Uses. The Concept Master Plan must contain building design, landscaping, parking and circulation elements that minimize conflict with adjacent uses to the greatest extent practicable.

vii. Mitigation of Off-site Impacts. All potential off-site impacts including litter, noise, shading and glare shall be identified and mitigated to the greatest extent practicable.

b. Detailed Phasing Plans. To obtain an approval of one or more subsequent phases of development, the applicant shall demonstrate compliance with all of the following criteria:

i. Consistency. A Detailed Phasing Plan shall be substantially consistent with the phase as approved in the Concept Master Plan.

ii. Content. A Detailed Phasing Plan shall contain all of the information required in the submittal requirements in Section 16.25.005(E)(5).

iii. Numerical Development Standards. A Detailed Phasing Plan shall adhere to all of the numerical development standards approved in the Concept Master Plan. However, as part of the review of a Detailed Phasing Plan, the applicant may introduce modifications necessary for a specific project or projects subject to the approval criteria without the requirement for a variance, if the proposed modification is equal to or less than a twenty (20) percent increase or decrease in the numerical standard. If the proposed modification involves a change in a numerical standard of greater than twenty (20) percent, the review of the Detailed Phasing Plan shall be accompanied by a concurrent variance request consistent with the requirements of Chapter 16.71 of this title.

iv. Design and Non-numerical Development Standards. A Detailed Phasing Plan shall adhere to all of the design and non-numerical development standards approved in the Concept Master Plan. However, as part of the review of a Detailed Phasing Plan, the applicant may introduce any modifications necessary to a specific project or projects subject to the approval criteria and the provisions of Section 16.25.005(H).

8. Conditions of approval. In approving the a Concept Master Plan and subsequent Detailed Phasing Plans, the appropriate Review Authority may impose any conditions of it deems necessary to mitigate potentially adverse impacts on surrounding properties to the greatest extent practicable.

F. Vesting.

1. Applicability. A complete application for a Concept Master Plan shall be reviewed under this Chapter and the zoning, development and other land use ordinances in the Happy Valley Municipal Code, including any uncodified ordinances modifying the same, in effect on the date the Concept Master Plan is submitted. An approved Concept Master Plan may be implemented by means of Detailed Phasing Plans for subsequent phases under the zoning, development and land use ordinances applied by the City in its review of the Concept Master Plan, provided the phases are implemented in substantial compliance with the Concept Master Plan. An approved Concept Master Plan shall govern subsequent phases for the period described in Section 16.25.005(G).

2. *Vesting of Infrastructure Capacity.* An approved Concept Master Plan may include a list of on-site and off-site transportation improvements and other public infrastructure needed to support each proposed phase of development. In the event that the applicant agrees to install public improvements or infrastructure in excess of the capacity needed for a particular Detailed Phasing Plan, and in conformance with an approved Concept Master Plan, the City, through a development agreement or the formation of a reimbursement district, or both, shall accommodate future uses and building square footages based on the extent of the overbuilt infrastructure and consistent with the approved Concept Master Plan.

3. *Loss of Vesting.* A Detailed Phasing Plan for which modification is sought under Section 16.25.005(H)(4) or 16.25.005(H)(5) is not subject to the laws in effect when the Concept Master Plan was submitted as described in Section 16.25.005(F)(1) above. An application for a Detailed Phasing Plan that is subject to Section 16.25.005(H)(4) or 16.25.005(H)(5) shall comply with the land use regulations in effect at the time the Phasing Plan is submitted. Post-approval modifications that require only a minor review pursuant to Section 16.25.005(H)(3) do not result in the loss of the vesting described in 16.25.005(F)(1) above.

G. Term.

1. *General.* The term of a Concept Master Plan shall not exceed fifteen (15) years. An extension may be granted in accordance with the criteria and procedures provided in Section 16.25.005(G)(2), below.

