



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

03/08/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: Linn County Plan Amendment
DLCD File Number 004-10

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: Tuesday, March 22, 2011

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

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

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

Cc: Deborah Pinkerton, Linn County
Jon Jinings, DLCD Community Services Specialist
Ed Moore, DLCD Regional Representative
Jon Jinings, DLCD Community Services Specialist

<paa> YA



FORM 2

DLCD

Notice of Adoption

In person electronic mailed

DATE
STAMP

DEPT OF

MAR 01 2011

LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

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

Jurisdiction: **Linn County**

Local file number: **BC10-0005**

Date of Adoption: **2/23/2011**

Date Mailed: **2/25/2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 10/21/2010

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: **Code Text Amendment**

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

An urban exception was approved to allow the applicant to construct a 6200 square-foot building to house a convenience store and inside fast-food restaurant. The property is split-zoned Freeway Interchange Commercial (FIC) and Exclusive Farm Use (EFU). A Limited Use Overlay (LUO) was applied to a 5.79-acre (FIC zoned) portion of the 8.79-acre property.

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from:

to:

Zone Map Changed from: **FIC**

to: **FIC-LUO**

Location: **T12S, R3W, Section 4, Tax Lot 607**

Acres Involved: **5.79**

Specify Density: Previous:

New:

Applicable statewide planning goals:

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

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

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. _____

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

Local Contact: **Deborah Pinkerton**

Address: **P O Box 100**

City: **Albany**

Zip: **97321**

Phone: **(541) 967-3816** Extension: **2367**

Fax Number: **541-926-2060**

E-mail Address: **dpinkerton@co.linn.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

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

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

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

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



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816
Fax 541-926-2060 www.co.linn.or.us

NOTICE OF FINAL DECISION

CASE BC10-0005

APPLICANT VIRK, LLC

**RESOLUTION/
ORDER** 2011-027

ORDINANCE 2011-028

REQUEST A request for a *Comprehensive Plan* text amendment, a Land Development Code text amendment, and a Development Code zoning map amendment on a 5.79-acre portion of an 8.79-acre property, split-zoned EFU and FIC. The applicant applied for an exception to Statewide Planning Goal 14 (Urbanization) on the FIC-zoned portion of the property in order to construct a building approximately 6200 square feet in size.

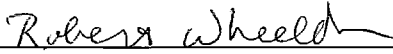
BOARD OF COMMISSIONERS ACTION

The Board approved the application which applies a Limited Use Overlay (LUO) to the 5.79 acres, amends the text of the *Comprehensive Plan* and the Land Development Code.

If you wish to appeal this decision, an appeal must be filed with the Land Use Board of Appeals (LUBA) within 21 days from the date this notice is mailed.

Appeals to LUBA must be filed in accordance with ORS 197.830. If you have any questions about this process, you should contact LUBA in Salem.

Ordinance 2011-028 and Resolution and Order No. 2011-027 may be reviewed at the office of the Linn County Clerk, Room 205, Linn County Courthouse; that office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. A copy of the (ordinance) (resolution and order) is available in the office of the Linn County Clerk. A fee to cover copying costs will be charged.



Robert Wheeldon
Director

February 25, 2011
Date

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

IN THE MATTER OF AN ORDINANCE)
AMENDING THE LINN COUNTY CODE, THE)
LINN COUNTY ZONING MAP, AND THE LINN)
COUNTY COMPREHENSIVE PLAN TEXT;)
T12S, R3W, SECTION 4, TAX LOT 607;)

ORDINANCE NO. 2011-028
(Amending Code)
(Planning and Building Department;
BC10-0005)

WHEREAS, VIRK, LLC filed an application for a *Comprehensive Plan* text amendment, Land Development Code text amendment, and zoning map amendment. The proposal is to amend the *Comprehensive Plan* with an urban exception (Goal 14) on a 5.79-acre portion of an 8.79-acre property zoned Freeway Interchange Commercial (FIC), provide a Limited Use Overlay designation (LUO) on the 5.79 acres, and amend the Land Development Code text of Sections 931.410 and 931.420(D) to identify the property and uses allowed on the property described as Tax Lot 607 on map T12S, R3W, Section 4;

WHEREAS, On January 26, 2011 at 10:00 a.m., the Board held a duly noticed public hearing to consider testimony on the proposed amendment;

WHEREAS, The Board having read the proposed ordinance and having received and considered the oral and written public testimony presented prior to and at the hearing; and

WHEREAS, The findings in support of this ordinance are attached to Resolution and Order No. 2011-027 and entitled Exhibit 1 (BC10-0005 Decision Criteria, Findings and Conclusions); and now, therefore, be it

ORDAINED by the Linn County Board of Commissioners, That:

Section 1. Comprehensive Plan Amendment. Appendix 2 – Exception Areas of LCC Chapter 905 be amended to read as follows:

C-8 Highway 34 as amended by Ordinance No. 2011-028;

Section 2. Comprehensive Plan Amendment. *Linn County Exceptions Document for Residential, Commercial and Industrial Land*, Commercial Exception number C-8, entitled "Highway 34" be amended to add the following text to the Land Use section on page 268:

The land uses permitted on the 5.79-acre, FIC zoned, portion of property described as T12S, R3W, Section 4, Tax Lot 607 are set forth in the Linn County Land Development Code, LCC 931.420(D);

Section 3. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to apply a Limited Use Overlay (LUO) to a 5.79-acre portion of property identified as Tax Lot 607 on Assessor map T12S, R3W, Section 4, Linn County, Oregon, that will remain zoned Freeway Interchange Commercial (FIC);

Section 4. Code Text Amendment. LCC Section 931.410(B) be amended to include:

- (4) T12S, R3W, Section 4, Tax Lot 607 (VIRK, LLC);

Section 5. Code Text Amendment. LCC Section 931.420(D) be added to the Code to read as follows:

- (D) The following structures and uses and their accessory buildings and accessory uses are allowed outright on the property set forth in LCC 931.410(B)(4):
 - (1) A 6200 square-foot structure that will contain a convenience store with an inside fast-food restaurant;
 - (2) All uses allowed in the FIC zoning district;
 - (3) All uses existing on the property set forth in LCC 931.410(B)(4);
and
 - (4) All accessory uses to those principle uses identified in paragraphs (1) to (3) to serve the traveling public.

Section 6. Savings clause. Repeal of a code section or ordinance shall not revive a code section or ordinance in force before or at the time the repealed code section or ordinance took effect. The repeal shall not affect a punishment or penalty incurred before the repeal took effect, nor a suit, prosecution, or proceeding pending at the time of the repeal for an offense committed under the repealed code section or ordinance.

Section 7. Severability. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 8. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption.

Section 9. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.


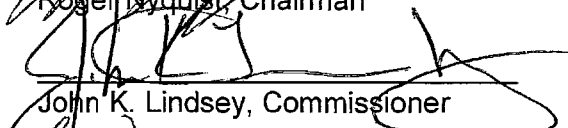
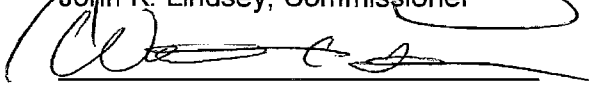
Public reading held February 2011.

