

LINN COUNTY BOARD OF COMMISSIONERS HEARING STAFF REPORT

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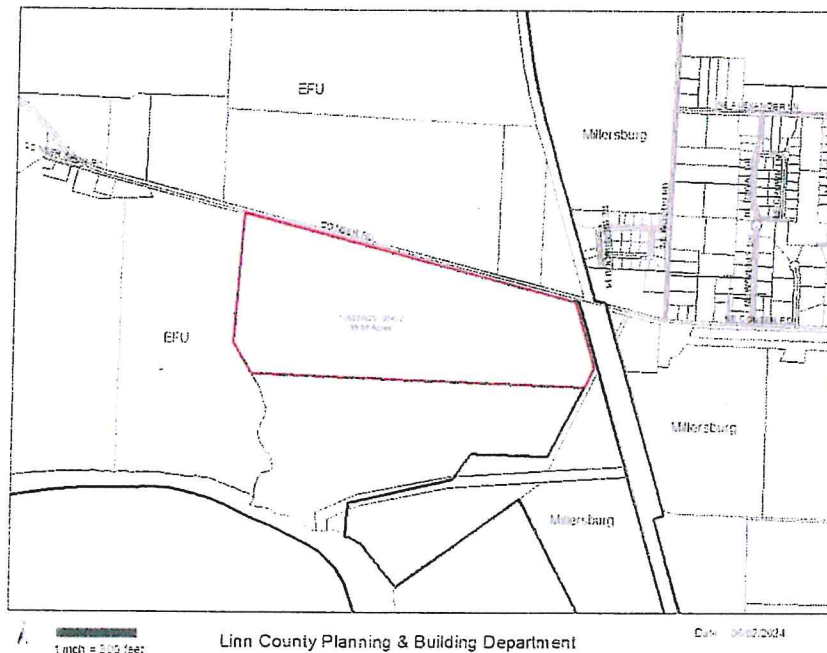
HEARING DATE: July 16, 2024



APPLICATION: **PD24-0128:** Applications by the City of Millersburg for a Comprehensive Plan Text Amendment and Reasons Exception to Statewide Planning Goals 3 and 14, affecting 1.44 acres of a 99.96-acre property identified as T10S, R3W, Sec. 20, Tax Lot 402. The property has a Plan Designation of Agricultural Resource and is zoned Exclusive Farm Use (EFU). The Applicant proposes a Goal Exception for Goals 3 and 14 to allow an urban driveway through EFU-zoned property in order to provide access to a set of landlocked parcels located within the City limits. The Application will culminate in two amendments to the Comprehensive Plan: 1) adding a Transportation Goal Exception to Appendix 2 (in two separate tables); and 2) adding proposed Tech Memo 7.1 into the County TSP.

LOCATION: The subject property is located on the south side of Conser Road, approximately 0.17 miles west of the intersection of Conser Road and Woods Road, and adjacent to the city limits of Millersburg.

CRITERIA: The applicable decision criteria are in Linn County Code (LCC) 921.872 and Oregon Administrative Rule (OAR) Chapter 660 Division 12.



I. INTRODUCTION

A. APPLICATION SUMMARY

The City of Millersburg (City) and Timberlab Inc. (Timberlab) (together, the Applicants) are requesting exceptions to Statewide Planning Goals 3 and 14 for a driveway to provide access to a set of parcels on the western edge of the City, within the City Limits (the Goal Exception). The driveway would provide access to Tax Lots 106, 203, 206, and 207 of Assessor's Map 10S-03W-29. These properties are subject to the City's zoning jurisdiction and are zoned General Industrial. The driveway is proposed to be located on Tax Lot 402 of Assessor's Map 10S-03W-20 (**Exhibit A, Pages 90-91**). This tax lot is outside of the City's UGB and is subject to Linn County's (County) zoning jurisdiction and is zoned Exclusive Farm Use (EFU).

The Applicants are requesting exceptions to applicable statewide planning goals to allow the proposed driveway on EFU-zoned land. The owner of Tax Lot 402 has entered into an agreement with the City to provide an access easement for the proposed driveway.

In connection with the Goal Exception, the Applicants are requesting an amendment to the County Transportation System Plan (TSP) to memorialize the transportation need to provide access to Tax Lots 106, 203, 206 and 207 (the TSP Amendment, and together with the Goal Exception, the Application).

Background

Tax Lots 106, 203, 206, and 207 of Assessor's Map 10S-03W-29 (the City Properties), are located within the City's UGB, and City limits, and zoned General Industrial. The City Properties have been zoned for industrial use since the 1970s, prior to the City's incorporation. The City owns Tax Lots 203, 206, and 207, and Willamette Valley Land, LLC owns Tax Lot 106. The City Properties comprise approximately 74.7 acres. The City Properties are shown on **Exhibit A, page 81-82**.

Although the City Properties are currently vacant, the General Industrial zone that applies to the properties authorizes development of a wide range of industrial uses, including manufacturing and assembly, wholesale trade and distribution, and other industrial uses. Timberlab is currently under contract to purchase a portion of the City Properties from the City and intends to utilize those properties for development of an innovative timber manufacturing and fabrication facility. While this Application is not limited to a specific use or development, Timberlab's intended timber manufacturing facility is indicative of the type of uses that could be approved on the properties.

The City Properties are located on the western edge of the City's limits. They are bordered:

- to the north, by land outside of the City's UGB that is zoned County EFU, including Tax Lot 402;
- to the east, by active railroad tracks owned by Burlington Northern Santa Fe and operated by Portland and Western Railroad;
- to the south, by land within the City's UGB that is owned by International Paper Company and that is predominantly covered by a decommissioned pond that was part of a wastewater treatment process; and

- to the west, by the Willamette River and lands within the Willamette River floodway.

There is no current vehicle access to the City Properties.

The County previously issued a conditional use permit (CUP) for substantially the same driveway on Tax Lot 402 to provide access to Tax Lots 203, 206, and 207. See **Exhibit A, Pages 83-89** - Notice of Decision for File No. PLN-2022-00765. In that case, the proposed use of the driveway was to serve a commercial activity in conjunction with farm use. After finding that the proposed driveway "will not force a significant change in or significantly increase the cost of accepted farming practices on surrounding properties," the Planning Director granted approval. The use was never developed, and Timberlab is now under contract to purchase a portion of the City Properties. Unlike the CUP approved in 2022, this Application would allow use of the driveway to serve nonfarm uses, including Timberlab's proposed timber manufacturing and fabrication facility. Therefore, the Application is needed even though the transportation facility to be authorized is substantially the same.

Project Description

The Goal Exception requests an exception to Statewide Planning Goals 3 and 14 to allow an urban transportation improvement, a driveway (the Driveway), on rural resource lands with an EFU zoning designation. The sole purpose of the Driveway is to provide access from Conser Road NE to the City Properties. The Driveway is proposed to be located on Tax Lot 402 of Assessor's Map 10S-03W-20. This tax lot is outside of the City's UGB and is zoned County EFU. Tax Lot 402 is bordered:

- to the north, by Conser Road NE;
- to the east, by the active railroad tracks owned by Burlington Northern Santa Fe and operated by Portland and Western Railroad;
- to the south, by farmland and the City Properties; and
- to the west, by farmland.

The City has entered into an agreement with the owner of Tax Lot 402 for an access easement for the Driveway. Exhibit C shows the location of the access easement, and the Driveway will be located within that easement. The access easement is 100 feet wide at the point of connection to Conser Road NE and then tapers to 60 feet wide for the remainder of the easement. It has a total area of 1.44 acres. The center of the Driveway connection to Conser Road NE is located approximately 591 feet west of the nearest track of the railroad crossing.

The Goal Exception for the Driveway encompasses the entire access easement area and includes all improvements to the Driveway, such as roadbed, shoulders, and potential future pedestrian access, lighting, gates, and other public utilities within the easement area.

B. PLANNING COMMISSION RECOMMENDATION

The Planning Commission (Commission) held public hearings on this matter on June 11, 2024 and July 9, 2024. After considering all the written evidence and oral testimony presented at the Commission hearings, the Commission voted 4-1 to adopt a motion to recommend that the Board approve the proposed applications. Voting in favor of the motion were Commissioners Alderman, Cromwell, Legras, and McHenry. Commissioner Boshart voted against the motion.

C. LAND USE PROCESS

The Planning Commission conducted public meetings to review the application and public comments on this matter on June 11, 2024 and July 9, 2024. The meetings were held in George Miller Room B, in the Old Armory Building on the corner of 4th Avenue and Lyon Street, Albany Oregon. The Commission made a recommendation to the Linn County Board of Commissioners (Board). The Board will conduct a public hearing on the applications at **10:00 a.m. on July 16, 2024**, in Room 200 of the Linn County Courthouse in Albany, Oregon. The hearing will afford interested parties an opportunity to be heard on the matter. The Board will make a final decision after the close of the public hearing.

D. DECISION CRITERIA AND PROPOSED FINDINGS

The Plan text amendment criteria applicable to this review are in Linn County Code (LCC) 921.872 and Oregon Administrative Rule (OAR) Chapter 660 Division 12. The decision criteria are attached in **Exhibit B**. The proposed findings of compliance are attached in **Exhibit A**.

II. LAND USE

A. ZONING AND DEVELOPMENT BACKGROUND

The property is located on the south side of Conser Road, approximately 0.17 miles west of the intersection of Conser Road and Woods Road, and adjacent to the city limits of Millersburg, and is identified on Linn County Assessor maps as T10S, R03W, Sec. 20, Tax Lot 402. The land has had a Plan Designation of Agricultural Resource and is zoned Exclusive Farm Use (EFU). The property has been zoned EFU since March 22, 1972.

EXISTING AND PROPOSED CONDITIONS

CONDITION	EXISTING	PROPOSED
Plan Designation	Agricultural Resource	Same
Zone Designation	Exclusive Farm Use (EFU)	Same
Site Location	T10S, R03W, S20, TL 402	Same
Access	Conser Road	Same
Land Use	Farm Use	Farm Use, Access Road

III. PHYSICAL CHARACTERISTICS OF THE PROPERTY

A. SOIL TYPES

The soils on the subject 99.96 acres are determined from the information in the National Resources Conservation Service (NRCS), formerly the Soil Conservation Service (SCS), publication Soil Survey of Linn County Area, Oregon, July, 1987. The soil types are Amity Silt Loam (3) (43.83%), and Concord Silt Loam (27) (23.89%), Woodburn Silt Loam, 0-3% Slopes (106A) (27.25%), and Dayton Silt Loam (33) (5.03%).

- B. **TOPOGRAPHY** – The property is predominately flat, ranging from 214 feet in the northeast corner, then sloping southwest towards the Willamette River with elevations at 200 feet.
- C. **NATURAL FEATURES** – There is a riverine that meanders through the property where it connects to another riverine, running into the Willamette River on the adjacent property to the south.
- D. **NATURAL AND/OR GEOLOGIC HAZARDS** – A small portion of the west property line of the subject property is located within a designated flood hazard area according to the Federal Emergency Management Agency (FEMA) Flood Insurance Study for Linn County, Oregon and Incorporated Areas dated September 29, 2010. There are no potential geologic hazards identified on the subject properties (Bulletin 84, Environmental Geology of Western Linn County Oregon).

IV. ENVIRONMENTAL FACTORS

- A. **WILDLIFE HABITAT** – The property is not located within an identified big game habitat area. The property does not contain any sensitive fish and riparian habitats.
- B. **WETLANDS** – The property contains an inventoried wetland (R4SBC- Riverine). The subject property contains hydric soils, as indicated on the State Wetland Inventory.

V. AVAILABILITY OF PUBLIC FACILITIES AND SERVICES

- A. **FIRE** – The property is located within the Jefferson Rural Fire Protection District.
- B. **POLICE** - The Linn County Sheriff's Department serves the area.
- C. **SCHOOL** - The property lies within the Greater Albany School District, the Linn Benton Lincoln Education Service District and the Linn Benton Community College District.
- D. **OTHER DISTRICTS** – The property is located within the Linn Soil and Water District.
- E. **SEWAGE DISPOSAL** – No on-site sanitation system is proposed as part of the use.
- F. **WATER SUPPLY** – No water supply is proposed as part of the use.
- G. **ACCESS** – The property has frontage on Conser Road, a paved, two-lane paved County maintained right of way.

VI. PUBLIC NOTICE AND HEARING REQUIREMENTS

A. NOTICE

Notice of this application along with the hearing dates was published in the Albany Democrat Herald Newspaper and posted on the Linn County Web Site at least 20 days prior to the first evidentiary hearing. Property owners within 1,000 feet of the boundaries of the subject property, and the affected agencies identified in the table below, were provided notice of this application at least 20 days prior to the first scheduled hearing. The Land Conservation and Development Commission (DLCD) was provided notice of this application at least 35 days prior to the first evidentiary hearing. Written comments are included in **Exhibit C and D**. Copies of the public notice materials are included in **Exhibit E**.

The following agencies have been provided notice and responded before this report was written.

AGENCIES	PROVIDED	RESPONDED	AGENCIES	PROVIDED	RESPONDED
Linn County Assessor	x		City of Millersburg	x	
Linn County EHP	x		Dept. State Lands	x	x
Linn County GIS	x		Dept. of Land Cons. & Dev.	x	
Linn County Sheriff	x	x	Dept. State Lands	x	
Linn County Road Dept.	x	x	RFPD: Jefferson	x	

B. PUBLIC HEARING REQUIREMENTS

The Planning Commission (Commission) reviewed the application at public meetings on **Tuesday, June 11, 2024 and Tuesday, July 9, 2024**, and made a recommendation to the Linn County Board of County Commissioners (Board) regarding the proposed *Plan* text amendments.

The Board is scheduled to conduct a public hearing on this matter at **10:00 a.m., Tuesday, July 16, 2024**, in the Board Hearing Room, Room 200, on the second floor of the County Courthouse. The Board may consider the applications for 42 days from the close of the public hearing. Tabling of the request for a period not to exceed 35 days may also occur if the applicant consents. Specified findings, stating the reason for decision, are required in taking action on the proposed amendments. The Board will consider all the testimony in the matter and may take action to: (1) Approve the applications; (2) Deny the applications; or (3) Modify the applications.

All testimony and evidence must be directed toward the applicable decision criteria including applicable criteria in the plan or other land use regulations. Failure to raise an issue before the close of the record, or failure to provide statements or evidence sufficient to afford the decision maker(s) and the parties an adequate opportunity to respond to each raised issue precludes an appeal based on that issue.

If additional documents or evidence are provided by any party, the Board may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. The 150-day time limitations of *ORS 215.428* do not apply to the proposed *Comprehensive Plan* amendment.

Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Board hearing, which is scheduled for a date and time certain on June 18, 2024, in the Board Hearing Room, Room 200, on the second floor of the Linn County Courthouse is at least seven days from the initial Commission hearing and provides adequate opportunity to present additional evidence and testimony for the record.

VII. EXHIBITS

The following Exhibits and supporting documentation are attached to this staff report:

- Exhibit A: Application Materials: Application and Supporting Documents
 - Text Amendment Exhibit 1, Proposed Comprehensive Plan Text Amendment
 - Text Amendment Application Exhibit 2, Compliance with the Comprehensive Plan
 - Text Amendment Application Exhibit 3, Compliance with Statewide Planning Goals
 - Text Amendment Application Exhibit 4, Exception Statement
 - Text Amendment Application Exhibit 5, Compliance with Other State Standards
 - Application Exhibit A - Map of Benefitted Properties
 - Application Exhibit B - NOD PLN-2022-00765 (Wilbur-Ellis CUP)
 - Application Exhibit C - Driveway Map
 - Application Exhibit D - Tech Memo 7.1 - TSP Amendment
 - Application Exhibit E - Sandow Engineering TPR Assessment
 - Application Exhibit F - Basis of Design Report
 - Application Exhibit G - Railroad Overcrossing Cost Estimate
 - Application Exhibit H - Undercrossing Feasibility Evaluation
 - Application Exhibit I - DSL Approval of Wetlands Delineation
 - Application Exhibit J - NRCS Soil Maps
 - Application Exhibit K - Wetlands Map with Driveway Overlay
 - Full Set Goal Exception Application to the County
 - Millersburg Application for Goal Exceptions and TSP Amendment
 - Transmittal Letter
- Exhibit B - Decision Criteria
- Exhibit C - Agency Comments
- Exhibit D – Written Comments
- Exhibit E – Public Notice
- Exhibit F – Letters of Support, ODOT, & Portland & Western Railroad Comments
- Exhibit G – Written comments submitted to PC during written comment period
- Exhibit H – Crag Law/1000 Friends of Oregon Comments

VIII. APPLICANT ANALYSIS AND PROPOSED FINDINGS

The Plan text amendment criteria are in Linn County Code (LCC) 921.872 and Oregon Administrative Rule (OAR) Chapter 660 Division 12. The decision criteria are attached in **Exhibit B**. The proposed findings of compliance are attached in **Exhibit A**.

