



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

August 16, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Winston Plan Amendment
DLCD File Number 002-04 R



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: September 1, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

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

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
John Renz, DLCD Regional Representative
David M. Van Dermark, City of Winston

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FORM 2 Notice of Adoption

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



Jurisdiction: City of Winston Local file number: None
Date of Adoption: August 7, 2006 Date Mailed: August 11, 2006
Date original Notice of Proposed Amendment was mailed to DLCD: July 13, 2004

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: Remand From LUBA

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

The amendment re-designates a 3.5-acre parcel from Residential-Medium to Agriculture-Open Space and rezones the parcel from R-M Residential Medium to A-0 Agriculture-Open Space.

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

Same

Plan Map Changed from: Residential-Medium to: Agriculture-Open Space
Zone Map Changed from: R-M Residential-Medium Density to: A-0 Agriculture-Open Space
Location: 250 Winston Section Road Acres Involved: 3.5
Specify Density: Previous: 7 DU/ac New: 1 DU/10 ac.

Applicable Statewide Planning Goals: None

Was and Exception Adopted? YES NO

DLCD File No.: 002-04-A(13757)

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

- Forty-five (45) days prior to first evidentiary hearing?** **Yes** **No**
If no, do the statewide planning goals apply? **Yes** **No**
If no, did Emergency Circumstances require immediate adoption? **Yes** **No**

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

Winston-Dillard Water District, City of Winston

Local Contact: David M. Van Dermark Phone: (541) 679 - 6739 Extension: 204
Address: 201 NW Douglas Blvd. City: Winston
Zip Code + 4: 97496 - Email Address: davidmvandermark@yahoo.com

ADOPTION SUBMITTAL REQUIREMENTS

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

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

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

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 620

**AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN AND ZONING
MAP FROM MEDIUM RESIDENTIAL (R-M) TO AGRICULTURE-
OPENSOURCE (A-O) FOR PROPERTY ADDRESSED AS 250 WINSTON
SECTION ROAD, ASSESSORS MAP NO. 28 06W 15CB; TAX LOT NO. 02900**

WHEREAS, the City of Winston Planning Commission held two public hearings, on October 13 and November 10, 2004, to consider a request for a Comprehensive Plan map amendment and zone change from property owners Don and Joell Jenkins, 5579 SW Grange Street, Roseburg, OR, for the property addressed as 250 Winston Section Road;

WHEREAS, the Planning Commission forwarded a favorable recommendation to the City Council to adopt the proposed Plan amendment and zone change;

WHEREAS, the Winston City Council held a public hearing on January 18, 2005, to consider the request for a Comprehensive Plan map amendment and zone change from property owners Don and Joell Jenkins;

WHEREAS, on February 7, 2005, the City Council adopted Ordinance No. 599 approving the request for a Comprehensive Plan map amendment and zone change from property owners Don and Joell Jenkins;

WHEREAS, Ordinance No. 599 was appealed to the Land Use Board of Appeals (LUBA) by Molly and Dana Jacobsen, the owners of adjoining property;

WHEREAS, on April 19, 2006, LUBA issued a Final Opinion and Order remanding Ordinance No. 599 to the City; and

WHEREAS, the City Council held a public hearing on July 5, 2006, to address the two issues that were the basis for LUBA's remand;

NOW THEREFORE, THE CITY OF WINSTON ORDAINS AS FOLLOWS:

SECTION ONE: FINDINGS OF FACT

- A. The findings of fact adopted by the City Council in support of Ordinance No. 599 are attached hereto as Exhibit A, and by this reference are incorporated into this Ordinance.
- B. The findings of fact addressing the bases for LUBA's remand in *Jacobsen* are attached hereto as Exhibit B, and by this reference are incorporated into this Ordinance.

SECTION TWO: CONDITIONS OF APPROVAL

Prior to the development of any non-residential use on the subject property, the following conditions shall be met:

- (1) A minimum of one row of evergreen shrubs, which will grow to at least six feet in height within one year of planting, shall be planted within five feet of the northwestern (interior) property line.
- (2) A minimum of nine trees at least five feet in height, of a species defined in City Standards, shall be planted within five feet of the northwestern (interior) property line. The remaining area within the five-foot buffer strip shall be treated with living ground cover, lawn or other ground cover.
- (3) A privacy fence six feet in height shall be installed along the northwestern (interior) property line.

SECTION THREE: AMENDING COMPREHENSIVE PLAN AND ZONING MAPS

The Comprehensive Plan Land Use Map and the City Zoning Map are hereby amended to designate and zone the following property and land area as Agriculture-Open Space (A-O):

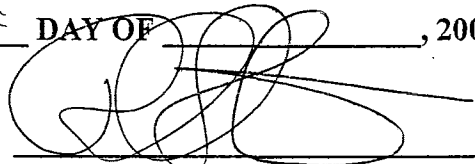
250 Winston Section Road
Assessors Map No. 28 06W 15CB; Tax Lot 02900

SECTION FOUR: EFFECT OF AMENDMENT

Ordinance Nos. 588 (Comprehensive Plan) and 590 (Zoning Ordinance) heretofore and herein amended, remain in full force and effect.