Adopted and passed February 2011.


The effective date of this Ordinance shall be February _____, 2011.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

Signed February 23, 2011.

		Voting	
		For	Against
Steve Druckenmiller, Linn County Clerk Recording Secretary	 Roger Nyquist, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>
By _____	 John K. Lindsey, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	 William C. Tucker, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>

APPROVED AS TO CONTENT:


Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:


Thomas N. Corr
Linn County Legal Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON

IN THE MATTER OF A COMPREHENSIVE)
PLAN TEXT AMENDMENT (URBAN EXCEPTION),)
LAND DEVELOPMENT CODE TEXT AMENDMENT,))
AND ZONING MAP AMENDMENT APPLICATION)
BY VIRK, LLC TO APPLY A LIMITED USE)
OVERLAY (LUO) DESIGNATION ON A 5.79-ACRE)
PORTION OF AN 8.79-ACRE PROPERTY, ZONED)
FREEWAY INTERCHANGE COMMERCIAL, AND)
IDENTIFIED AS TAX LOT 607 ON MAP T12S, R3W,)
SECTION 4)

RESOLUTION &
ORDER NO. 2011-027
Planning and Building Department
(BC10-0005)
(Findings and Conclusions)

WHEREAS, VIRK, LLC filed an application for a *Comprehensive Plan* text amendment, Land Development Code text amendment, and zoning map amendment. The proposal is to amend the *Comprehensive Plan* with an urban exception (Goal 14) on a 5.79-acre portion of an 8.79-acre property zoned Freeway Interchange Commercial (FIC), provide a Limited Use Overlay designation (LUO) on the 5.79 acres, and amend the Land Development Code text of Sections 931.410 and 931.420(D) to identify the property and uses allowed on the property described as Tax Lot 607 on map T12S, R3W, Section 4;

WHEREAS, On January 26, 2011, the Board held a duly noticed public hearing on the proposal;

WHEREAS, After considering all testimony and evidence submitted, the Board reached a consensus that the proposed *Comprehensive Plan* text amendment, Land Development Code text amendment, and zoning map amendment be approved;

WHEREAS, The findings in support of this decision to approve the proposed *Comprehensive Plan* text amendment, Code text amendment, and zoning map amendment are attached hereto as Exhibit 1 (BC10-0005 Decision Criteria, Findings and Conclusions); and now, therefore, be it

RESOLVED, That the Board of County Commissioners for Linn County adopt the Findings as set forth in Exhibit 1 (BC10-0005 Decision Criteria, Findings and Conclusions) and approve the *Comprehensive Plan* text amendment, Code text amendment, and zoning map amendment; and

ORDERED, That the Linn County Zoning map, the Linn County Code text, and the Linn County *Comprehensive Plan* text be prepared by county staff for amendment to designate a 5.79-acre portion of an 8.79-acre property (Tax Lot 607 on map T12S, R3W, Section 4), Linn

County, Oregon, as shown on the attached map, as being zoned Freeway Interchange Commercial with a Limited Use Overlay (FIC-LUO);

ORDERED, That the Linn County Land Development Code, Section 931.410(B) be amended to read as follows:

- (4) T12S, R3W, Section 4, Tax Lot 607 (VIRK, LLC);

ORDERED, That the Linn County Land Development Code, Section 931.420(D) be amended to read as follows:

- (D) The following structures and uses and their accessory buildings and accessory uses are allowed outright on the property set forth in LCC 931.410(B)(4):
 - (1) A 6200 square-foot structure that will contain a convenience store with an inside fast-food restaurant;
 - (2) All uses allowed in the FIC zoning district;
 - (3) All uses existing on the property set forth in LCC 931.410(B)(4); and
 - (4) All accessory uses to those principle uses identified in paragraphs (1) to (3) to serve the traveling public.

ORDERED, That Appendix 2 – Exception Areas, of LCC 905 be amended to read as follows:

- C-8 Highway 34 as amended by Ordinance No. 2011-028;

ORDERED, That the *Linn County Exceptions Document for Residential, Commercial and Industrial Land*, Commercial Exception number C-8, entitled "Highway 34" be amended to add the following text to the Land Use section on page 268:

The land uses permitted on the 5.79-acre, FIC zoned, portion of property described as T12S, R3W, Section 4, Tax Lot 607 are set forth in the Linn County Land Development Code, LCC 931.420(D).

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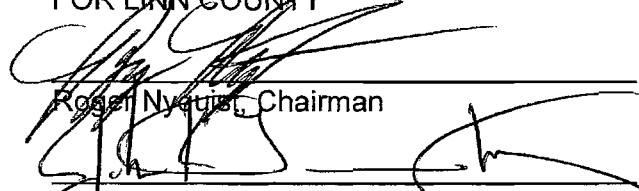
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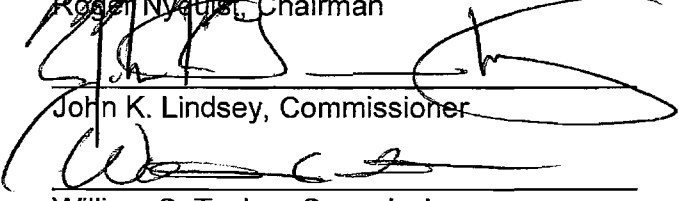
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Resolved this 23rd day of February 2011.

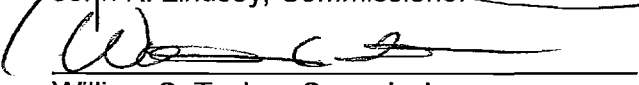
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY



Roger Nyquist, Chairman

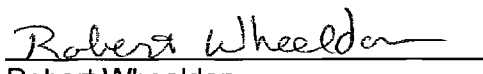


John K. Lindsey, Commissioner



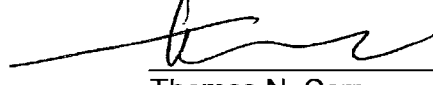
William C. Tucker, Commissioner

APPROVED AS TO CONTENT:



Robert Wheeldon
Director, Linn County Planning and Building

APPROVED AS TO FORM:



Thomas N. Corr
Linn County Legal Counsel

EXHIBIT 1

BC10-0005

DECISION CRITERIA, FINDINGS, AND CONCLUSIONS

I. DECISION CRITERIA

The applicable decision criteria are found in LCC 921.822(B), 921.824, 921.872, OAR 660-004-0020(2) and 660-014-0040(3) and the Oregon Statewide Planning Goals.

II. FINDINGS

- A. **CRITERION: The presence of development limitations including but not limited to geologic hazards, natural hazards, water quality and quantity and septic suitability, do not significantly adversely affect development permitted in the proposed zoning district.**

FINDINGS: According to the "Geologic Hazards of Linn County", published by the Oregon Department of Geology and Mineral Industries, the property does not contain any identified geologic hazards. Neither is the property located within an identified flood hazard area according to the Flood Insurance Rate Map (FIRM) (Panel 41043C0545G) for Linn County, effective September 29, 2010.

