Item 6
Exhibit 2

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January 12, 2016

VIA E-MAIL AND U.S. MAIL – amie.abbott@state.or.us

Land Conservation and Development Commission
c/o Amie Abbott
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Re: Rulemaking under HB 3214 (2015)

Dear Commission:

I am writing with respect to the proposed revisions to OAR 660-004-0018 to implement HB 3214 (2015). I am writing as a concerned citizen and not on behalf of any firm client; however, I have historical knowledge of the issues relative to this rule and bill because this firm represented a client in land use proceedings at Clackamas County, LUBA, the Court of Appeals and the Supreme Court in opposition to a proposal to rezone certain exception land in Clackamas County currently used for a paving business called Hal's Construction. Without belaboring the history of the land use proceeding, the end result was that Hal's application was denied because (among other reasons), the applicant had neither requested a new goal exception nor had the County made adequate findings that one was not required.

It is my understanding that HB 3214 was presented to the Legislature through the efforts of Hal's, in an attempt to legislatively undo the results of the above-described land use proceeding. While the final bill uses terminology that sounds generic on its face – "expansion of an industrial use that has been in operation for the five years immediately preceding the formal land use planning action" – I suspect that there are very few if any landowners who would presently meet these criteria other than Hal's.

Of course, the Commission's role is not to question a bill signed in to law, but to implement it, and I recognize that distinction. To that end, I think the DLCD's recommendation to implement the bill more generically for all "physically developed" and "irrevocably committed" exception areas is wise. However, I feel it important that the Commission be aware of the basic facts behind the Hal's case (all of which is available in the record of the land use proceeding), so that it has a better understanding of the impetus behind HB 3214 and the potential abuse of this rule change. Hopefully, this factual context will assist the Commission to consider if further limitations or clarifications of the rule are prudent.

For over twenty years, Hal's Construction has operated its business in continuous violation of Clackamas County land use ordinances and decisions applicable to the site, including several narrowly-limited decisions from the 1990s authorizing nonconforming uses. Specifically, the approved non-conforming uses are limited to (1) a two person business for installing, wiring and welding hitches on RV's and trailers, and storage of construction equipment on the site; and (2) a small, one man, part-time automobile repair and trailer hitch installation business. Neither of these remotely describes Hal's current or historical use of the property.

As a result, Clackamas County's file is bulging with evidence of long-standing, unresolved code compliance violations. Rather than bring its property into compliance, Hal's has sought with the County's complicity to excuse its long-standing violations by retroactively rezoning the property to authorize broader industrial uses. It has filed two land use applications in this regard, the first of which was withdrawn and the second of which led to the land use proceeding referred to above. In both applications, Hal's sought to rezone the property not just to retroactively legitimize its long-standing illegal non-conforming uses (which would be bad enough), but to also authorize a multitude of other potential industrial uses permissible under the County's rural industrial zoning but which do not, and never have, existed on the property. If Hal's application had been successful, its existing uses would have been retroactively authorized without any land use review of those specific uses whatsoever.

Accordingly, I recommend that the Commission closely consider whether any further modifications of the proposed rule are prudent so as to avoid abuse of the rule to legitimize a similar course of conduct. One option might be to prohibit use of the rule to retroactively legitimize existing code violations. There are likely other options or issues that occur to the Commission as well, and I encourage the Commission to have its staff brief it more thoroughly on the history of the Hal's property to help it identify other unintended consequences of this unfortunate bill.

Best regards,

David J. Petersen

DJP/rkb