2. *Extension.* If all phases of development in the approved Concept Master Plan are not built within the approved term, the applicant may request an extension in writing to the Planning Official. Two one-year extension requests may be approved subject to the following criteria:

a. The applicant has pursued in good faith completing the build-out of the approved Concept Master Plan.

b. There have been no changes to the Comprehensive Plan, Development Code or other applicable governing documents that are inconsistent with the approved Concept Master Plan.

c. There are no other significant changed conditions that would render the extension of the Concept Master Plan contrary to the public health, safety or general welfare.

3. An extension request shall be filed in writing with the Planning Official at least sixty (60) days prior to the expiration of the initial fifteen (15) year period or any subsequently approved extensions.

H. Post-Approval Modification of a Detailed Phasing Plan.

1. *Purpose.* The purpose of this section is to address instances in which the applicant may not be able to construct a phase of the development exactly as approved in an approved Detailed Phasing Plan. This section permits the applicant to seek post-Concept Master Plan approval changes using a review process that is determined by the magnitude of the proposed change or changes. As noted in Section 16.25.005(F), post-approval modifications that require a quasi-judicial review by either the Planning Official or Planning Commission or Design Review Board, procedure result in a loss of vesting in the approval criteria for that specific phase of development.

2. *Modifications Allowed by Right. The following modifications are permitted by right and are allowed upon issuance of a building permit, if required:*
 - a. *Interior improvements;*
 - b. *Exterior improvements associated with existing buildings that do not involve an expansion of floor area, subject to all applicable base zone development and design standards, as modified in the approved Concept Master Plan, and relevant conditions of approval thereto;*
 - c. *Installation of new or modification of existing mechanical or electrical equipment, subject to all applicable base zone development and design standards, as modified in the approved Concept Master Plan, and relevant conditions of approval thereto;*
 - d. *Maintenance of existing facilities when a building permit is required.*
3. *Minor Decision. The following modifications shall be reviewed by the Planning Official or designee, pursuant to the City's administrative decision-making procedure:*
 - a. *Modification of the location of an approved building or building addition, providing the modification complies with the development and design standards, as approved in the Concept Master Plan and as modified in the applicable Detailed Phasing Plan, including all relevant conditions of approval thereto;*
 - b. *Modification of use, design, or development standards including architecture, landscape architecture, pedestrian and bicycle facilities; signs and/or lighting elements approved in the approved Concept Master Plan as modified in the applicable Detailed Phasing Plan approval, including all relevant conditions of approval thereto;*
 - c. *A new building of any size in any location that replaces a building approved but not constructed, providing there is: (i) no net increase in total building coverage, and (ii) compliance with the approved Concept Master Plan as modified in the applicable Detailed Phasing Plan approval, and all relevant conditions of approval thereto;*
 - d. *New buildings or building additions up to ten thousand (10,000) gross square feet (gsf) not anticipated and, therefore, not contained in the approved Concept Master Plan as modified in the applicable Detailed Phasing Plan approval. Construction of such unanticipated buildings or building additions shall not exceed ten thousand (10,000) gsf in any one year, and shall not exceed thirty thousand (30,000) gsf in any four years. As part of this review, the applicant shall provide information on the amount of floor area built to date for the year in which the application is submitted, and the amount of floor area built within the four-year period preceding the request;*
 - e. *Adjusting the sequence of buildings within a phase of development provided that there is no net increase in traffic impacts.*
4. *Quasi-judicial Review by the Planning Official. The following modifications shall be reviewed by the Community Development Director or designee, pursuant to the City's quasi-judicial decision-making procedure:*
 - a. *A change in the approved site boundary resulting in the exchange of properties where the total amount of land in the approved boundary remains the same or is decreased;*
 - b. *A new building or building addition exceeding ten thousand (10,000) gsf but less than fifty thousand (50,000) gsf, not anticipated and, therefore, not*

contained in the approved Concept Master Plan as modified in the applicable Detailed Phasing Plan approval. For new buildings or building additions exceeding twenty-five thousand (25,000) gsf under this provision, the applicant shall provide traffic and parking analyses of the proposal as part of the application;

c. An increase or decrease of up to ten (10) percent in the total number of parking spaces approved in the Concept Master Plan approval as modified in the applicable Detailed Phasing Plan approval. The applicant shall provide a parking analysis related to the proposal as part of the application.