There is a public (drinking) water system on the property that is regulated by the Linn County Environmental Health Program (EHP). The on-site sewage disposal system is regulated by the Oregon Department of Environmental Quality (DEQ). Most of the sewage disposal system is located on the EFU zoned portion of the property. In addition to the existing uses that are served by the sewage disposal system, the applicant is proposing to add an inside fast-food restaurant that would also be served by the sewage disposal system.

The applicant has stated that the well is located near the northwest corner of the property and, according to the well log, the well was completed in June 1976, is 140 feet deep, sealed to 80 feet, and when it was drilled, produced 58 gallons of water per minute. The applicant further states the water system is tested quarterly for the presence of nitrates and coliform bacteria. Recent samples have tested within limits set by the Oregon Water Resources Department (WRD).

WRD regulates appropriation of water. The applicant has stated that the Water Resources Commission has established 12 ground water limited areas in the Willamette Basin. The nearest to the subject property is the Kingston Groundwater Limited Area, which is an approximate five square mile area located about ½ mile south of the North Santiam River in Township 9 South, Range 1 West, Sections 13, 14, 23, 24, 25, and 26.

The Linn County Environmental Health Program has submitted comments that state the following "Contamination has been detected in monitoring wells and the drinking water well on the property, which has resulted in the imposition of additional testing and reporting requirements for the Public Drinking Water

system that serves multiple facilities on the property. The Oregon Department of Environmental Quality (DEQ) has likewise imposed requirements for monitoring and reporting of groundwater contaminants. Plans for a proposed new food service facility on the site must be reviewed and approved by the agency having regulatory jurisdiction (unclear at this point; either Linn County as an agent for the Oregon Health Authority, or the Oregon Department of Agriculture) before construction permits can be issued. The owner or operator would then need to apply for a license from the appropriate regulatory agency. The existing wastewater treatment and dispersal facility is operated under a WPCF permit from DEQ. Any proposed change of use and/or increase in flow must be approved by DEQ.”

Additional information regarding water testing was provided. The tested water is not collected by the applicant/property owner but by either an employee of the lab or someone hired by the lab. The results of testing done by Waterlab Corp. and Apex Labs confirmed that contamination was not detected by the labs. The applicant stated there was an above-ground gasoline spill in 1989 on the property. Contamination is found at the surface and there is on-going monitoring of the water of the property. The monitoring evaluates the water for a wide-range of petroleum contamination. The applicant stated there is also monthly testing of the water for coliform and nitrates. The last test for these two contaminants came back as not detectable.

The applicant stated that the design flow of the sewage disposal system on the property is for 7000 gallons of water per day. The existing uses connected to the system, the Pine Cone restaurant and the convenience store, have produced about 1200 gallons per day. The Pine Cone accounts for about 60 percent of the flow and the convenience store produces the remainder of the flow. Before any building permits may be issued for the proposed convenience store and fast food restaurant, DEQ would have to approve the use of the sewage disposal system by the larger convenience store and fast food restaurant.

CONCLUSION: The property is not located within an area subject to either a geologic hazard or a flood hazard. Well water testing results showing contamination was not detected. The well produced approximately 58 gallons of water per minute when it was drilled. The well is 140 feet deep and sealed to 80 feet. Approval to use the existing sewage disposal system for a larger convenience store and an inside fast food restaurant must be granted by the Department of Environmental Quality (DEQ), but DEQ will only review and approve a permit if an applicant has land use approval. The applicant cannot apply to DEQ until Linn County has authorized the activity. Any permit to build a new structure (convenience store and fast food restaurant) could only be granted if DEQ has approved the use of the sewage disposal system for the new use. This criterion can be satisfied.

- B. CRITERION: The amendment will result in a development pattern having no significant adverse impact upon transportation facilities, police and fire protection, storm drainage facilities or the provision of other regional public facilities.**

FACTS: The property is located within the Tangent Rural Fire Protection District and receives police protection from the Linn County Sheriff's Department. Storm drainage is provided on-site with drainage to the highway roadside ditch or to other natural drainage ways in the area. The area around the existing structures is paved and has an impervious surface. The Department has not received a site plan that identifies the location of the proposed 6200 square foot convenience store/fast food restaurant, but it's presumed the location of the new structure will be in the same general location as the existing one in order to utilize existing infrastructure.

The sewage disposal system is regulated by the Oregon Department of Environmental Quality as an on-site sewage treatment and disposal facility and operated under Water Pollution Control Facilities Permit No. 108876. This facility has a design capacity of 5,000 gallons per day. Design and operation of this facility will be reviewed during permit review.

The subject property has about 820 feet of frontage on Highway 34, a paved five-lane state highway, which connects Corvallis, Interstate 5, and Lebanon. The applicant has submitted the following information to address transportation issues.

The functional classification (Highway 34) is principal arterial. Impacts to the state highway system are measured by the ratio of volume to capacity, with a variety of maximum ratios defining the state's mobility standards.

Linn County has adopted a Transportation System Plan (TSP) that is synchronized with its comprehensive plan. If an amendment to the comprehensive plan would significantly affect a transportation facility in the TSP, and thereby upset the balance of the two plans, the applicant must mitigate the traffic impact in a manner prescribed by the TPR (Transportation Planning Rule).

JRH Engineering conducted a traffic Impact analysis (TIA) for the proposed Comprehensive Plan amendment. ODOT took the lead as the review agency and prescribed a scope of work for the TIA. ODOT asked JRH to analyze the effect of additional traffic generated by the proposed convenience store, including a fast food restaurant within the convenience store. The TIA studied the effect on nearby intersections, including all turning movements and queue lengths, in the vicinity of the interchange. The JRH report, *Virk Fueling Facility Expansion*, dated August 12, 2010, is incorporated by reference to this narrative.

The net result is 63 new peak hour trips will be generated by the proposed development. When these trips are distributed to all intersections in this area and added to future traffic volumes for the year of opening (2011) and 15 years to the future (2025), the additional trips do not result in a measurable deterioration to mobility (volume/capacity, V/C) or level of service (LOS). Therefore the proposed expansion does not create significant impacts on the adjacent transportation system.

The findings of the TIA are summarized as follows.

- The addition of development traffic on the adjacent roadways does not cause the change in functional classification of any of the transportation facilities.
- The standards implementing a function classification system within the project study area are not changed by the proposed development.
- The proposed development does not result in types or levels of travel or access that are inconsistent with the functional classification of the studied transportation facilities.
- The addition of development traffic from the proposed expansion does not reduce the v/c for any signalized intersection. All unsignalized intersections operate above the minimum acceptable performance standards.
- The addition of development traffic from the land use change will not further degrade the performance of intersections projected to perform below the minimum acceptable performance standards.

Therefore, the proposed comprehensive plan amendment is consistent with the Linn County Transportation System Plan and the Transportation Planning Rule.

The Traffic Impact Analysis (TIA) is available in the Planning and Building Department for public review. A copy of the report is available at the Board of Commissioners' public hearing. Ann Batten, PE, a traffic analyst with Region 2 Oregon Department of Transportation, reviewed the applicant's TIA and wrote the applicant "ODOT concurs with the conclusion in the TIA that the subject expansion meets TPR requirements, as no "significant effect" on transportation facilities results from the projected increased traffic associated with the expansion." The Department also received a letter from John deTar, Senior Region Planner with ODOT. Mr. deTar's letter also stated that ODOT agrees with the conclusion in the TIA and asks that as part of any approval that may be granted, the applicant be required to demonstrate that new highway approach permits have been obtained before issuing any building permits.

