



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

(503) 373-0050

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NOTICE OF ADOPTED AMENDMENT

January 12, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Clackamas County Plan Amendment
DLCD File Number 008-06



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: January 26, 2007

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: Doug White, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative
Mike McCallister, Clackamas County

<paa> ya/

FORM 2

DEPT OF

DLCD NOTICE OF ADOPTION

JAN 08 2007

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

LAND CONSERVATION
AND DEVELOPMENT

(See reverse side for submittal requirements)

Jurisdiction: CLACKAMAS Local File No.: 20 522-06-CP
 Date of Adoption: DEC 21, 2006 Date Mailed: JAN 5, 2007
 (Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 8-28-06

- Comprehensive Plan Text Amendment
 - Comprehensive Plan Map Amendment
 - Land Use Regulation Amendment
 - Zoning Map Amendment
 - New Land Use Regulation
 - Other: _____
- (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write see Attached.≡

COMPREHENSIVE PLAN MAP AMENDMENT FROM RURAL
RESIDENTIAL TO RURAL INDUSTRIAL, CORRESPONDING ZONE
CHANGE FROM RRFF-5 TO RI

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 AN/A.≡

SAME

Plan Map Changed from: RURAL RESIDENTIAL to RURAL INDUSTRIAL
 Zone Map Changed from: RRFF-5 to RI
 Location: EAGLE CREEK AREA Acres Involved: 8.07
 Specify Density: Previous: 5 ACRES New: N/A
 Applicable Statewide Planning Goals: 1, 2, 6, 9, 10, 11 & 12
 Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 008-06(15507)

Did the Department of Land Conservation and Development **receive** a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**? Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

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

DDOT, OREG DEPT OF AVIATION, BORING FIRE DISTRICT

Local Contact: MIKE M'CALLISTER Area Code + Phone Number: 503-353-4522

Address: 9101 SE SUNNIBROOK BLVD City: CLACKAMAS

Zip Code+4: 97015 Email Address: mikem@co.clackamas.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 (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 ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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 Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

LAND USE - BOARD ORDER COVER SHEET

Amendments to Comprehensive Plan and Zoning and Development Ordinance:

In the Matter of a Comprehensive Plan Amendment and Zone Change for Eagle Foundry Company.

Z0522-06-CP/Z0523-06-Z

Hearing Date(s): November 29, 2006

Minutes: Yes

Board Order Signed: December 21, 2006 2006-586

Sent to Parties: December 27, 2006

Jeff Bennett, Jordan Schrader, PC
Sonya Kazen, ODOT
Randy Ealy, City of Estacada
Recording
Planning, Mike McCallister
Counsel
File

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

In the Matter of a Comprehensive
Plan Amendment and Zone Change
for Eagle Foundry Company

File No.: ZO522-06-CP/ZO523-06-Z

ORDER NO. 2006-586
(Page 1 of 2)

This matter coming regularly before the Board of County Commissioners, and it appearing that Eagle Foundry Company made application for a comprehensive plan amendment and zone change on property described as T2S, R4E, Section 31D, Tax Lot 200; W.M., located at the West side of Eagle Creek Road, approximately 400 feet north of its intersection with Weitz Lane; and

It further appearing that planning staff, by its report dated October 16, 2006, recommended denial of the application; and

It further appearing that the Planning Commission, at its October 23, 2006 meeting, recommended approval of the application with conditions; and

It further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on November 29, 2006, at which testimony and evidence were presented, and that a preliminary decision was made by the Board on November 29, 2006;

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

1. The applicant requests approval of a comprehensive plan map amendment from Rural to Rural Industrial and corresponding zone change from RRFF-5 to RI.
2. This request complies with the applicable criteria for the reasons stated in the attached "Findings in Support of Approval".

NOW, THEREFORE, IT IS HEREBY ORDERED that the requested Comprehensive Plan amendment and zone change are granted, subject to the following condition:

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

In the Matter of a Comprehensive
Plan Amendment and Zone Change
for Eagle Foundry Company

File No.: ZO522-06-CP/ZO523-06-Z

ORDER NO. 2006-586
(Page 2 of 2)

All access drives shall meet minimum access spacing standards of at least 300', as measured from any other access to Eagle Creek Road. If the 300' standard cannot be met, access shall be permitted at a location or locations deemed adequate by the DTD, Traffic Engineering staff.

DATED this 21st day of December, 2006.

BOARD OF COUNTY COMMISSIONERS


Bill Kennemer, Chair


Recording Secretary

EAGLE FOUNDARY COMPANY FINDINGS IN SUPPORT OF APPROVAL

The Board hereby adopts as its own, the Findings set forth in the Staff Report dated October 16, 2006 ("the "October Staff Report"), as to all standards applicable to the instant applications excepting the standards addressed below.

These Supplemental Findings address and are adopted to support the Board of Commissioner's decision on the two principal issues raised before the Board at its November 29, 2006 hearing, namely:

1. Does the application comply with Rural Industrial Plan Policy 3.0.a of the Clackamas County Comprehensive Plan?
2. Does the application comply with OAR 660-012-0060 of Oregon's Transportation Planning Rule?

