

## September-07

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						COUNCIL WS 8am-10am Coffee Hour
2	3 CITY OFFICES CLOSED HOLIDAY	4 Planning Comm 7pm Fire Bd 8pm	5 Water Providers CB 7:00pm	6 Notice of Measure Filing Deadline 11/06 Election	7	8
9	10 CITY COUNCIL 6:00 PM - WORK SESS (Per Review & Muni Ct) 7:00 PM - REGULAR MEETING COMMUNITY AUDITORIUM	11 CCI 4pm	12 WC Tourism Summit 8am-10am	13 PAC 5pm Fernhill Wetlands 7pm	14	15
16	17 Planning Comm 7pm CITY COUNCIL WORK SESSION - GOAL 5 4PM - 6PM - COMMUNITY AUDITORIUM	18 Library Foundation Fundraise McMenamins 5pm City Atty RFPs Due Library 7pm	19 P&R 7am PSAC 7:30am CFC 5:15pm	20	21 Dedication Lincoln Park Track & Soccer 5:00pm	22
23	24 CITY COUNCIL 5:45 PM - EXECUTIVE SESSION (Labor) 6:00 PM WORK SESS (Transp & Water Issues) 7:00 PM - REGULAR MEETING COMMUNITY AUDITORIUM	25	26	27	28	29
30		HLB 7pm		League of Oregon Cities Conference - Bend		

## October-07

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Planning Comm 7pm CITY COUNCIL WORK SESSION - TBA	2 Fire Bd 8pm	3	4	5	6 COUNCIL WS 8am-10am Coffee Hour
7	8 CITY COUNCIL 6:00 PM - WORK SESS (City Atty Ints) 7:00 PM - REGULAR MEETING COMMUNITY AUDITORIUM	9 CCI 4pm	10	11 Grand Opening Library 5-7pm PAC 5pm Fernhill Wetlands 7pm	12 JWC 12pm	13 Public Services Open House Fire Dept 10am-2pm
14	15 Planning Comm 7pm CITY COUNCIL WORK SESSION - TBA	16 Library 7pm	17 P&R 7am PSAC 7:30am CFC 5:15pm	18	19	20
21	22 CITY COUNCIL 6:30 PM - REGULAR MEETING 7:30 PM - JT WORK SESS (with Sch Dist) COMMUNITY AUDITORIUM	23 HLB 7pm	24	25	26	27
28	29	30	31	Thompson out		

## November-07

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3 COUNCIL WS 8am-10am Coffee Hour
4 Daylight Savings End	5 Planning Comm 7pm CITY COUNCIL WORK SESSION - TBA	6 General Election Day Fire Bd 7pm	7	8 PAC 5pm Fernhill Wetlands 7pm	9	10
11	12 CITY OFFICES CLOSED HOLIDAY	13 CITY COUNCIL 7:00 PM - REGULAR MEETING COMMUNITY AUDITORIUM CCI 4pm	14	15	16	17
18	19 Planning Comm 7pm PERIODIC REVIEW EVALUATION HEARING JT WORK SESS W/PLANNING COMM 7:00 PM - COMMUNITY AUDITORIUM	20 Library 7pm	21 P&R 7am PSAC 7:30am CFC 5:15pm	22	23	24
25	26 CITY COUNCIL 7:00 PM - REGULAR MEETING COMMUNITY AUDITORIUM	27 HLB 7pm	28	29	30	31 CITY OFFICES CLOSED HOLIDAY



# FOREST GROVE CITY COUNCIL

## Monday, September 24, 2007

5:45 PM – Executive Session (Labor Negotiations)  
6:00 PM – Work Session (Transportation & Water Issues)  
7:00 PM – Regular Meeting

Community Auditorium  
1915 Main Street  
Forest Grove, OR 97116

Thomas L. Johnston  
Victoria J. Lowe  
Camille Miller

Richard G. Kidd, Mayor

Ronald C. Thompson  
Peter B. Truax  
Elena Uhing

All meetings of the City Council are open to the public and all persons are permitted to attend any meeting except as otherwise provided by ORS 192. The public may address the Council as follows:

→ **Public Hearings** – Public hearings are held on each matter required by state law or City policy. Anyone wishing to testify should sign in for any Public Hearing prior to the meeting. The presiding officer will review the complete hearing instructions prior to testimony. The presiding officer will call the individual or group by the name given on the sign in form. When addressing the Council, please use the witness table (center front of the room). Each person should speak clearly into the microphone and must state his or her name and give an address for the record. All testimony is electronically recorded. In the interest of time, Public Hearing testimony is limited to three minutes unless the presiding officer grants an extension. Written or oral testimony is heard prior to any Council action.

→ **Citizen Communications** – Anyone wishing to address the Council on an issue not on the agenda should sign in for Citizen Communications prior to the meeting. The presiding officer will call the individual or group by the name given on the sign in form. When addressing the Council, please use the witness table (center front of the room). Each person should speak clearly into the microphone and must state his or her name and give an address for the record. All testimony is electronically recorded. In the interest of time, Citizen Communications is limited to two minutes unless the presiding officer grants an extension.

The public may not address items on the agenda unless the item is a public hearing. Routinely, members of the public speak during Citizen Communications and Public Hearings. If you have questions about the agenda or have an issue that you would like to address to the Council, please contact the City Recorder at 503-992-3235.

City Council meetings are handicap accessible. Assistive Listening Devices (ALD) or qualified sign language interpreters are available for persons with impaired hearing or speech. For any special accommodations, please contact the City Recorder at 503-992-3235, at least 48 hours prior to the meeting.

## A G E N D A

5:45 PM **EXECUTIVE SESSIONS ARE CLOSED TO THE PUBLIC.** Representatives of the news media and designated staff may attend Executive Sessions. Representatives of the news media are specifically directed not to report on any of the deliberations during the Executive Session, except to state the general subject of the session as previously announced. No Executive Session may be held for the purpose of taking final action or making any final decision.

The City Council will convene in the Community Auditorium - Conference Room at 5:45 p.m. to hold the following executive session:

In accordance with ORS 192.660(2)(d) to conduct deliberations with person designated by the governing body to carry on labor negotiations.

**FOREST GROVE CITY COUNCIL AGENDA**  
**SEPTEMBER 24, 2007**  
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6:00	<p><b><u>WORK SESSION: TRANSPORTATION AND WATER ISSUES</u></b> The City Council will convene in the Community Auditorium to conduct the above work sessions. The public is invited to attend and observe the work sessions; however, no public comment will be taken. The Council will take no formal action during the work session.</p>
<hr/>	
7:00	<ol style="list-style-type: none"><li>1. <b><u>REGULAR MEETING:</u></b> Roll Call and Pledge of Allegiance</li><li>2. <b><u>CITIZEN COMMUNICATIONS:</u></b> Anyone wishing to speak to Council on an item <u>not on the agenda</u> may be heard at this time. <i>Please sign-in before the meeting on the Citizen Communications form posted in the foyer.</i> In the interest of time, please limit comments to two minutes. Thank you.</li><li>3. <b><u>CONSENT AGENDA:</u></b> See Page 4</li><li>4. <b><u>ADDITIONS/DELETIONS:</u></b></li></ol>
7:10	<ol style="list-style-type: none"><li>5. <b><u>PRESENTATION:</u></b><ul style="list-style-type: none"><li>• Metro Update, Kathryn Harrington, Metro Councilor District 4</li></ul></li></ol>
7:30	<ol style="list-style-type: none"><li>6. <b><u>FIRST READING OF RESOLUTION NO. 2007-52 AUTHORIZING THE EXECUTION OF A LABOR AGREEMENT BETWEEN THE CITY OF FOREST GROVE AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW), LOCAL 125, TO BE EFFECTIVE JULY 1, 2007, AND EXPIRING JUNE 30, 2010</u></b></li></ol>
7:40	<ol style="list-style-type: none"><li>7. <b><u>RESOLUTION NO. 2007-53 AUTHORIZING THE SUBMISSION OF APPLICATIONS FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE 2008-2009 PROGRAM PERIOD AND PRIORITIZING THE COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS</u></b></li></ol>
7:50	<ol style="list-style-type: none"><li>8. <b><u>RESOLUTION NO. 2007-54 APPROPRIATING CERTAIN REAL PROPERTY FOR TOWN CENTER IMPROVEMENTS</u></b></li></ol>
8:00	<ol style="list-style-type: none"><li>9. <b><u>RESOLUTION NO. 2007-55 AUTHORIZING CLEAN WATER SERVICES TO NEGOTIATE TITLE TRANSFER ON BEHALF OF CITY OF FOREST GROVE</u></b></li></ol>

Rob DuValle  
Human Resources  
Manager

Jeff King  
Economic Development  
Coordinator

Rob Foster  
Public Works Director

Nick Kelsay  
Project Engineer

Rob Foster  
Public Works Director

**FOREST GROVE CITY COUNCIL AGENDA  
SEPTEMBER 24, 2007  
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- |  |      |   |
|--|------|---|
| Jon Holan<br>Community Development<br>Director | 8:15 | 10. <u>CONTINUE PUBLIC HEARING OF ORDINANCE NO. 2007-11 AMENDING THE FOREST GROVE ZONING MAP TO DESIGNATE FOUR PARCELS AS THE SMITH'S ORCHARD PLANNED RESIDENTIAL DEVELOPMENT, A 13-LOT SUBDIVISION. LOCATED AT 2332 B STREET, 2307, 2311, AND 2333 GALES WAY. (WASHINGTON COUNTY TAX LOT NOS. 1N4 36DA-300, 800, 1000, AND 1001). APPLICANT: DAVE TURNBULL. PROPERTY OWNERS: DAVE TURNBULL AND EDMUND AND BURTON GRAVELLE. FILE NO. PRD-06-05</u>  |
| Jon Holan<br>Community Development<br>Director | 8:45 | 11. <u>CONTINUE PUBLIC HEARING AND SECOND READING OF ORDINANCE NO. 2007-12 AMENDING THE FOREST GROVE COMPREHENSIVE PLAN MAP TO RE-DESIGNATE A 8.13 ACRE PORTION OF A 12.27 ACRE PARCEL FROM SEMI-PUBLIC/INSTITUTIONAL - COLLEGE DESIGNATION TO HIGH-DENSITY RESIDENTIAL. LOCATED AT 2311 CEDAR STREET, CANNERY FIELD. (WASHINGTON COUNTY TAX LOT NO. 1N3-31CA-3500). OWNER/APPLICANT: PACIFIC UNIVERSITY. FILE NO. CPA-07-03</u>  |
| Jon Holan<br>Community Development<br>Director | 9:00 | 12. <u>SECOND READING OF TWO ORDINANCES:</u><br><br>12. A. <u>SECOND READING OF ORDINANCE NO. 2007-13 AMENDING THE FOREST GROVE COMPREHENSIVE PLAN MAP TO RE-DESIGNATE AND RE-ZONE A 4.2 ACRE PORTION OF A 19.55 ACRE PARCEL FROM EXCLUSIVE FARM USE (EFU) TO LOW DENSITY RESIDENTIAL - MEDIUM DENSITY RESIDENTIAL (LDR-B). LOCATED AT 1548 19<sup>TH</sup> AVENUE (WASHINGTON COUNTY TAX LOT NOS. 1S4-1-400 AND 1S4 1AA-7200). APPLICANT: GALES CREEK TERRACE, LLC. PROPERTY OWNERS: RONALD AND WANDA RAU. FILE NO. CPA-06-01</u><br><br>12. B. <u>SECOND READING OF ORDINANCE NO. 2007-14 AMENDING THE FOREST GROVE ZONING MAP TO RE-ZONE A 4.2 ACRE PORTION OF A 19.55 ACRE PARCEL FROM EXCLUSIVE FARM USE (EFU) TO SINGLE FAMILY RESIDENTIAL (R-5). LOCATED AT 1548 19<sup>TH</sup> AVENUE (WASHINGTON COUNTY TAX LOT NOS. 1S4-1-400 AND 1S4 1AA-7200). APPLICANT: GALES CREEK TERRACE, LLC. PROPERTY OWNERS: RONALD AND WANDA RAU. FILE NO. ZC-07-01</u> |

**FOREST GROVE CITY COUNCIL AGENDA**  
**SEPTEMBER 24, 2007**  
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Jon Holan Community Development Director	9:15	13. <u>PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2007-15 ADOPTING TEXT AMENDMENTS TO THE COMPREHENSIVE PLAN, MUNICIPAL CODE, AND ZONE AND LAND DIVISION ORDINANCES TO COMPLY WITH METRO'S NATURE IN NEIGHBORHOOD FUNCTIONAL PLAN REQUIREMENTS (OTHERWISE REFERRED TO AS GOAL 5). FILE NO. CPA-06-03, FILE NO. ZA-06-03; AND FILE NO. LDO-06-02</u>
Michael Sykes City Manager	9:40	14. <u>CITY MANAGER'S REPORT:</u>
	9:50	15. <u>COUNCIL COMMUNICATIONS:</u>
	10:00	16. <u>ADJOURNMENT</u>

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3. CONSENT AGENDA: Items under the Consent Agenda are considered routine and will be adopted with a single motion, without separate discussion. Council members who wish to remove an item from the Consent Agenda may do so prior to the motion to approve the item(s). Any item(s) removed from the Consent Agenda will be discussed and acted upon following the approval of the Consent Agenda item(s).
- A. Approve City Council Regular Meeting Minutes of September 10, 2007.
  - B. Approve City Council Work Session (Periodic Review Process) Meeting Minutes of September 10, 2007.
  - C. Approve City Council Work Session (Municipal Court Update) Meeting Minutes of September 10, 2007.
  - D. Accept Planning Commission Meeting Minutes of July 2, July 16, July 30, and August 6, 2007.
  - E. Community Development Department Monthly Building Activity Informational Report for August 2007.

# **COUNCIL WORK SESSION**

**September 24<sup>TH</sup>, 2007**

## **City of Forest Grove Transportation Update**

Following is a 3-part presentation developed for City Council review and discussion. The purpose of this session is to inform council on what is happening with transportation.

### **AGENDA**

#### **6:00 Metro 2035 Regional Transportation Plan**

(Questions/Discussions)

#### **6:20 Washington County Coordinating Committee MSTIP and TIF**

(Questions/Discussions)

#### **6:40 City of Forest Grove Transportation System Plan Update**

(Questions/Discussions)

### **BACKGROUND**

#### ***Metro 2035 Regional Transportation Plan:***

The Regional Transportation Plan (RTP) is a long-range blueprint for the transportation system serving the Portland metropolitan region. The plan deals with how best to move people and goods in and through the region. As the federally designated Metropolitan Planning Organization, Metro is responsible for updating the plan every four years in coordination with the implementing agencies and jurisdictions that own and operate the transportation system in the region. This update will extend the planning horizon to the year 2035.

The primary mission of the Regional Transportation Plan is to implement the Region 2040 vision for land use, transportation, the economy and the environment. As required under federal and state law, the RTP also serves as a long-range capital plan that will guide the public and private expenditure of billions of dollars from federal, state, regional and local revenue sources. The RTP serves this function by considering current and long-range transportation needs at a regional level and identifying policies, implementation strategies, programs and projects to meet those needs. The plans of local jurisdictions responsible for the transportation system in this region must be consistent with the RTP policies, implementation strategies, programs and projects. Furthermore, projects and programs must be included in the RTP system to be eligible for most federal and state funding programs.

In June 2006, the Metro Council and the Metro Joint Policy Advisory Committee on Transportation (JPACT) approved a work program and process to guide the current update to the Regional Transportation Plan (RTP). The JPACT is a 17-member committee that provides a forum for elected officials and representatives of agencies involved in transportation to evaluate transportation needs in the region and to make recommendations to the Metro Council. The work program calls for an outcomes-based approach to identify and prioritize transportation investments that are crucial to region's economy and that most effectively support the land use, economic, environmental and transportation goals embodied in the 2040 Growth Concept.

Since approval of the work program (June 2006), Forest Grove has been working on a Metro solicitation process to identify a pool of eligible candidate projects. The current Forest Grove list of projects have been narrowed down from a much larger list to address current and future transportation needs, consistent with the RTP criteria.

Forest Grove's current list of projects and schedule for the RTP are shown in Exhibits 1 and 2.

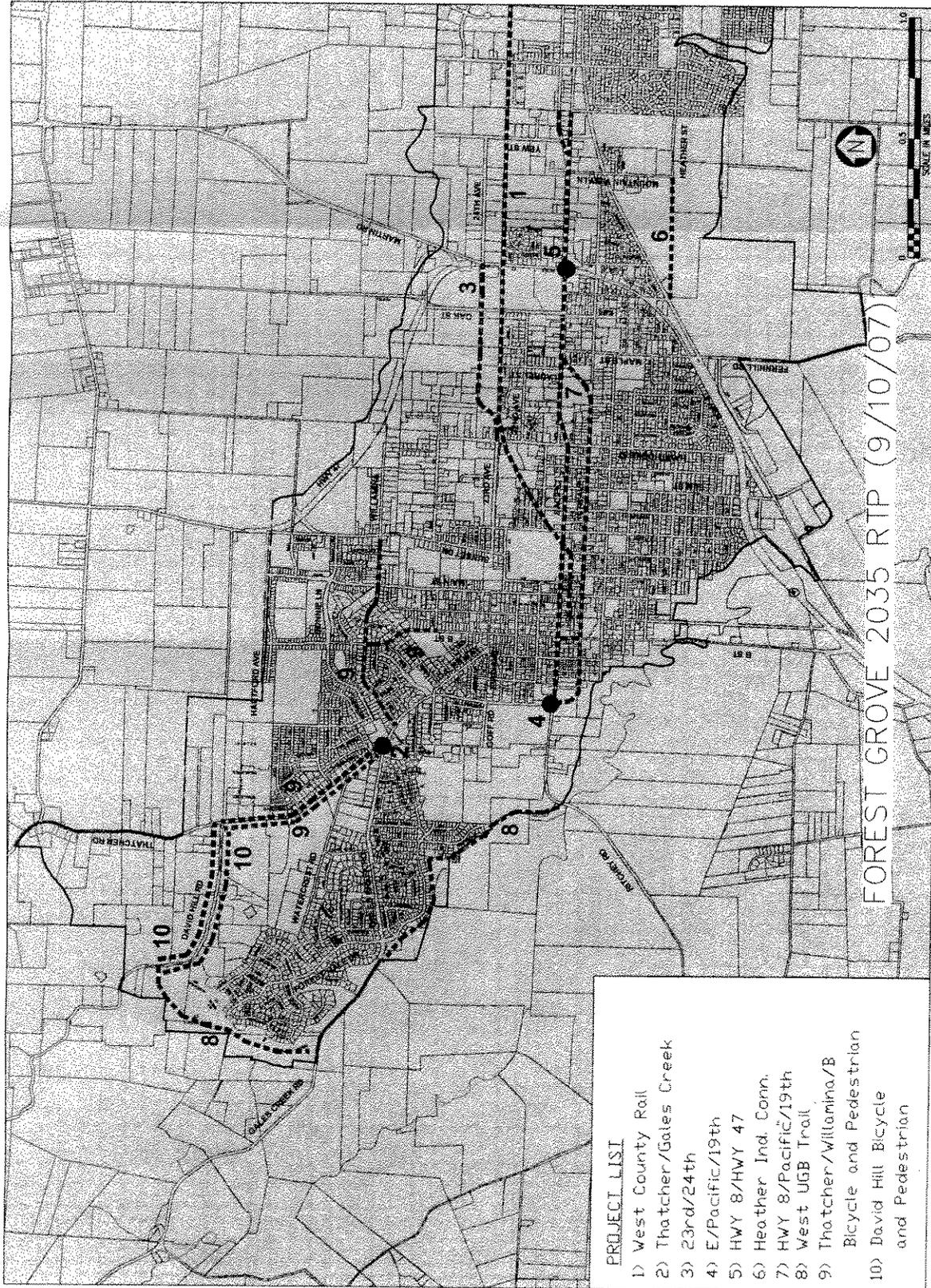
#### ***Washington County Coordinating Committee MSTIP and TIF:***

The Washington County Coordinating Committee's (WCCC) primary purpose is to coordinate activities of Washington County local governments and to work toward positions of consensus on regional and state land use and transportation planning matters. The WCCC is composed of elected representatives from the Washington County and the cities in Washington County.

The WCCC is supported by the WCCC Transportation Advisory Committee (WCCC TAC), which is composed of senior staff representatives from local governments. Both committees meet monthly and have non-voting members from regional and state governments and area service providers.

Following adoption of the 2020 Washington County transportation plan, County and City staff members developed an inventory of local transportation system needs and projects identified in their transportation plans. The inventory identifies needs totaling \$3.7 billion (\$2007). Of this, \$2.7 billion consists of capacity and safety projects on multi-modal arterial and collector roadways. The remaining \$1 billion of need includes bridges and culverts, stand alone bicycle projects, stand-alone pedestrian projects, transit capital projects and miscellaneous needs. On the resource side, a trend line based upon historical expenditure levels indicates that approximately \$1.5 billion would be available to address these needs over a twenty-year period. A trend line based upon current resource commitments and revenue generation assumptions suggests that approximately half that would be available.

After discussing funding options, WCCC members and the Board of Commissioners agreed to review the two major traditional capital funding programs – the Major Streets Transportation Improvement Program (MSTIP) and the Traffic Impact Fee Program (TIF) – with the idea of better tailoring them to address the identified needs.



FOREST GROVE 2035 RTP (9/10/07)

- PROJECT LIST**
- 1) West County Rail
  - 2) Thatcher/Gales Creek
  - 3) 23rd/24th
  - 4) E/Pacific/19th
  - 5) HWY 8/HWY 47
  - 6) Heather Ind. Conn.
  - 7) HWY 8/Pacific/19th
  - 8) West UGB Trail
  - 9) Thatcher/Willamina/B  
Bicycle and Pedestrian
  - 10) David Hill Bicycle  
and Pedestrian

**EXHIBIT 2**

**Metro 2035 RTP Schedule**

Task	Description	Schedule
1	Project solicitation begins	23-Apr-07
2	Metro staff consultations with three counties, City of Portland, ODOT and TriMet	May-07
3	Investment Priorities Worksheet Due	18-Jun-07
4	Road Capacity Air Quality Conformity Modeling Assumptions Due	18-Jun-07
5	GIS shapefiles of Projects/Programs Due	18-Jun-07
6	Project Cost Estimate Worksheet Due	30-Jun-07
7	2035 RTP systems' analysis released	24-Aug-07
8	Discussion draft RTP released for 45-day public review	11-Oct-07
9	Three public hearings held.	Oct./Nov. 2007
10	Consultation with CETAS (Collaborative Environmental Transportation Agreement for Streamlining) resource agencies.	16-Oct-07
11	45-day public review period ends at 5 p.m.	26-Nov-07
12	2035 RTP approved, pending air quality conformity analysis.	13-Dec-07
13	Air quality conformity analysis begins.	14-Dec-07
14	Air quality conformity analysis complete and released for 30-day public review.	21-Jan-08
15	30-day public review of 2035 RTP with air quality conformity analysis ends at 5 p.m.	20-Feb-08
16	2035 RTP final approval and state and federal findings submitted to USDOT for approval.	29-Feb-08
17	Conformity determination approval from FHWA/FTA.	5-Mar-08

MSTIP - The WCCC and BCC have directed staff to develop a proposal for a new MSTIP measure on a timeline that would allow it to be placed on the November 2008 election ballot. Traditionally the property-tax based MSTIP has been used to address existing safety and congestion problems. WCCC members agreed to target MSTIP at the major system element, and accepted a map of arterials and select collectors called the System of Countywide Interest. The WCCC agreed that facilities could be added or deleted from the map as determined to be appropriate by the WCCC. The map showing System of Countywide Interest and MSTIP 4 development schedule is attached for review, see attachments 3 & 4.

TIFF - WCCC and BCC members also have expressed interest in revising/developing a TIF and/or SDC (Systems Development Charge) program on a timeline generally concurrent with MSTIP development, although no specific deadline has been defined. The development-fee based TIF has been used to help fund additional capacity necessary to accommodate growth. The WCCC and Board continue to consider how the existing TIF Program structure might be modified.

Staff is looking for support to move forward with the MSTIP 4 as described above and keeping the TIF as is with only minor modifications including an increase. Staff does not see a need to develop a local SDC at this time.

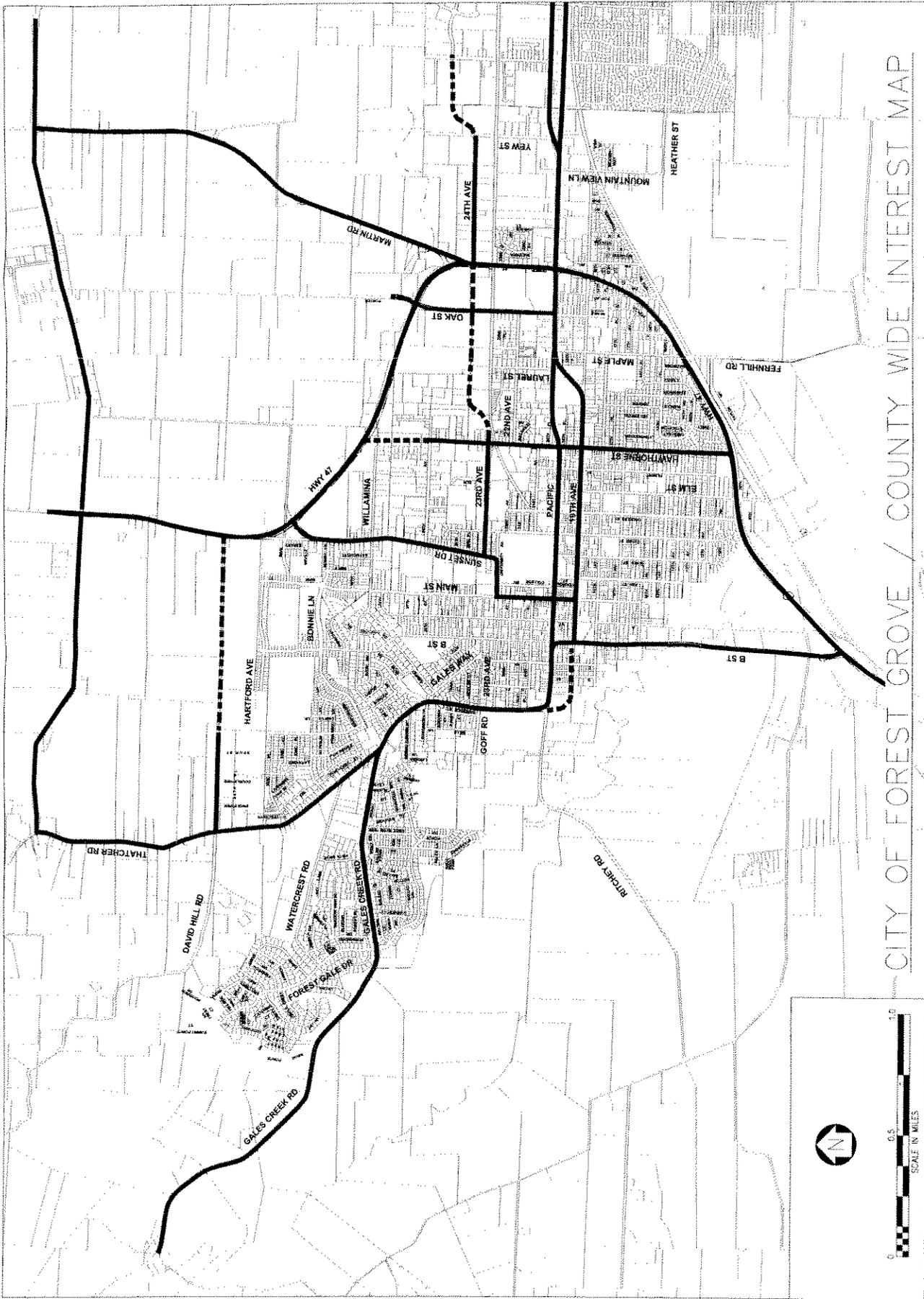
### ***City of Forest Grove Transportation System Plan Update:***

In May of 2007 the City of Forest Grove entered into contract with DKS and Associates to prepare an updated Transportation System Plan (TSP). The TSP serves as a guide to manage and develop the City's transportation plan for the next 20 years. The update process will also help provide necessary findings to support other ongoing efforts within the City including:

- Conducting the transportation analysis needed to support the update to the Comprehensive Plan related to proposed changes in zoning in the downtown area and other areas as a result of proposed adoption of a new development code.
- Define long-range corridor access plan and local circulation concepts along Highway 47 within the City limits.
- Provide input to on-going update to the Regional Transportation Plan, with specific recommendations about regional transportation improvements to be considered within the City limits.

Exhibit 5 shows a summary of the work-plan and schedule for the project.

Staff is currently in the process of developing a Project Advisory Committee (PAC) and will be looking for recommendations during the presentation.



CITY OF FOREST GROVE / COUNTY WIDE INTEREST MAP



SCALE IN MILES

## MSTIP 4 Development Schedule

### Complete or in progress --

1. WCCC defines intent to pursue and direction for Measure
2. WCCC defines targeted "*System of Countywide Interest*"
3. WCCC TAC discusses and reviews preliminary project selection process/criteria
4. WCCC TAC discusses other possible MSTIP measure elements

**Sept. 07 --      Decision to proceed with measure development;**  
**October            Define measure purpose, framework, and**  
**elements**

1. WCCC identifies Rate or Revenue Target for development purposes.
2. WCCC considers preliminary purpose/objectives/project eligibility and selection criteria
3. WCCC Discuss and resolve SCWI issues
  - Roads in Centers
4. WCCC Consider Additional elements
  - Special Capital Funds?

**Nov. '07 --      Refine measure purpose and framework;**  
**December         Develop measure elements**

1. MSTIP Financial Summary Review (in development)
2. WCCC Review/endorse project selection process
3. WCCC Review/endorse target allocations, project eligibility and evaluation criteria
4. WCCC endorses preliminary framework; submits to BCC and City Managers for review

**January '08 -- Refine measure purpose and framework;**  
**February         Develop measure elements**

1. WCCC TAC submits/discusses project candidates based on criteria and target allocations – (X times available).
2. WCCC considers and approves MSTIP initiative development cost sharing, contingent on approval by cities.

**March '08 -- Public review of general provisions Refine  
April measure purpose and framework;  
continue development of measure elements.**

1. Public Review Outreach undertaken to review framework, objectives, elements and long project list with public.
2. WCCC TAC reduces project set to 100 percent list.
  - WCCC TAC holds special working meetings as necessary

**May '08 -- Refine measure elements; jurisdictions and  
June public review specific proposal**

1. WCCC TAC completes and forwards refined initiative proposal, including proposed 100 percent project list to WCCC.
2. WCCC reviews initiative proposal, approves for public discussion and review by individual jurisdictions
3. Public Review Outreach undertaken to review framework, objectives, elements and proposed project list with public

**July '08 -- Formal endorsement of proposal; Public  
August Information Outreach begins**

1. WCCC and local jurisdictions endorse measure
2. Kick off public outreach:

**Sept. '08 -- Public Information Outreach continues  
October**

1. Public Information Outreach activities

**Nov. '08 -- Election**

EXHIBIT 5

Forest Grove TSP Update Schedule

Task	Description	Schedule
<b>1</b>	<b>Project Start Up &amp; Public Involvement Plan</b>	
	Final scope of work	Jun-07
	Prepare for and attend kick-off meeting	Jun-07
	Update project schedule and public involvement plan	Aug-07
<b>2</b>	<b>Background Plan and Policy Review</b>	
	Draft TM #1 (Background Document Review)	Sep-07
	Draft TM #2 (Goals and Objectives)	Sep-07
	PAC #1	Oct-07
	Planning Commission/City Council work session	Oct-07
	Final TM #1	Nov-07
	Final TM #2	Nov-07
<b>3</b>	<b>Evaluate Existing and Future Transportation Needs</b>	
	Draft TM #3 (Existing Conditions)	Sep-07
	Draft TM #4 (Future Needs)	Oct-07
	PAC #2	Nov-07
	Open House #1	Nov-07
	Final TM #3	Dec-07
	Final TM #4	Dec-07
<b>4</b>	<b>Develop and Evaluate Alternative Improvement Strategies</b>	
	Draft TM #5 (Improvement Evaluation)	Jan-08
	PAC #3	Feb-08
	Open House #2	Feb-08
	Final TM #5	Feb-08
<b>5</b>	<b>Draft TSP</b>	
	Working Draft TSP	Mar-08
	PAC #4	Mar-08
	Public Draft TSP	Apr-08
<b>6</b>	<b>Draft Implementation Policies and Ordinances</b>	
	Draft Implementation Policies and Ordinances	Apr-08
<b>7</b>	<b>Plan Adoption and Implementation</b>	
	Planning Commission/City Council Workshop	May-08
	Planning Commission hearing	June/July 2008
	City Council hearing	July/Aug 2008
	Final Draft TSP	Aug-08
	Final TSP	Aug-08

**FOREST GROVE CITY COUNCIL REGULAR MEETING  
SEPTEMBER 10, 2007 – 7:00 P.M.  
COMMUNITY AUDITORIUM  
PAGE 1**

*Minutes are unofficial until approved by Council.*

**1. ROLL CALL:**

Mayor Richard Kidd called the regular City Council meeting to order at 7:06 p.m. and led the Pledge of Allegiance. **ROLL CALL: COUNCIL PRESENT:** Thomas Johnston, Victoria Lowe, Camille Miller, Peter Truax, Ronald Thompson (arrived at 7:50 p.m.), Elena Uhing, and Mayor Kidd. **STAFF PRESENT:** Michael Sykes, City Manager; Andy Jordan, City Attorney; Jon Holan, Community Development Director; Kerstin Cathcart, Senior Planner; and Anna Ruggles, City Recorder.

**1. A. PROCLAMATION: WEEK OF REMEMBRANCE**

Truax proclaimed the week of September 11, 2007, as a “Week of Remembrance” in honor and recognition of the event of September 11, 2001.

**2. CITIZEN COMMUNICATIONS:**

Bill Buchholz, 2221 Oak Street, presented written testimony and reiterated his concern pertaining to the Forest Grove Post Office not complying with the American Disability Act (ADA) requirements, noting the Post Office lacks automated doors and an accessible entrance for disabled patrons. Buchholz indicated he has not received an acceptable response from postal officials and asked Council to consider directing the City Attorney to write a letter to postal officials demanding that automated doors be installed within 30 days, noting the Post Office lease agreement is scheduled to be renewed in November.

In response to Buchholz’s request, Jordan replied he would consider submitting a letter on behalf of the City upon direction from the Council.

In response to Buchholz’s concern, Sykes presented a memorandum to Council outlining the City’s findings and interventions to enhance accessibility to the Post Office for disabled citizens.

- 3. CONSENT AGENDA:** Items under the Consent Agenda are considered routine and will be adopted with a single motion, without separate discussion. Council members who wish to remove an item from the Consent Agenda may do so prior to the motion to approve the item(s). Any item(s) removed from the Consent Agenda will be discussed and acted upon following the approval

**FOREST GROVE CITY COUNCIL REGULAR MEETING  
SEPTEMBER 10, 2007 – 7:00 P.M.  
COMMUNITY AUDITORIUM  
PAGE 2**

of the Consent Agenda item(s).

- A. Approve City Council Work Session (Council Retreat) Meeting Minutes of August 15, 2007.
- B. Approve City Council Special Meeting Minutes of August 20, 2007.
- C. Accept Committee for Citizen Involvement Meeting Minutes of June 12 and July 10, 2007.
- D. Community Development Monthly Building Activity Informational Report for July 2007.
- E. Fire Department Monthly Statistics Report for August 2007.
- F. Endorse Liquor License (New Application) for Cork and Barrel Wine Shop, 2004 Main Street (Applicant: Scott Behrens).
- G. Endorse Liquor License (Change in Application) for Godfather's Pizza/Players Pub, 2834-A Pacific Avenue (Applicant: Kenneth Denfeld).

**MOTION:** Councilor Uhing moved, seconded by Councilor Miller, to approve the Consent Agenda as presented. **ABSENT:** Councilor Johnston (arrived at 7:50 p.m.). **MOTION CARRIED 6-0 by voice vote.**

- 4. **ADDITIONS/DELETIONS:** None.
- 5. **PRESENTATIONS:** None.
- 6. **CONTINUE PUBLIC HEARING OF ORDINANCE NO. 2007-11 AMENDING THE FOREST GROVE ZONING MAP TO DESIGNATE FOUR PARCELS AS THE SMITH'S ORCHARD PLANNED RESIDENTIAL DEVELOPMENT, A 13-LOT SUBDIVISION. LOCATED AT 2332 B STREET, 2307, 2311, AND 2333 GALES WAY. (WASHINGTON COUNTY TAX LOT NOS. 1N4 36DA-300, 800, 1000, AND 1001). APPLICANT: DAVE TURNBULL. PROPERTY OWNERS: DAVE TURNBULL AND EDMUND AND BURTON GRAVELLE. FILE NO. PRD-06-05**

The first reading of Ordinance No. 2007-11 by title and motion to adopt occurred at the meeting of August 6, 2007, and second reading of Ordinance No. 2007-11 by title occurred at the meeting of August 20, 2007.

**Public Hearing Continued:**

Mayor Kidd continued the Public Hearing from the meeting of August 20,

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2007.

**Staff Report:**

Holan referenced an e-mail dated September 10, 2007, submitted by Matt Newman, NW Engineers, LLC, and Michael Robinson, Perkins Coie, LLP, representing the applicant, asking Council to consider continuing the Public Hearing until September 24, 2007. Holan pointed out the e-mail also noted the applicant agreed to extend the 120-day rule by the period of the continuance.

**Council Response:**

Mayor Kidd asked for a motion and vote to continue the Public Hearing, as requested by the applicant, until September 24, 2007.

**MOTION:** Councilor Miller moved, seconded by Councilor Lowe, to Continue the Public Hearing to September 24, 2007, for Ordinance No. 2007-11 Amending the Forest Grove Zoning Map to Designate Four Parcels as the Smith's Orchard Planned Residential Development, a 13-Lot Subdivision. Located at 2332 B Street, 2307, 2311, and 2333 Gales Way. (Washington County Tax Lot Nos. 1N4 36DA-300, 800, 1000, and 1001). Applicant: Dave Turnbull. Property Owners: Dave Turnbull and Edmund and Burton Gravelle. File No. PRD-06-05.

**VOTE:** AYES: Councilors Lowe, Miller, Thompson, Truax, Uhing, and Mayor Kidd. NOES: None. ABSENT: Councilor Johnston (arrived at 7:50 p.m.). MOTION CARRIED 6-0 by voice vote.

**Proponents:**

No one signed in to testify and no written comments were received.

**Opponents:**

Mark McDowall, 1723 23<sup>rd</sup> Avenue, signed in to testify; however, testimony was not heard.

Wayne and Jean Dietzman, PO Box 561, Gaston, signed in to testify; however, testimony was not heard.

Roy Adams, 2326 B Street, signed in to testify; however, testimony was not heard.

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Mayor Kidd advised the above opponents that public testimony would be accepted at the hearing of September 24, 2007.

**Public Hearing Continued:**

Mayor Kidd continued the Public Hearing to the meeting of September 24, 2007, at which time, Mayor Kidd advised the Council would consider approving the PRD as proposed; approving the PRD with added, deleted, or modified conditions; denying the PRD; or continuing the matter for further consideration.

7. **PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2007-12 AMENDING THE FOREST GROVE COMPREHENSIVE PLAN MAP TO RE-DESIGNATE AN 8.13-ACRE PORTION OF A 12.27-ACRE PARCEL FROM SEMI-PUBLIC/INSTITUTIONAL - COLLEGE DESIGNATION TO HIGH-DENSITY RESIDENTIAL. LOCATED AT 2311 CEDAR STREET, CANNERY FIELD. (WASHINGTON COUNTY TAX LOT NO. 1N3-31CA-3500). OWNER/APPLICANT: PACIFIC UNIVERSITY. FILE NO. CPA-07-03**

**Staff Report:**

Holan and Cathcart presented the above-proposed ordinance requesting adoption of the ordinance to amend the Comprehensive Plan to re-designate an 8.13-acre portion of a 12.27-acre parcel, located at 2311 Cedar Street (Cannery Field), from Semi Public/Institutional - College designation to High-Density Residential. Cathcart reported Pacific University is requesting the above amendment in order to make the Comprehensive Plan consistent with the Zoning Map and to prepare the property for future development. Approval of the above amendment would also remove a split-designation on the parcel. Cathcart noted comments were expressed at the Planning Commission meeting regarding site drainage and potential conflict between an adjacent industrial zoned property (Gray & Company). In addition, Cathcart reported the re-designation would leave two small parcels as an island, with General Industrial Zoning surrounded by A-2 High-Density Zoning, noting the Planning Commission approved a motion directing staff to initiate a zone change and Comprehensive Plan amendment for the above two parcels.

Before proceeding with the Public Hearing and Council discussion, Mayor Kidd asked for a motion to adopt Ordinance No. 2007-12.

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Jordan read Ordinance No. 2007-12 by title for first reading.

**MOTION:** Councilor Truax moved, seconded by Councilor Lowe, to adopt Ordinance No. 2007-12 Amending the Forest Grove Comprehensive Plan Map to Re-Designate an 8.13 Acre Portion of a 12.27 Acre Parcel from Semi-Public/Institutional - College Designation to High-Density Residential. Located at 2311 Cedar Street, Cannery Field. (Washington County Tax Lot No. 1N3-31CA-3500). Owner/Applicant: Pacific University. File No. CPA-07-03.

The second reading of Ordinance No. 2007-12 by title and vote will occur at the meeting scheduled for September 24, 2007.

**Public Hearing Opened:**

Mayor Kidd opened the Public Hearing.

**Declaration of Ex-parte Contacts, Conflicts of Interest, or Abstentions:**

None declared.

**Challenges from Parties:**

None declared.

**Proponents:**

No one wished to testify and no written comments were received.

**Opponents:**

No one wished to testify and no written comments were received.

**Others:**

No one wished to testify and no written comments were received.

**Public Hearing Left Opened:**

Mayor Kidd left the Public Hearing opened until the meeting of September 24, 2007.

8. **PUBLIC HEARING AND FIRST READING OF TWO ORDINANCES:**
8. A. **ORDINANCE NO. 2007-13 AMENDING THE FOREST GROVE COMPREHENSIVE**

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PLAN MAP TO RE-DESIGNATE AND RE-ZONE A 4.2 ACRE PORTION OF A 19.55 ACRE PARCEL FROM EXCLUSIVE FARM USE (EFU) TO LOW DENSITY RESIDENTIAL - MEDIUM DENSITY RESIDENTIAL (LDR-B). LOCATED AT 1548 19<sup>TH</sup> AVENUE (WASHINGTON COUNTY TAX LOT NOS. 1S4-1-400 AND 1S4 1AA-7200). APPLICANT: GALES CREEK TERRACE, LLC. PROPERTY OWNERS: RONALD AND WANDA RAU. FILE NO. CPA-06-01

8. B. PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2007-14 AMENDING THE FOREST GROVE ZONING MAP TO RE-ZONE A 4.2 ACRE PORTION OF A 19.55 ACRE PARCEL FROM EXCLUSIVE FARM USE (EFU) TO SINGLE FAMILY RESIDENTIAL (R-5). LOCATED AT 1548 19<sup>TH</sup> AVENUE (WASHINGTON COUNTY TAX LOT NOS. 1S4-1-400 AND 1S4 1AA-7200). APPLICANT: GALES CREEK TERRACE, LLC. PROPERTY OWNERS: RONALD AND WANDA RAU. FILE NO. ZC-07-01

**Staff Report:**

Holan presented the above-proposed ordinances requesting adoption of the ordinances to amend the Comprehensive Plan and Zoning maps to re-designate a 4.2-acre portion of a 19.55-acre parcel from Exclusive Farm Use (EFU) to Low-Density Residential - Medium-Density Residential (LDR-B) and from Exclusive Farm Use (EFU) to Single-Family Residential (R-5). Holan reported Metro Order No. 06-201, issued December 28, 2006, approved adding the 4.2-acre portion into the Urban Growth Boundary (UGB). Holan reported Metro criteria requires a designation that allows an average density of at least 10 units per net developable acre or such other density that is consistent with Metro 2040 Growth Concept Plan designation of the area. Holan noted discussion at the Planning Commission meeting focused on the appropriate density for the parcel in order to keep development as least intensive as possible near Gales Creek. The Planning Commission concluded the proposed designation would best meet Metro criteria (ten units per net acre) due to slope consideration and would not create spot zoning.

Before proceeding with the Public Hearing and Council discussion, Mayor Kidd asked for a motion to adopt Ordinance No. 2007-13 and motion to adopt Ordinance No. 2007-14.

Jordan read Ordinance No. 2007-13 and Ordinance No. 2007-14 by title for first reading.

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**MOTION:** Councilor Uhing moved, seconded by Councilor Miller, to adopt Ordinance No. 2007-13 Amending the Forest Grove Comprehensive Plan Map to Re-Designate and Re-Zone a 4.2 Acre Portion of a 19.55 Acre Parcel from Exclusive Farm Use (EFU) to Low Density Residential - Medium Density Residential (LDR-B). Located at 1548 19<sup>th</sup> Avenue (Washington County Tax Lot Nos. 1S4-1-400 and 1S4 1AA-7200). Applicant: Gales Creek Terrace, LLC. Property Owners: Ronald and Wanda Rau. File No. CPA-06-01.

The second reading of Ordinance No. 2007-13 by title and vote will occur at the meeting scheduled for September 24, 2007.

**MOTION:** Councilor Miller moved, seconded by Councilor Uhing, to adopt Ordinance No. 2007-14 Amending the Forest Grove Zoning Map to Re-Zone a 4.2 Acre Portion of a 19.55 Acre Parcel from Exclusive Farm Use (EFU) to Single Family Residential (R-5). Located at 1548 19<sup>th</sup> Avenue (Washington County Tax Lot Nos. 1S4-1-400 and 1S4 1AA-7200). Applicant: Gales Creek Terrace, LLC. Property Owners: Ronald and Wanda Rau. File No. ZC-07-01.

The second reading of Ordinance No. 2007-14 by title and vote will occur at the meeting scheduled for September 24, 2007.

**Public Hearing Opened:**

Mayor Kidd opened the Public Hearing for Ordinance No. 2007-13 and Ordinance No. 2007-14.

**Declaration of Ex-parte Contacts, Conflicts of Interest, or Abstentions:**

None declared.

**Challenges from Parties:**

None declared.

**Applicant Testimony:**

Thomas Cutler, 5000 SW Meadows Road, Suite 400, Lake Oswego, representing the applicant, provided status of the property with respect to property ownership and control. Cutler reported they submitted a new application due to change in ownership, noting the new application resolves previously voiced issues by the Planning Commission and citizens. Cutler

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advised Council they were requesting the lowest possible density to protect habitat areas and comply with Metro requirements. In conclusion, Cutler noted they supported the proposed recommendations and looked forward to discussing with Council the Planned Residential Development.

**Proponents:**

No one wished to testify and no written comments were received.

**Opponents:**

John White, 1715 17<sup>th</sup> Avenue, testified in opposition and stated he would like to see a lower density to protect Gales Creek and asked Council to consider protecting Gales Creek as additional property annexes into the City.

**Others:**

No one wished to testify and no written comments were received.

**Council Discussion:**

Mayor Kidd provided status of the property with respect to Metro's amendment and realigning the UGB based on the 180' elevation and concurred that an R-5 was the best zone to meet the required criteria.

**Public Hearing Closed:**

Mayor Kidd closed the Public Hearing.

Johnston arrived at 7:50 p.m.

9. **SECOND READING OF RESOLUTION NO. 2007-49 AMENDING THE CITY MANAGER'S COMPENSATION PLAN AND CITY MANAGER'S EMPLOYMENT AGREEMENT AND AUTHORIZING COMPENSATION FOR THE CITY MANAGER FOR FISCAL YEAR 2007-08**

The first reading of Resolution No. 2007-49 by title and motion to adopt occurred at the meeting of August 20, 2007.

**Council Discussion:**

Hearing no discussion from the Council, Mayor Kidd asked for a roll call vote on the motion made at the meeting of August 20, 2007.

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Jordan read Resolution No. 2007-49 by title for second reading.

**ROLL CALL VOTE:** AYES: Councilors Johnston, Lowe, Miller, Thompson, Truax, Uhing, and Mayor Kidd. NOES: None. MOTION CARRIED 7-0.

**10. CITY MANAGER'S REPORT:**

Sykes reported on upcoming events as noted in the Council calendar and reported on other various upcoming local meetings and events. Sykes reported on the dedication celebration of the completion of the first portion of the facilities at Lincoln Park, noting a grand opening ceremony is planned for next spring. Sykes provided an update on various local and regional transportation issues and provided an update on the City's new website, noting training is underway. In conclusion, Sykes advised Council of an upcoming work session for the purpose of providing an overview of the Hagg Lake dam raise.

**11. COUNCIL COMMUNICATIONS:**

Lowe reported on the upcoming Fernhill Wetlands dedication celebration.

Miller reported the Committee for Citizen Involvement was excited about their participation in the Periodic Review process and reported the Sister Cities Association plans to host a Sushi Class on October 6, 2007, at the Community Auditorium. In addition, Miller reported on various upcoming Chamber community events.

Thompson had nothing to report.

Truax reported on the Forest Grove Rural Fire Protection District meeting, noting the Board appointed its new officers (Tim Dierickx, President; James Love, Vice President; and Kevin VanDyke, Secretary). In addition, Truax reported on the Library grand opening and fundraiser and provided an update on David Hill Road closure and a proposed gas pipeline project.

Uhing reported on various economic development issues.

Mayor Kidd reported on various Metro and Washington County meetings and tours he attended and upcoming meetings and events he was planning to attend. Mayor Kidd reported on various upcoming community-wide events and reported on various Washington County transportation issues. In

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addition, Mayor Kidd reported on the upcoming League of Oregon Cities Conference, noting the City is hosting a meet-and-greet highlighting various businesses in Forest Grove.

**12. ADJOURNMENT:**

Mayor Kidd adjourned the meeting at 8:30 p.m.

Respectfully submitted,

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Anna D. Ruggles, CMC, City Recorder

**FOREST GROVE CITY COUNCIL SPECIAL WORK SESSION  
(PERIODIC REVIEW PROCESS)  
SEPTEMBER 10, 2007 – 6:00 P.M.  
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*Minutes are unofficial until approved by the Council.*

**1. ROLL CALL**

Mayor Richard Kidd called the Work Session to order at 6:05 p.m. **ROLL CALL:**  
**COUNCIL PRESENT:** Victoria Lowe, Camille Miller, Ronald Thompson, Elena Uhing, and Mayor Kidd. **COUNCIL ABSENT:** Thomas Johnston and Peter Truax, excused.  
**STAFF PRESENT:** Michael Sykes, City Manager; Andy Jordan, City Attorney; Jon Holan, Community Development Director; Kerstin Cathcart, Senior Planner; and Anna Ruggles, City Recorder.

**2. PERIODIC REVIEW PROCESS:**

Holan facilitated the work session, noting the purpose of the work session was to brief Council about the specific work tasks in the Periodic Review process. Holan introduced Cathcart who presented a PowerPoint presentation outlining the Periodic Review Process - Phase I and presented a list of the preparatory tasks and a detailed calendar showing the public involvement plan. Cathcart reported there were two phases in the Periodic Review Process. Phase 1 involves the formal evaluation of the City's Comprehensive Plan and ordinances and the development of a Work Program. The State allows the City six months to complete Phase I, the Work Program. Once the State reviews and approves the Work Program, Phase II, the execution of the Work Program begins. Three years are allotted to the Work Program. Cathcart reviewed the public involvement plan, noting in order for an objection to be filed, the person filing the objection must be formally involved in the process. In addition, Cathcart outlined the State Planning Goals that must be addressed in the Periodic Review process and other goals the City may consider. In conclusion, Cathcart noted the Committee for Citizen Involvement is assisting in organizing the process and will be conducting a presentation on the Periodic Review at the next Annual Town Meeting.

Mayor Kidd opened the floor and roundtable discussion ensued pertaining to the Periodic Review process, Comprehensive Plan updates, public input, allotted time frames, and funding sources, i.e., grants, to help endure the costs of the Periodic Review process. Cathcart addressed Council questions and noted the expense to the City would be minimal because staff would be overseeing and conducting the Periodic Review process.

Council took no formal action nor made any formal decisions during the work session.

**3. ADJOURNMENT**

Mayor Kidd adjourned the work session at 6:35 p.m.

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Respectfully submitted,

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Anna D. Ruggles, CMC, City Recorder

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**FOREST GROVE CITY COUNCIL SPECIAL WORK SESSION  
(MUNICIPAL COURT UPDATE)  
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*Minutes are unofficial until approved by the Council.*

**1. ROLL CALL**

Mayor Richard Kidd called the Work Session to order at 6:35 p.m. **ROLL CALL:** **COUNCIL PRESENT:** Victoria Lowe, Camille Miller, Ronald Thompson, Elena Uhing, and Mayor Kidd. **COUNCIL ABSENT:** Thomas Johnston and Peter Truax (arrived at 6:46 p.m.), excused. **STAFF PRESENT:** Michael Sykes, City Manager; Andy Jordan, City Attorney; Paul Downey, Administrative Services Director; Virginia Petersen, Municipal Court Judge; Susanne Hudson-Rau, Municipal Court Coordinator; and Anna Ruggles, City Recorder.

**2. MUNICIPAL COURT UPDATE:**

Downey facilitated the work session, noting the purpose of the work session was to provide an update on the Municipal Court. Downey introduced Judge Petersen who gave an overview of the court procedures, court proceedings, type of offenses the court processes, arraignment process, payment contracts, and various programs the court offers. Petersen reported the Municipal Court has processed 6,507 citations since the court reinstated in 2004, noting of the 6,507 cases, 685 cases are currently in collections. Petersen reported the Court processes adult and juvenile, over 16, traffic citations; Minor In Possession of Alcohol; Possession of a Controlled Substance, less than an ounce; and Municipal Code violations. In addition, Petersen provided statistically information pertaining to the programs the court offers in lieu of a fine, noting the programs have a high success rate with most violators successfully completing the programs.

Truax arrived at 6:46 p.m.

Mayor Kidd opened the floor and roundtable discussion ensued pertaining to the court procedures, juvenile offenses, juvenile programs, officer overtime, and if the Court was financially self-sufficient. In addition, Truax suggested Council consider submitting a Request for Proposal for Municipal Judge services as standard practice in approximately two years. Petersen addressed Council questions and Hudson-Rau addressed officer overtime, noting the court is cognizant of the officers' overtime and makes every effort to schedule trials accordingly. Downey addressed court operation costs, noting the court is financially self-sufficient.

Council took no formal action nor made any formal decisions during the work session.

**3. ADJOURNMENT**

Mayor Kidd adjourned the work session at 6:58 p.m.

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(MUNICIPAL COURT UPDATE)  
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Respectfully submitted,

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Anna D. Ruggles, CMC, City Recorder

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**APPROVED**

3D

**1. CALL TO ORDER:**

Chairman Beck called the meeting to order at 7:04 p.m. **Planning Commission Present:** Tom Beck, Al Miller, Cindy McIntyre, Luann Arnott, Ed Nigbor. **Excused:** Lisa Nakajima, Carolyn Hymes. **Staff Present:** Jon Holan, Community Development Director; James Reitz, Associate Planner; Marcia Phillips, Permit Coordinator/Recorder.

**2. PUBLIC MEETING:**

**2.1 PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS:** None.

**2.2 PUBLIC HEARING:**

**A. Appeal of Community Development Director's Determination: Appeal of Community Development Director's Determination on Building Permit Number BLD 06-00220 and Attendant Site Plan Review. Location is 2937 Watercrest Road, Forest Grove. (Washington County tax Lot number 1N4 35AC-4100.) (Continued from May 21, 2007 with public hearing closed)**

Mr. Holan stated that at the May 21<sup>st</sup> meeting, the Planning Commission heard an appeal of a written determination of the Community Development Director concerning the setback applicable to an accessory structure in a single family residential zone. The Commission left the record open to allow the appellant's legal counsel and the applicant's legal counsel to submit final arguments concerning the jurisdiction of the Commission and the scope of its authority to require that the applicant move the accessory structure. Included in the Commission's packet was a memorandum from the City's Land Use Attorney, Pam Beery in which Beery states her Summary of Opinion, Discussion/Analysis and Conclusion.

Chairman Beck asked for questions or discussion from the Commissioners.

Chairman Miller stated that in reading through the memorandum from Beery, he saw nowhere that stated that the Commission has the authority to move the structure.

Chairman Beck said that in digging through the legal arguments, the City's Land Use Attorney's line of reasoning was fairly clear to follow, and made sense to him.

Chairman Beck asked for motions to be made one at a time, and indicated that possible motion language was provided by the City's Land Use Attorney as an attachment to her memorandum.

**Commissioner Miller made a motion that the Commission determine that the February letters to the Director in this matter do not constitute valid appeals under the Forest Grove Zoning Ordinance, because they are not worded as appeals and were not accompanied by the required appeal fee. Commissioner McIntyre**

APPROVED

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seconded the motion. Motion passed 4-0 with Commissioner Arnott excused from voting.

Commissioner McIntyre made a motion to deny the April 4, 2007 appeal, because the three-foot setback for accessory structures in the R-10 zone applies in this case based on the opinion by the City's legal counsel. Commissioner Miller seconded. Motion passed 4-0. Commissioner Arnott was excused from voting.

Commissioner Miller made a motion to determine that accessory structures should be sited five feet from any side or rear property line in the single family R-10 district as required by Zoning Ordinance Section 9.852(1)(d), which in such cases controls over Section 9.624(7), in any future applications coming before the City. Chairman Beck seconded. Motion passed 4-0. Commissioner Arnott was excused from voting.

Chairman Beck said that the last item on the agenda (Item (2)2.D) would be fairly quick, and it would be heard next.

**D. Conditional Use Permit Number CU-07-01: Forest Grove Community School, as applicant, is requesting to establish a K-12 charter school at 1914 Pacific Avenue (formerly Forest Grove Memorial Chapel). The proposed use would house up to 150 students. (Washington County Tax Lot Numbers 1S3 6BB-6800 and 7100). (Continued from June 18, 2007)**

Chairman Beck read the hearing procedures and asked for disclosure of any conflicts of interest, ex-parte contacts, bias or abstentions. Commissioner Miller stated that the school gave a presentation to his service club. Chairman Beck said he has had many discussions with the charter school about their project. There were no objections and no challenges from the audience.

**Chairman Beck opened the public hearing at 7:13 p.m. and called for the staff report.**

Mr. Reitz stated that the site is located in the Central Business District, and the proposed school is allowed as a conditional use. The ground floor and basement will be used for the charter school. The upper floor is not proposed to be used by the school, but will instead be used by the property owner for offices. The site is surrounded by non-conforming single family dwellings. When the single family redevelops they must conform to the Central Business District zoning standards.

In the interests of time and the number of items on the agenda, Chairman Beck asked Reitz to highlight any concerns.

Reitz stated that because the eighteen available parking spaces would more than comply with the minimum required for the initial demand, and because sufficient additional spaces are available on-street and in the adjacent public car park should the school

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expand its program to include grades 10-12, staff is not recommending an increase in parking.

Reitz read through the list of staff recommendation as listed on page 10 of the staff report.

**APPLICANTS:**

**Karen Torey, 43578 SW Hiatt Rd., Forest Grove, OR 97116.**

**Terry O'Day, 2417 15<sup>th</sup> Avenue, Forest Grove, OR 97116.**

Ms. Torey explained that this is a public charter school and will be run as a 501-C corporation by a Board of Directors. The intent is to open this year with an enrollment of 150 students in grades 1-9. The 10<sup>th</sup> grade will be added next year, with the remaining high school grades added sometime in the future.

Chairman Beck asked if the school were to move into the second floor of the building, would they require another Conditional Use permit. Reitz stated they would.

Ms. Torey said that at this time there is no plan for the use of buses, but this is an ongoing conversation with the school district. Many buses already go past the proposed site for the charter school, and in the future the charter school may ask permission to make a bus stop on a nearby street. There will be no buses in the parking Lot. The charter school is prepared to comply with all City regulations.

Ms. Torey stated that the charter school must pay for the facility. It is an ideal location for the school because there is ample parking and good traffic flow with the existing pass through. None of the other facilities in the area would allow all of the students to be on one site.

**Chairman Beck closed the public hearing at 8:45 p.m. and returned the meeting to the Commission for discussion.**

**DISCUSSION:**

Commissioner McIntyre was not sure this is the best place for the school. There will be parking problems when the high school is added.

**REBUTTAL:**

Ms. O'Day explained that the charter school is environmentally based. People will be encouraged to walk, ride bikes and take the bus, and the school tends to attract students who do.

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Commissioner Nigbor made a motion to approve the Conditional Use Permit for the Forest Grove Community School to establish a K-12 charter school at 1914 Pacific Avenue. Commissioner Arnott seconded. Motion passed 5-0.

**B. Planned Residential Development Number PRD-06-03: WRG Design, Inc. as applicants, are requesting a planned residential development to construct 58 single family detached dwellings on an 8.2 acre parcel. The site is located north of 26<sup>th</sup> Avenue approximately 320 feet to the east of the intersection of 26<sup>th</sup> Avenue and Sunset Drive (Washington County Tax Lot Numbers 1N3 31BD-1300, 3800, 3001, and 2900 ) (continued from March 19 and May 7, 2007)**

Chairman Beck stated that PRD-06-03 is continued from the March 19<sup>th</sup> and May 7<sup>th</sup> meetings, and called for an update on the staff report.

Mr. Holan said the applicant has revised the design of the project to address the Planning Commission's concerns. Included in the Commission's packet was a copy of the redesign with staff comments attached. The applicant has placed an east-west connector street on a previously long block. This improves the block design by shortening the block length along proposed Beechwood Street, and also provides opportunities for street access to Stites Park. The applicant would pay an in lieu of fee to cover half the cost to build the off-site portion of the road. The property owner to the west has expressed concern that the location of the proposed roadway would put much of that road on his property. Moving the road to the south to put more of the road on the applicant's property would shorten the already shorter block length to the south and lengthen the block to the north by about 20 feet.

The Commission should consider the type of housing appropriate to the area. The project, as proposed, would comply with the target density based on the provision of 9.813(m). The applicant has eliminated the four unit approach, therefore the maximum units in one structure are three. The architecture is repetitive. Lot depth does not allow for much variation, but variations could be made in the second story pitched roofs. Staff suggests a condition be added that states final elevation approval by the Community Development Director prior to building permit issuance.

**APPLICANT:**

**Jon Reinmann, 5415 SW Westgate Dr., Suite 100, Portland, OR 97221.**  
**Mike Robinson, Attorney, 1120 NW Couch St., Portland, OR 97205.**

Mr. Robinson stated that the applicant agrees with staffs recommendations and the added conditions of approval.

Mr. Reinmann asked for a temporary easement to accommodate utilities along Lot # 15. When the road is extended the easement will go away.

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**PROPONENTS:** None.

**OPPONENTS:**

**Ron Guillory, PO Box 12, Hillsboro, OR 97123.** Mr. Guillory gave the Commissioners a handout in the form of a letter written by him to the Planning Commission which summed up the potential impact the proposed PRD would have on the Bertsch property to the west. He stated that he was representing Tim Bertsch who could not be at the meeting due to illness.

Mr. Guillory said that the right-of-way impact on the applicant's property was 2.62 acres for their 8.23 acre development. This is 31.8% of their total development area. However, the impact on the Bertsch property will be a right-of-way impact of 53.5%, which is clearly disproportional and unacceptable. Mr. Bertsch believes the total east-west street improvement should be located on the applicant's site.

Mr. Guillory said the plan, as proposed, will create a "cloud" on the Bertsch property by obligating any future plans to develop the property to follow the shadow plat as submitted by the applicant.

Chairman Beck said the applicant would have to pay an in lieu of fee for half the street, which would be available when Bertsch develops his property.

**Granton West, 2432 Willamina Ave., Forest Grove, OR 97116.** Mr. West stated that City staff and the developer have not come up with a solution for the drainage problem. The detention pond will cause major problems on his property. There is water under the house now, and in winter time two pumps cannot keep up with it. When development occurs there will be problems with the sand filter system that runs along his south property line. The applicant has not addressed this issue, and it needs to be addressed. He stated that he is going to have problems, and there are five very medically challenged people living in the house.

**James Pistore, 2352 Willamina Avenue, Forest Grove, OR 97116.** Mr. Pistore lives on the corner of Sunset Drive and Willamina Avenue. He said he was concerned about storm water run off, and wanted to make sure the run off into the stream meets the 500-year flood plain requirements, so they would not be required to carry flood insurance. He does not want the run off to increase.

**Blaine Nunnenkamp, 2382 Willamina Avenue, Forest Grove, OR 97116.** Mr. Nunnenkamp owns the property the drainage creek runs through. He stated that he wants to keep it on the record that there are existing water run off and stream erosion issues. He stated that the applicant is proposing not to put a fence between the development and his property. The applicant is proposing to leave an existing fence that is in disrepair and falling down. Mr. Nunnenkamp would like a nice fence between his property and the wetland.

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Reitz stated that there will be a good neighbor fence adjacent to the developed Lots, but not specific to the wetland.

Holan said it is not uncommon for a Water Quality Facility to be surrounded by a chain link fence. He was not sure if this is a CWS requirement. The Planning Commission could make a chain link fence around the WQF a condition.

**OTHER:** None.

**REBUTTAL:**

Reinmann said that the applicant has tried to work with Mr. Bertsch, but the adjacent property owner has not come up with a better plan for street development. A developer would have to purchase other properties to make development of the Bertsch property work.

Robinson responded to Mr. Guillory's letter by saying that Mr. Bertsch can build a single family residence and not have to develop the streets. If he chooses to develop the property, he will benefit from the streets and utilities the applicant has brought to his property. This will increase its value. The east-west street now provides a good connection. If the street is moved to the south, the house to the west would have to be torn down to connect with Sunset Drive, and to the east the street would go through Steitz Park.

Reinmann stated that the applicant lost several lots when a three quarter street had to be put on the applicant's property. Clean Water Services does require a 4-foot chain link fence around the WQF. Regarding storm water, the applicant has agreed to put a curtain drain along the north property line, and adding utilities with granular backfill redirects ground water in a way that will direct the flow into the detention pond. The applicant is meeting CWS standards, so the flow will not increase with development. Conditions 31-37 deal with storm drainage.

**Chairman Beck closed the Public Hearing at 8:30 p.m. and returned the meeting to the Commission for discussion.**

Chairman Beck: What we are being told is that the City's Engineer and CWS have regulations that are being followed, and the Commission has to depend on these professionals. The City's Engineer and CWS experts tell us they know ahead of time how the creek will be affected. This area will continue to be developed, and the same situation will arise with another application in the same area.

Commissioner Miller: Based on the information we have seen, development should not change the amount of flow.

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Chairman Beck: Does anyone have a problem with adding a condition that would give the Community Development Director final approval on elevations?

The Commission agreed to the condition. Beck directed staff to create a condition to that effect.

Chairman Beck: The Commission can add a condition that would require a fence around the entire wetland (green) area. If it is already a CWS requirement, then it becomes a moot point. Should the applicant be required to pay for half of the road improvements on the east-west road?

Commissioner McIntyre: The applicant should be required to pay at least half of the cost of the east-west road on Mr. Bertsch's property. Regarding moving the east-west road, when it is developed in the future the road could be curved so the houses to the west would not have to be moved or torn down. I think it is wrong to take away the rights of one property owner and give them to another, and it seems that is what is happening with the east-west road.

Commissioner Miller: Nothing says the east-west road must be continued to Sunset Drive. It is a proposed street, but it is true that the first developer in a neighborhood sets the stage for future street layout.

Chairman Beck: This applicant is taking a fairly significant load as far as roads go. The Commission must be fair to the applicant. It makes sense to have the east-west road, and to have it go straight across. Whenever the road is eventually built what matters is how many lots you can get on the Bertsch property, and twenty feet will not make that much difference. Having the utilities and road there will make a significant increase in value.

Commissioner Nigbor: I think the applicant should put up half the money for the east-west street. I think it is the most reasonable thing for us to do. I am not too concerned that this will hurt and impact the Bertsch property when it develops. The applicant has led the way for some relatively good street and utility design. Mainly this is the most reasonable decision the Commission can make.

**Commissioner Miller made a motion to recommend approval of PRD-06-03 with Conditions of Approval as presented and a total of seven additional conditions. The four conditions from the applicant, approval of elevations by Community Development Director, a fence around the WQF, and half the cost of the portion of the east-west street that abuts Mr. Bertsch's property to be paid by the applicant. Commissioner Nigbor seconded. Motion passed 3-1. Commissioner Arnott was excused from voting.**

**C. Planned Residential Number PRD-06-05: Dave Turnbull, as applicant, is requesting a planned residential development on four parcels comprising a 1.72 acre site to develop 16 Lots. The site is located north of the intersection of Gales Way**

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**and 23<sup>rd</sup> Avenue and adjacent and west of “B” Street, about 275 feet north of 23<sup>rd</sup> Avenue. Addresses of the properties are 2332 “B” Street and 2307, 2311 and 2333 Gales Way. (Washington County Tax Lot Numbers 1N4 36DA-300, 800, 1000, and 1001) (Continued from April 16 and May 7, 2007)**

Chairman Beck explained that PRD-06-05 was continued from the April 16th and May 7<sup>th</sup> meetings. For the record, Mr. Holan stated that the public hearing on this matter was closed on May 7, 2007. Beck formally reopened the hearing due to a redesign of the proposed development, and called for the staff report.

Mr. Reitz said that on May 7, 2007, the Planning Commission continued the hearing to allow the applicant time to respond to a number of issues. The response was received on June 19<sup>th</sup> and included revised proposals pertaining to density, residential mix, parking, circulation, open space, building setbacks, orientation, and architectural design.

The current proposal is for 13 units. The redesign shows some change of residential mix. Off-street parking is available to all units, and there appears to be ample off street parking. The number of units has been reduced in the north driveway area, and the driveway length was reduced by ninety feet. The driveway is now for the sole use of the City’s Vactor truck, which maintains the WQF. The pedestrian path will be illuminated to address one concern had by the Commission.

The applicant is requesting more generic language for Condition # 35 in order to work with the City’s Engineer to design the water line. The applicant wants to see if there is a way to install all utilities in the easement to “B” Street where space is very limited.

Bill Bench, Fire Marshall, stated that the cul-de-sac would need a radius of 96-feet to accommodate turn around of the City’s fire truck, or the design must meet requirements for hammerheads. If the driveways are changed, they must stay out of the hammerhead turn around area. Staff recommends a fire suppression system in homes more than 150-feet from a fire hydrant. Sprinklers allow time for the Fire Department to add hose length to their setup.

**APPLICANT:**

**Matt Newman, Northwest Engineers, 19075 NW Tanasbourne Dr., Suite 160, Hillsboro, OR 97124.** Mr. Newman addressed the Fire Marshall’s comments. He stated that there was not enough room to enlarge the cul-de-sac to meet turn around requirements. The applicant decided to use a standard hammerhead instead.

Mr. Newman said that on May 7, 2007, the public hearing was continued to allow the applicant to continue to address site plan issues. By listening to input from the Commission and neighbors, the applicant did a redesign to reorient homes so they face towards the center. Attached units are staggered to create more interesting front elevations. The road access to the WQF is actually an easement across Lot # 6. There are

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a total of ten off-street parking spaces. The applicant agrees that driveways near the beginning of the bulb need to be reoriented due to issues with backing out.

Mr. Newman wanted to remind everyone that the development includes four existing homes. Two of these homes will be removed, and two will remain intact. According to Mr. Newman's density calculations minimum density is 12 units and maximum density is 15 units. Mr. Newman explained the method he used to calculate density.

Mr. Newman discussed the conditions of approval. He said that Condition # 8 needs to be revised because there is no Tract E. It should refer to Tract A. The content is fine. Condition # 27 regarding parking has been resolved, and needs to be amended. Condition # 35 has to do with utilities. The applicant plans to take the sanitary sewer and storm drain to "B" Street. It is doubtful whether there is sufficient room for the water line. The applicant's engineer believes looping of the water line is not necessary. Meters located in the cul-de-sac to serve three houses may be a solution. Mr. Newman suggested that Condition # 35 be revised to give the applicant flexibility to work with City staff to design the utilities. Mr. Newman said Condition # 37 could be left up to the interpretation of the Fire Department.

Holan stated that water pressure must meet Fire Department standards.

Chairman Beck said Condition # 38 should read, "If any portion of a home is more than 150-feet from a fire hydrant, the home must have a fire suppression system.

