



**TUALATIN CITY COUNCIL
AND
TUALATIN DEVELOPMENT COMMISSION**
Monday, November 23, 2009

City Council Chambers
18880 SW Martinazzi Avenue, Tualatin, Oregon

WORK SESSION begins at 5:00 p.m.

REGULAR MEETING begins at 7:00 p.m.

Mayor Lou Ogden

**Council President Chris Barhyte
Councilor Monique Beikman
Councilor Joelle Davis**

**Councilor Jay Harris
Councilor Donna Maddux
Councilor Ed Truax**

WELCOME! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for citizen comments on its agenda – Item C, following Presentations, at which time citizens may address the Council concerning any item not on the agenda, with each speaker limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the world wide web at www.ci.tualatin.or.us, at the Library located at 18878 SW Martinazzi Avenue, and are also on file in the Office of the City Manager for public inspection. Any person who has any question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011. Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised “live” on the day of the meeting on Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org.

Your City government welcomes your interest and hopes you will attend the City of Tualatin City Council meetings often.

- SEE ATTACHED AGENDA -

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A “legislative” public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

1. The Mayor opens the public hearing and identifies the subject.
2. A staff member presents the staff report.
3. Public testimony is taken.
4. The Council then asks questions of staff, the applicant or any member of the public who testified.
5. When the Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, deny, or “continue” the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A “quasi-judicial” public hearing is typically held for annexations, planning district changes, variances, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

1. The Mayor opens the public hearing and identifies the case to be considered.
2. A staff member presents the staff report to the Council.
3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
4. The Council then asks questions of staff, the applicant or any member of the public who testified.
5. When the Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, approve with conditions or deny the application, or “continue” the public hearing.

TIME LIMITS FOR PUBLIC HEARINGS

The purpose of time limits on public hearing testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 5 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

Executive session is a portion of the Council meeting that is closed to the public to allow the Council to discuss certain confidential matters. No decisions are made in Executive Session. The City Council must return to the public session before taking final action.

The City Council may go into Executive Session under the following statutory provisions to consider or discuss: *ORS 192.660(2)(a)* the employment of personnel; *ORS 192.660(2)(b)* the dismissal or discipline of personnel; *ORS 192.660(2)(d)* labor relations; *ORS 192.660(2)(e)* real property transactions; *ORS 192.660(2)(f)* non-public information or records; *ORS 192.660(2)(g)* matters of commerce in which the Council is in competition with other governing bodies; *ORS 192.660(2)(h)* current and pending litigation issues; *ORS 192.660(2)(i)* employee performance; *ORS 192.660(2)(j)* investments; or *ORS 192.660(2)(m)* security issues. **All discussions within this session are confidential.** Therefore, nothing from this meeting may be disclosed by those present. News media representatives are allowed to attend this session (unless it involves labor relations), but shall not disclose any information discussed during this session.



A. CALL TO ORDER

Pledge of Allegiance

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

Page No.

1. Tualatin Tomorrow Presentation Key Focus Area - Health, Safety & Social Services
2. Presentation of 25 Year Service Award to Human Resources Director Nancy McDonald
3. Proclamation Declaring December 10, 2009 as "Human Rights Day" and the Week.....
of December 7 – 13, 2009 as "Human Rights Week" in the City of Tualatin
4. Tualatin Riverkeepers Presentation – *Brian Wegener, Watershed Watch Coordinator*
5. Tualatin Studio Tour 2009 Presentation – *Tour Coordinator Hamish Corstorphine*
6. Tonquin Trail Master Plan Open House Presentation – *Carl Switzer, Community Services*
7. Starry Nights and Holiday Lights Presentation – *Carl Switzer, Community Services*

C. CITIZEN COMMENTS

This section of the agenda allows citizens to address the Council regarding any issue not on the agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA (Item Nos. 1 – 7)

Page No.

The Consent Agenda will be enacted with one vote. The Mayor will first ask the staff, the public and Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under "Items Removed from the Consent Agenda." The entire Consent Agenda, with the exception of items removed to be discussed under "Items Removed from the Consent Agenda," is then voted upon by roll call under one motion.