Rural Industrial Plan Policy 3.0 Findings and Conclusion.

The Clackamas County Comprehensive Plan provides that the Rural Industrial plan designation may be applied to lands that meet the following criterion:

"Areas shall have an historical commitment to industrial uses."

In its October 16, 2006 staff report ("October Report"), County staff analyzed the referenced criterion and concluded that the applicant failed to demonstrate it had been met.

Staff developed a list of what it believed were appropriate considerations to determine whether the "area" had an "historical commitment to industrial uses." That list is set forth on page 21 of the October Report. Applying its list, the staff concluded that the "area" was made up of a mixture of industrial, commercial, residential, agricultural and recreational uses, not just industrial uses. Staff also concluded that the Rural Industrial plan and zone designation on the adjacent 32 acres of land to the north failed to historically commit the "area" to industrial uses. Staff concluded that the "area" is not located within a public sewer, water or storm drainage district and that no such services existed in the area. Finally, staff concluded that the "area" is not substantially impacted by industrial truck traffic or noise. Based on its conclusions, staff recommended denial of the plan and zone change.

After hearing, the Planning Commission concluded that the Applicant had satisfied the "area shall have an historical commitment to industrial uses" criterion. In reaching its conclusion the Planning Commission members found that:

The site in question is not suitable for the RRFF-5 residential uses for which it is planned and zoned;

The appropriate "area" under consideration for the instant application is that identified by the applicant at the hearing. Consistent with the prior Board interpretation of Policy 3.0, the "area" is not limited to the subject property. The "area" is bounded by Weitz Lane on the south, Highway 224 on the west, the strip of uses along the north side of Highway 211 on the north and the base of Goose Creek on the east;

The existing industrial uses on Eagle Foundry's 32 acres zoned and planned Rural Industrial, constitute an historical commitment to industrial uses that affects an area that is larger than just those 32 acres and includes, at a minimum, the subject property;

The long-term use and development of Eagle Foundry's existing 32 acres are the predominant use and the predominant acreage in the above-referenced "area," and have had a significant impact on the use to which the subject property is committed;

A substantial infrastructure investment had been made in the area by PGE to provide industrial levels of electrical service to the area. A major PGE substation is located in the "area" at the intersection of Highways 224 and 211; and

Eagle Foundry is not the only industrial use present in the area. Others include a machine shop just south of Eagle Creek Farm and Feed store, Rain Country Construction Company on the east side of Eagle Creek Road and the Ferrell Gas distribution facility on the west side of Eagle Creek Road.

In addition, approval of this application is consistent with the comprehensive plan's Economics Policy 1.0, which states:

"Encourage retention and expansion of existing industry and business."

The Planning Commission found that Eagle Foundry plays an important role in the economic well-being of Estacada, Eagle Creek and greater Clackamas County by, among other things, providing 105 family wage jobs in an area where other employers are in job reduction mode, by providing college scholarships to area high school students, and by providing internships, mentorships and job shadows to local students desiring careers in manufacturing. The Planning Commission also acknowledged Eagle Foundry's stated need to have the subject property re-planned and re-zoned to Rural Industrial in order to accommodate expansion of the business, especially to accommodate currently displaced employee parking and needed expansion of materials storage areas and of the foundry building, which presently is located near the common property

line between the existing Eagle Foundry operations and the subject property and cannot economically be relocated elsewhere on Eagle Foundry's existing lands.

For the reasons that were articulated by the Planning Commission, the Board of Commissioners concludes that the Applicant has demonstrated that the "area" as described by the Applicant at the Planning Commission and Board of Commissioners hearing has "an historical commitment to industrial use." Therefore, the applicant has met the requirements of Rural Industrial Policy 3.0.a, such that the subject property shall be designated Rural Industrial on the County's comprehensive plan and zoning maps.

Transportation Planning Rule Findings and Conclusion

The Oregon Land Conservation and Development Commission adopted an administrative rule to address implementation of various parts of Statewide Planning Goal 12-Transportation. The rule is known as the Transportation Planning Rule or TPR. A section of the TPR is invoked when an applicant seeks modification of a previously acknowledged comprehensive plan or zoning designation as is the case in the Eagle Foundry applications.

Specifically, OAR 660-012-0006 states, in relevant part:

"(1) When an amendment to . . . an acknowledged comprehensive plan, or a land use regulation would *significantly affect* an existing or planned transportation facility, the local government shall put in place measures as provided in Section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g., level of service, volume to capacity ratios, etc.) of the facility. A plan or land use regulation amendment *significantly affects* a transportation facility if it would:

"* * *;

"(c) As measured at the end of the planning period identified in the adopted transportation system plan:

"* * *;

"(C) *Worsen* the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan."

"(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

"* * *;

“(e) Providing other measures as a *condition of development* “ (emphasis added).