APPLICANT ANALYSIS:

LCC 921.872(A): The amendment is consistent with the intent of the applicable section (s) of the Comprehensive Plan; and

COMPLIANCE WITH THE COMPREHENSIVE PLAN

As previously noted, a Comp Plan text amendment is required to (1) add the Driveway on Tax Lot 402 to the Comp Plan's list of exception sites in the County (the Goal Exception) and (2) amend the TSP to adopt Tech Memo 7.1 (the TSP Amendment). The Comp Plan text amendments require a demonstration of consistency with the intent of applicable sections of the Comp Plan and statewide planning goals.

Specifically, a demonstration that the "amendment is consistent with the intent of the applicable section(s) of the *Comprehensive Plan*" is required by LCC 921.872(A). Accordingly, the applicant demonstrates that the Application complies with the intent applicable Comp Plan elements and policies. Comp Plan elements and policies not expressly discussed herein are deemed inapplicable to the Application. LCC 921.872(A) only requires consistency with the intent of applicable sections, which is consistent with the general rule that specific comprehensive plan elements and policies are not intended to operate as particular mandatory approval criteria. Rather general consistency is only required as it is recognized that a comprehensive plan may reflect policy goals that are not addressed by every individual development.

Citizens Involvement Element (Chapter 901)

Response: Like Statewide Planning Goal 1, this Element is designed to ensure public participation in the planning and land use process. The County has acknowledged provisions for citizen involvement that allow citizens to be involved in the planning process and sets out requirements for such involvement in compliance with Goal 1. The Application does not amend the County's citizen involvement element, and the County's process for reviewing the Application complies with this element and Goal 1.

The Application will be noticed as required through the LCC as a Comp Plan Text Amendment, which requires a hearing at the Planning Commission and a hearing and final decision by the Board of County Commissioners. Notice of land use items allows citizens to participate in the planning process through comments to the Planning Commission and Board of Commissioners (as applicable).

Plan Monitoring and Amendment Code – Administrative Element (Chapter 902)

Response: LCC 902.200 describes the purpose of the Comp Plan amendment process: "to allow a property owner or a group of owners to apply for a change of [plan] designations or policies in order to pursue land development options." The Application does not involve a change in plan designation but, instead, requests a Goal Exception and Comp Plan text amendment to authorize the Driveway and memorialize the need for the Driveway in the TSP. The hearings process dictated by Chapter 921 complies with the citizen involvement requirements, as further discussed in this Application.

Natural Resources Element (Chapter 903)

Response: This Element addresses hazards, open spaces, natural areas, scenic areas, historic and cultural areas, waterways, and other resources. The Application would allow the development of a Driveway on 1.44 acres of land that is previously disturbed. The proposed Driveway location is not within any hazard zone, natural area, scenic area, waterway, or other inventoried resource area, except that the Driveway

may impact up to 0.14 acres of wetlands, as further discussed throughout this Application. There are no known historic or cultural resources within the subject property. There are no conflicts with any listed open space or scenic areas. The 1.44 acres is not located within a FEMA flood designation or floodway, nor is the area a risk for landslides as shown on the Oregon Department of Geology and Minerals Industries (DOGAMI) maps. The Driveway area is flat.

To the extent any wetlands would be impacted by development of the Driveway, the Applicants will coordinate with the Department of State Lands, consistent with LCC 903.650.

The environmental quality policies in LCC 903.160 identify County coordination requirements that do not directly apply to the Application. The natural and geologic hazards policies in LCC 903.260 do not apply to the Application because the Driveway area does not contain any natural resources or hazards. The remaining policies in this element do not apply to the Application because the proposed Driveway area is not within any resource areas covered by this Element, other than those specifically addressed in this response.

Community Facilities and Development Element (Chapter 904)

Response: This Element addresses the need for infrastructure to support development, transportation, housing, recreational needs, and energy conservation. Infrastructure includes water, sewer, storm drainage, utilities, and other County provided services (public schools, safety, and fire protection). Although the transportation section of the Comp Plan (Chapter 904, Subsection II) is part of Chapter 904, that chapter redirects to Chapter 907, which governs the TSP addressed later in this narrative.

The proposed Driveway location, and eventual construction of the Driveway itself, would not require any public utilities such as water, sewer, storm drainage, or any other services. The proposed Goal Exception area is only for the Driveway. Development and use of the City Properties is not within the scope of this Application and, therefore, is not addressed herein. This Application only addresses the Driveway area located within the County, which is 1.44 acres. The policies for public facilities and services in LCC 904.210 do not apply to the Application because no public facilities and services are proposed or required.

The housing and recreation sections of this Element and related policies in LCC 904.320 and 904.420, do not apply to the Driveway because the area within the County will only be used for access. The Application does not involve housing development or land inventoried for recreational needs.

This Element also addresses energy conservation and is focused on recognizing the need to increase reliance on renewable sources of energy and conserving energy by locating housing close to employment and service uses, discouraging sprawl, providing alternative public transportation, and allowing solar power. The energy conservation policies in LCC 904.520 are directed at the County and do not directly apply to the Application.

It should be noted that the Application would authorize Driveway access, which will address the landlocked nature of the City's Properties. These parcels are within the City limits, within the UGB, and intended for urban uses and specifically employment uses. The industrial area is near residential land uses within the City (within bicycle distance). Approval of the Application will help facilitate the development of industrial and employment uses that have been planned since the City was formed by Linn County action, and long before that, when the City of Albany was envisioning growth into this area, prior to Millersburg incorporation.

Land Use Element (Chapter 905)

Response: This Element contains goals and policies for each specific land use designation contemplated by the Comp Plan. The proposed Driveway location is within lands designated Agricultural Resource and zoned EFU. Approval of the Application will not change that designation. The Application would authorize an urban land use in the Agricultural Resource designation on 1.44 acres for the specific location of a Driveway, providing needed vehicle access from Conser Road NE to an urban site (currently zoned General Industrial) that is already within the City limits but is currently landlocked. As discussed later in this narrative, the only way to access the existing City Properties is through this Agricultural Resource designated property.

The proposed Goal Exception would be memorialized within LCC Chapter 905. Appendix 2 lists the areas within the County with approved Goal Exceptions. If approved, the proposed Driveway location would be added to the list in Appendix 2.

The Land Use Element contains multiple subsections, of which three are relevant to the Application. These three policies (Agricultural Resource Lands, Industrial Land, and Urbanization) are discussed below.

Agricultural Resource Lands Subsection

Response: LCC 905.120 identifies policies for Agricultural Resources lands, like the proposed Driveway location. Policy (G) addresses the conversion of a tract or parcel from the Agricultural Resource designation to a different designation. The Application does not involve the conversion of a tract or parcel but, rather, would authorize the Driveway on lands designated Agricultural Resource via a goal exception, consistent with the requirements of ORS Chapter 215, OAR Chapter 660, Division 12, and all other applicable requirements of state and local law. No other policies in LCC 905.100 through 905.120 are relevant to the Application.

STAFF ANALYSIS: Staff notes that the proposed amendments would not change the Plan or zoning designation of the proposed use. The property would continue to be zoned Exclusive Farm Use.

Industrial Lands Subsection

Response: LCC 905.570 identifies policies for Industrial lands. This section, and related provisions LCC 905.550 and 905.560 do not apply to the Application, which requests authorization for a Driveway on land designated Agricultural Resource.

The proposed Driveway would, however, serve urban land currently zoned General Industrial within the City UGB. LCC 905.570 identifies policies that demonstrate County support to prioritize industrial uses within city UGBs. Approval of the Application is consistent with these policies, as demonstrated below.

LCC 905.570(B)(4) provides:

The majority of new industrial sites will be located within an urban growth boundary to take advantage of public facilities and utilities. The County supports the efforts of the various cities to plan and prepare land for industrial development.

LCC 905.570(B)(8) provides:

The expansion of existing industry is encouraged. Expansion onto resource land may be permitted through the Plan amendment and exception process.

These policies support approval of the Application, consistent with the County's policies to prioritize industrial development within UGBs and to support industrial development that benefits the County.

Urbanization Subsection

Response: LCC 905.610 addresses urbanization and includes a policy specifically addressing goal exceptions to Statewide Planning Goal 14, the Urbanization goal. Specifically, LCC 905.610(F) provides:

Oregon Statewide Planning Goals allow local jurisdictions to adopt exceptions to Statewide Planning Goal 14 to allow specific urban uses on rural lands when certain criteria are met. The Statewide Planning goal exception standards are set out at ORS 197.732; Goal 2, Part II; OAR Chapter 660, Division 4; and OAR Chapter 660, Division 14. Linn County will maintain a list of properties for which a Goal 14 exception is adopted to allow specific urban uses on rural lands. The list of Goal 14 Exception properties is contained in Appendix 2 of this chapter.

This policy does not apply to the Application because, as discussed in Exhibit 4, the requested goal exception is not governed by OAR Chapter 660, Divisions 4 and 14. Rather, the specific type of goal exception requested in the Application is governed by ORS Chapter 215 and OAR Chapter 660, Division 12. As discussed further below, Chapter 907 of the Comp Plan specifically governs the type of goal exception requested in this Application.

Transportation Plan Code (Transportation Element) (Chapter 907)

Response: This Element contains the County's TSP for a 20-year planning period, projecting the County's transportation needs and identifying goals and policies to address forecasted growth.

Different sections of this Element apply to the TSP Amendment and the Goal Exception. First, LCC 907.100 through 907.140 concern the County's transportation planning policies. As relevant to the TSP Amendment, LCC 907.100 addresses the various elements of the County's transportation network, and LCC 907.110 addresses linkages between transportation planning and land uses. In addition, LCC 907.210 addresses coordination and notification in connection with transportation planning. The sections of LCC 907.100, 907.110, and 907.210 that apply to the TSP Amendment are discussed below.

Second, as relevant to the Goal Exception, LCC 907.230 and LCC 907.240 address the specific type of goal exception requested in this Application, which seeks authorization for a transportation improvement on rural lands. Most of LCC 907.230 and all of LCC 907.240 directly apply to the Goal Exception and are addressed below.

LCC 907.100 Transportation planning; elements

(B) Policy Statements

(1) Linn County supports a transportation system that:

(a) furnishes efficient movement for Linn County residents, businesses and other users;

(b) facilitates the flow of goods and services so as to strengthen the local

and regional economy;

- (c) adequately serves the needs of agricultural and forest enterprises; and*
- (d) maintains and supports multimodal transportation opportunities.*

Response: The TSP Amendment adopts Tech Memo 7.1 into the County TSP to memorialize the need to provide access to the City Properties. Providing access to the City Properties will allow for development of those properties and will facilitate the flow of goods and services to and from such development. Without access, the City Properties are unusable. Allowing development of the City Properties encourages the efficient use of urban land within the City UGB to strengthen the County's and City's economies.

Providing the Driveway connection to Conser Road NE also enables access to future development of the City properties to be provided via existing City and County transportation facilities (e.g., Conser Road NE) and avoids costly new roadways to be constructed as grade-separated crossings of the railroad. This enables the efficient use of existing City and County resources and complies with statewide planning goals to utilize existing infrastructure investments.

The City Properties have been zoned for industrial use for decades, even before the City's incorporation. The industrial zoning that applies to the properties allows for a range of industrial uses, the development of which would benefit both the County and the City. For example, the planned Timberlab manufacturing and fabrication facility could create synergies with the County's agricultural and forest enterprises. Providing access to the City Properties does not impede the ability of the County's transportation system to serve agricultural enterprises.

The City Properties are directly adjacent to the Burlington Northern Santa Fe (BNSF)/Portland & Western Railroad, and providing access to those properties will allow development on those properties to take advantage of rail access to transport goods.

(2) It is the policy of Linn County that an integrated transportation system, which accommodates a variety of travel modes and demand management programs, be maintained and promoted. It is the policy of Linn County to:

- (a) consider all modes of transportation including highways and roads, public transit, air, rail, bicycling, walking and telecommunication, where needed and economically feasible, when making transportation decisions;*
- (b) consider carpooling, van pooling, telecommuting and staggered work shifts as alternatives for reducing congestion when making transportation decisions;*
- (c) avoid total reliance on any one mode of transportation and support other modes of travel besides the automobile;*
- (d) reduce auto reliance through providing a road network that can accommodate public transit, bicycling and walking facilities;*
- (e) plan land uses that support alternative modes when appropriate; and*
- (f) support transportation access for all residents through a combination of walking and bicycling facilities, provision of special transportation for the transportation disadvantaged, identification of opportunities for coordinating special transportation, encouragement of use of alternate modes and coordination of multimodal passenger services.*

Response: As detailed in the goal exception analysis below, the only feasible alternative for providing access to the City Properties is via the Driveway. The City Properties are currently, and have historically been, zoned for industrial use to, in part, take advantage of the properties' proximity to the BNSF/Portland & Western Railroad tracks. Providing access to the City Properties will allow development that can take advantage of the adjacent railway to transport goods. Accordingly, the TSP Amendment is consistent with the County's policies in LCC 907.100(B)(2) to consider all modes of transportation and to support

alternative modes when appropriate. The proposed Driveway does not change the need for nor preclude future travel by pedestrians and cyclists. Further, the proposed Driveway does not preclude any future development of the City lands from implementing measures to reduce single occupancy vehicle use, particularly during peak periods, thereby complying with this policy.

- (3) It is the policy of Linn County that conflicts between transportation modes be minimized, especially:**
(a) conflicts between movements of automobiles, pedestrians and bicyclists; and
(b) conflicts between roads, rail lines and airports.

Response: As detailed in the goal exception analysis below, the Applicants evaluated the potential for an at-grade or grade-separated railroad crossing as an alternative to provide access to the City Properties. The Driveway avoids the need to establish a new railroad crossing and therefore is consistent with the County's policy in LCC 907.100(B)(3) to avoid conflicts between roads and rail lines.

- (5) It is the policy of Linn County that the presence of a transportation facility or improvement shall not be a basis for allowing residential, commercial, or industrial development on rural resource lands.**

Response: The TSP Amendment identifies a need for the Driveway to provide access only to the City Properties, which are within the City's UGB. The Driveway will not provide access to any lands outside of the UGB. Accordingly, the need identified in the TSP Amendment to locate the Driveway on rural resource lands will not facilitate residential, commercial, or industrial development on rural resource lands.

LCC 907.110 Land Use Issues

(B) Policy Statements

(1) Linn County recognizes the rural nature of the county. Anticipated development in the unincorporated areas of the county will be on a rural scale. Therefore, the County does not foresee significant impacts on the County-owned transportation system from upcoming development projects. Furthermore, the County views the main purpose of the County-owned road network as the efficient movement of people and goods between incorporated areas in the County and not as a means of increasing urban scale development in the unincorporated areas. This especially applies to areas outside of urban growth boundaries.

- (3) It is the goal of Linn County that transportation movements which occur outside of urban growth boundaries do not create urbanizing pressures in those areas.**

Response: The TSP Amendment, through Tech Memo 7.1, identifies a need for the Driveway to provide access to the City Properties, which are within the City's UGB. Tech Memo 7.1 does not propose to provide access to any lands outside of the UGB or any lands inside of the UGB, other than the four tax lots that are the City Properties. Accordingly, the need identified in Tech Memo 7.1 to locate the Driveway on rural

resource lands will not create urbanizing pressure on those lands and will not create urban-scale development in unincorporated areas.

LCC 907.210 Coordination, continued planning, and notification

Response: LCC 907.210 addresses the County's transportation planning process and specifically identifies coordination and notification requirements in connection with that process. The Application, including the TSP Amendment, will be noticed as required through the LCC as a Comp Plan Text Amendment, which requires a hearing at the Planning Commission and a hearing and final decision by the Board of County Commissioners. The TSP Amendment is the product of coordination between the County and the City of Millersburg. The County will notify the Linn County Road Department of the Application, consistent with LCC 907.210. In addition, the County will notify the DLCD which will, in turn, notify applicable public agencies, including ODOT. The Application does not propose a new railroad crossing, and so LCC 907.210(7) does not apply.

LCC 907.230 Transportation Plan Implementation

(C) Transportation project

(3) Transportation projects that require a plan text amendment. In cases where a transportation project is not listed or identified as allowed outright or allowed through a conditional use permit, a plan text amendment is necessary. A project which requires a plan text amendment, depending on the zoning district, may either require a conditional use permit and/or a plan map amendment. Procedures for both plan text and plan map amendments are outlined in the Linn County Comprehensive Plan Amendment Provision. The projects set forth in paragraphs (1) to (12) of this subsection require a plan text amendment and a conditional use permit when they occur in development zones. When projects are proposed in a resource zone then a plan text amendment and an exception are required. A plan map amendment may also be necessary in resource zones depending on the project.

Response: The Driveway is a transportation improvement not allowed outright or via a conditional use permit pursuant to LCC 907.230(C)(1)-(2) and applicable state law. ORS 215.283 identifies specific transportation improvements permitted outright or that may be approved conditionally on resource lands zoned EFU, like the proposed Driveway location. In turn, OAR Chapter 660, Division 12 and LCC 907.230(C)(1)-(2) implement those provisions of ORS 215.283. As further discussed in the goal exception analysis below, the proposed Driveway is neither permitted outright or conditionally under ORS 215.283(1) or (2) nor covered by OAR 660-012-0065. Therefore, a plan text amendment and goal exception are required pursuant to LCC 907.230(C)(3) and applicable state law.