Beck asked whether parking could be moved to the north side of Smith Court.

Mr. Newman said the road could shift to the south and a sidewalk could be placed on the north side of the street, so people would step out of their cars onto concrete. By moving the parking to the north side, driveways would be avoided, and an extra parking space would be gained.

Chairman Beck suggested that the sidewalk on the south side of Smith Court could be eliminated, and then the street would not have to be shifted. That way reconfiguration would not interfere with setbacks.

**Dave Turnbull, 3897 SE Ash Street, Hillsboro, OR 97123.** Mr. Turnbull stated that he has given a great deal of thought to the opinions and concerns of the Planning Commission and neighbors. This is reflected in the redesign. The desire seems to be for Craftsman style homes to fit the look of the existing neighborhood. Mr. Turnbull has been looking for suitable designs, and Mr. Adams, a neighbor, has provided several very nice elevations several of which can be used. Mr. Turnbull showed examples of the elevations and described architectural details of the Craftsman style homes.

**PROPOSERS:** None.

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**OPPONENTS:**

**Melissa Moore and Roy Adams, 2326 "B" Street, Forest Grove, OR 97116.** Ms.

Moore appreciates that the houses now face the center. She said Chairman Beck made the comment that homes on the exterior lots should look like the existing homes, but the interior could have its own look. This would be fine for people driving by, but Ms. Moore said she will be looking at five of the interior homes outside her kitchen window, and they are a part of her neighborhood. They should look like the existing also. Ms. Moore said that it was her impression at the last meeting that the Commission requested the minimum density. She was disappointed to see the redesign come back with the same number of units. The driveway along Lots #4, #5 and #6 looks like a strange arm. By eliminating a couple of units the driveway can be made more "standard" looking. Ms. Moore suggested that the fence along the existing house on "B" Street could stop between the homes, and not go all the way to the street.

Ms. Moore said she found the elevations given to Mr. Turnbull online, and the main thing she noticed was that the garages were not so prominent. The applicant's elevations should reflect this.

Ms. Moore asked for clarification regarding the access road to the WQF. Is it wide enough for the Vector truck? Must the road be paved or can it be a green drive (grasscrete)?

Mr. Adams wanted to know how the Commission would insure that the access road would not be used for parking. He felt that the applicant did a good job of listening. The green space around the homes is nice. There is one unit too many, so the number of homes needs to be reduced by one. Mr. Adams wants to see Lot # 6 pushed forward with a six foot setback in the rear. It would be nice to eliminate one house along Covey Run, and make the homes along there one story for privacy.

Mr. Adams stated that there is a great deal of tandem parking. In a multi-family situation that does not work well. Covey Run is a good example. The parking on Lot # 7 is a concern. He would like to retain the existing nice looking home on Lot # 10 along Gales Way. It could be fixed up. He concluded by stating that there still seems to be many unknowns regarding elevations, parking, driveways, fencing, etc.

Chairman Beck explained that the conditions of approval outline what will happen. Many times the conditions of approval leave the decision up to the Community Development Director.

Mr. Adams was agreeable to the Community Development Director making decisions.

**Mark McDowell, 1723 23<sup>rd</sup> Avenue, Forest Grove, OR 97116.** Mr. McDowell said the elevations were very nice looking. Things have been moved around in the new design, but the density has remained the same. Parking is his main concern. There are potential

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problems in several areas with backing out, if a car is parked in the way. If one house were eliminated, the driveway spaces would open up and allow for better exiting.

**Mike Deitzman, PO Box 561, Forest Grove, OR 97116.** Mr. Deitzman wants a 6-foot fence between his property and the park. There should be a sidewalk on both sides of Smith Court, and the sidewalks should have been included from the beginning. Mr. Deitzman also wants a driveway off of Smith Court to the back portion of his property.

**Josh Straubuck, 2318 Gales Way, Forest Grove, OR 97116.** Mr. Straubuck said he appreciates that the house on Lot # 10 has been turned, so he now sees the front of the house instead of the side elevation from his property. He wonders why the applicant is tearing down a house to build a house. Mr. Straubuck would like the Walnut trees to be preserved. They look nice, it keeps a house cool in hot weather and they increase property value. The design allows sufficient room for the large trees to remain. Mr. Straubuck likes the elevations, but the garages are too prominent. The driveways and parking do not seem to be very well thought out. The driveways are being used for parking, exiting and Fire Dept. turn around.

**OTHER:**

**Sandy McDowell, 1723 23<sup>rd</sup> Avenue, Forest Grove, OR 97116.** Ms. McDowell asked whether the sewer back up problem has been addressed.

**REBUTTAL:**

In response to Mr. Adams comments regarding the number of units, Mr. Newman explained how he calculated the density. The applicant is within the target density.

Newman explained that the existing house needs to be removed in order to build the road, and the applicant wanted a nicer looking house at the entrance to the development.

Newman said that the garages are setback or even with the front of the house. Even the second floor on some of the homes projects out over the garage, so the garage is not so prominent. It is very difficult to market a house without a garage.

Regarding the road access to the WQF, Newman said grasscrete could be used or some type of low impact driveway material. Because the road is actually on an easement across private property, people would not be able to park there, and a gated fence could be put across the road.

Newman said he did not share the concerns about maneuvering and parking. Lot # 12's back out could be made larger with a bump out.

Newman said he believes there is no issue with the sanitary sewer backing up. He had talked to staff briefly and no one in the City says there is a problem. Nine new homes would not affect the sewer line by much. Calculations show that the storm drainage is

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fine.

Newman agreed that the Walnut trees are messy, but could remain. There will be a 6-foot solid fence between the park and the concerned property owner. By putting a driveway to the back of Mr. Dietzman's property, one parking space would be lost on Smith Court.

Mr. Turnbull said he saw no need for a driveway off of Smith Court to the back of Mr. Dietzman's property. Dietzman has access to that area from the front of his own property.

Turnbull said the Walnut trees are beautiful, but he feels sorry for the people buying that house. The trees are very messy, and they will have to keep it cleaned up. Turnbull explained that trees that are taken out will be replaced with trees suggested by the City. Trees are a renewable resource.

**Chairman Beck closed the Public Hearing at 10:30 p.m., and returned the meeting to the Commission for discussion.**

Chairman Beck asked for staff's comments on the sewer problem.

Reitz: The City's Engineering Department has no comment regarding storm and sewer problems on "B" Street. For clarity, it is a City requirement that a 6-foot fence must stop at the leading edge of the home, which means the fence would end 14-20 feet from the sidewalk.

Chairman Beck: For clarity Condition # 62 needs to read, "The fence is to stop 14-20 feet from the sidewalk."

Commissioner McIntyre: Is the access road 12 feet or 14 feet wide?

Reitz: 12 feet is recommended. The area is twenty feet wide, so the road could be made wider. The Vactor truck, which is as wide and heavy as a fire truck, needs to be accommodated. Condition # 25 states that the road needs to be 12-foot wide all the way to the WQF. It should be clarified that part of the road is on an easement on private property. The City's Public Works Dept. would normally put bollards and a locked chain across the roadway, so the area would not be available for parking.

Chairman Beck directed staff to change the wording on Condition # 25 to read, ". . .to Lot # 6 property line then is on an easement on Lot # 6. He would expect the applicant to make the area as amenable to potential buyers as possible.

Commissioner McIntyre: How wide are other emergency vehicles? The access road needs to be 14-foot wide.

Fire Marshall Bench: The Fire Department prefers the 14-foot width. Metro West Ambulance might try to go in there.

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Chairman Beck directed staff to change Condition # 25 to read, "Shall have a paved width of fourteen feet."

Commissioner McIntyre: Is the minimum density 11 or 12 units? I suggest that the total be reduced by two units by eliminating Unit # 3 and # 9. The applicant could charge more for larger units, and this would eliminate the parking problem and clutter.

Chairman Beck: Staff please take a moment to look at the density calculations. In the mean time, any other comments from the Commissioners.

Commissioner McIntyre: The applicant did a good job on the elevations, but could do better especially on the duplexes. I liked the first renderings better than those presented at this meeting.

Chairman Beck: Generally speaking the elevations look good. The applicant has made a lot of progress.

Reitz: Condition # 47 speaks about the type of architectural features.

Chairman Beck: Staff add to Condition # 47, "Final determination by the Community Development Director."

Commissioner McIntyre: Can the Commission could go lower than the minimum density?

Holan: A PRD gives the Commission a great deal of flexibility. The issue is meeting our Metro density requirements.

Chairman Beck: The Commission just this evening passed a PRD with higher density. I tend to agree with Commissioner McIntyre that to eliminate two units will allow more space between houses and loosen up the parking. The density calculations are a moot point with the flexibility given to the Commission on a PRD.

Holan: For the record, the density calculations provided by the applicant seem reasonable. Twelve to fifteen units are the target density.

Commissioner Miller: This is a busy subdivision. It is the homeowner's responsibility to get in and out of his own driveway as best he can. Is the Planning Commission going to determine specifically which units to eliminate with nothing being put their its place.

Chairman Beck: In place of Units # 2 & 3 have one unit because that corner is too crowded, and eliminate either Unit # 8 or # 9. The placement of the other units seems appropriate. If the applicant can make it work with eleven units, it is a nice development.

Commissioner Miller: Eliminating Unit # 4 would open the cul de sac.

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Commissioner McIntyre: Fewer, larger units would sell better. Replace Unit # 8 and # 9 with one nice unit to be seen as you drive in.

Commissioner Nigbor: I am leaning towards eliminating two units. This would make a tremendous difference, and would look more like the existing neighborhood. Eliminate Unit # 4 for sure and either Unit # 8 or # 9. Taking away Unit # 3 would not make much difference. Part of our job as a Planning Commission is to help integrate infill development.

Chairman Beck: Commissioner Miller made a good point about eliminating Unit # 4. I am wary of eliminating Unit # 3. This project needs to be financially feasible.

Commissioner McIntyre: If the subdivision does not fit – it does not fit. It is not the Commission's responsibility to be sure the applicant's finances are alright.

Chairman Beck: Units # 4 and # 5 would become one unit, and Units # 8 and # 9 would become one unit. The applicant has worked hard, and has made a lot of changes.

Commissioner Miller: I agreed with Units # 4 and # 9 being removed. The height of the homes should be reduced for privacy. A 6-foot tall fence was not intended for privacy with two-story homes.

**Commissioner McIntyre made a motion to recommend approval of PRD-06-05 Smith's Orchard with Conditions of Approval as noted in the staff report with the addition of the following conditions:**

- **Modify Condition # 4 to read, "no more than eleven lots. Lots 4-5 and 8-9 to be consolidated into single lots with single family detached units."**
- **Modify Condition # 25 to read, "access road shall have a minimum paved width of fourteen feet".**
- **Modify Condition # 38 to read, "Homes with any portion of the home located greater than 150 feet from Smith Court shall be equipped with a fire suppression system.**
- **Modify Condition # 47 to read, "Elevations shall be submitted to the Community Development Director for approval."**
- **Modify Condition # 63 to add, "The fence will not extend further than twenty feet from the sidewalk."**
- **Add a condition to read, "A curb tight sidewalk shall be installed along the north side of Smith Court."**
- **Add a condition to read, "Eliminate Lots # 4 and # 9 and replace with single-family detached homes.**
- **Add a condition to read, "Ten on-site parking spaces – not in driveways."**

**Motion was seconded. Motion passed 4-0. Luann Arnott was excused from voting.**

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**3.0 BUSINESS MEETING:**

**3.1 APPROVAL OF MINUTES:** Miller made a motion to approve the minutes for 5-18-07, 5-21-07, 5-7-07, and 4-16-07. Arnott seconded. Motion passed 5-0 with one correction on the minutes for 5-21-07. On the last page delete, "and for the record Holan ended on page 29 of the staff report."

Chairman Beck: The City Council has invited the Commissioners to a joint work session next Monday night to discuss Planned Residential Developments. Please try to make it if you can.

Commissioner Beck: Will there will be a Planning Commission meeting on July 30<sup>th</sup>. When asked how many could be there, Beck, Arnott, Miller and Nigbor said yes. McIntyre could not be there. It was decided there would be enough Commissioners present to have a quorum.

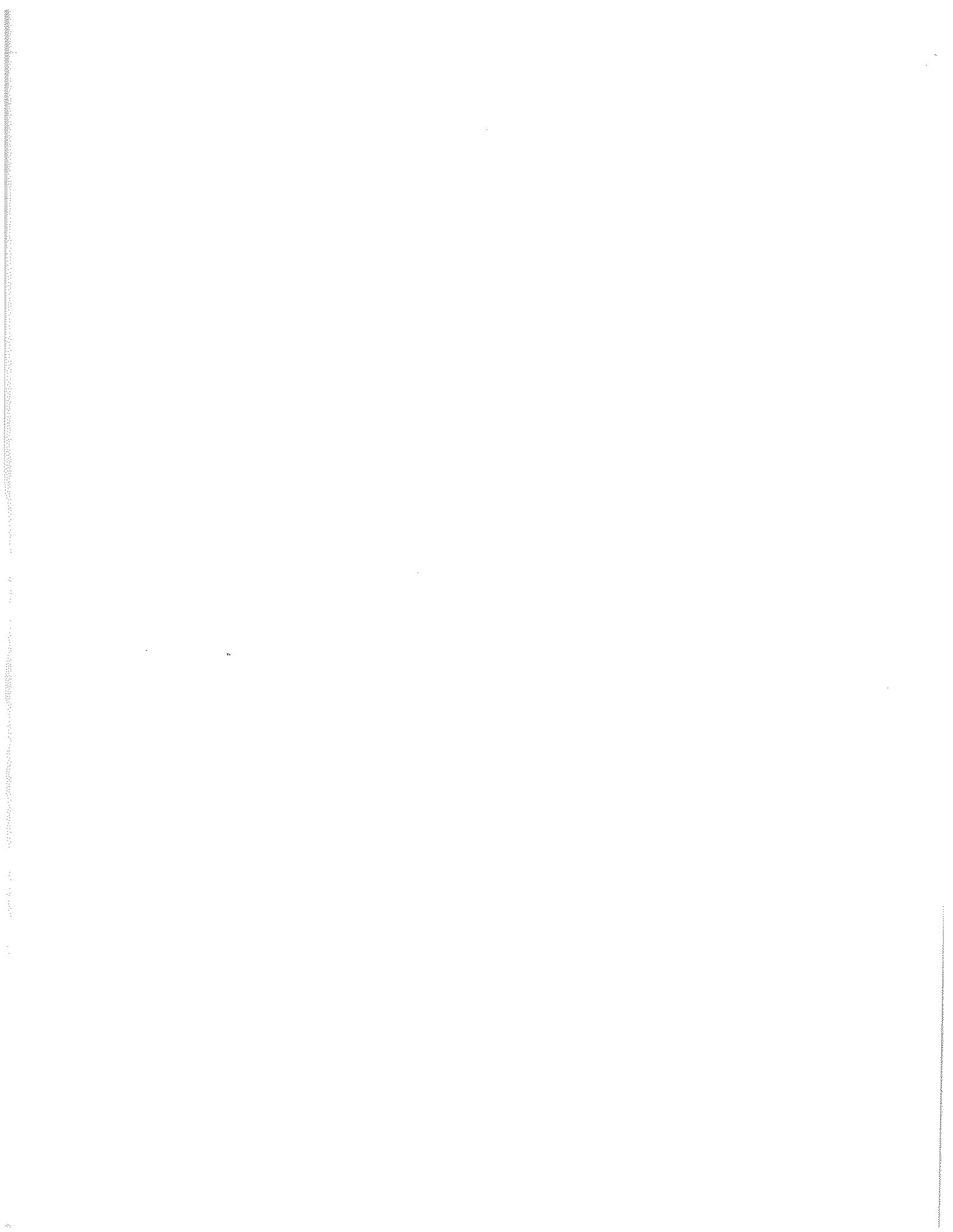
**3.2 REPORTS FROM COMMISSIONERS/SUBCOMMITTEES:** None.

**3.3 DIRECTOR'S REPORT:** None.

**3.4 ANNOUNCEMENT OF NEXT MEETING:** Next meeting will be held on July 30, 2007.

**3.5 ADJOURNMENT:** Meeting was adjourned.

Respectfully submitted by:  
Marcia Phillips



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APPROVED

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1. **CALL TO ORDER:**

Chairman Beck called the meeting to order at 7:05 p.m. **Planning Commission Present:** Tom Beck, Al Miller, Carolyn Hymes, Ed Nigbor, Luann Arnott. **Absent:** Lisa Nakajima and Cindy McIntyre. **Staff Present:** Jon Holan, Community Development Director; Kerstin Cathcart, Senior Planner; Marcia Phillips, Permit Coordinator/Recorder.

2.1 **PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS:** None.

2.2 **PUBLIC HEARING:**

Chairman Beck opened the meeting and stated that the Commission would hear Agenda Item (2)2.B first, because it would not require as much time as Agenda Item (2)2.A.

**B. Comprehensive Plan Amendment Number CPA-07-03: Pacific University, as applicant, requests an amendment to the Comprehensive Plan to redesignate 8.13 acre portion of a 12.27 acre site from "Semi-Public/Institutional – College" designation to "High Density Residential". The subject site located between Cedar and Elm Streets and about 175 feet north of 23<sup>rd</sup> Avenue. The site is known as Cannery Field. (Washington County Tax Lot number 1N331CA3500.)**

Chairman Beck read the hearing procedures and asked for disclosure of any conflicts of interest, ex-parte contacts, bias or abstentions. Commissioner Miller said he has been on site. Chairman Beck said he has a former interest. He was a former employee of Pacific University, and in the past he had the area rezoned. There were no objections and no challenges from the audience.

**Chairman Beck opened the Public Hearing at 7:10 p.m. and called for the staff report.**

Ms. Cathcart said that Pacific University owns a 12.27 acre site which is commonly referred to as "Cannery Field." The current tax lot 1N331CA 3500 was originally two different lots. In 1948, the University was presented with 8.13 acres, originally tax lot 3600, from the Taylor family. This lot was designated Semi-Public/Institutional on the City's Comprehensive Plan map which was adopted in 1980. This is the portion of the project subject to the proposed amendment.

The University then acquired the adjacent lot, originally tax lot 3500, which is approximately 4.14 acres, in 1986. This property was never designated Semi Public/Institutional. Its existing zoning was General Industrial. Both lots together were referred to as "Cannery Field."

In 2002, the applicant requested a zone change on a 4.25-acre portion of the original 8.13 acre site (tax lot 3600). This portion was changed from General Industrial (GI) to A-2

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Multi-Family Residential in order to facilitate the intended development of an athletic facility. This change gave the same zoning, high density residential, to both tax lots.

The two tax lots were combined in 2004 under the tax lot number 3500. The Comprehensive Plan has a split designation on the property – High Density Residential and Semi-Public/Institutional.

Pacific University and the City of Forest Grove have entered into a joint agreement to develop Lincoln Park as the new athletic facility for Pacific University and the community. The University expects to sell the Cannery Field property shortly and, therefore, the current comprehensive plan map designation would be inappropriate for private development.

Ms. Cathcart stated that the applicant is requesting removal of the Comprehensive Plan map designation of Semi-Public/Institutional on part of tax lot 3500, to be replaced with High Density Residential. The Zoning Map already assigns the entire lot the A-2 Multi-Family Residential district, so only a comprehensive plan map amendment is required. Removing the designation unifies the property.

This redesignation leaves two small parcels as an island with General Industrial zoning surrounded by A-2 High Density zoning. Tonight's focus is on the Comprehensive Plan Amendment. The rezoning of these two small parcels would require another hearing.

**PROPONENTS:**

**Jerry Brown, 43578 Purdin Road, Forest Grove, OR 97116.** Mr. Brown owns the flag lot at 2323 Cedar Street, and is in favor of changing the University's property to A-2 Multi-family.

**OPPONENTS:**

**Robert Cox, 2409 Cedar Street, Forest Grove, OR 97116.** Mr. Cox missed the opportunity to testify against the last zone change. He objects to a playing field being there due to lights and noise, and is not certain that High Density is appropriate due to drainage problems. Mr. Cox said the area floods even with the new storm drains. Water runs down driveways. He is very concerned about the drainage problem.

Chairman Beck explained that the intent of Pacific University is to sell the property to a developer. When the property develops, the drainage issue would be addressed. Beck suggested that Mr. Cox talk to the City Engineer now about the drainage problem.

**Josh Reynolds, Executive Vice President of Gray & Co., 2331 23<sup>rd</sup> Avenue, Forest Grove, OR 97116. Home address 8024 SE 32<sup>nd</sup> Avenue, Portland, OR.** Mr. Reynolds stated that Gray & Co. intends to do maraschino cherries long term in Forest Grove. The company has always been supportive of Pacific University developing a playing field.

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Mr. Reynolds wants the A-2 zone designation to remain – not single family. The company sometimes produces stinky odors and is messy. Home owners may think it would affect property values. He is agreeable to high density housing. The company wants to know about the University's property so long term decisions can be made.

Chairman Beck suggested that Mr. Reynolds appear before the City Council and say what he said tonight.

Mr. Reynolds said he will write a letter and give it to staff.

Mr. Holan recommended that Mr. Reynolds be involved in the Periodic Review update process.

**Dr. Forrest Bump, no address given.** Dr. Bump said he has a personal interest in Forest Grove and its development. He is concerned about Pacific University selling property and moving away.

Chairman Beck explained that Pacific University moved to Hillsboro to get more patients for various classes. The University is putting five million dollars into development of Lincoln Park in partnership with the City, and the sale of this property will help pay for that.

**Chairman Beck closed the Public Hearing at 7:35 p.m. and returned the meeting to the Commission for discussion.**

Commissioner Hymes: Why wasn't this brought to us together as a rezone of the two extra properties (zoned General Industrial) and the Comprehensive Plan Amendment?

Holan: Measure 56 notices will need to be sent to property owners involved with the rezone of those two properties. The Commission can direct staff to initiate a Zone Change Amendment and Comprehensive Plan Amendment for the two properties.

**Commissioner Arnott made a motion to recommend approval of CPA-07-03. Commissioner Hymes seconded. Motion passed 5-0.**

**Commissioner Arnott made a motion directing staff to initiate a Zone Change Amendment and a Comprehensive Plan Amendment for the two properties east of Cedar Street now zoned General Industrial to be changed to A-2 Multi-family. Commissioner Hymes seconded. Motion pass 5-0 with a voice vote.**

**A. Comprehensive Plan Amendment Number CPA-06-03, Zoning Text Amendment Number ZA-06-03, Land Division Ordinance Number LDO-06-02 and Municipal Code Amendment: The City, as applicant, is proposing amendments to the Comprehensive Plan, Zoning and Land Division ordinances and the Municipal Code to implement the requirements of Metro's Title 13 Functional Plan**

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**requirements pertaining to Nature in the Neighborhood (otherwise referred to as Goal 5). The amendments are city wide. (continued from May 7 and May 21, 2007)**

Chairman Beck explained that agenda item (2)2.A Goal 5 was continued from the May 7<sup>th</sup> and May 21<sup>st</sup> meetings, and asked staff to continue with the staff report.

Mr. Holan said, since two property owners were in the audience, the Commission could hear from them at this time, or continue with the staff report. The Commission chose to hear from the property owners.

**Ray Hoodenpyle, 44471 NW David Hill Road, Forest Grove, OR 97116.** Mr. Hoodenpyle owns 2.41 acres on David Hill Road. He asked why on the Metro map so much Class I is on the west side of Thatcher and not on the east side. The east side is wetter.

Holan explained that the areas are determined by Metro, and the City is obligated to use Metro's inventory. He could surmise that the designation is due to modifications on the east side of Thatcher Road due to farming. It appears the drainage continues along David Hill road to the north, and is a possible tributary to Council Creek. The area in brown on the map is due to slope, not wetlands. Most of the Hoodenpyle property is blue – Class I riparian area. The Planning Commission will make a recommendation to City Council. When it goes to the Council there can be a discussion of how this affects your particular property. Mr. Hoodenpyle agreed to meet with Mr. Holan next Friday to discuss the matter.

Chairman Beck asked whether existing houses in the areas affected by Goal 5 would be "grandfathered in", so if they burned the houses could be rebuilt.

Holan said they can rebuild, because they are exempt from this provision. No one else in the audience wanted to speak at this time, so Mr. Holan resumed the staff report.

Holan said he ended on page 29 of the staff report at the last meeting. Metro Functional Plan Requirements Section 3 requires that the implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process. This is accomplished by proposed Subsections 9.944 (F) and (G) which are taken from the Metro Model Ordinance. These are the two basic sections. In Section F, if the developer meets all standards, he can build, and Section G is if standards are not met.

The idea is to avoid impacting Natural Resource Areas. These are areas beyond the fifty foot buffer required by Clean Water Services. If these areas cannot be avoided, then the developer must mitigate on site or off site in the same basin. Site design is flexible. The overall density does not change, but the housing can be clustered to keep away from the Natural Resource Area.

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Beck: The Commission still has the same basic conundrum – trading High Density to preserve the resource area.

Holan: Density for the overall property would not change. Density on a particular part of the property would change (clustered homes). The developer would not have to do a Planned Residential Development, because provision is already in the Goal 5 plan. The main thrust of Goal 5 is to avoid, minimize, mitigate. Holan discussed the formula used to determine the amount of area that can be built upon.

Commissioner Miller: Who will do the calculations?

Holan: Staff will do the calculations. The applicant must do the mapping verification process. A Wetlands Biologist would prepare the report. There is a basic procedure for this, and a more complex procedure if the situation is complicated or the applicant desires more precision.

No commercial areas are affected by Goal 5, except one small area identified as an upland riparian area. Per the chart on page 31 Table 2, Class I CC (Community Commercial) – 10% of the Natural Resource Area can be disturbed. In Class II GI (General Industrial) - 50% of the Natural Resource Area can be disturbed.

Beck: It seems like it should be the opposite. It allows 50% intrusion by the most intrusive development.

Holan: The intent of Metro is to allow greater flexibility for industrial uses. The City can do a separate Goal 5 program, if it wishes more restrictive requirements.

Hymes: If we accept the Metro plan now, could we make our own plan on down the line?

Holan: Yes. As part of the Periodic Review update, the City can pursue its own Goal 5 program. Moving on to page 32 - Parks and Open Space, Tom Gamble, Aquatic/Parks and Recreation Director, has no problem with this section as written. I do not believe the City has much park property that would be affected by this. Holan read Section (3) on page 33 – Utility Facility Standards. Holan stated that Rob Foster, Engineering/Public Works Director, has no concerns with this section. This section applies if you are in a Natural Resource Area and states how to mitigate the disturbance. It gives specifications of plant size and spacing, etc. All of this is a significant improvement over what the City has now.

**On page 37 Standards for Subdivisions, Section (ii) could be changed to read, “Applicants who are sub-dividing and developing properties must comply with Subsections (E), (F) or (G) and (H).**

On page 37 Section (vii), “Prior to final plat approval, ownership of the NRA tract shall be identified to distinguish it from lots intended for sale.” It then lists three ways the

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NRA tract can be identified. The intent is to make sure it is managed by someone.

Page 48 Section (v), Municipal Water Utility Facilities Standards - Rob Foster, Engineering/Public Works Director, has no concern with this section.

Page 52 Section (c) – Property Developed Between Summer 2002 and January 5, 2006. I do not believe the City could have a property owner who developed during this period of time retroactively go through this process.

**Page 52 Section (7)(b) – Detailed Verification Approach – Notice Requirements. The Commission agreed notification should be sent to property owners within 300 feet rather than only 100 feet.**

**On Page 58 is a new section which will apply citywide. This section deals with Habitat-Friendly Development Techniques and Natural Resource Area Requirements. Section 9.971 (3) encourages property owners and developers to integrate habitat friendly development procedures, and actually lists habitat friendly development procedures and practices. There are no incentives to do so, just encouragement.**

**Chairman Beck closed the Public Hearing at 9:08 p.m.**

Holan said there were a few minor typing errors that will need to be corrected, and the two changes requested by the Commission.

**On page 37 Standards for Subdivisions, Section (ii) could be changed to read, “Applicants who are sub-dividing and developing properties must comply with Subsections (E), (F) or (G) and (H).**

**and**

**Page 52 Section (7)(b) – Detailed Verification Approach – Notice Requirements. The Commission wants notification sent to property owners within 300 feet rather than only 100 feet.**

**Commissioner Arnott made a motion to recommend approval of CPA-06-03, ZA-06-03, Land Division Ordinance Number LDO-06-02 and Municipal Code Amendment with changes as noted to staff. Commissioner Miller seconded. Motion passed 5-0.**

**3.0 BUSINESS MEETING:**

**3.1 APPROVAL OF MINUTES: None.**

**3.2 REPORTS FROM COMMISSIONERS/SUBCOMMITTEES: None.**

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**3.3 DIRECTOR'S REPORT:**

Holan said he had gone on the Metro tour to Vancouver BC. He visited Port Moody which is similar to location in the Vancouver metro area as Forest Grove is to the Portland area.. There is a significant difference there in development, pricing and average income between the two communities.

The attorney for the Rau's will not be available on August 6, 2007, so there will probably need to be a second meeting in August.

Chairman Beck asked when the curbs and sidewalks will be installed on University Avenue.

Holan replied that it is part of the development agreement for Burlingham Hall. The City's Public Works Director has not pushed forward with that yet. Darlene Morgan would be happy to come to a Planning Commission meeting to discuss it.

The new Pacific University Student Housing Phase II will begin soon. The building site is where the tennis courts are located now, and includes property further up Main Street. Parking has been expanded by sixty spaces.

Commissioner Miller: Where are we now on the Pacific University Master Plan?

Holan: The student housing was the first application under the Master Plan.

Chairman Beck: Pacific University had designated parking on Cannery Field, which they will no longer own.

Holan: The University has sufficient parking for the new student housing. If there is further development, they will have to put in parking in other areas.

**3.4 ANNOUNCEMENT OF NEXT MEETING:** The next meeting will be held on July 30, 2007.

**3.5 ADJOURNMENT:** The meeting was adjourned at 9:20 p.m.

Respectfully submitted by:  
Marcia Phillips



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1. **CALL TO ORDER:**

Chairman Beck called the meeting to order at 7:10 p.m. **Planning Commission Present:** Tom Beck, Carolyn Hymes, Ed Nigbor, Luann Arnott, Lisa Nakajima and Cindy McIntyre. **Absent:** Al Miller **Staff Present:** Jon Holan, Community Development Director; Marcia Phillips, Permit Coordinator/Recorder.

2. **PUBLIC MEETING:**

2.1 **PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS:** None.

2.2 **PUBLIC HEARING:**

**A. Comprehensive Plan Amendment Number CPA 06-01 and Zoning Map Amendment ZC 07-01:** Gales Creek Terrace LLC, as applicant, is requesting the redesignation of a 4.2 acre portion of a 19.55 acre site. The Comprehensive Plan Amendment is to re-designate the 4.2 acre area from "Exclusive Farm Use" (EFU) to Low Density Residential. The requested zone change is to rezone the same area from EFU to Single Family Residential" (R-5). The amendments are the result of bringing the subject site into Urban Growth Boundary. The 19.55 acre parcel is located at the western terminus of 19<sup>th</sup> Avenue rights-of-way and the 8.7 acre site is located adjacent and north of Gales Creek on the property. (Washington County Tax Lot Number 1S 4 1-400.)

Chairman Beck read the hearing procedures and asked for disclosure of any conflicts of interest, ex-parte contacts, bias or abstentions. Commissioner Arnott said she visited the property to look at it. There were no challenges from the audience.

**Chairman Beck opened the public hearing at 7:12 p.m. and called for the staff report.**

Mr. Holan said the proposed amendment is to establish Low Density Residential plan designation and Single Family Residential (R-5) zoning on the 4.2 acre site brought into the UGB by Metro earlier this year. This 4.2 acre site is part of the 19.55 acre parent parcel. A planned residential development has been submitted for 100 units on a 10.13 acre portion of the parcel and includes the 4.2 acre site subject to this amendment. Based on the analysis prepared by staff, it is found that the proposed designation would essentially meet Metro's ten unit per net acre density requirement.

Staff experienced projector problems, so maps could not be displayed for the audience. Holan invited members of the audience to come forward, and view the maps. One citizen came forward.

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Metro is the agency that determines the location of the Urban Growth Boundary. On February 28, 2007, Metro revised the UGB generally based on the 180 foot elevation. This elevation is based on findings by the City's Public Works Department that the 180 foot elevation is above the estimated 100 year flood plain for Gales Creek.

The proposed amendments would be at a lower density than the planned future character of the area including the remainder of the developed portion of the 19.55 acre parent parcel. Taking slope reductions into account, the 4.2 acre site would yield a density of 7.62 units per net acre. The remaining portion of the parcel within the UGB is planned and zoned for high density residential consistent with the large area south of Pacific Avenue and east of "B" Street.

The proposed amendment for single family residential would meet locational criteria for a low density single family residential development. About 50% of the site is 10 to 15 percent in slope and almost the entire net area is less than 25 percent in slope. A higher density designation, such as Medium Density or High Density residential could be considered for the site by the Commission. The one area where there is a question is the site's slope. A majority of the site is at or above the 10 percent slope criteria for either medium or high density residential.

The most significant issue is whether designating a portion of the 19.55 acre parcel for low density residential would be considered a spot zone given the adjacent, existing plan designations for the area. Generally, there are no definitive criteria for spot zones. Generally, a spot zone may be found where the site in question is small and there are no substantial dissimilar characteristics with other properties in the area planned for the same general land uses.

Staff recommends approval of the Comprehensive Plan Amendment and Zone Change. The Commission could consider higher density.

Chairman Beck said that given the slope consideration, the R-5 zoning works consistently with the Metro requirement.

Commissioner Hymes arrived at 7:50 p.m.

Commissioner Nakajima stated that this site is a little bit different because it is on the edge of the UGB, and the report talks about tax lot 400 being 16.92 acres, when actually 9.42 acres are not buildable because they are outside the UGB. Is it reasonable to use that number? Is there any precedent any where else in the community?

Holan stated that Knox Ridge was an example, where a substantial portion of the property lay outside the UGB. For the site being considered, the total acreage was

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looked at for purposes of looking at the overall site area. In terms of the density analysis, staff used that portion of the property inside the UGB.

Chairman Beck summarized the staff report by stating that, given the slope considerations, focus is on the single family residential designation for the Comprehensive Plan and R-5 for the zoning designation, and these designations work consistently with Metro's requirements.

Holan said staff believes the designations work consistently with Metro's requirements, based on the information received from Metro staff.

**APPLICANT:**

**Thomas Cutler, 5000 SW Meadows Road, Suite 400, Lake Oswego, OR 97035.**

Mr. Cutler stated that he represents the applicant, Gales Creek Terrace, LLC. As mentioned in the staff report, the ownership and control of the property has changed hands, so this is a new application. The application is very different from the previous proposal presented to the Commission, and many of the previous issues have been resolved. A much smaller area is being brought into the UGB than originally proposed. Everyone has come to a good solution with respect to where the Urban Growth Boundary should be located. The applicant supports staff's report and recommendation.

Metro determined the Urban Growth Boundary line, and coupled with that decision Metro's ordinance states that the site be zoned at least ten units per net developable acre. That decision was never appealed to LUBA. That leaves the very real constraint that whatever the zoning is, it needs to be at least ten units per net developable acre. Due to concerns of the Commission and citizens, the applicant has volunteered to go with the lowest density possible to still meet the Metro requirements. Looking at the surrounding zoning, it might be natural to request A-1 or A-2. But due to concerns of the Commission and community, the applicant is willing to go with a substantially lower zoning designation. R-5 is the lowest zoning designation that would still allow the capacity for unit yield that Metro requires in their ruling.

**Matt Sprague, SFA Design Group, 9020 SW Washington Square Dr., Suite # 350, Portland, OR 97223.**

If this were looked at as just an individual parcel not part of another development coming in, the automatic minimum zoning requirement under Metro to meet the ten units per acre requirement would be an A-1 zone. Utilizing the A-1 and R-5 zoning over the entire site, the applicant was able to come up with a net density of 10 units per acre. This was done in an attempt to get the density to the absolute lowest zoning that was possible.

**PROPONENTS:**

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**Bob Browning, 3012-B Pacific Avenue, Forest Grove, OR 97116.** Mr. Browning said he supports the continuing efforts of folks to find a use for this property. The constitutional question was the correct establishment of the UGB, which has been determined by Metro. There is some question whether tonight's proceedings are necessary.

**OPPONENTS:**

**Ron Thompson, 1728 "C" Street, Forest Grove, OR 97116.** Mr. Thompson said he had concerns regarding the Comprehensive Plan Amendment. This land is steep and has slopes. The property should not be developed south of 18<sup>th</sup> Avenue. The Comprehensive Plan designates this property as Gales Creek Natural Resource Area. The City established the 180 foot UGB line and Metro agreed. According to our own Comprehensive Plan, there is to be no high density on slopes over 10%, and 50% of the site is over 10% slope.

Chairman Beck said that because the R-5 zone is permitted with slope less than 20%, the applicant is actually following what Mr. Thompson is suggesting. In this development A-1 and A-2 is not allowed due to slope.

**Del Schrag, 1810 "D" Street, Forest Grove, OR 97116.** Mr. Schrag said his property is bordered on the west and south by the applicant's property. Gales Creek is a beautiful area. Metro says we need open spaces and pleasant places. Metro could pay the owners to keep this property and not develop it. This is a unique parcel. A person can walk ten minutes from downtown and be in an area full of wildlife. Mr. Schrag encouraged the Commission to keep housing to the lowest levels possible.

**Doug Thompson, 1728 "C" Street, Forest Grove, OR 97116.** Mr. Thompson said he would like to see the City's proposed trail above the 180 foot line. Parts of this property should be a lower density (R-10) not R-5 despite what Metro says. Sherwood is a great city due to good planning.

**Dick Lane, 1608 18<sup>th</sup> Avenue, Forest Grove, OR 97116.** The Comprehensive Plan still states that the Gales Creek Natural Resource area is on this exact property. The property should be developed minimally and kept as natural as possible. At a previous meeting the Commission recommended R-10 zoning. If Metro can decide the UGB line and density, the City has no control.

**Bonnie Combs, 1908 "C" Street, Forest Grove, OR 97116.** Ms. Combs gave the Commission a picture of a large oak tree endangered by development (Handout # 1). The Comprehensive Plan Amendment and Zone Change do affect the lives of the trees on this property. An archeological report should be obtained to look for Native American grave sites.

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**John White, 1715 17<sup>th</sup> Avenue, Forest Grove, OR 97116.** Mr. White said good progress has been made on determining the 180 foot UGB line. Due to the degree of slope on the property, it would be good to do some grading and to put in some retaining walls to allow the houses to be built on more level ground. There would also be less slope on the streets. Mr. White said the City's loop trail is proceeding nicely, and he wants to see the progress continue.

**OTHER:**

**Walt Wentz, 1817 17<sup>th</sup> Avenue, Forest Grove, OR 97116.** Mr. Wentz said there was an error on the public notice where it says an 8.7 acre lot on the third line from the bottom. The Comprehensive Plan Amendment redesignates the property from Future Farm Use to Residential. Mr. Wentz said he is not sure anyone has informed Gales Creek of these changes. "B" Street floods in the winter. The nursery located across Gales Creek from the site has an earthen berm for protection from the flood waters. Any encroachment on the channel will raise the flood level.

**REBUTTAL:**

Mr. Cutler said Metro decided that if this property was brought into the UGB, it must be 10 units per net developable acre. The Forest Grove City Council could have appealed this decision. The Urban Growth Boundary Line has been determined, and Metro has stated the area must be 10 units per net developable acre, so zoning is determined from that. R-5 is the only zoning that satisfies Metro's criteria. The zoning cannot be R-10 and still meet Metro's criteria.

The matter of trees will be discussed at the public hearing for the Planned Residential Development.

Flood issues have been adequately addressed. Decisions must be based on scientifically determined habitat preservation techniques. This is not only about livability and sustainability, but also about families. Once the natural resource areas have been protected and buffered, it is about these families. The applicant's development will provide affordable housing opportunities, add to the tax resources, and add value to the community.

**Chairman Beck closed the public hearing at 8:35 p.m. and brought the meeting back to the Commission for discussion.**

Chairman Beck called for a five minute recess.

**DISCUSSION:**

The meeting resumed at 8:45 p.m. Chairman Beck said that during the break, the

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Commissioners questioned staff regarding density and zoning. How the property is zoned will affect the Planned Residential Development. Beck asked Holan to read the densities.

Holan: R-5 with slope – 27.07 units – 4.2 acres  
R-7 with slope – 19.33 units – approximately 8 fewer units  
R-10 with slope – 13.55 units – approximately 13-14 fewer units

Beck: Please discuss the overall Comprehensive Plan vision for the Gales Creek area.

Holan: In the Comprehensive Plan, there is not a specifically designated area for the Gales Creek Natural Resource area. The Comprehensive Plan is more general, and just says along Gales Creek.

Commissioner McIntyre: This property is being brought into the city as residential from farm land. Can it be brought in as EFU?

Holan: No.

Commissioner McIntyre: Can it be brought in as R-10?

Holan: The problem would be with Metro. They can determine densities, and have stated the property must be ten units per net developable acres. This is in Metro's code.

Commissioner McIntyre: What if the Commission would not accept anything but R-10?

Holan: Metro, the applicant or property owner might litigate. This is an Urban Growth Boundary criteria which is part of Metro's code.

Chairman Beck: One conundrum is clearly that the Commission wants as little development as possible. Unfortunately, in the past the whole area was zoned A-1 and A-2. Looking at Metro's order, this area is considered an inner neighborhood near downtown. In a practical sense, the Commission's choices are A-1, A-2 and R-5 due to what is adjacent to the property. These are some practical realities beyond our control. The Commission has some control over how the property develops.

Commissioner McIntyre: The area floods. How many people do we want to be involved in the flood? Metro is forcing us to do something we know is not right. Maybe we need to stand up to Metro.

Chairman Beck: It is not accurate to discuss whether this area will flood. That has

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been decided. This area should not flood, because it is above the flood line.

Commissioner Arnott: I prefer R-10 zoning.

Commissioner Nigbor: Years ago I built a house on a steep slope. The City said I needed engineering. I had to build cassons twenty five feet deep, so the house would not slide. Keep density down where slope is greater.

Commissioner Hymes: This is a difficult area. The Commission has had a hard time finding a way to get around the R-5 zoning.

**Commissioner Hymes made a motion on CPA-06-01 to recommend approval of the redesignation of 4.2 acres from "Exclusive Farm Use" (EFU) to Low Density Residential. Commissioner Nakajima seconded. Motion passed 4-2.**

**Commissioner Nakajima made a motion on ZC-07-01 to recommend approval of the rezone of the same area from EFU to Single Family Residential" (R-5). Commissioner Hymes seconded. Motion passed 4-2.**

**B. Planned Residential Development Number PRD-06-01: Gales Creek Terrace LLC, as applicant, is requesting a planned residential development to construct 100 single-family detached and attached homes on a 13.14 acre site. The site is located at the western terminus of 19<sup>th</sup> Avenue rights-of-way. (Washington County Tax Lot Numbers: 1S 4 1-400 and 1S4 1AA-7200.)**

Chairman Beck stated that staff has asked for a continuance on PRD-06-01. The applicant's traffic engineer will not be available on August 20, 2007, which would be the next usual Planning Commission meeting date. The hearing could begin on that date, and then if the traffic engineer's testimony was needed, could be continued to the September 3<sup>rd</sup> meeting. Upon further discussion, it was determined that there would not be enough Commissioners available on August 20<sup>th</sup> to make a quorum.

**Chairman Beck continued PRD-06-01 to the Tuesday, September 4, 2007, Planning Commission meeting.**

**3.0 BUSINESS MEETING:**

**3.1 APPROVAL OF MINUTES: None.**

**3.2 REPORTS FROM COMMISSIONERS/SUBCOMMITTEES: None.**

**3.3 DIRECTOR'S REPORT: None.**

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- 3.4    **ANNOUNCEMENT OF NEXT MEETING:** Next meeting will be held on August 6, 2007, in the Public Auditorium's small conference room.
  
- 3.5    **ADJOURNMENT:** The meeting was adjourned at 9:25 p.m.

Respectfully submitted by:  
Marcia Phillips

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APPROVED

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1. **CALL TO ORDER:**

Chairman Beck called the meeting to order at 7:07 p.m. **Planning Commission Present:** Tom Beck, Carolyn Hymes, Luann Arnott, and Al Miller. **Absent:** Lisa Nakajima, and Cindy McIntyre. **Staff Present:** James Reitz, Associate Planner; and Marcia Phillips, Permit Coordinator/Recorder.

2. **PUBLIC MEETING:**

2.1 **PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS:** None.

2.2 **PUBLIC HEARING:**

**Conditional Use Permit Number CU-07-02:** Forest Grove School District, as applicant, is requesting a conditional use permit to enlarge two outdoor score boards at two locations. One scoreboard is located at Forest Grove High School, 1401 Nichols Lane (Washington County tax lot 1N4 36-300). The other location is at Neil Armstrong Middle School, 1777 Mountain View Lane (Washington County tax lot 1S3 5AD-300 and 1100).

Chairman Beck read the hearing procedures and asked for disclosure of any conflicts of interest, ex-parte contacts, bias or abstentions. Commissioner Arnott said she lives next door to the high school, and can see the scoreboard from her home. There were no challenges from the school district staff people, who were the only two people in the audience at the meeting. Chairman Beck called for the staff report.

Mr. Reitz stated that the Forest Grove School District is requesting a conditional use permit to enlarge two outdoor scoreboards at two locations. The high school scoreboard would be 28 feet wide, twelve feet tall and the overall height would be 22 feet above grade. This would replace the existing scoreboard, which measures 5 feet by 11 feet. The Neil Armstrong School scoreboard would be 18 feet wide, 8 feet tall and the overall height would be 18 feet. This would replace the existing scoreboard, which measures 5 feet by 11 feet.

Both scoreboards more than meet the required front yard setbacks, and staff has proposed conditions to ensure that the scoreboards are in compliance with the remaining setbacks. Staff has not received any communication from adjacent property owners. Mr. Reitz read the six conditions of approval as written in the staff report.

**APPLICANT:**

**Darin Davidson, Forest Grove School District, 1728 Main St., Forest Grove, OR 97116.** Mr. Davidson said the scoreboards are pretty straight forward. The

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school district is basically replacing existing boards with larger ones for greater visibility.

**Terry Thetford, Forest Grove School District, 1728 Main St., Forest Grove, OR 97116.** Mr. Thetford said the scoreboard at Neil Armstrong School will be situated in the same place as the old one. The one at Forest Grove High School will be placed a little further to one side than the existing one.

**OPPONENTS:** None.

**OTHER:** None.

**Chairman Beck closed the public hearing at 7:15 p.m. and returned the meeting to the Commission for discussion.**

**DISCUSSION:**

Commissioner Arnott: I am a next door neighbor to the high school, and I believe the scoreboard will be a good thing.

**Commissioner Arnott made a motion to approve Conditional Use Permit CU-07-02 to allow the Forest Grove School District to enlarge two scoreboards at two locations. Commissioner Hymes seconded the motion. Motion passed 4-0.**

**3.0 BUSINESS MEETING:**

**3.1 APPROVAL OF MINUTES:** None.

**3.2 REPORTS FROM COMMISSIONERS/SUBCOMMITTEES:** None.

**3.3 DIRECTOR'S REPORT:** None.

**3.4 ANNOUNCEMENT OF NEXT MEETING:** Next meeting will be held on Tuesday, September 4, 2007, due to the Labor Day holiday.

**3.5 ADJOURNMENT:** The meeting was adjourned at 7:20 p.m.

Respectfully submitted by:  
Marcia Phillips



## Memorandum

Date: August 7, 2005  
From: Jon Holan  
Re: Planning Commission Meeting

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There will be no Planning Commission Meeting on Monday, August 20, 2007.

# MONTHLY BUILDING ACTIVITY REPORT

3E

AUGUST

2006 - 2007

	August Zero-Six		August Zero-Seven	
	# Of Permits	Value	# Of Permits	Value
Man. Home Setup		N/A		N/A
Single-Family-New	4	956,601.10	10	2,363,998.26
SFR Addition & Alt/Repair	13	293,898.19	4	60,302.00
Multiple-Family-New/Alt	2 (5 units)	402,184.00		
Group Care Facility				
Commercial New			1	Modular office for Pacific University
Commercial Addition	1	100,500.00	3	23,576.00
Commercial Alt/Repair	5	25,570.00		
Industrial New				
Industrial Addition	1	19,700.00		
Industrial Alt/Repair	1	5,000.00	1	1,352.00
Gov/Pub./Inst. (new/add)			5	162,130.00
Signs & Grading	2		6	5 Grading 1 Sign \$1,200.00
Demolitions	1	<b>SFR</b>	2	
<b>Total</b>	<b>30</b>	<b>\$1,803,453.29</b>	<b>32</b>	<b>\$2,612,558.26</b>

**FISCAL YEAR, TOTAL TO DATE**

2006-2007		2007-2008	
Permits:	51	Value:	\$3,709,186.51
Permits:	63	Value:	\$7,064,342.36

September 24, 2007

**REPORT ON THE LABOR AGREEMENT BETWEEN THE  
CITY OF FOREST GROVE AND THE INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS (IBEW),  
LOCAL UNION NO. 125**

**Project Team:** Michael Sykes, City Manager  
Rob DuValle, Human Resources Manager

**Issue Statement:** The current year labor agreement expired June 30, 2007. The new labor agreement has been modified, ratified by bargaining unit members, and needs to be executed by the Council.

**Background:** Representatives of the City of Forest Grove and IBEW met during recent months and have reached tentative agreement on certain modifications to the agreement, pending approval of the City Council. The substantive agreement modifications are as follows:

- **COLA:** Cost of living adjustments were bargained for all classifications covered within the agreement at three and a half percent (3.50%) per year. Both historical data, as well as current established agreements, indicate that positions covered by IBEW tend to exceed the Portland CPI significantly. The negotiated rate is anticipated to maintain the City's labor market position in relation to market comparables for the duration of the agreement.
- **Journeyman Tree Trimmer:** A wage was established at 80% of Journeyman Lineman (JL) wages. The Tree Trimmer will also receive 90% of JL Wages when assigned to oversee the work of a two or more person crew consisting of a minimum of one other JL.
- **Health Insurance:** Current benefit levels of medical, dental, and vision coverage will continue for the term of the agreement.
- **Retirement:** The Retirement Plan, Section VII (3), will be modified to extend benefits currently assigned to three other employee groups (Police, Fire, and Management) under Council Resolution 90-58. This resolution was adopted to provide benefits equal to or better than the Oregon Public Employees Retirement System (PERS) resulting from changes in Oregon law

(Senate Bill 656 and House Bill 3349) regarding taxation of retirement benefits for employees who were members before July 14, 1995. The City asked for and has reviewed the fiscal impact from the City's actuary, Milliman Consultants and Actuaries. The modifications explicitly are awarded to the eight active employees listed in the agreement, and exclude separated employees.

- **Paid Meals:** Amounts distributed for Paid Meals will be included in the employees' taxable income pursuant to IRS regulations. Amounts were increased to offset resulting taxes.
- **Vacation Leave:** Vacation caps were increased to 360 hours consistent with existing labor agreements in other employee groups.
- **Clothing and Tools:** Amounts distributed for the purchase of clothing will be included in the employees' taxable income pursuant to IRS regulations. Amounts were increased to offset resulting taxes. Reimbursement for prescription goggles was increased to \$325.00 once every two years. Equipment purchased will be required to be stored on City property when not in use.
- **Working Rules:** Clarifying language was added to require a timely response to off duty emergency calls.
- **Long Term Disability Insurance:** Benefits were increased from 50% to 60% of the first \$4000 of salary (resulting in a maximum monthly benefit of \$2400) consistent with agreements in other employee groups.
- **Term:** Extends the term of the agreement for three years, expiring June 30, 2010.

The costs to implement this agreement are within the parameters set by Council and funds have been identified in the 2007-2008 budget and within the 5-year fiscal plan.

**Staff Recommendation:** The staff is recommending that City Council approve the attached resolution authorizing the City Manager to execute the labor agreement between the City and IBEW.

6.  
First Reading

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING EXECUTION OF A LABOR AGREEMENT  
BETWEEN THE CITY OF FOREST GROVE AND THE INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS (IBEW), LOCAL UNION NO. 125,  
EFFECTIVE JULY 1, 2007, AND EXPIRING JUNE 30, 2010**

**WHEREAS**, representatives of the City of Forest Grove and IBEW, Local 125, have met in good faith and negotiated a labor agreement between both parties effective July 1, 2007, through June 30, 2010, and

**WHEREAS**, the labor agreement provides for certain compensation and fringe benefit adjustments.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:**

Section 1: That the City Manager is authorized to execute the attached labor agreement (Exhibit A) between the City of Forest Grove and IBEW, Local 125.

Section 2: That the compensation plan contained in this agreement is approved, effective July 1, 2007, expiring June 30, 2010.

Section 3: That the fringe benefits contained in this agreement are approved, effective July 1, 2007, expiring June 30, 2010.

**PRESENTED AND PASSED** for first reading this 24<sup>th</sup> day of September, 2007.

**PRESENTED AND PASSED** for second and final reading this 8<sup>th</sup> day of October, 2007.

\_\_\_\_\_  
Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 8<sup>th</sup> day of October, 2007.

\_\_\_\_\_  
Richard G. Kidd, Mayor

**AGREEMENT**

**BETWEEN THE**

**CITY OF FOREST GROVE**

**AND**

**INTERNATIONAL BROTHERHOOD**

**OF ELECTRICAL WORKERS**

**LOCAL UNION NO. 125**

**JULY 1, 2007 TO JUNE 30, 2010**

## **AGREEMENT**

The CITY OF FOREST GROVE, Oregon, hereinafter referred to as "the City", and Local Union No. 125 of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, hereinafter referred to as "the Union", hereby mutually establish and agree upon the working conditions and wage schedule hereinafter set forth covering those employees listed in Article 30 and employed by the City of Forest Grove Light and Power Department.

The City and the Union have a common and sympathetic interest in the electrical industry, therefore, a working system and harmonious relations are desirable to improve the relationship between the Employer and the Union. All shall benefit by continuous peace and by adjusting any differences by rational common sense methods. To these ends, this Agreement is made.

### **ARTICLE 1 - RECOGNITION**

1.1 The City recognizes the Union as the sole and exclusive collective bargaining agent for the purpose of establishing wages, hours of work, benefits and conditions of employment for all regular electrical worker employees of the City, excluding supervisory and confidential employees, and employees presently represented in any other bargaining unit.

1.2 For the purposes of this Agreement:

- a. **ELECTRICAL WORKER:** Is defined as all classifications set-forth in Article 30.
- b. **REGULAR FULL-TIME EMPLOYEE:** Is defined as any employee who is regularly scheduled to perform work for 40 hours per week.
- c. **REGULAR PART-TIME EMPLOYEE:** Is defined as any employee who is regularly scheduled to work more than 600 hours in a calendar year, but less than 40 hours per week.
- d. **TEMPORARY EMPLOYEE:** Is defined as any employee who is employed for a limited period, not to exceed six months in a twelve-month period for a full-time employee, or 600 hours in a calendar year for a part-time employee.
- e. **SUPERVISORY EMPLOYEE:** Is defined as in Oregon Revised Statutes 243.650 (23).
- f. **CONFIDENTIAL EMPLOYEE:** Is defined as in Oregon Revised Statutes 243.650 (6).

## **ARTICLE 2 - DURATION OF AGREEMENT**

\* 2.1 This Agreement shall remain in full force and effect from July 1, 2007, up to and including June 30, 2010, and thereafter until terminated by at least sixty (60) days notice, in writing, by either party to the other.

2.2 This agreement may be amended or modified by mutual agreement between the parties hereto, without notice of termination by either party.

## **ARTICLE 3 - MANAGEMENT RIGHTS**

3.1 The Union recognizes the right of the City to manage its affairs, in accordance with its responsibilities, expressed powers, inherent authority, and the City Charter and that, except to the extent expressly abridged by provisions of this Agreement, management functions are not subject to negotiations. These functions include, but are not limited to, directing the activities of the department; determining levels of service and methods of operation, including subcontracting and introduction of new equipment; the right to hire, lay-off, transfer and promote; to discipline or discharge for cause; to determine the work schedules and assign work; to develop employment policies and procedures and any other such rights not specifically referred to in this agreement.

3.2 Unless directly contradicted by the terms of this Agreement or a mandatory subject for bargaining, all employment policies of the City are specifically incorporated herein by reference.

## **ARTICLE 4 - UNION SECURITY**

4.1 Membership or non-membership in the Union shall be the individual choice of employees covered by this Agreement. Employees who are not members of the Union shall make payment in lieu of dues to the Union. Such payment shall be in the same amount as provided for regular Union dues and assessments.

4.2 The City agrees to deduct Union dues or "fair share" from the paycheck of all bargaining unit employees. The City shall not be held liable for checkoff errors, but shall make proper adjustments with the employees and the Union as soon as practicable and upon notification from the Union. The Union agrees to indemnify and hold the City harmless from any action arising under this Article. The amounts to be deducted shall be certified to the City by the Treasurer of the Union by the tenth (10<sup>th</sup>) day of the succeeding month after such deductions are made.

4.3 Any Employee who is a member of a church or religious body having bona fide religious teachings which prohibit association with a labor organization or the payment of dues to it shall pay an amount or money equivalent to regular Union dues, initiation fees and assessments, if any, to a non-religious charity or another charitable

organization mutually agreed upon by the employee affected and the representative labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof to the employer that this has been done.

4.4 The Union shall assist the City by referring skilled workers to the City when requested.

4.5 The City shall designate bulletin board space for posting of official Union notices.

#### **ARTICLE 5 - EMPLOYEE RIGHTS**

5.1 The City and the Union agree there shall be no discrimination with regard to the hiring or tenure of the employees by reason of race, color, religion, sex, pregnancy, citizenship, age, marital status, physical disability, mental disability, veteran's status, medical condition, sexual orientation, political affiliation or national origin, or on the basis of membership in any other protected class. Discrimination on the basis of relationship, mental or physical handicap are prohibited, except in the instance of valid occupational qualification and under the provisions of the Americans with Disabilities Act. The City and the Union agree further that there shall be no discrimination against any employee due to membership or non-membership in the Union or because of an activity in which the employee may engage in on behalf of the Union, provided such activity does not interfere with the employee's performance of work assignments.

5.2 The City shall give all employees ten (10) working days notice of lack of work.

5.3 Employees appointed as Acting Superintendent shall be paid at the Line Foreman rate of pay. Employees shall not be appointed as Acting Superintendent while concurrently serving as Shop Steward.

#### **ARTICLE 6 - STRIKE AND LOCKOUT**

6.1 The Union agrees that during the term of this Agreement its membership shall not engage in any strike, work stoppage, slowdown or interruption of services, and the City agrees not to engage in any lockout.

6.2 Disputes between the Union and the City shall be resolved by arbitration in the same manner as set forth in Article 20.

#### **ARTICLE 7 - DISCHARGE, SUSPENSION, WARNING**

7.1 New employees may be terminated within the twelve-month (12) probationary period without cause.

7.2 Employees are subject to discipline for just cause. Disciplinary action or measures shall be limited to the following: oral reprimand, written reprimand, demotion, suspension, reduction of pay, or discharge.

7.3 Oral reprimands shall not be subject to the grievance procedure. Written reprimands may be processed through the grievance steps and may proceed to arbitration.

7.4 If the City has reason to reprimand an employee, it shall be done in a manner that is least likely to embarrass the employee before other employees or the public.

### **ARTICLE 8 - PAID TIME AND HOURS OF WORK**

8.1 The workday shall consist of eight (8) hours worked in a twenty-four (24) hour period with a lunch period of thirty (30) minutes, or eight (8) hours worked with a lunch period of one (1) hour. The normal workday at present is from 8:00 AM until 4:30 PM, with a lunch period of thirty (30) minutes. The lunch period shall be midway in the shift. The normal hours of work may be changed by mutual agreement between the City and the Union. Such agreement shall be reduced to writing. The employee shall not receive pay for the lunch period. Each employee shall also be allowed a rest break at the job site, not to exceed fifteen (15) minutes, approximately midway in each half shift, the time of which shall count as time worked. Any employee required to work overtime at the conclusion of the employee's regular shift shall have the option of a meal period of at least thirty (30) minutes, but not to exceed one (1) hour upon having completed the first one and one-half (1.5) hours of overtime work.

- \* 8.2 Changes in the normal hours of work for the summer months work schedule may be approved by mutual agreement between the City and the Shop Steward. The Shop Steward shall obtain concurrence from the Union.
- \* 8.3 When an employee reports for overtime work four (4) hours or more before the beginning of his regular shift, he shall be paid at the overtime rate until relieved. If the employee has worked six (6) hours or more outside their regular shift hours, they shall receive a minimum of eight and one half (8.5) consecutive hours of rest before their regular shift begins or regular shift hours will be worked at the overtime rate. Before leaving work the employee will notify the Supervisor of the employee's decision to report to the regular shift.

Work in excess of (8) eight hours per day and work in excess of five (5) eight (8) hour days, or forty (40) hours in any workweek, shall be considered overtime, but hours of work for which daily overtime is allowed shall not be included in computing weekly overtime. Overtime, computed to the nearest quarter hour, shall be compensated for at two (2) times the regular rate of pay. A minimum call back time of one (1) hour between 6 AM and 10:00 PM Monday through Friday and two (2) hours between 10:00 PM and 6:00 AM Monday through Friday, weekends and holidays, shall be paid except that

employees on weekend/holiday stand-by shall only be eligible for a one (1) hour minimum call back. Work contiguous to the regular shift shall be compensated at two (2) times the regular rate of pay for the time actually worked. Employees shall be paid at the overtime rate for all time worked on other than their regular shift or day and for all time worked on holidays, in addition to their holiday pay. Overtime must be pre-approved except in an emergency or while on stand-by. Overtime will be kept equitable within classification and based on a 12 month rolling accumulation and posted for each pay period.

8.5 All overtime worked shall be paid or the employee shall receive compensatory time-off based upon mutual agreement and the Department Head's determination of Department needs. Compensatory time-off shall be scheduled by mutual agreement of the employee and the supervisor based on the needs of the department. Compensatory time-off accumulation shall be capped at forty (40) hours.

8.6 The overtime pay of any employee called from home for overtime work shall be time worked plus one-half (.5) hour for travel time.

#### **ARTICLE 9 - PAID MEALS**

\* 9.1 Employees working one and one-half (1.5) hours of overtime contiguous to their regular shift, and up to or through a designated meal time, and any other overtime worked which continues into or through a designated meal time, shall be paid for appropriate meals at the Federal meal per diem rate for breakfast, lunch and dinner. The midnight meal shall be paid at the dinner rate. Amounts distributed for meals shall be paid through payroll and will be included in the employee's taxable income pursuant to IRS regulations. If the IRS meal allowance is increased during the term of this agreement a like percentage shall be added to the amounts listed in section 9.2. Under normal circumstances employees shall not be required to work more than six (6) hours without a meal. In the event an employee is required by management to work more than six (6) hours without a meal break, he shall be paid for one (1) hour at the straight time rate in addition to his compensation for time worked. When employees are scheduled to work outside their normal shift they shall not be required to supply themselves more than one (1) meal within a 24 hour period.

\* 9.2 Designated meal times for the purposes of Article 9 are defined as 6:30 to 7:00 AM for breakfast and shall be paid at the rate nine dollars and sixty cents (\$9.60), 12:00 noon to 12:30 PM for lunch at the rate of fourteen dollars and forty cents (\$14.40), 6:00 to 6:30 PM for dinner at the rate of twenty-five dollars and twenty cents (\$25.20), and 12:00 midnight to 12:30 AM for the midnight meal at the rate of twenty-five dollars and twenty cents (\$25.20). Meal breaks, if taken, during designated meal times, are one-half (.5) hour, and shall be considered unpaid time.

9.3 When conditions imposed upon the City require that work be performed during the designated noontime lunch period, the Foreman may advance the designated

noontime lunch period one-half (.5) hour, or delay it one (1) hour. If such delay of the noontime lunch period still results in employees working through their adjusted meal period, they shall be paid for one (1) hour at the straight time rate in addition to their compensation for time worked.

### **ARTICLE 10 - HOLIDAYS**

10.1 Employees covered by this Agreement shall receive the following paid holidays: New Year's Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, day after Thanksgiving, Christmas Day and two (2) personal holidays. Personal holidays shall be credited at the beginning of each calendar year and shall be prorated to the nearest hour for newly hired employees, and scheduled with the approval of the supervisor, and used within the calendar year. Employees on vacation when a legal holiday occurs shall be entitled to holiday pay or an extra day vacation.

10.2 Personal holiday hours of eight (8) hours or less as of December 31<sup>st</sup> of each year shall be carried over into the next year.

### **ARTICLE 11 - VACATION**

11.1 All employees who shall have completed twelve (12) full months of continuous service shall be allowed vacation time in accordance with the following schedule:

<u>Years of Continuous Service</u>	<u>Hours per Month</u>	<u>Days Per Year</u>
1-2 yrs	6.67	10
2-5 yrs	8.00	12
5-10 yrs	10.00	15
10-15 yrs	13.34	20
15-25 yrs	16.67	25
26 yrs	17.34	26
27 + yrs	18.00	27

11.2 Vacation accrual shall be calculated on a monthly basis beginning with the employee's date of employment. If an employee is hired in the middle of the month, vacation accrual shall be pro-rated for the first month of employment. Vacation time shall accrue during all hours of employment at straight time (not including overtime), vacation time, recognized holidays, used sick leave and time off chargeable to an occupational disability.

\* 11.3 Employees are encouraged to take vacation time on a yearly basis and vacation accrual shall not exceed 45 days (360 hours) without the approval of the City Manager.

\* 11.4 Upon termination of employment, an employee who has not taken accrued vacation and who has been continuously employed for at least twelve (12) calendar months shall be entitled to vacation compensation, not to exceed 45 days (360 hours).

11.5 Vacations may be taken any time with the prior approval of the Director or his designee.

\* 11.6 Employees may not take vacation time in increments of less than one (1) hour. Vacation in excess of one (1) hour may be taken in increments of one quarter (1/4) hour.

### **ARTICLE 12 - APPROVED ABSENCE**

12.1 Sick Leave. Employees shall accrue sick leave at the rate of eight (8) hours for each month of service. Sick leave may be accrued to a maximum of fourteen hundred (1400) hours. For purposes of the sick leave conversion at retirement, the cap shall remain at one thousand (1000) hours. When employees are terminated, all accrued sick leave credits shall be canceled. Employees taking time off for doctor or dentist appointments during working hours shall have such time charged against their sick leave accumulation. The City may request a doctor's release to return to work if the City can reasonably articulate its need for the release. Employees falsifying their claim for sick leave shall be liable for disciplinary action by the City. When an employee must be away from the job because of illness in the immediate family, such time off may be charged against sick leave time on an hourly basis. If the absence becomes prolonged, such time off may be charged against accumulated vacation. Employees must keep their department head informed as to their status to qualify under this provision. Under no circumstances shall the City grant an employee sick leave with pay for time off from City employment when sickness or injury resulted from employment other than with the City of Forest Grove.

12.1.1 Upon retirement, an employee's accrued, unused sick leave shall be converted to the employee's retirement account to be withdrawn in a lump sum or in the form of a monthly annuity. The conversion amount to be credited at retirement shall be based on the following table:

<u>Sick Leave Hours</u>	<u>Conversion at Retirement</u>
Up to 700	50%
701-775	55%
776-850	60%
851-925	65%
926-1000	70%

12.2 Funeral Leave. Whenever a death shall occur in an employee's immediate family or household, including grandparents, grandchildren, and in-laws, a leave of absence not to exceed 40 working hours, with full pay, shall be granted. Up to four (4)

hours of paid leave shall be given to an employee acting as pallbearer for anyone not listed above. Funeral leave is intended for the purpose of attending the funeral and/or attending to the affairs of the deceased.

12.3 Jury Duty. All regular employees who are called for jury duty or subpoenaed as a witness in a case for which they are not a party shall be entitled to receive full pay for such time off, if they endorse their checks for such services over to the City.

12.4 Leave of Absence Without Pay. All regular full-time employees may be granted a leave of absence without pay upon written application to the Director, providing such leave does not impair the functions of the department. Leave for longer than one (1) month must be approved by the City Manager.

12.5 Regular full-time employees in the service of the City shall maintain their place on the seniority list while on leave for good cause or while under transfer to some other department or on Union full-time appointment for a period not to exceed (1) year.

### **ARTICLE 13 - PROBATIONARY PERIOD**

13.1 All original and re-employment appointments shall be made for a probationary period of twelve (12) months. The probationary period shall be deemed a part of the examining process for determining the qualifications of the employee for regular full-time employee status. A probationary employee may be dismissed or demoted, and shall not have recourse to the grievance procedures.

13.2 An employee promoted to a higher paying classification shall serve a probationary period of six (6) months. The City may return the probationary employee to the former job during the probationary period without recourse to the grievance procedure.

### **ARTICLE 14 - INDUSTRIAL ACCIDENT**

14.1 The City shall provide Workers' Compensation insurance in accordance with the requirements of the State of Oregon. Employees who sustain an injury or illness compensable by Workers' Compensation and who are unable to perform their normal duties as a result of such injury or accident shall be compensated by the City's insurance carrier for the period of time loss. The difference between the Workers' Compensation payments and the employee's regular straight-time wages, less any payroll deductions, shall be paid by the City for a period of sixty-five workdays. Whenever an employee receives a check from the City's insurance carrier, the employee shall report the amount and the period, which it represents to the City's payroll department. If an employee is off work beyond the sixty-five (65) day period as a result of a work injury, accrued days of leave may be used on a pro rata basis to supplement the employee's insured disability income until leave is exhausted.

14.2 Both parties agree to the principle that during the period that the employee receives compensation from both the insurance carrier and the City, the employee shall suffer no financial penalty nor should the employee have a financial advantage as regards employee's regular pay, referred to in Section 14.1, by being on disability status.

14.3 It is in the mutual interest of the parties to return an injured employee to work as soon as practicable. When possible, the City shall provide limited duty assignments within the department for injured employees. With the concurrence of the attending physician, an injured employee shall return to work in the limited duty assignment if work is available, until such time as the employee is released for normal duties. Such limited duty assignment is intended to be temporary in nature and not a permanent assignment.

### **ARTICLE 15 - SAFETY**

15.1 All work under this Agreement shall be performed according to the Oregon Occupational Safety and Health Code. If the Oregon Occupational Safety and Health Code does not cover a specific work situation, the National Electric Safety Code shall apply when appropriate. This Agreement shall apply when its terms exceed the requirements of the safety codes.

15.2 It is the responsibility of the City and employees to comply with all state safety regulations set forth in Section 15.1.

15.3 The determination as to the safety of any operation shall initially be made by the Foreman and/or Working Foreman on the job. When in the opinion of the Foreman, the work assigned to a crew cannot be done safely because of the manpower and equipment available, the Foreman may reject the job. If any dispute arises because of such a decision by a Foreman, the City and the Union shall jointly hold a hearing on the matter as soon thereafter as time permits.

15.4 The City shall hold one safety meeting per month. The City and members shall establish a safety committee to investigate all accidents, unsafe conditions and actions as they occur.

### **ARTICLE 16 - CLOTHING AND TOOLS**

- \* 16.1 Protective clothing shall be furnished to all employees whenever and wherever it shall be necessary for health and safety reasons. This shall not include footwear. The City shall provide an allowance to employees annually for the purchase of rain gear (New employees will receive a pro-rated amount). The City's intent is to provide an allowance of \$300.00 to all classifications within the Bargaining Unit, payable on July 1<sup>st</sup> of each year. Amounts distributed for clothing shall be paid through payroll and will be

included in the employees' taxable income pursuant to IRS regulations. Clothing purchased by the employee must meet Flame Retardant guidelines when the potential for exposure dictates.

- \* 16.2 All Journeyman Lineman and Apprentices shall furnish the first set of tools. Then the City shall furnish replacements as they are lost, stolen or worn out. All equipment purchased by the City will be stored on City property.
- \* 16.3 The City shall provide work gloves as needed and shall be stored on City property.
- \* 16.4 Employees requiring prescription lenses shall be reimbursed up to \$325.00 once every two years for prescription safety glasses. Employees shall be required to present receipts for prescription safety glasses to receive reimbursement and will be stored on City property. Safety glasses will be replaced at City expense if the safety glasses are damaged while an employee is performing regular job duties. The City shall purchase and provide safety glasses for those employees who do not require prescription glasses.