PASSED BY THE CITY COUNCIL THIS 7th DAY OF August, 2006.

SIGNED AND APPROVED THIS 8th DAY OF _____, 2006.



REX STEVENS, MAYOR

ATTEST:



DAVID VAN DERMARK, CITY ADMINISTRATOR

CONFORMANCE WITH THE STATEWIDE PLANNING GOALS.

The Statewide Planning Goals have been acknowledged as being applicable to the City of Winston Comprehensive Plan. A proposal to amend the Comprehensive Plan and Zoning Ordinance must comply with all applicable Statewide Planning Goals unless an exception to one or more of the goals is proposed. There is no exception being proposed as part of this application. The City of Winston must make a finding that the applicant's proposal complies with each of the relevant goals.

The following information regarding the Statewide Planning Goals shows how this request complies with them.

Goal No. 1 - Citizen Involvement

To ensure the opportunity for citizen involvement in all phases of the planning process.

City of Winston will provide written notice of the requested Plan Amendment and Zone Change to surrounding property owners within 250 feet of the subject property and will cause a public notice of the application and public hearing to be published in the local newspaper. Notice will also be given to affected state and local agencies, and other individuals and organizations entitled to such notice. These various forms of individual and public notice assure local citizens have an opportunity to become informed about, and participate in, the public hearing process. The requested Plan Amendment is being processed in a manner that assures compliance with Goal 1.

Goal No. 2 - Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to assure an adequate factual base for such decisions and actions.

City of Winston has established policies and procedures that require a detailed evaluation of proposals to amend the Comprehensive Plan. Specific criteria and standards are set forth against which the applicant's amendment request must be evaluated in the light of relevant Findings of Fact. The City's decision in this matter will be based on the weight of those Findings of Fact. The requested Comprehensive Plan Amendment is being evaluated in a manner that assures full compliance with Statewide Goal No. 2.

Goal No. 3 - Agricultural Land

To preserve and maintain agricultural lands.

The subject property is located within the City of Winston, has been the subject of a previous Goal 14 exception and is therefore not agricultural land. This finding is validated by the fact that the site has been determined to be irrevocably committed to urban use and subsequently included within the City of Winston. Statewide Goal No. 3 is not applicable to the requested amendment.

Goal 4 - Forest Lands

To preserve forest lands for forest use.

The subject property is located within the City of Winston, has been the subject of a previous Goal 14 exception and is therefore not forestland. This finding is validated by the fact that the site has been determined to be irrevocably committed to urban use and has subsequently been included within the City of Winston. Statewide Goal No. 4 is not applicable to this requested amendment.

Goal No. 5 - Open Space, Scenic and Historic Areas, and Natural Resources.

To conserve open space and protect natural and scenic resources.

All of the City of Winston, including the subject site, has previously been subjected to extensive surveys intended to inventory and evaluate Goal 5 resources. These inventories, which are incorporated into the City of Winston Comprehensive Plan, have previously received acknowledgment of compliance with Statewide Goal 5. The subject property is not included in any inventory of needed open space or scenic areas as defined by Goal 5, nor is it identified in the Comprehensive Plan as having any historic, cultural or natural resources which need to be preserved and/or protected. The requested Plan Amendment and Zone Change will not conflict with Statewide Goal 5.

Goal No. 6 - Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state.

Statewide Goal 6 requires that air, land and water resources of the state be maintained and improved. This is accomplished by assuring that future development, in conjunction with existing development, does not violate applicable state and federal environmental quality standards, and

does not exceed the carrying capacity of local air sheds, degrade land resources or threaten the availability of such resources. The subject property is situated in an area where the full range of urban services is available, including public access, electricity, gas, water and sewer service. The availability of these services helps to assure that development of the subject property with the proposed use will not result in degradation of air, water and land resources within the City of Winston or the State of Oregon. Furthermore, existing regulatory measures in place will ensure that existing and future development of the site will not result in deleterious or unanticipated impacts on the air, water and land resources of the urban area. The requested Comprehensive Plan Amendment is consistent with Statewide Goal No. 6.

Goal No. 7 - Areas subject to Natural Disasters and Hazards

To protect life and property from natural disasters and hazards.

The subject property has been identified as being within the boundaries of the 100 Year Floodplain of the South Umpqua River. The entire property proposed for amendment is within the floodway as defined on the Flood Insurance Rate Map Community Panel No. 410059 0930 A of the Federal Emergency Management Agency (See Attachment A). The City of Winston Comprehensive Plan text indicates the following:

- 2) *Floodways shall be protected from encroachment by the provisions of the Zoning Ordinance.*
- 3) *Development within the "flood fringe" shall be strongly discouraged and subject to the provisions of the City's "Floodplain Ordinance".*

The South Umpqua River has a relatively wide floodplain in the area of the subject property and the subject property is entirely within the boundary of the floodway of the river as previous mentioned. Although the subject property is subject to some degree of flooding during a flood event, the existing regulatory structure for development in floodplain areas provides specific guidelines for improvements within both the floodplain and floodway areas of any stream with an identified floodplain boundary such as the South Umpqua River. The specific development standards for floodplain areas are contained in Article 6 of the City of Winston Ordinance.