(E) Comprehensive Plan or Land Development Code amendments.

- (1) A Comprehensive Plan or Land Development Code amendment significantly affects transportation if:**
 - (a) it changes the function of a planned transportation facility;**
 - (b) it changes standards for a functional classification system; or**
 - (c) it would increase or decrease the level of a transportation facility's activity beyond an acceptable level.**

(2) Findings shall be made to determine the extent of any impact and suggest ways to mitigate any adverse impacts.

Response: The Application requests two Comp Plan text amendments: (1) the Goal Exception, which would document the County's approval of the requested identify the Driveway as a new "Transportation Exception" area in the Comp Plan, and (2) the TSP Amendment, which would amend the TSP to memorialize the need for the Driveway. Both Comp Plan amendments are subject to and comply with LCC 907.230(E), which implements OAR 660-012-0060. LCC 907.230(E) and OAR 660-012-0060 require an analysis of whether Comp Plan amendment "significantly affects" existing or planned transportation facilities. Exhibit 5 of the Application demonstrates that neither the Goal Exception nor the TSP Amendment will "significantly affect" transportation facilities within the meaning of LCC 907.230(E) and OAR 660-012-0060. The findings regarding compliance with other State Standards are expressly incorporated by reference in response to LCC 907.230(E) and demonstrate that the Application complies with the intent of LCC 907.230(E).

LCC 907.240 Exceptions for Transportation Improvements on Rural Lands

(A) Transportation facilities and improvements which are not allowed outright or do not require a conditional use permit may require an exception to statewide planning goals to be sited on resource lands (EFU A/F, and FCM). Exceptions are not needed for projects located in development zones.

Response: As discussed above, the proposed Driveway is an urban transportation improvement in an EFU zone. The specific improvement is not permitted outright or conditionally in the EFU zone. As previously noted, the Driveway will require exceptions to Goals 3 and 14. The proposed Driveway is not located within a County development zone.

(B) An exception adopted as part of the transportation plan shall at a minimum determine need, mode, function and general location for the proposed facility or improvement. The general location shall be specified as a corridor within which the proposed project is to be located. Specific sites or areas within the corridor may be excluded from the exception to avoid or lessen adverse impacts.

Response: This Application addresses the need, mode, function, and general location for the proposed Driveway at length in the goal exception analysis below. Those findings are expressly incorporated by reference in response to LCC 907.240(B), which implements OAR 660-012-0070(3) and (3)(a). In addition, the Application requests a text amendment to the County TSP to document the need for the Driveway.

(C) The size, design and capacity of the proposed facility or improvement shall be described generally, but in sufficient detail to allow a general understanding of the likely impacts of the proposed facility or improvement. Measures limiting the size, design or capacity may be specified in the description of the proposed use in order to simplify the analysis of its effects. If an exception to Statewide Planning Goals 3, 4, 11, or 14 is required, the exception shall be taken pursuant to ORS 197.732 (1) (c).

Response: This Application addresses the general size, design and capacity of the proposed Driveway at length in the goal exception analysis below. Those findings are expressly incorporated by reference in response to LCC 907.240(C), which implements OAR 660-012-0070(3)(b). This Application requests exceptions to Statewide Planning Goals 3 and 14 and complies with ORS 197.732(1)(c), as explained throughout the Application.

(D) The adopted exception shall include a process and standards to guide selection of the precise design and location within the corridor consistent with the general description of the proposed facility or

improvement. The exception shall be approved and adopted as a plan text amendment through the Linn County Comprehensive Plan Amendment Provision. Once adopted the project becomes part of the Transportation Project List.

Response: This Application addresses the process and standards to guide selection of the precise design and location within the proposed Driveway location in the goal exception analysis below. Those findings are expressly incorporated by reference in response to LCC 907.240(D), which implements OAR 660-012-0070(3)(c). As noted, this Application requests a text amendment to the Comp Plan to document the Goal Exception. The text amendment memorializing the Goal Exception would be located within the Land Use Element, Appendix 2, of the Comp Plan. If approved, the proposed Driveway location would be added to the list of County-approved exception areas.

(E) Land use regulations implementing the exception may include specific mitigation measures to assure compatibility with adjacent uses and/or offset unavoidable environmental, economic, social or energy impacts of the proposed project.

Response: This Application demonstrates compliance with this criterion in the goal exception analysis below. Those findings are expressly incorporated by reference in response to LCC 907.240(E), which implements OAR 660-012-0070(3)(d).

STAFF ANALYSIS: Staff concurs with the applicant's analysis. No additional staff analysis is provided for this section.

LCC 921.872(B): The amendment is consistent with the statewide planning goals.

COMPLIANCE WITH STATEWIDE PLANNING GOALS

As previously noted, this application requests Comp Plan text amendments to (1) add the Driveway on Tax Lot 402 to the Comp Plan's list of exception sites in the County and (2) adopt Tech Memo 7.1 as part of the TSP. The Comp Plan text amendments require demonstration of consistency with Statewide Planning Goals. See LCC 921.872(B). In addition, the Application requests exceptions to Goals 3 and 14, and an exception to one or more Statewide Planning Goals must demonstrate compliance with the remaining Goals. Accordingly, this application demonstrates that the Application complies with applicable Statewide Planning 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.

Response: The County Comp Plan contains acknowledged provisions for citizen involvement that ensure the opportunity for citizens to be involved in all phases of the planning process and that set out requirements for such involvement in compliance with Goal 1 (see also OAR chapter 660, Division 15). The Application does not amend the County's citizen involvement program, and the process for reviewing the Application complies with Goal 1 because it complies with, and surpasses the requirements of, the citizen involvement provisions under Goal 1. The Application, therefore, complies 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.

Response: Goal 2 requires each local government to have and follow a comprehensive land use plan and implementing regulations. The County's land development code (LCC Title 9, Subtitle 2) specifies the procedure and criteria to be used in considering this Application, consistent with LCC Chapter 921 and

the Comp Plan. The County has adopted standards and procedures for land use decisions that have been acknowledged as consistent with the Statewide Planning Goals. The County will ensure compliance with Goal 2 by reviewing the Application in the manner prescribed by the LCC.

The proposed Application will be noticed as required through the LCC as a Comp Plan Amendment, which requires a hearing at the Planning Commission and a hearing and final decision by the Board of County Commissioners. Notice of land use items provides an opportunity for citizens to participate in the review through comments to the Planning Commission and Board of Commissioners (if applicable). To comply with the Goal 2 coordination requirement, the County will engage in an exchange about the subject of the Application with all affected governmental units. In addition, because the Application requests two post acknowledgment Comp Plan amendments, the County will comply with all requirements of ORS 197.610 et seq. and OAR chapter 660, division 18.

Finally, as demonstrated throughout this Application, the Goal Exception complies with all requirements for goal exceptions pursuant to Goal 2, as implemented by state and local requirements, including OAR 660-012-0070.

The proposed Application is therefore consistent with Goal 2.

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

Response: Goal 3 requires agricultural lands to be preserved and maintained for farm use. Counties must inventory agricultural land, designate it on their comprehensive plans, and zone it as EFU. EFU zoning restricts development and uses unrelated to agriculture to prevent conflicts with farming. The subject property where the Driveway is proposed to be located is zoned EFU and subject to Goal 3.

The Application will authorize a new transportation improvement (the Driveway) across lands subject to Goal 3 and, accordingly, requests an exception to Goal 3 pursuant to ORS 215.283(3)(a).

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.

Response: This Goal does not apply to the Application as the Application would not affect any land designated for forest use. Therefore, the Application does not affect compliance with Goal 4. The Application is consistent with Goal 4.

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

Response: The Application would not create or amend a list of Goal 5 resources, amend a plan or code provision adopted to protect a significant Goal 5 resource or address specific requirements of Goal 5, and would not amend an acknowledged UGB. The Comp Plan does not identify Goal 5 protected resources on the subject property or immediately adjacent to the subject property. This includes wetlands, sensitive waterways, riparian ways, big game habitat, cultural or historic sites, or aggregate resource sites.

There are approximately 6.80 acres of state-jurisdictional wetlands and two natural waterways, including the Willamette River, on Tax Lots 402 and 101. Approximately 0.14 acres of the wetlands are located within the access easement for the Driveway. Accordingly, development of the Driveway has the potential to impact up to 0.14 acre of state-jurisdictional wetlands. The wetlands are subject to all applicable

requirements of the state Removal-Fill law. Therefore, the Application will maintain established protection measures for inventoried Goal 5 resources within and adjacent to the proposed Driveway location and are consistent with Goal 5. Additionally, because the Application will not affect any Goal 5 resource, the Application complies with OAR 660-023-0250.

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

Response: Goal 6 instructs local governments to consider protection of air, water and land resources from pollution and pollutants when developing comprehensive plans. At a federal level, the elements within Goal 6 correspond broadly to the Clean Air Act and Clean Water Act. At a state level, Goal 6 covers many areas regulated by the Oregon Department of Environmental Quality (DEQ) through its permitting actions. DEQ ensures its permitting decisions comply with the plan and zoning regulations of the affected local government and coordinates with DLCDD and other agencies to be sure that city and county plans comply with state and federal laws.

The only state permits necessary for construction of the Driveway are a 1200-C permit from the DEQ and, potentially, a Removal-Fill permit from the Department of State Lands (DSL) for wetland impacts. Standard stormwater control measures will be used to prevent erosion and control runoff during construction. No other impacts are anticipated.

The Application does not change the level of protection afforded in local regulations for air and water quality, or land resources. The Application does not negatively affect the environmental factors specified in Goal 6. Therefore, the Application is consistent with Goal 6.

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

Response: Goal 7 requires local governments to adopt comprehensive plans to reduce risk to people and property from natural hazards such as floods, landslides, earthquakes, tsunamis, and wildfires. The County protects people and property from natural hazards through various land use and building code requirements. The Application does not alter these protective provisions, nor does it propose development in areas identified to be unsuitable for development. The location of the Driveway is not located within any identified DOGAMI landslide areas, or FEMA designated floodplains. Therefore, the Application is consistent with Goal 7.

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.

Response: Goal 8 requires local governmental agencies to plan for recreation areas, facilities, and opportunities. This Goal ensures the provision of recreational facilities to Oregon residents and is primarily concerned with the provision of those facilities in non-urban areas of the state. The County has not identified the proposed Driveway location as necessary to meet the County's recreational needs. The proposed Driveway location is not currently used for recreational purposes and no recreational use of the subject property is being proposed. No Goal 8 resources are identified on or near the subject property. The Willamette River is nearby, and while it is available for recreational opportunities such as boating and fishing, the proposed project will not impinge on these opportunities. The river is about 2,500 feet from the closest part of the proposed Driveway. The Application does not involve the siting of destination resorts. Based on these findings, the Application is consistent with Goal 8.

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.

Response: Goal 9 (OAR chapter 660, division 9) applies to comprehensive plans within UGBs. The Goal requires cities to provide an adequate land supply for economic development and employment growth. The proposed Driveway location is on non-urban land, outside of any UGB. Therefore, the Application does not affect compliance with Goal 9 or corresponding administrative rules. The Application is consistent with Goal 9.

Goal 10 Housing, to provide for the housing needs of citizens of the state.

Response: Goal 10 (OAR chapter 660, division 8) applies to comprehensive plans within urban growth boundaries. It requires that sufficient buildable land be designated on the City's comprehensive plan map to satisfy housing needs by type and density range, as determined in the housing needs projection. The proposed Driveway location is not designated for residential uses and the County has not identified the subject property as necessary to address any identified Goal 10 housing needs. Therefore, the Application does not affect compliance with Goal 10 or corresponding administrative rules. The Application is consistent with Goal 10.

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.

Response: Goal 11 (OAR Chapter 660, Division 11) requires cities and counties to develop and adopt a public facility plan for areas within a UGB containing a population greater than 2,500 persons. The purpose of the plan is to help assure that urban development in such UGBs is guided and supported by types and levels of urban facilities and services appropriate for the needs and requirements of the urban areas to be serviced, and that those facilities and services are provided in a timely, orderly, and efficient arrangement, as required by Goal 11. The proposed Driveway location is not within an area covered by a public facility plan, and the City is not proposing to extend public facilities subject to Goal 11 outside the UGB as part of this Application. Therefore, the Application does not affect compliance with Goal 11 or corresponding administrative rules. The Application is consistent with Goal 11.

Goal 12 Transportation, to provide and encourage a safe, convenient and economic transportation system.

Response: Goal 12 is implemented through the Transportation Planning Rule (TPR, OAR chapter 660, division 12). The Linn County TSP is the regional policy framework through which the TPR is implemented at the local level. Goal 12 compliance for comprehensive plan and land use regulation amendments is governed by the Goal 12 rule at OAR 660-010-0060.

OAR 660-010-0060(1) requires a determination by the County of whether the amendment will "significantly affect a transportation facility" and provides the criteria used to evaluate whether a transportation facility is significantly affected. OAR 660-010-0060(2) and (3) prescribe what the County must or can do if it determines that a plan amendment will significantly affect an existing transportation facility.

This Application demonstrates compliance with the TPR, including OAR 660-012-0060. Those findings are expressly incorporated by reference in response to Goal 12 and demonstrate that approval of the Application would not result in any significant effect on any planned or existing transportation facility. Therefore, mitigation of adverse impacts is not required, and the Application is consistent with Goal 12.

Goal 13 Energy Conservation, to conserve energy.

Response: Goal 13 requires that land and uses developed on the land shall be managed and controlled to maximize the conservation of all forms of energy, based upon sound economic principles. Goal 13 is directed at the development of local energy policies and implementing provisions and does not establish any requirements with respect to other types of land use decisions.

The Application does not specifically impact local energy conservation policies or implementing provisions, except to facilitate urban development within the UGB. As noted, the Driveway will resolve the landlocked nature of the City Properties, which are within the City limits, within the UGB, and intended for urban uses (specifically, employment uses). The City Properties are near residential land uses and in travel distance of alternative modes, specifically bicycle transit. Approval of the Application will help facilitate the development of industrial and employment uses that have been planned since the City was formed by Linn County action, and long before that, when the City of Albany was envisioning growth into this area, prior to Millersburg incorporation. Therefore, the Application 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.

Response: Goal 14 requires local governments to provide for an orderly and efficient transition from rural to urban land uses by establishing UGBs that provide land for urban development needs and that separate urbanizable land from rural land.

The proposed Driveway would be located on rural land and is intended to serve urban land within the City's UGB. Accordingly, the Application requests an exception to Goal 14 to locate the Driveway on rural land.

Goals 15 – 19 Willamette River Greenway, Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.

Response: Goals 15 through 19 do not apply to the subject property or this Application because the subject property is not located within the Willamette River Greenway or near any ocean or coastal related resources.

STAFF ANALYSIS: Staff concurs with the applicant's analysis. No additional staff analysis is provided for this section.

EXCEPTION STATEMENT

Below provides the analysis and substantial evidence required to justify an exception to Statewide Planning Goals 3 and 14 for an urban transportation improvement, in accordance with the requirements of OAR 660-012-0070.

A. INTRODUCTION

1. Applicable Exception Standard: OAR 660-012-0070

The standards that govern approval of statewide planning goal exceptions for transportation facilities on rural lands differ from the approval standards for other types of goal exceptions. The standards that govern exceptions for transportation facilities and improvements on rural lands are set out exclusively at OAR 660-012-0070.

Pursuant to OAR 660-012-0070(2):

"When an exception to Goals 3, 4, 11, or 14 is required to locate a transportation improvement on rural lands, the exception shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and [OAR chapter 660, division 12]. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 14 shall not apply. Exceptions adopted pursuant to [OAR chapter 660, division 12] shall be deemed to fulfill the requirements for goal exceptions required under ORS 197.732(1)(c) and Goal 2."

(emphasis added); see also OAR 660-004-0000(1)(b) ("[S]tandards for a demonstration of reasons for urban transportation improvements on rural land are provided in OAR 660-012-0070.")

This Application seeks approval of a transportation facility or improvement (the Driveway) on rural (EFU) lands. Accordingly, the exclusive exception standards governing the exceptions for this Application are set out in OAR 660-012-0070. The exception standards in OAR chapter 660, division 4 and OAR chapter 660, division 14 do not apply to this Application.

2. OAR 660-012-0070(1) – Definition of Transportation Facility.

"Transportation facilities and improvements which do not meet the requirements of OAR 660-012-0065 require an exception to be sited on rural lands." OAR 660-012-0070(1). "Transportation facilities" are defined broadly to include "any physical facility that moves or assist[s] in the movement of people or goods[.]" OAR 660-012-0005(51).

The Driveway, including all improvements, such as roadbed, shoulders, and potential future pedestrian access, lighting, gates, and other public utilities within the easement area, constitutes a transportation facility or improvement. The Driveway is not covered by OAR 660-012-0065. Thus, OAR 660-012-0070 is the applicable standard for analysis and justification of statewide planning goal exceptions for the proposed project.