CONCLUSION: The property already receives both police and fire protection. Drainage is to either the ditch of Highway 34 or other natural drainage ways. Because ODOT agrees with the conclusions in the Traffic Impact Analysis that the proposed uses will not have a significant effect on transportation facilities and the proposal is consistent with the Transportation Planning Rule requirements, this criterion is met.

C. CRITERION: The amendment will result in a development pattern compatible with uses on nearby lands and will have no significant adverse impact on the overall land use pattern in the area.

FACTS: There are ten tax lots within ¼ mile of the boundary of tax lot 607. There are eight tax lots within ¼ mile of the FIC-zoned portion of the property. Properties across Highway 34 to the north are zoned FIC, Limited Industrial (LI), and Exclusive Farm Use (EFU). The LI property is in farm use (grass seed production). The FIC-zoned property contains a service station and the EFU-

zoned properties are in grass seed production. Property to the south is also in grass seed production and is owned by Linn County. Properties across Interstate 5 to the west are zoned FIC and EFU. The FIC-zoned properties contain a propane tank business, the UPS distribution and shipping center, and one is vacant. The EFU-zoned property is in farm use (grass seed).

The applicant states that only one tax lot (tax lot 600) adjoins the subject property. One other tax lot (tax lot 500) is located on the same corner of the interchange. The remaining six tax lots are located west of Interstate 5 or north of Highway 34. Forest practices do not occur on nearby land. Compatibility with farming practices is limited to the five tax lots where farming practices are evident. To be compatible, it is not necessary for there to be no impacts or for adjacent uses to be identical, only that any interference is reasonably limited.

Soil and groundwater conditions are such that grass seed production is the predominant farm use on nearby land. Some fields have switched to wheat, presumably for the near term, as grass seed prices have fallen in the current economic climate.

Farming practices typically associated with these commodities include tilling, spraying of herbicides and pesticides, application of soil amendments, and harvesting. These activities are intermittent, occurring from late winter to late summer.

The commercial use of the subject property has co-existed with nearby farming practices for more than 50 years. The transient nature of customers of the restaurant, store, and fueling stations ensures the long-term compatibility with farming practices. Longevity is an indicator of compatibility.

A county park has been proposed for Tax Lots 500 and 600 on map T12S, R3W, Section 4. If a county park is constructed on the two tax lots, farming practices will disappear from the only land adjoining the subject property. The remaining farm land would be located north of Highway 34 such that the intervening distance ensures compatibility with farm use.

CONCLUSION: The applicant's proposal would increase the size of the existing convenience store, expand the number of fueling dispensers and add a fast-food restaurant inside the convenience store. These proposed (expanded) uses already exist on the property in one form or another. There is a restaurant on the property (Pine Cone), there is the existing convenience store, and there are both gasoline and diesel fuel dispensers on the property. The applicant's proposal does not alter the use of the property. The existing restaurant and convenience store have existed on the property since the early 1960's. This criterion has been met.

D. CRITERION: The amendment is consistent with the intent and purpose statement of the proposed zoning district.

FACTS: The purpose of the Freeway Interchange Commercial (FIC) zoning district shall be to permit the use of freeway interchange property to fill the

immediate needs of motorists and commerce. The uses permitted in this zoning district are intended to serve the rural and traveling population.

Information relating to this criterion is found in the findings addressing the Exception to Statewide Planning Goal 14.

CONCLUSION: This criterion is met.

E. CRITERION: The amendment is consistent with the existing *Comprehensive Plan* map designation.

FACTS: The *Comprehensive Plan* map designation on the portion of the property zoned Freeway Interchange Commercial (FIC) is commercial. The *Comprehensive Plan* designation for the portion of the property zoned Exclusive Farm Use (EFU) is Agricultural Resource. The current proposal would affect only the land zoned FIC.

CONCLUSION: The proposed amendment is consistent with the existing *Comprehensive Plan* map designation.

F. CRITERION: The amendment will not have a significant adverse impact on a sensitive fish or wildlife habitat.

FACTS: There are no identified sensitive fish, riparian, or big game habitats on the subject property.

CONCLUSION: This criterion has been met.

G. CRITERION: The amendment, if within an adopted urban growth boundary, is consistent with the *Comprehensive Plan* and implementing ordinances of the affected city.

FACTS: The subject property is not located within an adopted urban growth boundary.

CONCLUSION: This criterion has been met.

H. CRITERION: The amendment is consistent with the intent and purpose statement of the affected Chapter or subchapter of the Land Development Code.

FACTS: Information addressing this criterion is found in findings addressing the Exception to Statewide Planning Goal 14.

CONCLUSION: This criterion is met.

I. CRITERION: The amendment is consistent with the intent of the policies within the applicable section (s) of the *Comprehensive Plan*.

FACTS: The following *Comprehensive Plan* policies apply to this application.

Commercial Land Goal 1. Provide for rural commercial and freeway related commercial uses which are needed for rural residents, tourists, and motorists.

The background commentary of the *Comprehensive Plan* acknowledges the need for some level of commercial enterprise in rural areas. These businesses are expected to provide convenient access for rural residents and highway travelers to daily goods and services. The types of businesses that provide these goods and services are small stores, restaurants, service stations, and vehicle repair shops. It is expected that many of these businesses will locate around freeway interchanges to complement existing businesses and because the location will attract the most customers. As freeway traffic increases, the demand for goods and services around interchanges will grow. The proposed expansion of the convenience store is directly in response to the needs of additional motorists, tourists, and truckers travelling I-5 and OR-34.

Commercial Land Goal 2. Ensure that commercial development is compatible with farming and forestry practices on nearby land.

There are eight tax lots located within ¼ mile of the subject property. Only one tax lot (600) adjoins the subject property. One other tax lot (500) is located on the same corner of the interchange. The remaining six tax lots are located west of I-5 or north of OR-34. A summary of data for these tax lots appears in Table 3.

Table 3, Nearby Land Uses Within ¼ Mile of Subject Property

Tax Lot*	Zone	Exception Area	Location	Use
600	EFU	No	Adjoining	Grass seed. Approved for county park.
500	EFU	No	275 feet west	Grass seed. Approved for county park.
1103	FIC	Yes	West of I-5	Propane tank business.
1101	FIC	Yes	West of I-5	Vacant
400	EFU	No	North of OR-34	Grass seed.
200	EFU	No	North of OR-34	Grass seed.
201	FIC	Yes	North of OR-34	Gasoline station
205	LI	Yes	North of OR-34	Grass seed

Source: Linn County GIS

Forest practices do not occur on nearby land. Compatibility with farming practices is limited to the five tax lots where farming practices are evident. To be compatible, it is not necessary for there to be no impacts or for adjacent uses to be identical, only that any interference is reasonably limited.

Soil and groundwater conditions are such that grass seed production is the predominant farm use on nearby land. Some fields have switched to wheat, presumably for the near term, as grass seed prices have fallen in the current economic climate.