The subject property contains an existing 31-space mobile home park (Orchard Mobile Home Park). The park was established prior to zoning and prior to inclusion of the property into the City of Winston. A number of the mobile homes in the park were placed prior to the establishment of floodplain requirements governing location of structures in floodplain areas along streams in the City of Winston. Consequently, these homes are at substantial risk in the event of a 100 year flood event and the applicant desires to address that problem. Replacement of these permanent manufactured dwellings will eliminate the threat of flood damage.

The applicant currently owns the Rising River RV Park which is located directly across the river from the subject property. The applicant purchased the subject property with the intent of upgrading the quality of development in the area. If the proposed amendment and conditional use permit are approved, all of the existing mobile homes on the property will be removed with the exception of one which will be used for the recreational vehicle park manager's residence. The property will then be improved with a recreational vehicle park, similar in nature to Rising River RV Park, which will accommodate 31 recreational vehicles. The proposed development will not only be an enhancement to the area, but will also have a positive impact in the identified floodplain along the South Umpqua River.

The proposal to rezone the subject property is a recognition of the need to minimize impacts on the floodplain areas along the South Umpqua River and will actually lessen the impacts on the identified floodplain area along the stream. The rezoning of the property and the approval of the recreational vehicle park will result in removal of all but one of the existing mobile homes on the site. The sites will then be used for temporary occupancy by recreational vehicles in conjunction with the recreational vehicle park. Recreational vehicles can be moved to avoid any threat of damage from rising flood waters.

It is also important to note that the subject property is generally flat and contains no steep slopes that might otherwise create concern about the geologic stability of the site. The natural topography of the site does not suggest any significant physical constraints to development or the potential of unstable soils or geology. Any future redevelopment activity on the property will be required to comply with all

applicable standards established under City and State site development regulations, thus assuring compliance with Goal 7.

Goal No. 8 - Recreational Needs

To satisfy the recreational needs of the citizens of the state.

The subject property is located in the City of Winston. A mix of commercial retail, service and tourist oriented businesses are in the vicinity of the subject property in the adjacent Green and the City of Winston urban areas. Some of these businesses, which include multiple grocery stores, gas stations and restaurants and numerous specialty and antique stores, will be directly supported by future guests of the proposed recreational vehicle park. The subject property is also located in the immediate vicinity of the Wildlife Safari which is a major destination recreational facility in the local area. Reconstruction of the manufactured home park to provide for the proposed recreational vehicle park on the subject property will provide accommodations for the traveling public on Highway 42 and Interstate 5. A more complete discussion of the interaction of the proposed RV park and area business is set out below under the public need section of this document.

The subject property is located approximately three miles from the Highway 42, Interstate 5 Exit 119. There are three other RV parks located in proximity to the proposed recreational vehicle park including Rising River RV Park located immediately north of the subject property across the South Umpqua River, Umpqua Safari RV Park located between the subject property and the City of Winston, and River Bend RV Park which is located in the City of Winston. While these RV parks are located along or in proximity to Highway 42 and Interstate 5, all of the parks operate at are near capacity during the year. The applicant's proposed recreational vehicle park will provide additional sites to accommodate the high levels of tourist oriented traffic in the Winston and surrounding areas. The proposed amendment will enhance recreational opportunities in the Winston area based on the facts set out herein and is consistent with Statewide Goal No. 8.

Goal No. 9 - Economy of the State

To diversify and improve the economy of the state.

The Statewide Economic Development Goal is intended to be applied on a county-wide basis, and

requires that future economic growth be accommodated, in part, by ensuring that there is sufficient suitable land planned and zoned for commercial and industrial uses. Within the City of Winston, commercial zoning has been applied to lands containing existing commercial uses, as well as to a limited amount of undeveloped land that is intended to accommodate future commercial development. Nearly all of the commercially designated and zoned land in Winston is located along Highway 42 and Old Highway, and is for the most part applied to properties that are already developed with commercial uses.

The Winston Comprehensive Plan contain specific policies to ensure that opportunities for economic development are enhanced in the urban area. While the proposed Plan Amendment and Zone Change will not result in increasing the amount of commercially designated land in the urban area, the proposed amendment will allow the establishment of a tourist oriented commercial facility to enhance the economic activity in the Winston area. There are a number of businesses in the immediate vicinity of the subject property in both Winston and Green which cater to the kind of tourist oriented use proposed for this property including multiple grocery stores, gas stations and restaurants and numerous specialty and antique stores. While the recreational vehicle park will not be the main source of income for these businesses, it will potentially provide another source of revenue for them.

Based on the facts set forth above, the proposed Plan Amendment will provide and enhance area economic opportunities as directed by Statewide Goal 9:

Goal No. 10 - Housing

To provide for the housing needs of the citizens of the state.

The primary purpose of Goal 10, within the context of amending the Comprehensive Plan, is to ensure that sufficient buildable land is available to allow for the full range of future housing needs.