3. OAR 660-012-0070(1)(a) – Adopted Findings of Fact and Statement of Reasons.

A local government approving a proposed exception pursuant to OAR 660-012-0070 "shall adopt as part of its comprehensive plan findings of fact and a statement of reasons that demonstrate that the standards in [OAR 660-012-0070] have been met." OAR 660-012-0070(1)(a). Accordingly, the County should, consistent with its adopted Comprehensive Plan and Code, adopt this Exhibit 4 or the County's own findings of fact and statement of reasons demonstrating compliance with OAR 660-012-0070 as a part of the County's Comprehensive Plan.

4. OAR 660-012-0070(1)(b) – Substantial Evidence in the Record.

"The facts and reasons relied upon to approve or deny a proposed exception shall be supported by substantial evidence in the record of the local exceptions proceeding." OAR 660-012-0070(1)(b).

Applicants have submitted into the record documents, evidence, and testimony prepared by experts, as well as other evidence, testimony, and analysis, demonstrating satisfaction of the approval criteria in OAR 660-012-0070. The evidence submitted by Applicants constitutes evidence a reasonable decision maker would rely upon in reaching a decision and, therefore, is substantial evidence to support approval of the proposed exceptions. The remainder of this analysis is structured as follows:

- Section B addresses the need, mode, function and general location for the proposed Driveway per OAR 660-012-0070(3) and (4).
- Section C provides a brief summary of reasons justifying why the applicable goals should not apply per OAR 660-012-0070(4).
- Section D addresses the thresholds chosen to evaluate the reasonableness of the alternatives per OAR 660-012-0070(6).
- Section E is the required alternatives analysis for measures not requiring an exception per OAR 660-012-0070(4).
- Section F is the required alternatives analysis for locations not requiring an exception per OAR 660-012-0070(5).
- Section G is the required alternative analysis for alternative locations requiring an exception per OAR 660-012-0070(7).
- Section H addresses rural lands impacts likely to result from the Driveway per OAR 660-012-0070(8).

B. NEED, MODE, FUNCTION AND LOCATION OF PROPOSED EXCEPTION FACILITY

An exception for a transportation improvement on rural lands must "decide need, mode, function and general location for the proposed facility," pursuant to OAR- 660-012-0070(3) and (4). OAR 660-012-0070(3). It must also provide "a process and standards to guide selection of the design and location within the corridor consistent with the general description of the proposed facility." OAR 660-012- 0070(3)(c). The primary purpose of the analysis in this section is to provide an adequate factual basis for the required exception components specified in OAR 660-012-0070(3) and (4).

1. Need

An exception taken pursuant to OAR 660-012-0070 must "demonstrate that there is a transportation need identified consistent with the requirements of OAR 660- 012-0030 * * *." OAR 660-012-0070(4). OAR 660-012-0030, in turn, requires transportation system plans (TSPs) to "identify transportation needs relevant to the planning area and the scale of the transportation network[.]" OAR 660-012- 0030(1). "Minor transportation improvements," such as the "provision of local streets," are not required to be listed as planned projects in a TSP, if the project is otherwise consistent with the TSP. OAR 660-012-0005(26).

For purposes of OAR chapter 660, division 12, "transportation needs" means:

"estimates of the movement of people and goods consistent with an acknowledged comprehensive plan and the requirements of this division. Needs are typically based on projections of future travel demand resulting from a continuation of current trends as modified by policy objectives, including those expressed in Goal 12 and this division, and attaining the state's goals for greenhouse gas emissions reduction, especially those for avoiding principal reliance on any one mode of transportation."

660-012-0005(53).

The need for the Driveway is to provide access to the City Properties, which are vacant, industrial-zoned properties that do not have existing access and, therefore, cannot be developed currently. The Driveway is the only practicable alternative for providing access to the City Properties, as discussed further below. Without access, the City Properties will remain undevelopable permanently.

The following analysis of transportation needs in the Linn County TSP, and the goals and objectives of the TSP, support the need for the proposed Driveway. The TSP Amendment included in this Application (Tech Memo 7.1) further memorializes that need.

Linn County TSP, Vol. 2, Technical Memorandum #7: Future Transportation Conditions and Needs – Freight Needs.

The Linn County TSP identifies the need for freight mobility and resiliency. As stated in the TSP, "[e]fficient truck movement plays a vital role in the economical movement of raw materials and finished products." *Linn County TSP, Vol. 2, Technical Memorandum #7, p. 19 (Sept. 26, 2016)*. "With increased economic activity in Linn County . . . freight mobility and resiliency will remain an important element of the transportation system." *Id.*

Industrial development of the City Properties is expected to rely on freight movement via trucks and rail for the movement of raw materials and finished products. As documented in the Applicants' Transportation Planning Rule Assessment, prepared by Sandow Engineering (the TPR Assessment), attached as **Applicant Exhibit E (Exhibit A, Pages 95-180)**, the Driveway will be designed to accommodate truck access from Conser Road NE. Further, the City TSP classifies Conser Road NE as an Arterial, and the County TSP classifies it as a Major Collector; both are appropriate designations for the movement of freight. Accordingly, the Driveway supports the need identified in the TSP for freight mobility.

Linn County TSP, Vol. 1, Goal 7: Economy - Ensure the transportation system supports a prosperous and competitive economy.

The need for the Driveway is to provide access to future urban development on the City Properties, which are currently zoned for industrial use. The City has marketed the City Properties since 2018. Without access, the City Properties are undevelopable and unusable. Providing access to the City Properties supports a prosperous economy by facilitating use of urban lands within the UGB, which lands are currently planned for industrial development, consistent with the City's and County's comprehensive plans.

In addition, the anticipated development of the City Properties is consistent with other industrial uses located within the County, including Selmet, located along I-5, and the already well-developed lumber and wood products industry. According to technical memoranda prepared in support of the County's TSP, "Linn County's economy relies heavily on the lumber and wood products industry; in 1990, this industry accounted for 40% of the county's manufacturing jobs." *Linn County TSP, Vol. 2, Technical Memorandum #5: Existing Transportation Conditions, p. 1 (May 13, 2016)*.

For these reasons, the proposed driveway is consistent with Linn County TSP Goal 7, which identifies a need for the proposed Driveway, as required by OAR 660-012-0070(4).

Linn County TSP, Vol. 1, Objective 7a: Improve the freight system efficiency, access, capacity and reliability.

As stated above, industrial development of the City Properties is expected to rely on freight trucks for movement of raw materials and finished products, and the Driveway will be designed to accommodate truck access from Conser Road NE. The proposed Driveway is consistent with Linn County TSP Objective 7a, which identifies a need for the Driveway to improve freight access. In addition to freight truck deliveries, the City Properties will have access to rail service for freight movement. Rail service alone is insufficient to accommodate all freight deliveries as well as the movement of employees and working business visitors (vendors, subcontractors, etc.) to the property.

Linn County TSP, Vol. 1, Objective 7b: Identify transportation improvements that will enhance access to employment.

Development of the City Properties is also anticipated to generate new employment opportunities for the County and City, and the Driveway will provide the sole access to those employment opportunities. The City Properties are zoned for industrial use and could accommodate a range of industrial uses under the current zoning. Timberlab's innovative timber manufacturing and fabrication facility is one example of industrial development that may occur on the City Properties. If Timberlab proceeds to develop a timber manufacturing and fabrication facility, it expects to generate 35 new jobs by 2027, growing to more than 100 jobs by 2031 at the facility. The facility estimates the use of 75 million board feet of timber a year, which would further strengthen existing timber jobs in the County. Without the Driveway, the City Properties cannot be developed. The Driveway is consistent with Linn County TSP Objective 7b, which identifies a need for the Driveway to enhance access to employment.

Linn County TSP, Vol. 1, Goal 8: Coordination – Coordinate with local and state agencies and transportation plans.

The Driveway is also consistent with Linn County TSP Goal 8, to coordinate with local TSPs, including the City of Millersburg TSP. The City of Millersburg TSP has policies and objectives to "facilitate the movement of freight by rail and truck" and to "increase total number of jobs by enhancing freight mobility." City of Millersburg TSP, Goal 3, Objective 1. The Driveway is designed to accommodate freight traffic into and out of the City Properties and will provide access to the existing rail facility adjacent to the City Properties. Accordingly, the Driveway serves the needs identified in the City of Millersburg TSP to facilitate the movement of freight by truck and rail and to enhance freight mobility, and the Driveway is consistent with Linn County TSP Goal 8, which identifies a need to coordinate with the City of Millersburg TSP.

Linn County TSP, Vol. 1, Objective 8g: Coordinate the development of transportation facilities with other elements of the Comprehensive Plan policies.

Section 905.600 of the Land Use Element of the County's Comprehensive Plan emphasizes the importance of efficiently using land within the UGB. The proposed Driveway implements the County's Comprehensive Plan policies by allowing urban development where it is intended to be located: within the UGB. Without the proposed Driveway, the City Properties cannot be utilized—this would result in inefficient use of lands within the UGB and would necessarily place additional development pressure on other, nearby lands, including rural lands outside the UGB. The Driveway is consistent with Linn County TSP Objective 8g, which identifies a need to coordinate development of transportation facilities with other elements of the County's Comprehensive Plan.

2. Mode

OAR 660-012-0070(3) requires the exception to specify the mode of the transportation facility. The mode of the Driveway is ingress and egress for automobiles and freight trucks.

The Driveway will serve the City Properties, which are currently zoned for industrial use. It is anticipated that development of the City Properties will involve regular freight truck traffic. Accordingly, the proposed Driveway will accommodate passenger vehicles for staff working at facilities on the City Properties and freight trucks transporting manufactured goods to and from the City Properties.

3. Location

OAR 660-012-0070(3)(a) requires the general location of the proposed facility or improvement to be "specified as a corridor within which the proposed facility or improvement is to be located." "Specific sites or areas within the corridor may be excluded from the exception to avoid or lessen likely adverse impacts. Where detailed design level information is available, the exception may be specified as a specific alignment." OAR 660-012-0070(3)(a).

Applicant Exhibit C shows the location of the Driveway. The Driveway will be constructed within an access easement that is 100 feet wide at the point of intersection with Conser Road NE and 60 feet wide for the remainder of the easement. The Driveway is planned to intersect Conser Road NE at a point approximately 591 feet west of the railroad crossing. As the Driveway heads south from Conser Road NE through Tax Lot 402, it will curve east to minimize the impacts to farm operations on Tax Lot 402.

4. Function, Size, and Capacity

OAR 660-012-0070(3)(b) requires a general description of the size, design, and capacity of the proposed facility sufficient to understand likely impacts from the proposed facility and to justify the amount of land needed for the transportation facility. In this case, the function of the Driveway is to allow for local movement of vehicles entering and leaving the City Properties. This includes providing facilities for the roadbed, shoulders, drainage, and potential future improvements related to lighting, pedestrian access, and/or gates.

The Driveway is proposed to be a privately constructed and maintained access road and will not be a throughway. Therefore, it will not receive a functional classification in the County's TSP. The Driveway will connect to Conser Road NE. The portion of Conser Road NE located west of the railroad crossing is within the County's jurisdiction and is classified as a Major Collector. The portion of Conser Road NE located east of the railroad crossing is within the City's jurisdiction and is classified as an arterial street.

The Driveway will be designed to comply with all applicable codes and standards, including Linn County's access requirements, as detailed in **Applicant Exhibit F - Preliminary Design Basis of Design Report (Exhibit A, Pages 181-189)**.

5. Design Process

OAR 660-012-0070(3)(c) requires an adopted exception to include a process and standards to guide selection of the precise design and location of the transportation facility or improvement. Here, a driveway through Tax Lot 101 of Assessor's Map 10S-03W-29, Tax Lot 402 of Assessor's Map 10S-03W-20, or both, are the only practicable alternatives for providing access to the City Industrial Properties. Accordingly, the City's design process focused on siting a driveway within Tax Lots 101 or 402. The City

worked with the landowner of those tax lots to design the proposed Driveway in a way to minimize effects on farming operations on the remainder of the property, as discussed below.

C. REASONS THE PROPOSED GOAL EXCEPTIONS ARE JUSTIFIED

The first part of OAR 660-012-0070(4) requires: "To address Goal 2, Part II(c)(1) the exception shall provide reasons justifying why the state policy in the applicable goals should not apply." This section details the reasons and justifications for the proposed exceptions to Statewide Planning Goals 3 and 14. In summary, reasons justify the requested exceptions because:

- The proposed Driveway is the only practicable alternative to provide access to the City Properties. Without access, the City Properties are unusable. Providing access to the properties facilitates locating urban development where it is intended to occur, within the UGB, thereby minimizing development pressure on other, nearby lands outside the UGB.
- The proposed Driveway provides needed access for freight trucks and employees associated with future urban development of the City Properties, thereby supporting a prosperous and competitive economy for both the City and the County.
- The proposed Driveway will impact a small area of land (no more than 1.44 acres) in the EFU zone, and the impacts of the Driveway will be minimal, as detailed in this Application.
- County and City roadways and intersections have capacity to accommodate the proposed Driveway.
- The Driveway will allow use of the City Properties, which are ideally situated for industrial development. The City Properties are adjacent to existing rail lines that currently serve multiple industrial properties within the City. Due to the location and characteristics of the City Properties, including their proximity to rail, these properties have been designated for industrial use since before the City was incorporated.
- Although the Driveway will provide access to the City Properties, it will not provide access to properties within the UGB that are located west and south of the City Properties. As discussed in this narrative, the properties immediately west and south of the City Properties are not suitable for development due to the presence of an existing pond and a FEMA floodway designation.

D. ALTERNATIVES ANALYSIS – TRANSPORTATION FACILITY THRESHOLDS

OAR 660-012-0070 requires consideration of alternative methods and locations for the proposed transportation facility or improvement. Pursuant to OAR 660-012-0070(6), the local government must determine "transportation facility thresholds" to judge whether an alternative transportation method or location cannot reasonably accommodate the identified transportation need or location. The chosen thresholds can be used to explain why potential alternatives do not require detailed evaluation, and they may be used to evaluate alternatives in detail and explain how an exception satisfies the requirements of OAR 660-012-0070(4) and (5).

Thresholds used under OAR 660-012-0070(6) include "cost, operational feasibility, economic dislocation and other relevant factors." The justifications for the thresholds applied in this exception document are set forth in this section.

1. Cost

Pursuant to OAR 660-012-0070(6), cost is one of the factors that should be addressed to evaluate alternatives. Consideration of cost is consistent with County TSP Objective 6g ("[c]onsider costs and benefits when identifying project solutions") and City TSP Goal 6 ("*[m]aximize the cost-effectiveness of transportation improvements*"). The City Properties require access for the properties to be developable. If

the cost of access is too great, however, the City Properties will not be marketable and will remain undeveloped for their intended urban use. Based on the City's experience marketing the City Properties since 2018, the City believes that the City Properties will not be sellable if the cost to provide access exceeds the value of the properties. Accordingly, a threshold requirement is that the cost to provide access not exceed the market value of the City Properties.

2. Operational Feasibility

Pursuant to OAR 660-012-0070(6), "operational feasibility" is one of the factors that should be addressed to evaluate alternatives. Operational feasibility asks the question of whether a transportation improvement can be implemented and, if so, how. Thus, a threshold requirement is that the access alternative be (1) capable of providing passenger vehicle and freight truck access when applying construction solutions that are based on sound engineering principles and (2) legally approvable.

3. Economic Dislocation

Pursuant to OAR 660-012-0070(6), "economic dislocation" is another factor that should be addressed to evaluate alternatives. Economic dislocation is the term used to evaluate and describe impacts to neighborhoods and private property from new transportation facilities, and especially improvements that require the acquisition of right-of-way from private owners. In this case, the City negotiated with the owner of Tax Lot 402, Willamette Valley Land, LLC, to provide adequate compensation for the access easement for the Driveway.

4. Additional Railroad Crossing

Whether an access alternative requires creation of a new at-grade railroad crossing is an additional threshold consideration that must be addressed. The City Properties are located west of the railroad tracks owned by Burlington Northern Santa Fe and operated by Portland and Western Railroad. The railroad tracks separate the City Properties from the remainder of the City and from Interstate-5, which are both located east of the railroad tracks. Access to the City Properties from the City and from I-5 requires crossing the railroad.

There are currently two at-grade railroad crossings within the City limits: (1) at NE Conser Road and (2) at NE Millersburg Drive. The City asked Burlington Northern Santa Fe and Portland and Western Railroad for permission to establish an additional at-grade railroad crossing within the City, and the railroad companies denied that request. ODOT Commerce and Compliance Division (formerly ODOT Rail) has exclusive authority to control and regulate at-grade railroad crossings, and state policy discourages such crossings. ORS 824.202; OAR 741-100-0005. Limiting additional railroad crossings and reserving railroad right-of-way is also consistent with Linn County TSP Objective 8h, to "[e]ncourage preservation of rail right-of-way," and City TSP Goal 3, to "preserve the mobility of existing freight routes to ensure the efficient movement of goods." Accordingly, a threshold requirement for the alternatives analyses required by OAR 660-012-0070(4) and (5) is that an access alternative may not require the establishment of an additional at-grade railroad crossing.

5. Railroad Safety

Railroad safety is another factor that must be considered when evaluating access alternatives. The City's TSP Goal 3 includes the policy to "promote intermodal safety at and near railway crossings."