Farming practices typically associated with these commodities include tilling, spraying of herbicides and pesticides, application of soil amendments, and harvesting. These activities are intermittent, occurring from late winter to late summer.

The commercial use of the subject property has co-existed with nearby farming practices for more nearly 50 years. The transient nature of customers of the restaurant, store, and fueling stations ensures the long-term compatibility with farming practices. Longevity is an indicator of compatibility.

If the county park is constructed on Tax Lots 500 and 600, farming practices will disappear from the only land adjoining the subject property. The remaining farm land would be located north of OR-34 such that the intervening distance ensures compatibility with farm use.

Commercial Land Goal 4. Ensure that commercial development will not create traffic safety concerns or reduce the carrying capacity of state highways and county roads.

The subject property is situated on the south side of Oregon Highway 34 (OR-34), on the east side of Interstate 5 (I-5). Both highways are under the jurisdiction of the Oregon Department of Transportation (ODOT). The nearest county road is Seven Mile Lane, intersecting OR-34 approximately 0.4 mile east of the subject property.

JRH Engineering conducted a trip generation analysis for the proposed expansion. JRH met with ODOT staff to discuss the assumptions for the analysis. ODOT agreed that a convenience store or fueling dispenser is not a destination per se because these uses temporarily divert drivers traveling to other destinations. The proposed expansion would not add more vehicles to I-5 or OR-34. Any new customers would already be on the highways. Therefore the proposed expansion, in and of itself, will not reduce the carrying capacity of state highways and county roads.

The proposed expansion would compete with other commercial establishments along the I-5 or OR-34 corridor. If the applicant is successful in drawing customers away from other businesses, it would divert traffic from those businesses and change some of the turning movements around the interchange. JRH estimated those changes in turning movements and determined the numbers to be so low that there would be no measurable change in capacity of nearby intersections as measured by volume to capacity ratio (V/C).

Commercial Land Policy 1. The Freeway Interchange Commercial (FIC) zone has been established to provide for tourist and Interstate 5 transportation needs and to a lesser extent, services for surrounding residences. The FIC zone can only be applied at freeway interchanges or adjacent to property which is zoned FIC. Additional FIC zoning will only be permitted when a Plan amendment and exception is approved.

The proposed business expansion will occur within the existing boundary of the FIC zoning district established at the I-5 / OR-34 interchange. No additional FIC

zoning is proposed. The expanded convenience store will cater to the increasing needs of travelers on the I-5 and OR-34 corridors in compliance with this policy.

Commercial Land Policy 3. Most commercial development will occur within a UGB because of city services and the surrounding population are necessary to sustain most businesses. The county supports the use and expansion, if necessary, of a UGB for commercial development. The uses permitted in the RCM and FIC zone are intended to meet certain rural needs and those of the traveling public and have been carefully written so that the uses will not conflict with commercial development in the incorporated communities in the county.

The proposed business expansion includes uses that are permitted in the FIC zoning district: convenience store, and service station. The expansion will enhance the level of service that the traveling public has come to expect at this location. The need for the expansion is evidenced by the long term of service at this location.

Commercial Land Policy 4. The commercial uses permitted in the RCM and FIC zones are considered rural because the businesses will be serving the rural area and the traveling public. None of the permitted uses is intended to provide commercial services for an urban population. The commercial uses located on freeway interchanges and arterials will provide service to current and anticipated traffic and will not generate additional traffic. The FIC zone is considered a rural zone because only two types of transportation dependent commercial uses are permitted; service stations and repair shops and small markets and restaurants.

The subject property is situated at the intersection of I-5 and OR-34 where tourists, truckers, and other travelers pause from their journeys for fuel, food, and restroom breaks. Services to the travelling public were established at this site shortly after I-5 opened 50 years ago. The nearest urban areas in Tangent (2.5 miles), Lebanon (6.7 miles), and Albany (4.4 miles) offer similar services to their residents that do not compete with existing or proposed services at the subject property. The growth of commercial service around the interchange is driven by the growing numbers of travelers on I-5 and OR-34.

Commercial Land Policy 5. In order to ensure that the permitted commercial uses do not exceed the intended scale of operation, a building size limitation has been established. New commercial uses must be located within a building no greater than 3,750 square feet in size. The building size standard is based on existing commercial building sizes and the need to ensure that new businesses can operate efficiently by having adequate space for customers and storage. Businesses in existing buildings (as of the date of adoption of this policy) are permitted to expand the building size up to 3,750 square feet or by up to fifty per cent of existing building size, whichever is greater. In no case, may the expansion result in a building which exceeds the greater of 3,750 square feet or a fifty percent expansion of the existing building size.

The limitation to building area was established by Linn County to comply with Goal 14. The proposed exception to Goal 14 would enable the limitation to be exceeded. Findings in support of the goal exception are set forth in following sections.

According to background information for the Commercial Lands section of the *Comprehensive Plan*, the building area standard was derived from data for six exception areas: eight businesses in buildings with a total area of 30,684 square feet; the average size of the largest businesses is 3,835 square feet; the largest building is 6,522 square feet; and the smallest building is 3,025 square feet.

Commercial Land Policy 6. As stated in the Background and Summary of Issues, a limit of three separate, freestanding commercial uses, or one per property (as mapped on the effective date of this amendment), is established at all exception sites except for C-3; C-4; C-8; C-18 and C-19. The number of uses permitted at each site is limited in order to maintain a scale of development consistent with a rural area. The sites which have been exempted from the limitation are already developed with three or more commercial uses.

The subject property is exception site C-8. This policy recognizes that the subject property is already developed with three or more commercial uses.

Unfortunately, the 3,750 SF limitation is blind to the number of commercial uses. It is applied as the total building area of a site, irrespective of the number of buildings. It does not matter whether the site has three or more commercial uses, such as the subject property, or just one commercial use.

The economic disadvantage to a multiple use site such as the applicant's finds no relief in the Code; it can only be addressed by an exception to Goal 14.

Commercial Land Policy 7. Access points for commercial development shall be minimized to reduce conflicts with thru traffic. The county Roadmaster and if a state highway is involved, the state highway division, will be asked to review and approve access points for proposed commercial development.

According to ODOT records, there are three permitted approach roads to the subject property. These permits were issued in 1962, but were affected by the "OR-34:I-5 Interchange" and the "OR-34:I-5 to Lebanon" highway modernization projects during the 1990s. Right-of-way was acquired across the frontage of the subject property. All three approach roads were reconstructed in conjunction with these projects, except that the easternmost approach road was moved to its current location with the addition of an eastbound deceleration lane. An on-site barricade was erected to prevent trucks from entering the westernmost approach road. Signs were erected directing trucks to the easternmost approach road. The proposed expansion would be served by the westernmost driveway except that truckers would continue to use the easternmost driveway, park east of the fueling stations, and walk to the proposed convenience store.

- J. **CRITERION:** The amendment is consistent with the intent of the applicable section (s) of the *Comprehensive Plan*.

FACTS: This criterion is addressed in the previous criterion.

CONCLUSION: This criterion is met.

- K. **CRITERION:** The amendment is consistent with the statewide planning goals.