#### **ARTICLE 17 - SENIORITY**

17.1 Seniority is hereby defined to mean the length of continuous service with the City within the bargaining unit. Seniority is a factor for management to consider when making decisions on employee promotion, layoffs, or other employee requests. When management determines that all other factors are equal, seniority shall be the determining factor.

17.2 When employees are laid off because of lack of work, they shall maintain their seniority rights during the layoff period for time equivalent to their length of service, but not to exceed one (1) year.

#### **ARTICLE 18 - OUTSIDE EMPLOYMENT**

18.1 It is agreed that no employee under this Agreement shall perform gainful outside employment, unless such outside work receives the prior approval of the Director and is compatible with the employee's City duties, in no way detracts from the efficiency of the employee in City duties, presents no conflict of interest with City affairs, in no way discredits City employment, and does not take preference over extra duty required by City employment.

#### **ARTICLE 19 - WORKING RULES - MISCELLANEOUS PROVISIONS**

19.1 The Union recognizes the right of the City to establish reasonable rules and regulations for the safe, sanitary and efficient conduct of the City's business, and

reasonable penalties for the violation of such rules and regulations. All employees shall continue to comply with the presently published rules, except in those areas superceded by this Agreement. Changes or additions to such rules shall be furnished to the Union, at the time of issuance, and such changes or additions shall be subject to review under the grievance procedure if the Union objects to said rules as violations of this Agreement within thirty (30) days after issuance.

19.2 Standby. Department employees may be required to be on call in a standby status for the purpose of responding to customer outages or emergencies pertaining to the Light and Power Department and the City's electric utility system during weekends and/or holiday periods.

19.2.1 Standby duty shall be performed by journeyman linemen, and other department journeymen employed as of the date of this agreement, and work assignments for standby shall be made on a rotating basis from week to week.

19.2.2 Standby crews shall be compensated at the rate of two (2) hours on the overtime schedule per person per standby day. Compensation for standby duty shall be for Saturdays, Sundays, and holidays only. Employees who have weekend standby duty shall be expected to be in a standby status from the close of regular work on Friday to the beginning of regular work on Monday. An employee who is unable to report to work or cannot be located shall forfeit standby pay. In the event standby crews are called to work, they shall receive additional compensation at the overtime rate for time actually worked.

19.2.3 The Operations Superintendent shall be notified, when practicable, when additional personnel are necessary for emergency work.

\* 19.2.4 Employees assigned to stand-by duty shall be provided with a pager or other communication device and shall be expected to respond in a timely manner when contacted. They shall be required to be available to receive emergency calls during time periods outside of their normal working hours. Failure to be available or to respond while on stand-by shall result in a loss of stand-by pay.

19.3 Night Work. When Journeymen are sent out at night to perform repair work which requires working on energized primary equipment or climbing off the ground, not less than two (2) Journeymen shall be required, except for re-fusing transformers and lines.

19.4 Construction. All framing and erection of poles or towers and stringing of wires shall be done by Journeyman Linemen assisted by Helpers, as required. All employees working eighty (80) feet above the ground or higher shall be paid at the rate of double-time (2X) while working at such height. This shall exclude roofs where no exceptional hazards exist and/or aerial man lifts.

19.5 Underground. The installation of underground electrical systems when performed by regular qualified employees of the City shall be performed with not more than two (2) Helpers to every Journeyman Lineman. The connection, termination, and maintenance of underground systems shall be performed under applicable rules set forth in the Oregon Occupational Safety and Health Code and the National Electrical Safety Code.

19.6 Tree Trimming and Brush Cutting. Tree trimming and brush cutting shall be performed in accordance with the State of Oregon Occupational Safety and Health Code.

19.6.1 After trees are trimmed from primary areas, or brush is cut from under energized lines, the limbs or brush may be chipped or hauled away by qualified employees.

19.7 Apprentice Linemen or Apprentice Metermen. The City may employ in each branch of the Electrical Workers' Trade one (1) Apprentice for each two (2) Journeymen, including Line Foremen, Line Working Foremen, Metermen, Working Foremen and other premium classifications as Journeymen, provided, that with the consent of the Union, the foregoing limitations may be suspended or modified when the need for training additional skilled employees exists. An Apprentice shall work under the direct supervision of a Journeyman.

19.7.1 No Apprentice shall be permitted to work on live wires, apparatus and/or equipment operated at voltages in excess of 750 volts until the fifth six-month period of the apprenticeship.

19.7.2 An Apprentice Meterman shall work under the direct supervision of a Journeyman Meterman and may perform other work as assigned.

19.8 Layout of Work. On jobs having a Foreman, employees are not to take directions, orders, or accept the layout of any job from anyone except the Foreman.

19.9 Where the work of an outside employee involves two or more classifications on the same day, the outside employee shall be paid at the higher rate of pay for actual time worked in that higher classification. No Foreman shall, at the same time, perform or supervise work for more than one (1) crew except, however, when two (2) or more crews are combined for a specified job, the Director or Superintendent shall designate one (1) of the Foremen to be in charge of the job, with no reduction in pay for either Foreman.

19.10 Supervisors and employees outside of the Bargaining Unit shall not handle tools and do that class of work required of a Journeyman except: a) when life or property is in danger and there are no other qualified persons available to do the work, b) when necessary to check the work of others, or c) when necessary to train others.

## ARTICLE 20 - GRIEVANCE PROCEDURES

20.1 For the purpose of this Agreement, a grievance is defined as a dispute about the meaning or interpretation of a particular clause of this Agreement, or an alleged violation of this Agreement, or of the laws governing the relationship between the City and employee or unlawful supervisory action which reasonably could be interpreted to endanger the job of an employee or the benefits arising there from.

20.2 Any dispute which arises between the parties during the term of this Agreement shall be handled as follows:

STEP 1 The Steward shall, on behalf of the aggrieved party, present the grievance in writing to the Superintendent within ten (10) working days of its occurrence, not including the day of occurrence or the day upon which the employee became aware of the occurrence. The dispute shall be discussed by the Superintendent, Steward, and the Employee. The Superintendent shall make every effort to reach a satisfactory conclusion within five (5) working days.

STEP 2 If no agreement is reached at Step 1, the employee, groups of employees, or Shop Steward shall present their grievance, in writing, to the Director within ten (10) working days of the response to Step 1. This grievance is to be signed by the grievant. Copies of the written grievance shall also be submitted to the City Manager and the Union Business Manager setting forth:

- (a) the nature of the grievance and the circumstances from which it arose,
- (b) remedy or correction the City or Union requested to make, and
- (c) the Section or Sections of the Agreement, if any, relied upon or claimed to have been violated.

The City and the Union shall endeavor wherever practicable to settle any grievance at this point, such "Settlement Agreement" to be signed by both parties and copies thereof to be furnished to the City Manager and the Union Business Manager. If, however, the employee and the Director do not settle such grievance directly within ten (10) working days after its presentation by the employee, then steps hereafter shall apply. Time frames herein may be extended by mutual agreement.

STEP 3 If no agreement is reached as provided in Step 2, the Union Business Manager or his authorized representative shall submit the grievance, in writing, to the City's authorized representative or representatives within ten (10) working days from the response at Step 2. The Union and the City shall meet to consider the grievance and may call and present witnesses to testify at such meeting and each shall pay all costs of the appearance of any witnesses so called by it. The time frames herein may be extended by mutual agreement.

20.3 If no agreement is reached through the process outlined in Step 3, an arbitrator may be selected at the request of either party to arbitrate the particular grievance. The arbitrator shall be selected jointly by the City and the Union and is to be chosen from a list of five (5) arbitrators residing in Oregon supplied by either the Public Employee Relations Board, State of Oregon, or the Office of the Federal Mediation and Conciliation Service, by lot or mutual agreement. The City and the Union shall each alternatively strike from this list, one (1) name at a time, until only one (1) name remains on the list.

Two (2) days shall be allowed for the striking of each name. The initial striking shall be determined by lot. The name of the arbitrator remaining on the list shall be accepted by both parties.

20.4 During the process of the grievance procedure, there shall be no strike or lockout. The arbitrator shall interpret this Agreement, determine if it has been violated, and determine awards, restitution, and corrective action. The arbitrator shall pass on the admissibility of the evidence. Each of the parties hereto shall provide all books, records, documents, or any other material which, in the opinion of the arbitrator, is relevant to the issue in dispute. The arbitrator's decision shall be final and binding on both parties, but the arbitrator shall have no power to alter, modify, amend, add to or detract from the terms of this Agreement. Neither party to the dispute shall seek judicial review. Should either party fail to promptly proceed with the steps of this grievance procedure or fail or refuse to abide by the decision of the arbitrator, the other party shall be free to take whatever action it deems necessary. The fee of the arbitrator and his incidental expenses shall be borne equally by the parties. Each party shall be responsible for costs of presenting its own case to and in arbitration.

#### **ARTICLE 21 - AGENTS OF THE UNION**

21.1 Whenever agents of the Union shall visit the place of employment, they shall make their presence known to the Supervisors and Director and shall not interfere with any employee in the performance of his work.

#### **ARTICLE 22 - SAVINGS CLAUSE**

22.1 Whenever it shall be found that any portion of this Agreement is in violation of any City, State or Federal law, such portion of the Agreement shall become invalid, and the remainder of the Agreement shall remain in effect. The City and the Union agree to negotiate substitute provisions for those Articles that may be in question.

#### **ARTICLE 23 - SUBCONTRACTING**

23.1 Nothing contained in this Agreement shall act as a bar to the City being able to subcontract out portions of work now being performed under this Agreement when such action would enhance the efficiency of operations or when technological advances make it feasible to do so, provided that the work subcontracted does not result in layoffs.

#### **ARTICLE 24 - SCOPE OF AGREEMENT**

24.1 The City and the Union shall not be bound by any requirement not specifically stated in this Agreement. The City and the Union are not bound by any unwritten past practices of the City or the Union, unless such past practices or understandings are specifically stated or referred to in this Agreement.

24.2 The Union and the City agree that this Agreement is intended to cover all matters affecting wages, rates of pay, hours, grievance procedures, working conditions, and all terms and conditions of employment and similar or related subjects and that, during the term of this Agreement, neither the City nor the Union shall be required to negotiate on any further matter affecting these or any other subjects not specifically set forth in this Agreement.

#### **ARTICLE 25 - HEALTH AND WELFARE**

25.1 The City shall provide medical, dental and vision insurance benefits to the employee and his dependents comparable to Blue Cross Plan V PPO medical insurance, Blue Cross Plan II dental insurance and Blue Cross UCR vision insurance. The City shall also offer Kaiser medical and dental insurance as an alternative to Blue Cross. The City agrees to contribute to employee's health insurance coverage an amount equal to ninety percent (90%) of the Blue Cross medical, dental and vision premium.

25.2 Upon retirement from the City service, employees with three (3) years of continuous service, may elect to continue their group medical insurance coverage at their expense.

#### **ARTICLE 26 - LONG TERM DISABILITY INSURANCE**

- \* 26.1 The City shall provide long-term disability insurance, which provides sixty percent (60%) of monthly salary up to a maximum salary of \$4,000 per month, after an eligibility period of ninety (90) days. Premium costs shall be paid in full by the City.

#### **ARTICLE 27 - RETIREMENT PLAN**

27.1 The City shall provide a defined benefit retirement plan. After six (6) months of full-time regular employment, employees covered by this Agreement are required to

participate in the retirement system. The City shall pay the employees' portion of the contribution. Total contributions to the retirement plan shall meet actuarial requirements. Employees who terminate prior to being eligible for vesting rights shall withdraw their contributions, plus interest, to the plan.

- \* 27.2 The amendments to the retirement plan which were adopted by council Resolution No. 90-58 shall be granted to the members of IBEW. Specifically to include the addition of active IBEW employees under Section VII, Part 3 of the City's Retirement Plan. This provision applies to eligible active employees of the City only and specifically excludes separated employees. The City and the Union agree that the only employees who will be eligible under Section VII, Part 3 are as follows:

Adams, Jeffery  
Hanville, Laurence  
Hormann, Keith  
Jansen, Kent

Stickles, James  
Smith, Roy  
Temple, Eric  
Vandehey, Donald

27.3 Retirees who are members of the City's retiree health insurance plan shall have their premiums reduced by \$65 per month upon reaching the Medicare age of 65. This applies to retired employees only and not dependents.

27.4 An employee eligible to receive disability retirement who is also receiving workers' compensation, shall have his/her retirement benefit reduced by the amount of the workers' compensation. Under no circumstances shall an employee's compensation from disability retirement and workers' compensation exceed the employee's average monthly earnings as of the date of disability.

### **ARTICLE 28 - LIFE INSURANCE**

28.1 The City shall provide life insurance in an amount equal to an employee's annual salary rounded to the nearest thousand dollars. Premium costs shall be paid in full by the City.

### **ARTICLE 29 - DEFERRED COMPENSATION**

29.1 Employees shall have the option of participating in a deferred compensation plan sponsored by the City. The deferred compensation plan shall be of no direct cost to the City and employee participation shall be voluntary.

29.2 The City shall offer to the bargaining unit any IRS tax deferred plans it offers to other City employees.

**ARTICLE 30 - CLASSIFICATION AND WAGES**

30.1 All wages to be increased by 3.50 percent July 1, 2007, 3.50 percent July 1, 2008, and 3.50 percent July 1, 2009.

Classification		Hourly Rate	Hourly Rate	Hourly Rate
		Eff: 7/1/07	Eff: 7/1/08	Eff: 7/1/09
		<u>3.50%</u>	<u>3.50%</u>	<u>3.50%</u>
Line Foreman	115%	\$39.78	\$41.17	\$42.61
Line Working Foreman	110%	\$38.05	\$39.38	\$40.76
Meter Relay Foreman	113%	\$39.09	\$40.45	\$41.87
Meterman Working Foreman	110%	\$38.05	\$39.38	\$40.76
<b>Journeyman Lineman</b>	<b>100%</b>	<b>34.59</b>	<b>35.80</b>	<b>37.05</b>
Journeyman Meterman	100%	34.59	35.80	37.05
Apprentice, 7th	90%	\$31.13	\$32.22	\$33.35
Apprentice, 6th	84%	\$29.06	\$30.07	\$31.12
Apprentice, 5th	80%	\$27.67	\$28.64	\$29.64
Apprentice, 4th	76%	\$26.29	\$27.21	\$28.16
Apprentice, 3rd	73%	\$25.25	\$26.13	\$27.05
Apprentice, 2nd	70%	\$24.21	\$25.06	\$25.94
Apprentice, 1st	65%	\$22.48	\$23.27	\$24.08
Mechanic, After 4 years		22.50	23.29	24.11
Mechanic, After 3 years		21.79	22.55	23.34
Mechanic, After 2 years		21.05	21.79	22.55
Mechanic, After 1 year		20.17	20.88	21.61
Mechanic, After 6 months		19.09	19.76	20.45
Mechanic, Start		18.00	18.63	19.28
Tree Trimmer Foreman	90%	\$31.13	\$32.22	\$33.35
Tree Trimmer	80%	\$27.67	\$28.64	\$29.64

Sr. Util Wkr, Thereafter	23.82	24.65	25.51
Sr. Util Wkr, After 6 months	21.41	22.16	22.94
Sr. Util Wkr, Start	18.99	19.65	20.34
Meter Reader, Thereafter	21.03	21.77	22.53
Meter Reader, After 6 months	17.85	18.47	19.12
Meter Reader, Start	15.06	15.59	16.14

30.2 Each employee shall be paid at one (1) of the steps of the range prescribed for his/her classification. Employee performance shall be evaluated in writing in a format prescribed by the City. Performance evaluations shall be conducted after six (6) months and one (1) year of employment, and on an annual basis thereafter. Merit raises may be granted based on the evaluation of work performance. Whenever an employee is appointed to a position in a higher classification, he/she shall receive at least the nearest higher salary in the new salary range. The merit and promotional salary increases shall be instituted at the beginning of the next pay period following completion of required service or notice of promotion.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this

\_\_\_\_\_ day of \_\_\_\_\_, 2007

International Brotherhood of  
Electrical Workers, Local Union 125

City of Forest Grove

\_\_\_\_\_  
Business Manager

\_\_\_\_\_  
City Manager



September 24, 2007

REPORT AND RESOLUTION FOR
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING
FOR STREET AND PARK IMPROVEMENTS
FOR THE 2008 FUNDING PROGRAM

PROJECT TEAM: Michael Sykes, City Manager
Rob Foster, Director of Public Works
Tom Gamble, Director of Parks & Recreation
Jeffrey King, Economic Development Coordinator
Nick Kelsay, Project Engineer

ISSUE STATEMENT: City Council is requested to pass a resolution authorizing the City Manager to sign and make application to Washington County for two 2008 Community Development Block Grant projects. The total cost, including City match is estimated at \$377,000.

BACKGROUND: The Washington County Office of Community Development (OCD) has released a call for grant proposals from communities and certain non-profits for the 2008 Community Development Block Grant Program (CDBG). The County has moved from a three-year funding cycle to a one-year cycle. This was done to better align the CDBG program with other federal grants the OCD receives. The competitive program categories for funding are: Public Facilities, Infrastructure Improvements and Public Services. Project applications are judged within their specific category. The OCD competitive scoring process will evaluate applications from all jurisdictions to determine their compliance with program requirements and to establish funding priorities for the coming program year.

The City will make two applications to OCD for CDBG grants. They are prioritized as follows:

Table with 4 columns: Priority #, Name of Project, CDBG \$ request, Total Cost. Row 1: Bard Park Playground Equipment, \$ 75,000, \$ 77,000. Row 2: 'A' Street Sidewalk & Street Improvements, \$140,000, \$300,000.

The first priority project is for new playground equipment at Bard Park. Equipment includes two fossil bluff climbers, tensile tough overhead event, triple painted

chinning/turning bars, triple bars, twin rider and two spring rockers. Bard Park serves a population of 2,025 within a 1/3-mile radius. This playground equipment compliments a recent CDBG project at Bard Park that completed a new path, shelter, basketball courts, benches, plantings, and other improvements. The request for CDBG funds is \$75,000 with a total project cost of \$77,000.

The second project is for new sidewalks, curbs, drainage, and street paving on A Street between 23<sup>rd</sup> and 26<sup>th</sup> Avenues. Over 1400 lineal feet of sidewalks will be constructed. It also includes approximately 1000 lineal feet of storm sewer, street signs, street trees, hydrant replacement and landscaping. The current infrastructure on this lower income area is either in poor condition or was never installed. There are no sidewalks, the road is in disrepair and drainage is lacking or in ditches. Cars often park in the undefined road shoulder, forcing schoolchildren and residents into the street. This also creates a hazard for children who walk to a nearby school. Because this project is in a different census tract, we are required to conduct a door-to-door income survey to document low-moderate income eligibility. The survey is required to make application. The survey is in progress. Total project cost is estimated at \$300,000. The request is for \$140,000 CDBG funds with \$160,000 in City matching funds.

The deadline for applications is October 12, 2007. Funding awards and construction is for a period covering July 1, 2008 – June 30, 2009.

**RECOMMENDATION:** Attached is a recommended resolution prioritizing the projects and authorizing the City to submit applications for possible CDBG funding. The projects are all of a high priority based on the individual project's relative urgency, number of low-moderate income persons served, and public support.

7.

**RESOLUTION NO. 2007-53**

**RESOLUTION APPROVING THE SUBMISSION OF APPLICATIONS FOR  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING  
FOR THE 2008-2009 PROGRAM PERIOD**

**WHEREAS,** It is the City's intent to improve the quality of public infrastructure including streets, sidewalks, storm drainage and parks; and

**WHEREAS,** The Federal Community Development Block Grant Program (CDBG) provides funding for such public improvements through the Washington County Office of Community Development (OCD); and

**WHEREAS,** The OCD has prepared a CDBG Plan for the 2008-2009 program containing program requirements for seeking block grant funding; and

**WHEREAS,** The City Council recognizes that identified project beneficiaries cannot be directly or indirectly charged by special assessment for any matching financial contribution to funding provided by CDBG sources; and

**WHEREAS,** The Forest Grove Engineering Department, Parks & Recreation Department and the Legislative and Executive Department have prepared formal applications to receive CDBG funding for the proposed projects, in accordance with OCD application requirements (a map illustrating each project is included in the application and attached to this resolution as Exhibit A).

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:**

Section 1. That the City of Forest Grove submits two applications for qualified projects to OCD, as indicated on Exhibit A, and cooperate with OCD in the review and evaluation process.

Section 2. That the City of Forest Grove has prioritized the CDBG applications in the following order: 1. Bard Park Playground Equipment, 2. "A" Street Sidewalk, Street and Curb Improvements Project.

Section 3. That the City of Forest Grove be prepared to contribute funding as specified in the grant application for any awarded grants.

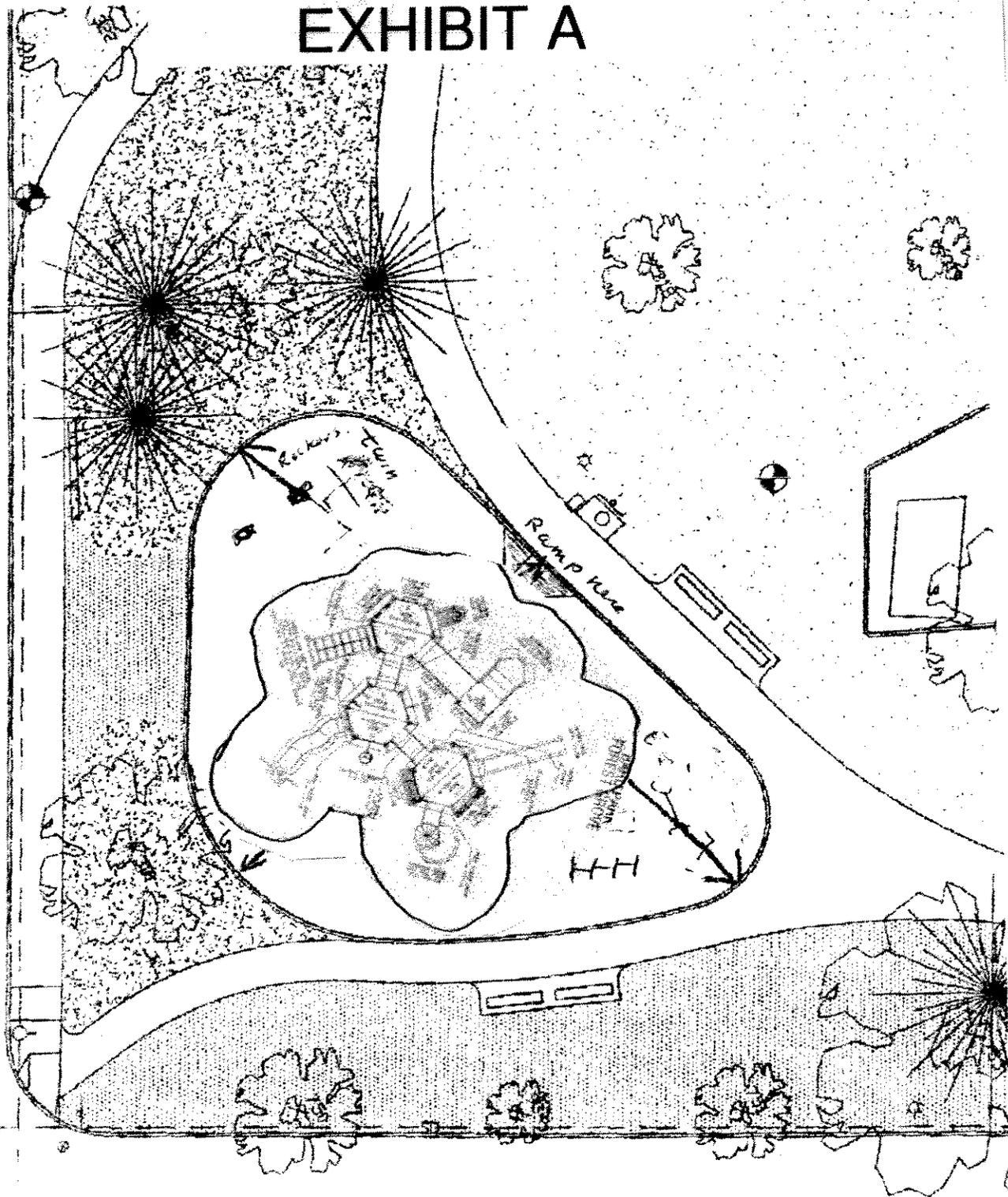
**PRESENTED AND PASSED** this 24<sup>th</sup> day of September, 2007.

\_\_\_\_\_  
Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 24<sup>th</sup> day of September, 2007.

\_\_\_\_\_  
Richard G. Kidd, Mayor

# EXHIBIT A



Forest Grove  
Bard Park

KINGWOOD STRE  
(50' WIDE)

## BARD PARK

# PLAYGROUND EQUIPMENT

DATE: 08/27/08

# EXHIBIT A

## CDEG BARD PARK IMPROVEMENTS



### Legend

City Limits

Urban Growth Boundary

Railroad

Stream



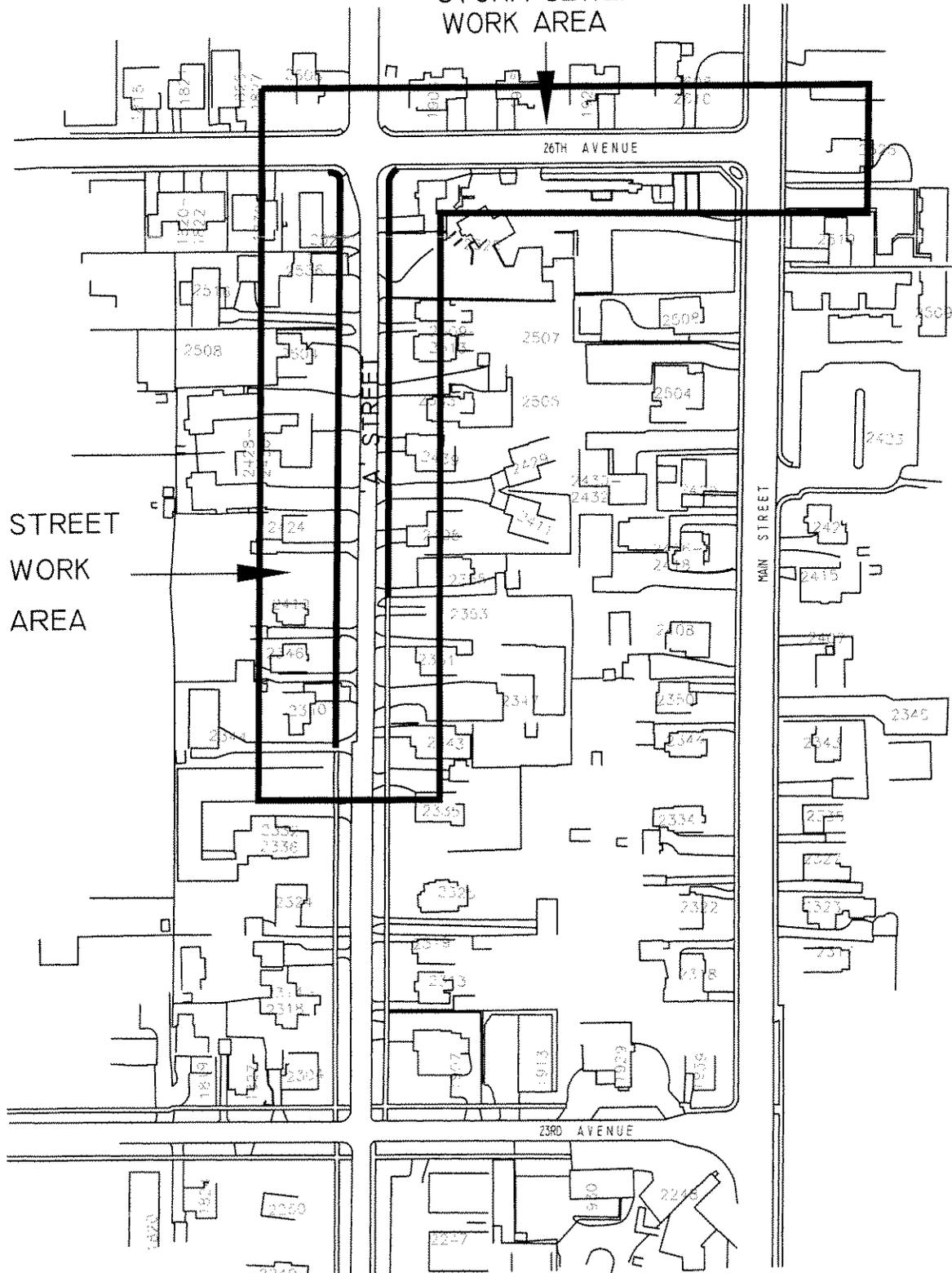
city of  
forest  
grove

FOREST GROVE - CDEG BARD PARK IMPROVEMENTS

# EXHIBIT 'A'

## PROPOSED 'A' STREET PROJECT AREA

STORM SEWER  
WORK AREA



STREET  
WORK  
AREA

MAIN STREET

26TH AVENUE

23RD AVENUE

**MEMORANDUM**

**TO: CITY COUNCIL**

**FROM: ROBERT FOSTER, DIRECTOR OF PUBLIC WORKS  
MICHAEL SYKES, CITY MANAGER  
NICK KELSAY, PROJECT ENGINEER**

**DATE: SEPTEMBER 12, 2007**

**SUBJECT: TOWN CENTER PEDESTRIAN IMPROVEMENTS PROJECT**

In order to complete construction of the Town Center Pedestrian Improvements Project it is necessary for the City to obtain temporary easements from some property owners adjacent to the project area. The work for this portion of the project will be performed by City Engineering staff, David Evans and Associates staff and ODOT staff. The attached resolution fulfills the requirements of the laws of the State of Oregon for the acquisition of these easements.

Staff recommends passing of this resolution to allow work on the right-of-way phase of the project to proceed.

**RESOLUTION NO. 2007-54**

**RESOLUTION OF NECESSITY APPROPRIATING CERTAIN REAL PROPERTY  
FOR TOWN CENTER IMPROVEMENTS**

**WHEREAS**, by the laws of the State of Oregon, the City of Forest Grove ("City") is authorized and empowered to locate, acquire, construct, reconstruct, alter, enlarge, renew, replace, operate and maintain roads, sidewalks, street lighting and other improvements as in the judgment of the Council are necessary and proper for the area of the City; and

**WHEREAS**, according to the laws of the State of Oregon, the City may acquire by purchase, gift, devise, condemnation proceedings or otherwise, such real and personal property interests, and rights of way either within or without the limits of the City, as in the judgment of the City are necessary or proper to exercise its powers, and

**WHEREAS**, for the public purpose of facilitating its transportation system, street lighting, pedestrian walkways, and access within the Town Center area of the City, and for the health, safety, benefit, and general welfare of the public, the City plans to locate, construct, operate, maintain and repair rights-of-way, sidewalks, street trees, street lighting and other improvements in the Town Center as provided in the legal agency agreement attached hereto as Exhibit 1, now therefore;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:**

1. The City finds and declares that there is needed and required for the location, construction, operation, maintenance, repair and improvement of City rights-of-way, street lighting and pedestrian improvements of that real property and interests in the Town Center area described in Exhibit 2 attached hereto and by reference incorporated herein.
2. The location, construction, operation, maintenance, repair and improvement of the City rights-of-way and improvements for which the Exhibit 2 real property and interests are required and are to be taken is necessary in the public interest, and the rights-of-way and improvements have been planned, designed, located and will be acquired and constructed in a manner that will be most compatible with the greatest public benefit and the least private injury or damage.
3. The City Manager and City Attorney are hereby authorized to negotiate with the owners and other persons in interest in the Exhibit 2 real property and as to the compensation to be paid for the appropriation of the property, and in the event that no satisfactory agreement can be reached, then the City Attorney is directed and authorized to commence and prosecute to final determination such proceedings as may be necessary to acquire the real property and interest therein and that upon the filing of such proceeding, possession of the real property and interest therein may be taken immediately.
4. Upon the trial of any suit or action instituted to acquire the real property or any interests therein, the attorneys acting for and on behalf of the City are hereby authorized to make such stipulations, agreements or admissions as in their judgment may be for the best interest of the City.

**PRESENTED AND PASSED** this 24<sup>th</sup> day of September, 2007

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Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor on this 24<sup>th</sup> day of September, 2007

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Richard G. Kidd, Mayor

**Exhibit 1**  
**Legal Agency Agreement**

LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROJECT – URBAN  
Forest Grove Town Center Pedestrian Improvements

**THIS AGREEMENT** is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF FOREST GROVE, acting by and through its elected officials, hereinafter referred to as "Agency".

**RECITALS**

1. The roadway and sidewalk segments included in this Project are part of the city street system under the jurisdiction and control of the Agency.
2. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

**NOW THEREFORE**, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to replace or repair deteriorated sidewalks and curbing and install new sidewalks and curbing in areas without; install pipe to eliminate open ditch sections; install illumination, benches and bicycle racks; and provide enhanced pedestrian crossings, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A", and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program (STP), Title 23, United States Code. The total Project cost is estimated at \$1,963,000. The original STP urban funds for this Project shall be limited to \$1,100,000. Additional STP Urban funds in the amount of \$660,000 are being made available to the Project through Metro (JPAC/TPAC). The additional funding is programmed in the 2006 – 2009 STIP and scheduled to be approved prior to December 31, 2005. If the STIP approval has not occurred by that date then funds available for the Project shall remain at \$1,100,000. The Project will be financed with STP funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds. The estimate for the total Project cost is subject to change.

M C & A No. 21,878  
CITY OF FOREST GROVE

3. The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense.
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on completion of the Project and final payment or ten calendar years following the date all required signatures are obtained, whichever is sooner. In the event the Project has been started but not completed at the expiration of ten years, the Parties may enter into an amendment to extend the Agreement for a reasonable period of time in order to allow completion.
5. This Agreement may be terminated at any time by mutual written consent of both parties. State may terminate this Agreement without Agency's consent by delivering written notice to Agency of State's intent to terminate, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
6. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

MC & A No. 21,878  
CITY OF FOREST GROVE

7. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2.
8. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
9. Agency shall enter into and execute this Agreement during a duly authorized session of its City Council.
10. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**IN WITNESS WHEREOF**, the parties hereto have set their hands as of the day and year hereinafter written.

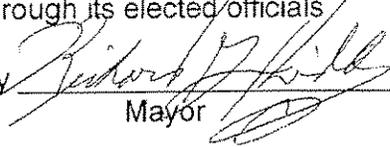
This Project is in the 2004-2007 Statewide Transportation Improvement Program, (Page 81, key #12481) that was approved by the Oregon Transportation Commission on November 17, 2003.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

M C & A No. 21,878  
CITY OF FOREST GROVE

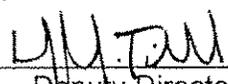
On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

**CITY OF FOREST GROVE**, by and through its elected officials

By   
Mayor

Date Sept 26, 2005

**STATE OF OREGON**, by and through its Department of Transportation

By   
Deputy Director, Highways

Date 26 OCT 05

By   
Recorder

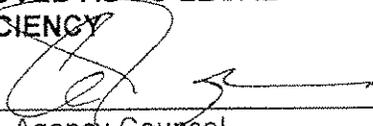
Date Sept 26, 2005

**APPROVAL RECOMMENDED**

By   
Technical Services Manager/Chief Engineer

Date 10-25-05

**APPROVED AS TO LEGAL SUFFICIENCY**

By   
Agency Counsel

Date Oct 7 2005

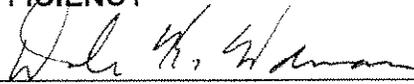
By   
Region 1 Manager

Date 9-9-05

Agency Billing Address:

City of Forest Grove  
P.O. Box 326  
Forest Grove, OR 97116

**APPROVED AS TO LEGAL SUFFICIENCY**

By   
Assistant Attorney General

Date: 10/21/05

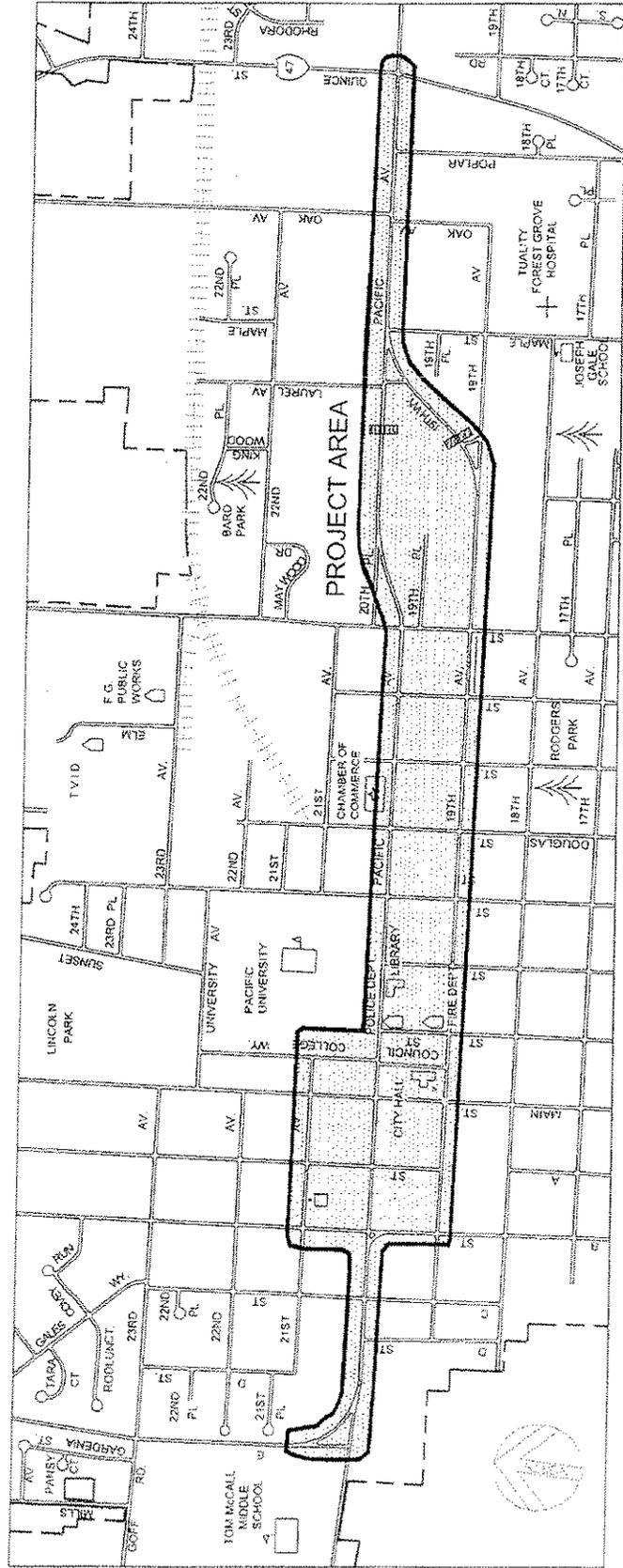
ATTACHMENT NO. 1 to Agreement No. 21,878  
SPECIAL PROVISIONS

1. Agency shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Agency shall, upon State's award of a construction contract, furnish all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. ODOT shall extend any warranty provisions in any contract between ODOT and contractor to Agency.
4. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Purchasing and Contracts Unit Manager or designee (Salem). Said contract must be reviewed and approved by the Purchasing and Contracts Unit Manager or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
5. State may make available Region 1's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
6. Maintenance and power responsibilities shall survive any termination of this Agreement.

**Exhibit 2**  
**Description of Property**

Exhibit A

# FOREST GROVE TOWN CENTER PEDESTRIAN IMPROVEMENT



## EASEMENT FILES FOR ODOT0000-0547

Tax Lot Number	Engineering Plan Sheet	Street Address	Mailing Address	Owner
TL 1600	Sheet 7	1912 21st Avenue	13135 SW Shore Dr, Tigard 97116	Terry Hammond
TL 6700	Sheet 4	1926 Pacific	1450 Treat Blvd, Walnut Creek, CA 94597	Pacific One Bank
TL 4000	Sheet 6	2202 Pacific	1513 Tara Ct	Francis Olberding
TL 4700	Sheet 3	1832 Pacific	1828 Pacific Ave	Robert Fuiten Estate & Helen Fuiten
TL 2600	Sheet 4	2004 Main Street	1828 Pacific Ave	Robert Fuiten Estate & Helen Fuiten
TL 5100	Sheet 3	1828 Pacific Avenue	1832 Pacific Ave	RH&R Properties (Roderick, Robert & Helen Fuiten)
TL 9900	Sheet 7	No address	1924 21st Ave	Rudy & Barbara Mohorich
TL 6305	Sheet 6	No address	2214 Pacific Ave	Ronald Nyman & Robert Jones
TL 3800	Sheet 6	2214 Pacific	2214 Pacific	J&N Automotive Inc
TL 8100	Sheet 11	1908 Main Street	2459 SE Tualatin Valley Hwy #314, Hillsboro	MSX2 LLC & PMB #314
TL 7000	Sheet 10	1904 Pacific	2459 SE Tualatin Valley Hwy #314, Hillsboro	SAS I LLC (Robert McKee)
TL 6300 & 8300	Sheet 11	1940 Pacific Avenue	2800 E Lake St, Minneapolis, MN	US Bank
TL 4301 & 4400	Sheet 3	1817 & 1831 Pacific	28291 SW Strawberry (NO MAIL) Hillsboro	Clem Properties LLC
TL 9500	Sheet 7	1905 21st Avenue	28291 SW Strawberry (NO MAIL) Hillsboro	Clem Properties LLC
TL 5200	Sheet 3	1818 Pacific Avenue	3257 Ammon Way	Eric & Joyce Burbano
TL 8300	Sheet 8	2011 21st Avenue	4247 NW Half Mile Ln	Laura J Frye Rev Living Trust
TL 9800 & 9700	Sheet 7	1921 21st Avenue	450 S Dogwood St, Cornelious 97113	Jaime Ramos & Ismael Fuentes
TL 7100 & 6800	Sheet 4	1920 Pacific	885 SW Stringtown Rd	Preston Alexander
TL 6900	Sheet 4	1910 Pacific	885 SW Stringtown Rd	Preston Alexander
TL 2900	Sheet 4	1911 Pacific	9555 NW 316th Pl, Hillsboro, 97124	Prosteel Builders LLC
TL 10000	Sheet 7	1927 21st Avenue	PO Box 1033 Hillsboro	L Gratteri LLC
TL 1700	Sheet 4 & Sheet 7	1905 Pacific	PO Box 2609 Carlsbad, CA 92018	1st Interstate Bank of WA
TL 100	Sheet 8 & Sheet 14	2032 College Way	PO Box 265	United Church of Christ
TL 6400	Sheet 4	1936 Pacific Avenue	PO Box 369	Robert & Ruth McNicol, Trustees
TL 8400	Sheet 8	2007 21st Avenue	same	Joseph & Margaret Pike
TL 9600	Sheet 7	1913 21st Avenue	same	Tamara Jean Wilson
TL 3400	Sheet 6	2236 Pacific	same	Vaughn & Janet Tidwell

September 17, 2007

**Report and Resolution Authorizing  
Clean Water Services to Negotiate Title Transfer  
on Behalf of the City of Forest Grove**

**PROJECT TEAM:**            **Rob Foster, Public Works Director**  
                                      **Derek Robbins, City Engineer**  
                                      **Michael Sykes, City Manager**

**BACKGROUND:** City Staff has been meeting with the Tualatin Basin Water Supply Project partners as directed by City Council to investigate the possibility of raising Scoggins dam. As a part of this work we have become aware of possible benefits from transferring title of the existing dam from the Federal Bureau of Reclamation (BOR) to the new Tualatin Partnership.

Most of the work on this project, which has been the Environmental Impact Statement and other studies, is being managed by Clean Water Services (CWS) staff (Tom VanderPlaat) through a funding agreement passed by the member cities in 2001. There have been several amendments to the original funding agreement which has kept the project moving.

The BOR requires that first an investigation into Title Transfer be completed before actual transfer can be completed. This investigation will identify the major elements in the Title Transfer. One agency from the committee must be selected to work with the BOR on the Title Transfer investigation. The Committee selected CWS to do this work. The governing bodies of each member of the Committee must also authorize this decision.

I have attached a memorandum from Tom VanderPlaat that also explains this process. I have also attached, for Council's information, the Memorandum of Agreement between the BOR and the Partnership. Also included is the original funding agreement with CWS for work on this project and the latest amendment. No additional cost is anticipated for this work.

**RECOMMENDATION:** Staff recommends Council approve Resolution 2007-55 authorizing Clean Water Services to sign the Title Transfer Investigation – Memorandum of Agreement (MOA) with Bureau of Reclamation on behalf of the Tualatin Project Title Transfer Partners.

**RESOLUTION NO: 2007 - 55**

**RESOLUTION AUTHORIZING CLEAN WATER SERVICES  
TO NEGOTIATE TITLE TRANSFER  
ON BEHALF OF THE CITY OF FOREST GROVE**

**WHEREAS**, the partners include the following entities: Tualatin Valley Water District (TVWD) and the cities of Hillsboro, Beaverton, Forest Grove, and Tigard, who together make up the Joint Water Commission (JWC); Tualatin Valley Irrigation District (TVID); Clean Water Service (CWS); Lake Oswego corporation; and Washington County; and

**WHEREAS**, the Partners intend to seek Congressional authorization to transfer all rights, title, and interest held or claimed by the United States in and to any portion of the dam; and

**WHEREAS**, the Partners and Bureau of Reclamation (BOR) have been cooperating on studies to assess alternatives for meeting future water supply needs in the Tualatin River basin and are currently working on a Draft Planning Report/Environmental Impact Statement (PR/EIS) to evaluate alternatives involving a potential dam raise at Scoggins Dam, a feature Reclamations' Tualatin Project; and

**WHEREAS**, the Partners agree for efficiency one Partner shall contract with the Bureau of Reclamation for the Title Transfer Investigation; and

**WHEREAS**, the existing funding agreement between the partners and Clean Water Services provides for this work; and

**WHEREAS**, the Partners have requested that Bureau of Reclamation consider title transfer with or without a dam raise project, in order to gain greater local control and autonomy with a goal of localizing Project decisions.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:**

Upon execution of the Memorandum of Agreement between the City of Forest Grove and Clean Water Services:

**Section 1.** Clean Water Services is hereby authorized to represent the City of Forest Grove in the Title Transfer Investigation with Bureau of Reclamation of behalf of the Tualatin Project Title Transfer; and

**Section 2.** Clean Water Services is hereby authorized to perform other technical or administrative tasks associated with the proposed transfer.

**PRESENTED AND PASSED** this 24<sup>th</sup> day of September, 2007.

\_\_\_\_\_  
Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 24<sup>th</sup> day of September, 2007.

\_\_\_\_\_  
Richard G. Kidd, Mayor

# Tualatin Project Title Transfer Partnership

## MEMORANDUM

**Date:** September 5, 2007

**To:** Tualatin Project Title Transfer Partners

**From:** Tom VanderPlaat, Tualatin Basin Water Supply Project Manager

**Subject:** Request Authorization for Clean Water Services to sign the Title Transfer Investigation - Memorandum of Agreement (MOA) with Bureau of Reclamation on behalf of the Tualatin Project Title Transfer Partners.

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The title transfer process began with a resolution to support consideration of Title Transfer from the governing bodies of the repayment contract holders for the existing facilities. These agencies include the Tualatin Valley Irrigation District (TVID), Clean Water Services, the cities of Hillsboro, Beaverton, and Forest Grove, the Lake Oswego Corporation (pending), and Washington County. Other water supply partners including Tualatin Valley Water District and the City of Tigard will participate as well.

The partners involved in the Tualatin Basin Water Supply Project have recently begun consideration of Bureau of Reclamation's Title Transfer Program. The United States Bureau of Reclamation maintains title of all existing facilities of the Tualatin Project (Scoggins Dam, Hagg Lake with adjoining lands, Tualatin Valley Irrigation District facilities, recreational facilities, etc.). The Title transfer program provides for reviewing the elements of transferring title from the US Bureau of Reclamation to local ownership. The potential benefits of Title Transfer include more flexibility and efficiency as a result of local control, and improved integration to meet water resource management challenges.

Reclamation has developed a framework for title transfers as a policy direction for more efficient and effective management of facilities through local ownership. Local water resource agencies involved in the Water Supply Project formed a study committee to determine the feasibility of title transfer and brought their findings to the Tualatin Basin Water Supply Project Policy Steering Committee (PSC) made up of elected and appointed officials from each of the partners in the project. The PSC unanimously recommended that the partners proceed with the investigation of Reclamation Title transfer program.

The next major step for Title Transfer is to negotiate and sign a MOA with Reclamation for the investigation of the Title Transfer and complete various tasks, such as a comprehensive facilities assessment and environmental review. The MOA provides for specific roles and responsibilities for Reclamation and the Partners. The main elements of the MOA are as follows:

1. Contracting with consultants for completing Environmental Review work (NEPA) and other applicable local, state and federal processes.

## **Tualatin Project Title Transfer Partnership**

2. Pay reasonable costs for performing the obligations under the terms of the MOA.
3. Obtain surveys and title searches for facilities to be transferred
4. Define the governance structure for the entity formally designated to receive title.
5. Develop agreements with other entities and/or individuals to define how the existing operations will remain unchanged.

A copy of the draft MOA is attached for your information.

As provided in the Tualatin Basin Water Supply Project - Joint Funding Agreement (JFA), Clean Water Services provides project management (Section 3) services to seek and retain contracted services to complete the various studies and tasks for the Water Supply Project. Due to the need to maintain title transfer schedule and improve efficiency for its completion, it is suggested that Clean Water Services provide project management services for the Title Transfer and be authorized to sign the MOA with Reclamation on behalf of the Water Supply Partners and other Tualatin Project entities (Tualatin Valley Irrigation District, Lake Oswego Corporation and Washington County). The signing of the MOA obligates the partners and entities to investigate Title Transfer, but does not bind them to complete the transfer. The decision to complete the transfer will be part of a future action. The funding of the title transfer investigation is in the existing approved JFA budget.

Clean Water Services has provided the project management services on behalf of Tualatin Basin Water Supply Partners since 2001. These services included hiring contracted services to complete the studies and tasks for the Water Supply Feasibility Study and the Draft Planning Report/Environmental Impact statement (PR/EIS). A key element for both the Study and PR/EIS has been the coordination with Reclamation for a variety of project elements. The Partner's staff members will continue to assisting with selection and review of contracting services and other project processes.

The requested action is to authorize Clean Water Services to sign the MOA on behalf of the Tualatin Project Partners with Reclamation for the investigation of Title Transfer.

Reclamation Agreement No.: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT**  
BETWEEN  
UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION, LOWER COLUMBIA AREA OFFICE  
AND  
THE TUALATIN PROJECT TITLE TRANSFER PARTNERS

***PRELIMINARY DRAFT – August 21, 2007***

This Memorandum of Agreement (MOA) is made pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, between the UNITED STATES OF AMERICA, acting through the Lower Columbia Area Office, Bureau of Reclamation, Department of the Interior, hereinafter referred to as Reclamation, and the TUALATIN PROJECT TITLE TRANSFER PARTNERS (PARTNERS), a group of entities involved in water supply/management issues in the Tualatin River basin and organized under the laws of the State of Oregon., hereinafter referred to as the Partners.

WHEREAS, the Partners as defined in this MOA include the following entities: Tualatin Valley Water District (TVWD) and the cities of Hillsboro, Beaverton, Forest Grove, and Tigard, who together make up the Joint Water Commission (JWC); Tualatin Valley Irrigation District (TVID); Clean Water Services (CWS); Lake Oswego Corporation; and Washington County; and

WHEREAS, the Partners intend to seek Congressional authorization to transfer all rights, title, and interest held or claimed by the United States in and to any portion of the dam, reservoir, pumping stations, distribution systems, recreational facilities and associated lands and rights-of-way and any other portion of the Tualatin Project, including water rights and mineral rights held by the United States for the benefit of TVID, the cities of Hillsboro, Beaverton and Forest Grove, CWS, Lake Oswego Corporation and Washington County; and

WHEREAS, the Partners include TVID, the cities of Hillsboro, Beaverton and Forest Grove, CWS, Washington County, and Lake Oswego Corporation, entities which have entered into repayment and other contracts with the United States and which are currently making or have made payments in accordance with such contracts for storage capacity and/or recreational facilities in the Tualatin Project reservoir, construction of pumping and distribution systems, conveyance of water, and/or operation of such facilities; and

WHEREAS, the Partners and Reclamation have been cooperating on studies to assess alternatives for meeting future water supply needs in the Tualatin River basin and are currently working on a Draft Planning Report/Environmental Impact Statement (PR/EIS) to evaluate alternatives involving a potential dam raise at Scoggins Dam, a feature of Reclamation's Tualatin Project; and

WHEREAS, the Partners have requested that Reclamation consider title transfer with or without a dam raise project, in order to gain greater local control and autonomy with a goal of localizing Project decisions.

WHEREAS, Reclamation intends to request the public's assistance in identifying issues and concerns associated with the proposed action of title transfer as required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et. seq. (hereinafter referred to as NEPA), through a scoping letter and will receive comments from interested parties to the proposed transfer; and

WHEREAS, Reclamation and the Partners intend to prepare environmental reports and other documents to support Reclamation's completion of NEPA analysis, documentation, and compliance for the proposed transfer; and

WHEREAS, Reclamation has the ultimate responsibility to conduct the environmental analyses associated with NEPA compliance and has adopted guidelines for such analyses; and

WHEREAS, Reclamation represents to the Partners that, at this time, Reclamation has no specific authorization or funds appropriated for paying costs associated with this proposed title transfer; and

WHEREAS, the Partners intend to seek Congressional authorization and appropriation of funds necessary to accomplish the proposed title transfer; and

WHEREAS, the Partners and Reclamation agree to proceed with the proposed title transfer process in accordance with Reclamation's August 1995 Framework for the Transfer of Title.

NOW THEREFORE, the parties agree as follows:

## **I. Implementing Actions**

### **1. The Partners, subject to Reclamation's review as appropriate, will:**

- a. As necessary, contract with a consultant, to be reviewed with Reclamation, to conduct appropriate activities to prepare environmental reports for Reclamation's use in completing NEPA analysis and preparing NEPA documentation on the proposed title transfer, and comply with ESA, NHPA, and other applicable State and Federal laws as required.
- b. Pay for Reclamation's reasonable costs in performing its obligations under this MOA, or performing any other activities as mutually agreed to by the parties in the manner hereinafter provided, with the exception of costs specifically defined as to be paid by Reclamation in Sections III.a and III.b of this MOA.
- c. Obtain the necessary surveys and title searches for the facilities and rights-of-way to be transferred.
- d. Define the governance structure for the entity formally designated to receive title, including: delineations of roles and responsibilities of Partner members within such entity; and designate specific Partners which may receive title to specific facilities, properties, rights, and/or interests, if any. The Partners will also establish and formalize a governance structure that is approved by the Secretary and the State of Oregon, and provide Reclamation with a copy of the documentation that evidences the related agreement among the Partners.
- e. As necessary and appropriate, develop agreements with other entities and/or individuals to define how operations will remain unchanged, or the degree to which they will change, as projected for the period after the proposed transfer, including but not limited to: Project operations and maintenance; recreational facilities and operations; flood control operations;

mitigation responsibilities; cultural resource protections; dam safety procedures; interactions with private landowners; and other issues that may be mutually identified by the parties during the title transfer process.

f. Provide, for Reclamation's review and consideration, an initial definition of specific water rights and mineral rights which the Partners intend for inclusion in the proposed title transfer.

**2. Reclamation, in cooperation with the Partners, will:**

a. Plan and complete all measures necessary for compliance with NEPA, including NEPA analysis, preparing NEPA documentation, and any and all other necessary compliance activities relative to the proposed transfer. Reclamation and the Partners agree that the development of an environmental assessment (EA) that will adequately fulfill Reclamation's NEPA obligations for the title transfer. Reclamation will make the final determination for meeting its NEPA obligations. The EA will provide for a review of the processes and programs for the Draft PR/EIS to evaluate alternatives involving a potential dam raise at Scoggins Dam, a feature of Reclamation's Tualatin Project. The review will address the effects of a dam raise under local ownership versus federal ownership. Reclamation recognizes that the Partners have an interest in maintaining a timely schedule for the title transfer.

b. Monitor the work of the Partners and/or any consultants engaged by the Partners to ensure compliance with procedural requirements of NEPA, ESA, NHPA, and other State and Federal laws applicable to the proposed transfer.

c. Review environmental report documentation prepared by the Partners/consultants to determine the sufficiency of the information for Reclamation to conduct the appropriate level of NEPA compliance, analysis, and documentation for the proposed transfer. As lead agency for NEPA compliance, final NEPA documentation will be the responsibility of Reclamation.

d. Communicate with the U.S. Fish and Wildlife Service and the NOAA Fisheries Service as appropriate and necessary to comply with Section 7 of the Endangered Species Act, request and pursue consultation.

e. Identify and/or inventory and consult with Tribes on Indian Trust resources and Traditional Cultural Properties impacted by the proposed transfer. In accordance with Section 106 of the NHPA, NAGPRA, and other applicable historic properties and cultural resources law or regulation, Reclamation will ensure the completion of any additional cultural resources investigations necessary to identify significant cultural resources on the subject lands, and prior to transfer will ensure that any adverse effects of transfer of Federal lands or easements to a non-Federal entity are appropriately addressed.

f. With the exception of those records that may be withheld pursuant to the exemptions under the Freedom of Information Act or pursuant to Reclamation security restrictions, make available to the Partners all records pertinent to: the design, construction, and operations and maintenance for Tualatin Project facilities; associated rights-of-way, easements, and real property; and third-party agreements to be included in the proposed transfer.

g. Perform other technical or administrative tasks associated with the proposed transfer as mutually agreed to in advance in writing by both parties.

- h. Seek prior approval from the Partners, to contract with another person or entity for any of Reclamation's obligations herein, and such costs, including Reclamation's actual costs for administering the contracts, except as excluded below, shall be paid by the Partners.
- i. Ensure that all contracts or obligations entered into by Reclamation relating to this MOA contain provisions for cancellation, wherein the contracts or obligations may be terminated at any time upon the written request of the Partners, and the Partners will only be responsible for costs and expenditures incurred up to the date of termination.
- j. Provide copies, if requested, to the Partners of all contracts, documents, invoices, and other writings which evidence obligations pursuant to this MOA.
- k. Ensure that the costs billed to the Partners by Reclamation and any other person or entity Reclamation contracts with to perform any of the obligations pursuant to this MOA, including Reclamation's actual costs of administering the contracts, shall be actual and reasonably necessary costs incurred to complete the proposed transfer activities.
- l. Provide the Partners cost billings quarterly, or more frequently if requested by the Partners, until the proposed title transfer investigation is complete. With each cost billing, Reclamation will itemize costs for all work performed and materials used in performing obligations under this MOA.
- m. Within, 30 days of the signing of the MOA, Reclamation will provide an overall work plan including a scope of work and project schedule for the title transfer investigation process. No less than seven (7) days prior to the first of each quarter, Reclamation will, upon request, provide the Partners with an itemized cost list of Reclamation's estimated actions and expenses for the upcoming quarter, including a list of all activities to be performed, all Reclamation or contract personnel to perform such activities together with their hourly rates, beginning and ending dates and total time to perform each activity, and all materials and materials costs. If acceptable to the Partners, the Partners shall promptly provide Reclamation with written notification of approval together with a remittance of sufficient funds to pay the approved costs. If not acceptable to the Partners, the Partners and Reclamation shall consult prior to the first of the quarter to resolve issues pertaining to the cost list.
- n. Conduct a final asset valuation to finalize the June 16, 2006 preliminary valuation and to determine the value of the project features proposed for transfer and any revenue streams thereof, and negotiate with the Partners regarding adjustments to the value if appropriate.
- o. Provide for, if required, an independent financial review of any adjustment to the asset value.
- p. Complete an environmental site assessment (hazardous materials survey) of facilities and associated real property and rights-of-way proposed for transfer.
- q. Prepare a complete list of all Tualatin Project features that will be transferred should the Partners agree to pursue title transfer subject to IIb.

## **II. Areas of Mutual Responsibility**

- a. The Partners and Reclamation will appoint principal contacts (*See* section VII of this MOA) to coordinate activities necessary to complete the proposed transfer. All requests relating to the proposed transfer described under this MOA will go through the principal contacts.

- b. The Partners and Reclamation will ensure completion of all activities required to comply with NEPA, ESA, NHPA, and other State and Federal laws applicable to the proposed transfer, including development of an inventory of facilities, lands, rights-of-way, easements, and other elements proposed for transfer to serve as a basis for the proposed action to be analyzed during NEPA compliance.
- c. The Partners and Reclamation will provide for public notice as deemed necessary and appropriate by both parties to comply with NEPA.
- d. The Partners and Reclamation will cooperate to evaluate how aid to irrigation (ability to pay) and preference rates for pumping power would be affected by title transfer, including communications with Bonneville Power Authority. Reclamation will determine the legal and policy controls that will ultimately govern viable approaches for addressing these issues.
- e. To the degree that funding is available, Reclamation will cooperate with the Partners on investigations and/or other assessments of existing facilities that may be relevant to potential negotiations regarding future costs for facility upgrades that may be anticipated with or without a title transfer.
- f. The Partners and Reclamation will cooperate to identify and evaluate specific liability issues relevant to the proposed title transfer, and to work toward reaching an agreement as to how such liability issues will be addressed.
- g. The Partners and Reclamation will cooperate to identify and evaluate specific water rights issues relevant to the proposed title transfer, and to work toward reaching an agreement as to how such water rights issues will be addressed.
- h. The Partners and Reclamation will cooperate to develop and agree to an inventory list of facilities to be transferred and an understanding of operations and maintenance tasks and costs as experienced for recent Project operations.
- i. The Partners and Reclamation will cooperate to develop and agree on an approach for implementing appropriate cultural resource and historic property surveys and consultations.
- j. The Partners and Reclamation will cooperate to conduct the proposed transfer investigation process in a manner that ensures appropriate public and landowner participation, as deemed necessary and appropriate under NEPA requirements.
- k. Should the activities described in this MOA lead to a mutual intent for the Partners and Reclamation to implement a title transfer if so directed by Congress, the parties will work to develop a Transfer Agreement that defines the terms and conditions of the transfer and which can serve as a reference for related transfer legislation.
- l. In the event that Congress directs Reclamation to transfer title as contemplated in this MOA and a future Transfer Agreement, Reclamation will prepare a quitclaim deed to transfer title to the relevant facilities, real property, and rights-of-way from the United States to the Partners. If the Partners or Reclamation become aware of additional facilities, real property, and/or rights-of-way at a later date that both parties agree are within the original intent of the title transfer, such facilities, real property, and/or rights-of-way will be transferred accordingly.

m. The Partners and Reclamation agree that any of the responsibilities of either party under this MOA may become the responsibility of the other party if agreed to by both parties in writing, unless prohibited by law or regulation.

n. The Partners and Reclamation agree that payment in advance for Reclamation costs or completion of any or all aspects of this MOA does not guarantee that title will be transferred for any or all of the relevant facilities, real property, and rights-of-way named in this MOA or that transfer of title will be approved by Reclamation and/or the Congress of the United States.

o. Within the first 10 days of each ensuing month, the Partners will provide Reclamation's principal contact listed in Section VII, Principal Contacts, with an itemized list of costs incurred the month prior on the proposed transfer of title investigation. This itemized list shall be sent each month until the proposed title transfer investigation is complete, and must itemize costs incurred by the Partners by category, expenditures for the month, and total costs to date. Once received, Reclamation will compare the Partners' itemized list of costs to costs incurred by Reclamation to ensure the Parties are meeting the intent established under Section III, Areas of Mutual Agreement. At the end of each quarter, Reclamation will determine if additional funds are needed to cover Reclamation's estimated expenses for the upcoming quarter, and if so, a Bill for Collection will be sent to the Partners, as outlined in provision IV.c, Budget and Payment, Advance Payment.

### **III. Areas of Mutual Agreement**

a. All necessary and reasonable costs of complying with NEPA incurred as a direct result of pursuing title transfer investigation shall be paid in equal shares by Reclamation and the Partners.

b. All costs of performing environmental site assessments (hazardous material surveys) incurred as a direct result of pursuing title transfer investigation shall be paid by Reclamation.

c. All administrative costs not addressed in (a) and (b) above which have been mutually agreed to by the parties shall be paid by the Partners.

d. Reclamation agrees to allocate such funds as may be available for the performance of tasks that are defined under this MOA as tasks for which costs are to be paid by Reclamation. If Reclamation does not have allocated funds for their share, the Partners may advance funds to Reclamation. Reclamation shall credit the Partners' for any funds the Partners advance and apply the credit toward the final title transfer payment in the title transfer agreement.

e. Reclamation agrees to take the necessary steps to minimize costs for activities associated with the proposed title transfer investigation.

### **IV. Budget and Payment:**

a. Authority. Reclamation may provide the services outlined in this MOA pursuant to the Intergovernmental Cooperation Act, 31 U.S.C. § 6505, and OMB Circular A-97, as well as related laws, rules, regulations and orders. Reclamation may receive – and may expend funds received – for investigations and other work involving operations similar to those provided for by the Reclamation law pursuant to the Contributed Funds Act of 1921, 43 U.S.C. § 395.

b. Application of Contributed Funds. Funds contributed by the Partners will be used to pay for costs incurred by Reclamation associated with the implementing actions as described in this MOA.

c. Advance Payment. The Partners agree to provide payment in advance of Reclamation's performance of tasks outlined in this MOA. Funds contributed by the Partners will be used to pay for costs incurred by Reclamation associated with the proposed title transfer investigation as described herein. Bills, statements, and correspondence associated with this MOA shall be directed to:

*(PARTNERS' contact to be determined)*

d. Separate Account. Reclamation shall deposit funds contributed by the Partners under this MOA into a Reclamation reimbursable account for use on the "TUALATIN PROJECT Proposed Title Transfer" project. Reclamation shall at all times hold the Partners funds separate from all other funds and shall not commingle said funds with any other funds. The Partners shall submit an initial advance payment of \$5,000 for this account and shall deposit funds in this account by the end of each quarter in order to reestablish a positive balance of not less than \$1,000, and no more than the anticipated costs for the upcoming quarter.

e. Insufficient Payment. In the event that funds contributed by the Partners are not sufficient to cover all costs incurred by Reclamation, or if this MOA is terminated by either party, Reclamation will cease work to the extent possible and notify the PARTNERS of the deficiency. The Partners will be responsible for costs incurred by Reclamation for all activities that Reclamation is unable to cancel after reasonable diligence.

f. Address for Return of Funds to the Partners. Reclamation shall return unexpended funds after the termination or expiration of this MOA to the Partners to:

*(Partners' contact to be determined)*

g. Address to Send Payments to Reclamation. The Partners shall make all payments payable to Bureau of Reclamation. The Partners shall notify Reclamation of each deposit by sending notification via email to \_\_\_\_ (*Reclamation contact to be determined*). The Partners shall remit all payments to Reclamation's lockbox at:

Bureau of Reclamation  
PN Region: Pacific Northwest  
PO Box 894240  
Los Angeles, CA 90189-4240

## **V. Modifications**

Modifications to this MOA shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by the parties, prior to any changes being made. Proposed modifications that may affect pending legislation will be reviewed by Reclamation and the Partners to determine if it is appropriate to advise Congress before effecting such changes, at each party's discretion.

## **VI. Period of Performance**

This MOA shall become effective on the date of last signature hereto and shall remain in effect until (date to be determined) or upon full execution of a title transfer agreement, whichever occurs earlier, unless renegotiated and/or renewed, in writing, by mutual consent of both parties. Either party may terminate its obligations and duties under this MOA at any time upon thirty (30) days written notice to the other party. All duties and obligations of both parties under this MOA will cease at that time except as the MOA provisions relate to outstanding accounting and reimbursement of the parties' expenses.

## VII. Principal Contacts

The principal contacts for this MOA are:

Reclamation  
(to be determined)

Partners  
(to be determined)

## VIII. General Provisions

a. Reclamation and the Partners pledge their individual good faith to seek prompt and fair agreement on all issues relating to the proposed transfer.

b. The Partners agree that the following language will be incorporated in any legislation language submitted to Congress and that inclusion of this language into law will be actively supported:

“Effective on the date of the conveyance of the facilities described in Section \_\_\_\_\_, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. 2671 et seq.).”

c. The Partners agree that the following language be incorporated into any quitclaim deed:

(i) Grantee accepts these facilities, premises, and appurtenances “as is.”

(ii) CERCLA Environmental Covenants and Stipulations:

1. Grantee stipulates that it would be a potentially responsible party, should a release have occurred on relevant real property and rights-of-way during Grantee's operation of the facilities under contract with the Grantor.

2. To the extent the United States is determined responsible, and to the extent allowed, Grantor warrants that any response action or corrective action found to be necessary after the date of the transfer shall be conducted by the United States.

3. Grantee grants the United States access to relevant property in any case in which a response action or corrective action is found to be necessary by the United States after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

d. Nothing herein shall be construed to obligate Reclamation to expend or involve the United States in any contract or other obligation for the future repayment of money in excess of appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder.

e. No Member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or be part of this MOA or receive any benefit that may arise out of it other than as a water user or landowner in the same manner as any other water user or landowner.

**Signatures**

IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the last date written below.

UNITED STATES OF AMERICA

\_\_\_\_\_  
Ronald J. Eggers, Area Manager  
Lower Columbia Area Office  
Bureau of Reclamation

\_\_\_\_\_  
Date

**Clean Water Services**

\_\_\_\_\_  
Bill Gaffi, General Manager

\_\_\_\_\_  
Date

STATE OF IDAHO )

:SS

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared before me \_\_\_\_\_, to me known to be the official of the UNITED STATES OF AMERICA that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the  
State of Idaho  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

DRAFT

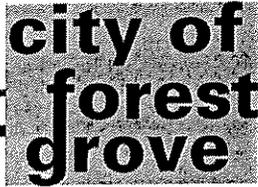
STATE OF OREGON       )  
County of Washington    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared before me \_\_\_\_\_, to me known to be the official of the **PARTNERS** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said Partners, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Seal)

\_\_\_\_\_  
Notary Public in and for the  
State of Oregon  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



## Memorandum

**TO:** Clean Water Services

**CC:** Rob Foster, Public Works Director

**FROM:** Anna D. Ruggles, City Recorder

**DATE:** June 12, 2007

**SUBJECT:** Third Amendment to Joint Funding Agreement

Item	Copies	Description
Agreement	3	Third Amendment to Joint Funding Agmt For IWRM Water Supply Feasibility Study

**Remarks:**

Enclosed you will find three (3) signed originals of the above-referenced agreement. Upon receipt of the appropriate signature(s), please return one fully executed original/copy of the agreement for City record.

- As you requested
- For your information
- For your approval
- For your review
- Return requested: City of Forest Grove, Attn: City Recorder, PO Box 326, Forest Grove, OR 97116
- Signature required

11 COPY

**THIRD AMENDMENT  
TO JOINT FUNDING AGREEMENT FOR  
IWRM WATER SUPPLY FEASIBILITY STUDY  
(AKA AS TUALATIN BASIN WATER SUPPLY PROJECT)**

This Amendment, dated \_\_\_\_\_, 2007 is between Clean Water Services (District), formerly known as Unified Sewerage Agency, a county service district formed by authority of ORS 451, the Tualatin Valley Water District, a domestic water district formed by authority of ORS 264 and the cities of Hillsboro, Beaverton, Forest Grove and Tigard, all municipal corporations of the State of Oregon (Partners) and amends the parties' Joint Funding Agreement – IWRM Water Supply Feasibility Study dated June 20, 2001 as amended by the First Amendment dated November 14, 2002, and the Second Amendment dated December 4, 2003 (collectively, JFA).

**RECITALS**

1. The Partners previously entered into the JFA under which the Partners agreed to jointly fund a study of the feasibility of alternative approaches to increase the water supply and evaluate the "no action alternative."
2. The Partners now wish to amend the JFA to fund additional tasks to complete the Tualatin Basin Water Supply Project Draft Planning Report/ Environmental Impact Statement, and Title Transfer Project (collectively, Project). The Water Supply Feasibility Study was completed in March 2004.
3. The Partners also wish to amend the JFA to address the acquisition and disposition of Project assets upon termination of the JFA or termination of any Partner's participation in the JFA secured during the development of the Project.

**TERMS AND CONDITIONS**

1. Section 2 of the JFA is hereby deleted in its entirety and replaced with the following:

"2. Cost Share

Each party's share of the cost of the Project shall be proportional to the party's projected share of the additional water supply as of the date of this agreement, assuming 50,600 acre-feet of additional supply. The cost share for each party shall be equal to the percentage indicated in Exhibit B attached hereto and incorporated herein."