As specified in the City's Preliminary Design Basis of Design Report, attached as Applicant Exhibit F, ODOT Commerce and Compliance Division's regulations establish safe stopping distances (SSDs) measured 15

feet from the nearest rail. Based on ODOT Rail's SSDs and the Conser Road statutory speed limit (55 mph), a transportation facility must be 510 feet from the nearest rail of the Burlington Northern Santa Fe and Portland and Western Railroad to avoid impacting the rail crossing. Thus, a threshold requirement is that an access alternative may not require siting an access road on Conser Road within 510 feet of an existing railroad crossing.

6. Freight Access

Freight access is another factor that must be considered when evaluating access alternatives. The City Properties are zoned for industrial use, and it is anticipated that such uses will involve regular freight truck traffic. Providing efficient freight access is consistent with the need identified in the Linn County TSP to provide efficient truck movement and with Linn County TSP Objective 7a to "[i]mprove the freight system efficiency, access, capacity and reliability." Accordingly, a threshold requirement is that an access alternative must allow for efficient movement of freight trucks.

E. ALTERNATIVES ANALYSIS FOR ALTERNATIVE MEASURES NOT REQUIRING AN EXCEPTION

For the requested Goal Exception, Statewide Planning Goal 2, Part II C(1) is implemented by OAR 660-012-0070(4), which requires an exception to demonstrate that the identified transportation need cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception:

1. Alternative Modes of Transportation (OAR 660-012-0070(4)(a))

The transportation need is to provide access to the City Properties, which are urban properties that do not have existing access. The properties are anticipated to be developed for industrial use. Based on future anticipated development of the properties, access is needed for freight trucks and for employee vehicles. The access need cannot be met solely by alternatives to single occupancy and/or freight vehicles. Therefore, the proposed Driveway is needed for vehicular access. Accordingly, this alternative cannot accommodate the identified transportation need and does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

2. Traffic Management Measures (OAR 660-012-0070(4)(b))

Traffic management measures attempt to intervene in the transportation system to better manage the flow of traffic on the current roadway system. Examples of traffic management measures include traffic signal improvements and coordination, roundabouts, and speed humps. In this case, traffic management measures are not a viable option to provide access to the City Properties, as the City Properties currently lack any means of access, regardless of how the current roadway system is managed. Accordingly, this alternative cannot accommodate the identified transportation need and does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required. We further note that provision of the Driveway on Conser Road NE does not preclude any future efforts by the City or County to implement traffic management measures on the roadway system to increase operational efficiency of existing and planned investments.

3. Improvement to Existing Transportation Facilities (OAR 660-012-0070(4)(c))

The City Properties currently do not have road access and are not adjacent to any existing transportation facilities that could provide access if improved. Thus, there are no existing transportation facilities that

could be improved to provide access to the City Properties. Accordingly, this alternative does not accommodate the identified transportation need and does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

In sum, the transportation need identified in Section B and described in Tech Memo 7.1—providing access to the City Properties—cannot be accommodated through any one or a combination of the alternative measures listed in OAR 660-012-0070(4).

F. ALTERNATIVES ANALYSIS FOR ALTERNATIVE LOCATIONS NOT REQUIRING AN EXCEPTION

OAR 660-012-0070(5) requires a demonstration that alternative locations not requiring a goal exception cannot reasonably accommodate the proposed transportation or facility. The rule provides that the thresholds identified above, pursuant to OAR 660-012-0070(6), may be applied to eliminate alternatives that do not meet the identified thresholds. That evaluation must establish an adequate factual basis that an exception is required to meet the identified transportation need and that a location not requiring an exception to satisfy the identified need is not practicable.

As demonstrated below, there are no possible alternative locations for the Driveway that do not require an exception. All possible alternative locations not requiring an exception do not meet the thresholds identified by the Applicants and justified in this exception document.

1. Description of Potential Alternative Locations

Applicants identified all possible locations not requiring an exception to the statewide planning goals to provide access to the City Properties. These alternatives are described as follows:

a. Access via Tax Lot 106

A narrow strip of land comprising the northern portion of Tax Lot 106 of Assessor's Map 10S-03W-29 connects the City Properties to Conser Road NE. This strip of land is approximately 40 feet wide and is located within the City's UGB. A portion of the strip of land is covered by an 18-foot-wide Pacific Power easement with existing utility poles. As well, the strip of land is directly adjacent to the Burlington Northern Santa Fe/Portland and Western Railroad tracks. Due to its location adjacent to the railroad tracks and the Pacific Power easement, the strip of land is partially covered by steep slopes and power poles.

b. Extension of NE Arnold Road with New At-Grade Railroad Crossing (No Closure of Conser Road NE Crossing)

Applicants considered providing access to the City Properties via a westward extension of NE Arnold Road with a new at-grade railroad crossing at NE Arnold Road. This alternative did not include a closure of the existing railroad crossing at Conser Road NE.

c. Extension of NE Arnold Road with New At-Grade Railroad Crossing (With Closure of Conser Road NE Crossing)

Applicants considered providing access to the City Properties via a westward extension of NE Arnold Road with a new at-grade railroad crossing at NE Arnold Road. This alternative included a closure of the existing railroad crossing at Conser Road NE. This alternative would result in Conser Road NE "dead-ending" at the location of the existing crossing, unless a connection were provided between Conser Road NE and the new crossing.

d. Extension of NE Arnold Road with New Above- or Below-Grade Railroad Crossing

Applicants considered providing access to the City Properties via a westward extension of NE Arnold Road with a new above- or below grade railroad crossing.

e. Connection to Existing At-Grade Railroad Crossing Adjacent to International Paper Company Property

Applicants considered providing access to the City Properties via an existing at-grade railroad crossing located south of the City Properties. Accessing the crossing from the City Properties requires travel through Tax Lot 401 of Assessor's Map 10S-03W-29 and Tax Lot 100 of Assessor's Map 10S- 03W-33, which lots are owned by International Paper Company (together, the IPC Property). The IPC Property is predominantly covered by a large pond on the east part of the property and the Willamette River floodway, on the west part of the property. Accessing the railroad crossing from the City Properties would require travelling along the east side of the pond located on the IPC Property. (Travel along the west side of the pond is not feasible due to steep slopes and the presence of the FEMA floodway designation.) On the east side of the pond, there is a large berm and a Pacific Power easement with existing utility poles. The berm and the easement/utility poles are located in the narrow space between the pond and the Burlington Northern Santa Fe/Portland and Western Railroad tracks.

The at-grade crossing located adjacent to the IPC Property is not a public crossing. Burlington Northern Santa Fe/Portland and Western Railroad will not approve a public crossing at this location. The railroad companies advised the City that they would allow use of this crossing only if the City requested permission to use the crossing at least 24 hours in advance, which permission the railroad companies could grant or deny, and only if the City agreed to indemnify the railroad companies for any injury resulting from use of the crossing.

f. Connection to Existing Below-Grade Crossing Owned by ATI Specialty Alloys & Components LLC and Extension to Nygren Road

Applicants considered providing access to the City Properties by connecting to an existing below-grade railroad crossing located south of the City Properties and owned by ATI Specialty Alloys & Components LLC (ATI). The ATI undercrossing connects to an extension of NE Nygren Road. Connection to this below-grade crossing would require travel through the IPC Property, described above. In addition, the below-grade crossing is located on property owned by ATI, which contains government-required Security Access Restrictions.

The below-grade crossing owned by ATI was constructed in the 1950s and does not meet current access standards for vertical and horizontal dimensions. It is too narrow (only 12 feet) and too short to accommodate emergency vehicles, such as fire trucks, or freight trucks, and it cannot be modified unless a new crossing application was pursued.

g. Connection to the South to Albany

The nearest existing public railroad crossing to the south of the City Properties is in the City of Albany at Davidson Street NE. The City considered constructing roads to the south to connect to the existing crossing at Davidson Street NE. The Davidson Street NE crossing is located over two miles south of the City Properties. Connection to this public crossing would require travel over a current bridge with a weight restriction limited to single lane access, and through the IPC and ATI Properties, described above, in addition to travel through several sites with restricted access, including the Talking Water Gardens and Simpson Park.

h. Willamette Bridge Crossing

The Willamette River is located west of the City Properties. The City considered the possibility of establishing a bridge across the river to access the City Properties. This alternative would also create a connection to areas outside of the UGB.

2. Evaluation of Alternative Locations Not Requiring an Exception

After identifying all possible locations not requiring an exception to provide access to the City Properties, Applicants then applied the thresholds in Section D, above, to evaluate the alternative locations. For ease of reference, the thresholds determined by Applicants are listed here:

- Threshold 1: Cost
- Threshold 2: Operational Feasibility
- Threshold 3: Economic Dislocation
- Threshold 4: Additional Railroad Crossing
- Threshold 5: Railroad Safety
- Threshold 6: Freight Access

Based on application of the thresholds, all alternatives were eliminated from further evaluation, as follows:

a. Access via Tax Lot 106

Although the strip of land comprising the northern portion of Tax Lot 106 touches both Conser Road NE and the City Properties, Applicants determined that it cannot provide adequate physical access to the City Properties, because the strip is partially covered (i) by steep slopes due to proximity to the adjacent railroad tracks and (ii) by existing utility poles within the 18-foot-wide Pacific Power easement. As such, the strip is not wide enough to accommodate a driveway to serve the City Properties and does not meet Threshold 2: Operational Feasibility.

In addition, utilizing the strip to provide access between the City Properties and Conser Road NE would require placement of the driveway within 510 feet of the existing Conser Road NE railroad crossing. For that reason, this alternative does not meet Threshold 5: Railroad Safety.

Finally, the strip of land connects to Conser Road NE at an angle that would not accommodate truck turning radii. Therefore, this alternative would not allow freight access to the City Properties and does not meet Threshold 6: Freight Access. For these reasons, this alternative does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

b. Extension of NE Arnold Road with New At-Grade Railroad Crossing (No Closure of Conser Road NE Crossing)

The City considered providing access to the City Properties via a westward extension of NE Arnold Road with a new at-grade railroad crossing at NE Arnold Road. Because this alternative would require establishment of an additional at-grade railroad crossing, it does not meet Threshold 4: Additional Railroad Crossing. For that reason, this alternative does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

c. Extension of NE Arnold Road with New At-Grade Railroad Crossing (With Closure of Conser Road NE Crossing)

As an alternative to provide access to the City Properties via a westward extension of NE Arnold Road, the City considered closing the existing railroad crossing at Conser Road NE and establishing a new railroad crossing at NE Arnold Road. This alternative would result in a dead-end at the existing Conser Road NE crossing. Dead-ending Conser Road NE would reduce local connections and create inefficient freight travel. This is also inconsistent with the functional classification maps in both the County and City TSPs. Accordingly, this alternative does not meet Threshold 6: Freight Access.

As a variation on this alternative, if the existing crossing at Conser Road NE were closed, a connection could be provided between Conser Road NE and the new crossing at the westward extension of NE Arnold Road. Providing this connection would require siting a road in the location of the Driveway, and therefore would require a goal exception. As well, detouring Conser Road NE traffic through NE Arnold Road would create an inefficient travel route for existing traffic, including heavy farm equipment, that currently utilizes Conser Road NE, and would impact all intercity movement that is intended by Major Collector/Arterial designations in the County and City TSPs. Therefore, this alternative variation does not meet Threshold 6: Feight Access.

For those reasons, this alternative does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

d. Extension of NE Arnold Road with New Above- or Below-Grade Railroad Crossing

The Applicants also considered providing access to the City Properties via a westward extension of NE Arnold Road with a new above- or below grade railroad crossing.

The City's consultant analyzed the cost and size of railroad overcrossings that are comparable to an overcrossing that would need to be constructed to access the City Properties, as summarized in **Applicant Exhibit G – Railroad Overcrossing Cost Estimate (Exhibit A, Pages 189-191)**. Based on that analysis, the estimated cost of an above-grade crossing could range from \$25 million to \$40 million. Thus, the cost of an above-grade crossing exceeds the value of the City Properties (i.e., less than \$5 million), and an above-grade crossing alternative does not meet Threshold 1: Cost.

The City also considered the constructability of below-grade crossing to provide access to the City Properties. As detailed on the City's Undercrossing Feasibility Evaluation attached as **Applicant Exhibit H – Undercrossing Feasibility Evaluation (Exhibit A, Pages 192-195)**, construction of a railroad undercrossing at the westward extension of NE Arnold Road is not feasible due to lack of appropriate drainage and conflicts with existing utilities. Thus, a below grade crossing alternative does not meet Threshold 2: Operational Feasibility.

Accordingly, this alternative does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

e. Connection to Existing At-Grade Railroad Crossing Adjacent to International Paper Company

Applicants considered providing access to the City Properties via the existing at-grade crossing located directly east of the IPC Property. Accessing the existing crossing from the City Properties would require constructing a driveway along the eastern side of the pond on the IPC Property. Due to the large berm and power poles, the area between the pond and the railroad tracks is not wide enough to construct a driveway that can accommodate regular passenger and freight truck travel. In addition, the existing crossing is not a public crossing. Therefore, this alternative would require establishing a new public crossing at the existing crossing location. Accordingly, this alternative does not meet Threshold 2: Operational Feasibility or Threshold 4: Additional Railroad Crossing. Accordingly, this alternative does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

f. Connection to Existing Below-Grade Railroad Crossing Owned by ATI and Extension to NE Nygren Road
Applicants considered providing access to the City Properties by connecting to an existing below-grade railroad crossing located south of the City Properties and owned by ATI, which undercrossing connects to NE Nygren Road. Connection to this below-grade crossing would require travel through the IPC Property, described above. For that reason, this alternative does not meet Threshold 2: Operational Feasibility.

As well, the ATI property on which the crossing is located is subject to government-required Security Access Restriction. In addition, the below grade crossing owned by ATI was constructed in the 1950s and does not meet current access standards for vertical and horizontal dimensions. It is too narrow (only 12 feet) and too short to accommodate emergency vehicles, such as fire trucks, or freight trucks. For those additional reasons, the alternative does not meet Threshold 2: Operational Feasibility or Threshold 6: Freight Access. Accordingly, this alternative does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

g. Connection to the South to Albany

The City considered constructing roads south of the City Properties to connect to the existing railroad crossing at Davidson Street NE, located within the City of Albany. This alternative is not operationally feasible, because it would require a connection to be established through the IPC Property. In addition, it would require travel over several sites with restricted access, including ATI, the Talking Water Gardens and Simpson Park. Thus, this alternative does not meet Threshold 2: Operational Feasibility. Accordingly, this alternative does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

h. Willamette Bridge Crossing

The City considered the possibility of establishing a bridge across the river to access the City Properties. However, no additional bridges across the river are currently proposed or planned. Accordingly, this alternative is not operationally feasible and does not meet Threshold 2: Operational Feasibility. For that reason, this alternative does not meet the thresholds identified by the Applicants and justified in this exception document. Pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation of this alternative is required.

In sum, as demonstrated above, all possible alternative locations not requiring an exception do not meet the thresholds identified by the Applicants and justified in this exception document. Accordingly, pursuant to OAR 660-012-0070(6)(b), no further detailed evaluation is required for any alternative location not requiring an exception to the statewide planning goals.

G. Alternatives Analysis for Alternative Locations Requiring an Exception

After determining that the identified transportation need cannot be practicably accommodated through alternative measures or locations not requiring an exception, as shown in the analysis above, analysis of alternative locations requiring an exception is required by Statewide Planning Goal 2, Part II C(3), as implemented by OAR 660-012-0070(7).

Based on the alternatives analysis and targeted mitigation strategies described in this section, the Application seeks approval of the least impactful alignment of the Driveway, which is shown in Applicant Exhibit C (the **Proposed Alignment (Exhibit A, Pages 90-91)**).

This Section G is organized as follows:

- Subsection 1 describes potential alternative locations for the Driveway.
- Subsection 2 describes consequences of locating the Driveway in potential alternative locations.
- Subsection 3 describes mitigation strategies that Applicants employed to identify the least impactful alignment of the driveway, which is the Proposed Alignment.
- Subsection 4 describes consequences of locating the Driveway in the Proposed Alignment.

1. Description of Alternative Locations

OAR 660-012-0070(7)(a) requires a description of "the characteristics of each alternative location considered * * * for which an exception might be taken."

Due to the location of the City Properties, access alternatives are extremely limited. Access to the City Properties from the east and south is constrained by the Burlington Northern Santa Fe/Portland and Western Railroad tracks, and access from the west is constrained by the Willamette River. As set forth above, there are no locations to the east, south, or west that can reasonably accommodate access to the City Properties. Accordingly, the only lands that can reasonably accommodate access to the City Properties are to the north.

Lands to the north of the City Properties are all EFU-zoned lands, which all require an exception to authorize development of a driveway. Thus, the only possible alternative locations to consider under OAR 660-012-0070(7) are alternative alignments of the driveway within the EFU-zoned properties located north of the City Properties.

As shown on Exhibit A, access to the City Properties requires locating a driveway in Tax Lot 101 of Assessor's Map 10S-03W-29, Tax Lot 402 of Assessor's Map 10S-03W-20, or both. Tax Lots 101 and 402 are both zoned EFU and are currently in farm use. Accordingly, the alternatives considered are different possible alignments of the driveway through Tax Lots 101, 402, or both.