The Comprehensive Plan presently designates the subject property for multiple family residential use, which is implemented with R-M zoning. The current R-M Plan designation and R-M zoning potentially allow the property to be developed with a number of residential uses, including a mobile home park. The property currently contains a 31-space mobile home park.

As mentioned earlier, the existing mobile home park was established prior to zoning and prior to inclusion of the property into the Winston urban growth area. A number of the mobile homes in the park were placed prior to the establishment of floodplain requirements governing location of structures in floodplain areas along streams in the City of Winston. Consequently, these homes are at substantial risk in the event of a 100 year flood event and the applicant desires to address that problem. If the proposed amendment and conditional use permit are approved, all but one of the existing mobile homes on the property will be removed. The proposed development is a use more suited to the identified floodplain along the South Umpqua River in that it is a passive use that does not require a high level of structural development that might otherwise have a negative impact on the floodplain area.

Although the subject property is currently designated for residential development, the Plan policies related to the floodplain direct that residential development be strongly discouraged in identified floodplain areas. The applicant concludes that residential development of the subject property is not consistent with the Plan policies of the City and now desires to apply an agricultural designation to the property to facilitate the recreational vehicle park use. Further, the proposal will not conflict with the intent of Goal 10 with respect to providing opportunities for a broader range of housing types, locations and costs as a result of designation of the property for tourist oriented purposes. This is due primarily to the fact that the site is in the floodway of the South Umpqua River and cannot be realistically developed for residential uses.

Goal No. 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 development.

Statewide Goal No. 11 concerns the public facilities and services aspects of amending the Comprehensive Plan, and requires consideration of a system or plan that ensures the proper coordination of the types, locations and delivery of public facilities and service that best support existing and proposed land uses. With respect to the public facilities and services issues relevant to this amendment proposal, the applicant proposes the following findings of fact.

Public facilities and services within the City of Winston are provided by the City of Winston, Douglas County and several special districts. The Winston-Dillard Water District provides water service and sewer service is provided by the City of Winston; fire protection is provided by Winston-Dillard Fire District; street maintenance, storm drainage and street lighting are all provided by Douglas County; and police services are provided jointly by the City and the County. Policies concerning the coordination, timing and location of public facilities and services in this area are contained within the Public Facilities and Land Use Elements of the City of Winston Comprehensive Plan.

The City of Winston maintains an 6-inch sewer main which is located in the adjacent right-of-way of Winston Section Road along the south boundary of the subject property. The City currently provides service to the mobile home park on the subject property and the existing sewer main is considered adequate for the present level of development being served in the area, as well as for the anticipated new development on the subject parcel resulting from the proposed Comprehensive Plan Amendment, Zone Change and Conditional Use Permit.

Winston-Dillard Water District provides water service to the subject property and surrounding area. A 6-inch water main is located in the right-of-way of Winston Section Road adjacent to the south boundary of the property. The District currently provides service to the mobile home park and the existing water facilities in the area are of sufficient size and capacity to accommodate the anticipated new development on the subject parcel resulting from the proposed Comprehensive Plan Amendment, Zone Change and Conditional Use Permit.

Other utilities and services presently available to the site include police protection from the City of Winston Police and the Douglas County Sheriff. Electric service is provided by Pacific Power, while telephone service is provided by Qwest. WP Natural Gas Company serves the City of Winston with natural gas.

No extension of public facilities and services will be needed as a consequence of the proposed Plan Amendment and Zone Change. Consequently, based on the above facts, an adequate level of public

facilities and services exist to accommodate the future development on the subject site resulting from the proposed Comprehensive Plan Amendment and Zone Change. The facts demonstrate such facilities and services will be delivered in a timely, orderly and efficient manner consistent with the purpose of Statewide Goal 11. Further, the requested amendment will not adversely impact the present or future provision of public facilities and services to other properties in the immediate area or within the broader City of Winston urban area. These conclusions are based on consideration of the existing public service delivery systems and plans that are in effect within this area.

Goal No. 12 - Transportation

To provide and encourage a safe, convenient and economic transportation system.

The statewide transportation goal is generally intended to be applied on a county-wide basis. Specific transportation-related policies and development standards are included within the City's Comprehensive Plan and Zoning Ordinance to assure that the intent of the statewide transportation goal is implemented through the application of both state and local policies and standards at the time of development. The intent of Goal 12 is also implemented by the State Transportation Planning Rule (OAR 660, Division 12). OAR 660-12-060(1) requires that "*amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility*".

Access to the subject property is directly from Winston-Section County Road No. 111. The functional classifications of transportation facilities within the City of Winston, including Winston-Section, are identified on Map 6 of the Transportation System Plan for the City of Winston. County Road No. 111 is classified a Local Road along the south boundary of the property and a Collector along the east boundary of the property.

Estimates of the average number of daily vehicle trips generated by a specific land use can be obtained from a number of reliable sources; however, the most commonly referenced source for such data is Trip Generation published by the Institute of Transportation Engineers (ITE). Average daily trip generation rates published in the ITE's 5th Edition of Trip Generation (1991) are

based primarily on field data obtained from direct observation of actual land use activities. Trip generation rates are reported as an average of the often wide-ranging vehicle counts taken at numerous sites having the same classification of land use. Trip generation rates are often broken down into specific time frames, such as "Average Daily Trips (ADT)", "Average Peak Hour Trips", "AM (morning) Peak Hour Trips" and "PM (evening) Peak Hour Trips". For most land use activities, including a recreational vehicle park, ITE defines an "average daily trip" as a one-way vehicular movement between a single origin and a single destination.