2. Pursuant to Section 4 of the JFA, the cities of Cornelius, Banks, North Plains, Sherwood and Tualatin voluntarily terminated their rights and obligations under the JFA. Other Partners have assumed their rights and obligations as identified in Exhibit B.

3. From the effective date of this Amendment, each Partner shall compensate District for its share of the cost of the Project as provided in Exhibit B attached hereto and incorporated herein. A revised payment schedule with reallocation of each Partner's share is included in Exhibit B. Total payment to District for compensation for services provided during fiscal year 2007-2008 shall not exceed \$1.33 million.

4. The first sentence of Section 4 of the JFA is hereby deleted and replaced with the following:

“Except as otherwise indicated in this Section, no party may terminate its rights and obligations under this Agreement until the Project is completed or a total of \$5,797,400 has been expended, whichever occurs first.”

5. Exhibit A of the JFA is hereby replaced with Exhibit A attached hereto and incorporated herein.

6. The previous Amendments to the JFA included funding for future real property purchases and other capital assets.

7. The purpose of this agreement is to enable the Partners to acquire real property, easements and other real property interests necessary for the Project (collectively, Property). The Partners grant District the authority to acquire Property necessary for the Project and to sign any documents on behalf of the Partners to purchase the Property. Any real property acquired shall be owned by the Partners as tenants in common.

8. Section 4 of the JFA established the conditions which must be met for any Partner to voluntarily terminate its rights and obligations. If any funding Partner terminates its rights and obligations under the JFA, it shall, upon the sale or transfer of any interest in the Project property, receive a share equal to the lesser of the following: a) the amount that the terminating Partner paid to purchase the Project property less that Partner's prorata share of all expenses incurred with respect to the Property including but not limited to costs of repairs, maintenance, debt service, all real and personal property taxes, governmental or other assessments levied against the Project property, title insurance premium, real estate commission, escrow fee, appraisal fee, recording fees and any other expenses incurred in connection with the sale or acquisition of the Project property (the foregoing expenses shall be referred to collectively as Expenses) or b) the amount of the terminating Partner's prorata share of the actual purchase price of the Project property less that Partner's prorata share of Expenses. The terminating Partner shall deliver to the nonterminating Partners a duly executed statutory warranty deed conveying the terminating Partner's interest in the Project property to the nonterminating Partners, or any other Partner that the nonterminating Partners may designate, free and clear of all liens and encumbrances except those existing as of the date such Partner terminated its interest in the JFA.

9. If the Project property is not sold or transferred within three years of the voluntary termination of any Partner, the nonterminating Partners shall purchase the terminating Partner's interest in the Project property in an amount equal to each nonterminating Partner's share as identified in the JFA. The nonterminating Partners shall have the Project property appraised and shall pay the terminating Partner the lesser of the following: a) the amount that the terminating Partner paid to purchase the Project property less that Partner's prorata share of all expenses incurred with respect

to the Property including but not limited to costs of repairs, maintenance, debt service, all real and personal property taxes, governmental or other assessments levied against the Project property and the prorata share of the appraisal fee (collectively, Costs) or b) the amount of the terminating Partner's prorata share of the actual appraised value of the Project property less that Partner's prorata share of Costs. The terminating Partner shall deliver to the nonterminating Partners a duly executed statutory warranty deed conveying the terminating Partner's interest in the Project property to the nonterminating Partners, or any other Partner that the nonterminating Partners may designate, free and clear of all liens and encumbrances except those existing as of the date such Partner terminated its interest in the JFA.

10. If the Partners decide to terminate the JFA, they shall have the Project property appraised and list it for sale. Each Partner shall receive its prorata share of the actual purchase price of the Project property less such Partner's prorata share of Expenses. No terminating Partner shall be reimbursed for any other Project costs incurred before termination.

11. This Amendment shall be effective upon signing of all parties.

12. Except as amended herein, the JFA shall remain in full force and effect.

The above is hereby agreed to by the Partners and executed by the duly authorized representatives below:

CLEAN WATER SERVICES

APPROVED AS TO FORM

By: \_\_\_\_\_

\_\_\_\_\_  
District General Counsel

Date: \_\_\_\_\_

TUALATIN VALLEY WATER DISTRICT

APPROVED AS TO FORM

By: \_\_\_\_\_

\_\_\_\_\_  
Attorney

Date: \_\_\_\_\_

CITY OF HILLSBORO

APPROVED AS TO FORM

By: \_\_\_\_\_

\_\_\_\_\_  
Attorney

Date: \_\_\_\_\_

CITY OF BEAVERTON

APPROVED AS TO FORM

By: \_\_\_\_\_

\_\_\_\_\_  
Attorney

Date: \_\_\_\_\_

CITY OF FOREST GROVE

APPROVED AS TO FORM

By: Michael J. Dykes

\_\_\_\_\_  
Attorney

Date: June 11, 2007

CITY OF TIGARD

APPROVED AS TO FORM

By: \_\_\_\_\_

\_\_\_\_\_  
Attorney

Date: \_\_\_\_\_

## **Exhibit A**

### ***SCOPE OF WORK AND PROJECT ELEMENTS***

### ***TUALATIN BASIN WATER SUPPLY PROJECT***

The following is a review of the various phases and project elements:

*Water Supply Project – Completion of Draft Planning Report/Environmental Impact Statement (PR/DEIS)*

1. Complete Draft PR/EIS for public review and distribution.
2. Coordinate with Bureau of Reclamation on existing operations ESA consultation.
3. Prepare Biological Assessment and Fish and Wildlife Coordination Act reports for Water Supply Project consultations.

*Title Transfer Project - Draft Environmental Assessment Review (EA) for Title Transfer Process*

1. Develop Draft EA for Title Transfer

*Additional Combined Projects Elements*

The following are additional Project elements handled with separate contracts or agreements:

1. Governmental and Public Affairs – Consultant contracts to continue efforts to secure federal funding assistance, and community support at local, regional and national levels. Additional resources will be developed based on a comprehensive public affairs strategy.
2. Bureau of Reclamation (BOR) Pacific Northwest Regional Office and Technical and Engineering Services
  - a. Comprehensive Facilities Review – Inspect and assess condition of Reclamation Facilities. Develop the recommended improvements and cost estimates for the improvements.
  - b. Biological Resources Coordination – Coordinate of existing operations consultation with EIS and permitting requirements. Determine environmental and associated mitigation elements, such as wetlands, fish and wildlife mitigation areas implementation.
3. Governance Structure Development and Contract Negotiations for Title Transfer Project
  - a. Conduct a governance structure development process with local agencies to establish an organization(s) to accept the rights and responsibilities of the transferred Reclamation Facilities. A contractor will assist with development, negotiations and preparation of the various contractual and intergovernmental agreements with the Partners. The contractual elements will include operations, management and administration of the transferred facilities.

4. Land Survey and Easement investigation
  - a. Conduct a land survey, title search and related real estate activities to determine the status of the Reclamation lands and interests for the potential title transfer project. These services may include surveying, appraisals, document research and environmental assessments for the various elements of the Title Transfer Project. Continued coordination with Reclamation Lands Resources staff on review of lands acquisition needs and requirements.
5. Clean Water Services Project Management – Continued project management and staff support for the Water Supply and Title Transfer Projects.
6. Miscellaneous expenses – The tasks and elements of the Project not currently provided for in the above listed items.

**Tualatin Basin Water Supply Project and Tualatin Project Title Transfer  
 Payment Schedule for Title Transfer and WSP Draft Environmental Impact Statement Phase  
 For FY07-08 - WSP - JFA 3rd amendment**

Project Manager - Tom VanderPlaats

Date

5/4/07

**EXHIBIT B  
 PAYMENT SCHEDULE**

(Based on reallocation and Percentage Share)

	Water		% Share	Total	FY07-08					FY07-08 Total
	Allocations	Costs			Qtr1	Qtr 2	Qtr 3	Qtr 4		
	Ac - ft	MGD		100.0%	20.0%	30.0%	30.0%	20.0%	100.0%	
<b>Water Quality **</b>										
Clean Water Services	9,320	25.3	17.62%	\$234,334	\$46,867	\$70,300	\$70,300	\$46,867	\$234,334	
<b>M&amp;I ***</b>										
City of Tigard	8,649	15.7	16.35%	\$217,445	\$43,489	\$65,234	\$65,234	\$43,489	\$217,445	
TVWD****	23,091	41.8	43.65%	\$580,558	\$116,112	\$174,167	\$174,167	\$116,112	\$580,558	
City of Hillsboro	9,656	17.5	18.25%	\$242,770	\$48,554	\$72,831	\$72,831	\$48,554	\$242,770	
City of Beaverton	1,763	3.2	3.33%	\$44,333	\$8,867	\$13,300	\$13,300	\$8,867	\$44,333	
City of Forest Grove	420	0.8	0.79%	\$10,560	\$2,112	\$3,168	\$3,168	\$2,112	\$10,560	
<b>Total M&amp;I</b>	<b>43,579</b>	<b>78.9</b>	<b>82.38%</b>	<b>\$1,095,666</b>	<b>\$219,133</b>	<b>\$328,700</b>	<b>\$328,700</b>	<b>\$219,133</b>	<b>\$1,095,666</b>	
<b>Sub Total</b>	<b>52,900</b>	<b>104.2</b>	<b>100.00%</b>	<b>\$1,330,000</b>	<b>\$266,000</b>	<b>\$399,000</b>	<b>\$399,000</b>	<b>\$266,000</b>	<b>\$1,330,000</b>	
<b>WQ(exisiting)</b>	<b>12,618</b>	<b>22.8</b>								
<b>M&amp;I (existing w/LOC)</b>	<b>14,000</b>	<b>25.3</b>								
Irrigation										
Fish and Wildlife										
Recreation*										
Hydro power	6,900									
<b>Flood Management</b>										
<b>Total (active storage)</b>	<b>106,540</b>									
<b>Total Storage</b>	<b>113,440</b>			<b>\$1,330,000</b>						

\*Inactive (Dead) Storage  
 \*\* CWS demands based on 120 day season  
 \*\*\* M&I Demands based on 180 day season  
 \*\*\*\*Note - Sherwood Shares transferred to TVWD (2000 af)

Note: The Cities of North Plains, Cornelius and Banks elected not to sign the Joint Funding Agreement (JFA) - 2nd amendment. Cities of North Plains and Cornelius shares were transferred to City of Hillsboro  
 City of Banks shares were allocated proportionally to all Partners under the Joint Funding Agreement - Second Amendment. Cities of Tualatin and Sherwood have decided not sign the JFA- 3rd amendment and their shares will be allocated to TVWD.

The Worksheets will be reviewed following the release of the WSP draft PR/EIS

Tualatin Water Supply Project - DEIS Phase II (FY-08) and Tualatin Project Title Transfer  
 Title Transfer Transaction and WSP Draft Planning Report - Environmental Impact Statement  
 Joint Funding Agreement - #3 Amendment  
 Project Manager - Tom VanderPlaat - Clean Water Services 4/18/2007

Estimated Budget Expenses Review

PROJECT ELEMENTS	FY 07-08	Percent
	Total Costs	Complete
<b>TUALATIN BASIN WATER SUPPLY PROJECT</b>		
Draft Planning Report/EIS (completion)	\$50,000	100%
<b>TUALATIN PROJECT TITLE TRANSFER</b>		
<b>Transaction Costs</b>		
<i>Draft Environmental Review elements</i>	\$450,000	100%
<i>Comprehensive Facilities Review</i>	\$200,000	**
<i>Governance Development for Title Transfer</i>	\$100,000	100%
<i>Land Survey and Easement for existing lands</i>	\$125,000	**
<b>Sub Total of Transaction Costs</b>	<b>\$875,000</b>	<b>**</b>
<b>Governmental/ Public Affairs</b>	\$125,000	**
<b>CWS Project Management</b>	\$130,000	**
<b>Misc Expenses</b>	\$100,000	**
<b>Contingency</b>	\$50,000	**
<b>Total Costs</b>	<b>\$1,330,000</b>	

\*\* - Task completion percentage cannot be determined

Note: Joint Funding agreement - Amendment # 3 - provides funding through DEIS phase  
 Partner will reassess budget needs following the public comment period of DEIS

ORDINANCE NO. 2007-11

1st Reading  
Aug 6, 2007  
2nd Reading  
Aug 20, 2007

10.

**ORDINANCE AMENDING THE FOREST GROVE ZONING MAP  
TO DESIGNATE FOUR PARCELS AS THE SMITH'S ORCHARD  
PLANNED RESIDENTIAL DEVELOPMENT**

**WHEREAS**, the Smith's Orchard Planned Residential Development application was filed on December 13, 2006; and

**WHEREAS**, the application was deemed complete on March 9, 2007; and

**WHEREAS**, the Planning Commission held a public hearing on the proposed planned residential development on April 16, May 7 and July 2, 2007; and

**WHEREAS**, the Planning Commission recommended approval of the proposal; and

**WHEREAS**, notice of the City Council hearing on this request was mailed to affected parties on July 23, 2007, as required by Zoning Ordinance Section 9.915. Notice was also published in the *News Times*, as required by Zoning Ordinance Section 9.915; and

**WHEREAS**, the City Council held a public hearing on the proposed planned residential development on August 6, August 20, and September 10, 2007; and

**WHEREAS**, there is on file with the City Council a staff report which includes the criteria, facts, and conclusions which collectively are the findings supporting this request:

**NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:**

**SECTION 1.** The findings for adoption of this ordinance are attached as Exhibit "A."

**SECTION 2.** The minutes of the Planning Commission meetings of April 16, May 7 and July 2, 2007, are hereby incorporated by reference into this ordinance.

**SECTION 3.** Based on the above findings, the Forest Grove Zoning Ordinance Map is hereby amended to designate Washington County tax lots 1N4 36DA-300, 800, 1000, and 1001 with a Planned Residential Development Overlay, with the conditions listed in Exhibit "B", and as further described in the attached map, listed as Exhibit "C".

**PRESENTED AND PASSED** the first reading the 6<sup>th</sup> day of August, 2007.

**PASSED** the second reading the 20<sup>th</sup> day of August, 2007.

---

Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 24<sup>th</sup> day of September, 2007.

---

Richard G. Kidd, Mayor

**EXHIBIT A**  
**ORDINANCE NO. 2007-11**

CRITERION: Public facilities serving the proposed development, including but not limited to, sanitary sewers, water, streets, storm sewers, electrical power facilities, parks, public safety and schools shall be adequate and meet current City standards; or it is guaranteed that inadequate or nonexistent public facilities will be upgraded or constructed by the applicant prior to occupancy of the project.

Analysis and Findings:

- Public facilities including sanitary sewers, water, storm sewers and electrical power are available to the site. With the conditions to construct a looped water system through the site and provide storm water detention, all utilities would be designed and constructed to City standards and specifications.
- Gales Way is a designated Collector street. It would receive a majority of the traffic generated by the project. It has already been improved to City standards.
- "B" Street is a designated Collector street. It would receive some of the traffic generated by the project. It has already been improved to City standards.
- Smith's Orchard is within an area served by the Forest Grove School District. The district has not commented on this proposal.
- No public park is required as part of the project, but each new home will be assessed the standard parks system development charge (currently \$3,000).
- The project is within an area served by City police and fire services.

Conclusion: All interior streets would be constructed to City standards. All utilities would be constructed to City or other governing agency standards. With the proposed conditions, the project would comply with the public facilities requirement.

CRITERION: The impact of the proposed development on public facilities shall not exceed the impact anticipated for the site in the formulation of the public facilities master plans contained in the Comprehensive Plan.

Analysis and Findings:

- Sanitary sewers, water, storm sewers and electrical power facilities to and within the project will be constructed to City Master Plan, current Standards and Specifications, and/or other approved or referenced specifications.
- The underground utilities within street right-of-ways and utility easements will be City owned and maintained and built in accordance with City master plan specifications and/or privately-owned and maintained franchised utilities.

Conclusion: Because all public facilities are required to be built to master plan specifications, there would not be any adverse impact on the City's public utility system. The proposed development's impact on public facilities will not exceed the anticipated impact for the site as contained in the Comprehensive Plan, and the project would meet the public facility master plan criteria.

CRITERION: Any uses proposed for the development which are not listed as uses permitted outright in the zone in which the proposed PD is located shall be designed to achieve compatibility with both the remainder of the PD and properties adjacent to the PD site.

Analysis and Findings: Because the uses proposed are permitted in the R-5 and A-1 zones, this criterion is met.

CRITERION: The proposal shall provide adequate open space, landscaping, and design features to minimize significant adverse effects on adjacent properties and uses.

Analysis and Findings:

- The proposal includes two private park tracts that are centrally located within the project site. The tracts would be improved with outdoor amenities including a picnic table.
- Each home would have its own private landscaped yard space for use by the residents.

Conclusion: The proposed private park areas would be adequately sized to serve the number of proposed lots. It appears that the requirement for adequately-sized and centrally-located open space would be met.

CRITERION: The location, shape, size and character of common open space areas shall be suitable and appropriate to the scale and character of the project, considering its size, density, expected population, topography, and the number, type and location of buildings to be provided.

Analysis and Findings:

- The proposal includes two private park tracts that are centrally located within the project site. The tracts would be improved with outdoor amenities including a picnic table.
- Each home would have its own private landscaped yard space for use by the residents.

Conclusion: The proposed private park areas would be adequately sized to serve the number of proposed lots. It appears that the requirement for adequately-sized and centrally-located open space would be met.

CRITERION: The proposed development shall not result in creation of any nuisance, including but not limited to air, land, or water degradation, noise, glare, heat, vibration or other conditions which may be injurious to public health, safety, and welfare.

Analysis and Findings:

- The proposed development consists exclusively of residential uses. The creation of any nuisance, including but not limited to air, land, or water degradation, noise, glare, heat, or vibration is not anticipated.
- The surface water leaving the site would be treated for water quality as directed by Clean Water Services' *Design and Construction Standards for Surface Water Management*.
- Decorative streetlights shall be required to comply with the City's standards and specifications. Street illumination shall be comparable to that created by existing street lights, and is not anticipated to have any adverse impact on adjacent properties.
- Because this development will not result in creation of any nuisance, including but not limited to air, land, or water degradation, noise, glare, heat, vibration or other conditions which may be injurious to public health, safety, and welfare this criteria is met.

CRITERION: The proposal shall meet the intent and objectives for a PD as expressed in Sections 9.680 (PRD), or 9.730 (CPD), or 9.760 (PID), or 9.770 Manufactured Home Subdivisions or 9.780 Manufactured Home Parks (MHP), as appropriate.

## Analysis and Findings:

It is the intent of Zoning Ordinance Section 9.680 to accommodate creative and planned residential development in residential districts. In addition the intent is to facilitate the development of parcels suitable for residential use but are difficult to develop by virtue of topography, natural landscape features, unique historical character, or being an isolated problem area by being passed over and subsequently surrounded by development. A PRD would permit those innovations in the technology of land development, which are in the best interest of the City of Forest Grove.

In order to accomplish this intent, it is the purpose of these regulations:

1. to permit in a PRD a variety of dwelling types, including single-family, two-family and multi-family dwellings such as townhouses, garden apartments, and high-rise types.

**Finding:** The proposed development consists of single-family detached and attached homes. Providing a variety of dwelling types expands the housing options available.

2. to permit the flexible spacing of lots and buildings in order to encourage:

- (a) the separation of pedestrian and vehicular circulation;

**Finding:** Sidewalks will be provided around most of Smith Court, which will connect with the Gales Way sidewalk. To minimize cut-through pedestrian travel (particularly by students walking to and from Harvey Clark School) no walkway connection from Smith's Court to "B" Street is required.

- (b) the conservation of natural amenities of the landscape;

**Finding:** The site has no natural amenities of the landscape to be conserved. This criterion does not apply.

- (c) the provision of readily accessible open space,

**Finding:** The proposal includes two private park tracts which would both be centrally located and readily accessible to all residents.

- (d) the creation of functional and interesting residential areas, and

**Finding:** Uses proposed for a planned development should be designed to achieve compatibility with properties adjacent to its site. With the exception of the Covey Run duplexes developed east side of Smith's Orchard, the immediate area has been largely developed with single-family detached homes. To provide a more compatible transition between the all-duplex Covey Run project and the single-family detached homes located adjacent to the site and across Gales Way, the number of lots should be reduced from 13 to 11, and four attached units replaced with two single-family detached units.

- (e) the provision of a necessary complement of community facilities.

**Finding:** The community facilities being proposed include two improved recreation tracts consisting of landscaping, a bench and a picnic table. It appears that the intent of this regulation is met.

**EXHIBIT B**  
**ORDINANCE NO. 2007-11**

To ensure compliance with all of the applicable provisions of the Zoning Ordinance and Land Division Ordinance, the City Council hereby adopts the following conditions of approval:

**GENERAL:**

1. The applicant is bound to the project description and all representations made by the applicant during the application and decision-making proceeding.
2. The applicant must comply with all applicable City building and development standards, including all dimensional standards and public works specifications except as modified by these conditions of approval.
3. Appropriate Fire Department access and utility line connectivity must be secured prior to approval of plans for public improvements construction. All such connectivity shall be clearly shown on the plans for public improvements construction.

**FINAL PLAT REQUIREMENTS:**

4. The final plat shall include no more than 11 lots. Lots 4-5 and 8-9 shall be consolidated into single lots respectively and developed with single-family detached units.
5. The final plat must comply with Land Division Ordinance Section 9.107 et. seq., and substantially comply with the tentative plat (LDO Section 9.105(3) *Action on Final Plat*).
6. A ten-foot-wide utility and sidewalk easement is required adjacent to all property lines abutting a street. Eaves and projections may extend into the public utility easement with the written consent of the utility providers (LDO Section 9.110(2)c.i. *Easements*).
7. Tracts "B" and "C" shall be subject to a public utility and access easement in their entirety.
8. Lot 7 shall be subject to a public utility easement.
9. A separate tract shall be created for the storm water quality facility. The facility shall remain in private ownership. An easement to the City of Forest Grove shall be provided over said tract for maintenance of the facilities and conveyance systems (LDO Section 9.109 *Required Improvements-Storm Sewers and Erosion Control Facilities*).
10. Submit a copy of the proposed final deed restrictions concurrent with the final plat. The CCRs shall provide adequate provisions including but not limited to funding for the maintenance of all privately maintained open space and recreation areas, the water quality tract, and the wetland tract. To ensure the funding mechanism is adequate, provide an estimate of the total anticipated maintenance expenses for a ten-year period, and describe how those expenses will be met (LDO Section 9.107(42) *Final Plat Requirements*).
11. At least 75% of those lots with less than 9,000 square feet of lot area shall comply with LDO Sections 9.110(3)(h) *Street Connection Requirement*, and 9.110(3)(i) *Diversity Requirement*. Lots exempt from these requirements shall be noted within the conditions, covenants, and restrictions (CCRs) (LDO Section 9.110(3)h and i.).
12. The final plat shall be submitted within one year of tentative plat approval, pursuant to LDO Section 9.105 *Final Plat For Subdivisions*. Upon satisfactory completion, a Mylar copy of the recorded plat shall be provided to the Community Development Department. Home building permits shall not be issued until the Mylar is received.

**IMPROVEMENTS (GENERALLY):** All plans submitted to date are considered *conceptual only*. Detailed plans and specifications must be submitted that demonstrate compliance with standards and regulations adopted by the City of Forest Grove and/or all other agencies that have jurisdiction. No home building permits will be issued until all required public improvements have been constructed and accepted by the City of Forest Grove and/or others having jurisdiction.

13. All site grading and public improvement work shall conform to the City of Forest Grove *Municipal Code*, Smith's Orchard Subdivision *Conditions of Approval*, City of Forest Grove *Standard Specifications*, Uniform Building Code Appendix Chapter 33 *Excavation and Grading*, and the *Agreement Allowing Developer to Construct Public Improvement*.

14. Finish grading shall not deviate significantly from existing grade, as determined by the City Engineer.
15. All utilities shall be constructed to Master Plan specifications, and all construction shall comply with CWS Resolution and Order 07-20 *Design and Construction Standards for Sanitary Sewer and Surface Water Management*.
16. The recommendations of the geotechnical report shall be incorporated into the construction plans for the subdivision.
17. Permits for grading and erosion control shall be obtained from the Building Division prior to any excavation. Site grading shall conform to 1994 Uniform Building Code Appendix Chapter 33 Table 33-A. The application shall include a grading plan complying with 1994 UBC Appendix Chapter 33 for engineered grading, erosion control plan, and the geotechnical report. The soils and geotechnical report shall be provided prior to issuance of a grading permit. Additionally, all project site grading shall conform to conditions of the CWS-approved 1200-C Permit.

#### **ELECTRICAL SYSTEM**

18. Underground utility lines shall be required throughout. Electrical plans need to be coordinated with the Light and Power Department. Submit an electronic copy of the utility plans to Light and Power Director (503/992-3256).
19. A minimum eight-foot distance shall be maintained between electrical transformers and any combustible materials (National Electrical Supply Code (NESC) Section 15 and Forest Grove Light and Power Department *Electrical Service Requirements and Guidelines* Section 1.09 *Clearances From Utility Equipment*).
20. Transformer locations shall be no more than 200 feet from the farthest meter to be served by that transformer. Transformers shall be located within 15 feet of a suitable driving surface that is accessible to City personnel at all hours. To site the transformers and/or the access ways, additional public utility easements may be required.
21. Decorative street lighting fixtures shall comply with the City's standards and specifications.

#### **STREETS AND ALLEYS**

22. Smith Court shall be improved to City Local street standards. Pavement width shall be 28 feet and shall be posted for no parking on one side and entirely around the bulb.
23. The Tract "B" access way shall:
  - have a minimum paved width of fourteen feet, and
  - be curbed and posted on both sides as a Fire Lane-No Parking; and
  - shall otherwise comply with the City's *Maintenance Access or Emergency Access Road* standards and specifications.
24. All signage (including, but not limited to, street names, vehicular parking restrictions, and vehicular and pedestrian traffic protection and direction) for public rights-of-way and easements; pavement striping and marking; and pavement reflectors (including, but not limited to, blue fire hydrant markers), shall be shown on the approved plans and installed by the developer, as required by the Engineering Department. To minimize conflict with driveway locations and street trees, signs shall be attached to utility poles wherever possible (LDO Section 9.109(1)a. *Required Improvements - Streets*).
25. The Geotechnical Investigation and Report shall contain a separate section addressing public improvements. In that section, address structural design and construction of public streets and roadways referencing the *Washington County Uniform Road Improvements and Design Standards* and/or AASHTO standards. Plans for construction shall include alternate design considerations for "wet-weather" construction. The street design shall meet or exceed minimum standards established by the City Engineer.
26. Ten parking spaces shall be provided exclusive of those provided on each lot.

#### **WATER, STORM AND SANITARY**

All sanitary and storm drainage improvement work shall conform (as applicable) with the following City of Forest Grove/CWS-approved plans and specifications.

27. Submit an application for a new NPDES General Permit #1200-C along with the DEQ-required Land

Use Compatibility Statement (LUCS). Application forms are available from the Community Development Department. Include the required site plans for Erosion Control and Grading per the CWS template.

28. Submit copies of approved CWS permits.
29. Provide storm drainage calculations for the water quality facility and address detention, as per CWS standards and specifications (LDO Section 9.109(1)b. *Required Improvements-Storm Sewers and Erosion Control Facilities*). The facility shall be sized to provide storm water detention, in compliance with City standards and specifications.
30. All storm water runoff from any newly created impervious surface areas shall drain to an approved public storm water facility (LDO Section 9.109(1)b. *Required Improvements-Storm Sewers and Erosion Control Facilities*). A downstream analysis shall be included with storm drainage report.
31. Once the water quality facility in the storm water quality tract is constructed to City and CWS standards and accepted by the City, the tract shall be dedicated to the declarant or an approved homeowners association. An easement for purposes of maintenance, conveyance, treatment and detention of storm and surface water runoff shall be granted to the City of Forest Grove (LDO Section 9.109(1)b. *Required Improvements-Storm Sewers and Erosion Control Facilities*).
32. Water-quality (sumped) manholes will be required at each inlet pipeline to water quality facilities. Unless approved otherwise, water-quality manholes shall not substitute for standard flow-through or junction manholes (LDO Section 9.109(1)b. *Required Improvements-Storm Sewers and Erosion Control Facilities*).
33. Storm drain and sanitary sewer piping materials shall be approved by the City Engineer. Storm drain piping between a water quality manhole and discharge into the water quality facility shall be concrete pipe with a beveled end section and rip-rap designed for the discharge location (LDO Section 9.109(1)b. *Required Improvements-Storm Sewers and Erosion Control Facilities*).
34. A City-standard water line shall be looped through from Gales Way to "B" Street.

#### **FIRE**

35. New fire hydrants shall be installed as per City requirements. Hydrants shall be equipped with 4-inch Storz fittings, and their locations identified with blue reflective pavement markers at the street centerline (Municipal Code Section 5.635 *Amendments to the Oregon Fire Code*).
36. Buildings more than 30 feet in height shall have fire apparatus access roads constructed for use by aerial apparatus with an unobstructed driving surface width of not less than 26 feet (OFC 503.2.4 and OFC Appendix D).
37. Homes partially or wholly located greater than 150 feet from Smith Court shall be equipped with a Fire Department-approved fire suppression system.

#### **SIDEWALKS** (LDO Section 9.109(1)e. *Sidewalks*).

38. A curb-tight sidewalk shall be installed along the north side of Smith Court and adjacent to all tracts abutting Smith Court concurrent with street construction.
39. Curb-tight sidewalks six feet in width shall be installed concurrent with home construction.
40. Sidewalks shall be installed at street corner radius returns concurrent with street construction.

#### **SETBACKS**

41. Minimum front yard setbacks for lots 4-6 shall be 8 feet to the living area or porch (as measured from the north property line of Tract "B"). All other lots shall maintain a minimum front yard setback of 14 feet.
42. Minimum front yard setbacks for all lots shall be 20 feet to the garage.
43. Corner side yard setbacks shall be a minimum of fourteen feet. The street connection requirements of ZO Section 9.624(1)(a)-(c) shall apply (ZO Section 9.624 *Setback and Lot Width Requirements* and LDO Section 9.110(2)c.).
44. Side yard setbacks between shall be a minimum of five feet.

## ARCHITECTURAL STANDARDS

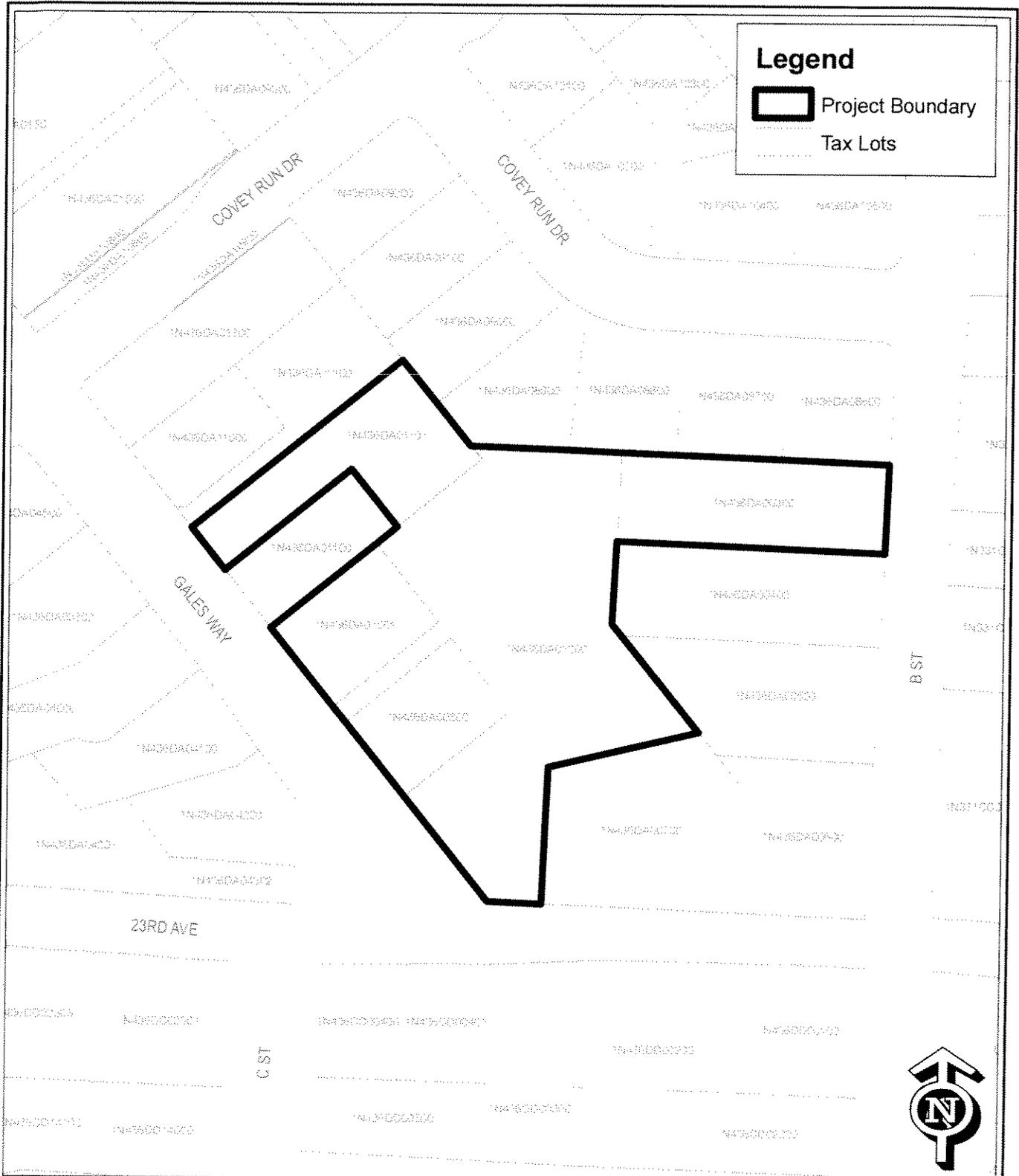
45. All new homes shall exhibit the architectural features and details of Craftsman architecture as represented by the duplex elevations proposed for Lots 4-5, including porches with roofs supported by columns, knee braces, entry doors with multiple panes (a.k.a. lights), windows with multiple lights (no sliders), extensive wood trim, and no shutters.
46. Elevations and any modifications to the proposed design types shall be submitted to the Community Development Department for review and approval by the Community Development Director or his designee prior to submitting for building permits (ZO Section 9.816.5 *Compliance with Final Plan*).
47. The home located on Lot 10 shall be oriented toward Gales Way, but shall take vehicular access from Smith Court.
48. The primary front elevation siding materials shall be continued on all elevations.
49. At least 75% of the homes shall comply with the Street Connection Requirement of LDO Section 9.110(3)h.
50. At least 75% of the front elevations shall comply with the Diversity Requirement of LDO Section 9.110(3)i.
51. To preserve privacy, side elevation windows shall: a) not align with the windows in the adjacent home, or b) use translucent glass, or c) the sill shall be not less than 5 ½ feet above the floor.
52. All homes shall be constructed with a front porch, which shall extend at least four feet forward of the garage door.
53. Garage doors shall be located flush with or behind the front door.

## TREES

54. Existing on- and off-site trees that may be adversely affected by street or utility extensions or on-site grading shall be identified and protected. Protection measures shall be included on the grading plans and shall be in place prior to any grading activity. Measures shall remain in place for the duration of construction (ZO Section 9.945(D)(3) *Protection Plan*).
55. Chain-link fencing shall be installed around all tree protection zones.
56. City staff shall be notified prior to commencement of grading or excavation near any of the protected trees, to verify that the tree protection measures are in place.
57. A tree removal permit shall be required for all trees to be removed (ZO Section 9.942 *Permit Requirements*).
58. To compensate for the trees to be removed, the applicant shall pay a fee:
  - Equal to the street tree fee for 2 removed deciduous trees with a diameter of 10 inches or greater; and
  - Of \$10 each for 5 removed conifer trees with a diameter of 10 inches or greater. These funds shall be used for tree installation on publicly-owned land in the city.
59. Street trees adjacent to lots 1 and 10 shall be charged a street tree installation fee (LDO Section 9.109(1)g.iv. *Street Trees*).

## OTHER

60. Mailboxes and newspaper receptacles (serving at least four but not more than eight homes) are required; locking mailboxes are recommended. These facilities shall be located in the vicinity of streetlights. Locations and specifications should be confirmed with the Forest Grove Post Office prior to installation. Installation shall occur prior to occupancy of the first home (LDO Section 9.109(1)h. *Mailboxes*).
61. A six-foot-tall Craftsman-style fence shall be installed at the project perimeter (ZO Section 9.682(5) *Perimeter Requirements*). The fence shall project not closer than twenty feet from the back of the sidewalk.



**NW ENGINEERS**  
 Engineering & Planning  
 19075 NW TANASBOURNE DRIVE,  
 SUITE 160  
 HILLSBORO, OREGON 97124  
 PHONE: 503-601-4401

**Exhibit 'C'**  
**Smith's Orchard - PRD-06-05**  
**City of Forest Grove, Washington County, Oregon**

Source:  
 Metro Data Resource Center, RLIS Lite Data Disc, Feb. 2007

Date: 07/27/2007
Scale: 1 in. = 100 ft.
Project #: 1140.001
Drawn By: CEB

## NOTICE OF PUBLIC HEARING CONTINUATION FOREST GROVE CITY COUNCIL

A **PUBLIC HEARING CONTINUATION** will be held before the Forest Grove City Council to review the following planned development application:

---

**Applicant:** Dave Turnbull, 3897 SE Ash Street, Hillsboro, Oregon 97123

**Owners:** Dave Turnbull, 3897 SE Ash Street, Hillsboro, Oregon 97123  
Edmund and Burton Gravelle, 2333 Gales Way, Forest Grove, Oregon 97116

**Location:** 2332 "B" Street; 2307, 2311, and 2333 Gales Way  
Washington County Tax Lots 1N4 36DA-300, 800, 1000 and 1001

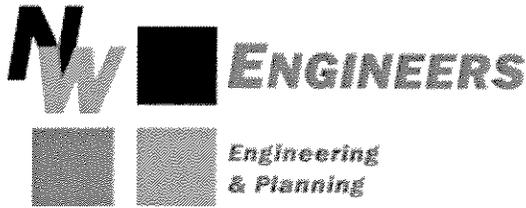
**Requests:** A rezone to establish a Planned Residential Development overlay designation for Smith's Orchard, a 16-lot subdivision

**File Number:** PRD-06-05

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The continuation of the above Public Hearing will take place before the Forest Grove City Council on **Monday, September 24, 2007, at 7:00 p.m. or thereafter**, in the Community Auditorium, 1915 Main Street, in Forest Grove. At this time and place all persons will be given a reasonable opportunity to give testimony about this proposal. If an issue is not raised in the hearing (by person or by letter) or if the issue is not explained in sufficient detail to allow the Council to respond to the issue, then that issue cannot be used for an appeal to the Land Use Board of Appeals (LUBA).

If additional documents or evidence are provided in support of an application, any party shall be entitled to a continuance of the hearing. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing. Information pertaining to these requests may be obtained from Associate Planner James Reitz at the Community Development Department, 1924 Council Street, (503) 992-3233, between 8 a.m. and 5 p.m. The staff report will be available seven days prior to the hearing; copies will be available at cost. This notice is sent by the authority of the Forest Grove City Council.



Written - Sept 10, 2007  
Testimony - Hearing  
Resubmitted - Hearing  
Sept 24, 2007  
NW Engineers, LLC  
19075 NW Tanasbourne Drive, Suite 160  
Hillsboro, OR 97124  
Phone (503) 601-4401  
Fax (503) 601-4402  
Email [inbox@NW-Eng.com](mailto:inbox@NW-Eng.com)  
Website [www.nw-eng.com](http://www.nw-eng.com)

August 31, 2007

James Reitz, AICP  
City of Forest Grove  
Community Development Department  
1924 Council Street  
P.O. Box 326  
Forest Grove, Oregon 97116-0326

Dear Mr. Reitz:

Re: Smith's Orchard PRD - File No. PRD-06-05  
Planning Commission Approved PRD plan  
Requested by City Council 8/20/07

The Smith's Orchard 13-lot site plan has been revised to reflect the approval by the Planning Commission on July 2, 2007 which includes: (1) a reduction of 2 lots; and (2) sidewalk & on-street parking shifted to the north side of Smith Court. Specifically, the Planning Commission required that two single-family attached buildings (Lots 4 & 5 and 8 & 9 of the proposed plan) be replaced with two single-family detached homes (shown as Lots 4 & 7 on the submitted plan).

The submitted plan has also been revised in accordance with City Council direction at the August 20, 2007 hearing to include a 5-ft. pathway connection to "B" Street, and to indicate the location of the proposed fire hydrant (located between Lots 8 & 10). Three separate plans have been created to emphasize proposed parking & circulation, and landscape area for ease of evaluation.

An alternate 15-unit subdivision plan has been submitted to indicate how the property could be developed under the current R-5 & A-1 zoning & development standards without the need for review through a PRD by the Planning Commission or City Council. As indicated on this plan, 13 attached and two detached homes could be developed on the site. All four existing dwellings would be demolished with this alternative.

The applicant continues to request approval of the proposed 13-lot plan. The applicant agrees to the other recommended conditions including extension of a pedestrian pathway to "B" Street should the Council find that this connection is desirable.

Following is a brief summary of the site's existing conditions and evolution of the development plan from the original 16-lots and an earlier configuration to the proposed 13-lot PRD requested at this time.

**1. Open Space/Existing Conditions/Site Constraints:**

- There are four existing houses on 4 tax lots which make up the 1.71-acre site.
- The site is zoned R-5 & A-1 (0.29 acre is in the R-5 zone).
- Site conditions require that utilities be run to B Street (approx 10-ft. slope west to east).
- Mr. & Mrs. Turnbull desire to retain the existing residence and surrounding trees.
- Mr. & Mrs. Turnbull vision to create a mix of attached and detached housing with "master on the main" to provide living opportunities for seniors, people with special needs, and families who wish to provide housing for their elderly parents. This mix of attached and detached housing would also provide housing for a variety of incomes.
- Access to the development only possible from Gales Way.
- It was determined that a PRD was the only feasible way to develop the site and retain open space areas & some existing trees.

**2. Initial Plan – 16 or 15 lots:**

- Originally there were 8 attached units and 7 or 8 detached units.
- Two existing houses were retained. Neighbors suggested that the house on Tax Lot 800 also be retained, but this area is needed for Smith's Court access.
- An improved park in the Gales Way right-of-way was proposed but the Planning Commission and neighbors didn't want this area improved and landscaped.
- This plan included an open space "passive park" tract on the south side of the existing house but the Planning Commission and neighbors didn't want the public in this area.
- Pedestrian access from Gales Way to B Street was proposed to provide neighborhood circulation but the Planning Commission and neighbors didn't want people walking through this area.
- Staff was concerned about the location of the Water Quality Facility at the end of Smith Court.
- Staff was also concerned about the location of the proposed parks and stated that they needed to be centrally located.
- Neighbors, staff and the Planning Commission were concerned about the narrow driveway accessing attached units and proposed 1-way road with fencing.
- Other concerns were raised regarding parking, location of open space, building orientation and setbacks.
- Lots 11 & 12 (at the corner of Gales Way & Smith Court) needed to be turned into a single-family detached dwelling and oriented toward Gales Way.
- There were concerns regarding density – staff recommended 13 lots.

**3. Proposed Plan – 13 lots:**

- The plan was revised to address the above comments as follows:
- Density reduced to 13-lots – 6 attached & 7 detached units
- Density recalculated as follows: Max 15 units/Min 12 units
- Parks adjacent to Gales Way eliminated and new parks with landscaping, benches and picnic table are provided on both side of Smith's Court.
- Water quality facility is shifted east and 5 attached units in the area reduced to 2 attached units and 1 single-family detached unit on Tract B private street.

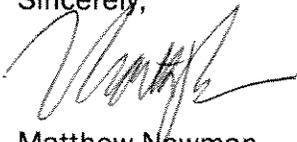
- Pedestrian pathway connection to B Street was eliminated.
- Additional on-street parking has been provided– 10 spaces
- All homes are oriented toward center except Lots 1 & 10 (oriented towards Gales Way).
- Setbacks along the site's perimeter have been increased. Setbacks along Gales way increased to match surrounding homes.
- Vehicular circulation has been improved including back-out distance on private street.
- Building elevations have been improved to reflect the Craftsman style of surrounding homes in the neighborhood.
- Existing walnut trees on Gales Way to be retained (along with trees on the south side of the existing home on Lot 11).
- Fencing is provided along the site's perimeter.
- Sidewalk shifted to north side of Smith Court.

The applicant continues to request approval of the 13-lot plan. As demonstrated on the submitted plans, the 11-lot plan creates no more open space than the 13-lot plan. Instead no improvement to vehicular circulation is provided since three detached units access Tract B. In addition these homes are not oriented towards the cul-de-sac as the homes are with the 13-lot plan. Instead they are oriented toward Tract B and the duplexes in Covey Run, with a greater visual impact to surrounding property owners. Building mass of the attached single-family dwellings on Lots 4 & 5 and 8 & 9 is less than or equal to the mass exhibited by single-family detached homes on the 11-lot plan due to their orientation. Building footprints are similar but the roofline of the single-family attached units is varied as indicated in the application submittal package.

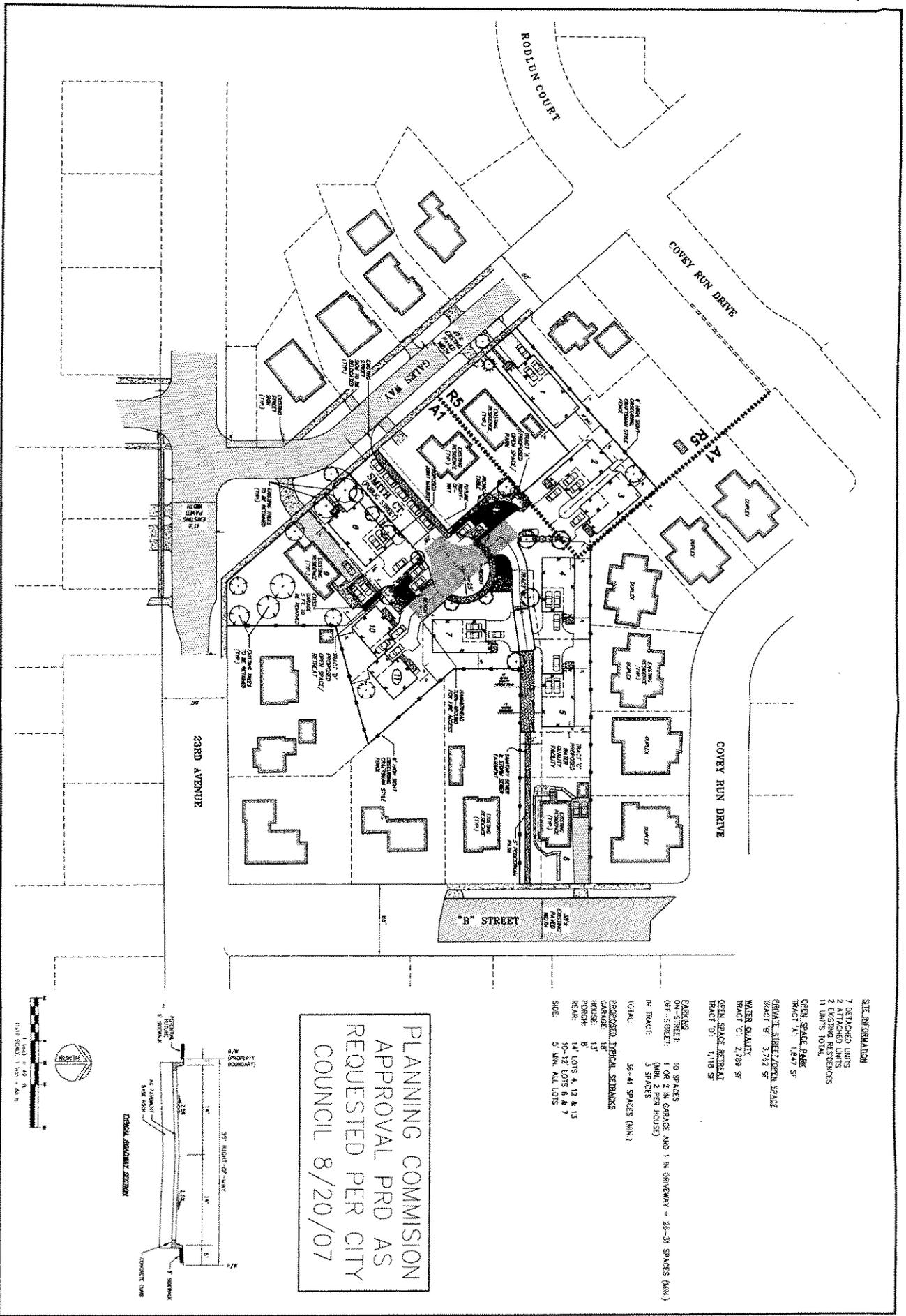
Finally the 13-lot plan is superior because it provides the mix of attached and detached homes that can be marketed to people of varied incomes as envisioned by Mr. & Mrs. Turnbull. The 13-lot plan also provides additional resources for maintenance of the open space areas and private streets, ensuring long-term success of the development.

The application has demonstrated compliance with the required findings of the Forest Grove Zoning Ordinance. Therefore, we request approval of the 13-lot PRD plan as proposed.

Sincerely,

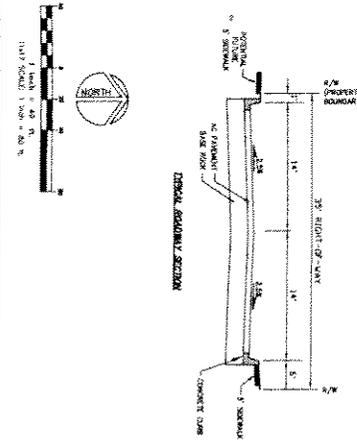


Matthew Newman  
Planning Manager



**PLANNING COMMISSION**  
**APPROVAL PRD AS**  
**REQUESTED PER CITY**  
**COUNCIL 8/20/07**

- SITE INFORMATION**
- 7 DETACHED UNITS
  - 2 ATTACHED UNITS
  - 2 TOWNHOUSES/RESIDENCES
  - 11 UNITS TOTAL
  - OPEN SPACE PARK
  - TRACT A: 1,947 SF
  - TRACT B: 5,792 SF
  - OPEN SPACE/OPEN SPACE
  - TRACT C: 2,789 SF
  - OPEN SPACE HERBET
  - TRACT D: 1,118 SF
- PARKING**
- 10 SPACES
  - OFF-STREET: (MIN. 2 IN GARAGE AND 1 IN DRIVEWAY = 26-31 SPACES (MIN.)
  - IN TRACT: 3 SPACES
  - TOTAL: 36-41 SPACES (MIN.)
- BERKELEY TYPICAL SEPARANS**
- GARAGE: 18'
  - HOUSE: 13'
  - PORCH: 8'
  - REAR: 14'-1/2' LOTS 4, 12 & 13
  - 14'-1/2' LOTS 5, 6 & 7
  - SIDE: 5' MIN. ALL UNITS



SITE EXH  
**1a**

DESIGNED	REVISION	BY	DATE
DRAWN CB	1		
REVIEWED MN	2		
SUBMITTAL 06/13/07	3		
	4		
	5		
	6		
	7		

**SMITH'S ORCHARD P.R.D.**

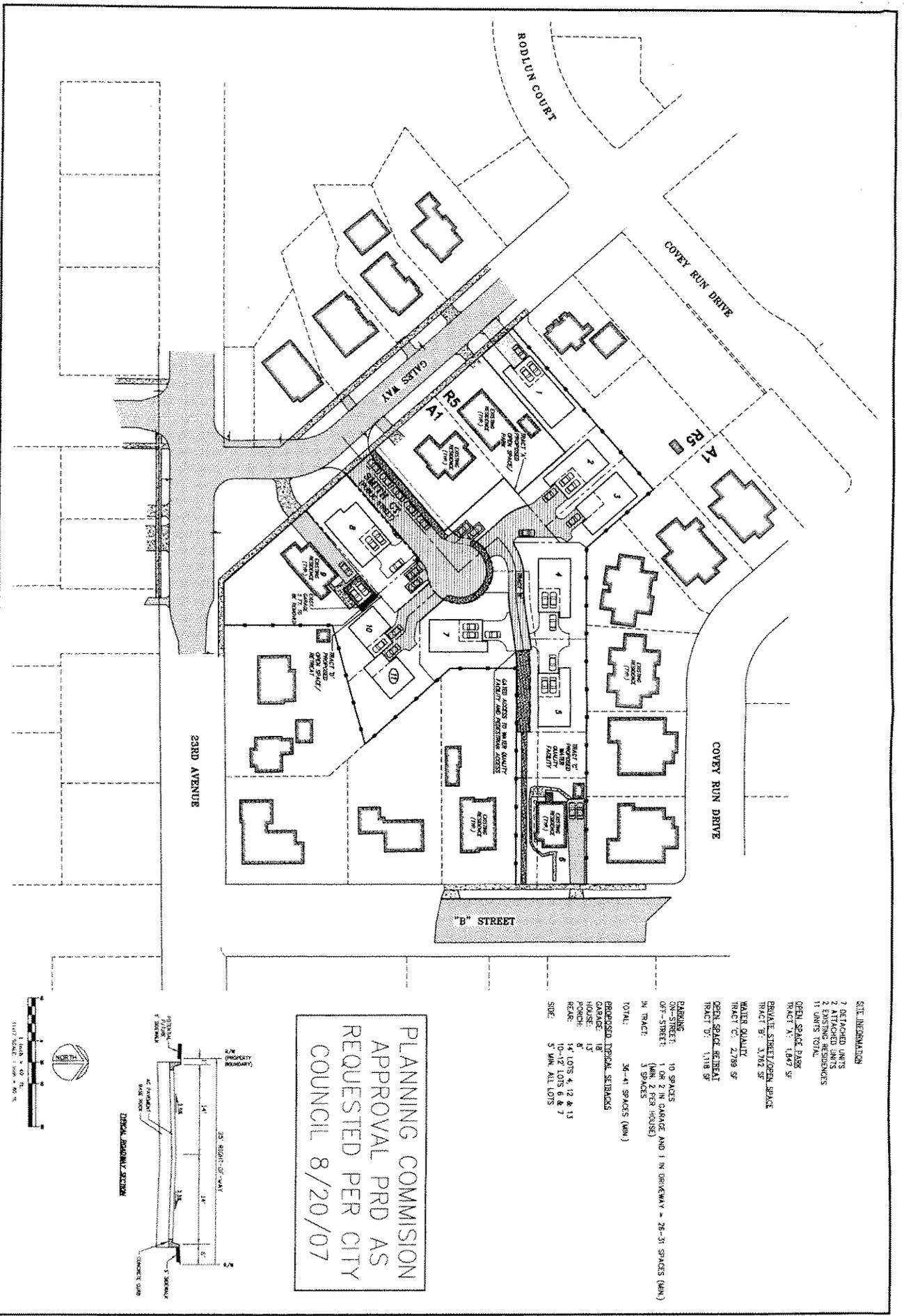
1140.001  
PRELIMINARY SITE PLAN

FOR: DAVID TURNBULL  
3897 SE ASH STREET  
HILLSBORO, OREGON 97123

SITE: TAX MAP 1N4 380A  
TAX LOT 300, 500, 1000 & 1101  
CITY OF FOREST GROVE, OREGON

**NW ENGINEERS**  
Engineering & Planning

15072 NW Tessemore Drive, Suite 100  
Hillsboro, OR 97124  
503.733.4251 503.607.9922 fax

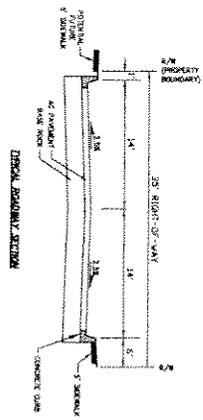


**PLANNING COMMISSION**  
**APPROVAL PRD AS**  
**REQUESTED PER CITY**  
**COUNCIL 8/20/07**

**SITE INFORMATION**  
 7 DETACHED UNITS  
 2 ATTACHED UNITS  
 2 EXISTING RESIDENCES  
 11 UNITS TOTAL  
 OPEN SPACE PARK  
 TRACT A: 1,067 SF  
 PRIVATE STREET/OPEN SPACE  
 TRACT B: 3,782 SF  
 WATER QUALITY  
 TRACT C: 2,108 SF  
 OPEN SPACE RETREAT  
 TRACT D: 1,118 SF

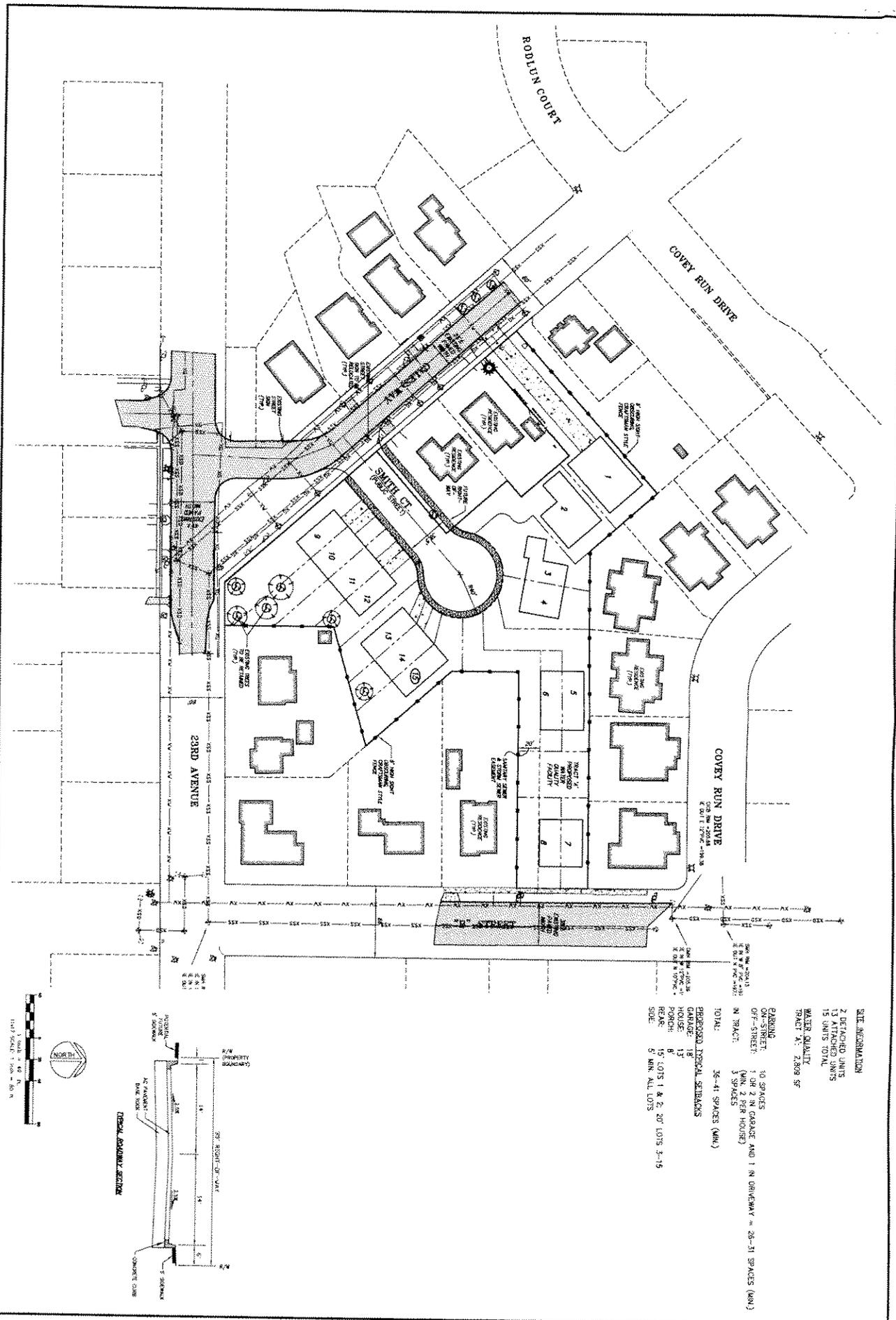
**PLANNING**  
 ON-STREET: 10 SPACES  
 OFF-STREET: 1 OR 2 IN DRIVEWAY + 28-31 SPACES (MIN.)  
 IN TRACT: (MIN. 2 PER HOUSE)  
 TOTAL: 36-41 SPACES (MIN.)

**EMERGENCY TYPICAL SERVICES**  
 GARAGE: 10  
 DRIVEWAY: 10  
 PORCH: 8  
 REAR: 14 LOTS 4, 12 & 13  
 10-12 LOTS 6 & 7  
 SIDE: 5 MIN. ALL LOTS



SITE-EXH  <b>1b</b>	DESIGNED DRAWN CB REVIEWED MN SUBMITAL 06/13/07	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>REVISION</th> <th>BY</th> <th>DATE</th> </tr> </thead> <tbody> <tr><td>1</td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td></tr> <tr><td>6</td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td></tr> </tbody> </table>	REVISION	BY	DATE	1			2			3			4			5			6			7			<b>SMITH'S ORCHARD P.R.D.</b>  1140.001 PRELIMINARY SITE PLAN - STREETS AND PARKING	FOR: DAVID TURNBULL 3807 SE ASH STREET HILLSBORO, OREGON 97123  SITE: TAX MAP 1N4 36DA TAX LOT 360, 809, 1030 & 1161 CITY OF FOREST GROVE, OREGON	<b>ENGINEERS</b> Engineering & Planning <small>13875 NW Embarcadero Drive, Suite 100          Hillsboro, OR 97124          503.671.0000 503.671.0002 fax</small>
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1																													
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5																													
6																													
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**SITE INFORMATION**

2 DETACHED UNITS  
 13 ATTACHED UNITS  
 15 UNITS TOTAL

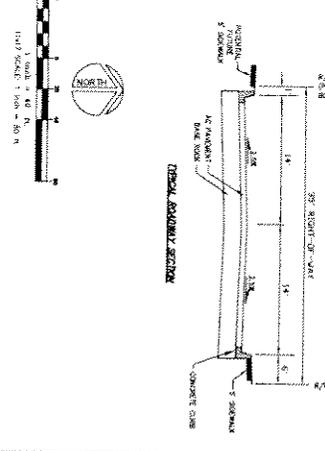
**WATER QUALITY**  
 TRACT # 1: 2,505 SF

**GARAGE**  
 18 SPACES  
 OFF-STREET (MIN. 2 PER HOUSE)  
 5 SPACES  
 IN TRACT

**TOTAL:** 26-41 SPACES (MIN.)

**PROPOSED TYPICAL STRUCTURES**

TRACT # 1: 1,000 SF HOUSE  
 TRACT # 2: 1,000 SF HOUSE  
 TRACT # 3: 1,000 SF HOUSE  
 TRACT # 4: 1,000 SF HOUSE  
 TRACT # 5: 1,000 SF HOUSE  
 TRACT # 6: 1,000 SF HOUSE  
 TRACT # 7: 1,000 SF HOUSE  
 TRACT # 8: 1,000 SF HOUSE  
 TRACT # 9: 1,000 SF HOUSE  
 TRACT # 10: 1,000 SF HOUSE  
 TRACT # 11: 1,000 SF HOUSE  
 TRACT # 12: 1,000 SF HOUSE  
 TRACT # 13: 1,000 SF HOUSE  
 TRACT # 14: 1,000 SF HOUSE  
 TRACT # 15: 1,000 SF HOUSE



SITE-EXH  <div style="font-size: 2em; font-weight: bold;">1d</div>	DESIGNED DRAWN REVIEWED SUBMITTAL DATE: 11/13/07	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>REVISION</th> <th>BY</th> <th>DATE</th> </tr> </thead> <tbody> <tr><td>1</td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td></tr> <tr><td>6</td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td></tr> </tbody> </table>	REVISION	BY	DATE	1			2			3			4			5			6			7			<b>SMITH'S ORCHARD          SUBDIVISION</b> 1140.001 PRELIMINARY SITE PLAN - 15 LOTS	FOR: DAVID TURNBULL 3897 SE ASH STREET HILLSBORO, OREGON 97123  SITE: TAX MAP 1N4 30CA TAX LOT 300, 800, 1000 & 1101 CITY OF FOREST GROVE, OREGON	<div style="text-align: center;"> <p><b>ENGINEERS</b>          Engineering &amp; Planning</p> </div> <p style="font-size: 0.8em;">18005 NW Greenwood Drive Suite 1000          Hillsboro, OR 97124          503.637.4300    503.637.4322    fax</p>
REVISION	BY	DATE																											
1																													
2																													
3																													
4																													
5																													
6																													
7																													

Second Reading

11-

**ORDINANCE NO. 2007-12**  
**ORDINANCE AMENDING ORDINANCE NO. 80-14**  
**COMPREHENSIVE PLAN MAP**  
**FROM SEMI-PUBLIC/INSTITUTIONAL – COLLEGE**  
**TO HIGH DENSITY RESIDENTIAL (HDR)**

**WHEREAS**, Pacific University requests an amendment to the comprehensive plan,

**WHEREAS**, notice of this request was mailed to property owners and residents within 300 feet of the subject site on June 21, 2007, as required by Zoning Ordinance Section 9.915. Notice was also published in the *News Times* on June 27, 2007, as required by Zoning Ordinance Section 9.915. No written comments were received in response to these notices; and

**WHEREAS**, notice of this request was mailed to Metro, and the Department of Land Conservation and Development (DLCD) on June 5, 2007. Both DLCD and Metro reviewed the amendments and registered no comments; and

**WHEREAS**, the Planning Commission held the duly noticed public hearing on the proposed comprehensive plan map amendment on July 16, 2007.

**WHEREAS**, the City Council held public hearings concerning this amendment on September 10, 2007, and made a determination on the basis of the findings contained in Sections 1 and 2 below; and

**WHEREAS**, there is on file with the City Council a staff report which includes the criteria, facts, and conclusions which collectively are the findings supporting this request:

**NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:**

**SECTION 1.** The findings contained in the staff report for this proposal (File Number CPA-07-03), the minutes of the Planning Commission meeting of July 16, 2007, and Planning Commission Decision Number 07-11 are hereby adopted and incorporated by reference into this ordinance.

**SECTION 2.** That the application meets the Comprehensive Plan Map Amendment Criteria (Ordinance 80-14, Section II, Amendments to the Comprehensive Plan) because:

1. Justification of the proposed amendment and an explanation of how it fulfills applicable comprehensive plan goals and policies and LCDC statewide planning goals.

Finding: Complies. As analyzed above in Section V, *Conformance to Land Use Policy* the proposed amendment is justified.

2. Identification of alternative locations within the City or Urban Planning Area which could be used without amending the plan, and a explanation as to why they are considered unsuitable.

Finding: *No other locations are applicable in this situation.*

Finding: Complies in that the amendment is the removal of a designation that doesn't require compensation elsewhere in the city.

3. Identification of the short and long-term environmental, social, economic and energy consequences of the proposed change on the city, region, and state, with particular attention to the impacts on public facilities and services such as streets, traffic control, mass transit, sewer, water, drainage, parks, schools, public safety, and public utilities.

Findings: Complies. The proposed amendment is not anticipated to have any short or long-term adverse environmental, social, economic or energy consequences. Impact on city services would not be adverse, because at this time, the applicant does not propose any specific development. In the long-term, this site may be redeveloped as residential housing. About 1/3 of the site has been zoned residential, therefore future impacts have been somewhat expected. The proposal will help provided needed housing. Streets, water, sewer and other public facilities are currently available to the site.

4. Demonstration that the proposed new land uses will be compatible with existing adjacent land uses and with future adjacent land uses as proposed in the comprehensive plan.

Findings: Complies. The proposed land use would consist of high density residential development. This use would be compatible with existing and future adjacent land uses and would eliminate the current split designation on the site.

**SECTION 3:** Based on the above findings, the Comprehensive Plan No. 80-14 is hereby amended to incorporate those changes contained in Map Exhibit "A".

**PRESENTED AND PASSED** the first reading the 10<sup>th</sup> day of September, 2007.

**PASSED** the second reading the 24<sup>th</sup> day of September, 2007.

---

Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 24<sup>th</sup> day of September, 2007.

---

Richard G. Kidd, Mayor Kidd

**Planning Commission Findings and Decision Number  
07-11 to Recommend Approval on  
Comprehensive Plan Map Amendment CPA-07-03**

**WHEREAS**, Pacific University requests amendment to the comprehensive plan map,

**WHEREAS**, notice of this request was mailed to property owners and residents within 300 feet of the subject site on June 21, 2007, as required by Zoning Ordinance Section 9.915. Notice was also published in the *News Times* on June 27, 2007, as required by Zoning Ordinance Section 9.915. No written comments were received in response to these notices; and

**WHEREAS**, notice of this request was mailed to Metro, and the Department of Land Conservation and Development (DLCD) on June 5, 2007. Both DLCD and Metro reviewed the amendments and registered no comments; and

**WHEREAS**, the Planning Commission held the duly noticed public hearing on the proposed comprehensive plan map amendment on July 16, 2007.

The City of Forest Grove Planning Commission does hereby recommend approval of the proposed comprehensive plan map amendment as shown on Exhibit A, making the following specific findings in support of this decision:

The Planning Commission adopts by reference the staff report, including findings and recommendations, dated July 9, 2007

Comprehensive Plan Map Amendment Criteria (Comprehensive Plan, Ordinance 83-15, Section II, Amendments to the Comprehensive Plan):

1. Justification of the proposed amendment and an explanation of how it fulfills applicable comprehensive plan goals and policies and LCDC statewide planning goals.

Staff Analysis and Findings: Complies. As analyzed above in Section V, *Conformance to Land Use Policy* the proposed amendment is justified.

2. Identification of alternative locations within the City or Urban Planning Area which could be used without amending the plan, and a explanation as to why they are considered unsuitable.

Applicant's Response: *No other locations are applicable in this situation.*

Staff Analysis and Findings: Complies in that the amendment is the removal of a designation that doesn't require compensation elsewhere in the city.

3. Identification of the short and long-term environmental, social, economic and energy consequences of the proposed change on the city, region, and state, with particular attention to the impacts on public facilities and services such as streets, traffic control, mass transit, sewer, water, drainage, parks, schools, public safety, and public utilities.

Applicant's Response: *The impact on city services would not be adverse, because at this time, the applicant does not propose any specific development. In the long-term, this site may be redeveloped as residential housing. About 1/3 of the site has been expected to be used as residential, therefore future impacts have been somewhat expected.*

Staff Analysis and Findings: Complies. The proposed amendment is not anticipated to have any short or long-term adverse environmental, social, economic or energy consequences.

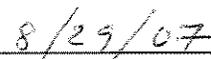
The proposal will help provided needed housing. As discussed above in Section V *Conformance to Land Use Policy*, streets, water, sewer and other public facilities are currently available.

4. Demonstration that the proposed new land uses will be compatible with existing adjacent land uses and with future adjacent land uses as proposed in the comprehensive plan.