2. ESEE Consequences of Alternative Driveway Alignments

OAR 660-012-0070(7)(a) requires a comparison of long-term economic, social, environmental, and energy (ESEE) consequences of the proposed alternative locations requiring an exception. This analysis must describe "the typical advantages and disadvantages of using the location for the proposed transportation facility or improvement, and the typical positive and negative consequences resulting from the transportation facility or improvement at the proposed location[.]" OAR 660-012-0070(7)(a).

In this case, all of the "alternatives" for the location of the Driveway are similar: they are all within Tax Lots 101, 402, or both. As such, there are no material differences in the evaluation of ESEE consequences among the alternatives. As a result, no alternative evaluated under OAR 660-012-0070(7)(a) would result in significantly more adverse net ESEE impacts than any other alternative evaluated under this rule, as further discussed in this section. See OAR 660-012-0070(7)(b).

The following paragraphs compare potential ESEE consequences of locating the Driveway at alternative locations in Tax Lot 101 and 402.

a. Economic

The economic consequences of the Driveway, whether it is located on Tax Lot 101, 402, or both, can be measured by weighing the economic loss of farmland in agricultural use against the economic gains that may result from the proposed driveway.

The primary negative economic consequence of the Driveway will be the loss of farmland planned and zoned for agricultural use. Agriculture is one of the largest industries in Linn County and is an economic activity that Oregon seeks to protect statewide. Accordingly, removal of land from agricultural use has a negative effect on the County's agriculture industry. In this case, the amount of farmland proposed to be removed from agricultural use for the Driveway (1.44 acres) is very small as compared to the area of Tax Lot 402 (approximately 100 acres) and the area of Tax Lot 101 (approximately 63 acres).

Another negative economic consequence of the Driveway relates to the potential for bifurcating farmland, which could limit the productivity or usability of the land that is separated from other lands under farm use. Negative economic consequences of bifurcating farmland can be mitigated through measures facilitating access to the bifurcated land. Driveway alignments that bifurcate a larger amount of farmland have potential for greater negative economic consequences than alignments that bifurcate a smaller amount of farmland.

The Proposed Alignment was selected to minimize the total amount of farmland impacted by the Driveway and minimize the amount of farmland bifurcated by the Driveway, as further discussed below. Accordingly, the negative economic effect of the Driveway on agricultural use (if any) is extremely limited.

The positive economic consequences of the Driveway stem from potential future urban development of the City Properties. The City Properties are within the UGB and are zoned for industrial use. Without the proposed driveway, the City Properties have no access and are unusable. Accordingly, the Driveway allows the City Properties to be developed for their intended use. Industrial development of the City Properties is intended to produce substantial economic benefits, including new jobs for City and County residents and strengthening of the County's and City's industrial economy.

As well, providing access to the City Properties facilitates urban development within the UGB, where such use is intended, and reduces urban development pressure on rural lands. In that way, the Driveway supports the preservation of agricultural land. The positive economic consequences of the Driveway are the same for all of the alternative driveway alignments.

b. Social

Negative social consequences of the Driveway may include noise, visual impacts, and increased traffic associated with use of the Driveway to serve potential future development of the City Properties. However, these impacts are expected to be very minimal, and the Proposed Alignment for the Driveway (as discussed further below) was identified with the express purpose of minimizing these adverse impacts to the maximum extent practicable.

The Driveway may generate noise from vehicle and truck travel. The nearest residence to the west of the Driveway is approximately one-quarter mile west of the western edge of Tax Lot 402, and the nearest residences to the east of the Driveway are located east of the railroad tracks. Noise impacts to residences may be reduced by shifting the Driveway away from the residential use. However, Conser Road NE is currently used for truck and large farm equipment travel in connection with agricultural operations. Accordingly, the noise generated by the use of the Driveway would be comparable to the noise

generated by existing traffic on Conser Road NE. For that reason, and due to the distance of the Driveway from nearby residences, noise impacts of the Driveway will be minimal.

Another potential social consequence of the Driveway is visual impacts. However, the Driveway, by its nature, is low in profile. In addition, as described above, the Driveway is some distance from the nearest residences. Thus, visual impacts will be minimal.

Use of the Driveway to serve future development of the City Properties may also cause increased traffic from existing levels on Conser Road NE. Analyzing traffic impacts of specific future development of the City Properties is outside of the scope of the Application. However, the TPR Assessment analyzes impacts of hypothetical industrial development of those properties, based on the current zoning that applies to the properties. As demonstrated by the TPR Assessment, increased traffic resulting from potential future industrial development of the City Properties will not cause local roads to fail to meet applicable transportation performance thresholds. Traffic impacts from the alternative driveway alignments do not differ significantly, except that siting driveway alignments further westward would result in slightly increased impacts to County roads.

Positive social consequences from the Driveway include increased employment opportunities stemming from future development of the City Properties.

c. Environmental

Negative environmental consequences of the Driveway may include minor impacts to wetlands or streams located on Tax Lots 402 and/or 101. Due to the small size of the Driveway, such impacts would be limited and would be mitigated to the extent required by state or federal law, regardless of where the Driveway is ultimately located.

Wetlands on Tax Lots 402 and 101 were delineated in 2023, and the Oregon Department of State Lands ("DSL") issued concurrence decisions approving those delineations on June 22, 2023 and November 7, 2023. See **Applicant Exhibit I – DSL Approval of Wetland Delineations (June 22, 2023 and November 7, 2023)(Exhibit A, Pages 196-213)**. As indicated by Exhibit I, there are approximately 6.80 acres of state jurisdictional wetlands on Tax Lots 402 and 101. The wetlands are dispersed within Tax Lots 402 and 101, with some of the delineated wetlands on the western portions of the properties and some on the eastern portions of the properties. In addition, there are two natural waterways, including the Willamette River, on the southern and western edges of the properties. The wetlands and waterways are subject to Oregon's Removal-Fill Law. Accordingly, the Applicants, will be required to comply with all requirements of the Removal-Fill Law, including, if required by state law, obtaining prior DSL approval before disturbing these wetlands and waterways and minimizing or mitigating impacts to the extent required by state law.

To date, none of the wetlands on Tax Lots 402 or 101 have been determined to be subject to federal jurisdiction under Section 404 of the Clean Water Act. If wetlands on Tax Lots 402 or 101 are determined to be federally jurisdictional, then Applicants would be required to comply with all applicable federal requirements under the Clean Water Act (in addition to the state Removal-Fill Law) to minimize and mitigate impacts to those wetlands.

d. Energy

Energy consequences of the Driveway stem from use of the Driveway by automobiles and trucks to travel to and from the City Properties. Negative energy consequences relate to increased driving, and therefore increased energy consumption. Development of the City Properties is consistent with the City's Comp Plan policies, however, which require that job-generating land uses be located close to housing; this results in

less driving, and thus less energy consumption. As noted, all of the alternative Driveway alignments are within Tax Lots 101, 402, or both. The alternative alignments exist within a relatively close geography, and therefore have very similar energy consequences.

3. Targeted Mitigation Strategies

The alternative analysis under OAR 660-012-0070(7) requires consideration of measures to mitigate adverse effects of the proposed Driveway. The City worked closely with the owner of Tax Lots 101 and 402, Willamette Valley Land, LLC, to identify the least impactful alignment of the driveway across those properties. That alignment is the Proposed Alignment shown on Applicant Exhibit C (**Exhibit A, Pages 90-91**).

The City identified the following mitigation measures for the Driveway, which are already incorporated into, and implemented by, the City's agreement with the landowner:

- minimize the area of farmland directly affected by the Driveway by siting the Driveway to provide the most direct route between the City Properties and Conser Road NE, while still meeting operational and safety thresholds;
- maximize the amount of land that remains under farming by allowing Willamette Valley Land, LLC to continue to farm approximately 4.8 acres within Tax Lot 206 of Assessor's Map 10S-03W-29 that is currently under farm use, but that is owned by the City and within the UGB;
- site the Driveway to minimize the amount of farmland that is bifurcated from the remainder of the property;
- locate the Driveway on the east side of the farmland properties (near the railroad tracks) to minimize noise and traffic impacts to rural residences located west of the property; and
- provide for timely reconstruction of the existing waterline and drip irrigation system following construction of the Driveway to ensure that construction of the Driveway does not negatively impact farming operations on the property.

4. Determination of Net Adverse ESEE Impacts with Targeted Mitigation

OAR 660-012-0070(7)(b) requires a determination of "whether net adverse impacts associated with the proposed exception, with mitigation measures designed to reduce adverse impacts, are significantly more adverse than the net impacts from other locations which would also require an exception." A proposed exception fails to comply with OAR 660-012-0070(7)(b) only if "the impacts associated with it are "significantly more adverse than other exception sites."

The following ESEE consequences may be observed when mitigation measures are imposed to reduce adverse effects:

a. Economic

As stated above, the economic consequences of the Driveway can be measured by weighing the economic loss of farmland in agricultural use against the economic gains that may result from the Driveway.

The targeted mitigation measures discussed above reduce the negative economic consequence of the Driveway by strategically locating the Driveway. The centerline of the Proposed Alignment intersects Conser Road NE at a point approximately 591 feet west of the nearest rail of the railroad crossing. Traveling south from Conser Road NE, the Proposed Alignment curves to the east to minimize the amount of farmland in the northeast corner of Tax Lot 402 that is bifurcated from the remainder of the property.

The total area of the proposed Driveway in the Proposed Alignment is 1.44 acres. Tax Lot 402 is approximately 100 acres. Accordingly, the Proposed Alignment will remove approximately 1.44 percent of the total parcel from farm use.

In addition, the mitigation measures allow for continued farming of an additional 4.8 acres. The owner of Tax Lot 402 is currently mistakenly farming a portion of Tax Lot 206 (approximately 4.8 acres), which is owned by the City. As part of the City's agreement with the landowner, the City will lease those 4.8 acres to the landowner to allow continued farming of those lands. Thus, the agreement keeps 4.8 acres in farm use and offsets the portion of farmland that would be lost to develop the Driveway.

The positive economic consequences of the proposed Driveway are the same for all alignments.

b. Social

As discussed above, potential negative social consequences of the Driveway include noise and increased traffic associated with use of the Driveway to serve potential future development of the City Properties. To mitigate these negative social consequences, the Proposed Alignment locates the driveway on the east side of Tax Lot 402, away from rural uses to the west.

Potential positive social consequences includes increased employment opportunities stemming from future development of the City Properties. These positive social consequences are the same for all potential alignments of the Driveway.

c. Environmental

A potential negative environmental consequence of the Driveway is impacts to wetlands and waterways. As discussed above, there are approximately 6.80 acres of state-jurisdictional wetlands and two natural waterways, including the Willamette River, on Tax Lots 402 and 101. Approximately 0.14 acres of the wetlands are located within the access easement for the Driveway, as shown on the wetlands map attached as **Applicant Exhibit K (Exhibit A, Pages 230-231)**. Accordingly, development of the Driveway in the Proposed Alignment has the potential to impact up to 0.14 acre of state-jurisdictional wetlands. The Proposed Alignment would not impact any of the natural waterways.

The alignment of the Driveway could potentially be shifted south or west to avoid any impact to wetlands. However, relocating the Driveway south or west of the Proposed Alignment would impact a greater extent of farmland, because it would require moving the Driveway away from the eastern edge and toward the center of the farmland property. As discussed above, it is not feasible to locate the Driveway farther east to fully avoid wetlands, due to site limitations adjacent to the railroad.

Because of the small area of wetlands impacted (no greater than 0.14 acre), and because the wetlands are subject to state Removal-Fill Law that requires a state permit for cumulative fill or annual excavation of 50 cubic yards or more, the Proposed Alignment does not have an impact on wetlands that is "significantly more adverse" than other possible alignments of the Driveway. Further, as discussed throughout this Application, although the proposed Driveway alignment will result in unavoidable impacts to up to 0.14 acres of wetlands, the proposed alignment was selected because it best balances these unavoidable environmental impacts with the other negative and positive ESEE impacts identified herein.

d. Energy

The mitigation measures do not affect the analysis of energy consequences of the proposed driveway alternatives.

Where a proposed goal exception is located on lands subject to Goal 3, OAR 660-012-0070(7)(b) also requires that the exception include facts concerning the following:

- Facts Used to Determine Which Resource Land is the Least Productive. Where a proposed goal exception location is on resource lands subject to Goal 3, OAR 660-012-0070(7)(b) requires the exception to include facts used to determine which resource land is least productive. **Exhibit J – NRCS Soils Map Evaluation (Exhibit A, Pages 214-229)** identifies the soil types on Tax Lots 101 and 402. As detailed in Exhibit J, most of the eastern portions of Tax Lots 101 and 402 are Amity silt loam soils (Map Unit 3) and Concord silt loam soils (Map Unit 27), which have NRCS Farmland Classifications of "Prime farmland if drained" and "Farmland of statewide importance," respectively. The western portion of Tax Lots 402 and the southwestern portion of Tax Lot 101 are mostly covered by Woodburn silt loam soils, 0 to 3 percent slopes (Map Unit 106A), which have an NRCS Farmland Classification of "Prime farmland." The entire area for the Proposed Alignment of the Driveway features Amity silt loam soils (Map Unit 3). Tax Lot 402 is drained, so this area is classified a Prime farmland. However, there is no way to avoid impacts to Prime farmland without shifting the Driveway westward, which would require extending the length of the Driveway and would necessarily impact more Prime farmland than would be impacted under the Proposed Alignment.
- Ability to Sustain Resource Uses Near the Proposed Use. Where a proposed goal exception location is on resource lands subject to Goal 3, OAR 660-012-0070(7)(b) requires the exception to include facts used to determine the ability to sustain resource uses near the proposed use.

As already discussed, the City worked closely with the owner of Tax Lot 402 to site the Driveway to allow continued farming use of that property. The access agreement for the Driveway includes several measures intended to allow for continued farming use of the portions of Tax Lot 402 on both sides of the Driveway, which are discussed above.

In addition, as discussed in Section H, below, traffic associated with the Driveway will not inhibit use of Conser Road NE by farm vehicles, and the Driveway will not otherwise impede farm uses in the surrounding area.

- Long-Term Economic Impact on the General Area Caused by Irreversible Removal of the Land from the Resource Base. Where a proposed goal exception location is on resource lands subject to Goal 3, OAR 660-012-0070(7)(b) requires the exception to include facts used to determine the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. This analysis is provided above, in relation to economic consequences of the Driveway.

In sum, the alternative locations considered for purposes of OAR 660-012-0070(7) are alternative Driveway alignments across Tax Lots 101 and 402. Due to similar locations of the alignments, the net ESEE impacts are generally comparable across the alternatives. By applying targeted mitigation measures already implemented through the City agreement with the landowner, the City identified the Proposed Alignment, which reduced negative economic, social, and environmental impacts of the Driveway by, among other considerations: reducing the amount of farmland directly affected by the Driveway, facilitating continued farming of lands where the Driveway is proposed to be located, and locating the Driveway away from rural uses to the west.

The Proposed Alignment has the potential to impact up to 0.14 acres of state jurisdictional wetlands. Although alternative alignments of the Driveway could have avoided impacts to wetlands, such alignments would impact a greater extent of Prime farmland, because they would require moving the Driveway away from the eastern edge of Tax Lot 402. Given the small extent of the potential impact to wetlands, and Applicants' obligation to comply with all applicable state and federal regulatory

requirements concerning wetland fill or removal, the Proposed Alignment does not have an impact on wetlands that is "significantly more adverse" than other possible alignments of the Driveway, and it does not result in collective ESEE impacts that are "significantly more adverse" than other possible alignments.

Accordingly, none of the ESEE impacts associated with the proposed driveway alignment are "significantly more adverse" than the impacts of possible alternative alignments, as the Proposed Alignment was selected with the express goal of minimizing adverse ESEE impacts, and this requirement is met.

H. Rural Lands Analysis

This section analyzes impacts to rural lands to provide an adequate factual basis to satisfy the requirements of OAR 660-012-0070(8).

The County previously considered impacts to rural lands from a driveway substantially similar to the proposed Driveway. See Applicant Exhibit B - Notice of Decision for File No. PLN-2022-00765. The County found that the driveway in that case, which was proposed to serve an agricultural chemical and fertilizer manufacturing facility on the City Properties, would not "force a significant change in or significantly increase the cost of accepted farming practices on surrounding lands," because:

- the driveway would not significantly alter farm practices, including hay and hazelnut production, on surrounding properties;
- access to adjacent properties would be unaffected by the driveway; and
- all facilities and operations associated with development of the City Properties, other than the driveway, would occur within the City limits, a significant distance away from nearby farm parcels.

The findings in the Planning Director's decision in PLN-2022-00765 apply similarly to the Driveway proposed in this Application, which would likewise be located on Tax Lot 402 and would provide access to the City Properties. In addition to the County's prior relevant findings, the following sections analyze potential impacts from the Driveway on rural lands.

1. Potential Adverse Effects on Rural Lands and Land Uses

OAR 660-012-0070(8)(a) requires a description of "the adverse effects that the proposed transportation improvement is likely to have on the surrounding rural lands and land uses, including increased traffic and pressure for nonfarm or highway oriented development on areas made more accessible by the transportation improvement[.]"