Trip generation rates are reported at a ratio of 3.6 vehicle trips per space for a recreational vehicle park. Based on the proposed 31 recreational vehicle sites that will be accommodated within a recreational vehicle park on the subject 3.50 acre property by the requested amendment, the use on the subject property could potentially generate up to 112 ADT. It is important to note that the subject property is currently zoned R-M and has an existing 31 space mobile home park on the site. A 31 space mobile home park on 3.50 acres has the potential to generate 193 ADT. The replacement of the existing mobile park with a recreational vehicle park translates into a net traffic reduction of 81 ADT.

The proposed amendment will be consistent with the identified function, capacity, and performance standards of those facilities based on the facts set forth above. Furthermore, specific transportation-related policies and development standards are included with the City of Winston Comprehensive Plan and Zoning Ordinance to ensure that the statewide transportation goal is implemented on a site-specific basis at the time of development. It is the applicant's intent to develop the subject property in full compliance with all applicable transportation-related policies and development standards.

The proposed Plan Amendment will not conflict with the Statewide Transportation Goal. Compliance with the intent of Goal 12 will be assured through the application of specific local policies and standards at the time specific development plans for the subject property are formulated and submitted for review and approval.

Goal No. 13 - Energy Conservation

To conserve energy.

The statewide energy conservation goal is intended to be applied on a city-wide basis. To achieve this goal, land and uses developed on land are to be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principals. The subject site is situated within an acknowledged urban area where major public facilities and services (water and sewer service, police and fire protection, etc.) are already serving the property, thus reducing the energy-related inefficiencies associated with extending such services. The site is free of any significant physical constraints that would otherwise require more energy to develop and use the property than would any other property. Furthermore, specific energy conservation policies and development standards are included within the Comprehensive Plan and Zoning Ordinance to ensure that the statewide energy conservation goal is implemented on a site-specific basis at the time of property development.

Goal 14 - Urbanization

To provide for an orderly and efficient transition from rural to urban development.

The urbanization goal provides the standards and procedures for establishing or expanding an urban growth boundary (UGB). The urbanization goal specifically requires that land within an UGB ". . . shall be considered available over time for urban uses." The subject property was included within the City of Winston at the time the Comprehensive Plan was adopted, thus implying the City's legislative intent to allow urban development to occur on the property. The proposed Comprehensive Plan Amendment will have no effect on the present status of the City of Winston UGB. The proposed Plan Amendment and Zone Change will not conflict with Statewide Goal No. 14.

COMPLIANCE WITH CITY OF WINSTON COMPREHENSIVE PLAN POLICIES FOR COMPREHENSIVE PLAN AMENDMENTS

A Plan Amendment and Zone Change must comply with all relevant Comprehensive Plan Policies. The following information address those policies deemed relevant to the requested amendment.

The information is set out by Goal and reference is made to pertinent discussion set out above to avoid unnecessary repetition.

Goal Two: Land Use Planning

Policy 4 (Page 61):

Continue to implement the local street network plan, which developed an overall circulation system which includes pedestrian and bike paths linking all residential areas of the city with activity centers, both existing and proposed. The street network should be closely coordinated with future land use designations to avoid conflicts.

The subject property is located inside the boundaries of the City of Winston UGB and there is a mix of residential, commercial and industrial uses on three sides of the ownership. Further, the property abuts Winston Section Road which is designated a Collector and the use will not significantly impact the function, capacity or performance standards of the area road system as set out under Goal 12 above. Consequently, the proposed amendment is consistent with this policy.

Goal Seven: Natural Hazards

Policy 3 (Page 9):

Development within the "flood fringe" shall be strongly discouraged and subject to the provisions of the City's "Floodplain Ordinance."

The proposed Plan Amendment and Zone Change is consistent with this policy as set out under Goal 7 above.

Goal Nine: Economy of the State

Policy 2 (Page 28):

Encourage the creation of public and private tourist attractions and recreational areas that are compatible with the environment, in order to promote tourism without damaging the areas natural attractiveness.

The proposed amendment will allow the establishment of a tourist oriented commercial facility to enhance the economic activity in the Winston area. There is a full range of public

facilities and services currently serving the property which will assure no negative environmental consequences as a result of the applicant's proposal. Also, there are a number of businesses in the immediate vicinity of the subject property in both Winston and Green which cater to the kind of tourist oriented use proposed for this property including multiple grocery stores, gas stations and restaurants and numerous specialty and antique stores. While the recreational vehicle park will not be the main source of income for these businesses, it will potentially provide another source of revenue for them.