1. Approval of the Work Session and Meeting Minutes of November 9, 2009
[REMOVED from the Agenda]
2. Approval of a Change of Ownership Liquor License Application for Pinz's
3. Community Involvement Committee Appointments
▪ *Gimena Olguin – Library Advisory Committee, student term ending 11/23/10*
4. Resolution No. 4939-09 Accepting Deed of Dedication and Easement Associated.....
with the SW Leveton Drive Extension Project (L & T
Properties, LLC)
5. Resolution No. 4940-09 Authorizing a Revocable Permit for Wall Signs on the Seneca
Building Overhanging Public Right-of-Way of SW Seneca
Street and SW Martinazzi Avenue

D. CONSENT AGENDA (Item Nos. 1 – 7) [continued from the previous page]

- 6. Resolution No. 4941-09 Approving a Joint Position Statement by the Cities of Lake
Oswego, Tualatin and West Linn Regarding the Future
Urbanization of the Stafford Area North of I-205 and the
Northern Portion of Pete’s Mountain Along the Tualatin River
- 7. Resolution No. 4942-09 Denying the Appeal of the July 23, 2009 Interpretation.....
Answering “What is the Status of the Nonconforming Use
Rights of the Land and Structure Located at 8250 SW
Tonka Street?” (Tax Map 2S124CB Tax Lot 1700) (INT-09-01)

E. PUBLIC HEARINGS – Legislative or Other
None.

F. PUBLIC HEARINGS – Quasi-Judicial
None.

G. GENERAL BUSINESS (Item Nos. 1 – 6) Page No.

- 1. Consideration of Installation of Stop Signs on SW Dogwood Street at SW 106th Avenue.....
- 2. Consideration of the Removal of Stop Signs at the SW Alsea Drive/SW 99th Avenue
Intersection and at the SW Alsea Court/SW 100th Drive Intersection
- 3. Ordinance No. 1292-09 Relating to Building Codes; Amending TMC 4-1-040, 4-1-050,.....
4-1-070, 4-1-090, 4-2-020, 4-2-040, and 4-3-100; Adding
Table 4-2A
- 4. Ordinance No. 1293-09 Requiring Gutters and Downspouts be Maintained on
Rental Properties and Amending TMC 6-13-040(4)(a)
- 5. Ordinance No. 1294-09 Relating to Bancroft Bonds; and Amending TMC 2-7-010.....
- 6. Ordinance No. 1295-09 Granting Portland General Electric a Franchise for Ten.....
Years to Erect, Construct, Maintain and Operate Within
the City of Tualatin, an Electric Light and Power System;
Providing an Effective Date; and Repealing Ordinance
No. 1038-99

H. ITEMS REMOVED FROM CONSENT AGENDA
Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

I. COMMUNICATIONS FROM COUNCILORS

J. EXECUTIVE SESSION

K. ADJOURNMENT



CITY COUNCIL SIGN-UP SHEET

DATE: November 23, 2009

PLEASE COMPLETE TO GIVE TESTIMONY

LIMIT TESTIMONY TO THREE MINUTES

	(PLEASE PRINT CLEARLY) Name	Address	E-mail	Representing	Agenda Item(s) or Citizen Comments
1.	Linda Moholt	19181 SW. 55th Ct. Tualatin	lindamoholt@msn.com	Food Party	
2.					
3.					
4.					
5.					
6.					
7.					
8.					

Proclamation

Proclamation Declaring December 10, 2009 as "Human Rights Day" and December 7 - 13, 2009 as "Human Rights Week" in the City of Tualatin

WHEREAS on December 10, 1948, the member States of the United Nations signed the Universal Declaration of Human Rights and countries of different political, economic and social systems unanimously agreed on the fundamental rights that all people share solely on the basis of their common humanity; and

WHEREAS the Universal Declaration asserts recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace; and

WHEREAS disregard for human rights have resulted in acts which have offended the conscience of mankind, and the advent of the world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people; and

WHEREAS the Universal Declaration is referred to as the primary definition of human rights standards and increasingly referred to as customary international law, which all countries should abide; and

WHEREAS the primary responsibility to promote respect for these rights and freedoms lies with each individual in the City of Tualatin, and each of us can play a major role in enhancing human rights; and

WHEREAS, the people of the City of Tualatin reaffirm their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life.