FACTS: The intended use of the subject property is consistent with the provisions of the FIC zoning district, acknowledged by the Oregon Department of Land Conservation and Development as consistent with the statewide planning goals. The narrow issue at the center of this Comprehensive Plan map amendment is the size of the intended use, requiring an exception to Goal 14. In all other respects, the intended use is allowed by the Linn County Development Code which has been acknowledged as being consistent with the statewide planning goals.

On June 20, 1985, the Land Conservation and Development Commission acknowledged the Linn County Comprehensive Plan and implementing ordinances as being in compliance with the Statewide Planning Goals. Subsequent post-acknowledgement plan amendments must also comply with the statewide goals.

Goal 1, Citizen Involvement: *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

Opportunities for citizen involvement occurred during the formulation and adoption of the Linn County Comprehensive Plan and Development Code. The Oregon Land Conservation and Development Commission acknowledged the Comprehensive Plan and Development Code as being in compliance with Goal 1.

In quasi-judicial proceedings conducted for map amendments as proposed by the applicant, the Development Code sets forth the acknowledged provisions for citizen at public hearings before the Planning Commission and Board of Commissioners. Based on these provisions, citizens will have ample opportunity to review and comment on the proposed amendments.

For these reasons, the proposed amendments comply with Goal 1.

Goal 2, Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

Goal 2 establishes a standard process for complying with the statewide planning goals and allows for exceptions to this process. Findings in support of consistency with the Goal 2 exception process [OAR 660-04-0020(2)] are found below in the information addressing the exception to Goal 14.

Goal 3, Agricultural Lands: *To preserve and maintain agricultural lands.*

Goal 3 does not apply because the subject property is an acknowledged exception area.

Goal 4, Forest Lands: *To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

Goal 4 does not apply because the subject property is an acknowledged exception area.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces: *To protect natural resources and conserve scenic and historic areas and open spaces.*

The aim of Goal 5 is to protect a broad range of resources. According to Goal 5, the following resources must be inventoried:

- a. Riparian corridors, including water and riparian areas and fish habitat;
- b. Wetlands;
- c. Wildlife Habitat;
- d. Federal Wild and Scenic Rivers;
- e. State Scenic Waterways;
- f. Groundwater Resources;
- g. Approved Oregon Recreation Trails;
- h. Natural Areas;
- i. Wilderness Areas;
- j. Mineral and Aggregate Resources;
- k. Energy sources;
- l. Cultural areas.

Local governments are also encouraged to inventory the following resources:

- a. Historic Resources;
- b. Open Space;
- c. Scenic Views and Sites.

No Goal 5 resource has been identified on the subject property or adjoining properties in the Comprehensive Plan. Therefore Goal 5 does not apply.

Goal 6, Air, Water and Land Resources Quality: *To maintain and improve the quality of the air, water and land resources of the state.*

Findings regarding water resources are found earlier in this narrative under Criterion A.

The subject property is not located in a Non-attainment or Maintenance Area as determined by Oregon Department of Environmental Quality, according to the *2009 Oregon Air Quality Data Summaries*, published June 2010. The proposed amendment will not increase the number of vehicles on state highways. Therefore the proposed amendment will not affect air quality in accordance with Goal 6.

The land resource provisions of Goal 6 do not apply because the subject property has been fully impacted by previous development and it an acknowledged exception area.

Goal 7, Areas Subject to Natural Hazards: *To protect people and property from natural hazards.*

Findings regarding development limitations of the property are found earlier in this narrative under Criterion A.

Goal 8, Recreational Needs: *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Goal 8 does not apply because the proposed map amendment is not intended to satisfy public recreational needs.

Goal 9, Economic Development: *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The existing facilities are dependent on motorists using I-5 and OR-34 for its economic viability. The site has been used for highway related services for nearly 50 years. Increased traffic on these highways will be accompanied by a commensurate demand for additional goods and services. The existing convenience store is small, crowded, and lacks the variety of goods and merchandise the traveling public has come to expect. To respond to the changing needs of motorists, the convenience store must expand to increase shelf space and to expand food service. The proposed amendments would allow expansion of the convenience store and enable greater economic development at the site as envisioned by Goal 9.

Goal 10, Housing: *To provide for the housing needs of citizens of the state.*

Goal 10 does not apply because the proposed amendments are not intended for residential purposes.

Goal 11, Public Facilities and Services: *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

Findings regarding public facilities are found earlier in this narrative under Criterion B.

Goal 12, Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

This Transportation Planning Rule (TPR) is applicable to this *Comprehensive Plan* amendment. [OAR 660-012-0060(1)] The TPR states full:

Where an amendment to a functional plan, 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 ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) ***Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***
- (b) ***Change standards implementing a functional classification system;***
or
- (c) ***As measured at the end of the planning period identified in the adopted transportation system plan:***
 - (A) ***Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***
 - (B) ***Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or***
 - (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.***

The subject property has frontage on and physical access to Highway 34 (OR-34), a paved five-lane state highway connecting Corvallis, I-5, and Lebanon. There are no bicycle or pedestrian facilities. The functional classification is principal arterial. Impacts to the state highway system are measured by the ratio of volume to capacity, with a variety of maximum ratios defining the state's mobility standards.

Linn County has adopted a Transportation System Plan (TSP) that is synchronized with its *Comprehensive Plan*. If an amendment to the comprehensive plan would significantly affect a transportation facility in the TSP, and thereby upset the balance of the two plans, the applicant must mitigate the traffic impact in a manner prescribed by the TPR.

JRH Engineering conducted a Traffic Impact Analysis (TIA) for the proposed *Comprehensive Plan* amendment. ODOT took the lead as the review agency and prescribed a scope of work for the TIA. ODOT asked JRH to analyze the effect of additional traffic generated by the proposed convenience store, including a fast

food restaurant within the convenience store. The TIA studied the effect on nearby intersections, including all turning movements and queue lengths, in the vicinity of the interchange. The JRH report, *Virk Fueling Facility Expansion*, dated August 12, 2010, is retained in the Planning and Building Department file and in the records of the Linn County Clerk.

The net result is 63 new peak hour trips will be generated by the proposed development. When these trips are distributed to all intersections in this area and added to future traffic volumes for the year of opening (2011) and 15 years to the future (2025), the additional trips do not result in a measureable deterioration to mobility (volume/capacity, V/C) or level of service (LOS). Therefore the proposed expansion does not create significant impacts on the adjacent transportation system.

The findings of the TIA are summarized as follows.

- The addition of development traffic on the adjacent roadways does not cause the change in functional classification of any of the transportation facilities.
- The standards implementing a function classification system within the project study area are not changed by the proposed development.
- The proposed development does not result in types or levels of travel or access that are inconsistent with the functional classification of the studied transportation facilities.
- The addition of development traffic from the proposed expansion does not reduce the v/c for any signalized intersection. All unsignalized intersections operate above the minimum acceptable performance standards.
- The addition of development traffic from the land use change will not further degrade the performance of intersections projected to perform below the minimum acceptable performance standards.

Therefore, the proposed *Comprehensive Plan* amendment is consistent with the Linn County Transportation System Plan and the Transportation Planning Rule.