PUBLIC NEED FOR REQUESTED PLAN AMENDMENT & ZONE CHANGE

ZO Section 9.021 requires Comprehensive Plan Amendments to be predicated on the standards set out above. The proposed amendment must demonstrate that there is a public need for a change of the kind in question and that such need will be best served by changing the Plan designation of the particular piece of property in question as compared with other available property. The applicant proposes the following findings to address these criteria.

Both the Comprehensive Plan and the Statewide Planning Goals establish the principal that there should be sufficient developable land designated and zoned for tourist oriented use so as to ensure that opportunities for tourist-oriented activity and associated economic development are enhanced in the Winston area. As mentioned earlier, the subject property is developed with a mobile home park that was established prior to zoning and prior to inclusion of the property into the Winston urban growth area. A number of the mobile homes in the park were placed prior to the establishment of floodplain requirements governing location of structures in floodplain areas along streams in the City of Winston. Consequently, these homes are at substantial risk in the event of a 100 year flood event and the applicant desires to address that problem. If the proposed amendment and conditional use permit are approved, all but one of the existing mobile homes on the property will be removed. The proposed development is a use more suited to the identified floodplain along the South Umpqua River in that it is a passive use that does not require a high level of structural development that might otherwise have a negative impact on the floodplain area. Although the subject property is currently designated for residential development, the Plan polices related to the floodplain direct that residential development be

strongly discouraged in identified floodplain areas. Consequently, the proposed amendment will reduce or eliminate a substantial amount of encroachment into the identified floodway and satisfy the public need to preserve the floodway and floodplain areas along the South Umpqua River in accordance with both federal floodplain regulations and City of Winston Plan policies.

The property is situated at the north end of the City of Winston along the South Umpqua River and Highway 42 which is a major tourist corridor. The area north of the river and in proximity to the property is inside the Green urban unincorporated area. The surrounding lands are a mixed of residential zoning to the south and west and residential and commercial zoning to the east. Property to the north in the Green UUA is zoned for tourist commercial use. The site proposed for amendment is developed with a mobile home park. The subject site and surrounding area have some vegetative screening that provides a limited visual barrier for the dwellings located south of Winston Section Road and east of the subject property. The screening consists of mature trees, conifers, photinia and shrubbery. The property immediately north across the South Umpqua River is developed with a RV Park similar to the development being proposed by the applicant. The site is partially visible from the residential land to the west which has three dwellings located on it.

Approval of the proposed amendment will facilitate the logical extension of the established development pattern in the area and enhance the quality of development in the area. The subject property is located in a transitional area between commercial and residential uses, is in the City of Winston and is adjacent to the Green UUA. The proposed development will facilitate the removal of the older mobile homes in the existing mobile home park resulting in substantial improvement of the property. The development site is partially screened from view of the residential uses south of Winston Section Road and east of the subject property. As a result, the subject property is ideally situated to accommodate recreational vehicle park development without having a negative impact on area residential uses. On the basis of the foregoing, the applicant has concluded that there is a clear and immediate public need to increase the urban area's inventory of land that is zoned for the proposed tourist oriented use.

The public need to change the Comprehensive Plan designation and zoning classification on the

subject property will best serve the identified public need as compared with other available property in the City of Winston. This conclusion is based on the recognized public need to preserve the existing floodway and floodplain areas from encroachment, the fact that the subject property is located along a major tourist corridor and by the recognized public benefit resulting from the implementation of applicable Comprehensive Plan policies that are intended to facilitate continued tourist activities and the associated economic growth.

PROPOSED FINDINGS ADDRESSING ZONE CHANGE CRITERIA

In addition to the criteria to be addressed when proposing an amendment to the Comprehensive Plan, the ZO also establishes criteria that must be considered when a change in zoning is proposed. The criteria for a Zone Change are found in ZO Section 3.051, and require the Planning Commission to find that:

- a. *The rezoning will conform with the City of Winston Comprehensive Plan, including the land use map and written policies; and*
- b. *The site is suitable to the proposed zone with respect public health, safety and welfare of the surrounding area.*

Addressing the zone change criteria cited above, the applicant proposes the following findings: The requested change in zoning from R-M to A-O on the subject 3.50 acre property is predicated on a concurrent request to amend the Comprehensive Plan map designation from R-M to A-O. If the applicant's Plan Amendment request is approved, the requested zone change will conform with the amended Comprehensive Plan map. Findings demonstrating that the requested change in zoning will conform with applicable policies in the Comprehensive Plan are included in preceding sections of this supplemental application document. The rezoning will conform with the applicable sections of the Comprehensive Plan.

Specific findings addressing the suitability of the subject site for the proposed zone and the intended use are included in preceding sections of this supplemental application document. Those earlier findings demonstrate that the subject 3.50 acre site is well suited for the proposed A-O zoning with respect to the physical characteristics of the property, availability of necessary and appropriate public facilities and services and adequate access and accessibility to local transportation facilities.

Therefore, the site is suitable for the proposed zone and its intended use.