In conjunction with its application the Eagle Foundry submitted a Traffic Impact Study prepared by Lancaster Engineering dated June 2006 (the “TIS”). In estimating trip generation as required by the Comprehensive Plan and TPR, Lancaster Engineering used ITE Manual land use code 110-General Light Industrial. There is no code in the ITE manual for rural industrial uses so the trip generation level used somewhat overestimates actual anticipated trip generation for rural industrial uses. In order to compensate for this, Lancaster issued a supplement to the TIS in a letter dated July 28, 2006 (the “TIS Supplement”).

The TIS includes a “capacity analysis” of all affected intersections and concludes that all but one meet applicable levels of service or volume to capacity ratios. The one non-complying intersection is the northbound turn movement from Highway 211 onto Highway 224 in the PM peak hour. It concludes that “the intersection of Highway 224 and Highway 211 is not operating within either ODOT’s or the County’s standards.” The Table at TIS page 20 shows that the operational non-compliance is confined to the PM Peak Hour only, presently, in 2008 and in 2026 (the time periods of examination required by applicable County requirements).

Again, the conclusion set forth in the TIS is based on hypothetical trips generated by a General Light Industrial use. Based on the ITE Manual, such use at the Eagle Foundry site in the worst case scenario would generate an additional 21 trips to the Highway 211 northbound turn lane onto Highway 224 in 2006, 2008 and 2026 (Figures 3 through 7).

The TIS Supplement, however, demonstrates that when trip generation is based on rural industrial uses, coupled with the actual work shift patterns historically used by Eagle Foundry, that the worst case scenario would generate an additional two (2) trips to the Highway 211 northbound lane onto Highway 224 in 2006, 2008 and 2026 (TIS Supplement, page 2).

The Oregon Department of Transportation (ODOT) weighed in on the TIS. In its Memorandum dated September 21, 2006, it makes the following observation:

“The PM peak hour exceeds the mobility level of 0.80 presently, with the background traffic in 2008, and with the light industrial traffic added in 2008. The TIS does not recommend any mitigation. ODOT has found that adding a westbound right-turn lane will bring the v/c to acceptable level even with the added light-industrial traffic in 2008. ODOT recommends that the developer be conditioned to construct the right-turn lane as per ODOT standard, RD225.”

“* * * OR 211 is only a two-lane highway, and by adding a westbound right-turn lane the v/c can be brought back below the 2026 background level which would meet the Transportation Planning Rule requirements.”

In other words, ODOT concluded under TPR that (i) the requested plan and zone change would “significantly affect” the Highway 211/224 intersection and (ii) that the “affect” could be mitigated by construction of a westbound right-turn lane in Highway 211 onto northbound Highway 224.

ODOT never received nor analyzed the TIS Supplement. It did, however, in an October 23, 2006 letter to the County agree to allow an additional impact into the intersection of one trip as would be generated from the subject property if developed with a single family dwelling, without violating the TPR.

Eagle Foundry objected to imposition of ODOT’s requested condition on several bases.

1. The TIS Supplement demonstrates that in the likely case only one trip and in the worst case scenario only two trips will be added to the Highway 211/224 intersection in the PM peak hour. ODOT has acknowledged that one additional trip into the intersection is acceptable under TPR. Eagle Foundry has demonstrated a long-term commitment to the area, has implemented a work shift means of operations that significantly limits the number of trips that are generated from the facility during both AM and PM peak hours such that its impact on nearby road and highway facilities, including the intersection of Highways 211/224 is minimized to the maximum extent possible. That the County’s Rural Industrial comprehensive plan Policy 1.0 allows only industrial uses that are not “labor intensive” and use only “rural facilities and services.” That consistent with the plan policy, the County’s Rural Industrial zoning district allows only land extensive uses. Therefore, under the TPR, there is no “significant effect” because approval of the plan and zone change will not “worsen,” even in the worst case, the performance of the intersection.

2. Cost estimates for construction of the ODOT-proposed right-turn lane range from \$102,000.00 to nearly \$200,000.00. The estimates provided from the applicant, from the County and from ODOT are minimal cost in nature and do not take into account acquisition of right-of-way or the cost of addressing impacts on drainage facilities. There is no evidence to controvert that actual impacts to the Highway 211/224 intersection from the proposed plan and zone change are two PM peak hour trips. In light of the minimal impacts generated by the applications and the cost of complying with ODOT’s proposed condition of intersection improvements, imposition of that condition is inequitable at best, disproportionate to the impacts created, and in violation of *Dolan v. City of Tigard* requirements at worst.

At the Board hearing the Board heard testimony from County Economic Development Department staff to the effect that the County is committed to seek and implement a solution to the existing condition of the intersection of Highways 211/224 that will include installation of the right-turn lane requested by ODOT.

Based on the arguments proffered by Eagle Foundry, and by the commitment made by County staff to address the existing conditions at the Highway 211/224 intersection, the Board concludes that approval of the plan and zone changes will not violate the TPR.