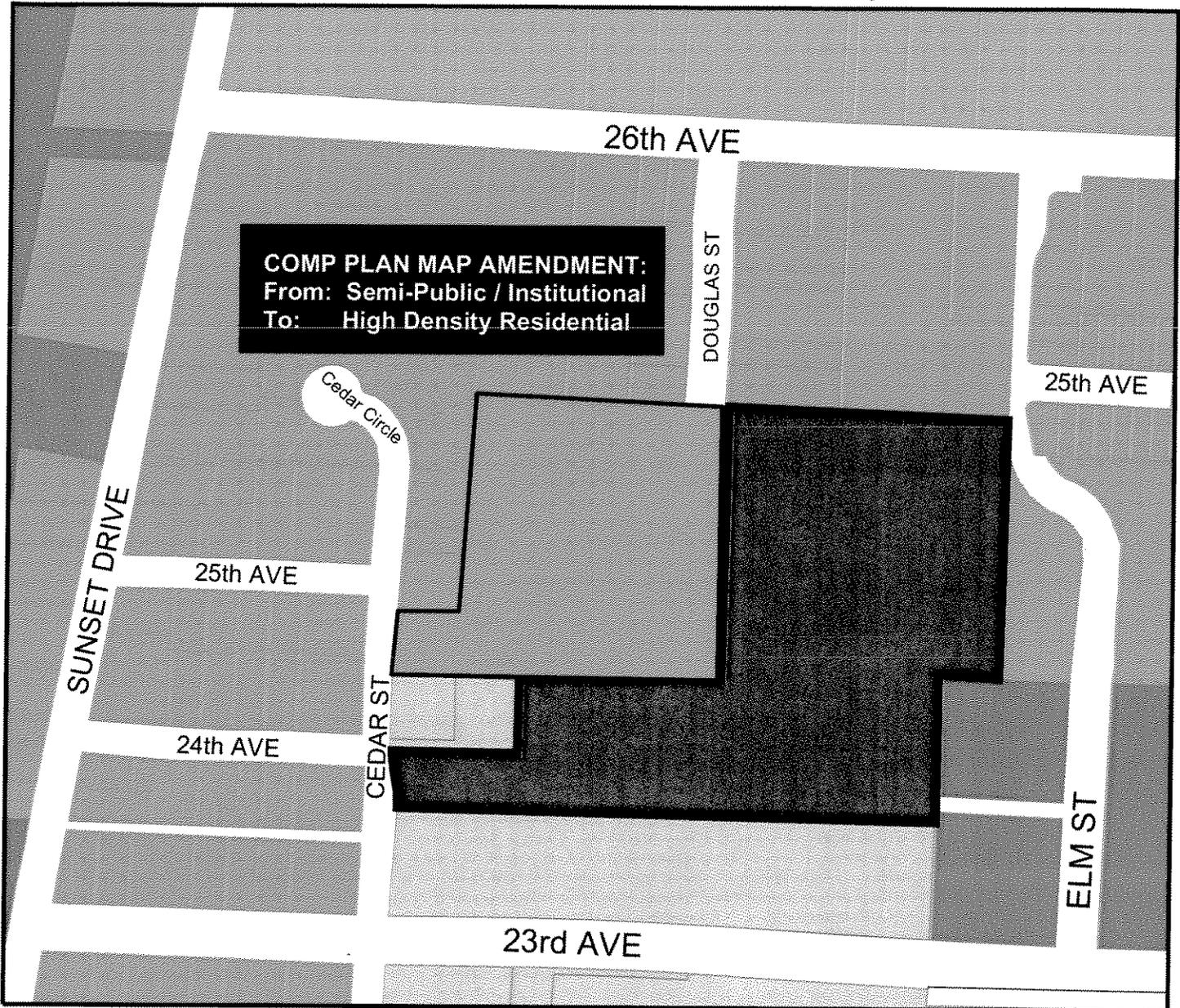
Applicant's Response: *The existing neighborhoods to the west and east are residential. This change will keep the Cannery Field with the same zoning.*

Staff Analysis and Findings: Complies. The proposed land use would consist of high density residential development. This use would be compatible with existing and future adjacent land uses and would eliminate the current split designation on the site.

  
\_\_\_\_\_  
TOM BECK, Chair

  
\_\_\_\_\_  
Date

# Proposed Comprehensive Plan Map Amendment CPA 07-03 Pacific University's Cannery Field



## Legend

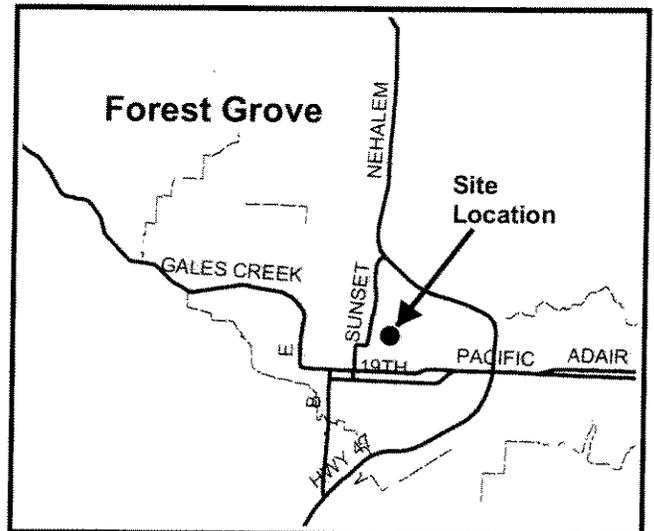
-  General Industrial
-  High Density Residential
-  Medium Density
-  Public
-  Parks
-  Semi-Public/Institutional



NOT TO SCALE

**city of  
forest  
grove**  
1924 Council Street  
P.O. Box 326  
Forest Grove, OR 97116

FG Comm Dev Dept  
Created 7-02-07  
Project # KC07-07-01



## NOTICE OF PUBLIC HEARING CONTINUATION FOREST GROVE CITY COUNCIL

A PUBLIC HEARING CONTINUATION will be held before the Forest Grove City Council to review the following:

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- Proposal:** Comprehensive Plan Map Amendment
- Location:** Corner of Cedar Street and 23<sup>rd</sup> Avenue behind Gray's Industries aka Pacific University's Cannery Field Washington County tax lot 1N331CA03500
- Applicants:** Pacific University
- File Number:** CPA-07-03 to redesignate this parcel from Semi-Public/Institutional to High Density Residential (existing zoning designation)
- Criteria:** Applications for comprehensive plan amendments shall be reviewed and approved based on compliance with the following criteria:

*Comprehensive Plan Map Amendment Criteria:*

1. Justification of the proposed amendment and an explanation of how it fulfills applicable comprehensive plan goals and policies and LCDC statewide planning goals;
  2. Identification of alternative locations within the City of Urban Planning Area which could be used without amending the plan, and a explanation as to why they are considered unsuitable;
  3. Identification of the short and long-term environmental, social, economic and energy consequences of the proposed change on the city, region, and state, with particular attention to the impacts on public facilities and services such as streets, traffic control, mass transit, sewer, water, drainage, parks, schools, public safety, and public utilities;
  4. Demonstration that the proposed new land uses will be compatible with existing adjacent land uses and with future adjacent land uses as proposed in the comprehensive plan.
- 

The continuation of the above Public Hearing will take place before the Forest Grove City Council on **Monday, September 24, 2007, at 7:00 p.m. or thereafter**, in the Community Auditorium, 1915 Main Street, in Forest Grove. At this time and place all persons will be given reasonable opportunity to give testimony about this proposal. If an issue is not raised in the hearing (by person or by letter) or if the issue is not explained in sufficient detail to allow the Council to respond to the issue, then that issue cannot be used for an appeal to the Land Use Board of Appeals (LUBA).

If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Unless these is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing. Information pertaining to this request may be obtained from Kerstin Cathcart at the Community Development Department, PO Box 326, 1924 Council Street, (503) 992-3224 between 8 a.m. and 5 p.m. (kcathcart@ci.forest-grove.or.us). The staff report will be available seven days prior to the hearing; copies will be available at cost.

Second Reading  
12A

**ORDINANCE NO. 2007-13**

**ORDINANCE AMENDING THE FOREST GROVE COMPREHENSIVE PLAN MAP  
TO RE-DESIGNATE AND RE-ZONE A 4.2 ACRE PORTION OF A 19.55 ACRE PARCEL  
FROM EXCLUSIVE FARM USE (EFU) TO  
LOW DENSITY RESIDENTIAL – MEDIUM PLAN DESIGNATION**

**WHEREAS**, Metro Chief Operating Officer issued Order Number 06-201 approving a minor amendment to the Urban Growth Boundary (UGB) to add 4.2 acres into the UGB on December 28, 2008; and

**WHEREAS**, the Metro Council sustained the order on appeal on March 22, 2007; and

**WHEREAS**, Public notice for this application was mailed to property owners and residents within 300 feet of the site on July 9, 2007; and published in the *News Times* on July 25, 2007, as required by Zoning Ordinance Section 9.915; and

**WHEREAS**, Notice of the proposed comprehensive plan and zoning amendments was provided to the Department of Land Conservation and Development (DLCD) and Metro on July 5, 2007 pursuant to ORS 197.610 - OAR Chapter 660 – Division 18, and Metro Code Section 3.07.820 (Functional Plan Title 8). Both DLCD and Metro have reviewed the amendments and have registered no comments; and

**WHEREAS**, the Planning Commission held the duly noticed public hearing on the proposed zoning ordinance map amendment on July 30, 2007, and adopted Decision Number 07-09 recommending approval of Low Density Residential - Medium for the 4.2 acre site; and

**WHEREAS**, the City Council held a duly noticed public hearing on September 10 and 24, 2007.

**NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:**

**SECTION 1.** The City of Forest Grove City Council does hereby approved Comprehensive Plan Map amendment CPA 06-01 as shown on Exhibit A, making the following specific findings in support of this decision:

**SECTION 2.** The City Council adopts by reference the staff report, including findings and recommendations, dated July 23, 2007.

**SECTION 3.** Comprehensive Plan Map Amendment Criteria (Comprehensive Plan, Ordinance 83-15, Section II, Amendments to the Comprehensive Plan):

- A. Justification of the proposed amendment and an explanation of how it fulfills applicable comprehensive plan goals and policies and LCDC statewide planning goals.

Analysis and Findings: Complies and the proposed amendment is justified as follows:

1. Urbanization Goal 1:

*LAND SHALL BE MADE AVAILABLE WITHIN THE URBAN GROWTH BOUNDARY TO MEET ALL URBAN LAND USE NEEDS.*

Analysis and Finding: One major issue with this project is the appropriate location of the UGB. For that area within the UGB, the potential number of dwelling units would increase next to areas with available urban services. Thus, the proposal would provide more efficient use of land for residential purposes.

2. Residential Land Use Goal 1:

*RESIDENTIAL AREAS SHALL BE DEVELOPED IN A SAFE, AESTHETICALLY PLEASING, AND EFFICIENT MANNER.*

Analysis and Finding: Residential development in this area can be efficiently accomplished due to the extension of utility services from the existing developed areas although sewer line extensions and off-site street improvements may be necessary to provide adequate service. Further, any development of the site must be consistent with applicable design related requirements of the Zoning and Land Division ordinances. This can be addressed through the development review process. In addition, the site avoids the riparian habitat area identified by Metro and any development would preserve those resources.

3. Housing Goal 1:

*ENCOURAGE THE PROVISION OF AFFORDABLE, GOOD QUALITY HOUSING IN ADEQUATE NUMBERS TO ALL SEGMENTS OF FOREST GROVE'S POPULATION INCLUDING BUT NOT LIMITED TO PEOPLE OF ALL RACES, AGE, SEX, RELIGION, NATIONAL ORIGIN, MENTAL AND PHYSICAL HANDICAPS, INCOME, MARITAL STATUS, OR FAMILY SIZE.*

Analysis and Findings: This proposal would result in a greater number of lots than are presently permitted under the Exclusive Farm Use designation, thus increasing the supply of housing. Given the higher density designations on the remainder of the property currently within the UGB, the parcel could be developed with a variety of lower and higher density residential which would reach a variety of segments of Forest Grove's population.

4. Housing Goal 2:

*PROVIDE FOR AN ADEQUATE SUPPLY OF NEW HOUSING TO MEET DEMAND, THUS AVOIDING SHORTAGES AND ADVERSE IMPACTS ON PRICE, RENTS, AND CHOICE OF HOUSING.*

Analysis and Findings: This proposal would result in a greater number of lots than are presently permitted, thus increasing the supply of housing.

5. Housing Goal 3:

*THE CITY SHALL TAKE ACTIONS AND MAKE RECOMMENDATION WHICH WILL ASSIST AND ENCOURAGE THE REDUCTION OF HOUSING COSTS.*

Analysis and Finding: Given the mix of high and low density housing on the parent parcel within the UGB, there would be a commensurate decrease in the land price per lot in the higher density area, thus increasing their affordability on the overall parcel.

6. Public Facilities and Services Fire Protection Goal 1:

*PROVIDE AND MAINTAIN A DESIRABLE LEVEL OF FIRE PROTECTION SERVICES TO ALL SEGMENTS OF THE COMMUNITY.*

Analysis and Finding: The proposal with proper improvements would provide adequate water availability. On-site and needed off-site street improvements would also improve access for emergency services vehicles for the project and existing residential development in the area. Services are available to the site and required improvements through the development review process would address the need.

7. State Planning Goal 1 – Citizen Involvement:

*TO DEVELOP A CITIZEN INVOLVEMENT PROGRAM THAT ENSURES THE OPPORTUNITY FOR CITIZENS TO BE INVOLVED WITH ALL PHASES OF THE PLANNING PROCESS*

Analysis and Finding: The public has an opportunity to participate in a public hearing with notices sent to interested parties and property owners within 300 feet of the 19.55 acre parcel.

8. State Planning 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 BASIS FOR SUCH DECISIONS AND ACTIONS.*

Analysis and Findings: The Comprehensive Plan establishes goals, policies and locational criteria for this proposed amendment to be evaluated in a public review setting. Because these items are in place, State Planning Goal 2 will be met.

9. State Planning Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces

*TO PROTECT NATURAL RESOURCES AND CONSERVE SCENIC AND HISTORIC AREAS AND OPEN SPACES.*

Analysis and Findings: There are no historic areas on the site. The presence of Gales Creek presents natural resources, scenic areas and open spaces. As noted above, the 4.2 acre site is outside a riparian resource area as identified by Metro. Sensitive Land requirements established by CWS have been addressed. As discussed above, this area will be substantially avoided based on a Service Provider Letter issued by CWS. Thus, natural resource areas are being preserved consistent with adopted and anticipated standards. The presence of the Sensitive Land area also preserves open space in the proximity of Gales Creek.

10. State Planning Goal 6 – Air, Water and Land Resources Quality

*TO MAINTAIN AND IMPROVE THE QUALITY OF THE AIR, WATER AND LAND RESOURCES OF THE STATE*

Analysis and Findings: The 4.2 acre area of the site represents a marginal area as it relates to the entire land within the UGB for the Forest Grove area. Thus, the refinement of the UGB location and the establishment of the low density residential designation represent a minor impact on air and water quality and land resources. Further, required standards pertaining to sewerage and storm drainage would help mitigate impacts.

11. State Planning Goal 7 – Areas Subject to Natural Disasters and Hazards

*TO PROTECT PEOPLE AND PROPERTY FROM NATURAL HAZARDS*

Analysis: As discussed above, a substantial portion of the 4.2 acre site is estimated to be above the 180 foot elevation and avoid the 100 year floodplain. A portion of the site is at or above the 178 foot elevation. If this is not above the 100 year flood elevation, it is at a location where higher flood velocities would be avoided. Further, this situation can be addressed through elevating structures above appropriate elevations. Thus, people and property can be protected from natural hazards through appropriate development requirements.

12. State Planning Goal 10 - Housing:

*TO PROVIDE FOR THE HOUSING NEEDS OF CITIZENS OF THE STATE.*

*BUILDABLE LANDS FOR RESIDENTIAL USE SHALL BE INVENTORIED AND PLANS SHALL ENCOURAGE THE AVAILABILITY OF ADEQUATE NUMBERS OF HOUSING UNITS AT PRICE RANGES AND RENT LEVELS WHICH ARE COMMENSURATE WITH THE FINANCIAL CAPABILITIES OF OREGON HOUSEHOLDS AND ALLOW FOR FLEXIBILITY OF HOUSING LOCATION, TYPE AND DENSITY.*

Analysis and Finding: The proposed amendment is consistent with this Goal, which calls for communities to plan for needed housing types. The amendments would provide for more efficient residential development due to the density of the plan and zoning designations, and would have a minor positive impact on the dwelling unit capacity of the community. The proposed designations on the site would have to be developed with higher density residential development intended of the remainder of the parcel within the UGB. Thus, the development of the parcel can provide opportunities for a variety of housing that provides for a flexibility of housing type and density.

13. State Planning 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.*

Analysis and Findings: The 4.2 acre site would be developed as part of a 10.13 acre development area on the 19.55 acre parcel. Thus, the extension of services for the development of the overall area would provide the orderly, timely and efficient service extension to the site. The development of the area will require off-site road improvements and sewer line extensions consistent with the City's Sewer Master Plan.

14. State Planning Goal 12 – Transportation

*TO PROVIDE AND ENCOURAGE A SAFE, CONVENIENT AND ECONOMIC TRANSPORTATION SYSTEM*

Analysis and Findings: As previously discussed, existing roads and road right-of-way abut subject site and the parent 19.55 acre parcel. Thus, there is a logical extension of roadways for the development of the site. To provide a safe and convenient transportation system, some of these roads will have to be further improved to provide adequate transportation and emergency access.

15. Metro Functional Plan Requirements:

The proposal is in conformance with Metro Functional Plan Requirements as described in the following:

1. Design Types. The portion of the 19.55 parent parcel currently within the UGB is within the "Inner Neighborhood" design type of Metro's Functional Plan. According to the Regional Framework Plan, that design type is intended to provide residential areas that are accessible to employment. The site is about a 1500 foot walking distance from the nearest portion of the Town Center and Tri-Met's Line 57 bus terminal located at the corner of "B" Street and 19<sup>th</sup> Avenue. Thus, it is accessible to employment.

The Framework Plan also indicates that the design type is intended to trade smaller lot sizes for better access to jobs and shopping. The proposed R-5 zoning provides the smallest lot size of all the Single Family Residential zoning designations provided by the City. This request in combination with the high density residential designations on the remainder of the 10.13 acre area to be developed (5.93 acres), would achieve this intent.

2. Title 1: The City is in compliance with *Title 1, Requirements for Housing and Employment Accommodation* of the Functional Plan. The proposal would have a minor impact on the dwelling unit capacity of the community that can be compensated by other projects. The proposal would result in increasing residential development capacity in the City by expanding the amount of area available for residential use.

3. Title 3: The City is in compliance with *Title 3, Water Quality and Flood Management Conservation* through the implementation of Clean Water Service's (CWS) Design and Construction Standards. As noted above, the site has a Title 3 resource and a Service Provider Letter has been obtained.

16. Metro UGB Requirements

As noted above, Metro Code Section 3.01.030 (f), Minor Adjustments Criteria, requires an average density of at least 10 units per net acre. The density of the comprehensive plan designation on the entire parcel within the UGB (including the 4.2 acre site) is at 13 units per net acre. This is the same overall density if the 10 unit per net acre density was applied on the 4.2 acre site. Thus, the intent of the Metro UGB requirements is met.

- B. Identification of alternative locations within the City or Urban Planning Area which could be used without amending the plan, and a explanation as to why they are considered unsuitable.

Analysis and Findings: Comply. The site has been created as a result of Metro's action to define the location of the UGB on this site. As a result, an urban land use designation needs to be assigned to the site. Given this situation, there are no alternative locations that could address this situation

- C. Identification of the short and long-term environmental, social, economic and energy consequences of the proposed change on the city, region, and state, with particular attention to the impacts on public facilities and services such as streets, traffic control, mass transit, sewer, water, drainage, parks, schools, public safety, and public utilities.

Analysis and Findings: Complies. The proposed amendment is not anticipated to have any short or long-term adverse social, economic or energy consequences. It is part of a larger parcel planned for high density residential development due to its location near transit and commercial development. As noted above, the low density designation is consistent with the locational criteria established by the Comprehensive Plan. It also has limited common boundaries with the higher density residential land use designations for the surrounding area which would minimize any potential compatibility and social issue. Any adverse social impacts would be minimal as the entire parcel within the UGB would have a combination of low and high density residential with the high density nearest to existing high density designations on other properties in the area.

Short and long-term impacts on energy is not expected to be substantial since site's proximity to transit and commercial areas can reduce energy consumption through alternative modes of transportation (pedestrian and transit).

The amendment would have a short-term economic benefit through the construction of new dwellings within the site. There is not anticipated to be any noticeable long-term economic benefits or impacts.

The amendment is not anticipated to have any short and long-term impacts on the environment. The site avoids a riparian resource area identified by Metro's Goal 5 inventory. Further, a Service Provider Letter issued by CWS indicates that environmental resources as defined by the current CWS Sensitive Land requirements, indicates that any resource loss would be consistent with established program requirements.

The site is also part of a larger parcel where full urban services with capacity can be made available.

- D. Demonstration that the proposed new land uses will be compatible with existing adjacent land uses and with future adjacent land uses as proposed in the comprehensive plan.

Analysis and Findings: Complies. The proposed density is consistent with the existing lot patterns and low density residential use in the area. Regarding future planned uses, the surrounding area is intended for high density residential. Any on-site compatibility issues with the higher density designation can be addressed through the review of a development project. The 4.2 acre site is primarily within the larger project site and is adjacent to higher density residential areas on adjacent lands only in limited areas.

**PRESENTED AND PASSED** the first reading the 10<sup>th</sup> day of September, 2007

**PASSED** the second reading the 24<sup>th</sup> day of September, 2007.

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Anna D. Ruggles, City Recorder

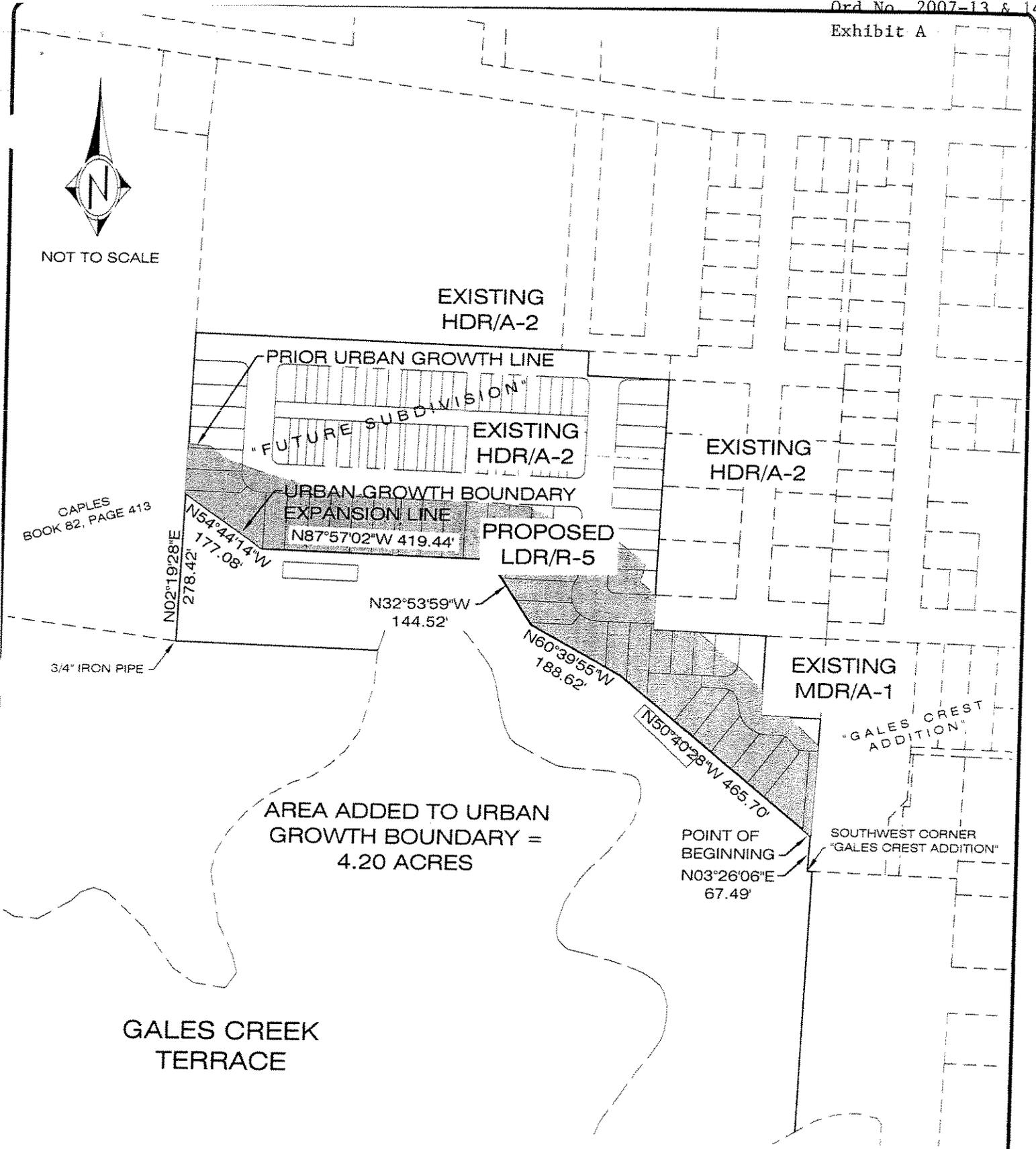
**APPROVED** by the Mayor this 24<sup>th</sup> day of September, 2007.

---

Richard G. Kidd, Mayor



NOT TO SCALE



SFA JOB NO. <b>155-007</b>	DATE <b>3/12/07</b>	PREPARED FOR <b>INTEGRITY DEV. GROUP</b>
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EXHIBIT SKETCH



**SFA Design Group, LLC**  
 STRUCTURAL | CIVIL | LAND USE PLANNING | SURVEYING  
 9020 SW Washington Square Dr. • Suite 350 • Portland, Oregon 97223  
 Phone 503.641.8311 Fax 503.643.7905

**PROPOSED PLAN/ZONE  
MAP AMENDMENTS**

LOCATED IN THE NE 1/4 OF SECTION 1, TOWNSHIP 1 SOUTH,  
RANGE 4 WEST, WILLAMETTE MERIDIAN, CITY OF FOREST  
GROVE, WASHINGTON COUNTY, STATE OF OREGON.

Second Reading

12B

**ORDINANCE NO. 2007-14**

**ORDINANCE AMENDING THE FOREST GROVE ZONING MAP TO RE-ZONE A 4.2 ACRE PORTION OF A 19.55 ACRE PARCEL FROM EXCLUSIVE FARM USE (EFU) TO SINGLE FAMILY RESIDENTIAL (R-5) ZONE DISTRICT**

**WHEREAS**, Metro Chief Operating Officer issued Order Number 06-201 approving a minor amendment to the Urban Growth Boundary (UGB) to add 4.2 acres into the UGB on December 28, 2008; and

**WHEREAS**, the Metro Council sustained the order on appeal on March 22, 2007; and

**WHEREAS**, Public notice for this application was mailed to property owners and residents within 300 feet of the site on July 9, 2007; and published in the *News Times* on July 25, 2007, as required by Zoning Ordinance Section 9.915; and

**WHEREAS**, Notice of the proposed comprehensive plan and zoning amendments was provided to the Department of Land Conservation and Development (DLCD) and Metro on July 5, 2007 pursuant to ORS 197.610 - OAR Chapter 660 - Division 18, and Metro Code Section 3.07.820 (Functional Plan Title 8). Both DLCD and Metro have reviewed the amendments and have registered no comments; and

**WHEREAS**, the Planning Commission held the duly noticed public hearing on the proposed zoning ordinance map amendment on July 30, 2007, and adopted Decision Number 07-09 recommending approval of Single Family Residential (R-5) for the 4.2 acre site; and

**WHEREAS**, the City Council held a duly noticed public hearing on September 10 and 24, 2007.

**NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:**

**SECTION 1.** The City of Forest Grove City Council does hereby approved Zoning Ordinance Map amendment ZC-07-01 as shown on Exhibit A, making the following specific findings in support of this decision:

**SECTION 2.** The City Council adopts by reference the staff report, including findings and recommendations, dated July 23, 2007.

**SECTION 3** Zoning Ordinance Map Amendment Criteria (Zoning Ordinance Section 9.905):

- A. The proposal will place all property similarly situated in the area in the same zoning category, or in appropriate complementary categories, without creating a "spot zone".

Analysis and Findings: Complies. The proposed Single Family Zone Designation for the site is different than the High Density Residential Zoning on adjacent areas. However, the proposed zoning meets the locational criteria for low density residential designation due to slope and other considerations. Thus, the R-5 zone district is consistent with the Comprehensive Plan and is not considered a spot zone.

- B. There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed zone change.

Analysis and Findings: Complies. Uses permitted for the R-5 zone district proposed for the site are single family detached and attached residential. This matches the uses allowed in the existing residential zone districts in the vicinity of the site.

- C. There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed zone change.

Analysis and Findings: Complies. The character of the existing neighborhood near the subject site is a low density single-family residential uses and the uses allowed by the proposed zone district would be compatible with those uses. Development consistent with the R-5 zoning on the site is not expected to have an adverse impact for the future high density characteristics of the neighborhood because the underlying uses would be similar (residential) and the site has limited boundaries with these other sites.

- D. The proposed change is in compliance with the goals and policies of the adopted Comprehensive Plan.

1. Urbanization Goal 1:

*LAND SHALL BE MADE AVAILABLE WITHIN THE URBAN GROWTH BOUNDARY TO MEET ALL URBAN LAND USE NEEDS.*

Analysis and Finding: One major issue with this project is the appropriate location of the UGB. For that area within the UGB, the potential number of dwelling units would increase next to areas with available urban services. Thus, the proposal would provide more efficient use of land for residential purposes.

2. Residential Land Use Goal 1:

*RESIDENTIAL AREAS SHALL BE DEVELOPED IN A SAFE, AESTHETICALLY PLEASING, AND EFFICIENT MANNER.*

Analysis and Finding: Residential development in this area can be efficiently accomplished due to the extension of utility services from the existing developed areas although sewer line extensions and off-site street improvements may be necessary to provide adequate service. Further, any development of the site must be consistent with applicable design related requirements of the Zoning and Land Division ordinances. This can be addressed through the development review process. In addition, the site avoids the riparian habitat area identified by Metro and any development would preserve those resources.

3. Housing Goal 1:

*ENCOURAGE THE PROVISION OF AFFORDABLE, GOOD QUALITY HOUSING IN ADEQUATE NUMBERS TO ALL SEGMENTS OF FOREST GROVE'S POPULATION INCLUDING BUT NOT*

*LIMITED TO PEOPLE OF ALL RACES, AGE, SEX, RELIGION, NATIONAL ORIGIN, MENTAL AND PHYSICAL HANDICAPS, INCOME, MARITAL STATUS, OR FAMILY SIZE.*

Analysis and Findings: This proposal would result in a greater number of lots than are presently permitted under the Exclusive Farm Use designation, thus increasing the supply of housing. Given the higher density designations on the remainder of the property currently within the UGB, the parcel could be developed with a variety of lower and higher density residential which would reach a variety of segments of Forest Grove's population.

4. Housing Goal 2:

*PROVIDE FOR AN ADEQUATE SUPPLY OF NEW HOUSING TO MEET DEMAND, THUS AVOIDING SHORTAGES AND ADVERSE IMPACTS ON PRICE, RENTS, AND CHOICE OF HOUSING.*

Analysis and Findings: This proposal would result in a greater number of lots than are presently permitted, thus increasing the supply of housing.

5. Housing Goal 3:

*THE CITY SHALL TAKE ACTIONS AND MAKE RECOMMENDATION WHICH WILL ASSIST AND ENCOURAGE THE REDUCTION OF HOUSING COSTS.*

Analysis and Finding: Given the mix of high and low density housing on the parent parcel within the UGB, there would be a commensurate decrease in the land price per lot in the higher density area, thus increasing their affordability on the overall parcel.

6. Public Facilities and Services Fire Protection Goal 1:

*PROVIDE AND MAINTAIN A DESIRABLE LEVEL OF FIRE PROTECTION SERVICES TO ALL SEGMENTS OF THE COMMUNITY.*

Analysis and Finding: The proposal with proper improvements would provide adequate water availability. On-site and needed off-site street improvements would also improve access for emergency services vehicles for the project and existing residential development in the area. Services are available to the site and required improvements through the development review process would address the need.

**SECTION 4.** Compliance With Metro Urban Growth Boundary Requirements

Metro Code Section 3.01.030 (f), Minor Adjustments Criteria, requires an average density of at least 10 units per net acre. The density of the comprehensive plan designation on the entire parcel within the UGB (including the 4.2 acre site) is at 13 units per net acre. This is the same overall density if the 10 unit per net acre density was applied on the 4.2 acre site. Thus, the intent of the Metro UGB requirement is met.

**PRESENTED AND PASSED** the first reading the 10<sup>th</sup> day of September, 2007

**PASSED** the second reading the 24<sup>th</sup> day of September, 2007.

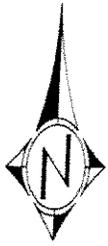
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Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 24<sup>th</sup> day of September, 2007.

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Richard G. Kidd, Mayor



NOT TO SCALE

EXISTING HDR/A-2

PRIOR URBAN GROWTH LINE

"FUTURE SUBDIVISION"

EXISTING HDR/A-2

EXISTING HDR/A-2

CAPLES BOOK 82, PAGE 413

N02°19'28"E  
278.42'

N54°44'14"W  
177.08'

URBAN GROWTH BOUNDARY EXPANSION LINE

N87°57'02"W 419.44'

PROPOSED LDR/R-5

N32°53'59"W  
144.52'

3/4" IRON PIPE

N60°39'55"W  
188.62'

EXISTING MDR/A-1

"GALES CREST ADDITION"

AREA ADDED TO URBAN GROWTH BOUNDARY = 4.20 ACRES

N50°40'28"W 465.70'

POINT OF BEGINNING  
N03°26'06"E  
67.49'

SOUTHWEST CORNER "GALES CREST ADDITION"

GALES CREEK TERRACE

JOB NO. 55-007	DATE 3/12/07	PREPARED FOR INTEGRITY DEV. GROUP
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EXHIBIT SKETCH



**SFA Design Group, LLC**  
 STRUCTURAL | CIVIL | LAND USE PLANNING | SURVEYING  
 9020 SW Washington Square Dr. • Suite 350 • Portland, Oregon 97223  
 Phone 503.641.8311 Fax 503.643.7905

**PROPOSED PLAN/ZONE MAP AMENDMENTS**  
 LOCATED IN THE NE 1/4 OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 4 WEST, WILLAMETTE MERIDIAN, CITY OF FOREST GROVE, WASHINGTON COUNTY, STATE OF OREGON.

**To:** City Council

**From:** Jon Holan, Community Development Director  
Michael Sykes, City Manager

**Subject:** Adoption of Comprehensive Plan Amendment CPA-06-03, Zone Map Amendment ZC-06-03, Land Division Ordinance Amendment LDO-06-02 and Municipal Code Amendment to comply with Metro's Nature in Neighborhoods program (also referred to as Goal 5)

**Date:** September 24, 2007

**Issue:** Metro Council has adopted the Nature in Neighborhood program to preserve and enhance riparian and upland habitat. As part of that program, the City of Forest Grove needs to amend its comprehensive plan and implementing ordinances to comply with Functional Plan requirements adopted by Metro as part of the Nature in Neighborhood program.

**Background:** The staff report discusses the history about the Nature in Neighborhood program, the Functional Plan requirements, the description of the proposed amendments and how the amendments comply with the requirements. Staff recommends reviewing that document.

Overall, there are two different approaches for the City to consider. One will be referred to as the Metro approach. The other is the Tualatin Basin approach. The Metro approach involves the adoption of specific requirements to preserve and enhance habitat by the following priorities: avoid the resource as part of development; minimize encroachment into the resource area and mitigate where intrusion is allowed. The Tualatin Basin approach uses the current Clean Water Services Design and Construction standards to define vegetative corridors and sensitive areas. Their standards prohibit any development in these areas. The program also includes the expenditure of over \$90 million over the next 20 years to improve the environmental health of the Tualatin Basin. In addition, under both approaches, the City must remove barriers to use Low Impact Development (LID) in habitat areas.

The proposed program is a combination of both approaches. It incorporates Metro Model Ordinance into the Zoning Ordinance to establish specific standards. The amendments also continue to recognize CWS requirements by defining the resource area under city jurisdiction as that beyond the land subject to CWS requirements. Further, the City remains eligible for a portion of the expenditures since the community is within CWS

jurisdictional boundary and the City has participated in the Tualatin Basin effort. The proposed amendments also is removing barriers for the use on LID not only within resource areas but citywide. This is accomplished by removing the prohibition and allowing an individual to use such an approach.

The amendments also go beyond Nature in Neighborhood requirements by addressing certain floodplain issues, providing more specific requirements for geologic analysis for areas having slopes of 20 percent or greater and removing the Environmental Review Overlay District and replacing it with performance standards. The floodplain issue is to allow the most recent relevant data to determine the location of the 100 year floodplain rather than relying on the FEMA 1981 study. Based on the experience with Gales Creek, this change is needed and brings the City consistent with CWS floodplain requirements.

The geologic analysis is based on requirements taken from the City of Salem. It has specific requirements as to the qualifications of the person to prepare a report and the contents of the report. This amendment substantially improves the previous requirements under the ER Overlay requirements which were more generalized. The area of application is still the same, lands having slopes of 20 percent or greater.

The change from the overlay approach to the performance approach is to assure improved consistency in compliance with city requirements. If a property contained a resource or had steep slopes, no requirements would be applied if the property did not have the overlay designation. Further, many current approaches to deal with resource or hazards, including the proposed amendments, have been on performance basis rather than as an overlay area. This is particularly critical when not all hazard areas (i.e. 20 percent slopes) have not been inventoried. It is also important where there may be isolated slopes on a property which may not qualify for an ER designation.

**Recommendation:** Staff recommends that the City Council adopt the attached ordinance making appropriate revisions to Exhibit A.

## NOTICE OF PUBLIC HEARING: FOREST GROVE CITY COUNCIL

A PUBLIC HEARING will be held before the Forest Grove City Council to review the following:

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- Proposal:** Comprehensive Plan Map Amendment, Zoning Ordinance Amendment and Municipal Code Amendment to comply with Metro Functional Plan requirements pertaining to Goal 5 or Nature in Neighborhoods.
- Location:** Citywide
- Applicants:** City of Forest Grove.
- File Number:** Comprehensive Plan Amendment CPA-06-03, Zone Amendment ZC-06-03, Land Division Ordinance Amendment LDO-06-02 and Municipal Code Amendment for Floodplain purposes
- Criteria:** Applications for comprehensive plan amendments and zone changes shall be reviewed and approved based on compliance with the following criteria:

*Comprehensive Plan Map Amendment Criteria:*

1. Justification of the proposed amendment and an explanation of how it fulfills applicable comprehensive plan goals and policies and LCDC statewide planning goals;
2. Identification of alternative locations within the City of Urban Planning Area which could be used without amending the plan, and a explanation as to why they are considered unsuitable;
3. Identification of the short and long-term environmental, social, economic and energy consequences of the proposed change on the city, region, and state, with particular attention to the impacts on public facilities and services such as streets, traffic control, mass transit, sewer, water, drainage, parks, schools, public safety, and public utilities;
4. Demonstration that the proposed new land uses will be compatible with existing adjacent land uses and with future adjacent land uses as proposed in the comprehensive plan.

*Zoning Ordinance Amendment Criteria:*

1. The proposed change is consistent with and promotes the goals and policies of the Comprehensive Plan and the Zoning Ordinance of the City; and
  2. There is a public need for a change of the kind in question.
- 

**This Public Hearing will take place before the Forest Grove City Council on Monday, September 24, 2007, at 7:00 p.m. or thereafter, in the Community Auditorium, 1915 Main Street, in Forest Grove.** At this time and place all persons will be given reasonable opportunity to give testimony about this proposal. If an issue is not raised in the hearing (by person or by letter) or if the issue is not explained in sufficient detail to allow the Council to respond to the issue, then that issue cannot be used for an appeal to the Land Use Board of Appeals (LUBA).

If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing. Information pertaining to this request may be obtained from Jon Holan at the Community Development Department, PO Box 326, 1924 Council Street, (503) 992-3224 between 8 a.m. and 5 p.m. (jholan@forestgrove-or.gov). The staff report will be available seven days prior to the hearing; copies will be available at cost. This notice is sent by the authority of the Forest Grove City Council.

Anna D. Ruggles, CMC, City Recorder

To be published: September 19, 2007

**PLANNING COMMISSION FINDINGS AND RECOMMENDATION NUMBER 07-08  
TO RECOMMEND ADOPTION OF TEXT AMENDMENTS TO THE  
COMPREHENSIVE PLAN, MUNICIPAL CODE, AND ZONING AND LAND DIVISION  
ORDINANCES TO COMPLY WITH METRO'S NATURE IN NEIGHBORHOOD  
FUNCTIONAL PLAN REQUIREMENTS**

**WHEREAS**, Metro proceeded with the development of a program for the protection and conservation of fish and wildlife habitat; and

**WHEREAS**, in response to the Metro efforts, communities in Washington County formed the Tualatin Basin program; and

**WHEREAS**, Metro Council on September 29, 2005 adopted Ordinance Number 05-1077C to establish the Nature in Neighborhoods program pertaining to preservation and enhancement of riparian and upland habitat areas; and

**WHEREAS**, a community could comply with the Nature in Neighborhood program by adopting the Metro Model Code and Habitat Conservation Areas or make the appropriate code amendments to implement the Tualatin Basin program; and

**WHEREAS**, the City of Forest Grove initiated Comprehensive Plan Amendment CPA-06-03, Zone Map Amendment ZC-06-03, Land Division Ordinance Amendment LDO-06-02 and Municipal Code Amendment; and

**WHEREAS**, the Planning Commission and City Council held several work sessions on the matter. Work sessions and updates were held with the Commission on June 18, 2001, September 30, 2002, March 17, 2003, November 17, 2003, May 17, 2004, March 7, 2005, October 2, 2006, November 20, 2006 and January 29, 2007. It should be noted that City Councilors were invited to the last two Commission meetings and several Councilors were in attendance. Meetings with Council included June 11, 2001, November 13, 2001, April 22, 2002, July 8, 2002, May 27, 2003, May 27, 2004, and July 26, 2005. In addition, three joint work sessions were held with both the Planning Commission and Council on July 12, 2004, October 17, 2006 and September 5, 2006; and

**WHEREAS**, a Measure 56 notice was mailed to affected property owners on March 13, 2007 and reminder cards on April 9, 2007 and June 12, 2007; and published in the *News Times* on March 23, 2007, as required by Zoning Ordinance Section 9.915, and republished on May 1, 2007; and

**WHEREAS**, pursuant to the Zoning Ordinance Section 9.902 and Land Division Ordinance Section 9.117 the Planning Commission conducted a duly noticed public hearing on the proposed text amendments on May 21 and July 16, 2007.

The City of Forest Grove Planning Commission does hereby recommend to the City Council approval of Comprehensive Plan Amendment CPA-06-03, Zone Map Amendment ZC-06-03, Land Division Ordinance Amendment LDO-06-02 and Municipal Code Amendment as provided in Exhibit A making the following specific findings in support of this recommendation:

A. Comprehensive Plan Map Amendment Criteria (Comprehensive Plan, Ordinance 83-15, Section II, Amendments to the Comprehensive Plan):

1. Justification of the proposed amendment and an explanation of how it fulfills applicable comprehensive plan goals and policies and LCDC statewide planning goals.

Analysis and Findings: Based on the analysis and findings contained in the staff report, the proposed amendment fulfills applicable comprehensive plan goals and LCDC statewide planning goals.

2. Identification of alternative locations within the City or Urban Planning Area which could be used without amending the plan, and a explanation as to why they are considered unsuitable.

Analysis and Findings: The amendments are intended to apply to those areas containing natural resources and in areas subject to either flood plain or steep slope hazards. Thus, there are no alternative locations that would be appropriate since other areas would not contain these resources or hazards.

3. Identification of the short and long-term environmental, social, economic and energy consequences of the proposed change on the city, region, and state, with particular attention to the impacts on public facilities and services such as streets, traffic control, mass transit, sewer, water, drainage, parks, schools, public safety, and public utilities.

Analysis and Findings: ESEE analysis has been performed by Metro and the Tualatin Basin. The Tualatin Basin ESEE contains analysis from the City of Forest Grove. Those ESEE analysis are adopted here by reference.

4. Demonstration that the proposed new land uses will be compatible with existing adjacent land uses and with future adjacent land uses as proposed in the comprehensive plan.

Analysis and Findings: Not applicable. The amendment proposes no new land uses.

B. Zoning Ordinance Amendment Criteria (Zoning Ordinance Section 9.902):

1. The proposed change is consistent with and promotes the goals and policies of the Comprehensive Plan and Zoning Ordinance of the City; and

Analysis and Findings: As discussed in the findings, the proposal promotes the goals of the Comprehensive Plan and the purpose of the Zoning Ordinance.

2. There is a public need for a change of the kind in question.

Analysis and Findings: The public need is based on Metro Functional Plan requirements to for local jurisdictions to amend their ordinances to implement the Nature in Neighborhoods program either by the regional program requirements or the requirements adopted for the Tualatin Basin program.

C. Land Division Ordinance Amendment Criteria (Land Division Ordinance 9.118 (7):

In that the Comprehensive Plan for Forest Grove may be amended from time to time to keep it consistent with the changing needs and desires of the community, it may be necessary to amend these regulations to implement the goals and policies of the Comprehensive Plan.

Analysis and Findings: As discussed in the findings, the proposal promotes the goals of the Comprehensive Plan as proposed to be amended and the purpose of the Land Division Ordinance as proposed to be amended.

D. The proposed amendments meet or exceed the Metro Functional Plan requirements as follows:

Tualatin Basin Program Requirements:

The proposed amendments exceed the Tualatin Basin program by extending regulations beyond CWS Sensitive Lands and Vegetative Corridor requirements and are consistent with the Metro approach. This is consistent with the intent of the Tualatin Basin approach to establish a common baseline approach for all communities in the Basin. Further, there is nothing in the Tualatin Basin approach or Metro's requirements to prevent a community to go beyond the Basin approach.

- Comply with the six steps identified in Section B of Chapter 7 of the Tualatin Basin program;

Comment: Of the six steps, the only one that pertains to this action is the adoption of Low Impact Development Guidelines. This is accomplished in proposed new Section 9.971.

- CWS approves and implements its Healthy Streams Plan;

Comment: Not applicable as this the requirement for Clean Water Services.

- Tualatin Basin members renew and extend their partnership to implement Healthy Streams project list and cooperate with Metro to develop regional public information;

Comment: Not applicable as this item is outside the scope of the ordinance amendment. However, Forest Grove remains part of the Tualatin Basin effort and will assist in supporting the project list and cooperation with public information program to the extent that the city can.

- Cities adopt provisions to facilitate and encourage use of habitat-friendly development practices, where feasible, in Class I and II riparian habitat;

Comment: Based on the review of other cities programs submitted to Metro, it is staff's understanding that "encourage" means some type of incentive to developers to use habitat-friendly development practices. Generally, those incentives could be in the form of increased densities or other type of regulatory flexibilities, or financial incentives by reducing water quantity and water quality SDCs.

Financial incentives are not feasible for Forest Grove since water quality and water quantity SDCs are collected for an outside agency (CWS). Thus, the use of Metro's Model Ordinance is proposed to be used to address this requirement. The amendment proposes flexible densities and development standards for development within or avoiding NRA's. Further, it requires the use of habitat-friendly practices to the extent that Metro has deemed appropriate through its Model Ordinance. It should be noted that the proposed amendments exceeds the Metro requirements in that it establishes requirements near habitat areas (Section 9.971 (5)) and offers the developer the flexibility to use habitat-friendly approaches though-out the city.

- Cities adopt provisions to allow for density reduction consistent with other portions of Section 3 (see below)

Comment: This is achieved in Sections 9.944 (F) (1) (d) (iii) and 9.971 (4) of the proposed amendments.

- Cities adopt either the Model Ordinance or alternative ordinances to apply to upland wildlife habitat in territory added to the UGB after the effective January, 2006 date.

Comment: This is accomplished by integrating the Model Ordinance into Section 9.944.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process.

Comment: This is accomplished by proposed Subsections 9.944 (F) and (G) which are taken from the Metro Model Ordinance.

- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by:

- Identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and

Comment: This is accomplished by the conducted barrier analysis.

- Adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.

Comment: This is being accomplished by several proposed amendments including Items 6, 16, 17, 18, 20 and 25.

- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.

Comment: This is accomplished through Subsection 9.944 (H) which is taken from the Metro Model Ordinance.

- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

Comment: As noted above, densities can be reduced per Subsection 9.944 (F) and requirements through dedication or restrictive covenant in Subsections (F) and (G).

#### Metro Function Plan Requirements:

While the City can exceed the Tualatin Basin requirements, it cannot exceed the Metro requirements due to the background and ESEE analysis that was performed for the Metro program. As will be seen below, there are two aspects of the proposed that do exceed the program requirements. Barriers and allowance to use low impact development techniques extend beyond habitat area. However, this is a permissive “regulation” that developers are encouraged to use rather than be required to use outside the habitat areas.

There are two requirements under Subsection 9.971 (5) that also exceed the Metro requirements. These requirements relate to landscape placement and outdoor lighting. These requirements are proposed to comply with the Issue Papers 1 and 2 produced for the Tualatin Basin agencies to assess their local requirements. Further, the lighting requirement was also supported to be included in the most recent Planning Commission work session.

The Functional Plan requirements for non-Tualatin Basin communities and staff comment are as follows:

- Adopt the Metro Model Ordinance and Metro Habitat Conservation Areas;
- An alternative ordinance that substantially meets specified performance standards and best management practices identified in Section 4 of the Functional Plan;
- Implement a program based on alternative approaches that will achieve protection and enhancement of Class I and II riparian habitat and Class A and B upland

wildlife habitat areas in territory added after the effective date of Metro's adopting ordinance (Ordinance No. 05-1077 which was January 5, 2006); or

- Develop a district plan with other jurisdictions.

Comment: The proposed amendments are adopting the Metro Model Ordinance. As discussed above, the Metro Habitat Conservation Areas are not being adopted. In its place, the Regionally Significant Fish and Wildlife Habitat Inventory Map is being adopted and linking standards to city zone districts and parks are being proposed.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process;
- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.
- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.
- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

Comment: These were addressed under the Tualatin Basin analysis.

## **E. CONFORMANCE TO LAND USE POLICY**

### 1. Physical Environment Goal 1:

*ALL DEVELOPMENT SHALL CONSIDER, TAKE INTO ACCOUNT AND DEMONSTRATE SUITABILITY RELATIVE TO THE NATURAL HAZARD LIMITATIONS OF THE AREA.*

Analysis and Finding: Complies. The proposed amendment Item 2 is intended to update the City's Flood plain standards to use the most up-to-date information in making determinations as to the location of the 100 year flood elevations. Further, other proposed amendments will make current requirements related to flood plain management more effective by including references into the City's Zoning and Land Division ordinances. In addition, requirements for steep sloping areas and flood management areas are addressed in a more consistent basis by establishing

performance requirements rather than relying on the provisions of the ER District. Also, the requirements under the proposed amendments for both steep areas and flood plain areas will be more specific than under the ER District requirements.

2. Residential Land Use Goal 1:

*RESIDENTIAL AREAS SHALL BE DEVELOPED IN A SAFE, AESTHETICALLY PLEASING, AND EFFICIENT MANNER.*

Analysis and Finding: The amendments would contribute to this goal by retaining habitat area to the extent feasible and mitigating where removed. Preservation and enhancement of habitat adjacent to residential areas increases the aesthetic value of the area. In addition, allowances for clustered housing increases the efficiency of housing by using less land for a given number of units. It is also more efficient by reducing road and other paving requirements, and reducing the amount of utility extensions since the housing would be closer proximity with each other.

3. Commercial Land Use Goals 1 and 2:

*STRENGTHEN FOREST GROVE'S POSITION AS A COMMERCE CENTER OF WESTERN WASHINGTON COUNTY, AND ENCOURAGE SHOPPING BY RESIDENTS OF THAT AREA.*

*ENCOURAGE THE OPPORTUNITY FOR REVITALIZATION OF THE CENTRAL BUSINESS DISTRICT*

Analysis and Finding: None of the commercial areas are near steep slopes, flood management areas or natural resource areas. Thus, the propose would not have any impact on the City to achieve these commercial goals.

4. Industrial Land Use Goal 3:

*THE CITY SHALL COOPERATE IN PROVIDING THE PUBLIC SERVICES AND FACILITIES NEEDED BY EXISTING AND FUTURE BUSINESSES AND INDUSTRIES.*

Analysis and Finding: The proposed Natural Resource Area provisions would allow the installation of utilities through these areas. Thus, the proposed amendments would not have an impact on meeting this Goal.

5. Natural Resource Land Use Goal 1 and Open Space Goal 2:

*PRESERVE AND MAINTAIN THE QUALITY OF EXISTING AGRICULTURAL, FORESTRY, WILDLIFE AND OTHER NATURAL RESOURCE AREAS.*

Analysis and Finding: The proposed amendments would help achieve this goal for wildlife and other natural resource areas by adding a new policy to the Comprehensive Plan to implement the regional Nature in Neighborhoods program

and establishing standards and requirements for preserving, minimize intrusions or mitigate intrusions into these areas.

6. Natural Resource Land Use Goal 2:

*OPEN SPACE VALUABLE TO FISH AND WILDLIFE RESOURCES SHALL BE PROTECTED.*

Analysis and Finding: The amendment is intended to preserve open space valuable to fish and wildlife resources in riparian areas and in upland areas brought into the UGB in the future. This is accomplished through adding a new policy to the Comprehensive Plan to implement the regional Nature in Neighborhoods program and establishing standards and requirements for preserving, minimize intrusions or mitigate intrusions into these areas. Further, areas preserved as open space must be placed into tracts which cannot be developed.

7. Natural Resource Land Use Goal 3:

*THE PRESERVATION OF EXISTING TREES SHALL BE ENCOURAGED.*

Analysis and Finding: Through the adoption of a new natural resource policy and implementing the Nature in Neighborhood program, this goal will be achieved by encouraging limiting removal of trees in riparian areas though proposed objective standards.

8. Agricultural and Forest Land Use Goals 2 and 3:

*FORESTRY LANDS SHALL BE PRESERVED FOR FOREST USES.*

*PRESERVE AND MAINTAIN THE QUALITY OF EXISTING AGRICULTURAL, FORESTRY WILDLIFE AND OTHER NATURAL RESOURCE AREAS.*

Analysis and Finding: Natural resource preservation was addressed above. Regarding forestry, the amendments would not affect properties in forest production within the current UGB since the Natural Resource Area designation does not apply to upland resource areas identified by Metro. However, it may affect properties in forest practices that are brought into the UGB in the future.

9. Open Space Goal 3:

*PRESERVE AND IMPROVE SPECIFIC OPEN SPACE AREAS TO PROVIDE RECREATION, EDUCATION, CONTACT WITH NATURE AND SCENIC AMENITIES.*

Analysis and Finding: Open space intended for active recreational use will not be limited by the proposed natural resource amendments since the natural resource designation will not be applied to these areas. Open space intended for natural preservation will be limited to vegetation removal only for trail development.

10. Open Space Goal 4:

*MAINTAIN DESIRABLE EXISTING OPEN SPACE AND ENHANCE THE ENVIRONMENT WITHIN THE CITY THROUGH PRESERVATION AND LANDSCAPING.*

Analysis and Finding: This goal will be promoted through the natural resource provisions included in the proposed amendments. The amendments encourage the preservation of existing open space in natural resource areas where possible. Where not possible, it provides measures to minimize intrusion into these areas and to mitigate any intrusion.

11. Zoning Ordinance Purpose Statement:

*This ordinance has been designed in accordance with the adopted goals, and policies of the Forest Grove Comprehensive Plan. It is the general purpose of this ordinance, therefore, to provide one of the principal means for the implementation of the Forest Grove Comprehensive Plan as well as: encourage the most appropriate use of the land; conserve and stabilize the value of property; promote a variety of housing opportunities; aid in the rendering of fire and police protection; provide adequate open space for light and air; lessen the congestion on streets; promote orderly growth in the city; prevent undue concentrations of population; facilitate adequate provisions for community utilities and facilities such as water, sewerage, electrical distribution systems, transportation, schools, parks and other public facilities; and in general promote public health, safety, convenience and general welfare.*

Analysis and Finding: The proposed amendments to the Zoning Ordinance, as discussed above, forwards the applicable goals of the Forest Grove Comprehensive Plan. Thus, the proposed amendments meet the purpose of the Zoning Ordinance. Further, this section of the ordinance is proposed to be changed to include conservation of natural resource areas to better reflect the Comprehensive Plan Goals and policies as amended.

12. Land Division Purpose Statement:

*This ordinance has been formulated in accordance with the adopted goals and policies of the Forest Grove Comprehensive Plan. It is the general purpose of this ordinance, therefore, to provide one of the principal means for the implementation of the Comprehensive Plan. It is also the intent of this ordinance to accomplish the orderly development of land within the City through rules, regulations and standards governing the approval of subdivisions and partitions, taking into consideration all of the applicable goals and policies and the locations of proposed subdivisions and partitions, as well as their impact on the surrounding area and the entire City. These rules, regulations and standards are intended to provide for lessening congestion in the streets, for securing safety from fire, flood, slides, pollution or other dangers, for providing adequate light and air, including solar energy access, for preventing*

*overcrowding of land, for facilitating drainage, education, recreation and other needs, and in general to promote the public health, safety, convenience and general welfare.*

Analysis and Finding: The proposed amendments to the Land Division Ordinance, as discussed above, forwards the applicable goals of the Forest Grove Comprehensive Plan. Thus, the proposed amendments meet the purpose of the Zoning Ordinance. Further, this section of the ordinance is proposed to be changed to include conservation of natural resource areas to better reflect the Comprehensive Plan Goals and policies as amended.

12. Oregon State Land Use Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

*To protect natural resources and conserve scenic and historic areas and open spaces.*

Analysis and Finding: The proposed amendment is consistent with this Goal. It includes new policies, standards and requirements for the protection of natural resources consistent with the Metro Nature in Neighborhoods program that has been acknowledged by Land Conservation and Development Commission.

13. Oregon State Land Use Goal 7, Areas Subject To Natural Hazards

*To protect people and property from natural hazards.*

Analysis and Finding: The proposed amendments would assure more consistent protection from natural hazards since the current Environmental Review Overlay District, intended to address natural hazard conditions, only applies to portion of areas subject to steep slopes and flood management hazards. Further, the protection is being brought up-to-date by allowing more recent information than current FEMA studies completed in 1981 to determine the location of the 100 year flood plain. In addition, more specific requirements than that specified by the ER district would be implemented by the amendment.

F. All other findings contained in the staff report are hereby incorporated by reference.

  
\_\_\_\_\_  
Tom Beck, Chair

8-3-07  
Date

13

FIRST Reading

**ORDINANCE NO. 2007-15**

**ADOPTION OF TEXT AMENDMENTS TO THE COMPREHENSIVE PLAN,  
MUNICIPAL CODE, AND ZONING AND LAND DIVISION ORDINANCES TO  
COMPLY WITH METRO'S NATURE IN NEIGHBORHOOD FUNCTIONAL PLAN  
REQUIREMENTS**

**WHEREAS**, Metro proceeded with the development of a program for the protection and conservation of fish and wildlife habitat; and

**WHEREAS**, in response to the Metro efforts, communities in Washington County formed the Tualatin Basin program; and

**WHEREAS**, Metro Council on September 29, 2005, adopted Ordinance Number 05-1077C to establish the Nature in Neighborhoods program pertaining to preservation and enhancement of riparian and upland habitat areas; and

**WHEREAS**, a community could comply with the Nature in Neighborhood program by adopting the Metro Model Code and Habitat Conservation Areas or make the appropriate code amendments to implement the Tualatin Basin program; and

**WHEREAS**, the City of Forest Grove initiated Comprehensive Plan Amendment CPA-06-03, Zone Map Amendment ZC-06-03, Land Division Ordinance Amendment LDO-06-02 and Municipal Code Amendment; and

**WHEREAS**, the Planning Commission and City Council held several work sessions on the matter. Work sessions and updates were held with the Commission on June 18, 2001, September 30, 2002, March 17, 2003, November 17, 2003, May 17, 2004, March 7, 2005, October 2, 2006, November 20, 2006 and January 29, 2007. It should be noted that City Councilors were invited to the last two Commission meetings and several Councilors were in attendance. Meetings with Council included June 11, 2001, November 13, 2001, April 22, 2002, July 8, 2002, May 27, 2003, May 27, 2004, and July 26, 2005. In addition, three joint work sessions were held with both the Planning Commission and Council on July 12, 2004, October 17, 2006, and September 5, 2006; and

**WHEREAS**, a Measure 56 notice was mailed to affected property owners on March 13, 2007 and reminder cards on April 9, 2007 and June 12, 2007; and published in the *News Times* on March 23, 2007, as required by Zoning Ordinance Section 9.915, and republished on May 1, 2007; and

**WHEREAS**, pursuant to the Zoning Ordinance Section 9.902 and Land Division Ordinance Section 9.117 the Planning Commission conducted a duly noticed public hearing on the proposed text amendments on May 21 and July 16, 2007; and

**WHEREAS**, the Planning Commission adopted Planning Commission Decision Number 07-08 recommending approval of the proposed amendments to the City Council; and

**WHEREAS**, the City Council held a duly noticed public hearing on September 24, 2007.

**NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:**

SECTION 1. The City Council does hereby approve Comprehensive Plan Amendment CPA-06-03, Zone Map Amendment ZC-06-03, Land Division Ordinance Amendment LDO-06-02 and Municipal Code Amendment as provided in Exhibit A making the following specific findings in support of this recommendation:

A. Comprehensive Plan Map Amendment Criteria (Comprehensive Plan, Ordinance 83-15, Section II, Amendments to the Comprehensive Plan):

1. Justification of the proposed amendment and an explanation of how it fulfills applicable comprehensive plan goals and policies and LCDC statewide planning goals.

Analysis and Findings: Based on the analysis and findings contained in the staff report, the proposed amendment fulfills applicable comprehensive plan goals and LCDC statewide planning goals.

2. Identification of alternative locations within the City or Urban Planning Area which could be used without amending the plan, and a explanation as to why they are considered unsuitable.

Analysis and Findings: The amendments are intended to apply to those areas containing natural resources and in areas subject to either flood plain or steep slope hazards. Thus, there are no alternative locations that would be appropriate since other areas would not contain these resources or hazards.

3. Identification of the short and long-term environmental, social, economic and energy consequences of the proposed change on the city, region, and state, with particular attention to the impacts on public facilities and services such as streets, traffic control, mass transit, sewer, water, drainage, parks, schools, public safety, and public utilities.

Analysis and Findings: ESEE analysis has been performed by Metro and the Tualatin Basin. The Tualatin Basin ESEE contains analysis from the City of Forest Grove. Those ESEE analysis are adopted here by reference.

4. Demonstration that the proposed new land uses will be compatible with existing adjacent land uses and with future adjacent land uses as proposed in the comprehensive plan.

Analysis and Findings: Not applicable. The amendment proposes no new land uses.

B. Zoning Ordinance Amendment Criteria (Zoning Ordinance Section 9.902):

1. The proposed change is consistent with and promotes the goals and policies of the Comprehensive Plan and Zoning Ordinance of the City; and

Analysis and Findings: As discussed in the findings, the proposal promotes the goals of the Comprehensive Plan and the purpose of the Zoning Ordinance.

2. There is a public need for a change of the kind in question.

Analysis and Findings: The public need is based on Metro Functional Plan requirements to for local jurisdictions to amend their ordinances to implement the Nature in Neighborhoods program either by the regional program requirements or the requirements adopted for the Tualatin Basin program.

C. Land Division Ordinance Amendment Criteria (Land Division Ordinance 9.118 (7):

In that the Comprehensive Plan for Forest Grove may be amended from time to time to keep it consistent with the changing needs and desires of the community, it may be necessary to amend these regulations to implement the goals and policies of the Comprehensive Plan.

Analysis and Findings: As discussed in the findings, the proposal promotes the goals of the Comprehensive Plan as proposed to be amended and the purpose of the Land Division Ordinance as proposed to be amended.

- D. The proposed amendments meet or exceed the Metro Functional Plan requirements as follows:

Tualatin Basin Program Requirements:

The proposed amendments exceed the Tualatin Basin program by extending regulations beyond CWS Sensitive Lands and Vegetative Corridor requirements and are consistent with the Metro approach. This is consistent with the intent of the Tualatin Basin approach to establish a common baseline approach for all communities in the Basin. Further, there is nothing in the Tualatin Basin approach or Metro's requirements to prevent a community to go beyond the Basin approach.

- Comply with the six steps identified in Section B of Chapter 7 of the Tualatin Basin program;

Comment: Of the six steps, the only one that pertains to this action is the adoption of Low Impact Development Guidelines. This is accomplished in proposed new Section 9.971.

- CWS approves and implements its Healthy Streams Plan;

Comment: Not applicable as this the requirement for Clean Water Services.

- Tualatin Basin members renew and extend their partnership to implement Healthy Streams project list and cooperate with Metro to develop regional public information;

Comment: Not applicable as this item is outside the scope of the ordinance amendment. However, Forest Grove remains part of the Tualatin Basin effort and will assist in supporting the project list and cooperation with public information program to the extent that the city can.

- Cities adopt provisions to facilitate and encourage use of habitat-friendly development practices, where feasible, in Class I and II riparian habitat;

Comment: Based on the review of other cities programs submitted to Metro, it is staff's understanding that "encourage" means some type of incentive to developers to use habitat-friendly development practices. Generally, those incentives could be in the form of increased densities or other type of regulatory flexibilities, or financial incentives by reducing water quantity and water quality SDCs.

Financial incentives are not feasible for Forest Grove since water quality and water quantity SDCs are collected for an outside agency (CWS). Thus, the use of Metro's Model Ordinance is proposed to be used to address this requirement. The amendment proposes flexible densities and development standards for development within or avoiding NRA's. Further, it requires the use of habitat-friendly practices to the extent that Metro has deemed appropriate through its Model Ordinance. It should be noted that the proposed amendments exceeds the Metro requirements in that it establishes requirements near habitat areas (Section 9.971 (5)) and offers the developer the flexibility to use habitat-friendly approaches though-out the city.

- Cities adopt provisions to allow for density reduction consistent with other portions of Section 3 (see below)

Comment: This is achieved in Sections 9.944 (F) (1) (d) (iii) and 9.971 (4) of the proposed amendments.

- Cities adopt either the Model Ordinance or alternative ordinances to apply to upland wildlife habitat in territory added to the UGB after the effective January, 2006 date.

Comment: This is accomplished by integrating the Model Ordinance into Section 9.944.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process.

Comment: This is accomplished by proposed Subsections 9.944 (F) and (G) which are taken from the Metro Model Ordinance.

- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by:

- Identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and

Comment: This is accomplished by the conducted barrier analysis.

- Adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.

Comment: This is being accomplished by several proposed amendments including Items 6, 16, 17, 18, 20 and 25.

- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.

Comment: This is accomplished through Subsection 9.944 (H) which is taken from the Metro Model Ordinance.

- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

Comment: As noted above, densities can be reduced per Subsection 9.944 (F) and requirements through dedication or restrictive covenant in Subsections (F) and (G).

#### Metro Function Plan Requirements:

While the City can exceed the Tualatin Basin requirements, it cannot exceed the Metro requirements due to the background and ESEE analysis that was performed for the Metro program. As will be seen below, there are two aspects of the proposed that do exceed the program requirements. Barriers and allowance to use low impact development techniques extend beyond habitat area. However, this is a permissive “regulation” that developers are encouraged to use rather than be required to use outside the habitat areas.

There are two requirements under Subsection 9.971 (5) that also exceed the Metro requirements. These requirements relate to landscape placement and outdoor lighting. These requirements are proposed to comply with the Issue Papers 1 and 2 produced for the Tualatin Basin agencies to assess their local requirements. Further, the lighting requirement was also supported to be included in the most recent Planning Commission work session.

The Functional Plan requirements for non-Tualatin Basin communities and staff comment are as follows:

- Adopt the Metro Model Ordinance and Metro Habitat Conservation Areas;
- An alternative ordinance that substantially meets specified performance standards and best management practices identified in Section 4 of the Functional Plan;
- Implement a program based on alternative approaches that will achieve protection and enhancement of Class I and II riparian habitat and Class A and B upland wildlife habitat areas in territory added after the effective date of Metro's adopting ordinance (Ordinance No. 05-1077 which was January 5, 2006); or
- Develop a district plan with other jurisdictions.

Comment: The proposed amendments are adopting the Metro Model Ordinance. As discussed above, the Metro Habitat Conservation Areas are not being adopted. In its place, the Regionally Significant Fish and Wildlife Habitat Inventory Map is being adopted and linking standards to city zone districts and parks are being proposed.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process;
- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.
- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.
- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

Comment: These were addressed under the Tualatin Basin analysis.

**E. CONFORMANCE TO LAND USE POLICY**

1. Physical Environment Goal 1:

*ALL DEVELOPMENT SHALL CONSIDER, TAKE INTO ACCOUNT AND DEMONSTRATE SUITABILITY RELATIVE TO THE NATURAL HAZARD LIMITATIONS OF THE AREA.*

Analysis and Finding: Complies. The proposed amendment Item 2 is intended to update the City's Flood plain standards to use the most up-to-date information in making determinations as to the location of the 100 year flood elevations. Further, other proposed amendments will make current requirements related to flood plain management more effective by including references into the City's Zoning and Land Division ordinances. In addition, requirements for steep sloping areas and flood management areas are addressed in a more consistent basis by establishing performance requirements rather than relying on the provisions of the ER District. Also, the requirements under the proposed amendments for both steep areas and flood plain areas will be more specific than under the ER District requirements.

2. Residential Land Use Goal 1:

*RESIDENTIAL AREAS SHALL BE DEVELOPED IN A SAFE, AESTHETICALLY PLEASING, AND EFFICIENT MANNER.*

Analysis and Finding: The amendments would contribute to this goal by retaining habitat area to the extent feasible and mitigating where removed. Preservation and enhancement of habitat adjacent to residential areas increases the aesthetic value of the area. In addition, allowances for clustered housing increases the efficiency of housing by using less land for a given number of units. It is also more efficient by reducing road and other paving requirements, and reducing the amount of utility extensions since the housing would be closer proximity with each other.

3. Commercial Land Use Goals 1 and 2:

*STRENGTHEN FOREST GROVE'S POSITION AS A COMMERCE CENTER OF WESTERN WASHINGTON COUNTY, AND ENCOURAGE SHOPPING BY RESIDENTS OF THAT AREA.*

*ENCOURAGE THE OPPORTUNITY FOR REVITALIZATION OF THE CENTRAL BUSINESS DISTRICT*

Analysis and Finding: None of the commercial areas are near steep slopes, flood management areas or natural resource areas. Thus, the propose would not have any impact on the City to achieve these commercial goals.

4. Industrial Land Use Goal 3:

*THE CITY SHALL COOPERATE IN PROVIDING THE PUBLIC SERVICES AND FACILITIES NEEDED BY EXISTING AND FUTURE BUSINESSES AND INDUSTRIES.*

Analysis and Finding: The proposed Natural Resource Area provisions would allow the installation of utilities through these areas. Thus, the proposed amendments would not have an impact on meeting this Goal.

5. Natural Resource Land Use Goal 1 and Open Space Goal 2:

*PRESERVE AND MAINTAIN THE QUALITY OF EXISTING AGRICULTURAL, FORESTRY, WILDLIFE AND OTHER NATURAL RESOURCE AREAS.*

Analysis and Finding: The proposed amendments would help achieve this goal for wildlife and other natural resource areas by adding a new policy to the Comprehensive Plan to implement the regional Nature in Neighborhoods program and establishing standards and requirements for preserving, minimize intrusions or mitigate intrusions into these areas.

6. Natural Resource Land Use Goal 2:

*OPEN SPACE VALUABLE TO FISH AND WILDLIFE RESOURCES SHALL BE PROTECTED.*

Analysis and Finding: The amendment is intended to preserve open space valuable to fish and wildlife resources in riparian areas and in upland areas brought into the UGB in the future. This is accomplished through adding a new policy to the Comprehensive Plan to implement the regional Nature in Neighborhoods program and establishing standards and requirements for preserving, minimize intrusions or mitigate intrusions into these areas. Further, areas preserved as open space must be placed into tracts which cannot be developed.

7. Natural Resource Land Use Goal 3:

*THE PRESERVATION OF EXISTING TREES SHALL BE ENCOURAGED.*

Analysis and Finding: Through the adoption of a new natural resource policy and implementing the Nature in Neighborhood program, this goal will be achieved by encouraging limiting removal of trees in riparian areas though proposed objective standards.

8. Agricultural and Forest Land Use Goals 2 and 3:

*FORESTRY LANDS SHALL BE PRESERVED FOR FOREST USES.*

*PRESERVE AND MAINTAIN THE QUALITY OF EXISTING AGRICULTURAL, FORESTRY WILDLIFE AND OTHER NATURAL RESOURCE AREAS.*

Analysis and Finding: Natural resource preservation was addressed above. Regarding forestry, the amendments would not affect properties in forest production within the current UGB since the Natural Resource Area designation does not apply to upland resource areas identified by Metro. However, it may affect properties in forest practices that are brought into the UGB in the future.