Specific findings addressing the public health, safety and welfare aspects of changing the zoning on the subject property are included in preceding sections of this supplemental application document. Those findings demonstrate that the zone change will not adversely impact the carrying capacity of local air sheds, degrade land and water resources or threaten the availability of such resources (Goal 6); the site is physically and topographically well-suited for the proposed use (Goals 7, 13 and 14); the zone change will not negatively impact the existing housing stock in the surrounding area, result in significant population growth or increase the demand for housing beyond previous projections (Goal 10); that there is a sufficient level of public services and facilities available to the property, that the zone change will not adversely impact the present or future provision of public facilities and service in the surrounding area and that a full range of urban services appropriate for the type of land use activity contemplated is available and can be provided in a timely, orderly and efficient manner (Goal 11); public roads in the area will not be negatively impacted by the traffic resulting from the zone change (Goal 12); and finally, there is a public need to provide opportunities for tourist oriented development in suitable locations in the City of Winston, including the subject property (Public Need).

**FINDINGS ADDRESSING THE BASES FOR REMAND
IN *JACOBSEN V. CITY OF WINSTON*, LUBA NO. 2005-037**

1. Winston Comprehensive Plan Housing Goal C, Policy 2

In *Jacobsen v. City of Winston*, LUBA No. 2005-037 (April 19, 2006) (*Jacobsen*), slip op at 18-19, LUBA determined the City Council must either explain in its findings that Winston Comprehensive Plan (WCP) Housing Goal C, Policy 2, is not a mandatory approval criterion for the proposed Comprehensive Plan and Zoning Map amendments, or it must adopt findings demonstrating compliance with WCP Housing Goal C, Policy 2 (“Policy 2”).

Policy 2 states:

“Provide buffer zones between residential areas and conflicting land uses (i.e., industrial, certain kinds of commercial, residential, etc.) to protect the overall livability of those areas.” WCP, p. 40.

The term “buffer zones,” as used in Policy 2, is not interpreted to mean land in a separate “buffer” zoning district. The Winston Zoning Map shows many places where residentially zoned land abuts land in a commercial or industrial zone, or a higher density residential zone. Indeed, the Winston Zoning Ordinance (WZO) does not include a zoning district appropriate for use as a “buffer zone” between residential areas and potentially conflicting land uses in other zones. The Public Reserve (PR) zone is intended as a district “within which a variety of public service activities may be conducted without interference from inappropriate levels of residential, commercial or industrial activities.” WZO 4.050(1). It allows uses such as schools, churches, hospitals, recreational facilities and quarries. WZO 4.050(2) and (3). The Agriculture/Open Space (A-O) zone is the zone proposed to be applied to the subject property, and itself allows uses such as schools, churches, wastewater treatment plants, quarries and RV parks. WZO 4.010(1) and (2).

“Buffer zones,” as used in Policy 2, is interpreted to mean an area of land between residential uses and potentially conflicting land uses, within which measures designed to minimize the conflict and protect overall livability of residential areas, such as fencing, berms or landscaping, are required. Under this interpretation of “buffer zones,” it is clear that Policy 2 has been implemented in the WZO, at least with regard to parking areas and driveways conflicting with residential areas.

WZO 5.048 (Parking Area Screening) requires screening between any access driveway or parking area and any interior property line which abuts residentially zoned property. In this case, WZO 5.048 applies to the northwest property line of the Jenkins property that abuts the Jacobsen property. WZO 5.048 requires either a specified row of evergreen shrubs or an earth berm combined with specified evergreen plantings. Compliance with WZO 5.048 is required as part of site plan review (WZO 14.040(6)). The Planning Commission decision approving a conditional use permit for the RV park on the Jenkins property, in conjunction with this Plan and

Zoning Map amendment, includes a condition of approval specifically requiring that development of an RV park on the Jenkins property be subject to site plan review.

In addition, WZO 5.049 (Parking Area Landscaping and Buffering) requires that parking areas be "buffered" from interior lot lines abutting residential zones with a designated 5-foot wide landscaping strip. WZO 5.049(3). WZO 5.049(3)(a)(ii) provides that screening required by WZO 5.049 be incorporated into the required landscaping strip. WZO 5.049(3)(b) establishes landscaping standards per 50 lineal feet of required "buffer area." Once again, WZO 5.049(3) applies to the northwest property line of the Jenkins property that abuts the Jacobsen property, and is required to be satisfied as part of site plan review for an RV park on the Jenkins property. WZO 14.040.

The subject Plan and Zoning Map amendment is being approved in conjunction with a conditional use permit for development of an RV park on the subject property. With the exception of an existing Manager's dwelling and a laundry/restroom building, neither of which are near the northwest (Jacobsen) property line, the proposed RV park will consist entirely of driveways, parking areas and open space. Because Policy 2 has been implemented in the WZO with regard to driveways and parking areas, as described above, future development of an RV park on the Jenkins property will comply with Policy 2.

However, it is possible that under the A-O plan designation and zone, some other non-residential use of the subject property could occur in the future.¹ The City Council has authority under WZO 9.026(7) and 3.052 to impose conditions on the approval of Comprehensive Plan and Zoning Map amendments to protect the best interests of the surrounding area and to ensure compatibility with surrounding uses. Therefore, the following conditions shall be imposed on these Comprehensive Plan and Zoning Map amendments, to ensure that the Jacobsens' residential use will be buffered from any future non-residential development on the subject property:

Prior to the development of any non-residential use on the subject property, the following conditions shall be met:

- (1) A minimum of one row of evergreen shrubs, which will grow to at least six feet in height within one year of planting, shall be planted within five feet of the northwestern (interior) property line.
- (2) A minimum of nine trees at least five feet in height, of a species defined in City Standards, shall be planted within five feet of the northwestern (interior) property line. The remaining area within the five-foot buffer strip shall be treated with living ground cover, lawn or other ground cover.