Goal 13, Energy Conservation: *To conserve energy.*

The proposed amendments are intended to serve the needs of the travelling public. To the extent that expansion of the convenience store minimizes detours to urban areas to shop for convenience goods, the savings in fuel consumption is an energy conservation measure that is consistent with Goal 13.

Goal 14, Urbanization: *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

An exception to Goal 14 is proposed to exceed the 3,750 SF maximum building size for a convenience store in the FIC zoning district. Findings in support of an exception to Goal 14 are found earlier in this narrative beginning on page 11 and are incorporated herein by reference.

Goal 15, Willamette River Greenway: *To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

Goal 15 does not apply because the Willamette River Greenway is not present on the subject property.

Goal 16. Estuarine Resources: *To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.*

Goal 16 does not apply because no estuarine resources are present on the subject property.

Goal 17, Coastal Shorelands: *To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.*

Goal 17 does not apply because no coastal shorelands are present on the subject property.

Goal 18, Beaches and Dunes: *To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.*

Goal 18 does not apply because no beaches or dunes are present on the subject property.

Goal 19, Ocean Resources: *To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.*

Goal 19 does not apply because no ocean resources are present on the subject property.

EXCEPTION TO STATEWIDE PLANNING GOAL 14

There are two parts to the goal exception. In the first, an exception to the Statewide Planning Goals must address the general requirements of Goal 2. The second addresses the requirements of the specific goal, in this case, Goal 14.

I. Goal 2: Exception Requirements

The reasons to use land for uses not allowed by applicable Goal must be set forth in the Comprehensive Plan as an exception. The four factors in Goal 2, as explained in OAR 660-04-0020(2), are decision criteria. The reasons to allow building area in excess of the limit of 3,750 square feet are as follows.

(a) Reasons justify why the state policy embodied in the applicable goals should not apply.

The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land.

The state policy embodied in Goal 14 states that urban uses are to be contained in urban growth boundaries. Urban uses are characterized by the nature of the use (multi-family housing, professional offices, banks) or by the scale and intensity of the use (big box retail, shopping centers, availability of municipal water and sewer).

The purpose statement for the Freeway Interchange Commercial District reads:

The purpose of the Freeway Interchange Commercial (FIC) zoning district shall be to permit the use of freeway interchange property to fill the immediate needs of motorists and commerce. The uses permitted in this zoning district are intended to serve the rural and traveling population.

The existing facilities are dependent on motorists using I-5 and OR-34 for its economic viability. The site has been used for highway related services for nearly 50 years. Increased traffic on these highways will be accompanied by a commensurate demand for additional goods and services. The existing convenience store is small, crowded, and lacks the variety of goods and merchandise the traveling public has come to expect. To respond to the changing needs of motorists, the convenience store must expand to increase shelf space and to expand food service.

The proposed expansion will occur within the boundary of the FIC zone. The FIC zone is a Rural Development Zone that allows commercial activities proposed by the intended expansion. The subject property contains ample area to accommodate the replacement building.

The subject property has been acknowledged by the State as an exception area. The number of buildings on the subject property would not change; one building would be replaced by a larger building. The proposed expansion is a logical continuance of the longstanding uses of the subject property.

The site already benefits from a Goal 3 exception. The need for the Goal 14 exception is the building area standard. It is assumed that the building area standard defines an intensity of use that divides rural commercial from urban commercial. The number selected for the standard was based on analysis of then existing building sizes at freeway interchanges. The average building size was selected as the threshold for urban intensity without characterizing what constitutes an urban commercial intensity. In other words, the Comprehensive Plan does not explain what makes a building larger than 3,750 square feet an urban use. It is simply an artificial standard derived from data on existing facilities at the time the standard was adopted. The Comprehensive Plan's background findings for Commercial Lands acknowledge this dilemma:

Freeway interchange development in the county historically has been more intensive than other rural commercial development areas. The services at the interchanges are transportation dependent and cannot be classified as either urban or rural in terms of scale or type of use.

Lacking characterization in the Comprehensive Plan as to what constitutes urban commercial intensity, the reasons for the Goal 14 exception are based on longevity of the use, evolving market conditions, continuation of existing services, and the amount of FIC zoned land already excepted from Goal 3.

(b) Areas which do not require a new exception cannot reasonably accommodate the use.

The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified.

To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed

- Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?***
- Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?***
- Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?***
- Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?***

This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

Only two FIC zoned areas have Goal 14 exceptions: Pioneer Villa and Sherman Brothers. Both fully utilize their sites. The former undoubtedly would not allow competition on their site.

No locations at the I-5 / OR-34 interchange have a Goal 14 exception.

The subject property benefits economically from travelers on two highways. Nearby urban areas along the OR-34 corridor (Tangent and Lebanon) do not have I-5 exposure. Conversely Albany does not have OR-34 exposure.

There is only one urban growth boundary along the I-5 corridor in Linn County. The Albany I-5 interchanges are intensively developed to the extent that no vacant commercial land remains at the interchanges. Convenience store, restaurant, and gasoline fueling services are well-established and highly competitive.

Since the subject property receives a significant amount of truck traffic, development of a comparable facility within an urban growth boundary could result in significant adverse impacts to transportation facilities.

The lack of Goal 14 exception areas, the fully developed nature of Albany interchanges, proximity to two highway corridors, absence of congestion, and the ease of large vehicle movement around the interchange are reasons that give the subject property a comparative advantage in an alternative site analysis.

(c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception.

The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts.

Expansion of the facility at the existing location would have long-term environmental benefits compared to construction of a comparable new facility at another location. It would increase the capacity of the site without disturbing land designated for other uses. It would maintain the

efficient use of the interchange and both highways. It would allow continued use of established safe water, sewage disposal, and storm drainage systems.

The long-term economic benefit of the proposed expansion would be to maintain operations at an existing site, thereby avoiding the costs associated with locating and developing a new facility. The economic consequences of doing nothing would be lost revenues that could support the local economy.

The long-term social benefits to the proposed expansion would be stability and growth of employment opportunities in an area that historically suffers from higher than average unemployment.

The long-term energy benefits of the proposed expansion is support for established services as close to the interstate interchange as possible, thereby ensuring efficient energy usage by vehicles. It will also secure the long-term use of the subject property and delay the need for construction of a new motorist facility in the vicinity of this interchange.

(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

Findings regarding land use compatibility are found earlier in this narrative.

II. Goal 14: Establishment of New Urban Development on Undeveloped Rural Lands

The subject property is considered "undeveloped rural land" because it is subject to a built and committed exception to Goal 3. However it has not developed at urban density or committed to urban level development as defined by OAR 660-14-0040(1). Therefore the criteria set forth in OAR 660-14-0040(3) are applicable to the proposed amendment.

(a) The proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities.

Findings in support of an alternative site analysis as required by Goal 2: Exception Requirements [OAR 660-04-0020(2)(b)] are found earlier in this narrative.

The viability of Freeway Interchange Commercial uses depends on co-location with a freeway interchange.

(b) The long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

**(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and
(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.**

The advantages of a larger convenience store on the subject property have been described elsewhere in this narrative. The proposed use complies with this criterion for the following reasons:

- a. The subject property is already developed for non-resource use.
- b. The convenience store use is already established on the subject property.
- c. It is located within the boundaries of an acknowledged exception area (Goal 3).
- d. The existing infrastructure will accommodate the proposed use.
- e. No adverse impacts have been identified.
- f. No physical limitations have been identified.