9. Open Space Goal 3:

*PRESERVE AND IMPROVE SPECIFIC OPEN SPACE AREAS TO PROVIDE RECREATION, EDUCATION, CONTACT WITH NATURE AND SCENIC AMENITIES.*

Analysis and Finding: Open space intended for active recreational use will not be limited by the proposed natural resource amendments since the natural resource designation will not be applied to these areas. Open space intended for natural preservation will be limited to vegetation removal only for trail development.

10. Open Space Goal 4:

*MAINTAIN DESIRABLE EXISTING OPEN SPACE AND ENHANCE THE ENVIRONMENT WITHIN THE CITY THROUGH PRESERVATION AND LANDSCAPING.*

Analysis and Finding: This goal will be promoted through the natural resource provisions included in the proposed amendments. The amendments encourage the preservation of existing open space in natural resource areas where possible. Where not possible, it provides measures to minimize intrusion into these areas and to mitigate any intrusion.

11. Zoning Ordinance Purpose Statement:

*This ordinance has been designed in accordance with the adopted goals, and policies of the Forest Grove Comprehensive Plan. It is the general purpose of this ordinance, therefore, to provide one of the principal means for the implementation of the Forest Grove Comprehensive Plan as well as: encourage the most appropriate use of the land; conserve and stabilize the value of property; promote a variety of housing opportunities; aid in the rendering of fire and police protection; provide adequate open space for light and air; lessen the congestion on streets; promote orderly growth in the city; prevent undue concentrations of population; facilitate adequate provisions for community utilities and facilities such as water, sewerage, electrical distribution systems, transportation, schools, parks and other public facilities; and in general promote public health, safety, convenience and general welfare.*

Analysis and Finding: The proposed amendments to the Zoning Ordinance, as discussed above, forwards the applicable goals of the Forest Grove Comprehensive Plan. Thus, the proposed amendments meet the purpose of the Zoning Ordinance.

Further, this section of the ordinance is proposed to be changed to include conservation of natural resource areas to better reflect the Comprehensive Plan Goals and policies as amended.

12. Land Division Purpose Statement:

*This ordinance has been formulated in accordance with the adopted goals and policies of the Forest Grove Comprehensive Plan. It is the general purpose of this ordinance, therefore, to provide one of the principal means for the implementation of the Comprehensive Plan. It is also the intent of this ordinance to accomplish the orderly development of land within the City through rules, regulations and standards governing the approval of subdivisions and partitions, taking into consideration all of the applicable goals and policies and the locations of proposed subdivisions and partitions, as well as their impact on the surrounding area and the entire City. These rules, regulations and standards are intended to provide for lessening congestion in the streets, for securing safety from fire, flood, slides, pollution or other dangers, for providing adequate light and air, including solar energy access, for preventing overcrowding of land, for facilitating drainage, education, recreation and other needs, and in general to promote the public health, safety, convenience and general welfare.*

Analysis and Finding: The proposed amendments to the Land Division Ordinance, as discussed above, forwards the applicable goals of the Forest Grove Comprehensive Plan. Thus, the proposed amendments meet the purpose of the Zoning Ordinance. Further, this section of the ordinance is proposed to be changed to include conservation of natural resource areas to better reflect the Comprehensive Plan Goals and policies as amended.

12. Oregon State Land Use Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

*To protect natural resources and conserve scenic and historic areas and open spaces.*

Analysis and Finding: The proposed amendment is consistent with this Goal. It includes new policies, standards and requirements for the protection of natural resources consistent with the Metro Nature in Neighborhoods program that has been acknowledged by Land Conservation and Development Commission.

13. Oregon State Land Use Goal 7, Areas Subject To Natural Hazards

*To protect people and property from natural hazards.*

Analysis and Finding: The proposed amendments would assure more consistent protection from natural hazards since the current Environmental Review Overlay District, intended to address natural hazard conditions, only applies to portion of areas subject to steep slopes and flood management hazards. Further, the protection is being brought up-to-date by allowing more recent information than current FEMA studies completed in 1981 to determine the location of the 100 year flood plain. In

addition, more specific requirements than that specified by the ER district would be implemented by the amendment.

- F. All other findings contained in the staff report are hereby incorporated by reference.

**PRESENTED AND PASSED** the first reading the 24<sup>th</sup> day of September, 2007.

**PASSED** the second reading the 8<sup>th</sup> day of October, 2007.

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Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 8<sup>th</sup> day of October, 2007.

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Richard G. Kidd, Mayor Kidd

## EXHIBIT A

### *Proposed Text Amendments*

#### COMPREHENSIVE PLAN AMENDMENT

1. *New Natural Resource Policy 3:* The City shall implement and exceed the Tualatin Basin Goal 5 program consistent with Metro Title 13 requirements through a strategy of preserve, minimize and mitigate intrusions into Class I and Class II Riparian Wildlife Habitat and Class A and B Upland Habitat as identified by Metro and adopted by reference in this Comprehensive Plan. Implementation shall be achieved through amendments in the Zoning and Land Division ordinances, and through education and other public information efforts.

#### MUNICIPAL CODE TEXT AMENDMENT

2. *Amend Section 5.815 to redefine the basis to determine the areas of Special Flood Hazard:*

**5.815 Basis for Establishing the Areas of Special Flood Hazard.** The areas of special flood hazard are determined by:

- (1) ~~identified by~~ The Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of Forest Grove," dated September 15, 1981, with accompanying Flood Insurance Rate Maps, is hereby adopted by reference and declared to be a part of this code. The Flood Insurance Study is on file at the Administrative offices of the city; or
- (2) Updated flood studies or any other authoritative data documenting flood elevations as approved by the City Engineer or as a result of complying with the requirements of Clean Water Services' Design and Construction Standards.

#### LAND DIVISION ORDINANCE TEXT AMENDMENTS:

3. *Amend Section 9.101 of the Land Division Ordinance as follows:*

**9.101 PURPOSE.** This ordinance has been formulated in accordance with the adopted goals and policies of the Forest Grove Comprehensive Plan. It is the general purpose of this ordinance, therefore, to provide one of the principal means for the implementation of the Comprehensive Plan. It is also the intent of this ordinance to accomplish the orderly development of land within the City through rules, regulations and standards governing the approval of subdivisions and partitions, taking into consideration all of the applicable goals and policies and the locations of proposed subdivisions and partitions, as well as their impact on the surrounding area and the entire City. These rules, regulations and standards are intended to provide for lessening congestion in the streets, for securing safety from fire, flood, slides, pollution or other dangers, for providing adequate light and air, including solar energy access, for preventing overcrowding of land, for facilitating drainage,

education, recreation and other needs, for conserving natural resource lands and in general to promote the public health, safety, convenience and general welfare.

4. **Amend Section 9.102 to add new definition 27 and renumber accordingly:**

- (27) Natural Resource Area. The area defined by Metro as Riparian Wildlife Habitat Class I and II and Upland Wildlife Habitat Area A and B as shown on the Regionally Significant Fish and Wildlife Habitat Inventory Map dated at the time of adoption of this section or as amended in the future excluding those portions within Sensitive Areas and Vegetated Corridors as determined by the ~~Chapter 3~~ of Clean Water Services Design and Construction Standards.

5. **Amend Section 9.108 to add reference to Natural Resource Area review:**

**9.108 SUPPLEMENTAL MATERIALS WITH TENTATIVE PLAN**

- (1) In addition to those submittal materials to be provided in connection with an application for a proposed land division, as contained in Section 9.107, the Community Development Director may require that any of the following be submitted to supplement a tentative plan application:
- a. Approximate centerline profiles with extensions for a reasonable distance beyond the limits of the proposed land division, showing the finished grade of streets and sidewalks and the nature and extent of street construction.
  - b. Proposal for other utilities and improvements such as electric facilities.
- (2) Where the subject site is within 100 feet of a Natural Resource Area, the applicable informational requirements of Section 9.944 of the Zoning Ordinance shall be met.

6. **Amend Section 9.109 to provide habitat-friendly provisions and reference Natural Resource Area requirements:**

**9.109 REQUIRED IMPROVEMENTS**

- (1) For any subdivision approved in the City, the subdivider or partitioner shall have the responsibility of providing the following improvements pursuant to plans and specifications as approved by the City Engineer and in conformance with the design standards as contained in this ordinance. In instances where improvements are within or cross natural resource areas, the requirements of Section 9.944 of the Zoning Ordinance shall apply:

a. Streets: All streets and alleys within the development and those adjacent streets which directly serve the development shall be fully improved, including grading, base grade, paving, and installation of curbs, all constructed to design specifications as approved by the City Engineer. All streets to be constructed and/or improved shall comply with the minimum street improvement standards contained in this ordinance. Where traffic is anticipated to be less than 500 average daily trips, pervious paving may be used for roadway and/or parking areas as

approved by the City Engineer. In cases where physical conditions warrant it, special soils analyses or engineering designs may be required by the City Engineer. In addition, where a proposed subdivision or partition abuts a substandard arterial or collector street, the developer shall provide to the Community Development Department prior to final plat or map approval, adequate guarantees that within one year from the issuance of a building permit for construction within the development, such abutting arterial or collector street or streets shall be improved adjacent to the land division site in a manner which is compatible with the standards for streets as contained in this ordinance. Adequate guarantee shall consist of formation of a local improvement district, or provision of a bond or cash deposit in an amount sufficient to cover the estimated actual improvement cost, plus 15%. (Ord. 92-04; 1/27/92)

b. Storm Sewers and Erosion Control Facilities: Public storm sewer lines and facilities shall be constructed in compliance with the City's Master Storm Sewer Plan, and shall connect with existing storm sewer facilities which conform with the Master Storm Sewer Plan, or to lines which can be shown to be adequate for the development proposed. Drainage swales and other open drainage facilities may be used with the approval of the City Engineer. On-site storm water retention and disposal systems shall be provided in accordance with the provisions of Section 9.111 and as approved by the City Engineer.

c. Sanitary Sewer Facilities: Public sanitary sewer facilities shall be constructed in compliance with the City's Master Sewer Plan, and shall connect with existing sanitary sewers which conform with the Master Sewer Plan, or to lines which can be shown to be adequate for the development proposed. All sanitary sewers shall be constructed according to plans and specifications as approved by the City Engineer.

d. Water Facilities: Public water lines shall be constructed in compliance with the City's Master Water Plan, and shall connect with existing public water lines which conform with the Master Water Plan, or which can be shown to be adequate for the development proposed. All water systems shall be designed to provide domestic water to each lot or parcel and to provide adequate fire protection facilities, and shall be constructed according to plans and specifications as approved by the City Engineer.

e. Sidewalks: Public sidewalks shall be constructed in all street right-of-ways, on both sides of the street roadway, according to plans and specifications as approved by the City Engineer. Where other designated walkways or pedestrian accesses are shown on the plat, such walkways shall be constructed of hard-surface material in conformance with the approved tentative plan. Where approved by the City Engineer, pervious materials may be used for sidewalk construction.

Sidewalks shall be property-line sidewalks. These may be modified by the City Engineer for:

- a) Cul-de-sac bulbs; or
- b) Slopes of over 20% at right angles to the sidewalk; or
- c) To curve around existing or future trees.

f. If existing storm sewer, sanitary sewer, and/or water facilities which will serve the subdivision are not brought into immediate conformance with the appropriate public facilities

master plan elements of the Comprehensive Plan prior to development of the subdivision, but where such elements of the Comprehensive Plan indicate a future need for additional public facilities capacities which would directly serve or benefit such proposed subdivision, the subdivider shall be required to participate in the future construction of the facilities indicated, through the provision of a waiver of the right to remonstrate against future formation of a local improvement district.

g. **Public and Private Utilities:** Public electric, data communication and telecommunication conduits as well as conduits for franchise utilities including, but not limited to, telephone, natural gas and cable television shall be installed to serve all newly created lots and developments. Where necessary to provide for orderly development of adjacent properties, public and franchise utilities shall be extended through the site to the edge of adjacent property(ies).

Installation of utilities shall be provided in public utility easements and shall be sized, constructed, located and installed consistent with the following:

- a) Public telecommunication and data communication conduits, electrical conduits and appurtenances shall be installed per the City of Forest Grove Light and Power Department design standards.
- b) Franchise utility conduits shall be installed per the utility design and specification standards of the utility agency (Ord. 2006-18; 09/25/2006)

h. **Street Trees:**

i. At the time of submittal of a tentative plat application for a subdivision, a Street Tree Plan may be submitted to accompany such application. If submitted, the Street Tree Plan shall be provided on a copy of the tentative plat map, and shall include the following items:

- Quantities and species of all proposed street trees.
- The proposed locations of street trees and common area trees with dimensions given for spacing between trees.
- Locations, species, and sizes of all existing trees which will remain within street rights-of-way following construction of the street roadway, curbs, and sidewalks. Where existing trees larger than 6 inches d.b.h. are located within the anticipated parkway of a proposed street right-of-way, such trees shall be identified and preserved wherever possible, and, if of an appropriate species, shall be considered as meeting the requirements for street trees, as contained in this subsection. (Ord. 97-05; 3/24/97. Ord. 97-17; 11/3/97)

ii. No Street Tree Plan shall be approved unless it complies with the following standards:

- The total number of street trees and open space trees provided shall be based on the total linear curb frontage in feet divided by 30 plus the total

area of any common area(s) in square feet divided by 2,000, except the total number of trees can be adjusted based on optimum tree spacing and/or the design of the open space for the particular tree species. Spacing between street trees may be variable. (Ord. 97-17; 11/3/97)

- Species of street trees selected shall be those which are suited to the environment of Western Oregon.
  - Species of street trees bearing fruit, nuts or berries which fall on an annual basis shall be prohibited. In addition, those tree species prohibited by City Code Section 9.415 shall not be allowed as street trees.
  - Street trees shall have a minimum caliper size of one and one-half (1 ½) inches as measured one (1) foot above ground level, and a minimum branch height of six (6) feet.
  - The species of trees selected shall be the largest possible after considering above-ground constraints (such as overhead wires or adjacent buildings), and the available planting area. (Ord. 97-17; 11/3/97)
  - After determining the largest size appropriate for the site, the particular species is determined after considering at a minimum any Master Street Plan, other street trees on streets entering the subdivision, the need for street tree diversity in Forest Grove, and the importance of replacing the Oregon White Oak. (Ord. 97-17; 11/3/97)
- iii. Street trees shall be planted in substantial conformance with the approved Street Tree Plan. If no Street Tree Plan is approved, the City shall be responsible for determining trees species and locations, using (ii) above as guidelines. (Ord. 97 17; 11/3/97)
- iv. Street trees shall be funded and installed based on the following steps:
- Funding and installation (as set forth below) goes into effect for all areas which have not received Engineering Department approval and acceptance of required public improvements, even when the tentative plat was submitted prior to adoption of this ordinance.
  - Payment shall be made at the time of dwelling unit building permit request equal to the parcel's total lineal street frontage divided by 30 feet, and that number multiplied times a "Street Tree Cost", except 50 feet shall be used if the street frontage is 50 feet or less (for example, a flag lot).
  - Street Tree Cost shall include the cost of the tree, installation, and one year maintenance. The fee shall be updated by the City Council as part of the City Fee Schedule.
  - Money collected and interest earned shall be deposited into a Street Tree account, and used to plant trees on the specified lots. Any extra revenues received through interest earnings, volume discounts, etc. shall be used for other trees in public rights-of-way. The City, interested citizens, and other parties may also contribute to this program for the planting and

maintenance of public trees, with private parties eligible for a tax deductible contribution.

- The City shall prepare a Request for Proposal (RFP) on an annual (or semi-annual) basis and contract for the purchase, planting, and one year maintenance of the street trees, including appropriate watering throughout the summer. The same contractor shall be responsible for the full length of the planting maintenance period of street trees in specific developments, and replacement and subsequent maintenance of any dead or dying trees. The City, using standard accounting practices as referenced in ORS 279, has the option of bidding on this contract.
- Trees shall be planted during late winter/early spring after occupancy permits are issued, or as otherwise determined by the contractor.
- The City shall inspect the trees prior to installation to ensure compliance with the American Standard for Nursery Stock, and after installation for correct species and number. At the end of the maintenance period the City shall inspect the trees for health and determine what trees (if any) need to be replaced.
- When the trees pass approval at the end of the maintenance period, homeowners shall become responsible for maintaining the trees. Such transfer of responsibility to homeowners shall include City notice to the homeowners and pamphlets on their street tree responsibility, and the care, maintenance, pruning, and the process for removal and replacement of street trees. (Ord. 97-17; 11/3/97)

h j. Joint Mailboxes: Joint mailbox facilities shall be provided in all residential subdivisions, with each joint mailbox serving at least two, but no more than eight, dwelling units. Joint mailbox structures shall be placed in the street right-of-way adjacent to roadway curbs. Proposed locations of joint mailboxes shall be designated on a copy of the tentative plan of the subdivision, and shall be approved by the City Engineer prior to tentative plan approval. In addition, sketch plans for the joint mailbox structures to be used shall be submitted and approved by the City Engineer prior to final plat approval.

(2) The City shall not issue any building permit and shall withhold all public services of any nature, including the maintenance of streets and the furnishing of sewer, water and electrical facilities in all subdivisions and partitions until the above improvements have been fully constructed and/or installed as approved by the City Engineer, and in full conformance with the design standards of this ordinance, provided that public sidewalks adjacent to any lot or parcel need not be constructed prior to issuance of a building permit, but shall be provided prior to occupancy of any structure built on such lot or parcel. (Ord. 92-04; 1/27/92. Ord. 97-17; 11/3/97)

7. *Amend Section 9.110 (1) to allow minimal street widths through Natural Resource Areas.*

(1) Streets: Adequate street right-of-way shall be dedicated to provide for the safe and efficient movement of vehicular traffic within and adjacent to the subdivision, in accordance with the standards of this Section and with construction specifications as approved by the City

Engineer. In general, the design of local streets shall be such that through traffic is discouraged. Where a proposed arterial or collector street is projected within the land division as shown on the Functional Classification Map of the Comprehensive Plan, street rights-of-way shall be provided in those locations and to those standards for arterial and collector streets as contained in this ordinance. (Ord. 99-16; 11/22/99)

a. Minimum Right-of-Way and Roadway Width: Widths of street right-of-way and paving design shall be not less than those set forth in the following table. Where an existing street is located adjacent to any boundary of the subdivision or partition, the applicant shall dedicate additional right-of-way to allow for street construction in accordance with the following table for any such adjacent street where the existing width of right-of-way for such street is less than the minimum in said table. Bike paths on arterial and collector streets shall be at least 5 feet wide. (Ord. 92-04; 1/27/92; Ord. 98-04; 3/23/98; Ord. 99-16, 11/22/99)

<u>Street Type</u>	<u>Minimum R.O.W. Width</u>	<u>Minimum Roadway Width</u>
Major Arterial	90-96 feet	52-64 feet
Minor Arterial	66 feet	40 feet
Residential Collector	66 feet	40 feet
Neighborhood Route	54 feet	28 feet (7)
Local Industrial	66 feet	40 feet
Local	58 feet	32 feet
Local	54 feet	28 feet (1)
Local	50 feet	24 feet (2)
Local	50 feet (3)	15 feet (4)
Cul-de-sac (street)	58 feet	32 feet
Circular End of Cul-de-sac	55 feet (radius)	42 feet (radius)
Cul-de-sac	50 feet	24 feet (5)
Circular End of Cul-de-sac	40 feet (radius)	34 feet (radius) (6)
Alley	15 feet	12 feet

(1) These streets shall serve not more than 16 single-family or duplex dwelling units, nor more than 20 multi-family dwelling units. For streets with two accesses, (a loop or grid system), these standards shall double. (Ord. 97-05; 3/24/97)

(2) These streets shall serve not more than 12 single-family or duplex dwelling units, nor more than 16 multi-family dwelling units. For streets with two accesses, (a loop or grid system), these standards shall double. On-street parking permitted on one side only. This street width shall be used where local streets are going through a Natural Resource Area and no parking allowed on either side. (Ord. 97-05; 3/24/97)

- (3) Street right-of-way may be reduced if approved by the City Engineer, to preserve natural features or where construction of a full-width street would result in excessive cut-and-fill due to existing topography. (Ord. 97-05; 3/24/97)
- (4) One-way traffic only; no on-street parking permitted. One-way streets may be permitted only to preserve natural features or where the construction of a full-width street would result in excessive cut-and-fill due to existing topography, as determined by the City Engineer. (Ord. 97-05; 3/24/97)
- (5) No on-street parking permitted.
- (6) Sidewalks permitted adjacent to curb. The City Engineer may require slope easements due to topography, the size and shape of the tract, or other conditions.
- (7) On-street parking permitted on one side only. (Ord. 99-16; 11/22/99)

8. *Amend Subsection 9.110(2)b.iv. to allow sidewalks narrower than city standards where ADA requirements do not apply.*

- i. Sidewalks and/or walkway connections shall be designed according to City standards or specifications on file at the City. Where not required to meet ADA requirements, sidewalks may be less than the city standard where approved by the City Engineer. (Ord. 98-04; 3/23/98)

9. *Amend Section 9.113 to remove reference to Environmental Review Zones and replace with natural resource, flood management and steep slope areas with requirements to allow appropriate review for each area type:*

**9.113 LAND DIVISIONS IN ENVIRONMENTAL REVIEW ZONES NATURAL RESOURCE, FLOOD MANAGEMENT AND STEEP SLOPE AREAS**

- (1) The provisions of this section shall apply to proposed land divisions located entirely or in part within ~~an ER zone as designated in a~~ natural resource area as defined by the Zoning Ordinance, flood management area as defined by the Municipal Code, or locations with slopes of 20 percent or greater. The requirements of this section shall be applied in addition to all other general requirements of the Land Division Ordinance. The purposes of this section are to:
  - a. Encourage the planning, design, and development of safe and enjoyable building sites, while maintaining the integrity of the natural terrain and local ecosystem.
  - b. Use good building design, landscape design, and engineering to preserve and enhance the appearance and resources of hillsides and floodplains;
  - c. Prevent additional water runoff, soil erosion, sedimentation, and flooding which may otherwise occur through development of environmentally sensitive lands;
  - d. Achieve land use densities that are consistent with the Comprehensive Plan; and

- e. Encourage alternative approaches to conventional development where necessary to reduce the impact of urban development on environmentally sensitive areas.
- (2) ~~Environmental Report~~ Required: The applicant for approval of a land division proposal in the ~~ER zone~~ natural resource, flood management or steep slope areas shall file with the Community Development Department ~~an environmental~~ a report ~~as specified in the Zoning Ordinance.~~ For natural resource areas, the report shall address the requirements of Section 9.944 of the Zoning Ordinance. For flood management areas, the information necessary to meet the applicable requirements of Section 5.800 et. seq. of the Municipal Code. For steep slopes, the information and assessment required by Section 9.855 (1) of the Zoning Ordinance.
  - (3) Development Standards. These standards shall apply to all developments where improvements or grading are made in the ER zone any of the areas subject to this section and shall be incorporated into the ~~environmental~~ report and the design of the proposed land division:
    - a. General Standards:
      - i. No grading, filling, clearing or excavating of any kind shall be initiated on the land division site until the final plat or map for the land division has been approved as required by this ordinance.
      - ii. Fill areas shall be prepared by removing organic material, such as vegetation and rubbish, and other material which is determined by the soils analysis to be detrimental to proper compaction or otherwise not conducive to stability; no rock or similar irreducible material with a maximum diameter greater than eight inches shall be used as fill material in fills that are intended to provide structural strength.
      - iii. All retaining walls or facings with a total vertical projection in excess of three feet and associated with cut or fill surfaces shall be designed as structural members keyed into stable foundations and capable of sustaining the design loads.
      - iv. If the developer can demonstrate conclusively to the City Engineer that any of the requirements contained in items (v) through (ix) below are not necessary in the proposed land division and that the omission of such requirements would not result in hazard to life or limb, hazard to property, adverse effects on the safety, use, or stability of a public way or drainage channel, or adverse impact on the natural environment, those particular requirements may be waived.
      - v. Fills shall be compacted to at least 95% of maximum density, as determined by AASHTO T99 and/or ASTM D698.
      - vi. Cut slopes shall be no steeper than two horizontal to one vertical; subsurface drainage shall be provided as necessary for stability.
      - vii. Fill slopes shall be no steeper than two horizontal to one vertical; fill slopes shall not be located on natural slopes 2:1 or steeper or, where fill slope toes out, within 12 feet horizontally of the top of an existing or planned cut slope.
      - viii. Top and toes of cut and fill slopes shall be set back from property boundaries a distance of three feet plus one-fifth of the height of the cut or fill, but need not exceed a horizontal distance of 10 feet; tops and toes of cut and fill slopes shall be

setback from structures a distance of six feet plus one-fifth the height of the cut or fill, but not exceeding 10 feet.

- ix. Borrowing for fill shall be prohibited unless the material is obtained from a cut permitted under an approved grading plan obtained for some purpose other than to produce fill material, or imported from outside ~~the ER zone~~ natural resource, flood management or steep slope area.
- b. Roadway Standards:
  - i. No grading, filling, clearing or excavation of any kind shall be initiated for the land division site until the final plat or map of the land division has been approved as required by this ordinance.
  - ii. Fill areas shall be prepared by removing organic material, such as vegetation and rubbish, and any other material which is determined by the soils engineer to be detrimental to proper compaction or otherwise not conducive to stability.
  - iii. All retaining walls or facings with a total vertical projection in excess of three feet and associated with cut or fill surfaces shall be designed as structural members keyed into stable foundations and capable of sustaining the design loads.
  - iv. Borrowing for fill shall be prohibited unless the material is obtained from a cut permitted under an approved grading plan, or imported from outside the land division site.
  - v. Streets shall be designed to create the minimum feasible amount of land coverage and the minimum feasible disturbance to the soil.
  - vi. Existing vegetation of the deep-rooted perennial variety shall be preserved to the greatest extent possible in the location of streets. Street alignment should follow natural terrain and no unnecessary cuts or fills shall be allowed in order to create additional lots or building sites.
  - vii. Where sufficient justification is provided in the required environmental reports, the City Engineer may allow limited variations from the street design standards of the ordinance in order to keep grading and cut-fill slopes to a minimum.
  - viii. The width of a graded section shall extend at least three feet beyond the outside edge of the sidewalk.
  - ix. Standard vertical curb (six inches) and gutter shall be installed along both sides of all street roadways.
  - x. If the developer can demonstrate conclusively to the City Engineer that any of the requirements contained in items (xi) through (xvi) below are not necessary in the proposed land division and that the omission of such requirements would not result in hazard to life or limb, hazard to property, adverse affects on the safety, use, or stability of a public way or drainage channel, or adverse impact on the natural environment, those particular requirements may be waived.
  - xi. Cut slopes shall be no steeper than 1-1/2 horizontal to one vertical; subsurface drainage shall be provided according to the approved storm drainage, erosion and sedimentation control plan required in Section 9.108(4), and as necessary for stability.
  - xii. The maximum horizontal distance of disturbed soil surface shall not exceed 75 feet.

- xiii. Fill slopes shall be no steeper than 1-1/2 horizontal to one vertical; fill slopes shall not be located on natural slopes steeper than 2:1 or, where fill slope toes out, within 12 feet horizontally of the top of an existing or planned cut slope.
  - xiv. Tops and toes of cut and fill slopes shall be set back from buildings a horizontal distance of six feet plus one-fifth the height of the cut or fill, but need not exceed ten feet.
  - xv. Fills shall be compacted to at least 95% of maximum density, as determined to AASHTO T99 or ASTM D698.
  - xvi. All slopes which are stabilized by mechanical or chemical restraints shall be adapted to conform to the surrounding terrain and shall be given proper aesthetic treatment.
- c. Slope Stabilization and Re-vegetation: The developer shall submit a slope stabilization and re-vegetation plan which shall include a complete description of existing vegetation, the vegetation to be removed and the method of disposal, the vegetation to be planted, and slope stabilization measures to be installed. The plan shall include an analysis of the effects of such operations on slope stability, soil erosion and water quality. The re-vegetation and slope stabilization plan shall be submitted with the other environmental reports required by this section. The following standards shall be applied in preparation of the slope stabilization and re-vegetation plan:
- i. Vegetation shall be removed only when absolutely necessary, e.g. for buildings, filled areas, roads.
  - ii. Every effort shall be made to conserve topsoil which is removed during construction for later use on areas requiring vegetation or landscaping, e.g. cut and fill slopes.
  - iii. New plantings shall be protected with organic cover.
  - iv. All disturbed soil surfaces shall be stabilized or covered within 15 days of disturbance. If the planned impervious surfaces (i.e. streets) cannot be provided within 15 days, a temporary treatment adequate to prevent erosion shall be installed on those surfaces.
  - v. Between the first day of November and the fifteenth day of April, construction shall be scheduled to minimize soil disturbance.
  - vi. The developer shall be fully responsible for any destruction of native vegetation designated to be retained. He shall carry the responsibility both for his own employees and for all subcontractors from the first day of construction until the completion of all required improvements. The developer shall be responsible for replacing such destroyed vegetation.
  - vii. The use of qualified personnel experienced and knowledgeable in the practice of re-vegetation shall be required in all areas where re-vegetation is designated on the plan.
- d. Floodplain Fill Standards: Proposed excavation and filling within the 100-year floodplain is subject to the standards established in the Zoning Ordinance Municipal Code and Clean Water Services Design and Construction Standards. (Ord. 82-15, 9/27/82)

**ZONING ORDINANCE TEXT AMENDMENTS:**

**10. Amend Section 9.601 of the Zoning Ordinance:**

**9.601 PURPOSE.** This ordinance has been designed in accordance with the adopted goals, and policies of the Forest Grove Comprehensive Plan. It is the general purpose of this ordinance, therefore, to provide one of the principal means for the implementation of the Forest Grove Comprehensive Plan as well as: encourage the most appropriate use of the land; conserve natural resource areas, conserve and stabilize the value of property; promote a variety of housing opportunities; aid in the rendering of fire and police protection; provide adequate open space for light and air; lessen the congestion on streets; promote orderly growth in the city; prevent undue concentrations of population; facilitate adequate provisions for community utilities and facilities such as water, sewerage, electrical distribution systems, transportation, schools, parks and other public facilities; and in general promote public health, safety, convenience and general welfare.

**11. Amend definition of "Density, net" (Section 9.603 42.) as follows:**

"42. Density, net. The actual number of dwelling units per unit of land including the area for dwelling unit development and natural resource areas which but does not include land in streets, and other public/private institutional and other uses. Density is expressed as the number of dwelling units per acre.

**12. Add new definitions Numbers 27 and 96 to Section 9.603 and renumber existing definitions accordingly.**

"27. Bio-swale. One type of a stormwater management technique that uses chemical, biological and physical properties of plants, microbes and soils to remove, or retain, pollutants from stormwater runoff. It is distinguished from other types of bioretention techniques in that it is designed as part of a stormwater conveyance system that has relatively gentle side slopes and flow depths that are generally less than 12 inches."

"96. Natural Resource Area. The area defined by Metro as Riparian Wildlife Habitat Class I and II and Upland Wildlife Habitat Area A and B as shown on the Regionally Significant Fish and Wildlife Habitat Inventory Map dated at the time of adoption of this section or as amended in the future excluding those portions within Sensitive Areas and Vegetated Corridors as determined by Chapter 3 of Clean Water Services Design and Construction Standards."

**13. Amend Section 9.810, Intent, for establishment of a Planned Development as follows:**

**9.810 INTENT.** The intent of the Planned Development designation is to provide greater flexibility in the development of land for residential, commercial, or industrial development, or a mixture thereof. The Planned Development provides flexibility in the administration of certain Code standards to encourage:

- (1) Creative site development design.
- (2) Efficient use of land with more economical arrangement of building, circulation system, and utilities than conventional development regulated in other sections of this code.
- (3) Mitigation of unfavorable visual and other environmental impacts of development on adjacent land.
- (4) Provision of variety in the location of improvements, lot size, lot coverage, density, building bulk, structure type, etc.
- (5) Conservation of natural land features including but not necessarily limited to natural resource areas.
- (6) Creation of open space and the best use of open space.

However, a PD shall comply with the provisions of Section 9.810 through 9.819.5 for review of the proposal, and with the appropriate provisions dealing with Planned Residential Developments, Commercial Planned Development, and Planned Industrial Developments.

**14. Add new subsection (3) to Section 9.813, Preliminary Development Plan, as follows:**

- (3) Where there is a natural resource area on the site, information as required by Section 9.944.

**15. Add criteria for planned developments to take into consideration natural resource areas:**

**9.814 CRITERIA FOR PRELIMINARY PLAN APPROVAL.** A Preliminary Plan for a PD shall be approved if findings are made that each of the following criteria is satisfied:

- (1) Public facilities serving the proposed development, including but not limited to, sanitary sewers, water, streets, storm sewers, electrical power facilities, parks, public safety and schools shall be adequate and meet current City standards; or it is guaranteed that inadequate or nonexistent public facilities will be upgraded or constructed by the applicant prior to occupancy of the project.
- (2) The impact of the proposed development on public facilities shall not exceed the impact anticipated for the site in the formulation of the public facilities master plans contained in the Comprehensive Plan.
- (3) Any uses proposed for the development which are not listed as uses permitted outright in the zone in which the proposed PD is located shall be designed to achieve compatibility with both the remainder of the PD and properties adjacent to the PD site.
- (4) The proposal shall provide adequate open space, landscaping, and design features to minimize significant adverse effects on natural resource areas consistent with the requirements of Section 9.944, adjacent properties and uses.

(5) The location, shape, size and character of common open space areas shall be suitable and appropriate to the scale and character of the project, considering its size, density, expected population, topography, and the number, type and location of buildings to be provided.

(6) The proposed development shall not result in creation of any nuisance, including but not limited to air, land, or water degradation, noise, glare, heat, vibration or other conditions which may be injurious to public health, safety, and welfare.

(7) The proposal shall meet the intent and objectives for a PD as expressed in Sections 9.680 (PRD), or 9.730 (CPD), or 9.760 (PID), or 9.770 Manufactured Home Subdivisions or 9.780 Manufactured Home Parks (MHP), as appropriate.

**16. Amend Subsection 9.826(2)(a) to encourage use of native vegetation.**

(a) Installation—Native vegetation is encouraged to be used for all parking area landscaping except within 100 feet of a natural resource area. In such situations, native vegetation is required. All landscaping shall be installed in a sound workmanship like manner and according to ~~accepted good~~ best practice planting procedures with the quality of plant materials as hereinafter described. All elements of landscaping exclusive of plant material except hedges shall be installed so as to meet all other applicable ordinances and code requirements. Landscaped areas shall require protection from vehicular encroachment as herein provided in Section 9.825. A qualified representative of the agency charged with the issuance of building permits shall inspect all landscaping and no Certificates of Occupancy or similar authorization will be issued unless the landscaping meets the requirements herein provided.

**17. Amend Subsection 9.826(3)(a) and (b) to allow bio-retention facilities on the perimeter of parking lots.**

(a) Required Landscaping Adjacent to Public Rights-Of-Way--A strip of land at least 5 feet in width located between the abutting right-of-way and the off-street parking area or vehicle use area which is exposed to an abutting right-of-way, except in required vision clearance areas as provided in Section 9.826(3)(d). Landscaped areas may include water quality features such as bio-swales or wetlands, trees, grass, shrubs, and other plant material so as to cover the landscape area.

(b) Perimeter Landscaping Relating to Abutting Properties--On the site of a building or structure or open lot use providing an off-street parking area or other vehicular use area, where such areas will not be entirely screened visually by an intervening building or structure from abutting property, a 5-foot landscaped strip shall be between the common lot line and the off-street parking area or other vehicular use area exposed to abutting property. Landscaped areas may include water quality

features such as bio-swales or wetlands, trees, grass, shrubs, and other plant material so as to cover the landscape area.

**18. Amend Subsection 9.830(7) to allow walkways be constructed with pervious paving:**

- (7) Walkways shall be paved with hard-surfaced materials such as pervious or standard concrete or asphalt, stone, brick, etc. Walkways may be required to be lighted and/or signed as needed for safety purposes. (Ord. 98-05; 3/23/98)

**19. Amend Subsection 9.855 (1) to acknowledge the need for other approvals with or prior to site plan review:**

- (1) To ensure compliance with the provisions of this ordinance, prior to the issuance of a building permit for the construction of any new building within the city, and prior to any grading, excavation or filling or other site modification within an ER zone flood management or within 100 feet of a natural resource area or areas having a slope of 20 percent or greater, there shall be submitted to the Community Development Department for review and approval, or approval with modifications, a site plan (showing any grading, excavating or filling) drawn to scale of the entire property developed and of the proposed construction. For flood management areas, information required by Section 5.800 et. seq. of the Municipal Code. For natural resource areas, compliance with applicable requirements of Section 9.944 and 9.971. For areas with slopes of 20 percent or greater, the submission of a geological assessment and geotechnical report prepared and stamped by a Certified Engineering Geologist who is a registered geologist certified in the specialty of Engineering Geology under provisions of ORS 672.505 to 672.705. The assessment and report shall address the entire site and meet the following requirements:

- (a) The geological assessment shall include information and data regarding the nature, distribution of underlying geology, and the physical and chemical properties of existing soils; an opinion as to stability of the site, and conclusions regarding the effect of geologic conditions on the proposed development.
- (b) The geotechnical report shall include a comprehensive description of the site topography and geology; an opinion as to the adequacy of the proposed development from an engineering standpoint; and opinion as to the extent that instability on adjacent properties may adversely affect the project; a description of the field investigation and findings; conclusions regarding the effect of geologic conditions on the proposed development; and specific requirements for plan modification, corrective grading and special techniques and systems to facilitate a safe and stable development. The report shall provide other recommendations as necessary, commensurate with the project grading and development.

Where applicable, applications for other approvals shall be submitted prior to or concurrent with the site plan application. Said site plan may be submitted simultaneously or prior to application for a building permit. The site plan submittal shall include the items listed in Section 9.855(2) of this ordinance, except that the Community Development Director or his designee, may waive certain of these submittal items in the case of applications for single and two-family dwellings. Notice of application shall be provided pursuant to Section 9.915 of this ordinance. Upon review and approval by the Community Development Director or his designee, the site plan shall act as the official plan of development for that parcel, and any grading, excavating, filling, construction of the building(s), or use(s) to occur on that site shall be in strict compliance with the approved site plan. Should, at a later date, it be deemed necessary by the property owner to vary from the approved site plan, an application shall be filed with the Community Development Department requesting an amendment to the approved site plan. Any amendment to the site plan shall follow the same procedure as set forth in this Section. (Ord. 92-01, 1/13/92)

**20. Amend Subsection 9.855(4)(e) to eliminate the restriction of piped storm water lines to allow for open swales:**

- (e) Storm Sewer Lines and Facilities--Private storm drain lines shall be required to connect with public storm sewer lines that comply with the City's Master Storm Sewer Plan or to existing lines that can be shown to be adequate for the development proposed. ~~In no case shall storm drainage be permitted in open ditches.~~ An alternate storm water retention and disposal system may be approved by the City Engineer including the use of open swales. The provision of public storm drain lines that comply with the Master Storm Sewer Plan or an alternate system meeting the City Engineer's approval shall be guaranteed prior to the issuance of a building permit, as provided in Section 9.855(3).

**21. Amend Subsection 9.858(3)(b) to specify native vegetation to be used in buffer areas.**

- (b) At least 75% of the required landscaped area shall be planted with any suitable combination of native trees, shrubs, or ~~evergreen~~ ground cover. The required 75% coverage shall be accomplished and shall be based on the size of the plant material within a specified time as follows:
- (i) Trees--Within 5 years from the date of final inspection by the Building Official.
  - (ii) Shrubs--Within 2 years from the date of final inspection by the Building Official.
  - (iii) Ground Covers--At the time of final inspection by the Building Official.

22. Amend Section 9.940, Intent Statement of the Tree Protection Ordinance, as follows:

9.940 **INTENT.** The trees of Forest Grove, a reminder of the City's namesake, offer historic, aesthetic, spiritual, social, environmental, and monetary values to the community. To ensure the success of the urban forestry program, the tree management ordinance establishes governing guidelines, a legal framework, and authority for the community forestry program. This ordinance seeks to enhance the quality of life in Forest Grove by promoting good stewardship that will ensure the continued health and well-being of the community forest. This ordinance creates a protected status for trees as listed below:

- (1) Street Trees: Any woody perennial plant permitted by the City to be planted in the public right-of-way. Typically a 1 3/4-inch caliper or larger nursery stock tree.
- (2) Natural Resource Vegetation: Trees and vegetation within ~~wetlands or wetland buffer areas, flood plains, within 30 feet of center line of mapped drainage ways, and open space areas~~ Natural Resource Areas the Comprehensive Plan.
- (3) Trees on Developable Land: Trees which have a diameter of 6 inches or larger, measured at 4.5 feet above natural grade, and are on land subject to or undergoing development review. Development review includes site review, subdivision review, partition review, building permit review and design review.
- (4) Trees on Approved Site Plan: These trees were existing and/or shown on site plans, and are part of an approved development.
- (5) Register Trees: Trees placed on a register list (includes tree groves) as defined in this ordinance. Register Trees may include trees from any of the above categories as well as on private property.

Where any tree falls into more than one category, the most restrictive criteria apply.

23. Amend Section 9.941 to add the following definitions:

**Building site** - The area on a lot or parcel that is designated to contain a structure, impervious surface, or non-native landscaping.

**Building footprint** - The area that is covered by buildings or other roofed structures. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building footprint also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage. Underground facilities and structures are defined based on the foundation line.

**Developed areas not providing vegetative cover** - are areas that lack sufficient vegetative cover to meet the one-acre minimum mapping units of any other type of vegetative cover.

**Developed floodplain** - Any man-made change to improved or unimproved lands within a FEMA defined floodplain, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavation, or storage of equipment and materials.

**Development** - Any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than: either 10 percent or 20,000 square feet of the vegetation in the Habitat Conservation Areas on the lot is defined as development. When individual trees are removed, the area contained within the tree's drip line shall be the basis for calculating the square footage of vegetation removed.

Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Titles 3 and 13.

**Disturb** - Man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition:

- enhancement or restoration of the Water Quality Resource Area;
- planting native cover identified in the Metro Native Plant List.

**Disturbance Area** - An area that contains all temporary and permanent development, exterior improvements, and staging and storage areas on the site. For new development the disturbance area must be contiguous. The disturbance area does not include agricultural and pasture lands or naturalized areas.

**Dripline** - The outermost edge of a tree's canopy; when delineating the drip line on the ground, it will appear as an irregularly shaped circle defining the canopy's perimeter.

**Ecological functions** - The primary biological and hydrologic characteristics of healthy fish and wildlife habitat. Riparian ecological functions include microclimate and shade, streamflow moderation and water storage, bank stabilization and sediment/pollution control, sources of large woody debris and natural channel dynamics, and organic material sources. Upland wildlife ecological functions include size of habitat area, amount of habitat with interior conditions, connectivity of habitat to water resources, connectivity to other habitat areas, and presence of unique habitat types.

**Effective Impervious Area** - A subset of total impervious area that is hydrologically connected via sheet flow or discrete conveyance to a drainage system or receiving body of water

**Emergency** - Any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

**Engineer** - A registered professional engineer licensed by the State of Oregon.

**Enhancement** - The process of improving upon the natural functions and/or values of an area or feature that has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate beneficial processes and features that occur naturally.

**Erosion** - Erosion is the movement of soil particles resulting from actions of water or wind.

**Fill** - Any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a Title 3 wetland or floodplain for the purposes of development or redevelopment.

**Floodplain** - The land area identified and designated by the United States Army Corps of Engineers, the Oregon Division of State Lands, FEMA, or (identify name) county/city that has been or may be covered temporarily by water as a result of a storm event of identified frequency. It is usually the flat area of land adjacent to a stream or river formed by floods.

**Floodway** - The portion of a watercourse required for the passage or conveyance of a given storm event as identified and designated by the (identify name) city/county pursuant to this Ordinance. The floodway shall include the channel of the watercourse and the adjacent floodplain that must be reserved in an unobstructed condition in order to discharge the base flood without flood levels by more than one foot.

**Forest canopy** - Areas that are part of a contiguous grove of trees of one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature.

**Habitat-friendly development** - A method of developing property that has less detrimental impact on fish and wildlife habitat than does traditional development methods. Examples include clustering development to avoid habitat, using alternative materials and designs such as pier, post, or piling foundations designed to minimize tree root disturbance, managing storm water on-site to help filter rainwater and recharge groundwater sources, collecting rooftop water in rain barrels for reuse in site landscaping and gardening, and reducing the amount of effective impervious surface created by development.

**Invasive non-native or noxious vegetation** - Plant species that are listed as nuisance plants or prohibited plants on the Metro Native Plant List as adopted by Metro Council resolution because they are plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities.

**Lot** - Lot means a single unit of land that is created by a subdivision of land. (ORS 92.010).

**Low structure vegetation or open soils** - Areas that are part of a contiguous area one acre or larger of grass, meadow, crop-lands, or areas of open soils located within 300 feet of a surface stream (low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, crop-lands,

orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger).

**Mitigation** - The reduction of adverse effects of a proposed project by considering, in the order: a) avoiding the impact all together by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; c) rectifying the impact by repairing, rehabilitating or restoring the affected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and e) compensating for the impact by replacing or providing comparable substitute water quality resource areas or habitat conservation areas.

**Native vegetation or native plant** - Vegetation listed as a native plant on the Metro Native Plant List as adopted by Metro Council resolution and any other vegetation native to the Portland metropolitan area provided that it is not listed as a nuisance plant or a prohibited plant on the Metro Native Plant List.

**Open space** - Land that is undeveloped and that is planned to remain so indefinitely. The term encompasses parks, forests and farmland. It may also refer only to land zoned as being available to the public, including playgrounds, watershed preserves and parks.

**Owner or property owner** - The person who is the legal record owner of the land, or where there is a recorded land sale contract, the purchaser thereunder.

**Partition** - Partition means to divide land into two or three parcels of land within a calendar year. (ORS 92.010)

**Phased development project** - A phased development plan includes the following:

- A site plan showing the proposed final development of the site and phases, including the initial and interim phases.
- A written statement describing each phase, including the potential uses, and the approximate timeline for each phase of development.

**Practicable** - means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose and probable impact on ecological functions.

**Redevelopment** – Development that occurs on sites that have previously been developed.

**Restoration** - The process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

**Riparian** - Those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

**Routine repair and maintenance** - Activities directed at preserving an existing allowed use or facility, without expanding the development footprint or site use.

**Set-back adjustment** - The placement of a building a specified distance away from a road, property line or protected resource.

**Significant negative impact** - An impact that affects the natural environment, considered individually or cumulatively with other impacts on the HCA, to the point where existing fish and wildlife habitat functional values are degraded.

**Statewide Land Use Planning Goal 5** - Oregon's statewide planning goal that addresses open space, scenic and historic areas, and natural resources. The purpose of the goal is to conserve open space and protect natural and scenic resources.

**Steep slopes** - Steep slopes are those slopes that are equal to or greater than 25%. Steep slopes have been removed from the "buildable lands" inventory and have not been used in calculations to determine the number of acres within the urban growth boundary that are available for development.

**Stormwater pre-treatment facility** - Any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

**Stream** - A body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.

**Structure** - A building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles or irrigation system components, that are not customarily regulated through zoning codes.

**Subdivision** - A Subdivision of land means to divide land into four or more lots within a calendar year. (ORS 92.010).

**Top of Bank** - The same as "bankful stage" defined in OAR 141-85-010.

**Urban Growth Boundary or UGB** - means an urban growth boundary adopted pursuant to ORS chapter 197.

**Utility facilities** - Buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

**Variance** - means a discretionary decision to permit modification of the terms of an implementing ordinance based on a demonstration of unusual hardship or exceptional circumstances unique to a specific property.

**Water-dependent** - A use which can be carried out only on, in, or adjacent to water because it requires access to the water for waterborne transportation or recreation. Water-dependent also includes development, which by its nature, can be built only on, in, or over water. Bridges supported by piers or pillars, as opposed to fill, are water-dependent development.

**Water feature** - All rivers, streams (regardless of whether they carry year-round flow, i.e., including intermittent streams), springs which feed streams and wetlands and have year-round flow, Flood Management Areas, wetlands, and all other bodies of open water.

**Watershed** - A watershed is a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake or wetland.

**Wetlands** - Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.

**Woody vegetation** - Areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.

24. **Amend Section 9.944, Trees in Natural Resource Areas, as follows:**

9.944 **TREES IN NATURAL RESOURCE AREAS.**

- (A) Additional Information Requirements. An applicant who wishes to remove vegetation or do work within a Natural Resource Area (NRA) shall submit for a tree permit. It shall include the information required by this subsection. The information shall be submitted either prior to or concurrent with a site development or conditional use permit or planned development application required by the Zoning Ordinance or a preliminary subdivision or partition application required by Land Division Ordinance. Where no land use permit is required, the tree permit shall be submitted and approved prior to any physical modification of the subject site. ÷
- (1) Applicants must verify the natural resource area on their property as described in Section 9.944 (H).

- (2) Information indicating the area being affected; and For the entire subject property (natural resource area and non-natural resource area), applicants must submit a scale map of the property that includes:
- (a) Location of all natural resource areas on the property;
  - (b) Outline of any existing disturbance area, including the location of existing adjacent streets and paved areas, utilities, culverts, stormwater management facilities, or bridges;
  - (c) Location of any wetlands or water bodies on the property, including a delineation of the sensitive lands and vegetative corridors consistent with Clean Water Services Design and Construction Standards;
  - (d) Location of 100 year floodplain and floodway boundary as defined by Section 5.805 and determined by Section 5.815 of the Municipal Code; and
  - (e) Topography shown by contour lines of 2-ft. intervals for slopes less than 15% and by 10 ft. intervals for slopes 15% or greater. On properties that are two acres or larger, such a contour map is required only for the portion of the property to be developed.
- (3) The nature of the work proposed, and/or the reasons for removal of vegetation. If applicable, this shall include detailed site plan of proposed development outlining total disturbance area, including, proposed building footprints, site property improvements, utilities and landscaping.
- (4) The following additional information shall be provided about the natural resource area:
- (a) For properties containing less than one acre of natural resource area, the location of all trees within the natural resource area that are greater than six inches diameter at breast height (DBH), shall be identified by size and species. For properties containing one acre or more of natural resource area, the applicant may approximate the number of trees and the diameter range, and provide a listing of the dominant species;
  - (b) For proposed disturbance areas containing less than one acre of natural resource area, all trees with a diameter of six inches or greater that will be removed shall be specifically identified as to diameter at breast height (DBH) and species. For proposed disturbance areas containing one acre or more of natural resource area an approximate of the number of trees, their diameters and the dominant species; and

- (c) If grading will occur within the natural resource area, a grading plan showing the proposed alteration of the ground at 1-ft. vertical contours in areas of slopes less than 5%, and 2-ft. vertical contours in areas of slopes 6-15%, and at 5-ft. vertical contours of slopes 15% or greater.
  - (5) A plan for mitigation or re-vegetation consistent with the applicable mitigation requirements of Section 9.944 (F) or (G); and
  - (6) Evidence of submittal of appropriate applications to local, state and/or federal agencies as required.
- (B) Exempt Uses and Conditioned Activities. The following uses and activities are exempt from the requirements of this Section:
- (1) Change of ownership.
  - (2) Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005; unless such development required obtaining a land use decision, or a building, erosion control, or grading permit.
  - (3) A building permit for a phased development project for which the applicant has previously met the application requirements, so long as the site for new construction was identified on the original permit and no new portion of the natural resource areas will be disturbed.
  - (4) Where a property has been subdivided under section (F)(5) of this ordinance, and the mitigation requirements of (F)(4) have been completed for the subdivision, development on the individual lots may proceed without further review under this ordinance.
  - (5) Limited types of development, redevelopment, operations, and improvements, including the following:
    - (a) Maintenance, alteration, expansion, repair and replacement of existing structures, provided that:
      - (i) The rebuilding of existing residential and non-residential structures damaged by fire or other natural hazards occurs within the same foundation lines ("building footprint"); and
      - (ii) The alteration, expansion, or replacement of a structure will not intrude more than 500 sq. ft. into the natural resource areas, and so long as the new intrusion is no closer to the protected water feature than the pre-existing structure or improvement.

- (b) Minor encroachments not to exceed 120 sq. ft. of impervious surface such as accessory buildings, eave overhangs, exterior building improvements for access and exiting requirements or other similar features.
- (c) Temporary and minor clearing not to exceed 200 square feet for the purpose of site investigations and pits for preparing soil profiles, provided that such areas are restored to their original condition when the investigation is complete.
- (d) Up to 10% of vegetative cover within the original mapped natural resource areas on a lot or parcel may be removed, provided that no more than 20,000 square feet is removed; and provided that if more than 10% has been removed at the time of a development application, the review process shall use the original mapped natural resource areas, subject to map verification, as the basis for determining the Maximum Disturbance Area in Subsection (F)(2) and Mitigation standards in Sections (F)(4) and (G)(2), (G)(3), (G)(4)(a)(ii) and (G)(4)(b)(iv).
- (e) Maintenance of existing gardens, pastures, lawns and landscape perimeters, including the installation of new irrigation systems within existing gardens, pastures, lawns, and landscape perimeters.
- (f) Removal of plants identified as nuisance or prohibited plants on the *Metro Native Plant List* and the planting or propagation of plants identified as native plants on the *Metro Native Plant List*. Handheld tools must be used to remove nuisance or prohibited plants, and after such removal all open soil areas greater than 25 square feet must be replanted.
- (g) Maintenance, alteration, repair, and replacement of roads and utilities when no additional incursion into the natural resource areas is proposed.
- (h) Maintenance and repair of existing streets, railroads, shipping terminals, and utilities within rights-of-way, easements, and access roads.
- (i) Existing water-dependent uses that can only be carried out on, in, or adjacent to water because they require access to the water for waterborne transportation or recreation.
- (j) Operation, maintenance, and repair of manmade water control facilities such as irrigation and drainage ditches, constructed ponds or lakes, wastewater facilities, and stormwater pretreatment facilities.
- (k) Projects with the sole purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas, provided that the project is part of an approved local, state, or federal restoration or enhancement plan.

- (l) Low-impact outdoor recreation facilities for public use, outside of Water Quality Resource Areas, including, but not limited to, multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that the facility meets the following requirements:
- (i) It contains less than 500 sq. ft. of new impervious surface; and,
  - (ii) Its trails shall be constructed using non-hazardous, pervious materials, with a maximum width of four feet.
- (6) Emergency procedures or activities undertaken which are necessary to remove or abate hazards and nuisances or for the protection of public health, safety and welfare; provided that such remedial or preventative action must take place within a timeframe too short to allow for compliance with the requirements of this ordinance. After the emergency, the person or agency undertaking the action shall fully restore any impacts to the natural resource areas resulting from the emergency action. Hazards that may be removed or abated include those required to maintain aircraft safety.

(C) Prohibitions

- (1) The planting of any invasive non-native or noxious vegetation is prohibited within the NRA.
- (2) Outside storage of materials is prohibited within the NRA, unless such storage began before the effective date of this ordinance; or, unless such storage is approved during development review under either Subsection (F) or (G).

(D) Criteria. The request for vegetation removal shall be approved based on the criteria below:

- (1) The permanent impact will be negligible or minor and mitigation meets the requirements of this subsection, subsection (F)(4) or that allowed by Subsection (G).
- (2) The removal is necessary to prevent the spread of disease or insects declared to be a nuisance by a government agency or qualified arborist, or to correct or eliminate a natural hazard (as identified by the City or qualified arborist) to the property owner, surrounding properties, or community at large.
- (3) The loss of value will be of temporary duration of two years or less until new vegetation can be established, or the mitigation plan provides satisfactory replacement of the lost vegetation and establishment of a new resource area of equal value to be completed within two planting seasons. Mitigation for lost vegetation is preferred on-site, or within the immediate vicinity of the subject site.

Off-site mitigation may be approved if there is no reasonable alternative and a method of guaranteeing permanent use of the area off-site is found, such as dedication of the area to a public entity, easement or deed restriction.

- (4) Timetables for the work shall be established which minimize the impact on wildlife.
  - (5) Notwithstanding the above criteria, intrusion into the natural resource area is allowed provided the requirements in Subsection (F) or (G) are met.
- (E) Construction Management Plans: In order to ensure that trees and vegetation within NRAs are not damaged during construction, all applicants, even those not developing within an NRA, shall provide a construction management plan that includes the following information:
- (1) Location of site access and egress that construction equipment will use;
  - (2) Equipment and material staging and stockpile areas;
  - (3) Erosion and sediment control measures; and
  - (4) Measures to protect trees and other vegetation located within the NRA, but outside of the disturbance area approved under the provisions of Subsection (F) or (G).
- (F) Standards. The following standards are to be met when the subject site contains natural resource areas. In order of preference, these natural resource areas are to be avoided when development as allowed by the underlying zone district can be achieved outside the area or through alternative site design allowed by a planned development; minimize intrusion into the area to the extent feasible; or mitigate impacts from intrusions where no feasible alternatives exists. The following standards shall apply to achieve these avoid, minimize or mitigate objectives. As an alternative, the applicant may submit for discretionary approval pursuant to Section 9.944 (G):
- (1) Methods for avoiding or minimizing disturbance in Natural Resource Areas. The following habitat-friendly development practices may be used to avoid or minimize development within NRAs by allowing flexible site design:
    - (a) Building setback flexibility to avoid, or minimize, development within NRAs. The minimum building setback of the base zone may be reduced to any distance between the base zone minimum and zero, unless this reduction conflicts with applicable fire or life safety requirements.
    - (b) Flexible landscaping requirements to avoid, or minimize, development within NRAs.
      - (i) Landscaping requirements, apart from those required for parking lots or street berms, may be met by preserving the NRA.

- (ii) Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the NRA so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strip, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.
- (c) Flexible Site Design (On-site Density Transfer) to avoid or minimize development within NRAs.
- (i) Residential. For residential development, up to 100 percent of the development that could be allowed on lands within a natural resource area can be transferred other portions of the property outside the resources area.
  - (ii) In order to accommodate the transferred density, dimensional standards and lot sizes may be adjusted by no more than 20 percent. (30% reduction can be used)
  - (iii) Commercial and Industrial developments shall avoid natural resource areas unless no other practicable alternative is available.
  - (iv) Mixed-Use Zones. Within mixed-use zones the density transfer credit can be factored using either (i) or (ii) above, depending on the type of development proposed.
- (d) Site Capacity Incentives. The following site capacity standards provide flexibility in the design of land divisions in order to allow ways to better protect NRAs.
- (i) Density bonus if NRA is protected. In the Multi-Family (A-2) Residential Zone District, a 25 percent density bonus over the based density may be allowed for any development of four (4) or more dwelling units if 75 percent or more of the NRA on a site is permanently preserved.
  - (ii) All area within a NRA, or any portion of it, may be subtracted from the calculations of net size for purposes of determining minimum density provided that such area is protected. This provision may only be applied to properties that were inside the Metro UGB on January 1, 2002.
  - (iii) Projects can be developed below minimum density allowed by the zone district if the natural resource area is protected. This

provision may only be applied to properties that were inside the Metro UGB on January 1, 2002.

- (e) All natural resource areas that are preserved shall be permanently restricted from development and maintained for habitat functions, such as by making a public dedication or executing a restrictive covenant.
- (2) Development within NRA. The following development standards apply to all development that occurs within the NRA except for exempt uses and conditioned activities addressed in Subsection (B) and utility facilities addressed in subsection (F)(3). If all development occurs outside of an NRA on a property, these standards do not apply. These standards also do not apply to development that occurs pursuant to the standards established by the alternative discretionary development standards in Subsection (G).

(a) Disturbance area limitations to minimize impact to NRA.

- (i) Single-family residential. The maximum disturbance area (MDA) allowed within NRAs HCAs is determined by subtracting the area of the lot or parcel outside of Habitat Conservation Area (HCA) from the total disturbance area (TDA) calculated as described in Table 1 below.

(TDA – Area outside the HCA = MDA)

I Moderate and Low HCAs are subject to the same disturbance area limitations.

II Calculation of maximum disturbance area. If a lot or parcel includes both High and Moderate/Low HCAs then:

(A) If there is more High HCA than Moderate/Low HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were High, per Table 1 below; or

(B) If there is more Moderate/Low HCA than High HCA on the lot or parcel, then the MDA shall be calculated as if all of the Moderate/Low and High HCA were Moderate/Low, per Table 1 below.

III Location of MDA. If a lot or parcel includes different types of HCAs, then:

(A) The amount of development that may occur within the High HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the

High HCA (TDA – non-High HCA = MDA). If the area of the lot or parcel outside the High HCA is greater than the total disturbance area, then development shall not occur within the High HCA:

(Area outside High HCA > TDA = no development in High HCA);

- (B) The amount of development that may occur within the Moderate HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High and Moderate HCA (TDA – (Low HCA + non-HCA) = MDA). If the area of the lot or parcel outside the Moderate HCA is greater than the total disturbance area, then development shall not occur within the Moderate HCA:

(Area outside Moderate HCA > TDA = no development in Moderate HCA); and

- (C) The amount of development that may occur within the Low HCA is equal to the total disturbance area minus the area of the lot or parcel outside of the High, Moderate and Low HCA (TDA – non-HCA = MDA). If the area of the lot or parcel outside the Low HCA is greater than the total disturbance area, then development shall not occur within the Low HCA:

(Area outside Low HCA > TDA = no development in Low HCA).

**Table 1. Total Disturbance Area Limitations for Single Family Residential Zone Districts.**

<u>HCA Type</u>	<u>Habitat type</u>	<u>Total Disturbance Area (TDA)</u>
<u>High</u>	<u>Class I</u>	<u>50 percent of the lot area, up to maximum of 5,000 sq. ft.</u>
<u>Moderate/Low</u>	<u>Class II</u>	<u>65 percent of the lot area, up to maximum of 6,000 sq. ft.</u>
<u>Moderate/Low</u>	<u>Uplands Class A and B for properties brought into the UGB after January 5, 2006</u>	<u>65 percent of the lot area, up to maximum of 6,000 sq. ft.</u>
<u>No HCA or NRA</u>	<u>Uplands Class A and B within the UGB as of January 5, 2006</u>	<u>N/A</u>

(ii) All other zones. The maximum disturbance area (MDA) allowed by right within Natural Resource Areas in these zones is found in Tables 2 and 3 below; this MDA is subject to the mitigation requirements described in subsection (F)(4).

**Table 2. NRA Disturbance Area Limitations for Riparian Areas for all zones other than SFR.**

<u>Riparian Class and Zone District</u>	<u>Maximum Disturbance Area (MDA)</u>
<u>Class I – A-1, A-2, CC, CN, CH, LI, GI</u>	<u>10 percent of NRA on site</u>
<u>Class I – CBD, A-2 Class II – A-1, A-2</u>	<u>15 percent of NRA on site</u>
<u>Class II - CC, CN, CH, LI, GI</u>	<u>50 percent of NRA on site</u>

**Table 3. NRA Disturbance Area Limitations for Upland Areas for all zones other than SFR**

<u>Upland Class and Zone District for property brought into UGB after January 5, 2006<sup>1</sup></u>	<u>Maximum Disturbance Area</u>
Class A: CC, CN, CH, LI, GI; Class B: A-1, A-2	15 percent of NRA on site
Class A: CBD; Class B: CC, CN, CH, LI, GI	50 percent of NRA on site

<sup>1</sup>There is no uplands classification for lands within the UGB as of January 5, 2006.

(iii) Parks and Open Space

- I. Publicly owned property designated for open space or for habitat on the City's Park, Recreation and Open Space Master Plan shall be limited to vegetation removal for trail development. Any other vegetation removal shall be mitigated by replanting consistent with this Section.
- II. Parks intended for active recreational purposes as designated on the City's Park, Recreation and Open Space Master Plan shall not be considered in an NRA.

(iv) Development within an NRA in accordance with the provisions of this ordinance shall not result in a change of the NRA status of such developed areas on a property. In the case of a later development request seeking to develop within previously undisturbed NRAs on a property where a prior development request was subject to the provisions of this ordinance, the calculation of the MDA allowed on the property shall be based on the location of the NRA, notwithstanding the location of any authorized development within the NRA.

(b) Protection of habitat during site development. During development of any site containing a NRA, the following standards apply:

- (i) Work areas shall be marked to reduce potential damage to the NRA.
- (ii) Trees in NRAs shall not be used as anchors for stabilizing construction equipment.
- (iii) Native soils disturbed during development shall be conserved on the property.



- (i) Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site must be replaced as shown in Table 2. Conifers must be replaced with conifers. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

**Table 2. Tree Replacement**

<u>Size of tree to be removed (inches in diameter)</u>	<u>Number of trees and shrubs to be planted</u>
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

- (ii) Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the disturbance area within a NRA. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area. Bare ground must be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.
- (b) Plant size. Replacement trees must be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.
- (c) Plant spacing. Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.

- (d) Plant diversity. Shrubs must consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
- (e) Location of mitigation area. All vegetation must be planted on the applicant's site within the NRA or in an area contiguous to the NRA; provided, however, that if the vegetation is planted outside of the NRA then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant.
- (f) Invasive vegetation. Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.
- (g) Tree and shrub survival. A minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation is completed.
- (h) Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind. For a period of five years, the property owner must submit an annual report to (list appropriate city or county department) documenting the survival of the trees and shrubs on the mitigation site. *[Optional: the city or county may require the property owner to post a performance bond in the amount sufficient to cover costs of plant material and labor associated with site preparation, planting, and maintenance in lieu of the monitoring and reporting requirement.]*
- (i) To enhance survival of the mitigation plantings, the following practices are required:
  - (i) Mulching. Mulch new plantings a minimum of three inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
  - (ii) Irrigation. Water new plantings one inch per week between June 15th to October 15th, for the three years following planting.
  - (iii) Weed control. Remove, or control, non-native or noxious vegetation throughout maintenance period.
- (j) To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:
  - (i) Planting season. Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.

- (ii) Wildlife protection. Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and resulting damage to plants.
- (5) Standards for Partitions and Subdivisions standards. The purpose of this section is to allow for partitions in a manner that limits the total amount of allowable development within NRAs on the partitioned parcels; and to require that new subdivision plats delineate and show the Moderate and High NRAs as a separate unbuildable tract.
  - (a) Standards for Partitions containing NRAs:
    - (i) When partitioning a property into parcels, an applicant shall verify the boundaries of the NRA on the property according to Subsection (H).
    - (ii) Applicants who are partitioning, but are not simultaneously developing their property, do not need to comply with Subsection (E).
    - (iii) When partitioning a property into parcels there shall be no more than a 30% percentage point difference in the percentage of NRA on the parcels; for example, a partition that produces two parcels, one that is 55% NRA and the other that is 35% NRA is permissible; whereas a partition that produces two parcels, one that is 75% NRA and the other that is 30% NRA is not permissible. However, an applicant may partition a property such that at least 90% of the original property's High NRA and 80% of its moderate NRA is on a separate unbuildable parcel, protected by a restrictive covenant or a public dedication.
    - (iv) Subsequent development on any parcels containing NRAs shall comply with Subsection (E), and the development standards of either Subsection (F) or (G).
  - (b) Standards for Subdivisions:
    - (i) Applicants who are sub-dividing, but not developing, must verify the location of the NRA boundary according to Subsection (H) of this ordinance, and comply with this subsection (F)(5); such applicants do not need to comply with Subsection (E). Applicants who are sub-dividing, but not developing, property may:
      - I Complete the mitigation requirements of section (F)(4) and thereby exempt all subsequent development on lots

containing NRA from further review under this ordinance;  
or

II Not complete the mitigation requirements of section (F)(4), thus requiring that any subsequent development within an NRA be subject to this ordinance.

(ii) Applicants who are sub-dividing and developing properties must comply with Subsections (E), (F), or (G) and (H).

(iii) When a property containing any NRA is subdivided, this ordinance requires that new subdivision plats delineate and show 80 percent of the NRA as a separate unbuildable tract according to the following process:

(iv) If the tract is adjacent to the backyard for residences, the minimum backyard requirement is reduced to 10 ft.

(v) The standards for land divisions in Moderate and High NRAs shall apply in addition to the requirements of the city/county land division ordinance and zoning ordinance.

(vi) Prior to preliminary plat approval, the NRA shall be shown as a separate tract, which shall not be a part of any lot used for construction of a dwelling unit.

(vii) Prior to final plat approval, ownership of the NRA tract shall be identified to distinguish it from lots intended for sale. The tract may be identified as any one of the following:

I Private natural area held by the owner or homeowners association by a restrictive covenant; or

II For residential land divisions, private natural area subject to an easement conveying storm and surface water management rights to the city and preventing the owner of the tract from activities and uses inconsistent with the purpose of this ordinance; or

III At the owner's option, public natural area where the tract has been dedicated to the city or other governmental unit, or a private non-profit with the mission of land conservation.

(G) Alternative Discretionary Development Standards. Applicants may choose to use the alternative discretionary development standards provided in this section rather than the

development standards provided in Subsection (F). There are four discretionary review processes provided in this section: subsection (1) provides discretionary review for an applicant seeking only to partition a property; subsection (2) provides discretionary review for an applicant who will comply with the development standards in Subsection (F) of this ordinance, except that the applicant seeks to meet the mitigation requirements of that section on a different property from the property on which a NRA will be disturbed; subsection (3) provides discretionary review for an applicant who will comply with the development standards in Subsection (F), except that the applicant seeks to meet the mitigation requirements of that section by proportionally varying the number and size of plants required to be planted; and subsection (4) provides general discretionary review standards applicable to an applicant seeking some other type of discretionary approval of development that will disturb an NRA.

(1) Discretionary Review for Partitions. An applicant seeking to partition land in ways that do not accord with the standards established in Subsection (F)(5)(a) may seek review under this subsection (G)(1).

(a) The applicant shall verify the boundaries of the NRAs on the property according to Subsection (H).

(b) The applicant shall submit the following application materials:

(i) A scale map of the entire property that includes:

I Location of all NRA on the property;

II Location of any wetlands or water bodies on the property, including a delineation of the Water Quality Resource Area;

III Location of 100 year floodplain and floodway boundary as defined by the Federal Emergency Management Agency (FEMA) and the area of the 1996 flood inundation; and

IV A delineation of the proposed partition.

(ii) A written and documented explanation of how and why the proposed partition satisfies the approval criteria in subsection (G)(1)(c). Such written documentation shall include an alternatives analysis of different possible partition plans, based on the characteristics and zoning of the property.

(c) Approval Criteria. A partition shall be approved under this subsection (G)(1) provided that the applicant demonstrates that it is not practicable to comply with the partition standards in Section (F)(5)(a), and that the applicant's partition plan will result in the smallest practicable percentage

point difference in the percentage of NRA on the parcels created by the partition (this will minimize the amount of allowable disturbance areas within NRAs on the parcels, assuming that the development standards in this Section 6 were applied to future development on such parcels).

(d) Subsequent development on any parcels created by the partition and containing NRAs shall comply with all provisions of this ordinance, except that the map verification completed and approved as part of the partition may be used to satisfy the requirements of Subsection (H) for any such development.

(2) Discretionary Review To Approve Off-Site Mitigation. An applicant seeking discretionary approval only for off-site mitigation within the same subwatershed (6<sup>th</sup> Field Hydrologic Unit Code), but who will comply with all other provisions of Section F, may seek review under this subsection (G)(2). (An applicant who seeks to conduct the mitigation in a different subwatershed may apply for such approval under subsection (G)(4).)

(a) The applicant shall submit:

(i) A calculation of the number of trees and shrubs the applicant is required to plant under Section (F)(4) of this ordinance; and

(ii) A map and accompanying narrative that details the following:

I The number of trees and shrubs that can be planted on-site;

II The on-site location where those trees and shrubs can be planted;

III An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and

IV The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a NRA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.

(b) Approval Criteria. Off-site mitigation shall be approved under this subsection (G)(2) provided that the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant

has documented that it can carry out and ensure the success of the off-site mitigation on a property within the same subwatershed (6<sup>th</sup> Field Hydrologic Unit Code) as the related disturbed NRA.

(c) Mitigation approved under this subsection (G)(2) shall be subject to all of the requirements of subsection (F)(4), except for the requirements of subsection (F)(4)(e).

(3) Discretionary Review To Approve Mitigation That Varies the Number and Size of Trees and Shrubs. An applicant seeking discretionary approval only to proportionally vary the number and size of trees and shrubs required to be planted under subsection (F)(4), for example to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs, but who will comply with all other provisions of Subsection (F), may seek review under this subsection (G)(3).