¹ The only residential use allowed under the A-O zone is single-family dwellings in conjunction with farm use. WZO 4.010(1)(i).

- (3) A privacy fence six feet in height shall be installed along the northwestern (interior) property line.

2. WZO 4.010(3) (Lot Size)

In *Jacobsen*, slip op at 23-24, LUBA determined that the City Council must adopt findings interpreting the Winston Zoning Ordinance (WZO) with regard to whether a variance is required to amend the Comprehensive Plan and Zoning Map designation of the subject property to A-O.

The first question the City Council must address is whether a variance to the minimum lot area established by WZO 4.010(3), pursuant to WZO Article 8, is required to change the zoning of the subject 3.5-acre property to A-O. If the answer to this question is “no,” the City Council need not proceed further. WZO 4.010(3) (Lot Size) states:

“Lot size. Except as provided in Sections 5.090 and 7.10 [sic 7.010], the minimum lot size within an A-O zone shall be as follows:

“a. The minimum lot area shall be 10 acres.”

Every zoning district in the WZO has a lot size provision similar to that of WZO 4.010(3). WZO 4.010(3), and the minimum lot size provisions for other zoning districts, are interpreted to apply only to the creation of new lots or parcels. Winston Subdivision Ordinance (WSO) 13.B states that “[l]ot or parcel sizes shall conform with requirements of the [WZO] in effect at the date of application for land division.” Once a lot or parcel has been legally created, it remains a discrete lot or parcel unless vacated or further divided. ORS 92.017. WZO 3.051 (Criteria for Zone Change) does not require that each existing lot or parcel satisfy the minimum lot size standard of the new zoning district, but rather that the “site” being rezoned be “suitable to the proposed zone with respect to the public health, safety and welfare of the surrounding area.” There is no other WZO provision requiring that all lots and parcels being rezoned must meet the minimum lot size standard for the new zone.

That the pre-existing manufactured home park use of the subject property was a nonconforming use under the R-M zone is irrelevant to the proposed Plan and Zoning Map amendment. Opponents cite the WZO 10.020 and 10.030 requirements that a new or resumed use must “conform to this ordinance.” However, this does not answer the question of what the WZO requires. The A-O zone minimum lot area provision in WZO 4.010(3) (and the minimum lot area provisions for other zones) apply only to the creation of new lots or parcels.

Opponents point out that when approving a comprehensive plan amendment, WZO 9.026(1) allows the City Council to “increas[e] the required lot size * * *.” This means that the City Council may increase the lot area required when new lots or parcels are created. Not requiring a variance from the minimum lot area requirement of WZO 4.010(3) to apply the A-O zone to an existing lot or parcel smaller than 10 acres does not make this minimum lot area requirement meaningless.

That the minimum lot area standard of WZO 4.010(3) for the A-O zone, and analogous minimum lot area requirements for other zoning districts, apply only to the creation of new lots or parcels in those districts, does not mean that minimum area requirements for specific uses do not continue to apply. For instance, WZO 5.200(4)(g)(i) requires a minimum of 2.5 acres for approval of a manufactured home park. This requirement will apply to approval of a manufactured home park on an existing lot, regardless of the minimum lot area requirement for the particular zone.

WZO 5.090 (General Exceptions to Lot Size Requirements) is a section adopted to clarify the status of nonconforming lots when the WZO was originally adopted. WZO 5.090 is not inconsistent with interpreting the minimum lot area requirement of WZO 4.010(3) as only applying to the creation of new lots or parcels.

WOZO 1.020 defines "variance" as a "deviation from the strict application of standards established by this Ordinance with respect to lot area and dimensions, setbacks, building height and other such standards." This definition does not answer the question of what "lot area standard" is established by a provision such as WZO 4.010(3). Interpreting the WZO 4.010(3) standard as applying only to the creation of new lots or parcels does not "redefine" the term "variance."

It is true that the original staff report issued for the August 25, 2004 Planning Commission hearing referred to approving the Plan and Zoning Map application "with a variance from the minimum lot size" of the A-O zone. LUBA Record 164. However, opponents are not entitled to rely on a staff report as a final determination on the applicable law. In addition, the applicants never applied for a variance. Further, no City notice of hearing or subsequent staff report referred to any requirement for a variance. Opponents had ample opportunity at the October 13, and November 10, 2004 Planning Commission hearings to submit evidence regarding whether a variance should be or has been required in this situation. Opponents' rights are not prejudiced by the City Council's decision not to accept evidence on remand.

WZO 4.010(3) applies only to the creation of new lots or parcels in the A-O zone. No variance is required to change the zoning of the subject 3.5-acre property to A-O.



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