5. Quasi-judicial Review by the Planning Commission or Design Review Board. The following modifications shall be reviewed in a public hearing before the Planning Commission or Design Review Board, pursuant to the City's quasi-judicial decision-making procedure:

a. Expansion of the master plan boundary beyond that contained in the approved Concept Master Plan as modified in the applicable Detailed Phasing Plan approval;

b. New building or building additions of fifty thousand (50,000) gsf or more, not anticipated and, therefore, not contained in the initial Concept Master Plan approval as modified in the applicable Detailed Phasing Plan approval;

c. Proposals that result in an increase of ten (10) percent or more of site-generated vehicular trips approved in the Concept Master Plan approval as modified in the applicable Detailed Phasing Plan approval;

d. An increase or decrease greater than ten (10) percent in the total number of parking spaces approved in the Concept Master Plan approval as modified in the applicable Detailed Phasing Plan approval;

e. A proposed use or development that was denied in the approved Concept Master Plan."

III. CORRECTED FINDINGS (IN CONJUNCTION WITH LUBA REMAND)

The following Oregon Administrative Rules (OAR) have been addressed by staff as part of the "corrected finding" in conjunction with the LUBA remand:

"OAR Chapter 660, Division 9 (Economic Development)

660-009-0020

Industrial and Other Employment Development Policies

(1) Comprehensive plans subject to this division must include policies stating the economic development objectives for the planning area. These policies must be based on the community economic opportunities analysis prepared pursuant to OAR 660-009-0015 and must provide the following:

(a) Community Economic Development Objectives. The plan must state the overall objectives for economic development in the planning area and identify categories or particular types of industrial and other employment uses desired by the community. Policy objectives may identify the level of short-term supply of land the planning area needs. Cities and counties are strongly encouraged to select a competitive short-term supply of land as a policy objective.

(b) Commitment to Provide a Competitive Short-Term Supply. Cities and counties within a Metropolitan Planning Organization must adopt a policy stating that a competitive short-term supply of land as a community economic development objective for the industrial and other employment uses selected through the economic opportunities analysis pursuant to OAR 660-009-0015.

(c) Commitment to Provide Adequate Sites and Facilities. The plan must include policies committing the city or county to designate an adequate number of sites of suitable sizes, types and locations. The plan must also include policies, through public facilities planning and transportation system planning, to provide necessary public facilities and transportation facilities for the planning area.

(2) Plans for cities and counties within a Metropolitan Planning Organization or that adopt policies relating to the short-term supply of land, must include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed. These policies must describe dates, events or both, that trigger local review of the short-term supply of land.

(3) Plans may include policies to maintain existing categories or levels of industrial and other employment uses including maintaining downtowns or central business districts.

(4) Plan policies may emphasize the expansion of and increased productivity from existing industries and firms as a means to facilitate local economic development.

(5) Cities and counties are strongly encouraged to adopt plan policies that include brownfield redevelopment strategies for retaining land in industrial use and for qualifying them as part of the local short-term supply of land.

(6) Cities and counties are strongly encouraged to adopt plan policies pertaining to prime industrial land pursuant to OAR 660-009-0025(8).

(7) Cities and counties are strongly encouraged to adopt plan policies that include additional approaches to implement this division including, but not limited to:

- (a) Tax incentives and disincentives;*
- (b) Land use controls and ordinances;*
- (c) Preferential tax assessments;*
- (d) Capital improvement programming;*
- (e) Property acquisition techniques;*
- (f) Public/private partnerships; and*
- (g) Intergovernmental agreements.*

Staff Response:

The subject amendments from the original Local File No. CPA-03-08/LDO-03-08, include the addition of a Comprehensive Plan policy to be added to the City's existing Comprehensive Plan policies. These policies, combined with the addition of a short-term supply of employment land via the legislative application of the RC-ME zoning district (inclusive of the proposed restrictions to the RC-ME district per LUBA No. 2008-123) as detailed within this report, to the 146-acre subject area, which in turn has been "married" with additional employment and industrial lands to the east (within the adopted EHVCP area) illustrate a commitment to provide a competitive

short-term supply of employment land. As observed, the subject amendments involve application of a zoning district that is compatible with the "Mixed Employment" designation of the Damascus-Boring Concept Plan. The planning efforts and analysis that went into the Damascus-Boring Concept Plan are based on the Metro 2040 Concept Plan, and together are inclusive of the provisions of this administrative rule. Therefore, these criteria are satisfied by the proposed amendments.

660-009-0025

Designation of Lands for Industrial and Other Employment Uses

Cities and counties must adopt measures adequate to implement policies adopted pursuant to OAR 660-009-0020. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, public facility plans, and transportation system plans.

(1) Identification of Needed Sites. The plan must identify the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies. Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. Cities and counties may also designate mixed-use zones to meet multiple needs in a given location.

(2) Total Land Supply. Plans must designate serviceable land suitable to meet the site needs identified in section (1) of this rule. Except as provided for in section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.

(3) Short-Term Supply of Land. Plans for cities and counties within a Metropolitan Planning Organization or cities and counties that adopt policies relating to the short-term supply of land must designate suitable land to respond to economic development opportunities as they arise. Cities and counties may maintain the short-term supply of land according to the strategies adopted pursuant to OAR 660-009-0020(2).

(a) Except as provided for in subsections (b) and (c), cities and counties subject to this section must provide at least 25 percent of the total land supply within the urban growth boundary designated for industrial and other employment uses as short-term supply.

(b) Affected cities and counties that are unable to achieve the target in subsection (a) above may set an alternative target based on their economic opportunities analysis.

(c) A planning area with 10 percent or more of the total land supply enrolled in Oregon's industrial site certification program pursuant to ORS 284.565 satisfies the requirements of this section.

(4) If cities and counties are required to prepare a public facility plan or transportation system plan by OAR chapter 660, division 011 or division 012, the city or county must complete subsections (a) to (c) of this section at the time of periodic review. Requirements of this rule apply only to city and county decisions made at the time of periodic review. Subsequent implementation of or amendments to the comprehensive plan or the public facility plan that change the supply of serviceable land are not subject to the requirements of this section. Cities and counties must:

(a) Identify serviceable industrial and other employment sites. The affected city or county in consultation with the local service provider, if applicable, must make decisions about whether a site is serviceable. Cities and counties are encouraged to develop specific criteria for deciding whether or not a site is serviceable. Cities and counties are strongly encouraged to

also consider whether or not extension of facilities is reasonably likely to occur considering the size and type of uses likely to occur and the cost or distance of facility extension;

(b) Estimate the amount of serviceable industrial and other employment land likely to be needed during the planning period for the public facilities plan. Appropriate techniques for estimating land needs include but are not limited to the following:

(A) Projections or forecasts based on development trends in the area over previous years; and

(B) Deriving a proportionate share of the anticipated 20-year need specified in the comprehensive plan.

(c) Review and, if necessary, amend the comprehensive plan and the public facilities plan to maintain a short-term supply of land. Amendments to implement this requirement include but are not limited to the following:

(A) Changes to the public facilities plan to add or reschedule projects to make more land serviceable;

(B) Amendments to the comprehensive plan that redesignate additional serviceable land for industrial or other employment use; and

(C) Reconsideration of the planning area's economic development objectives and amendment of plan objectives and policies based on public facility limitations.

(d) If a city or county is unable to meet the requirements of this section, it must identify the specific steps needed to provide expanded public facilities at the earliest possible time.

(5) Institutional Uses. Cities and counties are not required to designate institutional uses on privately owned land when implementing section (2) of this rule. Cities and counties may designate land in an industrial or other employment land category to compensate for any institutional land demand that is not designated under this section.