(a) The applicant shall submit:

(i) A calculation of the number of trees and shrubs the applicant would be required to plant under Subsection (F)(4);

(ii) The numbers and sizes of trees and shrubs that the applicant proposes to plant;

(iii) An explanation of why the numbers and sizes of trees and shrubs that the applicant proposes to plant will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of subsection (F)(4). Such explanation shall be prepared and signed by a knowledgeable and qualified natural resources professional or a certified landscape architect and shall include discussion of plant diversity, plant spacing, site preparation including removal of invasive and noxious vegetation and soil additives, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control; and

(iv) The applicant's mitigation site monitoring and reporting plan.

(b) Approval Criteria. A request to vary the numbers and sizes of trees and shrubs to be planted shall be approved if the applicant demonstrates that its planting will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of subsection (F)(4) of this ordinance. Such determination shall take into consideration all of the information required to be submitted under subsection (G)(3)(a).

- (c) Mitigation approved under this subsection (G)(3) shall be subject to the requirements of subsections (F)(4)(d) through (F)(4)(i), and it is recommended that such mitigation also follow the practices recommended in subsection (F)(4)(j).
- (4) Discretionary Review. An applicant seeking discretionary approval to undertake any development activity within a NRA that does not comply with subsection (F) and is not described in subsections (G)(1), (2), or (3) may file an application under this Subsection (G)(4).
- (a) Application Requirements. The applicant shall provide all items described in subsection (A) and the following, except that for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project:
- (i) Impact Evaluation and Alternatives Analysis. An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria and to evaluate development alternatives for a particular property. The alternatives must be evaluated on the basis of their impact on the NRA, the ecological functions provided by the NRA on the property, and off-site impacts within the subwatershed (6<sup>th</sup> Field Hydrologic Unit Code) where the property is located. The impact evaluation shall include all of the following items:
- I Identification of the ecological functions of riparian habitat found on the property as described in Table 3 of this section and the habitat connectivity ecological functions described in subsection (G)(4)(a)(i)II(C) and (D).
- II For upland habitat in areas to be added to the Metro urban growth boundary areas after October 1, 2005, identification of the impact the proposed development would have on the following ecological functions provided by upland wildlife habitat:
- (A) Habitat patch size;
- (B) Interior habitat;
- (C) Connectivity of the habitat to water; and
- (D) Connectivity of the habitat to other habitat areas.

III Evaluation of alternative locations, design modifications, or alternative methods of development to determine which options reduce the significant detrimental impacts on the NRAs and the ecological functions provided on the property. At a minimum, the following approaches must be considered:

(A) The techniques described in subsection (F)(1);

(B) Multi-story construction;

(C) Minimizing building and development footprint;

(D) Maximizing the use of native landscaping materials;  
and

(E) Minimal excavation foundation systems (e.g., pier, post or piling foundation).

IV Determination of the alternative that best meets the applicable approval criteria and identification of significant detrimental impacts that are unavoidable.

**Table 3. Ecological functional values of riparian corridors.**

<u>Ecological function</u>	<u>Landscape features providing functional values</u>
<u>Microclimate and shade</u>	<u>Forest canopy or woody vegetation within 100 feet of a stream; a wetland<sup>1</sup>; or a flood area<sup>2</sup>.</u>
<u>Streamflow moderation and water storage</u>	<u>A wetland or other water body<sup>3</sup> with a hydrologic connection to a stream; or a flood area<sup>2</sup>.</u>
<u>Bank stabilization, sediment and pollution control</u>	<u>All sites within 50 feet of a surface stream;</u>  <u>Forest canopy, woody vegetation, or low structure vegetation/open soils within 100 feet of a stream or a wetland; or forest canopy, woody vegetation, or low structure vegetation/open soils within a flood area; and,</u>  <u>Forest canopy, woody vegetation, or low structure vegetation/open soils within 100-200 feet of a stream if the slope is greater than 25%.</u>
<u>Large wood and channel dynamics</u>	<u>Forest canopy within 150 feet of a stream or wetland; or within a flood area; and</u>  <u>The channel migration zone is defined by the floodplain, but where there is no mapped floodplain a default of 50 feet is established to allow for the channel migration zone.</u>
<u>Organic material sources</u>	<u>Forest canopy or woody vegetation within 100 feet of a stream or wetland; or within a flood area.</u>

<sup>1</sup> Refers to “hydrologically-connected wetlands,” which are located partially or wholly within ¼ mile of a surface stream or flood area.

<sup>2</sup> Developed floodplains are not identified as NRAs because they do not provide primary ecological functional value.

<sup>3</sup> “Other water body” could include lakes, ponds, reservoirs, or manmade water feature that is not a water quality facility or farm pond.

(ii) Mitigation Plan. The purpose of a mitigation plan is to compensate for unavoidable significant detrimental impacts to ecological functions that result from the chosen development alternative as identified in the impact evaluation. However, when development occurs within delineated wetlands, then the mitigation required under subsection (G)(4)(b)(iv) shall not require any additional mitigation than the mitigation required by state and federal law for the fill or removal of such wetlands.

I An applicant may choose to develop a mitigation plan consistent with the requirements of subsection (F)(4). If an

applicant so chooses, then the applicant shall submit a mitigation plan demonstrating such compliance.

II If an applicant chooses to develop an alternative mitigation plan that would not comply with the requirements of subsection (F)(4), including, for example, a proposal to create an alternative plant community type such as an oak savannah or a low-structure plant community, or where an applicant demonstrates that a portion of identified NRA on its property provides only impaired ecological functions, then the applicant shall submit a mitigation plan that includes all of the following:

(A) An explanation of how the proposed mitigation will adequately compensate for the impacts to ecological functions described in the impact evaluation required by subsection (G)(4)(a)(i). The applicant may use the mitigation that would be required under subsection (F)(4) as the baseline mitigation required to compensate for disturbance to a NRA that provides an average level of ecological functions. Such explanation shall include:

(1) If the applicant uses the mitigation that would be required under subsection (F)(4) as the baseline mitigation required to compensate for disturbance to a NRA, then the applicant shall submit a calculation of the number of trees and shrubs the applicant would be required to plant under subsection (F)(4);

(2) A site plan showing where the specific mitigation activities will occur and the numbers and sizes of trees and shrubs that the applicant proposes to plant; and

(3) A discussion of plant diversity, plant spacing, site preparation including removal of invasive and noxious vegetation and soil additives, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control.

- (B) Documentation of coordination with appropriate local, regional, special district, state, and federal regulatory agencies.
- (C) A list of all responsible parties.
- (D) The applicant's mitigation site monitoring and reporting plan.
- (E) If the proposed mitigation will not be conducted on-site, the applicant shall submit a map and accompanying narrative that details the following:
  - (1) The number of trees and shrubs that can be planted on-site;
  - (2) The on-site location where those trees and shrubs can be planted;
  - (3) An explanation of why it is not practicable for the remainder of the mitigation to occur on-site; and
  - (4) The proposed location for off-site mitigation and documentation that the applicant can carry out and ensure the success of the mitigation, including documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site, and, if the mitigation is not within a NRA, documentation that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.
- (F) If the mitigation area is off-site and not within the same subwatershed (6<sup>th</sup> Field Hydrologic Unit Code) as the related disturbed NRA, the applicant shall submit an explanation of why it is not practicable to conduct the mitigation within the same subwatershed and of why and how, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed.

- (G) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. If the applicant is proposing any in-stream work in fish-bearing streams as part of the mitigation project, then the applicant shall submit documentation that such work will be done in accordance with the Oregon Department of Fish and Wildlife in-stream work timing schedule.
- (iii) The Impact Evaluation and Alternatives Analysis required by subsection (G)(4)(a)(i) and the Mitigation Plan required by subsection (G)(4)(a)(ii) shall be prepared and signed by either (1) a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. The application shall include a description of the qualifications and experience of all persons that contributed to the Impact Evaluation and Alternatives Analysis and to the Mitigation Plan, and, for each person that contributed, a description of the elements of such reports to which the person contributed.
- (b) Approval Criteria.
- (i) All application requirements in subsection (G)(4)(a) shall be met.
- (ii) Avoid. An applicant shall first avoid the intrusion of development into the NRA to the extent practicable. The development that is proposed must have less detrimental impact to NRAs than other practicable alternatives, including significantly different practicable alternatives that propose less development within NRAs. If there is more than one type of NRA on a property then the applicant shall first avoid the intrusion of development into the higher-valued NRA, to the extent practicable, and the development that is proposed must have less detrimental impact to the higher-valued NRAs than other practicable alternatives. To avoid development in NRAs, and to the extent practicable, applicants shall use the approaches described in subsection (G)(4)(a)(i)III.
- (iii) Minimize. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the NRA, then the development proposed by the applicant within the NRA shall minimize detrimental impacts to the extent practicable. If there is more than one type of NRA on a property then the

development within higher-valued NRAs shall be considered more detrimental than development within lower-valued NRAs.

I Development must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed by right under the base zone, to the extent practicable;

II To the extent practicable within the NRA, the proposed development shall be designed, located, and constructed to:

(A) Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in subsection (F)(2)(b), reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post or piling foundation);

(B) Minimize adverse hydrological impacts on water resources such as by using the techniques described in Part (a) of Table 1 in Section 9.971, unless their use is prohibited by an applicable and required State or Federal permit issued to a unit of local government having jurisdiction in the area, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

(C) Minimize impacts on wildlife corridors and fish passage such as by using the techniques described in Part (b) of Table 8 of Section 9.971; and

(D) Consider using the techniques described in Part (c) of Table 1 of Section 9.971 to further minimize the impacts of development in the NRA.

(iv) Mitigate. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the NRA, then development must mitigate for adverse impacts to the NRA. All proposed mitigation plans must meet the following standards.

I The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by NRAs, after taking into consideration the applicant's efforts to minimize such detrimental impacts through the use of the techniques described in Table 1 in Section 9.971 and through any additional or innovative techniques. A

mitigation plan that requires the amount of planting that would be required under subsection (F)(4) of this ordinance based on the amount of proposed disturbance area within the NRA, and that otherwise complies with all of the mitigation requirements in subsection (F)(4) of this ordinance, shall be considered to have satisfied the requirements of this subsection (G)(4)(b)(iv).

II Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that it can carry out and ensure the success of the off-site mitigation, as described in subsection (G)(2)(a)(ii)IV. In addition, if the off-site mitigation area is not within the same subwatershed (6<sup>th</sup> Field Hydrologic Unit Code) as the related disturbed NRA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same subwatershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed. Mitigation shall not be allowed outside of the Metro jurisdictional boundary.

III All re-vegetation plantings shall be with native plants listed on the *Metro Native Plan List*.

IV All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream work-timing schedule.

V A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval.

(v) Municipal Water Utility Facilities Standards. Except as provided within this subsection, in addition to all other requirements of subsection (G)(4)(b), municipal potable water, storm water (drainage) and wastewater utility facilities may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced or upsized if not exempted in Subsection (B). These facilities may include but are not limited to water treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission

mains, conduits or service lines, terminal storage reservoirs, and outfall devices provided that:

I Such projects shall not have to comply with the requirements of subsection (G)(4)(b)(ii), provided that, where practicable, the project does not encroach closer to a water feature than existing operations and development, or for new projects where there are no existing operations or development, that the project does not encroach closer to a water feature than practicable;

II Best management practices will be employed that accomplish the following:

(A) Account for watershed assessment information in project design;

(B) Minimize the trench area and tree removal within the NRA;

(C) Utilize and maintain erosion controls until other site stabilization measures are established, post-construction;

(D) Replant immediately after backfilling or as soon as effective;

(E) Preserve wetland soils and retain soil profiles;

(F) Minimize compactions and the duration of the work within the NRA;

(G) Complete in-water construction during appropriate seasons, or as approved within requisite Federal or State permits;

(H) Monitor water quality during the construction phases, if applicable; and

(I) Implement a full inspection and monitoring program during and after project completion, if applicable.

(H) Map Administration and NRA Verification

- (1) Exempt development. Development that is outside of any NRA and no closer than 100 feet to the border of an NRA (including all impervious surfaces and landscaping), based on the NRA map, may proceed without having to comply with this section or any other portion of this ordinance except for Subsection (E), Construction Management Plan. [Note: At the time a city or county adopts this model ordinance and its NRA map, such city or county may decrease the 100 feet "safe harbor" distance provided in this section to no fewer than 25 feet provided that it conducts additional analysis to correct any misalignment errors of the type described in section (H)(6)(b) of this ordinance and adopts sufficient findings of fact to justify such corrections.]
- (2) Verification of the location of NRAs as described in this section shall not be considered a comprehensive plan or zoning amendment. [Note: Adjustment of the mapped HCA shall only proceed as provided in this ordinance.]
- (3) Map verification is available to correct for mistakes in the location of NRAs on properties. Map verification shall not be used to dispute whether identified NRAs provide the ecological functions that they are assumed to provide based on the ecological criteria used to identify them. If an applicant believes that a properly identified NRA does not provide the ecological functions that it has been identified as providing, then the applicant may use the discretionary review process to decrease its mitigation responsibilities for disturbing such an area.
- (4) Except for applicants seeking approval to undertake any exempt activities or conditioned uses described in Subsection (B), the map verification requirements described in this Subsection (H) shall be met at the time an applicant requests a building permit, grading permit, tree removal permit, land division approval, or some other land use decision. A property owner, or another person with the property owner's consent, may request to verify the location of NRAs on a real property lot or parcel pursuant to this Subsection (H) at other times, but whether the City processes such request shall be at the Community Development Director's sole discretion, based on staff availability, funding resources, and policy priorities. If a person receives a verification separate from a simultaneous request for a building permit, grading permit, tree removal permit, land division approval, or some other land use decision, then the person may use the verification to satisfy the requirements of this section at any time up until five years after the date the verification was issued.
- (5) Notwithstanding any other provisions of this Subsection (H), for utility projects undertaken by public utilities across property that is not owned by the utility, the utility shall not be required to map or provide any information about the property except for the area within 300 feet of the location of the proposed disturbance area of the utility's project.

(6) Basic Verification Approaches. The basic verification approaches described in subsections (H)(6)(a) through (c) are available for applicants who believe either (1) that the NRA map is accurate, (2) that there is a simple incongruity between the NRA map and the boundary lot lines of a property, or (3) that the property was developed prior to [insert date—either the effective date of this ordinance or two years after acknowledgement of the regional program, whichever is earlier].

(a) Applicant Believes NRA Map is Accurate. An applicant who believes that the NRA map is accurate may comply with this subsection (H)(6)(a). The applicant shall submit the following information regarding the real property lot or parcel:

(i) A detailed property description;

(ii) A copy of the applicable NRA map;

(iii) A summer 2005 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);

(iv) The information required to be submitted under Subsection (A) or (G) if the applicant proposes development within any NRA under those provisions; and

(v) Any other information that the applicant wishes to provide to support the assertion that the NRA map is accurate.

(b) Obvious Misalignment Between Mapped Habitat and Property Lot Lines. In some cases, the mapped vegetative cover layer in the GIS database might not align precisely with the tax lot layer that shows property lines, resulting in a NRA map that is also misaligned with tax lot lines. An applicant who believes that the NRA map is inaccurate based on such an obvious misalignment may comply with this subsection (H)(6)(b). The applicant shall submit the following information regarding the real property lot or parcel:

(i) The information described in subsections (H)(6)(a)(i) through (iv); and

(ii) A documented demonstration of the misalignment between the NRA map and the property's tax lot boundary lines. For example, an applicant could compare the boundary lot lines shown for roads within 500 feet of a property with the location of such roads as

viewed on the aerial photograph of the area surrounding a property to provide evidence of the scale and amount of incongruity between the NRA maps and the property lot lines, and the amount of adjustment that would be appropriate to accurately depict habitat on the property.

(c) Property Developed Between Summer 2002 and January 5, 2006. Where a property was developed between the summer of 2002 (when the aerial photo used to determine the regional habitat inventory was taken) and January 5, 2006, the applicant shall submit the following information regarding the real property lot or parcel:

(i) The information described in subsections (H)(6)(a)(i) through (iv);

(ii) A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 feet for larger lots (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742);

(iii) Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and January 5, 2006; and

(iv) A clear explanation and documentation, such as supporting maps or drawings or an more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area.

(d) Decision Process. The Planning Director's map verification decision made pursuant to this subsection (H)(6) may be an administrative decision. The Planning Director's decision shall be based on consideration of the information submitted by the applicant, any information collected during a site visit to the lot or parcel, any information generated by prior map verifications that have occurred on adjacent properties, and any other objective factual information that has been provided to the Planning Director.

(7) Detailed Verification Approach. All applicants who believe that the NRA map is inaccurate for a reason other than as described in subsections (H)(6)(b) and (c) may file a verification request consistent with this subsection (H)(7) of this ordinance.

(a) Application requirements. The applicant shall submit a report prepared and signed by either (1) a knowledgeable and qualified natural resource

professional, such as a wildlife biologist, botanist, or hydrologist, or (2) a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. Such report shall include:

- (i) A description of the qualifications and experience of all persons that contributed to the report, and, for each person that contributed, a description of the elements of the analysis to which the person contributed;
  - (ii) The information described in subsections (H)(6)(a)(i) through (v);
  - (iii) The information described in subsections (H)(6)(b)(ii) and (H)(6)(c)(ii) through (iv), if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel;
  - (iv) Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert's interpretation of the additional information they provide;
  - (v) A map showing the topography of the property shown by contour lines of 2 foot intervals for slopes less than 15% and by 10 foot intervals for slopes 15% or greater; and
  - (vi) Any additional information necessary to address each of the verification criteria in subsection (H)(7)(d), a description of where any NRAs are located on the property based on the application of the verification criteria in subsection (H)(7)(d), and factual documentation to support the analysis.
- (b) Notice requirements. Upon receipt of a completed application pursuant to this subsection (H)(7), the Planning Director shall provide notice of the map verification application to Metro, to the owners of record of property on the most recent property tax assessment roll where such property is located within 300 feet of the subject property, to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the property, and to any watershed council recognized by the Oregon Watershed Enhancement Board and whose boundaries include the property. The notice provided by the jurisdiction shall comply with the notice requirements of ORS 197.763. The Planning Director shall accept written public comments regarding the matter during a public comment period.
- (c) Decision process. The Planning Director shall apply the verification criteria in subsection (H)(7)(d) to confirm the location of any NRAs based on the NRA map, the information submitted by the applicant, any

information received during the public comment period, and any additional information readily available, including information collected during a site visit to the lot or parcel. The applicant and all persons that submitted written comments shall be provided with a written explanation of the Planning Director's decision.

(d) Verification Criteria. The verification of the location of NRAs shall be according to the four-step process described in this subsection (H)(7)(d). A verification application shall not be considered complete and shall not be granted unless all the information required to be submitted with the verification application has been received.

(i) Step 1. Verifying boundaries of inventoried riparian habitat. Locating habitat and determining its riparian habitat class is a four-step process:

I Locate the Water Feature that is the basis for identifying riparian habitat.

(A) Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.

(B) Locate all flood areas within 100 feet of the property..

(C) Locate all wetlands within 150 feet of the property based on the Local Wetland Inventory map (if completed) and on the Metro 2002 Wetland Inventory Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742). Identified wetlands shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.

II Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.

(A) Vegetative cover status shall be as identified on the Metro Vegetative Cover Map (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

(B) The vegetative cover status of a property may be adjusted only if (1) the property was developed

prior to the time the regional program was approved (see subsection (H)(6)(c) above), or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the definitions of the different vegetative cover types provided in Section 9.941.

III Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the methodology as described in Chapter 3 of Clean Water Services Design and Construction Standards; and

IV Identify the riparian habitat classes applicable to all areas on the property using Table 4 and the data identified in subsections (H)(7)(d)(i)I through III.

(ii) Step 2. Verifying boundaries of inventoried upland habitat in future urban growth boundary expansion areas. Upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The “forest canopy” designation is made based on analysis of aerial photographs, as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the NRA map unless corrected as provided in this subsection.

I Except as provided in subsection (H)(7)(d)(i)II, vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat at the time the area was brought within the urban growth boundary (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232; 503-797-1742).

II The only allowed corrections to the vegetative cover status of a property are as follows:

(A) To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat at the time the area was brought within the urban growth boundary. For example, an area may have been identified as “forest canopy” when it can be shown that such area has less than 60% canopy crown closure, and therefore should not have been identified as “forest canopy.” The perimeter of an

area delineated as “forest canopy” on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the “forest canopy” designation. To assert such errors, applicants shall submit an analysis of the vegetative cover on their property using the aerial photographs that were used to inventory the habitat at the time the area was brought within the urban growth boundary and the definitions of the different vegetative cover types provided in Section 9.941; and

(B) To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.

III If the vegetative cover status of any area identified as upland habitat is corrected pursuant to subsection (H)(7)(d)(ii)II(A) to change the status of an area originally identified as “forest canopy,” then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounding by an area of contiguous forest canopy.

**Table 4: Method for Locating Boundaries of Class I and II Riparian Areas**

<u>Distance in feet from Water Feature</u>	<u>Development/Vegetation Status<sup>1</sup></u>			
	<u>Developed areas not providing vegetative cover</u>	<u>Low structure vegetation or open soils</u>	<u>Woody vegetation (shrub and scattered forest canopy)</u>	<u>Forest Canopy (closed to open forest canopy)</u>
<b><u>Surface Streams</u></b>				
<u>0-50</u>	<u>Class II</u>	<u>Class I</u>	<u>Class I</u>	<u>Class I</u>
<u>50-100</u>		<u>Class II<sup>2</sup></u>	<u>Class I</u>	<u>Class I</u>
<u>100-150</u>		<u>Class II<sup>2</sup> if slope&gt;25%</u>	<u>Class II<sup>2</sup> if slope&gt;25%</u>	<u>Class II<sup>2</sup></u>
<u>150-200</u>		<u>Class II<sup>2</sup> if slope&gt;25%</u>	<u>Class II<sup>2</sup> if slope&gt;25%</u>	<u>Class II<sup>2</sup> if slope&gt;25%</u>
<b><u>Wetlands (Wetland feature itself is a Class I Riparian Area)</u></b>				
<u>0-100</u>		<u>Class II<sup>2</sup></u>	<u>Class I</u>	<u>Class I</u>
<u>100-150</u>				<u>Class II<sup>2</sup></u>
<b><u>Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)</u></b>				
<u>0-100</u>			<u>Class II<sup>2</sup></u>	<u>Class II<sup>2</sup></u>

<sup>1</sup>The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as “forest canopy” the forested area had to be part of a larger patch of forest of at least one acre in size.

<sup>2</sup>Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro’s Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

25. Add New Chapter 9.970 et. seq. regarding Habitat-Friendly Development Techniques and Natural Resource Area Requirements:

**HABITAT-FRIENDLY DEVELOPMENT TECHNIQUES AND NATURAL RESOURCE AREA REQUIREMENTS**

**9.970 INTENT:**

The purpose of this ordinance is to comply with Section 4 of Title 13 of Metro's Urban Growth Management Functional Plan.

- (1) To protect and improve the following functions and values that contribute to fish and wildlife habitat in urban streamside areas:
  - (a) Microclimate and shade;
  - (b) Stream-flow moderation and water storage;
  - (c) Bank stabilization, sediment and pollution control;
  - (d) Large wood recruitment and retention and channel dynamics; and
  - (e) Organic material sources.
  
- (2) To protect and improve the following functions and values that contribute to upland wildlife habitat in new urban growth boundary expansion areas:
  - (a) Large habitat patches
  - (b) Interior habitat
  - (c) Connectivity and proximity to water; and
  - (d) Connectivity and proximity to other upland habitat areas
  
- (3) To adopt habitat areas determined by Metro to implement the performance standards of Title 13 of the Urban Growth Management Functional Plan.
  
- (4) To implement performance standards through Natural Resource Areas (NRA) as provided in Section 9.944
  
- (5) To provide clear and objective standards and a discretionary review process, applicable to development in Natural Resource Areas, in accordance with Statewide Land Use Planning Goal 5.
  
- (6) To allow and encourage habitat-friendly development, while minimizing the impact on fish and wildlife habitat functions.
  
- (7) To provide mitigation standards for the replacement of ecological functions and values lost through development in Natural Resource Areas.

## 9.971 COMPLIANCE WITH NATURAL RESOURCE AREA PROVISIONS

- (1) The City of Forest Grove adopts Metro's Regionally Significant Fish and Wildlife Habitat Inventory Map dated at the time of adoption of this section or as amended in the future.
- (2) All development with Natural Resource Areas shall attempt to design development through avoidance of the resource area. If that cannot be achieved through standard development requirements, then the requirements of Section 9.944 shall apply and shall override any conflicting development requirements established by other portions of the Zoning Ordinance in order to minimize intrusion into the NRA.
- (3) All property owners, developers, or other persons proposing to modify land in the city limits of Forest Grove are encouraged to integrate the habitat-friendly development practices listed in Table 1 as part of any modification of the site. Those practices within road rights-of-way or other public property shall be approved by the City Engineer. Other practices shall be approved by the Community Development Department. Said approvals shall be obtained:
  - (a) Where no land use permit is required, prior to any physical modification of the site;
  - (b) Where any land use permit is required by the Zoning or Land Division ordinances, concurrent with an approval of the permit; or
  - (c) Where there is a Natural Resource Area and alternative discretionary development standards are used pursuant to the requirements of Subsection 9.944 (F)(4)(b).

**Table 1. Habitat-friendly development practices.<sup>1</sup>**

**Part (a): Design and Construction Practices to Minimize Hydrologic Impacts**

1. Amend disturbed soils to original or higher level of porosity to regain infiltration and stormwater storage capacity.
2. Use pervious paving materials for residential driveways, parking lots, walkways, and within centers of cul-de-sacs.
3. Incorporate stormwater management in road right-of-ways.
4. Landscape with rain gardens to provide on-lot detention, filtering of rainwater, and groundwater recharge.
5. Use green roofs for runoff reduction, energy savings, improved air quality, and enhanced aesthetics.
6. Disconnect downspouts from roofs and direct the flow to vegetated infiltration/filtration areas such as rain gardens.
7. Retain rooftop runoff in a rain barrel for later on-lot use in lawn and garden watering.
8. Use multi-functional open drainage systems in lieu of more conventional curb-and-gutter systems.
9. Use bioretention cells as rain gardens in landscaped parking lot islands to reduce runoff volume and filter pollutants.
10. Apply a treatment train approach to provide multiple opportunities for storm water treatment and reduce the possibility of system failure.
11. Reduce sidewalk width and grade them such that they drain to the front yard of a residential lot or retention area.
12. Reduce impervious impacts of residential driveways by narrowing widths and moving access to the rear of the site.
13. Use shared driveways.
14. Reduce width of residential streets, depending on traffic and parking needs.
15. Reduce street length, primarily in residential areas, by encouraging clustering and using curvilinear designs.
16. Reduce cul-de-sac radii and use pervious vegetated islands in center to minimize impervious effects, and allow them to be utilized for truck maneuvering/loading to reduce need for wide loading areas on site.
17. Eliminate redundant non-ADA sidewalks within a site (i.e., sidewalk to all entryways and/or to truck loading areas may be unnecessary for industrial developments).
18. Minimize car spaces and stall dimensions, reduce parking ratios, and use shared parking facilities and structured parking.
19. Minimize the number of stream crossings and place crossing perpendicular to stream channel if possible.
20. Allow narrow street right-of-ways through stream corridors whenever possible to reduce adverse impacts of transportation corridors.

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<sup>1</sup> These development practices represent the state of scientific knowledge at the time of this ordinance's enactment, if more effective habitat-friendly practices become available, they should be used.

**Part (b): Design and Construction Practices to Minimize Impacts on Wildlife Corridors and Fish Passage**

1. Carefully integrate fencing into the landscape to guide animals toward animal crossings under, over, or around transportation corridors.
2. Use bridge crossings rather than culverts wherever possible.
3. If culverts are utilized, install slab, arch or box type culverts, preferably using bottomless designs that more closely mimic stream bottom habitat.
4. Design stream crossings for fish passage with shelves and other design features to facilitate terrestrial wildlife passage.
5. Extend vegetative cover through the wildlife crossing in the migratory route, along with sheltering areas.

**Part (c): Miscellaneous Other Habitat-Friendly Design and Construction Practices**

1. Use native plants throughout the development (not just in NRA).
2. Locate landscaping (required by other sections of the code) adjacent to NRA.
3. Reduce light-spill off into NRAs from development.

(4) Section 9.944 allows for the applicant to either increase or decrease densities to provide options to address NRA impacts on their site. Where reduction of densities or employees is chosen, the reduction shall be taken into consideration when determining Metro's Functional Plan Title 1 density and capacity requirements.

(5) Habitat-friendly design requirements are as follows:

- (a) Landscaping and setback areas for parking lots and buildings shall be located adjacent to protected natural resource areas.
- (b) All landscaping required by this ordinance shall be of native vegetation unless waived by the Community Development Director.
- (c) All street, pedestrian and other outdoor lighting within 100 feet of a natural resource area shall be shielded in a manner to minimize light intrusion into the resource area. Street lights shall be metal halide within 100 feet of a natural resource area.
- (d) Where bio-swales, rain gardens and other open conveyances are to be installed, soil amendments, drainage holes and other techniques shall be used as approved by the City Engineer to allow stormwater to infiltrate into the ground.
- (e) Outside of natural resource areas, all solid walls and fences shall be designed to the satisfaction of the City Engineer to allow stormwater conveyance provided that all state and Clean Water Service requirements pertaining to off-site drainage are met.
- (f) Where approved by the City Engineer, bio-swales shall be allowed as part of an on-site drainage system.
- (g) Roads and driveways shall be designed to be perpendicular across streams and through natural resource area with minimal crossings taking into account adequate circulation and opportunities to reserve open space areas.



**To:** City Council  
**From:** Jon Holan, Community Development Director  
**Subject:** Study Session on Goal 5 Amendments  
**Date:** September 17, 2007

The City Council will be conducting a hearing at its September 24<sup>th</sup> meeting on the proposed Goal 5 amendments. These amendments are to implement Metro's Nature in Neighborhoods program and the Tualatin Basin approach to meet Metro requirements. Staff has attached the staff report that explains the proposed amendments as well as all the attachments to the staff report. The following is the list of attachments to the staff report.

- Attachment 1** Proposed Text Amendments
- Attachment 2** Maps showing location of Regionally Significant Fish and Wildlife Class I and II and A and B Habitat Inventory, Slopes 10 percent or greater and 100 Year Flood Plain
- Attachment 3** Metro ESEE (due to its size, this item is in a separate notebook available for review)
- Attachment 4** Metro Functional Plan Requirements for Nature in Neighborhoods
- Attachment 5** Tualatin Basin ESEE (due to its size, this item is in a separate notebook available for review)
- Attachment 6** Tualatin Basin Program
- Attachment 7** Technical Issue Paper 1
- Attachment 8** Technical Issue Paper 2
- Attachment 9** Gap Analysis
- Attachment 10** List of Native Trees from City's Street Tree list
- Attachment 11** Municipal Code Provisions on Flood Plan Management
- Attachment 12** Environmental Review Overlay District Text and Map
- Attachment 13** Letters Received

The focus of the September 17<sup>th</sup> work session is to review Attachment 1, the proposed text amendments, so that the Council has an understanding of its content and to answer

any questions. We anticipate that this review will help facilitate the public hearing on September 24<sup>th</sup>.

Staff has included all the material to allow the Council additional review time prior to the September 24<sup>th</sup> hearing. We are not intending to reproduce all this material for the September 24<sup>th</sup> packet. **Please remember to bring the material included in this September 17<sup>th</sup> packet with you to the September 24<sup>th</sup> hearing.** What will be included in the September 24<sup>th</sup> packet is the adopting ordinance.

PLANNING COMMISSION MEETING MINUTES  
FOREST GROVE COMMUNITY AUDITORIUM CONFERENCE ROOM

APPROVED

May 7, 2007 -7:00 P.M.

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1. CALL TO ORDER:

Chairman Beck called the meeting to order at 7:00 p.m. **Planning Commission Present:** Tom Beck, Al Miller, Cindy McIntyre, Ed Nigbor. **Excused:** Lisa Nakajima, Luann Arnott, and Carolyn Hymes. Carolyn Hymes is excused for tonight's meeting as well as the next three Planning Commission meetings. **Staff Present:** Jon Holan, Community Development Director; Marcia Phillips, Permit Coordinator/Recorder.

2. PUBLIC MEETING:

2.1 PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS: None.

2.2 PUBLIC HEARING:

Chairman Beck announced that because of the number of items on the agenda for the evening, **Agenda Item (2) 2.C** regarding Goal 5 will be continued to the May 21, 2007, meeting. One person from the audience left the meeting.

A. Planned Residential Development Number PRD-06-03: WRG Design, Inc. as applicants, are requesting a planned residential development to construct 58 single family detached dwellings on an 8.2 acre parcel. The site is located north of 26<sup>th</sup> Avenue approximately 320 feet to the east of the intersection of 26<sup>th</sup> Avenue and Sunset Drive (Washington County Tax Lot Numbers 1N3 31BD-1300, 3800, 3001, and 2900 ) (continued from March 19, 2007)

Chairman Beck stated that PRD-06-03 was continued from the March 19, 2007, meeting. Hearing procedures would be the same as for the first meeting. He called for the staff report.

Mr. Holan read a memo dated April 30, 2007, (Handout # 2) written by James Reitz, City Planner. In the memo Reitz commented on the applicant's response to the Planning Commission's request at the previous meeting for certain issues to be addressed by the applicant. The memo included staff's proposed Conditions of Approval.

The memo stated that according to an e-mail from Andrew Tull received on April 26, 2007, the applicant is "still in the queue at Clean Water Services . . . but is anticipating the completion of the review within the next few days." The memo stated that the applicant requests that the Planning Commission proceed with the hearing, and the Service Provider Letter will be forwarded to the City as soon as the applicant receives it. Holan stated that the Planning Commission can determine whether to allow submission of the Service Provider Letter prior to the City Council meeting.

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**APPLICANT:**

**Jon Riemann, WRG Design, 5415 SW Westgate Dr., Suite 100, Portland, OR 97221.** Mr. Riemann responded to Staff's memo by stating that he had with him a copy of the CWS Service Provider Letter and a new design for the project. The new design would eliminate half of the 4-plexes and replace them with duplexes. The product type is varied. The total number of units would be 62. A temporary pedestrian way was added to the open space located in the center of the project, and the open space was moved down. The applicant requests that the pedestrian way be removed as the area develops and streets are extended north and south. Riemann said the applicant has made attempts to purchase the property in the middle of the project, but has been unsuccessful. The amount of open space has been increased to 1.7 acres. The remaining 4-plexes have 20-foot driveways. There is also some on-street parking. The City of Forest Grove Engineering Department has approved rolled curbs. The applicant has no issues with the location of the doors and porches. Detention will be done on site, and the City's Engineering Department agrees. The applicant concurs with the rest of Staff's recommendations for Conditions of Approval.

**PROPONENTS:**

**Morgan Will, Project Manager Taurus Homes, PO Box 807, North Plains OR 97133.** Mr. Morgan pointed out that for marketing purposes the plexes are grouped together in several locations in the project. It makes sense to retain the plexes, because the homes are more affordable.

**Sue Graves, 1602 NE Orenco Station, Hillsboro, OR.** Ms. Graves stated that she owns property at Sunset Drive and University Avenue. There has been much positive change to her land drainage issues. The drainage issues have been well answered. Graves referred to the letter submitted by Lee Wells (Handout # 1) in support of the subdivision. There has been a great deal of development here, and Forest Grove needs to pay attention to affordability. This project provides affordable housing with open space that would be used by people on a daily basis. Graves stated that she lives in Orenco Station and loves the 4-plexes mixed in with other types of housing.

**OPPONENTS:**

**Blaine Nunnenkamp, 2382 Willamina Avenue, Forest Grove, OR 97116.** Mr. Nunnenkamp said he owns the property northwest of the PRD. He is very concerned about increased erosion on his property from the proposed PRD. Nunnenkamp showed pictures of the deep culvert which runs along his property. He is concerned that children might fall in and drown. He stated that there is erosion around the new culvert that goes under Willamina Avenue. He is asking for erosion control.

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Holan explained that the City is responsible for making sure the PRD is developed to Clean Water Services standards. There is a set of erosion control measures that must be used for development, such as silt fences and hay bales.

**Tim Bertsch, 805 NE Arrington Rd., Hillsboro, OR.** Mr. Birch stated that he just purchased the middle piece of property that abuts the proposed development. He has talked to Jon Rienmann several times, and told him the property is for sale. He has had several other offers on the property.

**OTHER:** None.

**REBUTTAL:**

Rienmann explained that he has talked with Nunnenkamp and Granton. It makes sense to do detention on site. The developer must obtain a 1200-C permit and provide erosion control measures. The flow will be contained on site to keep drainage to pre-development levels. Rienmann said he has gone through several designs with Staff, and is trying to meet street length and block length requirements.

Chairman Beck said that Staff suggests 41-52 units, and asked Rienmann what would happen if the Commission asked for a redesign.

Rienmann stated that it would not be economically feasible to develop with so few lots. His density calculations indicate 63 units.

**Chairman Beck closed the Public Hearing at 8:05 p.m., and returned the meeting to the Planning Commission for discussion.**

**DISCUSSION:**

Chairman Beck asked staff to discuss block length.

Holan read Ordinance Section 9.110 (1) (F) , and explained that the pedestrian way was required due to the length of the block, and gave Pacific Crossing as an example of using a pedestrian way to meet block length requirements. Holan said his impression is that the gaps between units provide some on-street parking. The parking spaces must be 23-feet in length to meet parallel parking standards in Forest Grove.

Holan explained that the density was based on Staff analysis; 41 is the minimum density, and 52 would be the target density. For an A-1 zone, density is 12 units per net acre. Eighty percent of that is 9.8 units per net acre. Historically area for streets and open space is deducted from the total acreage to determine net area. The net area is then used to determine density.

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Chairman Beck made the comment that a cross street in the middle of the property would slow the speed of cars. He was pleased to see the connection between the park and the lower half of the project.

Commissioner Nigbor remarked that the Commission is being too lenient and allowing too much density. Providing affordable housing is about the only benefit he could see from this project. He questioned whether continuing to allow such high density was beneficial to the City over all. He does not like a long block of garage doors.

Holan said it was up to the Commission and the Council to weigh the benefits being provided. There is concern at the Council level about those PRDs that exceed the density requirements. Besides affordable housing, another benefit being provided is open space.

Chairman Beck said water run off is a problem, but the applicant is doing as much as is legally required and legally permitted. He wants to see an east-west street located in the middle of the subdivision, and does not like long blocks. The east-west street could be put in and stubbed at both ends. Beck said he is not willing to approve higher density. He would like another park located centrally in the southern portion of the development.

Commissioner McIntyre was not sure the applicant has done all he can to address erosion. She did not agree with Staff's recommendation that the street width on Black Pine Street be reduced to 24-feet. It should be 28-feet with parking on one side. McIntyre would also like an east-west street in the middle of the project. She stated that the 4-plexes were not the right fit for Forest Grove.

Commissioner Miller said he is not opposed to the 4-plexes. His concern is that there is no connection to collector streets. The traffic circulation is not good.

Holan stated that the Planning Commission can deny the PRD or give the applicant more time to redesign. If the PRD is denied it will not go before the City Council, but the decision can be appealed.

Chairman Beck asked the applicant whether he would prefer to redesign or start over. The applicant asked for clarification of what the Commissioners want to see. Beck summarized what the Commissioners had stated during the discussion:

- No bonus density on PRDs in this area.
- Put an east-west street in the middle of the project.
- The park would have to be moved, but not eliminated.
- The 4-plexes were aesthetically objected to by two of the Commissioners.
- One Commissioner wants the applicant to work on the storm water problem.
- Do not make Black Pine Street narrower.

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- Lower the density. Get down to 52 units or close to it.
- Use a different look. The streetscape is very important. 4-plexes with four garages all in a row is not pleasing.
- The City Council is firm on 5-foot side yard setbacks.

The applicant requested four weeks to redesign, and agreed to a continuance of the hearing.

**Chairman Beck continued the hearing to the June 4, 2007, meeting and called for a short recess at 8:39 p.m.** The meeting was resumed at 8:45 p.m.

**B. Planned Residential Number PRD-06-05: Dave Turnbull, as applicant, is requesting a planned residential development on four parcels comprising a 1.72 acre site to develop 16 lots. The site is located north of the intersection of Gales Way and 23<sup>rd</sup> Avenue and adjacent and west of "B" Street, about 275 feet north of 23<sup>rd</sup> Avenue. Addresses of the properties are 2332 "B" Street and 2307, 2311 and 2333 Gales Way. (Washington County Tax Lot Numbers 1N4 36DA-300, 800, 1000, and 1001) (continued from April 16, 2007)**

Chairman Beck stated that PRD-06-05 was continued from the April 16, 2007, Meeting, and called for the staff report.

Mr. Holan read a memo from James Reitz, City Planner, dated April 30, 2007, regarding Smith's Orchard Planned Residential Development. The design submitted by the applicant for tonight's meeting (Handout # 5) and the design included in the Commissioners packets (attached to Reitz's memo) are the same design. Staff calculated 13 units at 100% density using the same method used by the applicant. With bonus density it would be 14-15 units. Holan read staff's recommended Conditions of Approval.

**APPLICANT:**

**Matthew Newman, NW Engineers, LLC, 19075 NW Tanasbourne Dr., Suite 160.** Mr. Newman said the applicant's redesign follows Staff recommendations, and addresses the concerns of both the Planning Commission and the neighbors regarding density, parking, circulation and design. The applicant is not asking for bonus density. Two existing houses will be kept and eleven new homes will be built. The property will have 36-41 parking spaces on site. Several units have 2-car garages and some have long driveways for tandem parking. The garages on Lots 6 & 7 have been pushed back to allow for a better turning radius into the driveways. The applicant does not believe it is necessary to loop the water line, is requesting approval to work with staff on this matter, and revision of Condition # 34 to reflect this. The applicant is requesting that Conditions 41 & 42 be revised to address setback issues. The applicant has been unable to locate plans with the master bedroom on the main floor that meet his requirements, but will continue to search.

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Holan said Mr. Turnbull has shown some elevations with the Craftsman style similar to those mentioned in Condition 45. The decision can be left to the discretion of the Community Development Director, but in PRDs the applicant usually provides elevations to be approved.

**PROPOSERS:** None.

**OPPOSERS:**

**Genevieve Bell, 2318 Gales Way, Forest Grove, OR 97116.** Ms. Bell said she is grateful for the changes made by the applicant, however, the proposed street into the development is right across Gales Way from her living room window, and she is concerned about getting out of her driveway with the increased traffic from the development. Walnut trees are messy, but beautiful, and Ms. Bell would like to see them preserved. She is not happy with the high density.

**John Metz, Manager of Covey Run, 1756-B Covey Run Dr., Forest Grove, OR 97116.** Mr. Metz said the main sewer line is marginal, and during the rainy season toilets backup. During heavy rains two years ago, there was flooding 3-feet wide on the south side of the street into Covey Run. Mr. Metz would like a privacy fence greater than six feet tall along the property line between the proposed development and Covey Run.

**Mark McDowall, 1723 23<sup>rd</sup> Avenue, Forest Grove, OR 97116.** Mr. McDowall appreciates the changes the applicant has made. The number of units decreased and were made larger. McDowall said he could live with 11 units not 13.

**Carol Woods, 2329 Gales Way, Forest Grove, OR 97116.** Ms. Woods said that historically during the heavy rainy season, many of the neighbors have leaky basements, so she is very concerned about storm drainage.

**Randy Van Wie, 2335 "B" St., Forest Grove, OR 97116.** Mr. Van Wie said his property is not adjacent to the development, but is located across the street from Lot # 8. The storm drain on "B" Street typically backs up during heavy rains. His concerns include the density, character change of the neighborhood, and the foot traffic to and from the nearby grade school and high school which will be impacted by this development.

**Sue & Joe Rowley, 2339 Gales Way, Forest Grove, OR 97116.** Ms. Rowley is concerned that the development is too small for a HOA to maintain Tract E. Eleven houses should be the maximum density.

**Melissa Moore, 2326 "B" Street, Forest Grove, OR 97116.** Ms. Moore said that typically the existing homes in the area have similar architectural features on all four sides of the homes. She is concerned that the proposed houses will have a "Disneyland" façade with architectural features mainly on the front. Lots 6, 7 & 9

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will be along her property. Lots 6 & 7 face her back yard, but she would prefer that the back of these houses face her backyard. The current design removes the large Maple tree, and Ms. Moore hopes it will be saved. She would like the existing house to remain, even if it must be shifted.

**Roy Adams, 2326 "B" Street, Forest Grove, OR 97116.** Mr. Adams showed a site plan with ten units that he designed as a possible alternative to the applicant's design. Mr. Adams wants the trees to be saved, and grass Crete to the WQF.

**OTHER:** None.

Chairman Beck called a recess at 9:45 pm. The meeting was resumed at 9:50 pm.

**REBUTTAL:**

Mr. Newman said cost is an issue. This is medium density not high density. To the north Covey Run has twelve units in a smaller area. Regarding storm drainage, the applicant has proposed detention to predevelopment levels. It may be possible to save the Maple tree. The applicant is willing to work with staff concerning facades on all four sides of the homes. The applicant has not heard of any sanitary problems. A fence greater than six feet in height would require engineering, which would add to the cost of the project.

Mr. Turnbull said if the project was reduced to less than 13 units, it would not be cost feasible. He also wants to save the Maple tree, and any trees that are removed will be replaced with other trees. Normally ninety percent of the décor is on the front of the home with some on the sides. He is agreeable to a privacy fence along Covey Run.

**Chairman Beck closed the public hearing at 9:52, and returned the meeting to the Planning Commission for discussion.**

**DISCUSSION:**

Commissioner McIntyre: Appreciates what the applicant has done with the redesign. It still looks busy and cluttered. The design showing ten units that was presented by one of the neighbors looked good. She suggested that perhaps the applicant could do fewer larger homes that would sell for a greater price. McIntyre expressed concern about fire access to the 14-foot road (Tract C driveway).

Commissioner Miller: This project does not have to change the neighborhood. The new homes just need to look like they have been there awhile. The problem with the sewer has not been brought up before. Someone needs to find out what the problem is and address it.

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Commissioner Nigbor: The redesign has some good changes. The new houses need to tie in with the existing homes as much as possible. Lots 4, 5 & 6 should not be duplexes and should be angled to provide privacy. There is a substantial improvement in the open space. The applicant needs to look carefully at the architecture.

Chairman Beck: The changes were necessary and good. Eliminate the walkways. Lots 10 and 11 face Gales Way, so it is important how they look. Lot 8 faces "B" Street, and it is also important how it looks. The internal neighborhood is different. The redesign is a big improvement, but there are still changes that need to be made. The houses do not seem to address the real senior housing issues. The homes need to be wheelchair accessible for example. Beck said he would be willing to grant a continuance. He is not ready to approve this version. Density is an issue. The Planning Commission needs to see some definite designs for the houses. Make Smith Court narrower with no parking.

**The applicant agreed to a continuance, and agreed to waive the 120-day rule. Chairman Beck continued the hearing to the June 4, 2007 meeting.**

**BUSINESS MEETING:**

3.1 **APPROVAL OF MINUTES:** Miller moved to approve the minutes from the April 2<sup>nd</sup> and April 9<sup>th</sup> meetings. Nigbor seconded. Motion passed 4-0 by voice vote.

3.2 **REPORTS FROM COMMISSIONERS/SUBCOMMITTEES:** None.

3.3 **DIRECTOR'S REPORT:**

The next meeting will deal with Goal 5 and the Ortman appeal. Holan invited the Planning Commissioners to come in to his office and go over the Goal 5 information, because there is a lot to absorb. He said he is willing to talk with anyone to help with comprehension.

3.4 **ANNOUNCEMENT OF NEXT MEETING:** Next meeting May 21, 2007. Miller, Beck and Hymes will not be here in June. McIntyre will not be available for the June 18<sup>th</sup> meeting.

3.5 **ADJOURNMENT:** Meeting was adjourned at 10:20 pm.

Respectfully submitted by:  
Marcia Phillips

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**1. CALL TO ORDER:**

Chairman Beck called the meeting to order at 7:00 p.m. **Planning Commission Present:** Tom Beck, Al Miller, Cindy McIntyre, Ed Nigbor. **Staff Present:** Jon Holan, Community Development Director; Marcia Phillips, Permit Coordinator/Recorder.

**2. PUBLIC MEETING:**

**2.1 PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS:** None.

**2.2 PUBLIC HEARING:**

Chairman Beck announced that due to the length of time needed for Agenda Item (2) 2.A dealing with Goal 5, the Commission would hear Agenda Item (2) 2.B the Ortman appeal first.

**The public hearing for the Ortman appeal was opened at 7:02 p.m.**

**B. Appeal of Community Development Director's Determination: Appeal of Community Development Director's Determination on Building Permit Number BLD 06-00220 and Attendant Site Plan Review. Location is 2937 Watercrest Road, Forest Grove. (Washington County tax lot number 1N4 35AC-4100.)**

Chairman Beck read the hearing procedures and asked for disclosure of any conflicts of interest, ex-parte contacts, bias or abstentions. There were none, and no challenges from the audience. Beck called for the staff report.

Mr. Holan stated that on October 27, 2006, Rick Vanderkin applied for a building permit to build a 720 square foot accessory structure. The application went through the review process, including site plan review by the Planning Division, and was approved. The permit was issued, work has begun and inspections have been done by City Building Inspectors. During construction a large tree on the Ortman's property blew down during a strong windstorm. Mr. and Mrs. Ortman sent letters to the Community Development Director about the accessory building. On March 14, 2007, the Director sent a response to the Ortman's. On April 4, 2007, an appeal was filed with the Community Development Director by the Ortman's. The appellant had four arguments:

1. The City did not give notice of the permit application
2. The project violates the Code's minimum setback requirements.
3. The second driveway violates code requirements.
4. The project encroaches on the Ortman's property.

Holan stated that staff concludes there was no error in the lack of notice as to the

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original approval of the site plan because the site plan review was not a limited land use decision. Staff based its evaluation of required setbacks on past practices. The second driveway does not violate City requirements. There does not appear to be any evidence of any encroachment caused by the construction of the accessory structure, and it appears speculative that the excavation of the structure resulted in the tree being blown down. If the Commission concurs with the Appellant's argument regarding setbacks, the solution is to require the applicant to move the structure the appropriate distance to maintain the 5 foot setback

Pam Beery, City's Land Use Attorney, stated that the Planning Commission and both legal councils had been given a copy of her memo regarding the appeal (Handout #1). In the memo Beery states that there are two legal questions presented.

1. Was the City required to give notice of the initial decision to approve the building permit, and if so, is this appeal to the Planning Commission timely filed insofar as it purports to challenge the issuance of the building permit itself?
2. Does the Planning Commission have the legal authority to require that the accessory building be moved to provide a setback of at least 5 feet?

In her summary, Ms. Beery stated that although it can be argued that the Zoning Ordinance sets out clear and objective standards for the setbacks applicable to accessory structures, the decision concerning which of two potentially applicable standards should be applied is an exercise of discretion. Therefore, the City should have provided notice of the decision granting the building permit. The question of whether this appeal of the building permit is timely is a question for the Commission to determine following the hearing. Even if the appeal is deemed timely, the Commission does not have the authority to require that the setback be changed at this time.

Ms. Beery stated that once the applicant received the building permit, he is allowed to build according to that permit. No changes in code can be made. The City does not have the authority to change the standard. The Planning Commission needs to make a ruling on all parts of the appeal and appeal criteria. It is not within the Commission's authority to require the shed to be moved.

Ms. Beery explained that notice does not necessarily mean receiving a piece of paper in the mail. Notice can mean seeing excavation or going to City Hall to inquire about what is being built.

**PROPOSERS:**

**Andrew Stamp, Attorney for the Vanderkins, Kruse-Mercantile Professional Offices, Suite 15, 4248 Galewood St., Lake Oswego, OR 97035.** Mr. Stamp

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stated that on November 2, 2006 the City issued a building permit to Mr. Vanderkin. The site plan submitted by the applicant shows a three-foot side-yard setback, which is consistent with the flyer the City gives prospective permittees seeking information on zoning restrictions. The planning division signed off on the building permit, indicating its determination that the application was in compliance with the Zoning Code, including setbacks. The City did not give notice with opportunity for comment to neighbors.

Mr. Stamp said the building permit became final on November 23, 2007, twenty-one days after its issuance. No timely local appeal was filed, which was predictable due to the City's failure to provide for notice and comment period. Mr. Vanderkin began construction consistent with a three foot side yard setback, and has since completed construction of the structure.

After construction had begun, a neighbor, Brad Ortman, sent two letters to the City's Planning Director alleging that the City erred in approving the building permit application with a three foot side yard setback, because the code actually requires a five foot side yard setback for accessory structures. The Planning Director issued a letter in response to Mr. Ortman on March 14, 2007, in which he acknowledges an internal inconsistency in the Code. The Director determined that the three foot setback was correctly applied, but that the matter could be appealed to the Planning Commission. On April 4, 2007, the Ortman's filed a timely local appeal of the Director's letter to the Commission.

Mr. Stamp stated that the Ortman's appeal seeks to have the building permit revoked. The appeal seeks to have the Planning Commission reverse various code interpretations of the Director for future unrelated cases, but is not a valid means of appealing the Vanderkin building permit. The City's failure to give notice or hold a hearing before issuing the building permit resulted in the Ortman's having a right to a direct LUBA appeal. The deadline for a LUBA appeal expired 21 days after the Ortman's received actual notice of the building permit. The Ortman's failed to file a timely appeal to LUBA, and cannot now file a local appeal of the director's letter.

Mr. Stamp said he agrees with Staff's analysis on the third driveway. If in fact excavation encroached onto the Ortman's property, the Vanderkins should pay for damages.

**OPPONENTS:**

**Krista Hardwick, Attorney for the Ortman's, 300 Pioneer Tower, 888 SW Fifth Avenue, Portland, OR 97204-2089.** Ms. Hardwick handed out a copy of the second page of the February 5, 2007, letter which was left out of the handout given to the Planning Commission. Hardwick stated that the Vanderkins had removed the encroachment to the Ortman's satisfaction.

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**Hardwick requested that the record be left open to give her the opportunity to review Ms. Beery's memo in depth.**

Ms. Hardwick stated that Section 9.855 and Section 9.915 of the Zoning Ordinance are contrary to one another. The former section states that all one story accessory structures are allowed to have a three foot setback. The latter section states that all accessory structures taller than 36 inches must have a five foot setback. Regardless of whether it is one or two stories, the accessory structure built by the Vanderkins is taller than 36 inches. The building permit should not have been issued with a three foot setback. Hardwick said that Mr. Stamp stated that the Ortman's are appealing Mr. Holan's letter, but the original letters appealed the building permit.

Ms. Hardwick cited the Warf case in which a local appeal was filed and accepted and did not void an appeal to LUBA. As soon as the Ortman's noticed excavation, they wrote letters to the Director. The Ortman's' appeal letters were accepted. Ms. Hardwick agreed that Ms. Beery gave a good explanation of "notice". Hardwick said the Planning Commission can hold to the five foot setback. The accessory structure has not received its final inspection. Hardwick pointed out that LUBA can repeal a decision if the City misconstrues the law.

**Brad Ortman, 2941 Watercrest Rd., Forest Grove, OR 97116.** Mr. Ortman said he was initially told by the Vanderkins that they were building a dog run and sport court.

**Wendy Ortman, 2941 Watercrest Rd., Forest Grove, OR 97116.** Ms. Ortman said they were aware in late January that a building was being built.

**OTHER:** None.

**REBUTTAL:**

Mr. Stamp stated that the opponents' attorney claims that the letters sent to the Director in February constitute an appeal. The appeal period for the building permit is 21 days after it was issued. That would be November 23, 2006. After that the only recourse would be to file an appeal directly to LUBA. It was not correct to file a late local appeal. Mr. Stamp referred to page 9 of his letter to the City's land use attorney where his explanation of the Warf case is mentioned.

Mr. Stamp concluded by saying that the Planning Commission tonight could make a ruling as to whether the three or the five foot setback will apply to future applications. But since the Vanderkins were issued a building permit with an approved three foot setback, and the 21 day appeal period has passed, they must be allowed to finish the construction as approved. Judges do not usually require a

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building to be torn down or moved. It is considered a waste of resources.

**Chairman Beck closed the public hearing at 8:10 p.m.**

**Ms. Beery stated that for the record the appellant has request that the record be left open for seven days for the appellants' attorney to respond. Then the record should be left open for an additional seven days to allow the applicants' attorney to respond. Ms. Beery will give her response after receiving the responses from the two attorneys.**

**Chairman Beck continued the deliberation to the July 2, 2007 meeting. The Commission would appreciate it if the appellants' attorney would have her analysis completed and turned into the City by May 29, 2007, and if the applicants' attorney would have his analysis completed and turned into the City by June 5, 2007.**

Chairman Beck said the Commission would now hear Agenda Item (2) 2.A.

**A. Comprehensive Plan Amendment Number CPA-06-03, Zoning Text Amendment Number ZA-06-03, Land Division Ordinance Number LDO-06-02 and Municipal Code Amendment: The City, as applicant, is proposing amendments to the Comprehensive Plan, Zoning and Land Division ordinances and the Municipal Code to implement the requirements of Metro's Title 13 Functional Plan requirements pertaining to Nature in the Neighborhood (otherwise referred to as Goal 5). The amendments are city wide. (continued from May 7, 2007)**

Chairman Beck stated that this is a legislative hearing. Due to the length of the staff report, the Commission would first hear from the only person in the audience, so he could leave the meeting if he chose to do so.

**OPPONENTS:**

**George Burlingham, 45157 David Hill Road, Forest Grove, OR 97116. Mr. Burlingham owns property to the north and south of David Hill Road and was annexed into the City two months ago. Burlingham requested that the Upland Wildlife Habitat Class A Green applied to the property north of David Hill Road be deleted. He concurred with staff that the overlay was appropriate south of David Hill Road. Burlingham gave the Commissioners an arial photograph on which he indicated the changes (Handout #2). Burlingham stated that he planted the stand of trees north of the road about fifty years ago, there is a tax liability with the county, and he plans to cut them down within ten years, so this is not a natural forest.**

Mr. Holan stated that in Mr. Burlingham's situation, because it is within the current UGB. However, the proposed amendments do not apply to the northern portion of

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his property it does raise the issue that if the City brings additional lands into the UGB which have forest practice permits or other activities going on, how should the ordinance requirements be handled.

Mr. Burlingham's property northeast of David Hill Road shows upland habitat. In the code as it is proposed, which is consistent with Metro, there are no standards and no provisions that apply to uplands. The code only applies to properties being brought into the UGB after the adoption of Goal 5 by Metro. In this case, Mr. Burlingham's property has been inside the UGB since the original inception of the UGB. So as far as the area with which he is concerned, there are no restrictions and no limitations as far as clearing the trees.

Burlingham said he wants the map changed.

Holan explained that it is a Metro map and would require an application to Metro to make that change. This is not necessary, because it is not an issue.

**Burlingham requested a copy of the minutes of tonight's meeting for his records.**

Chairman Beck asked for the staff report.

Commissioner Miller asked what the ramifications would be if the Commission does not understand Goal 5.

Chairman Beck explained that it was not necessary to understand every item, but it was important to understand the theory. The Commission has had work sessions on Goal 5 with Mr. Holan to help with comprehension.

Commissioner Nigbor asked Holan for a brief statement of Metro's Goal 5. Holan said Metro needed to comply with Goal 5 which addresses the preserving of resources, both natural and man made. Metro approached this in two ways. The first way was through water quality. No development is allowed in the 50-foot buffer on either side of creeks, which has been implemented through CWS requirements.

The second way is to protect riparian and upland habitat. Forest Grove has the option to adopt the Tualatin Basin proposal, whose goal is to improve the health of eco-systems, or to comply with Metro's functional plan requirements for communities outside the Tualatin Basin. Metro's model code could be adopted by the cities. To comply with the Tualatin Basin program, the City must offer incentives to use low impact development techniques. Holan stated that there is little the City can offer as incentives. One significant way is to reduce SDC's on water quality and quantity facilities. CWS sets the SDC charges, so the City cannot offer reduction in fees as an incentive.

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During a previous work session the City Council and Planning Commission indicated that they wanted a set of standards. As a result of this, staff moved forward on the version being presented, which blends the Metro model code with the City Ordinance.

Holan went through the proposed amendments which are referred to as Items 1-25 and began on page 8 of the staff report.

Item # 1 – Commissioner McIntyre asked whether she needed to understand Class 1 and Class 2. Holan explained that they just refer to the maps. Class 1 is a higher rated habitat area.

Item # 2 – This is a text amendment which has nothing to do with Goal 5. It adds a new section regarding updated flood studies and allows the use of other studies to make a decision.

Item # 3 – Provides a policy basis for what is being done.

Item # 4 – Adds a new definition of natural resource areas. Tries to provide clarity so there is no jurisdictional conflict between CWS and the City.

Item # 5 – Informational. Makes sure there is proper map verification of where a natural resource is located.

Item # 6 – Eliminates barriers for low impact, such as the use of pervious concrete.

Item # 7 – Allows for the use of open drainage as long as the City's Engineering Department has no problem with it.

Page 7 – Allows narrow streets through sensitive areas. This is intended to minimize impervious surface through resource areas.

Item # 8 – Sidewalks can be less than City standards where ADA is not an issue. Removes a barrier and allows for consideration of narrower sidewalks in subdivisions.

Item # 9 – Replicates what is written in the Environmental Review Zone.

Item # 10 – This is a policy amendment to add conservation of natural resource areas the purpose statement of the Zoning Ordinance.

Item # 11 – Very important – changes density. Currently when determining density, streets and open space are deducted. With this amendment if there is a natural resource area, it will not be deducted to determine density. This will avoid

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Measure 37 claims regarding reduction of development potential.

Commissioner Beck stated that he disagrees with this whole section, and does not want it included. It uses Measure 37 as an excuse, and Forest Grove may have to pay in the future. It allows dense housing up next to areas we want to protect. It contradicts what we are trying to do here.

Holan explained that the whole purpose is to encourage developers not to go into natural resource areas. It allows some intrusion with mitigation elsewhere, and does not change development standards for property owners. This is actually more than Metro requires, Holan said he is not sure the City has the authority to do this due to the ESEE analysis that has been done by Metro and the Tualatin Basin. Holan recommends going through Periodic Review and do an ESEE analysis.

Beery did not have an immediate answer. This is a significant policy change. She suggested that the Planning Commission could recommend the policy change to City Council and the legal discussion could occur there.

Item # 13 – To make it explicit that Planned Developments can be used for the conservation of natural resource areas..

Item # 14 – Adds new subsection (3) to Section 9.813.

Item # 15 – Add criteria for planed developments to take into consideration natural resource areas.

Item # 16- Encourages use of native vegetation.

Item # 17 – Bio retention facilities. Landscape areas may include bio swales, etc.

Item # 18 – Allows use of pervious paving for walkways.

Item # 19 – Needed more reference to geo tech reports. This amendment provides a standard.

Item # 20 – Allows open swales as approved by the City Engineer.

Item # 21 – Native vegetation to be used in buffer areas.

Holan explained that Items # 22-24 are the meat of how the program applies to lands.

Item # 22 – This is a restatement of tree protection in natural resource areas.

Item # 23 – Definitions that appear in the Metro's model code.

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Item # 24 – Trees in natural resource areas. Holan read the amendment. Due to the vesting issue, Holan said he is apprehensive about applying this retroactively. After there is a determination of completeness on a project, those are the requirements under which they develop.

Beery stated that this would not be allowed to be retroactive.

Chairman Beck stated that he is still opposed to increased density next to areas that are being protected. Incentives make sense only if something is gained.

Holan stated that if a developer avoids building in natural resource areas he gets incentives, and the City gets less intrusion. That is what is gained. Chairman Beck said that made sense.

Holan said there is a good chance the Planning Commission may not meet until July, due to lack of a quorum. A special meeting could be held in June, if enough Commissioners were available to make a quorum. Because Goal 5 is legislative and not quasi judicial, Commissioners that were not present tonight can participate without listening to the recorded tapes of the meeting.

Chairman Beck said he will be here May 31<sup>st</sup> and the first of June, and then will be gone until the end of June.

**Chairman Beck continued the meeting to July 2, 2007.** Commissioner Miller said he may not be here on July 2<sup>nd</sup>.

**3.0 BUSINESS MEETING:**

**3.1 APPROVAL OF MINUTES:** None.

**3.2 REPORTS FROM COMMISSIONERS/SUBCOMMITTEES:** None.

**3.3 DIRECTOR'S REPORT:** None.

**3.4 ANNOUNCEMENT OF NEXT MEETING:** Next meeting will be held on July 2, 2007.

**3.5 ADJOURNMENT:** The meeting was adjourned at 10:15 p.m.

Respectfully submitted by:  
Marcia Phillips

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**APPROVED**

**1. CALL TO ORDER:**

Chairman Beck called the meeting to order at 7:05 p.m. **Planning Commission Present:** Tom Beck, Al Miller, Carolyn Hymes, Ed Nigbor, Luann Arnott. **Absent:** Lisa Nakajima and Cindy McIntyre. **Staff Present:** Jon Holan, Community Development Director; Kerstin Cathcart, Senior Planner; Marcia Phillips, Permit Coordinator/Recorder.

**2.1 PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS: None.**

**2.2 PUBLIC HEARING:**

Chairman Beck opened the meeting and stated that the Commission would hear Agenda Item (2)2.B first, because it would not require as much time as Agenda Item (2)2.A.

**B. Comprehensive Plan Amendment Number CPA-07-03: Pacific University, as applicant, requests an amendment to the Comprehensive Plan to redesignate 8.13 acre portion of a 12.27 acre site from "Semi-Public/Institutional – College" designation to "High Density Residential". The subject site located between Cedar and Elm Streets and about 175 feet north of 23<sup>rd</sup> Avenue. The site is known as Cannery Field. (Washington County Tax Lot number 1N331CA3500.)**

Chairman Beck read the hearing procedures and asked for disclosure of any conflicts of interest, ex-parte contacts, bias or abstentions. Commissioner Miller said he has been on site. Chairman Beck said he has a former interest. He was a former employee of Pacific University, and in the past he had the area rezoned. There were no objections and no challenges from the audience.

**Chairman Beck opened the Public Hearing at 7:10 p.m. and called for the staff report.**

Ms. Cathcart said that Pacific University owns a 12.27 acre site which is commonly referred to as "Cannery Field." The current tax lot 1N331CA 3500 was originally two different lots. In 1948, the University was presented with 8.13 acres, originally tax lot 3600, from the Taylor family. This lot was designated Semi-Public/Institutional on the City's Comprehensive Plan map which was adopted in 1980. This is the portion of the project subject to the proposed amendment.

The University then acquired the adjacent lot, originally tax lot 3500, which is approximately 4.14 acres, in 1986. This property was never designated Semi Public/Institutional. Its existing zoning was General Industrial. Both lots together were referred to as "Cannery Field."

In 2002, the applicant requested a zone change on a 4.25-acre portion of the original 8.13 acre site (tax lot 3600). This portion was changed from General Industrial (GI) to A-2

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Multi-Family Residential in order to facilitate the intended development of an athletic facility. This change gave the same zoning, high density residential, to both tax lots.

The two tax lots were combined in 2004 under the tax lot number 3500. The Comprehensive Plan has a split designation on the property – High Density Residential and Semi-Public/Institutional.

Pacific University and the City of Forest Grove have entered into a joint agreement to develop Lincoln Park as the new athletic facility for Pacific University and the community. The University expects to sell the Cannery Field property shortly and, therefore, the current comprehensive plan map designation would be inappropriate for private development.

Ms. Cathcart stated that the applicant is requesting removal of the Comprehensive Plan map designation of Semi-Public/Institutional on part of tax lot 3500, to be replaced with High Density Residential. The Zoning Map already assigns the entire lot the A-2 Multi-Family Residential district, so only a comprehensive plan map amendment is required. Removing the designation unifies the property.

This redesignation leaves two small parcels as an island with General Industrial zoning surrounded by A-2 High Density zoning. Tonight's focus is on the Comprehensive Plan Amendment. The rezoning of these two small parcels would require another hearing.

**PROPONENTS:**

**Jerry Brown, 43578 Purdin Road, Forest Grove, OR 97116.** Mr. Brown owns the flag lot at 2323 Cedar Street, and is in favor of changing the University's property to A-2 Multi-family.

**OPPONENTS:**

**Robert Cox, 2409 Cedar Street, Forest Grove, OR 97116.** Mr. Cox missed the opportunity to testify against the last zone change. He objects to a playing field being there due to lights and noise, and is not certain that High Density is appropriate due to drainage problems. Mr. Cox said the area floods even with the new storm drains. Water runs down driveways. He is very concerned about the drainage problem.

Chairman Beck explained that the intent of Pacific University is to sell the property to a developer. When the property develops, the drainage issue would be addressed. Beck suggested that Mr. Cox talk to the City Engineer now about the drainage problem.

**Josh Reynolds, Executive Vice President of Gray & Co., 2331 23<sup>rd</sup> Avenue, Forest Grove, OR 97116. Home address 8024 SE 32<sup>nd</sup> Avenue, Portland, OR.** Mr. Reynolds stated that Gray & Co. intends to do maraschino cherries long term in Forest Grove. The company has always been supportive of Pacific University developing a playing field.

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Mr. Reynolds wants the A-2 zone designation to remain – not single family. The company sometimes produces stinky odors and is messy. Home owners may think it would affect property values. He is agreeable to high density housing. The company wants to know about the University's property so long term decisions can be made.

Chairman Beck suggested that Mr. Reynolds appear before the City Council and say what he said tonight.

Mr. Reynolds said he will write a letter and give it to staff.

Mr. Holan recommended that Mr. Reynolds be involved in the Periodic Review update process.

**Dr. Forrest Bump, no address given.** Dr. Bump said he has a personal interest in Forest Grove and its development. He is concerned about Pacific University selling property and moving away.

Chairman Beck explained that Pacific University moved to Hillsboro to get more patients for various classes. The University is putting five million dollars into development of Lincoln Park in partnership with the City, and the sale of this property will help pay for that.

**Chairman Beck closed the Public Hearing at 7:35 p.m. and returned the meeting to the Commission for discussion.**

Commissioner Hymes: Why wasn't this brought to us together as a rezone of the two extra properties (zoned General Industrial) and the Comprehensive Plan Amendment?

Holan: Measure 56 notices will need to be sent to property owners involved with the rezone of those two properties. The Commission can direct staff to initiate a Zone Change Amendment and Comprehensive Plan Amendment for the two properties.

**Commissioner Arnott made a motion to recommend approval of CPA-07-03. Commissioner Hymes seconded. Motion passed 5-0.**

**Commissioner Arnott made a motion directing staff to initiate a Zone Change Amendment and a Comprehensive Plan Amendment for the two properties east of Cedar Street now zoned General Industrial to be changed to A-2 Multi-family. Commissioner Hymes seconded. Motion pass 5-0 with a voice vote.**

**A. Comprehensive Plan Amendment Number CPA-06-03, Zoning Text Amendment Number ZA-06-03, Land Division Ordinance Number LDO-06-02 and Municipal Code Amendment:** The City, as applicant, is proposing amendments to the Comprehensive Plan, Zoning and Land Division ordinances and the Municipal Code to implement the requirements of Metro's Title 13 Functional Plan

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**requirements pertaining to Nature in the Neighborhood (otherwise referred to as Goal 5). The amendments are city wide. (continued from May 7 and May 21, 2007)**

Chairman Beck explained that agenda item (2)2.A Goal 5 was continued from the May 7<sup>th</sup> and May 21<sup>st</sup> meetings, and asked staff to continue with the staff report.

Mr. Holan said, since two property owners were in the audience, the Commission could hear from them at this time, or continue with the staff report. The Commission chose to hear from the property owners.

**Ray Hoodenpyle, 44471 NW David Hill Road, Forest Grove, OR 97116.** Mr. Hoodenpyle owns 2.41 acres on David Hill Road. He asked why on the Metro map so much Class I is on the west side of Thatcher and not on the east side. The east side is wetter.

Holan explained that the areas are determined by Metro, and the City is obligated to use Metro's inventory. He could surmise that the designation is due to modifications on the east side of Thatcher Road due to farming. It appears the drainage continues along David Hill road to the north, and is a possible tributary to Council Creek. The area in brown on the map is due to slope, not wetlands. Most of the Hoodenpyle property is blue – Class I riparian area. The Planning Commission will make a recommendation to City Council. When it goes to the Council there can be a discussion of how this affects your particular property. Mr. Hoodenpyle agreed to meet with Mr. Holan next Friday to discuss the matter.

Chairman Beck asked whether existing houses in the areas affected by Goal 5 would be "grandfathered in", so if they burned the houses could be rebuilt.