BE IT PROCLAIMED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON that:

December 7 – 13, 2009 to be "Human Rights Week" and December 10, 2009 as "Human Rights Day", in the City of Tualatin, and we encourage our residents to study and promote the ideas contained in Universal Declaration of Human Rights to the end that freedom, justice, and equality will flourish and be made available to all.

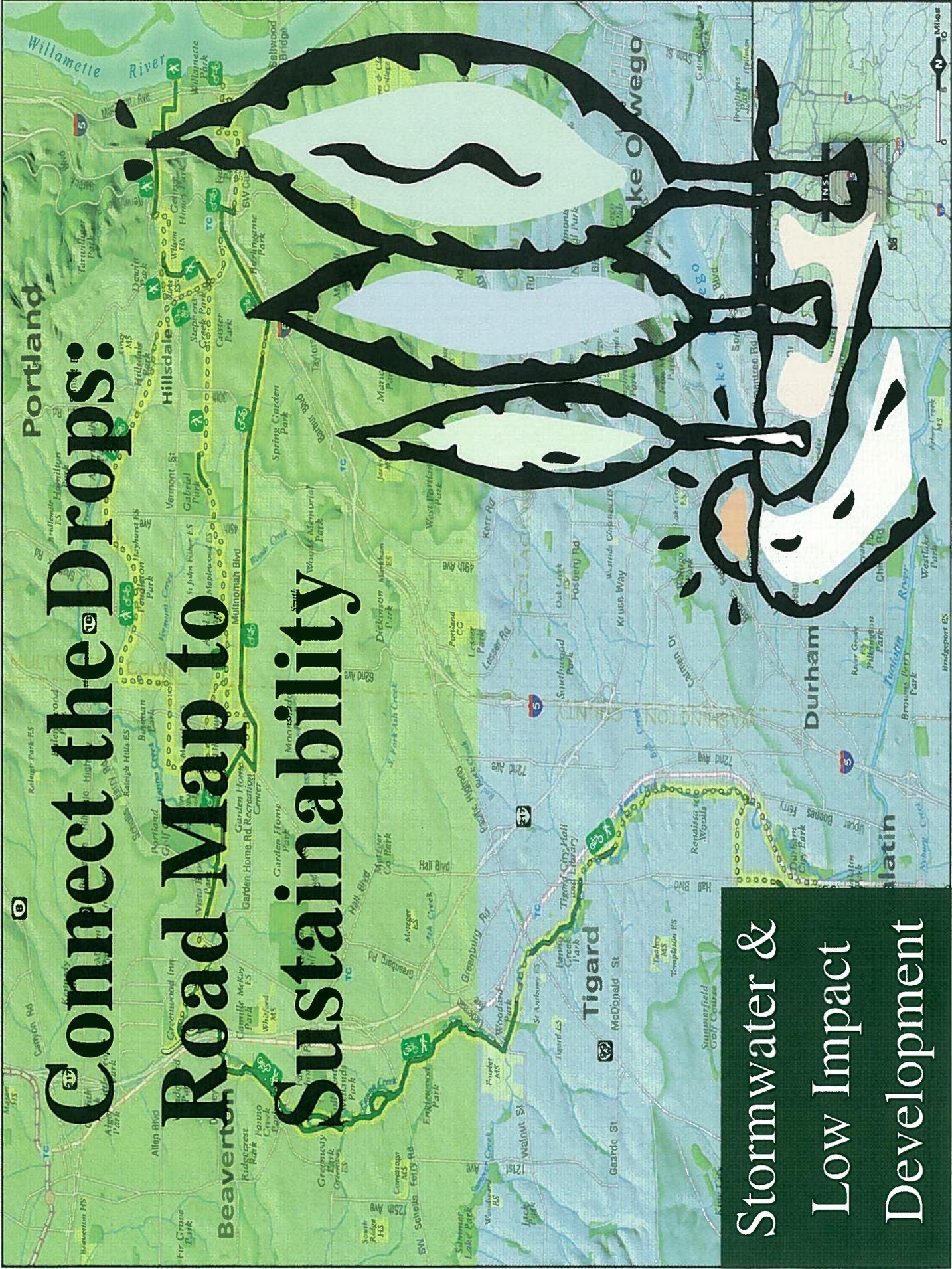
INTRODUCED AND ADOPTED this 23rd day of November, 2009