(6) Compatibility. Cities and counties are strongly encouraged to manage encroachment and intrusion of uses incompatible with industrial and other employment uses. Strategies for managing encroachment and intrusion of incompatible uses include, but are not limited to, transition areas around uses having negative impacts on surrounding areas, design criteria, district designation, and limiting non-essential uses within districts.

(7) Availability. Cities and counties may consider land availability when designating the short-term supply of land. Available land is vacant or developed land likely to be on the market for sale or lease at prices consistent with the local real estate market. Methods for determining lack of availability include, but are not limited to:

(a) Bona fide offers for purchase or purchase options in excess of real market value have been rejected in the last 24 months;

(b) A site is listed for sale at more than 150 percent of real market values;

(c) An owner has not made timely response to inquiries from local or state economic development officials; or

(d) Sites in an industrial or other employment land category lack diversity of ownership within a planning area when a single owner or entity controls more than 51 percent of those sites.

(8) Uses with Special Siting Characteristics. Cities and counties that adopt objectives or policies providing for uses with special site needs must adopt policies and land use regulations providing

for those special site needs. Special site needs include, but are not limited to large acreage sites, special site configurations, direct access to transportation facilities, prime industrial lands, sensitivity to adjacent land uses, or coastal shoreland sites designated as suited for water-dependent use under Goal 17. Policies and land use regulations for these uses must:

- (a) Identify sites suitable for the proposed use;*
- (b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities that interfere with development of the site for the intended use; and*
- (c) Where necessary, protect a site for the intended use by including measures that either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.*

Staff Response:

The subject amendments involve application of the RC-ME zoning district (with included restrictions per LUBA No. 2008-123) which is compatible with the "Mixed Employment" designation of the Damascus-Boring Concept Plan. The planning efforts and analysis that went into the Damascus-Boring Concept Plan are based on the Metro 2040 Concept Plan, and together are inclusive of the provisions of this administrative rule. Therefore, these criteria are satisfied by the proposed amendments.

The following Titles from METRO Chapter 3.07 (Urban Growth Management Functional Plan) are applicable to this request:

"Title 4 (Industrial and Other Employment Areas)

3.07.410 Purpose and Intent

The Regional Framework Plan calls for a strong economic climate. To improve the region's economic climate, Title 4 seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant and Industrial Areas (RSIAs), Industrial and Employment Areas. Title 4 also seeks to provide the benefits of "clustering" of those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. Title 4 further seeks to protect the capacity and efficiency of the region's transportation system for the movement of goods and services and to encourage the location of the types of employment in Centers, Employment Areas, Corridors, Main Streets and Station Communities. The Metro Council will evaluate the effectiveness of Title 4 in achieving these purposes as part of its periodic analysis of the capacity of the urban growth boundary.

[...]

3.07.440 Protection of Employment Areas

A. Except as provided in subsections C, D and E, in Employment Areas mapped pursuant to Metro Code Section 3.07.130, cities and counties shall limit new and expanded commercial retail uses to those appropriate in type and size to serve the needs of businesses, employees and residents of the Employment Areas.

B. Except as provided in subsections C, D and E, a city or county shall not approve a commercial retail use in an Employment Area with more than 60,000 square feet of gross leasable area in a single building, or commercial retail uses with a total of more than 60,000

*square feet of retail sales area on a single lot or parcel, or on contiguous lots or parcels, including those separated only transportation right-of-way.
[...]*

Staff Response:

The efforts afforded by the Damascus-Boring Concept Plan and the proposed Comprehensive Plan Text Amendment; Development Code Text Amendment (with restrictions per LUBA No. 2008-123); and, legislative application of the RC-ME zoning district to the approximately 146-acre subject area equate to the provision of "Employment Area" per the Purpose and Intent section of Title 4. In addition, the proposed RC-ME zoning district contains specific language limiting commercial retail use per the provisions of Metro Functional Plan Section 3.07.440.B. Therefore, these criteria are satisfied by the proposed amendments.

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