The Driveway is proposed to be sited on Tax Lot 402, which is EFU-zoned land. The properties to the north and west of Tax Lot 402 are also zoned EFU. The properties to the south and east of Tax Lot 402 are within the City's UGB and within City limits. Accordingly, this section focuses on potential effects to EFU lands to the north and west of Tax Lot 402.

- Traffic on Conser Road NE. Conser Road NE is designated as a Major Collector, which is intended to serve all surrounding farmlands, as well as provide for inter-city travel. The road provides access to farmland and agricultural operations in Linn County, including a large dairy and a hazelnut processing facility. Accordingly, farm vehicles currently use Conser Road NE in connection with farming operations. Although future development of the City Properties is outside the scope of this Application, the proposed Driveway will direct traffic from such development to and from Conser Road NE, thereby increasing traffic on Conser Road NE. Such truck and vehicle traffic is not inherently inconsistent with farming activities in the area surrounding the Driveway. In addition, as

demonstrated in the TPR Assessment and discussed further below, the majority of trips to and from the Driveway on Conser Road NE will be from the east, through the City, rather than through rural areas to the west.

- Pressure for nonfarm or highway-oriented development. OAR 660-012-0070(8)(a) requires consideration of potential pressure for nonfarm or highway-oriented development on areas made more accessible by the transportation improvement—in this case, the proposed Driveway. The sole function of the Driveway is to provide access to the City Properties, which are within the City's UGB. The Driveway will not provide access to any property outside of the UGB. Accordingly, the Driveway will not increase accessibility of any rural lands or create pressure for nonfarm or highway-oriented development on rural lands.

2. Adjacent Use Compatibility Analysis

OAR 660-012-0070(8)(b) requires demonstration of how the proposed Driveway is compatible with adjacent uses or will be made compatible through measures designed to reduce adverse impacts. Showing compatibility does not require a demonstration that there will be "no interference or adverse impacts of any type with adjacent uses." OAR 660-012-0070(8)(b).

The proposed Driveway will be sited and designed to be compatible with adjacent uses in the following ways:

- Traffic on Conser Road NE. The TPR Assessment analyzes traffic on Conser Road NE resulting from potential future industrial development of the City Properties. According to the TPR Assessment, only 5 percent of trips to and from the City Properties are expected to occur west of the driveway on Conser Road NE. The vast majority of trips (95 percent) are expected to occur east of the driveway on Conser Road NE (e.g., to/from I-5, Highway 99 South, and Highway 20). The proposed location of the Driveway connection with Conser Road NE is approximately 591 feet west of the nearest track of the railroad crossing and the City's UGB. Thus, increased traffic on Conser Road NE will be concentrated on the portion of Conser Road NE that is within the City's limit. As previously noted, Conser Road NE is designated as an Arterial in the City's TSP, which classification is appropriate for the movement of freight and connecting to employment areas. Only a small stretch of Conser Road NE within the County's jurisdiction—approximately 591 feet—will experience 95 percent of trips generated by future development of the City Properties.
- No Obstruction of Conser Road NE. The TPR Assessment evaluated the connection between the proposed driveway and Conser Road NE for safe truck movements in and out of the driveway. As summarized in the TPR Assessment, the area of the proposed Driveway is wide enough to allow trucks exiting the driveway to stay entirely in the travel lane and not swing into the oncoming lane, and to allow trucks entering the driveway enough room to make a turn entirely within the driveway area. Therefore, trucks turning into and out of the driveway will not impede farm vehicle travel on Conser Road NE.

3. Impact Mitigation Measures

OAR 660-012-0070(8)(c) directs the County to "[a]dopt as part of the exception, facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility or improvement and support continued rural use of surrounding lands."

The Driveway will not provide new urban access to any rural lands located outside of the UGB. The sole function of the Driveway is to provide access to the City Properties, which are within the UGB. Accordingly, no further mitigation measures are required to "minimize accessibility of rural lands from the" proposed Driveway.

The Driveway was sited and designed to minimize direct impacts to farmland and current farming operations on Tax Lot 402, including locating the Driveway toward the eastern edge of the property and providing for the repair of irrigation and drainage systems following construction of the Driveway. In addition, as detailed in the TPR Assessment, the Driveway will not interfere with existing use of Conser Road NE by farm vehicles. Use of the Driveway to provide access to the City Properties is not inconsistent with nearby farm uses. For those reasons, no mitigation measures are required to further "support continued rural use of surrounding lands."

I. OAR 660-012-0070(9) and (10)

This Section details compliance with OAR 660-012-0070(9) and (10). The OAR text is *italicized*, and findings in response to the OAR standards follow.

(9)(a) Exceptions taken pursuant to this rule shall indicate on a map or otherwise the locations of the proposed transportation facility or improvement and of alternatives identified under subsection (4)(c), sections (5) and (7) of this rule.

Response: The Proposed Alignment of the Driveway is shown on Applicant Exhibit C. The Application complies with this standard.

(b) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

Response: The County should follow the notice requirements provided in the LCC and applicable state law and should ensure that each notice specifies that a goal exception is proposed and that the notice summarizes the issue in an understandable manner. Such action will allow adoption of a finding that this criterion has been satisfied.

(10) An exception taken pursuant to this rule does not authorize uses other than the transportation facilities or improvements justified in the exception.

Response: The reasons exception only authorizes the transportation improvement expressly requested by this application, specifically the proposed driveway to provide access to the City Properties. Any transportation improvement or improvements that go beyond those approved by this decision may require a separate application for a new exception consistent with this requirement.

(a) Modifications to unconstructed transportation facilities or improvements authorized in an exception shall not require a new exception if the modification is located entirely within the corridor approved in the exception.

Response: The proposal does not request a modification to unconstructed transportation facilities.

(b) Modifications to constructed transportation facilities authorized in an exception shall require a new exception, unless the modification is permitted without an exception under OAR 660-012-0065(3)(b)-(f). For purposes of this rule, minor transportation improvements made to a transportation facility or

improvement authorized in an exception shall not be considered a modification to a transportation facility or improvement and shall not require a new exception.

Response: The proposal does not request a modification to a constructed transportation facility.

(c) Notwithstanding subsections (a) and (b) of this section, the following modifications to transportation facilities or improvements authorized in an exception shall require new goal exceptions:

(A) New intersections or new interchanges on limited access highways or expressways, excluding replacement of an existing intersection with an interchange.

Response: This criterion is not applicable.

(B) New approach roads located within the influence area of an interchange.

Response: This criterion is not applicable.

(C) Modifications that change the functional classification of the transportation facility.

Response: There is no existing transportation facility providing vehicle access to the City Properties. The proposal does not change the functional classification of any transportation facility. This standard does not apply to the proposal.

(D) Modifications that materially reduce the effectiveness of facility design measures or land use measures adopted pursuant to subsection (8)(c) of this rule to minimize accessibility to rural lands or support continued rural use of surrounding rural lands, unless the area subject to the modification has subsequently been relocated inside an urban growth boundary.

Response: The proposal does not request any modifications to facility design measures or land use measures. The criterion does not apply to the proposal.

Compliance with Other State Standards

This section provides the analysis and substantial evidence required to demonstrate compliance with applicable provisions of the Transportation Planning Rule, codified at OAR Chapter 660, division 12, that are not otherwise addressed in the applicant analysis above.

OAR 660-012-0010 through 660-012-055 contains provisions of the Transportation Planning Rule (OAR chapter 660, division 12) pertaining to transportation planning. These rules explain how local governments are responsible for transportation planning, including through the adoption of transportation system plans, or TSPs. Because the TSP Amendment would amend the County TSP, this section addresses application of these rules to the TSP Amendment.

OAR 660-012-0060 directs local governments to assess whether proposed plan amendments will have a significant effect on the transportation system. This Exhibit demonstrates that the Application will not have a significant effect on existing or planned transportation facilities.

OAR 660-012-0010. Transportation Planning. *This rule provides that transportation planning shall be divided into two phases, transportation system planning and project development.*

Response: The TSP Amendment amends the County TSP consistent with the provisions of OAR chapter 660, division 12.

OAR 660-012-0011. Applicable Rules. *This rule specifies the applicable TPR rules within urban and rural areas.*

Response: Section (1) of OAR 660-012-0011 specifies rules that apply statewide. The rules in Section (1) apply to the TSP Amendment. Section (2) specifies rules that apply to cities within metropolitan areas, portions of counties within UGBs of cities in metropolitan areas, Metro, and cities and portions of counties within the Metro UGB. Section (2) does not apply to the TSP Amendment, because the identified transportation need is not within an UGB. Section (3) provides that OAR 660-012-0010 through OAR 660-012-0045 and OAR 660-012-0055 apply to all local governments other than those listed in Section (2). The rules identified in Section (3) apply to the TSP Amendment.

OAR 660-012-0012. Effective Dates and Transition. *This rule provides for the transition and effective dates for compliance with the rule adjustments adopted on July 21, 2022.*

Response: The TSP Amendment fulfills the requirements for an interim TSP update consistent with OAR 660-012-0012(2)(b). "Interim updates must comply with applicable requirements in [OAR chapter 660, division 12] within the scope of the [TSP] amendment but need not bring the entire transportation system plan in compliance with all applicable regulations." OAR 660-012-0012(2)(b).

First, the interim update is not a major transportation system update as provided in OAR 660-012-0105 for the following reasons:

- The TSP Amendment does not include a change to the horizon year of the County TSP. OAR 660-012-0105(2)(a). The County TSP horizon year is 2040. The TSP Amendment does not change the horizon year.
- The TSP Amendment will not be adopted after January 1 of the planning horizon year of the acknowledged County TSP. OAR 660-012-0105(2)(a). The planning horizon year of the County TSP is 2040, and the TSP Amendment is proposed to be adopted in 2024.
- The TSP Amendment does not add a facility authorized under OAR 660-012-0830. OAR 660-012-0105(2)(c). The TSP Amendment amends the County TSP to identify a need to provide access to the City Properties. The TSP Amendment does not concern a facility authorized under OAR 660-012-0830.

Second, the County will have submitted notice of the proposed change to the Comp Plan as provided in OAR 660-018-0020 no later than June 30, 2027. OAR 660-012-0012(2)(b). This Application is being submitted in 2024, and the County will provide notice to the Land Conservation and Development Department in accordance with OAR 660-018-0020. Accordingly, the Application is consistent with OAR 660-012-0012.

OAR 660-012-0015. Preparation and Coordination of Transportation System Plans. *This rule includes requirements for preparation and coordination of TSPs.*

Response: The TSP Amendment is proposed to amend and be incorporated as part of the County TSP. OAR 660-012-0015(4). The TSP Amendment more directly identifies transportation needs consistent with OAR 660-012-0030 as documented within these findings.

OAR 660-012-0015(5) requires the preparation of TSPs to be coordinated with affected state and federal agencies, local governments, special districts, and private providers of transportation services. Consistent with OAR 660-012-0015(5), notice of the TSP Amendment will be provided as required under OAR chapter 660, division 12.

OAR 660-012-0020. Elements of Transportation System Plans. *This rule describes the elements that TSPs must contain.*

Response: As relevant here, the required elements of a TSP include "a determination of transportation needs as provided in OAR 660-012-0030." OAR 660-012-0020(2)(a). The TSP Amendment amends the County TSP determination of transportation needs consistent with OAR 660-012-0020.

OAR 660-012-0025. Complying with the Goals in Preparing Transportation System Plans; Refinement Plans. *This rule describes the requirements for compliance with the Statewide Planning Goals and refinement plans.*

Response: Analysis in this application provides findings of compliance with applicable Statewide Planning Goals, the County Comprehensive Plan, and the Linn County Development Code, as required by OAR 660-012-00225(2). Accordingly, this Application complies with OAR 660-012-0025.

OAR 660-012-0030. Determination of Transportation Needs. *This rule specifies how transportation needs shall be identified in TSPs.*

Response: Section (1) of OAR 660-012-0030 requires TSPs to identify transportation needs relevant to the planning area and the scale of the transportation network being planned including: (a) state, regional, and local transportation needs; (b) needs of the transportation disadvantaged; and (c) needs for movement of goods and services to support industrial and commercial development planned for pursuant to OAR chapter 660, division 9 and Goal 9 (Economic Development). The TSP Amendment amends the County TSP to adopt Tech Memo 7.1, which documents the need to provide access to the City Properties. The Application is consistent with OAR 660-012-0030(1).

OAR 660-012-0035. Evaluation and Selection of Transportation System Alternatives. *This rule addresses the evaluation and selection of transportation system alternatives in a TSP.*

Response: The TSP Amendment does not propose any transportation projects. Accordingly, OAR 660-012-0035 does not apply to the Application.

OAR 660-012-0040. Transportation Financing Program. *This rule applies to areas within UGBs.*

Response: The transportation need identified by the TSP Amendment is not within the City's UGB. Accordingly, OAR 660-012-0040 does not apply to the Application.

OAR 660-012-0045. Implementation of the Transportation System Plan. *This rule describes how local governments must implement their TSP through land use regulations and subdivision ordinance regulations.*

Response: The TSP Amendment does not amend the County's regulations implementing the County TSP. Accordingly, OAR 660-012-0045 does not apply to the Application.

OAR 660-012-0050. Transportation Project Development. *Project development addresses how a transportation facility or improvement authorized in a TSP is designed and constructed.*

Response: The TSP Amendment does not relate to project development. OAR 660-012-0050 does not apply to the Application.

OAR 660-012-0055. Timing of Adoption and Update of Transportation System Plans; Exemptions. This rule sets forth timelines for adoptions of TSPs and for the specific requirements of OAR 660-012-0045.

Response: Section (8) of OAR 660-012-0055 provides that “[p]ortions of TSPs and implementing measures adopted as part of comprehensive plans prior to the responsible jurisdiction’s periodic review shall be reviewed pursuant to OAR chapter 660, Division 18, Post Acknowledgement Procedures.” The County will review this Application consistent with the procedures in OAR chapter 660, division 18. Accordingly, this Application is consistent with OAR 660-012-0055.

OAR 660-012-0060. Plan and Land Use Regulation Amendments.

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

Response: OAR 660-012-0060(1) requires a local government to consider whether a comprehensive plan amendment “significantly affects” an existing or planned transportation facility. The Application requests two Comp Plan text amendments: (1) the Goal Exception, which would authorize the Driveway as a new “Transportation Exception” area in the Comp Plan, and (2) the TSP Amendment, which would amend the TSP to memorialize the need for the Driveway. Both Comp Plan amendments are subject to and comply with OAR 660-012-0060.

Goal Exception - As detailed below, and based on the analysis and findings in Applicant Exhibit E - TPR Assessment, the Goal Exception will not significantly affect existing or planned transportation facilities within the meaning of OAR 660-012-0060(1).

TSP Amendment - Additionally, the TSP Amendment will not significantly affect any existing or planned transportation facility within the meaning of OAR 660-012- 0060(1). The requested TSP Amendment is a minor text amendment to the Comp Plan for the sole purpose of memorializing the documented need for the Driveway. The TSP Amendment itself would not authorize the Driveway or any other transportation facility and, accordingly, would have no effect on any existing or planned transportation facilities.

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan):

Response: The Goal Exception will not change the functional classification of any existing or planned transportation facility. The proposed Driveway will connect to Conser Road NE, which is an existing transportation facility. Conser Road is designated by the City’s TSP as an Arterial and by the County’s TSP as a Major Collector. Per the City’s and County’s TSPs, Arterial and Major Collector roadways are intended to move traffic between major activity generators to higher-order streets. Arterials and Major Collectors are appropriate facilities for use by freight and employment areas, thereby no change to the functional classification of Conser Road is needed to serve industrial development of the City properties. The Driveway is not a planned transportation facility; it is a private Driveway that is best characterized as a minor transportation improvement. The Driveway will not require a change in the street classifications and will not change the function of a planned transportation facility.

(b) Change standards implementing a functional classification system; or

Response: The requested Goal Exception will not change standards implementing any functional classification system. As detailed in the TPR Assessment, the function of the Driveway is to allow for local movement of vehicles entering and leaving the City Properties. The Driveway will connect to Conser Road NE, which is planned to connect to a new street within the City, just east of the Driveway. The new street is called NE Transition Parkway and was planned to accommodate industrial traffic, such as freight trucks, through the City. The addition of traffic to Conser Road NE resulting from providing access to the City Properties via the Driveway will not result in changes to the street classifications or changes to the standards implementing a functional classification system.

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection. If a local government is evaluating a performance standard based on projected levels of motor vehicle traffic, then the results must be based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

Response: As detailed in Applicant Exhibit E - TPR Assessment, the Goal Exception will increase vehicle trips on Conser Road/Transition Parkway, which are classified as Arterial and Major Collector streets, respectively. Major Collector and Arterial streets are designated to facilitate the movement of vehicles between major activity generators to higher-order streets. The daily volume and types of trips added to Conser Road/Transition Parkway are consistent with their functional classifications.

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

Response: As detailed in Applicant Exhibit E - TPR Assessment, with the proposed Goal Exception, all intersections are modeled to operate better than applicable County and City performance standards. The Driveway does not cause any existing or planned transportation to fail to meet applicable performance standards.