**(c) The proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:
(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and
(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.**

Findings regarding land use compatibility are found earlier in this narrative.

(d) An appropriate level of public facilities and services are likely to be provided in a timely and efficient manner.

Findings regarding public facilities are found earlier in this narrative.

(e) Establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.

This criterion does not apply because no new urban growth boundary is proposed.

SUPPLEMENTAL INFORMATION
for
EXCEPTION TO STATEWIDE PLANNING GOAL 14

The reasons to use land for uses not allowed by applicable Goal must be set forth in the Comprehensive Plan as an exception. The four factors in Goal 2, as explained in OAR 660-04-0020(2), are decision criteria for a goal exception. The reasons to allow building area in excess of the limit of 3,750 square feet are as follows.

(a) Reasons justify why the state policy embodied in the applicable goals should not apply.

The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land.

The proposed use would be located on land subject to a built exception to Goal 3. At the time the exception was acknowledged, it was already developed at urban density because the area of the existing buildings exceeded 3,750 square feet.

The reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply to expansion of the existing use are based on the location of the subject property and proximity to economic activity generated by the traveling public. The subject property is located at the interchange of I-5 and OR-34, two heavily-traveled highways. The economic activity that would justify the exception is the demand for goods imposed by travelers on I-5 and OR-34. Motorists will stop to purchase fuel, snacks, food, vehicles parts, and other convenience items to complete their trip.

The demand for goods has risen as the number of travelers has increased. Traffic volume tables prepared by the Oregon Department of Transportation illustrate how much traffic has risen on I-5 and OR-34. Average daily vehicle counts dating back to 1993 are posted on the ODOT website. These data are summarized in Table 1.

Table 1, Vehicle Counts on Adjacent Highways

Year	OR-34 ¹	OR-34 ²	I-5 ³
1993	13,000	9,200	29,686
1994	13,500	9,500	30,358
1995	12,200	9,000	31,530
1996	12,400	11,500	32,208
1997	12,900	12,000	33,445
1998	16,000	14,100	34,034
1999	16,300	14,300	35,452
2000	16,300	14,300	35,919
2001	21,900	15,100	36,203
2002	22,200	15,200	37,766
2003	22,500	15,400	37,990

2004	23,300	16,400	38,055
2005	23,300	16,400	38,149
2006	22,900	16,100	38,200
2007	26,600	16,700	38,218
2008	25,100	15,800	36,157
2009	25,600	16,100	37,401

Source: ODOT

Counter Locations:

¹ OR-34: 0.1 mile west of I-5

² OR-34: 0.1 mile east of I-5

³ I-5: 8.5 miles north of Oak Grove Rest Area

From 1993 to 2009, traffic on I-5 increased 25 percent. For the same period, traffic on OR-34 has increased 97 percent west of I-5 and 75 percent east of I-5. The growing numbers of motorists on these highways expect fuel and convenience products to be available when the need arises. This increase in motorists and the commensurate growth in demand for convenience goods by travelers is the economic justification for the exception.

A confidential study commissioned by the applicant bears out the volume of consumer demand. The study predicts a tremendous increase in sales volume if the proposed convenience is approved. This is further evidence of commercial need that justifies the exception.

The proposed expansion will contribute to economic development and employment opportunity for rural residents of Linn County. Planning Guideline #4 of Statewide Planning Goal 9 (Economic Development) states, "Plans should strongly emphasize the expansion of and increased productivity from existing industries and firms as a means to strengthen local and regional economic development."

In conclusion, the public need for the exception is based on the demand for goods by the traveling public. There is market demand for the availability of more consumer goods that are convenient to travelers on I-5 and OR-34. It is this demand for more consumer goods that warrant a larger convenience store on the subject property.

(b) Areas which do not require a new exception cannot reasonably accommodate the use.

The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified.

To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed

- ***Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?***
- ***Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the***

applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

- *Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?*
- *Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?*

This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

OAR 660-14-0040(3) focuses on this criterion as it relates to an exception to Goal 14:

(a) The proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities.

The market demand generated by the traveling public at this locale is based on the combined consumer interests of travelers on both highways. I-5 and OR-34 are long corridors that deliver motorists to destinations far and near. The following analysis considers two groups of alternate sites: those near one highway but not the other; and sites around the I-5/OR-34 interchange. Other sites that are not adjacent to either I-5 or OR-34 were not considered in this analysis because the lack of exposure to motorists travelling those highways leaves them at a competitive disadvantage.

First consideration goes to alternate sites within existing urban growth boundaries. There are two urban growth boundaries along the I-5 corridor in Linn County. Both Albany I-5 interchanges (mileposts 233 and 234) are intensively developed to the extent that no vacant commercial land remains at the interchanges. Convenience store, restaurant, and gasoline fueling services are well-established and highly competitive. There is no commercially-zoned land around the Millersburg interchange at milepost 238. Along the OR-34 corridor, the Tangent urban growth boundary to the west lacks adequate public facilities for fire suppression purposes. There are sites in Lebanon that could serve travelers on OR-34, but they lack I-5 exposure. Similarly Albany and Millersburg suffer from lack of OR-34 exposure.

Second consideration goes to alternate sites created by expansion of existing urban growth boundaries. The Albany urban growth boundary is nearly two miles from the two I-5 interchanges. Any consideration of those sites suffers from lack of exposure. The Millersburg UGB is close to the I-5 interchange at milepost 238 but nearby accessible lands are zoned for resource use under Goals 3 and 4. Under Goal 14 rules, exception areas to the west and southwest would have the highest priority for expansion of the urban growth boundary and those areas are too distant from the interchange to be competitive in the I-5 market. Similar circumstances restrict expansion of the Tangent and Lebanon urban growth boundaries.

Third consideration goes to existing rural communities. However there are no existing rural communities in the vicinity of the I-5/OR-34 interchange to be considered.

In summary, the first group of alternate sites fails to address the needs of the traveling public along both highways. The combined market demand creates the need at the I-5/OR-34 interchange that cannot be met at any location distant from the interchange. Only those lands surrounding the interchange are competitive in this combined market.

Attention now turns to alternate sites around the I-5/OR-34 interchange. No consideration was given to lands outside the FIC exception area.

There are 12 other parcels zoned FIC at the I-5/OR-34 interchange. Five parcels are fully developed for fueling businesses, most with convenience stores. Three have non-forming uses (UPS distribution center, Amerigas Propane, Inter-City Housing). Of the four vacant parcels, three are too small to develop on a competitive scale. Each vacant parcel is constrained by the presence of hydric soils over the entire parcel. The cost of off-site mitigation effectively renders these parcels undevelopable in the current regulatory environment.

In conclusion, the subject property is the only site that is suited to meeting the needs of the traveling public on I-5 and OR-34. Without the advantage of exposure to both highways, nearby urban growth boundaries are not competitive with this combined market. Adjacent FIC-zoned lands are either developed or so constrained that it is not economically viable to develop the sites. The subject property is appropriately zoned, well served, and unconstrained by physical features.

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LAND CONSERVATION
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