CITY OF TUALATIN, OREGON

BY  _____
Mayor

ATTEST:

BY  _____
City Recorder



Connect the Drops:

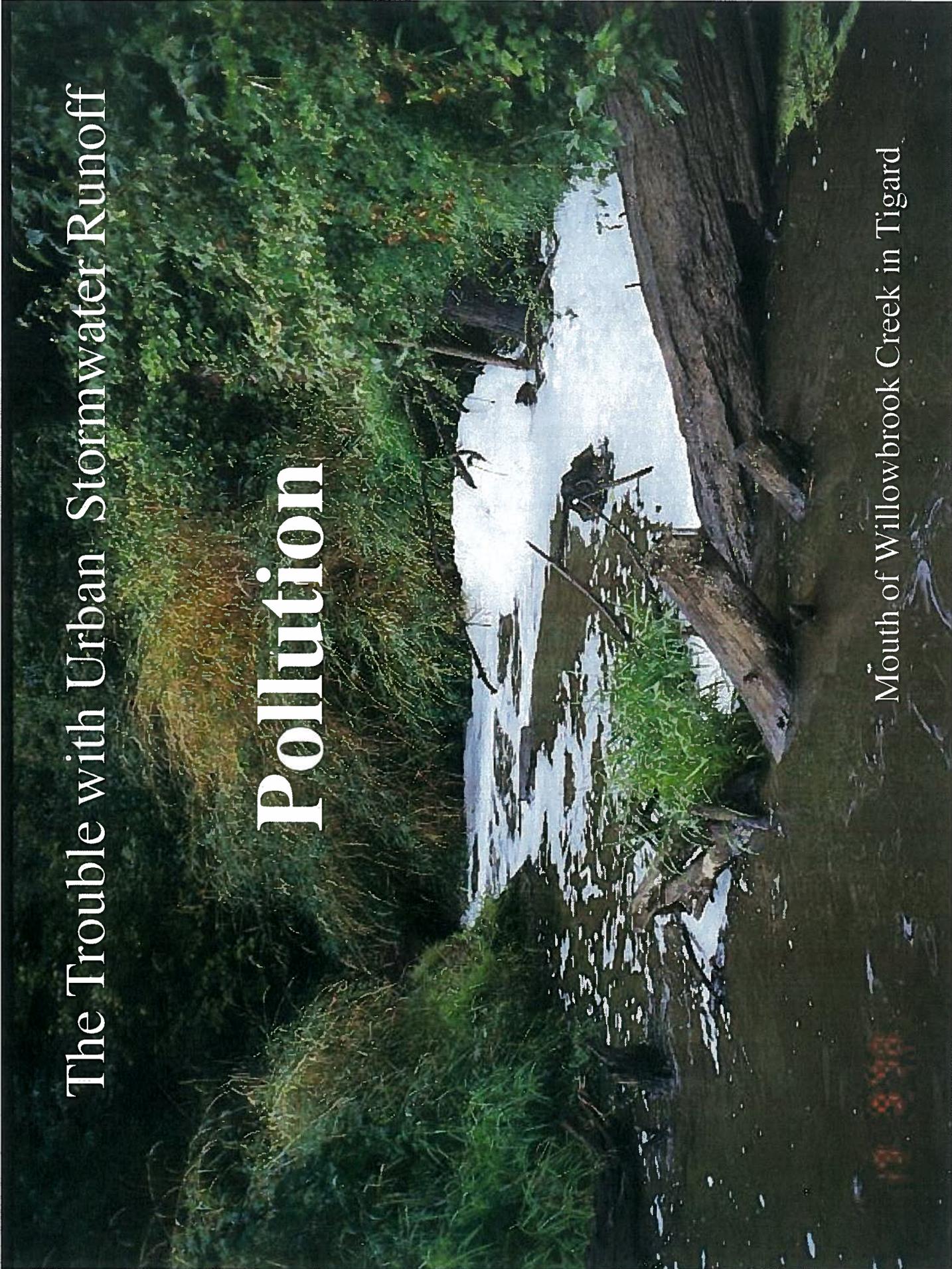