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

Response: As detailed in Applicant Exhibit E - TPR Assessment, the intersection of Conser Road at Old Salem Road does not meet the County's level of service (LOS) performance standard for Linn County under existing conditions. The City plans to construct a new street, Transition Way, before the year 2044. Transition Way will reroute the eastbound vehicles from the Coner Road at Old Salem Road intersection to the intersection of Transition Way at Old Salem Road. The relocation will improve the LOS at the intersection of Old Salem Road and Conser Road to meet the LOS standards with the proposed Goal Exception.

OAR 660-012-0065. Transportation Improvements on Rural Lands. This rule identifies transportation facilities, services and improvements that may be permitted on rural lands without an exception to the Statewide Planning Goals.

Response: As detailed in this Application, the proposed Driveway is not covered by OAR 660-012-0065. Accordingly, OAR 660-012-0065 does not apply to this Application.

OAR 660-012-0070. Exceptions for Transportation Improvements on Rural Lands. This rule identifies the requirements for exceptions to Goals 3, 4, 11 or 14 for transportation improvements on rural lands that do not meet the requirements of OAR 660-012-0065.

Response: This Application addresses OAR 660-012-0070 at length in Exhibit 4, which demonstrates compliance with this Rule.

STAFF ANALYSIS: Staff concurs with the applicant's analysis. No additional staff analysis is provided for this section.

DEVELOPMENT CODE COMPLIANCE

The LCC requires that all Comp Plan amendments comply with applicable LCC criteria. The Application does not propose any immediate development, but the requested plan amendment will be reviewed according to applicable procedural requirements of the LCC. Compliance with applicable procedural requirements is demonstrated below.

LCC 921.860 Persons authorized to submit amendment applications (A) An application to amend the Comprehensive Plan may be filed only by the persons set forth in subsection (B).

(B) Persons having authority to file an application.

* * * * *

(4) A city, if the amendment is request for land within an adopted urban growth boundary.

* * * * *

(6) A landowner for the landowner's property.

* * * * *

(8) County resident for Plan text amendment only.

Response: This Application requests a text amendment to the Comp Plan and is properly initiated at the request of the landowner for Tax Lot 402, the proposed location for the Goal Exception, pursuant to LCC 921.860(B)(6). Tax Lot 402 is located within the County, as contemplated by LCC 921.860(B)(8). Additionally, the City is a co-applicant on this Application, which impacts the City Properties within the UGB. See LCC 921.860(B)(4).

LCC 921.862 Types of amendment applications

(A) Application for amendment of the Comprehensive Plan may be initiated to amend the Plan map, Plan text, or a combination of the Plan map and text.

(B) An amendment to the Comprehensive Plan may be a legislative Type IIIA action.

(C) An amendment to the Comprehensive Plan may be a quasi-judicial Type IIIB action.

Response: The Application proposes two text amendments to the Comp Plan to (1) memorialize the requested Goal Exception to authorize the Driveway and (2) amend the TSP to adopt Tech Memo 7.1, which documents the need for the Driveway. Both requested text amendments may be processed under a single quasi-judicial Type IIIB procedure because the Application will result is a "quasi-judicial land use

decision" as defined in LCC 921.100(267), and pursuant the factors described by the Oregon Supreme Court. See *Strawberry Hill 4 Wheelers v. Board of Comm'rs*, 287 Or 591, 602-03, 601 P2d 769 (1979).

The Application is limited to a goal exception and related TSP amendment to acknowledge a transportation need for the approximately 1.44-acre Driveway, which will provide access for a small, identifiable group of properties (Tax Lots 106, 203, 206, and 207). The Application is directed at a closely circumscribed factual situation and involves the application of specified and preexisting criteria in a process that is bound to result in a decision.

In comparison, Comp Plan amendments that are legislative actions and are processed through a Type IIIA procedure create policies or new criteria that will be applied to future applications and have broad application to an entire community or class of individuals. LCC 920.100(177). As summarized in the County Code's definitions, "simply put, legislative land use decisions make law" and quasi-judicial land use decisions "apply law." LCC 920.100(177) and (267). The Application involves a request to apply the law to a single property, so the quasi-judicial Type IIIB procedure is applicable.

LCC 921.864 Application procedure

(A) An application may be filed seeking an amendment to the Comprehensive Plan if the application complies with the applicable requirements of LCC 921.002 to 921.499. The Department shall not accept an application for amendment of the Comprehensive Plan if incomplete or incorrect information has been submitted or if the applicant has failed to attend a pre-application conference with the planning staff.

(B) A public hearing on an application to amend the Comprehensive Plan shall be set no sooner than 45 calendar days following the deeming of that application complete.

Response: The Application complies with all applicable requirements of LCC 921.002 to 921.499, as demonstrated herein, and will be processed according to all required timelines under the LCC and applicable state law.

LCC 921.866 Fees

(A) In addition to the requirements of LCC 921.040, a fee shall be assessed in compliance with subsection (B) for each application filed with the Department to amend the Comprehensive Plan.

Response: The Applicants file this Application accompanied by all corresponding application fees.

LCC 921.868 Pre-application conference

Prior to filing an application to amend the Comprehensive Plan, the applicant shall attend a pre-application conference with the planning staff.

Response: The Applicants attended a pre-application conference with planning staff prior to filing this Application and have, therefore, complied with this requirement.

LCC 921.870 Review procedures

An application seeking an amendment to the Comprehensive Plan shall be reviewed under a Type IIIA procedure if the application is legislative, or a Type IIIB procedure if the application is quasi-judicial.

Response: As explained in response to LCC 921.862, the two requested Comp Plan amendments are quasi-judicial and, therefore, the Application will be processed through a Type IIIB procedure.

LCC 921.872 Decision criteria for [Comprehensive] Plan text amendments

To approve a plan text amendment, the following criteria shall be met:

(A) The amendment is consistent with the intent of the applicable section(s) of the Comprehensive Plan; and

Response: As demonstrated in the analysis above and incorporated by reference herein, the Application is consistent the intent of all applicable requirements of the Comp Plan.

(B) The amendment is consistent with the statewide planning goals.

Response: As demonstrated in the analysis above and incorporated by reference herein, the Application requests exceptions to Goal 3 and Goal 14 and is otherwise consistent with all applicable Statewide Planning Goals.

STAFF ANALYSIS: Staff concurs with the applicant's analysis. No additional staff analysis is provided for this section.

LINN COUNTY BOARD OF COMMISSIONERS HEARING STAFF REPORT



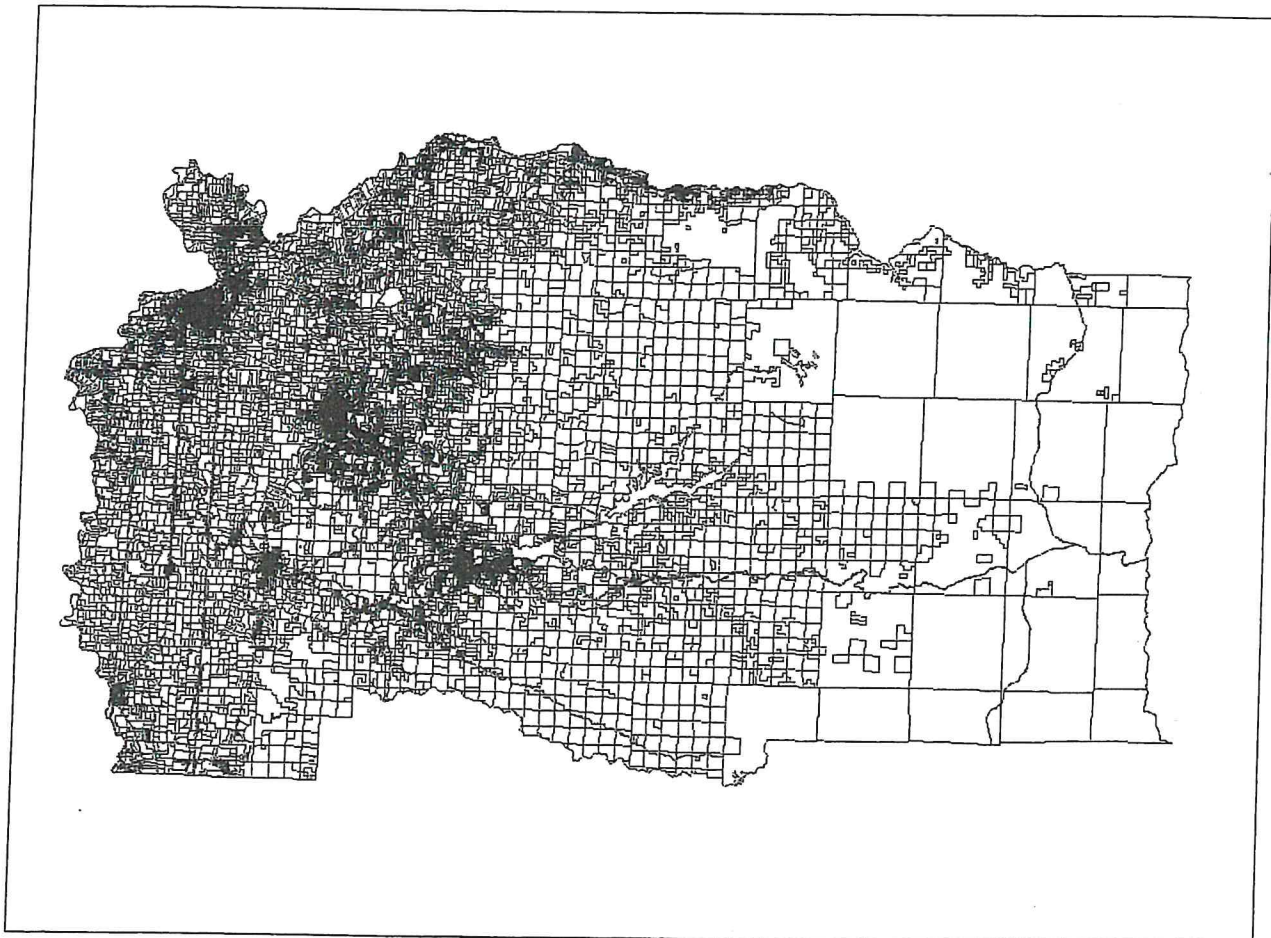
PRESENTED BY: Steve Wills, Linn County Planning & Building Department Director

DATE ISSUED: July 2, 2024

HEARING DATE: July 9, 2024

APPLICATION: **PD24-0154:** A Code text amendment application by Linn County to amend Linn County Code (LCC) Chapter 935. The proposed amendments are to update and clarify road construction and access standards and to align some standards with Oregon Fire Code.

CRITERIA: This application will be reviewed and a decision will be made using the decision criteria in Section 921.824 of the Linn County Land Development Code.



I. INTRODUCTION

A. PROJECT SUMMARY

The Code text amendment application contains proposed text amendments to Linn County Code (LCC) Chapter 935 (Access Code).

LCC Chapter 935 was established in 1998, when the Linn County Code was codified (Ordinance 98-002 §3 eff 3/4/98, amended for corrections per 98-432 eff 10/21/98, 99-121 §16 eff 6/30/99, and 12-315 §9 eff 12/12/12). Previous versions of the Access Code (prior to 1998) are contained in the Linn County Zoning Ordinance on file with the Linn County Clerk's Office and retained in the Planning and Building Department library.

Since that time, minimum construction standards for access have changed in Oregon Revised Statutes and Oregon Administrative Rules, with the most recent update in 2022 to the Oregon Fire Code and its regulating statutes and rules. The amendments are proposed to update and clarify road construction and access standards and to align some standards with Oregon Fire Code. Input on the amendments was provided from the County Roadmaster, County Engineer, and local fire authorities.

The proposed amendments would apply to the creation and improvement of new access roads and access points off of County roads throughout the unincorporated areas of the County and inside urban growth boundaries on land managed by the County.

Deleted text is written with a strikethrough and added text is underlined. All changes are in red. **Exhibit A** contains the sections of Chapter 935 that are proposed to be amended. A copy of the complete application is attached to this report in **Exhibit A**.

B. PLANNING COMMISSION RECOMMENDATION

The Planning Commission (Commission) conducted a public meeting at 7:00 p.m., June 11, 2024, to review and accept public comment on the proposed amendments. After considering the staff analysis and the written and oral testimony presented at the Commission hearing, the Commission voted 5-0 to adopt a motion to recommend that the Board approve the proposed text amendment, with modifications, specifically incorporating proposed amendments as described by the County Engineer, found in **Exhibit C, pages 4-14**.

C. DECISION CRITERIA

LCC 921.824(A) - Decision criteria for Development Code text amendments

A Land Development Code text amendment may be granted if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that:

- (1) The amendment is consistent with the intent and purpose statement of the affected Chapter or subchapter of the Land Development Code; and
- (2) The amendment is consistent with the intent of the policies within the applicable section(s) of the *Comprehensive Plan*.

II. PROPOSED CODE AMENDMENTS AND ANALYSIS

The Planning and Building Department (Department) is presenting for Board consideration draft amendments to *Linn County Code (LCC) Chapter 935*. The proposed amendments are contained in **Exhibit A**.

Deleted text is shown with a ~~strike through~~ and added text is underlined. All changes are in red. **Exhibit A** contains the sections of Chapter 935 that are proposed to be amended

The proposed Code amendments are identified below. The proposed Code text amendments are draft language. The Board of Commissioners will move to approve the amendments as proposed, approve the amendments with modifications, or deny the proposed amendments.

LCC Chapter 935

Section	Amendment
LCC 935.020(B)(1)	Amends the number of dwellings that may access off of a 30-foot wide easement
LCC 935.020(B)(2)	Amends the number of dwellings that may access off of a reserved right of way and amends the required reserved right of way width
LCC 935.020(B)(3)	Amends the required dedicated right of way width and clarifies language associated with this section.
LCC 935.100(A)(1)	Housekeeping edits
LCC 935.130(C)	Housekeeping edits – Other sections of Code detail the requirement to be removed.
LCC 935.160(A)	Adds local access roads to types of access that requires deed covenant for maintenance
LCC 935.160(C)	Housekeeping edits
LCC 935.200(A)	Amends the number of development sites that may require additional improvements for construction standards
LCC 935.200(B)(1)	Amends the construction materials required for roadway construction and updates the gross vehicle weights the road must support
LCC 935.200(B)(2)	Amends the curve radius requirements for roadways
LCC 935.200(B)(3)	Amends the distance requirement for intervisible turnouts
LCC 935.200(B)(4)	Amends section to accommodate for stormwater improvements, if appropriate, as well as turning radius requirements
LCC 935.200(B)(5)	Amends the turning radius requirement for dead-end access ways over 150 feet in length
LCC 935.200(B)(6)	Amends the maximum road grade requirements
LCC 935.250(F)	Housekeeping edits
LCC 935.300(B)(1)	Housekeeping edits
LCC 935.310	Housekeeping edits

III. NOTICE TABLE AND PROCEDURE

A. NOTICE

Adoption of Land Development Code text amendments is legislative rather than quasi-judicial. Therefore, notice to individual property owners is not required to be provided, as the proposed Code text amendments apply to general classes of property rather than to individual properties. Because the proposed amendments would not restrict existing uses, a Measure 56 notice is not applicable. The following agencies have been provided notice. No comments have been submitted as of the date this staff report was prepared.

AGENCY	NOTICE	RESPONSE	AGENCY	NOTICE	RESPONSE
Linn County GIS	x		Or. Dept. of Trans.	x	
Linn County Assessor	x		Dept. Land Cons. & Dev.	x	
Linn County Road Dept.	x	x	Other: St. Fire Marshal	x	
Linn County Sheriff	x	x	RFD: All Fire Districts	x	x (Mill City)

B. PROCEDURE

The proposed Code text amendments are classified as a Type IIIA Legislative application. The public notice, evidentiary, and legislative hearing processes will be conducted as set forth in *LCC 921.130: Type IIIA Legislative Procedure*. The "hearing authority" in a Legislative Code text amendment is the Board of County Commissioners for Linn County (Board).

The Planning Commission (Commission) conducted one public hearing on this matter on **June 11, 2024**. At the close of the hearing, the Planning Commission made a recommendation to the Board. The Board will hold a public hearing on **July 9, 2024**. The Board will make a final decision after the close of the hearing.

The Commission and the Board shall provide opportunity for the presentation of evidence and testimony. All testimony must be directed toward the applicable decision criteria including applicable criteria in the Comprehensive Plan or other land use regulations. Failure to raise an issue before the close of the record or failure to provide statements or evidence sufficient to afford the decision maker(s) and the parties an adequate opportunity to respond to each issue raised precludes an appeal to LUBA based on that issue.

If the Board hearing is continued or tabled, the chairperson shall state on the record the date and time for which the hearing is rescheduled, the place where the hearing will be conducted, and what limitations exist on further comment or submissions of written materials. Once the hearing is closed to public input, the Board shall begin deliberations on a decision or announce the time, date and place when the decision will be made. The Board shall make a decision conforming to the requirements of LCC 921.140 not more than 42 calendar days from the close of the public hearing.

IV. EXHIBITS

- A. Application and proposed amendments to LCC Chapter 935
- B. Public Notice
- C. Agency Comment