Holan said they can rebuild, because they are exempt from this provision. No one else in the audience wanted to speak at this time, so Mr. Holan resumed the staff report.

Holan said he ended on page 29 of the staff report at the last meeting. Metro Functional Plan Requirements Section 3 requires that the implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process. This is accomplished by proposed Subsections 9.944 (F) and (G) which are taken from the Metro Model Ordinance. These are the two basic sections. In Section F, if the developer meets all standards, he can build, and Section G is if standards are not met.

The idea is to avoid impacting Natural Resource Areas. These are areas beyond the fifty foot buffer required by Clean Water Services. If these areas cannot be avoided, then the developer must mitigate on site or off site in the same basin. Site design is flexible. The overall density does not change, but the housing can be clustered to keep away from the Natural Resource Area.

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Beck: The Commission still has the same basic conundrum – trading High Density to preserve the resource area.

Holan: Density for the overall property would not change. Density on a particular part of the property would change (clustered homes). The developer would not have to do a Planned Residential Development, because provision is already in the Goal 5 plan. The main thrust of Goal 5 is to avoid, minimize, mitigate. Holan discussed the formula used to determine the amount of area that can be built upon.

Commissioner Miller: Who will do the calculations?

Holan: Staff will do the calculations. The applicant must do the mapping verification process. A Wetlands Biologist would prepare the report. There is a basic procedure for this, and a more complex procedure if the situation is complicated or the applicant desires more precision.

No commercial areas are affected by Goal 5, except one small area identified as an upland riparian area. Per the chart on page 31 Table 2, Class I CC (Community Commercial) – 10% of the Natural Resource Area can be disturbed. In Class II GI (General Industrial) - 50% of the Natural Resource Area can be disturbed.

Beck: It seems like it should be the opposite. It allows 50% intrusion by the most intrusive development.

Holan: The intent of Metro is to allow greater flexibility for industrial uses. The City can do a separate Goal 5 program, if it wishes more restrictive requirements.

Hymes: If we accept the Metro plan now, could we make our own plan on down the line?

Holan: Yes. As part of the Periodic Review update, the City can pursue its own Goal 5 program. Moving on to page 32 - Parks and Open Space, Tom Gamble, Aquatic/Parks and Recreation Director, has no problem with this section as written. I do not believe the City has much park property that would be affected by this. Holan read Section (3) on page 33 – Utility Facility Standards. Holan stated that Rob Foster, Engineering/Public Works Director, has no concerns with this section. This section applies if you are in a Natural Resource Area and states how to mitigate the disturbance. It gives specifications of plant size and spacing, etc. All of this is a significant improvement over what the City has now.

**On page 37 Standards for Subdivisions, Section (ii) could be changed to read, “Applicants who are sub-dividing and developing properties must comply with Subsections (E), (F) or (G) and (H).**

On page 37 Section (vii), “Prior to final plat approval, ownership of the NRA tract shall be identified to distinguish it from lots intended for sale.” It then lists three ways the

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NRA tract can be identified. The intent is to make sure it is managed by someone.

Page 48 Section (v), Municipal Water Utility Facilities Standards - Rob Foster, Engineering/Public Works Director, has no concern with this section.

Page 52 Section (c) – Property Developed Between Summer 2002 and January 5, 2006. I do not believe the City could have a property owner who developed during this period of time retroactively go through this process.

**Page 52 Section (7)(b) – Detailed Verification Approach – Notice Requirements. The Commission agreed notification should be sent to property owners within 300 feet rather than only 100 feet.**

**On Page 58 is a new section which will apply citywide. This section deals with Habitat-Friendly Development Techniques and Natural Resource Area Requirements. Section 9.971 (3) encourages property owners and developers to integrate habitat friendly development procedures, and actually lists habitat friendly development procedures and practices. There are no incentives to do so, just encouragement.**

**Chairman Beck closed the Public Hearing at 9:08 p.m.**

Holan said there were a few minor typing errors that will need to be corrected, and the two changes requested by the Commission.

**On page 37 Standards for Subdivisions, Section (ii) could be changed to read, “Applicants who are sub-dividing and developing properties must comply with Subsections (E), (F) or (G) and (H).**

and

**Page 52 Section (7)(b) – Detailed Verification Approach – Notice Requirements. The Commission wants notification sent to property owners within 300 feet rather than only 100 feet.**

Commissioner Arnott made a motion to recommend approval of CPA-06-03, ZA-06-03, Land Division Ordinance Number LDO-06-02 and Municipal Code Amendment with changes as noted to staff. Commissioner Miller seconded. Motion passed 5-0.

**3.0 BUSINESS MEETING:**

**3.1 APPROVAL OF MINUTES: None.**

**3.2 REPORTS FROM COMMISSIONERS/SUBCOMMITTEES: None.**

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**3.3 DIRECTOR'S REPORT:**

Holan said he had gone on the Metro tour to Vancouver BC. He visited Port Moody which is similar to location in the Vancouver metro area as Forest Grove is to the Portland area.. There is a significant difference there in development, pricing and average income between the two communities.

The attorney for the Rau's will not be available on August 6, 2007, so there will probably need to be a second meeting in August.

Chairman Beck asked when the curbs and sidewalks will be installed on University Avenue.

Holan replied that it is part of the development agreement for Burlingham Hall. The City's Public Works Director has not pushed forward with that yet. Darlene Morgan would be happy to come to a Planning Commission meeting to discuss it.

The new Pacific University Student Housing Phase II will begin soon. The building site is where the tennis courts are located now, and includes property further up Main Street. Parking has been expanded by sixty spaces.

Commissioner Miller: Where are we now on the Pacific University Master Plan?

Holan: The student housing was the first application under the Master Plan.

Chairman Beck: Pacific University had designated parking on Cannery Field, which they will no longer own.

Holan: The University has sufficient parking for the new student housing. If there is further development, they will have to put in parking in other areas.

**3.4 ANNOUNCEMENT OF NEXT MEETING:** The next meeting will be held on July 30, 2007.

**3.5 ADJOURNMENT:** The meeting was adjourned at 9:20 p.m.

Respectfully submitted by:  
Marcia Phillips



**Comprehensive Plan, Zoning Text,  
Land Division Ordinances  
and  
Municipal Code Amendments  
Staff Report and Recommendation**

Community Development Department, Planning Division

**Report Date:** April 30, 2007

**Hearing Date:** May 7, 2007

**Land Use Request:** The proposed amendments to Forest Grove's Comprehensive Plan, Zoning Ordinance and Land Division Ordinance to come into compliance with Metro's Goal 5 program as approved for the Tualatin Basin. These amendments are to address the deficiencies the City has to allow for low impact development (LID) techniques. Further, the proposed amendments incorporates Metro's model ordinance to address other Metro requirements and to establish specific standards.

The Municipal Code amendment and certain Zoning Ordinance amendments do not pertain to Goal 5. They address flood management and slope issues to update the City's codes and revise the City's approach to performance standards rather than overlay zone districts. (see Attachment 1 for text of the amendment.)

**File Numbers:** Comprehensive Plan Amendment CPA-06-03, Zone Map Amendment ZC-06-03, Land Division Ordinance Amendment LDO-06-02 and Municipal Code Amendment

**Property Locations:** The amendments to allow LID techniques are citywide. The portion of the amendments that incorporates Metro's model ordinance would apply to areas identified as Class I and II Riparian habitat and Class A and B uplands by Metro's Regionally Significant Fish and Wildlife Habitat Inventory map. Floodplain changes would apply to those areas within the 100 year floodplain while steep slope provisions apply to those areas with slopes 20 percent or greater. (see Attachment 2 for maps showing the location of the habitat areas, slopes of greater than 10 % and 100 year floodplain locations).

**Applicant:** *Applicant:* City of Forest Grove

- Applicable Standards and Criteria:**
- City of Forest Grove Comprehensive Plan *Amendment Applications*
  - City of Forest Grove Zoning Ordinance:
    - Section 9.905 *Criteria for Zone Changes*
  - City of Forest Grove Land Division Ordinance
    - Section 9.118
- Reviewing Staff:** Jon Holan, Community Development Director
- Recommendation:** Staff recommends approval.

## I. HISTORY AND BACKGROUND

Metro adopted Title 3 to its Functional Plan to study and develop a protection program for the protection and conservation of fish and wildlife habitat. This is borne out of the provisions of State Planning Goal 5, which "is intended to protect natural resources and conserve scenic and historic areas and open spaces," and Metro's Regional Framework Plan which provides that Metro will adopt programs to maintain and improve water quality and to protect fish and wildlife habitat in the region.

The first step to meet these goals was to address water quality issues. For Washington County and its communities, this was done in 2000 with Clean Water Services (CWS) Agency adoption of sensitive area and vegetative corridor requirements as part of its Design and Construction Standards.

The second step was the development of the program to protect fish and wildlife habitat in the region. This consisted of three different general tasks to be compliant with Goal 5 requirements:

- Creating an **Inventory** of Significant Regional Resources,
- Analyzing the Economic, Social, Environmental and Energy (**ESEE**) consequences of allowing, limiting or prohibiting conflicting uses in resource and impact areas, and
- Developing a **Program** to implement the allow/limit/prohibit (ALP) decision.

The Metro Goal 5 efforts included completing the inventory analysis of significant regional resources, preparation and acceptance of an ESEE analysis for the regional effort (see Attachment 3) and the development of a regional program called Nature in Neighborhoods.

The Metro effort also lead to two local efforts. One was the formation of the Tualatin Basin Natural Resources Coordinating Committee. The committee was formed in 2002 and entered into an intergovernmental agreement with Metro to develop its own ESEE analysis and program. Public meeting was held on the acceptance of the ESEE analysis in April, 2004. The Committee held a public hearing on the draft program on August 2, 2004 and adopted Resolution and Order No. 2005-01 on April 4, 2005 to adopt the program and forward it to Metro. During the time of developing the program, Metro and the Tualatin Basin sponsored several open houses including an open house in Forest Grove.

The other local effort was the City of Forest Grove. Staff has held several work sessions with the Planning Commission and Council on the matter. Work sessions and updates were held with the Commission on June 18, 2001, September 30, 2002, March 17, 2003, November 17, 2003, May 17, 2004, March 7, 2005, October 2, 2006, November 20, 2006 and January 29, 2007. It should be noted that City Councilors were invited to the last two Commission meetings and several Councilors were in attendance. Meetings with Council included June 11, 2001, November 13, 2001, April 22, 2002, July 8, 2002, May 27, 2003, May 27, 2004, and July 26, 2005. In addition, three joint work sessions were held with both the Planning Commission and Council on July 12, 2004, October 17, 2006 and September 5, 2006.

**Metro Program:** Metro inventoried 80,000 acres of regionally significant fish and wildlife habitat. It was classified for its ecological value. For Forest Grove, the one portion of the proposed amendments would apply to the two highest valued habitat areas for riparian and upland habitat areas inventoried by Metro.

After the inventory, the process resulted in two approaches. Metro pursued Tasks 2 and 3 for most of the region. Washington county communities formed there own approach to meet Metro's program requirements. This effort will be discussed below.

On September 29, 2005 the Metro Council voted to approve Ordinance Number 05-1077 A to establish a regional Nature in Neighborhoods (Goal 5) program. Part of this approval was the adoption of a new Title 13, Nature in Neighborhoods, into Metro's Functional Plan (see Attachment 4). Section 3.B. establishes the implementation alternatives for cities and counties. Communities must either:

- Adopt the Metro Model Ordinance and Metro Habitat Conservation Areas;
- An alternative ordinance that substantially meets specified performance standards and best management practices identified in Section 4 of the Functional Plan;
- Implement a program based on alternative approaches that will achieve protection and enhancement of Class I and II riparian habitat and Class A and B upland wildlife habitat areas in territory added after the effective date of Metro's adopting ordinance (Ordinance No. 05-1077 which was January 5, 2006);
- Develop a district plan with other jurisdictions; or
- Amend ordinances and plans to be compliant with the Tualatin Basin program and other provisions of Section 3 (see below). The following conditions are required to be met by the Basin program to be compliant:
  - Comply with the six steps identified in Section B of Chapter 7 of the Tualatin Basin program;
  - CWS approves and implements its Healthy Streams Plan;

- Tualatin Basin members renew and extend their partnership to implement Healthy Streams project list and cooperate with Metro to develop regional public information;
- Cities adopt provisions to facilitate and encourage use of habitat-friendly development practices, where feasible, in Class I and II riparian habitat;
- Cities adopt provisions to allow for density reduction consistent with other portions of Section 3 (see below)
- Cities adopt either the Model Ordinance or alternative ordinances to apply to upland wildlife habitat in territory added to the UGB after the effective January, 2006 date.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances:
  - Must establish clear and objective standards; and
  - May include an alternative, discretionary approval process;
- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by:
  - Identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and
  - Adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.
- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.
- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

**Tualatin Basin Program:** The Metro Council action in adopting the Nature in Neighborhoods incorporated the Tualatin Basin Fish & Wildlife Habitat Program, as developed and recommended by the Tualatin Basin Partners for Natural Places. The Tualatin Basin's coordinated Goal 5 effort is known as *Partners for Natural Places* (Partners). The Partners represent an alliance of eight cities (Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, Sherwood, Tigard and Tualatin) and Washington County working together with Metro, Tualatin Hills Parks and Recreation District and Clean Water Services to meet federal, state and regional requirements for protecting riparian corridors and wildlife habitat in the Tualatin Basin. Washington County

communities, including Forest Grove, proposed a separate approach (called the Tualatin Basin approach) based on the Metro inventory.

As part of adopting the new Functional Plan requirements, the following are those plan requirements pertaining to the Tualatin Basin program:

- Comply with the six steps identified in Section B of Chapter 7 of the program. These steps are:
  - Development and adoption of the Basin Program as incorporated in the Metro Functional Plan;
  - Develop a model Low-Impact Development (LID) ordinance for the basin providing tools designed to reduce environmental impacts of new development and remove barriers to their utilization. This step includes local adoption of LID guidelines.
  - Coordination with CWS to implement the Healthy Streams Action Plan as well as local actions needed to support updated Stormwater Management Plan.
  - Coordinate with Metro on development of a regional bond measure supporting protection of regionally significant fish and wildlife habitat (this step has been completed).
  - Coordinate with CWS, Metro and others as necessary to develop and support the voluntary and educational components of the Basin program.
  - Coordinate with CWS, Metro and others as necessary to develop and support the monitoring and adaptive management components of the Basin Program.
- CWS approves and begins implementing its Healthy Streams Plan;
- Tualatin Basin members renew and extend their partnership to implement Healthy Stream Project List and target projects that protect and restore Class I and II Riparian Habitat, including habitat extending beyond CWS vegetative corridors and continue to coordinate activities with Metro and cooperate with Metro on a regional public information program;
- Cities (and the county) adopt provisions to facilitate and encourage the use of habitat-friendly development practices, where technically feasible and appropriate, (see Table 1 of Section 9.970 on pages 56 and 57 of the proposed amendments) for Class I and II habitat areas;
- The city has adopted provisions to allow for the reduction of density and capacity requirements of Title 1 of the Functional Plan that would apply:
  - Only to properties within the UGB on January 1, 2002;
  - Require the protection of regionally significant habitat either by public dedication or restrictive covenant; and
  - Allow only for the reduction of density based on the area protected and report by April 15 any approvals based on the density reduction.

The Tualatin Basin communities prepared its own ESEE analysis (see Attachment 5) for State Planning Goal 5 requirements and a program (see Attachment 6) to meet Metro's Functional Plan requirements. The program (see Chapter 6 of Attachment 6) is composed of four components: revenue, regulatory, non-regulatory and ongoing monitoring. In an outline form, the following summarizes the program elements:

Revenue Component:

- \$95 Million in Healthy Streams Plan (HSP) recommended capital improvements (ranging from \$3.5-\$6.5 million per year over the next twenty years) will be focused in areas of highest resource quality. Typical projects will include:
  - community tree planting
  - riparian corridor restoration and enhancements
  - culvert replacements
  - stormwater outfall retrofits
  - flow restoration;
- Regional Bond Measure providing funding for site acquisition and preservation; and
- Other potential funding alternatives (including grants, local bond measures, opportunities for park SDCs, etc.) – may be utilized for education, restoration and enhancement or acquisition.

Regulatory Component:

- Existing Clean Water Services Design & Construction Standards:
  - development related activity restrictions in Water Quality Sensitive Areas (wetlands, springs, streams, and the Tualatin River) and their associated Vegetated Corridor areas. (Vegetated Corridors average approximately 50 feet and range up to 200 feet depending on resource type and size, drainage area, slope, and site conditions.)
  - required enhancement of degraded or marginal condition vegetated corridors;
- Existing local Goal 5 program requirements;
- Existing local tree protection standards; and
- Other existing standards which result in local habitat protection (including but not limited to: local, state and federal wetland regulations, floodplain regulations, ESA, Clean Water Act, etc.).

Non-Regulatory (Voluntary and Incentives) Component:

- Educational programs;
- Guidelines for low-impact-development & green design;
- Flexible development standards;
- Technical assistance programs;
- Local, state, federal and non-profit grant programs; and
- Potential implementation of tax incentive programs.

Ongoing Monitoring and Administration Component:

- Adaptive management process;
- Regional data coordination;
- Continued TBNRCC functions:

- Project coordination
- Funding coordination;
- CWS monitoring activities for NPDES permit compliance and stream health; and
- HSP commitments to re-sample Watersheds 2000 Rapid Stream Assessment Technique (RSAT) inventory

An important feature of the Basin program is encouraging of land developers and property owners to incorporate habitat friendly practices in their site design. *Habitat friendly development practices* include a broad range of development techniques and activities that reduce the detrimental impact on fish and wildlife habitat relative to traditional development practices. The **Program Implementation Report to Develop and Encourage Habitat Friendly Development Practices** outlines a draft program to implement the ALP decision within significant riparian corridor and wildlife habitat resources and their impact areas within the Tualatin Basin Study Area.

One notable aspect of the Tualatin Basin approach is that the only regulatory aspect of the program, aside from allowing the use of low-impact development techniques, is the current Clean Water Services standards.

**City Proposed Program:** As part of the development of the Tualatin Basin Program, two technical issue papers were issued (See Attachments 7 and 8) that established a matrix to evaluate the adequacy of local programs. Attachment 9 is a summary of how various communities in the Tualatin Basin, including Forest Grove, meets those requirements and where gaps exist.

The Planning Commission held a work session with invitations to the City Council on November 20, 2006. At that meeting, the direction was to develop code amendments that were performance based rather than the use of the Environmental Review Overlay district. Further, there was discussion that specific, identified areas and specific standards be provided in the code amendments.

Based on that direction and the gap analysis, staff prepared a set of code amendments pertaining to requirements in habitat areas that were reviewed by the Commission on January 2, 2007. The proposal essentially incorporates the Metro Model Ordinance into the Zoning Ordinance and proposes changes to remove identified barriers to address the gap analysis. The Commission gave direction to proceed with that approach with minor clarification changes.

## II. SUMMARY OF THE AMENDMENTS

Attachment 1 contains the specific text amendments. Staff has broken the amendments down into 25 separate items to facilitate review and discussion. The following is a summary of the proposed amendments by item:

## **COMPREHENSIVE PLAN AMENDMENT**

1. Add new Natural Resource Policy to adopt Metro's Class I and II Riparian and Class A and B Upland areas and to set forth the basis of an implementation program through ordinance amendments and an informational and educational program.

## **MUNICIPAL CODE TEXT AMENDMENT**

2. Amend Section 5.815 to redefine the basis to determine the areas of Special Flood Hazard. Currently, the code only recognizes the floodplain as defined by the 1981 FEMA study. Based on the city's experience with the Rau project, that study may not be accurate and regional and federal laws allow for the consideration of more recent data in determining floodplain location. This amendment is intended to address that gap by adopting the wording from Clean Water Services Design and Construction Standards. This is a non-Goal 5 amendment.

## **LAND DIVISION ORDINANCE TEXT AMENDMENTS:**

3. Amend Section 9.101, Purpose Statement, of the Land Division Ordinance to incorporate natural resource conservation.
4. Amend Section 9.102 to add new definition 27 to define natural resource areas as Class I and II riparian areas and Class A and B upland habitat areas excluding those portions within Clean Water Service vegetative corridors. The definition excludes those areas within Clean Water Services vegetative corridors. This exclusion is intended to avoid having two sets of standards within the corridor and direct developers to follow the CWS requirements. This amendment coincides with and intended to help implement Amendment Item 24.
5. Amend Section 9.108, Supplemental Materials with Tentative Plan, to require submittal of information required for Natural Resource Area review where within 100 feet of such areas. This is an informational requirement to help implement the proposed provisions in Amendment Item 24.
6. Amend Section 9.109, Required Improvements, to require compliance with the proposed provisions of Amendment Item 24 where improvements are within natural resource areas. In addition, it provides the option to use habitat friendly techniques including pervious paving for certain streets and sidewalks, and drainage swales. Staff did not include specifying the use of native trees for street trees since trees to be used in street tree plans must be suited to Western Oregon. The Commission could consider revised wording to specify native trees. Attachment 10 is a list of native trees on the City's accepted tree list prepared by the City Arborist.
7. Amend Section 9.110 (1) to allow minimal (24 feet wide without parking) street widths through Natural Resource Areas. This is intended to minimize impervious surface through these resource areas. Clean Water Services already specified such a street width for one project in Forest Grove (Casey Meadows PRD).

8. Amend Subsection 9.110(2)b.iv. to allow sidewalks narrower than city standards where ADA requirements do not apply. This item is to remove a barrier and allow for the consideration of narrower sidewalks in subdivisions.
9. Amend Section 9.113 to remove reference to Environmental Review (ER) Overlay District and replace with natural resource, flood management and steep slope areas with requirements to allow appropriate review for each area type. Requirements for natural resource areas would implement Goal 5 requirements. Requirements for flood management make reference back to the requirements of the Municipal Code (see Attachment 11). These requirements are more detailed than that required by the ER zone but they currently exist. Thus, no new regulations are proposed. The steep slope area requirements makes reference to the proposed Zoning Ordinance amendment under Item 19113(3)d..

#### **ZONING ORDINANCE TEXT AMENDMENTS:**

10. Amend Section 9.601, Purpose Statement, of the Zoning Ordinance to include conservation of natural resource areas. This is a policy amendment.
11. Amend definition of "Density, net" (Section 9.603 42.) to include natural resource areas in determining net density and thereby unit yield. Currently, Forest Grove excludes all open space area from the density and unit yield determination. This amendment is intended to assure that these proposed standards do not reduced the entitled development levels as allowed by current zoning and land division ordinance provisions. This reduces the basis for possible Measure 37 claims.
12. Add new definitions for Natural Resource Areas and Bio-swales to Section 9.603 and renumber existing definitions accordingly. The bioswale definition is provided as a result of the worksession comments of January 2, 2007. The definition of natural resource areas is similar to the Land Division Ordinance definition and is intended to implement the proposed amendments in Item 24.
13. Amend Section 9.810, Intent, for establishment of a Planned Development to make it explicit that PD's can be used for the conservation of natural resource areas. Staff envisions that the planned development approach (residential, commercial or industrial) may be the best way to encourage good design that can reinforce the preservation and, if needed, enhancement of habitat areas. Where intrusions into habitat areas do occur, alternative design solutions may be available through a planned development to help minimize impacts to the remaining habitat.
14. Add new subsection (3) to Section 9.813, Preliminary Development Plan to require information for natural resource areas where applicable as part of Planned Development applications. This provision is included to help assure the proposed provisions under Item 24 are addressed.
15. Add criteria for planned developments to take into consideration natural resource areas. This is added to better assure that where planned developments are used in natural

resource areas, that the project comply achieves the resource objectives as proposed in Items 24 and 25.

16. Amend Subsection 9.826(2)(a), Parking Area Landscaping Requirements, to encourage use of native vegetation. This amendment is to remove a barrier and would apply citywide.
17. Amend Subsection 9.826(3)(a) and (b) to allow bio-retention facilities on the perimeter of parking lots. This amendment is to remove a barrier and would apply citywide.
18. Amend Subsection 9.830(7) to allow walkways be constructed with pervious paving. This amendment is to remove a barrier and would apply citywide.
19. Amend Subsection 9.855 (1) to acknowledge the need for other approvals for flooding and natural resource areas either concurrent with or prior to site plan review. This is to define the appropriate time in the land development review process when such analysis is required. The additional wording related to slope areas are similar in intent to the Environmental Review Overlay zone requirements but are more definitive. The proposed wording is taken from the City of Salem's Landslide Hazards ordinance.
20. Amend Subsection 9.855(4)(e) to eliminate the restriction of piped storm water lines to allow for open swales. This amendment is to remove a barrier and would apply citywide.
21. Amend Subsection 9.858(3)(b) to specify native vegetation to be used in buffer areas. As proposed, this is more than removing a barrier, but to require the use of native vegetation. It could be amended to consider using native vegetation except in natural resource area where it would be required.

The next three items are intended to establish specific standards and processes for natural habitat protection and enhancement. This is proposed to be achieved through the integration of Metro's Model Ordinance into the City's Tree Protection Ordinance. Text in italics indicates where Metro has identified options on standards for local jurisdictions to consider. The current ordinance has a provision for trees in natural resource areas (Section 9.944). In the current ordinance (Section 9.944 (B)), no vegetation can be removed unless:

- The permanent impact is negligible;
- To prevent the spread of disease or insects or to eliminate a natural hazard;
- The loss is temporary or there is a mitigation plan of adequate replacement of resource area of equal value either on or off-site;
- Timetables for work would have a minimum impact on wildlife.

There are no standards associated with these requirements such as defining a resource area of equal value or minimum impact on wildlife. Further, there is no definition of what a natural resource area is. Under Section 9.940, there is a definition of Natural Resource Vegetation which includes trees and vegetation within wetland or wetland buffer areas, floodplains, within 30 feet of the center line of mapped drainage ways, and open space areas as designated on the Comprehensive Plan. The Comprehensive Plan shows open

space for one city park, along a small portion of Gales Creek, along Council Creek from the Cornelius city limits to the end of the UGB north of the Sunset Drive/Highway 47 intersection, an open space preserve in Knox Ridge, a parcel in the southern portion of the historic old town area and an area in the General Industrial area. Wetlands are under the authority of U.S. Army Corps of Engineers and State Division of Lands. Wetland buffer areas are not defined. Generally, the drainage way definition has been usurped by Clean Water Services Vegetative Corridor requirements, although the ordinance does not define drainage ways and could be more inclusive. The issue of drainage ways versus ditches was not addressed by the current code. Thus, the provision has not been applied.

The amendments revise the Natural Resource Area by defining it as Class I and II riparian habitat areas and Class A and B wildlife habitat areas as inventoried by Metro. Many of these areas would be similar to the areas defined for Natural Area Vegetation. The notable exception would be 30 feet from the centerline of a drainage way. Metro's inventory extended to 100 to 150 feet of certain drainages. As noted above, it excludes those portions under the authority of CWS Vegetative Corridor requirements to avoid contradictory standards. The proposed amendments are less restrictive than if the current standards were applied. It would allow intrusion into habitat areas while the current requirements would not.

22. Amend Section 9.940, Intent Statement of the Tree Protection Ordinance to redefine natural resource vegetation to coincide with Natural Resource Areas.
23. Amend Section 9.941 to add definitions taken from Metro's Model Ordinance. This is added to assure consistent implementation with Metro's intent and to define terms that currently are not defined. The provision could have been included in the definition portion of the ordinance. It was included here because it pertained to Natural Resource Areas addressed under the next Item and other terms pertaining to the Tree Ordinance are placed in this section rather than under the general definitions.
24. Amend Section 9.944, Trees in Natural Resource Areas, to incorporate Metro's Model Code provisions. This Item is the most complex of all the proposed amendments. The following is a section-by-section discussion of the proposed changes to Section 9.944, Trees in Natural Resource Areas. Most of the changes are taken from the Metro Model Code.
  - a. Section A is the information requirements. Subsections (1) to (6) identify the particular information to be submitted. Consistent with Metro Functional Plan requirements, verification of the natural resource area is required under this section. The information must be submitted either prior to or concurrent with any land use application. If no permit is required, then prior to any land disturbance.
  - b. Section B identifies those uses and activities that are exempt from the requirements. Generally, these are minor activities or activities that enhance the habitat. The most notable exception is dwellings in a subdivision that has met the Natural Resource requirements.

- c. Section C identifies prohibitions in natural resource areas.
- d. Section D is essentially a holdover from the current requirements. The criteria offer some factors not addressed by the Metro code such as the spread of disease or insects and impact on wildlife. References to the new requirements are included to avoid any potential contradiction (i.e. permanent impact negligible versus allowed disturbance) between the current criteria and the proposed amendments.
- e. Section E requires construction management plans. Staff views this section as a significant provision to help assure the disturbance is minimized. Currently, the City does not have this type of requirement.
- f. Section F establishes the clear and objective standards as called for by Metro's Functional plan. As expressed in the first paragraph of the section, it establishes the priority of avoidance, minimize intrusion or as the lowest priority, mitigate the impacts where no alternatives exist.

Subsection (1) identifies methods to avoid or minimize disturbance. It proposes flexibility similar to a planned development but with limitations. Under density transfer, dimensional standards and lot sizes can be adjusted by no more than 20 percent than that allowed by the underlying zone district. The Commission could consider a 30 percent adjustment. It also proposes site incentives to adjust site capacity both by either allowing a density bonus or reduction of density. While the definition of net density includes habitat area for the purpose of computing development yield, this subsection allows the applicant to not include the area for that purpose.

Subsection (2) establishes standards for development within Natural Resource Areas. It establishes the amount of disturbance (known as Maximum Disturbance Area (MDA)) allowed for single family residential and other zone districts (Subsection (2)(a)). The Metro Model Ordinance uses Habitat Conservation Areas (HCA) to determine the disturbance area. HCAs are the result of the ESEE analysis for allow, limit and prohibit determinations. (That is, to determine if certain types of development will be allowed, limited or prohibited in the resource area.) The relationship of the HCA's to Metro land use design types are as follows:

- Class I Riparian: Town Centers – Moderate HCA  
Industrial and Employment (i.e. commercial) areas, and  
Inner and Outer Neighborhoods – High HCA
- Class II Riparian: Town Centers – Low HCA  
Industrial and Employment areas – Moderate HCA  
Inner and Outer Neighborhoods – High HCA
- Class A Upland: Existing UGB – No HCA  
Future UGB - Town Centers – Low HCA  
Industrial and Employment areas –  
Moderate HCA

Inner and Outer Neighborhoods –  
Moderate HCA  
Class B Upland: Existing UGB – No HCA  
Future UGB - Town Centers – Low HCA  
Industrial and Employment areas – Low  
HCA  
Inner and Outer Neighborhoods –  
Moderate HCA

(Note: "High" represents the greatest level of limitations and "Low" represents the least level of limitations)

Translating this to Forest Grove's land uses is as follows. Although there is no riparian habitat area in the Town Center area, the Central Business District (CBD) is included in the table. All multi-family residential zone districts would have a high HCA since they are all within either inner or outer area design types. All industrial and commercial districts (with the exception of the CBD) would have a high HCA in Class I riparian areas and low HCA in Class II riparian areas.

There are no disturbance limitations for any property currently within the UGB for upland habitat. It would apply to lands brought into the UGB as of January 5, 2006. (It should be noted that as of the date of this report, there has not been any lands brought into the UGB in the Forest Grove area since that date that has upland habitat.)

Table 1 is for the single family zone districts (i.e. all the "R" zone districts). The table identifies the *total* disturbance area (TDA). It relates the requirements to the City's zone districts and includes the HCA designation for purposes of implementing the subsections pertaining to multiple HCAs. Tables 2 and 3 are for non-single family zone districts but do not include the HCA classification. Including the zoning designations makes it easier to interpret and implement. All the tables do comply with the HCA approach.

For Table 1, the MDA is determined by subtracting the TDA from Table 1 from the area of the parcel outside the natural resource area. For example, if a lot was 5,000 square feet in size and 30% (i.e. 1,500 square feet) of it was outside the resource area, the amount of disturbance allowed would be determined as follows:

$2500$  (50% of lot area) –  $1500$  =  $1000$  square feet of the resource area on the lot can be disturbed.

The formula is such that the greater the area within a habitat area, the greater the allowed disturbance area.

Tables 2 and 3 are for the non-single family districts. The main difference is that the table provides the maximum disturbance area directly. Thus, the table has been modified from the Metro Model Code in that it does not include the HCA classification.

This subsection (Subsection (2)(b)) also includes standards for protecting habitat during constructions.

Subsection (3) establishes utility facility standards. The Public Works Department has reviewed these standards and had no concerns.

Subsection (4) establishes mitigation requirements for any disturbance. Reference is made to the intent section that is contained in Section 9.970. There are two options to determine replacement. Option One is based on the size of trees removed and Option Two is based on the size of the disturbance area. Also included in this subsection are standards pertaining to plant size, spacing and diversity, location of the mitigation area, prohibition of invasive vegetation and ongoing requirements.

Subsection (5) establishes standards for land divisions (partitions and subdivisions). For partitions, the most significant requirement is that any natural resource area needs to be somewhat evenly divided between the lots being created (within 30% of each other.) As a note, partitions in Forest Grove generally occur in the older, developed portion of the community where NRA does not exist.

For subdivisions, the requirements are different whether there is subsequent construction by the applicant. Mitigation and construction management plans are not required by the applicant if they are not developing. In all cases, map verification is required. Significant requirements for subdivisions are that 80 percent of the NRA be within a separate, unbuildable tract, and that backyard setbacks are reduced to 10 feet where the lot backs up to an open space tract.

- g. Section G provides an alternative, discretionary development standards in lieu of Subsection F. There are four basis to seek a discretionary review:
- For a partition;
  - For an applicant who meets all the requirements of Subsection (F) except that mitigation is proposed to be offsite;
  - For an applicant who meets all the requirements of subsection (F) except that they seek to proportionally vary the number and size of plants; and
  - For an applicant seeking another type of discretionary approval of development that will disturb an NRA.

Some of the more significant aspects of these provisions are as follows:

- For partitions, must demonstrate there are no practicable alternatives to comply with the 30% provision;
- For offsite mitigation, it must be in the same subwatershed (6<sup>th</sup> Field Hydrologic Unit Code – the same subwatersheds used by Metro in their inventory) as the parcel to the disturbed;

- For alternative planting schemes, an explanation that by the 5<sup>th</sup> year, the planting scheme will achieve comparable or better results than the required planning under Section F;
- For a general discretionary approval, an alternative analysis and impact evaluation must be performed and mitigation plan provided. The approval criteria addresses avoidance, minimize and mitigation options.

The section also provides an alternative process for municipal water utility facility standards. It would not apply to the City's watershed since it is outside the area but would affect any water related utilities (municipal water, sewer and storm drain conveyance system).

- h. Section H contains the Functional Plan required map verification requirement. Any project within 100 feet of a mapped NRA would have to go through the verification process. Metro offers a reduction to 25 feet if the City conducts additional analysis to correct any misalignment between various GIS layers. Due to person-power limitations and the likely need to resurvey streets, it is unlikely that the City could provide the findings to reduce the area. It is possible that the applicant could provide this analysis, but that could be accomplished through the provisions of subsection (H)(6)(b).

There are two verification approaches: basic and detailed. Both processes involve an administrative determination. The basic process is to allow for a simplified method to determine NRA boundaries. There are three different situations the simplified process applies to:

- Applicant believes the NRA map is accurate;
- A misalignment between mapped habitat area and property lines due to GIS differences between property lines and the NRA map; and
- Property developed between Summer, 2002 and January, 2006.

Regarding this latter provision, there is little development activity that would come under this provision. There is a small portion of the Parks project, David Hill project (including Ridge Point and Summit Point), Cook Village and Council Meadows that would fall under this provision. There are several projects that could be subject to this provision except construction has yet to begin (Karen's Glenn, Casey Meadows and Hawthorne Meadows).

This is the most problematic provision of the model ordinance. While the purpose of this provision is to simply update Metro's maps due to construction, it is difficult to get developers to go through such a verification process. Some have completed their development while others may likely object having to meet this requirement due to vesting or simply the hassle and cost factor.

There is not a requirement to adopt this provision. The Function Plan only requires a verification process but does not require verification on property constructed between the two dates. However, the Functional Plan (Section 4 D.) does require each community responsible to administer the maps.

The last portion of the verification process is the detailed approach. It follows the requirement established by the Functional Plan. The most significant difference is that the process in the proposed amendment is based on habitat type rather than HCAs. This should not be an issue in that the HCA is based on the habitat map.

25. Add New Chapter 9.970 et. seq. to establish Habitat-Friendly Development Techniques and Natural Resource Area requirements that some can apply citywide while others are limited to land adjacent to natural resource areas. Section 9.970 adopts the intent statement taken from the Model Ordinance. It is placed here rather than Section 9.944 for two reasons. First, there already is an intent statement in the Tree Ordinance and adding this statement in that section would be inappropriate because of tree requirements other than trees in Natural Resource Areas. Second, this section also includes standards (permissive and required) that relate to habitat-friendly techniques.

Section 9.971 adopts Metro's regionally significant fish and wildlife habitat inventory map by reference. Subsection (2) requires that if can't avoid the Natural Resource Areas through standard development requirements, then the provisions of Section 9.940 applies. The table identifying habitat friendly techniques from the Model Ordinance is incorporated in this section. Subsection (3) encourages people to use these techniques but there is no requirement citywide. Subsection (4) recognizes density reductions or increases that are allowed through Section 9.944. This provision applies only in these areas and not citywide. Subsection (5) provides habitat friendly requirements. They are placed here rather than Section 9.944 because it would likely to apply to property that may not have habitat but is adjacent to habitat areas. **Subsection (5) (b) may be a concern. It requires the use of native vegetation in landscaping unless waived by the Community Development Director. This was included in response to the matrix in the draft issue papers produced for the Tualatin Basin. The only requirement from Metro is that native vegetation be used in habitat areas. This is achieved elsewhere and the current zoning ordinance encourages the use of native vegetation as part of the general landscaping standards (Section 9.858 (3) (c) (x)).**

### III. PROCEDURAL REQUIREMENTS

Comprehensive Plan Amendment Process: "Any citizen may prepare an application for plan amendment and submit it for the Council's consideration...Proposed amendments shall be subject to a public review process including, at a minimum, public hearings before the Planning Commission and City Council...The Planning Commission shall prepare a recommendation for the Council on all amendment applications..."  
(Comprehensive Plan, Ordinance 83-15, Section II, *Amendments to the Comprehensive Plan*).

Zoning Amendment Process: Zoning Ordinance Section 9.902 *Planning Commission Public Hearing on an Amendment Required* authorizes the Planning Commission to act on a request for a zone change after holding a public hearing pursuant to Sections 9.915

*Notice of Public Hearings and Limited Land Use Decisions and 9.916 Procedure for Planning Commission Action at a Public Hearing.*

"At the hearing, the Planning Commission shall review the application and shall receive pertinent evidence and testimony as to why or how:

1. The proposed change is consistent with and promotes the goals and policies of the Comprehensive Plan and the Zoning Ordinance of the City; and
2. There is a public need for a change of the kind in question."

Comprehensive Plan Amendment and Zoning Map Amendment approval criteria follow on Section VI below.

DLCD and Metro Notification and Review: Notice of the proposed comprehensive plan and zoning amendments was provided to the Department of Land Conservation and Development (DLCD) and Metro on February 8, 2007 pursuant to ORS 197.610, OAR Chapter 660 – Division 18, and Metro Code Section 3.07.820 (Functional Plan Title 8). Both DLCD and Metro have reviewed the amendments and have registered no comments.

Public Notice: A Measure 56 notice was mailed to affected property owners (with habitat, FEMA flood plain and slopes of 10 percent or greater) on March 13, 2007; and published in the *News Times* on March 23, 2007, as required by Zoning Ordinance Section 9.915, and republished on May 1, 2007. Property owners include those within the city limits including those properties brought into the city from the recent city sponsored annexation effort. Ten percent slope was used because staff did not have GIS information for 20 percent slopes. Thus, more property owners than required were notified.

As of the writing of this report, staff has received two letters from the public that are included with the staff report. Mr. Jim Labbe from the Audubon Society of Portland submitted a letter in support of the proposed amendments and made suggestions concerning the intent statement. Mr. George Burlingham submitted a letter to delete the Upland Wildlife Habitat Class A from his property in that he is intending to harvest the trees on this property.

#### **IV. ANALYSIS**

##### **Requirements:**

The proposed amendments are intended to implement State Planning Goal 5 through a regional program. Goal 5, in part, is as follows:

**"To protect natural resources and conserve scenic and historic areas and open spaces.**

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future

generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability."

It is intending accomplish this through enhancing and preserving riparian areas currently in the City of Forest Grove and as the city expands. It is also intended to achieve the same objectives to upland wildlife habitat being brought into the Urban Growth Boundary in the future. This is being accomplished through promoting avoidance, minimize and mitigate strategy to limit intrusion into NRA where feasible. Standards are established for removing vegetation and mitigation for replacement as well as flexible standards to promote minimizing such intrusion.

The proposed amendments meet or exceed the Metro Functional Plan requirements. As noted above, Forest Grove has two options for compliance, the standard Functional Plan requirements for communities within the region, or the plan requirements for the Tualatin Basin program. The following is an analysis for each.

#### Tualatin Basin Program Requirements:

The following conditions are required to be met by the Basin program to be compliant and staff analysis concerning compliance. Generally, the proposal does exceed the Tualatin Basin program by extending regulations beyond CWS Sensitive Lands and Vegetative Corridor requirements and is consistent with the Metro approach. It is staff's understanding that the intent of the Tualatin Basin approach was to establish a common baseline approach for all communities in the Basin. There is nothing in the Tualatin Basin approach or Metro's requirements to prevent a community to go beyond the Basin approach. Based on this approach, the City of Sherwood has also adopted requirements that exceed the Basin requirements.

- Comply with the six steps identified in Section B of Chapter 7 of the Tualatin Basin program;

Comment: Of the six steps, the only one that pertains to this action is the adoption of Low Impact Development Guidelines. This is accomplished in proposed new Section 9.971.

- CWS approves and implements its Healthy Streams Plan;

Comment: Not applicable as this the requirement for Clean Water Services.

- Tualatin Basin members renew and extend their partnership to implement Healthy Streams project list and cooperate with Metro to develop regional public information;

Comment: Not applicable as this item is outside the scope of the ordinance amendment. However, Forest Grove remains part of the Tualatin Basin effort and will assist in supporting the project list and cooperation with public information program to the extent that the city can.

- Cities adopt provisions to facilitate and encourage use of habitat-friendly development practices, where feasible, in Class I and II riparian habitat;

Comment: Based on the review of other cities programs submitted to Metro, it is staff's understanding that "encourage" means some type of incentive to developers to use habitat-friendly development practices. Generally, those incentives could be in the form of increased densities or other type of regulatory flexibilities, or financial incentives by reducing water quantity and water quality SDCs.

Financial incentives are not feasible since water quality and water quantity SDCs are collected for an outside agency (CWS). Thus, the use of Metro's Model Ordinance is proposed to be used to address this requirement. The amendment proposes flexible densities and development standards for development within or avoiding NRA's. Further, it requires the use of habitat-friendly practices to the extent that Metro has deemed appropriate through its Model Ordinance. It should be noted that the proposed amendments exceeds the Metro requirements in that it establishes requirements near habitat areas (Section 9.971 (5)) and offers the developer the flexibility to use habitat-friendly approaches though-out the city.

- Cities adopt provisions to allow for density reduction consistent with other portions of Section 3 (see below)

Comment: This is achieved in Sections 9.944 (F) (1) (d) (iii) and 9.971 (4).

- Cities adopt either the Model Ordinance or alternative ordinances to apply to upland wildlife habitat in territory added to the UGB after the effective January, 2006 date.

Comment: This is accomplished by integrating the Model Ordinance into Sections 9.944.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process.

Comment: This is accomplished by proposed Subsections 9.944 (F) and (G) which are taken from the Metro Model Ordinance.

- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by:
  - Identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and

Comment: This is accomplished by the barrier analysis provided in Attachment 9.

- Adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.

Comment: This is being accomplished by several proposed amendments including Items 6, 16, 17, 18, 20 and 25.

- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.

Comment: This is accomplished through Subsection 9.944 (H) which is taken from the Metro Model Ordinance.

- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

Comment: As noted above, densities can be reduced per Subsection 9.944 (F) and requirements through dedication or restrictive covenant in Subsections (F) and (G).

#### Metro Function Plan Requirements:

While the City can exceed the Tualatin Basin requirements, it cannot exceed the Metro requirements due to the background and ESEE analysis that was performed for the Metro program. As will be seen below, there are two aspects of the proposed that do exceed the program requirements. Barriers and allowance to use low impact development techniques extend beyond habitat area. However, this is a permissive "regulation" that developers are encouraged to use rather than be required to use outside the habitat areas.

There are two requirements under Subsection 9.971 (5) that also exceed the Metro requirements. These requirements relate to landscape placement and outdoor lighting. These requirements are proposed to comply with the Issue Papers 1 and 2 produced for the Tualatin Basin agencies to assess their local requirements. Further, the lighting requirement was also supported to be included in the most recent Planning Commission work session.

The Functional Plan requirements for non-Tualatin Basin communities and staff comment are as follows:

- Adopt the Metro Model Ordinance and Metro Habitat Conservation Areas;
- An alternative ordinance that substantially meets specified performance standards and best management practices identified in Section 4 of the Functional Plan;
- Implement a program based on alternative approaches that will achieve protection and enhancement of Class I and II riparian habitat and Class A and B

upland wildlife habitat areas in territory added after the effective date of Metro's adopting ordinance (Ordinance No. 05-1077 which was January 5, 2006); or

- Develop a district plan with other jurisdictions.

Staff Comment: The proposed amendments are adopting the Metro Model Ordinance. As discussed above, the Metro Habitat Conservation Areas are not being adopted. In its place, the Regionally Significant Fish and Wildlife Habitat Inventory Map is being adopted and linking standards to city zone districts and parks are being proposed.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process;
- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.
- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.
- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

Staff Comment: These were addressed under the Tualatin Basin analysis.

### **Revision Assessment:**

The maps in Attachment 2 indicate the location of habitat and slopes of 10 percent or more for the four quadrants of the community and a separate map indicating the flood plain location. Also included is a map showing the locations of the Environmental Overlay Districts and the text of the district (see Attachment 12). Comparing the maps indicates that there is little relationship between the location of resources and hazards and the ER districts. The change from basing requirements on the ER District to development requirements will assure a more consistent application of requirements.

Flood plain: In the vicinity of Forest Grove, the FEMA 100 year flood plain is determined on Council Creek and small segments of its tributaries, Gales Creek and

Tualatin River. Many of these areas are currently not in the Environmental Review Overlay district.

The flood plain requirements as they apply to properties are not establishing new requirements but providing an update consistent with current provisions. In addition, the amendments assure that current requirements in the Municipal Code are being properly implemented. The requirements are not applied unless there is proposed development within the 100 year flood plain or there is a question as to the definition of the flood plain in determining its location. To staff's knowledge, there have only been two developments where the definition of the flood plain has been an issue: Knox Ridge and Gales Creek Terrace. To staff's knowledge, there is no development within the City of Forest Grove that is within the 100 year flood plain. Thus, staff views the flood plain provisions to be used on rare occasions and the amendment is to help avoid a situation that the City initially faced with Gales Creek Terrace.

Part of the proposed amendments pertaining to the flood plain involves defining the flood plain on the FEMA study or more recent data (Amendment Item 3). This is consistent with federal, state and subregional requirements and brings the City's code up-to-date.

Item 9 includes references to CWS standards for fill requirements within the 100 year flood plain. This requirement would already be imposed if proposed in the community but the amendment reaffirms that relationship.

Item 9 also makes reference to flood plain code requirements contained in the Municipal Code. Thus, there is no new requirement and it clarifies when the information is required for the review of land divisions. There is a similar provision in Item 19. The standards and requirements in the Municipal Code are more definitive than the ER requirements under Section 9.807 and have recently been accepted by the State as being in compliance with state flood hazard requirements.

Slopes: The 20 percent slope threshold is that used in the ER District. The city in the future may want to reconsider that threshold as being too steep. The map showing slopes is for slopes of 10 percent or greater. This is because we do not have current information on 20 percent slopes. This is for purposes of determining the extent of slopes in the city and whom to send Measure 56 notices to. It is not intended to be used to determine when the standards apply. That will be assessed when a project is submitted.

The significant amendment related to slopes is in Item 19. It defines the appropriate professional certification required to prepare reports and assessments. Although Section 9.804 (2) requires a geological analysis, the proposed amendment is more specific. It should help avoid the minimal analysis such as that submitted with the David Hill Tentative Map application. It also clarifies the submittal requirements that the City currently receives for grading permits in high slope areas.

Natural Resource Areas: The focus of this section is how these requirements would apply to land uses. Since uplands within the current UGB is not affected by the proposal, the main areas would be the Class I and II riparian areas. For future development, the primary areas would be located on David Hill Road and the industrial areas along the south boundary of the city. It might also affect 38 developed lots in the Forest Gale Heights area. It should be noted that for much of the area within the Class I and II areas may also be subject the limitations from existing CWS Sensitive Lands and Vegetative Corridor requirements.

Regarding future residential development areas, the property owner does not lose their development potential. If a parcel has the ability to develop 100 units with the underlying zoning, that does not change. However, if the applicant wishes, densities can be lowered or increased to the extent NRA covers the site. What changes is how the site gets developed. It is intended to encourage development away from any NRA site on the property. If it can't, certain amount of disturbance is allowed under the objective standards. If that does not work, a process to seek an alternative method to comply including off-site mitigation is provided.

For existing homes, there are specific exceptions from the regulations for rebuilding of destroyed homes, expansions or alterations not exceeding 500 square feet *into* the natural resource areas, minor encroachments into the NRA not to exceed 120 square feet of impervious surface for accessory buildings, and maintenance of existing gardens, pastures, lawns and landscape perimeters. In addition, if there is a need to remove vegetation for wild land fire purposes, Subsection 9.944 (D) (2) establishes criteria for vegetation removal for natural hazards.

For industrial, the amendments allow for 10 percent of the NRA Class I area and 50 percent of the Class II area under the objective standards. In reviewing CWS Sensitive Area Pre-screen map, there appears to be a high degree of similarity between wetland areas and the location of Class I areas. Although state and federal requirements can allow for fill of wetland areas, the amendments may limit the extent of that fill under the objective requirements. However, the alternatives option may allow a method to permit a greater amount of fill with proper mitigation.

There are no commercial areas affected by the proposed NRA amendments.

The letter from Mr. Burlingham brings up another issue. That is, whether the requirements would conflict with forest practices. For Mr. Burlingham and any others currently within the UGB, this is not an issue because the NRA upland designations do not apply. However, this may become an issue for any UGB changes in the future and should be investigated as part of any annexations of land involving forest practices.

## V. CONFORMANCE TO LAND USE POLICY

### 1. Physical Environment Goal 1:

*ALL DEVELOPMENT SHALL CONSIDER, TAKE INTO ACCOUNT AND DEMONSTRATE SUITABILITY RELATIVE TO THE NATURAL HAZARD LIMITATIONS OF THE AREA.*

Staff Analysis and Finding: Complies. The proposed amendment Item 2 is intended to update the City's Flood plain standards to use the most up-to-date information in making determinations as to the location of the 100 year flood elevations. Further, other proposed amendments will make current requirements related to flood plain management more effective by including references into the City's Zoning and Land Division ordinances. In addition, requirements for steep sloping areas and flood management areas are addressed in a more consistent basis by establishing performance requirements rather than relying on the provisions of the ER District. Also, the requirements under the proposed amendments for both steep areas and flood plain areas will be more specific than under the ER District requirements.

### 2. Residential Land Use Goal 1:

*RESIDENTIAL AREAS SHALL BE DEVELOPED IN A SAFE, AESTHETICALLY PLEASING, AND EFFICIENT MANNER.*

Staff Analysis and Finding: The amendments would contribute to this goal by retaining habitat area to the extent feasible and mitigating where removed. Preservation and enhancement of habitat adjacent to residential areas increases the aesthetic value of the area. In addition, allowances for clustered housing increases the efficiency of housing by using less land for a given number of units. It is also more efficient by reducing road and other paving requirements, and reducing the amount of utility extensions since the housing would be closer proximity with each other.

### 3. Commercial Land Use Goals 1 and 2:

*STRENGTHEN FOREST GROVE'S POSITION AS A COMMERCE CENTER OF WESTERN WASHINGTON COUNTY, AND ENCOURAGE SHOPPING BY RESIDENTS OF THAT AREA.*

*ENCOURAGE THE OPPORTUNITY FOR REVITALIZATION OF THE CENTRAL BUSINESS DISTRICT*

Staff Analysis and Finding: None of the commercial areas are near steep slopes, flood management areas or natural resource areas. Thus, the propose would not have any impact on the City to achieve these commercial goals.

4. Industrial Land Use Goal 3:

*THE CITY SHALL COOPERATE IN PROVIDING THE PUBLIC SERVICES AND FACILITIES NEEDED BY EXISTING AND FUTURE BUSINESSES AND INDUSTRIES.*

Staff Analysis and Finding: The proposed Natural Resource Area provisions would allow the installation of utilities through these areas. Thus, the proposed amendments would not have an impact on meeting this Goal.

5. Natural Resource Land Use Goal 1 and Open Space Goal 2:

*PRESERVE AND MAINTAIN THE QUALITY OF EXISTING AGRICULTURAL, FORESTRY, WILDLIFE AND OTHER NATURAL RESOURCE AREAS.*

Staff Analysis and Finding: The proposed amendments would help achieve this goal for wildlife and other natural resource areas by adding a new policy to the Comprehensive Plan to implement the regional Nature in Neighborhoods program and establishing standards and requirements for preserving, minimize intrusions or mitigate intrusions into these areas.

6. Natural Resource Land Use Goal 2:

*OPEN SPACE VALUABLE TO FISH AND WILDLIFE RESOURCES SHALL BE PROTECTED.*

Staff Analysis and Finding: The amendment is intended to preserve open space valuable to fish and wildlife resources in riparian areas and in upland areas brought into the UGB in the future. This is accomplished through adding a new policy to the Comprehensive Plan to implement the regional Nature in Neighborhoods program and establishing standards and requirements for preserving, minimize intrusions or mitigate intrusions into these areas. Further, areas preserved as open space must be placed into tracts which cannot be developed.

7. Natural Resource Land Use Goal 3:

*THE PRESERVATION OF EXISTING TREES SHALL BE ENCOURAGED.*

Staff Analysis and Finding: Through the adoption of a new natural resource policy and implementing the Nature in Neighborhood program, this goal will be achieved by encouraging limiting removal of trees in riparian areas though proposed objective standards.

8. Agricultural and Forest Land Use Goals 2 and 3:

*FORESTRY LANDS SHALL BE PRESERVED FOR FOREST USES.*

*PRESERVE AND MAINTAIN THE QUALITY OF EXISTING AGRICULTURAL, FORESTRY WILDLIFE AND OTHER NATURAL RESOURCE AREAS.*

Staff Analysis and Finding: Natural resource preservation was addressed above. Regarding forestry, the amendments would not affect properties in forest production within the current UGB since the Natural Resource Area designation does not apply to upland resource areas identified by Metro. However, it may affect properties in forest practices that are brought into the UGB in the future.

9. Open Space Goal 3:

*PRESERVE AND IMPROVE SPECIFIC OPEN SPACE AREAS TO PROVIDE RECREATION, EDUCATION, CONTACT WITH NATURE AND SCENIC AMENITIES.*

Staff Analysis and Finding: Open space intended for active recreational use will not be limited by the proposed natural resource amendments since the natural resource designation will not be applied to these areas. Open space intended for natural preservation will be limited to vegetation removal only for trail development.

10. Open Space Goal 4:

*MAINTAIN DESIRABLE EXISTING OPEN SPACE AND ENHANCE THE ENVIRONMENT WITHIN THE CITY THROUGH PRESERVATION AND LANDSCAPING.*

Staff Analysis and Finding: This goal will be promoted through the natural resource provisions included in the proposed amendments. The amendments encourage the preservation of existing open space in natural resource areas where possible. Where not possible, it provides measures to minimize intrusion into these areas and to mitigate any intrusion.

11. Zoning Ordinance Purpose Statement:

*This ordinance has been designed in accordance with the adopted goals, and policies of the Forest Grove Comprehensive Plan. It is the general purpose of this ordinance, therefore, to provide one of the principal means for the implementation of the Forest Grove Comprehensive Plan as well as: encourage the most appropriate use of the land; conserve and stabilize the value of property; promote a variety of housing opportunities; aid in the rendering of fire and police protection; provide adequate open space for light and air; lessen the congestion on streets; promote orderly growth in the city; prevent undue concentrations of population; facilitate adequate provisions for community utilities and facilities such as water, sewerage, electrical distribution systems, transportation, schools, parks and other public facilities; and in general promote public health, safety, convenience and general welfare.*

Staff Analysis and Finding: The proposed amendments to the Zoning Ordinance, as discussed above, forwards the applicable goals of the Forest Grove Comprehensive Plan. Thus, the proposed amendments meet the purpose of the Zoning Ordinance. Further, this section of the ordinance is proposed to be changed to include conservation of natural resource areas to better reflect the Comprehensive Plan Goals and policies as amended.

12. Land Division Purpose Statement:

*This ordinance has been formulated in accordance with the adopted goals and policies of the Forest Grove Comprehensive Plan. It is the general purpose of this ordinance, therefore, to provide one of the principal means for the implementation of the Comprehensive Plan. It is also the intent of this ordinance to accomplish the orderly development of land within the City through rules, regulations and standards governing the approval of subdivisions and partitions, taking into consideration all of the applicable goals and policies and the locations of proposed subdivisions and partitions, as well as their impact on the surrounding area and the entire City. These rules, regulations and standards are intended to provide for lessening congestion in the streets, for securing safety from fire, flood, slides, pollution or other dangers, for providing adequate light and air, including solar energy access, for preventing overcrowding of land, for facilitating drainage, education, recreation and other needs, and in general to promote the public health, safety, convenience and general welfare.*

Staff Analysis and Finding: The proposed amendments to the Land Division Ordinance, as discussed above, forwards the applicable goals of the Forest Grove Comprehensive Plan. Thus, the proposed amendments meet the purpose of the Zoning Ordinance. Further, this section of the ordinance is proposed to be changed to include conservation of natural resource areas to better reflect the Comprehensive Plan Goals and policies as amended.

12. Oregon State Land Use Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

*To protect natural resources and conserve scenic and historic areas and open spaces.*

Staff Analysis and Finding: The proposed amendment is consistent with this Goal. It includes new policies, standards and requirements for the protection of natural resources consistent with the Metro Nature in Neighborhoods program that has been acknowledged by Land Conservation and Development Commission.

13. Oregon State Land Use Goal 7, Areas Subject To Natural Hazards

*To protect people and property from natural hazards.*

Staff Analysis and Finding: The proposed amendments would assure more consistent protection from natural hazards since the current Environmental Review Overlay District, intended to address natural hazard conditions, only applies to portion of areas subject to steep slopes and flood management hazards. Further, the protection is being brought up-to-date by allowing more recent information than current FEMA studies completed in 1981 to determine the location of the 100 year flood plain. In addition, more specific requirements than that specified by the ER district would be implemented by the amendment.

#### 14. Metro Functional Plan Requirements:

The proposal is in conformance with Metro Functional Plan Requirements for the Tualatin Basin program as well as the Regional program as described in the following:

##### Tualatin Basin Program Requirements:

The following conditions are required to be met by the Basin program to be compliant and staff analysis concerning compliance. Generally, the proposal does exceed the Tualatin Basin program by extending regulations beyond CWS Sensitive Lands and Vegetative Corridor requirements and is consistent with the Metro approach. It is staff's understanding that the intent of the Tualatin Basin approach was to establish a common baseline approach for all communities in the Basin. There is nothing in the Tualatin Basin approach or Metro's requirements to prevent a community to go beyond the Basin approach. Based on this approach, the City of Sherwood has also adopted requirements that exceed the Basin requirements.

- Comply with the six steps identified in Section B of Chapter 7 of the Tualatin Basin program;

Comment: Of the six steps, the only one that pertains to this action is the adoption of Low Impact Development Guidelines. This is accomplished in proposed new Section 9.971.

- CWS approves and implements its Healthy Streams Plan;

Comment: Not applicable as this the requirement for Clean Water Services.

- Tualatin Basin members renew and extend their partnership to implement Healthy Streams project list and cooperate with Metro to develop regional public information;

Comment: Not applicable as this item is outside the scope of the ordinance amendment. However, Forest Grove remains part of the Tualatin Basin effort and will assist in supporting the project list and cooperation with public information program to the extent that the city can.

- Cities adopt provisions to facilitate and encourage use of habitat-friendly development practices, where feasible, in Class I and II riparian habitat;

Comment: Based on the review of other cities programs submitted to Metro, it is staff's understanding that "encourage" means some type of incentive to developers to use habitat-friendly development practices. Generally, those incentives could be in the form of increased densities or other type of regulatory flexibilities, or financial incentives by reducing water quantity and water quality SDCs.

Financial incentives are not feasible since water quality and water quantity SDCs are collected for an outside agency (CWS). Thus, the use of Metro's Model Ordinance is proposed to be used to address this requirement. The amendment proposes flexible densities and development standards for development within or avoiding NRA's. Further, it requires the use of habitat-friendly practices to the extent that Metro has deemed appropriate through its Model Ordinance. It should be noted that the proposed amendments exceeds the Metro requirements in that it establishes requirements near habitat areas (Section 9.971 (5)) and offers the developer the flexibility to use habitat-friendly approaches though-out the city.

- Cities adopt provisions to allow for density reduction consistent with other portions of Section 3 (see below)

Comment: This is achieved in Sections 9.944 (F) (1) (d) (iii) and 9.971 (4).

- Cities adopt either the Model Ordinance or alternative ordinances to apply to upland wildlife habitat in territory added to the UGB after the effective January, 2006 date.

Comment: This is accomplished by integrating the Model Ordinance into Sections 9.944.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process.

Comment: This is accomplished by proposed Subsections 9.944 (F) and (G) which are taken from the Metro Model Ordinance.

- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by:
  - Identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and

Comment: This is accomplished by the barrier analysis.

- Adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.

Comment: This is being accomplished by several proposed amendments including Items 6, 16, 17, 18, 20 and 25.

- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.

Comment: This is accomplished through Subsection 9.944 (H) which is taken from the Metro Model Ordinance.

- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

Comment: As noted above, densities can be reduced per Subsection 9.944 (F) and requirements through dedication or restrictive covenant in Subsections (F) and (G).

Metro Function Plan Requirements:

While the City can exceed the Tualatin Basin requirements, it cannot exceed the Metro requirements due to the background and ESEE analysis that was performed for the Metro program. As will be seen below, there are two aspects of the proposed that do exceed the program requirements. Barriers and allowance to use low impact development techniques extend beyond habitat area. However, this is a permissive "regulation" that developers are encouraged to use rather than be required to use outside the habitat areas.

There are two requirements under Subsection 9.971 (5) that also exceed the Metro requirements. These requirements relate to landscape placement and outdoor lighting. These requirements are proposed to comply with the Issue Papers 1 and 2 produced for the Tualatin Basin agencies to assess their local requirements. Further, the lighting requirement was also supported to be included in the most recent Planning Commission work session.

The Functional Plan requirements for non-Tualatin Basin communities and staff comment are as follows:

- Adopt the Metro Model Ordinance and Metro Habitat Conservation Areas;
- An alternative ordinance that substantially meets specified performance standards and best management practices identified in Section 4 of the Functional Plan;
- Implement a program based on alternative approaches that will achieve protection and enhancement of Class I and II riparian habitat and Class A and B upland wildlife habitat areas in territory added after the effective date of Metro's adopting ordinance (Ordinance No. 05-1077 which was January 5, 2006); or
- Develop a district plan with other jurisdictions.

Staff Comment: The proposed amendments are adopting the Metro Model Ordinance. As discussed above, the Metro Habitat Conservation Areas are not being adopted. In its place, the Regionally Significant Fish and Wildlife Habitat Inventory Map is being adopted and linking standards to city zone districts and parks are being proposed.

In addition to the above, Section 3 of the Functional Plan also requires:

- The implementing ordinances must establish clear and objective standards, and may include an alternative, discretionary approval process;
- Allow the use of habitat-friendly development practices in regionally significant fish and wildlife habitat areas by identifying provisions in Comprehensive Plans and implementing ordinances that prevent or limit the use of habitat-friendly practices; and adopt amendments to remove the barriers so that habitat-friendly practices may be used where practical, in regionally significant fish and wildlife habitat.
- Local jurisdictions must provide a reasonable, timely and verifiable process to locate habitat areas on a specific piece of land.
- Densities may be reduced on subdivisions if the property was within the UGB on January 1, 2002, the area of the property to be developed has been identified as a regionally significant fish and wildlife habitat and such a decision will directly result in protection of the remaining habitat either through dedication or restrictive covenant.

Staff Comment: These were addressed under the Tualatin Basin analysis.

## **VI. APPROVAL CRITERIA AND FINDINGS**

### **A. Comprehensive Plan Map Amendment Criteria (Comprehensive Plan, Ordinance 83-15, Section II, Amendments to the Comprehensive Plan):**

1. Justification of the proposed amendment and an explanation of how it fulfills applicable comprehensive plan goals and policies and LCDC statewide planning goals.

Staff Analysis and Findings: Based on the analysis and findings contained in the staff report, the proposed amendment fulfills applicable comprehensive plan goals and LCDC statewide planning goals.

2. Identification of alternative locations within the City or Urban Planning Area which could be used without amending the plan, and a explanation as to why they are considered unsuitable.

Staff Analysis and Findings: The amendments are intended to apply to those areas containing natural resources and in areas subject to either flood plain or

steep slope hazards. Thus, there are no alternative locations that would be appropriate since other areas would not contain these resources or hazards.

3. Identification of the short and long-term environmental, social, economic and energy consequences of the proposed change on the city, region, and state, with particular attention to the impacts on public facilities and services such as streets, traffic control, mass transit, sewer, water, drainage, parks, schools, public safety, and public utilities.

Staff Analysis and Findings: ESEE analysis has been performed by Metro and the Tualatin Basin. The Tualatin Basin ESEE contains analysis from the City of Forest Grove. Those ESEE analysis are adopted here by reference.

4. Demonstration that the proposed new land uses will be compatible with existing adjacent land uses and with future adjacent land uses as proposed in the comprehensive plan.

Staff Analysis and Findings: Not applicable. The amendment proposes no new land uses.

B. Zoning Ordinance Amendment Criteria (Zoning Ordinance Section 9.902):

1. The proposed change is consistent with and promotes the goals and policies of the Comprehensive Plan and Zoning Ordinance of the City; and

Staff Analysis and Findings: As discussed in the findings, the proposal promotes the goals of the Comprehensive Plan and the purpose of the Zoning Ordinance.

2. There is a public need for a change of the kind in question.

Staff Analysis and Findings: The public need is based on Metro Functional Plan requirements to for local jurisdictions to amend their ordinances to implement the Nature in Neighborhoods program either by the regional program requirements or the requirements adopted for the Tualatin Basin program.

C. Land Division Ordinance Amendment Criteria (Land Division Ordinance 9.118 (7)):

In that the Comprehensive Plan for Forest Grove may be amended from time to time to keep it consistent with the changing needs and desires of the community, it may be necessary to amend these regulations to implement the goals and policies of the Comprehensive Plan.

Staff Analysis and Findings: As discussed in the findings, the proposal promotes the goals of the Comprehensive Plan as proposed to be amended and the purpose of the Land Division Ordinance as proposed to be amended.

## VII. ALTERNATIVES

The Planning Commission may recommend approval as proposed, approval with modifications, deny, or continue deliberations to a date certain.

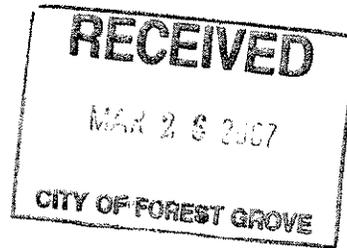
## VIII. RECOMMENDATION

Based on the analysis and findings above, staff recommends that the Commission approve the proposed comprehensive plan, zoning, land division and Municipal Code amendments to establish provisions to conserve natural resource areas, and adopt performance requirements to implement flood plain management and steep slope provisions that are more current than not have to rely on the Environmental Review Overlay District.

## IX. LIST OF EXHIBITS

The following attachments are part of the staff report and entered into the record as evidence for this application at the time this staff report was written. Exhibits received after the date of this report will be marked beginning with the next consecutive letter and will be entered into the record at the time the public hearing is opened, prior to oral testimony.

- Attachment 1** Proposed Text Amendments
- Attachment 2** Maps showing location of Regionally Significant Fish and Wildlife Class I and II and A and B Habitat Inventory, Slopes 10 percent or greater and 100 Year Flood Plain
- Attachment 3** Metro ESEE (due to its size, this item is in a separate notebook available for review)
- Attachment 4** Metro Functional Plan Requirements for Nature in Neighborhoods
- Attachment 5** Tualatin Basin ESEE (due to its size, this item is in a separate notebook available for review)
- Attachment 6** Tualatin Basin Program
- Attachment 7** Technical Issue Paper 1
- Attachment 8** Technical Issue Paper 2
- Attachment 9** Gap Analysis
- Attachment 10** List of Native Trees from City's Street Tree list
- Attachment 11** Municipal Code Provisions on Flood Plan Management
- Attachment 12** Environmental Review Overlay District Text and Map
- Attachment 13** Letters Received



27March 2007

To: Jon R. Holan  
Community Development Director  
City of Forest Grove

From: George Burlingham  
45157 NW David Hill Rd.  
Forest Grove, OR97116

Subject: Change in Comprehensive Plan CPA-06-03 Zone MPP  
Amendment ZC-06-03 Land Division Ordinance  
Amendment LDO-06-02 For Flood Plain

The purpose of this letter is to ask for a change from the proposal—specifically to delete all "Upland wildlife habitat Class A" as it affects my property.

This area consists of Douglas Fir trees which I planted over 40 years ago with the specific purpose of harvesting these trees when they were marketable. This takes about 50 years. I filed this plan with Washington County a long time ago. I am only asking for a change on the north and east side of David Hill Road.

I own a small acreage on the south side of David Hill Road. This consists mostly of wetland and native trees. On this area I totally agree with the Plan. I would like to meet with the proper city official to determine a possible city wetlands ownership of this area.

I will be available until April 8<sup>th</sup> and then after May 2<sup>nd</sup> to have a complete discussion of my requests.

Sincerely,

A handwritten signature in cursive script that reads "George Burlingham".

George Burlingham



April 2, 2007

Chair Tom Beck and Planning Commission  
City of Forest Grove (Attn: Jon Holans)  
1924 Council Street  
P.O. Box 326  
Forest Grove, Oregon 97116-0326



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Jill Inskip  
Terry Kem

Kristina Gifford  
Claire Puchy  
Adrienne Wolf-Lockett

**Board Member  
Emeritus**  
Dave Marshall

Dear Chair Beck and Planning Commission,

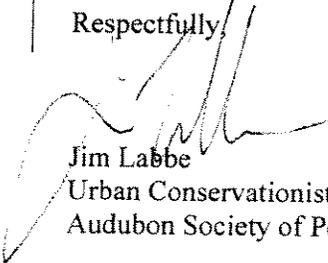
I am writing on behalf of Audubon Society of Portland and our 10,000 members residing in the Portland-Metro region to support the adoption of proposed comprehensive plan amendments (Natural Resource Policy 3) and associated code revisions (especially sections 9.101, 9.940, 9.941, 9.944, 9.970, and 9.971) relating to natural resource protection in Forest Grove.

We are pleased to see Forest Grove demonstrating leadership in the Tualatin Basin by developing policies and programs to protect and restore regionally significant fish and wildlife habitat. This supports more consistent policies across the Portland-Metro region to protect regionally interdependent natural resource values including clean water, fish and wildlife habitat, and public health and safety.

Having reviewed the draft code language that closely mirrors the Metro Title 13 model ordinance, we offer one comment and suggestion. The Planning Commission should consider closely the language specifying purpose and intent of proposed policies to ensure that they proposed regulations fall within Measure 37 exemptions, namely those preclude claims against regulations intended to control pollution, protect the public health and safety, and comply with federal law.

Again, we urge the Planning Commission to recommend that the City Council adopt these proposed comprehensive plan and zoning code amendments to protect regionally significant natural resources in Forest Grove.

Respectfully,

  
Jim Labbe  
Urban Conservationist,  
Audubon Society of Portland

**AERIAL PHOTOGRAPH**