Road Map to Sustainability

Stormwater & Low Impact Development

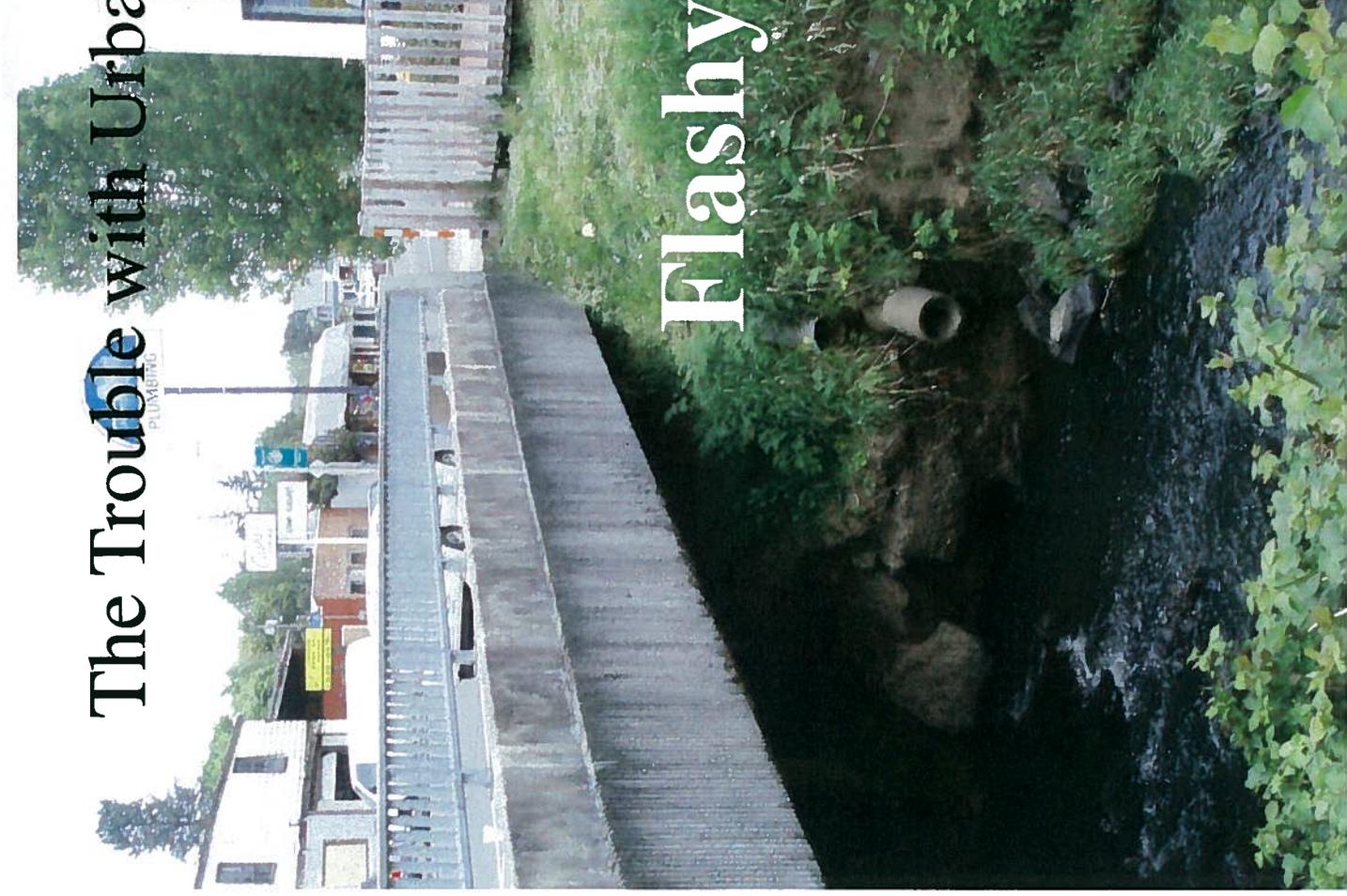
The Trouble with Urban Stormwater Runoff

Pollution

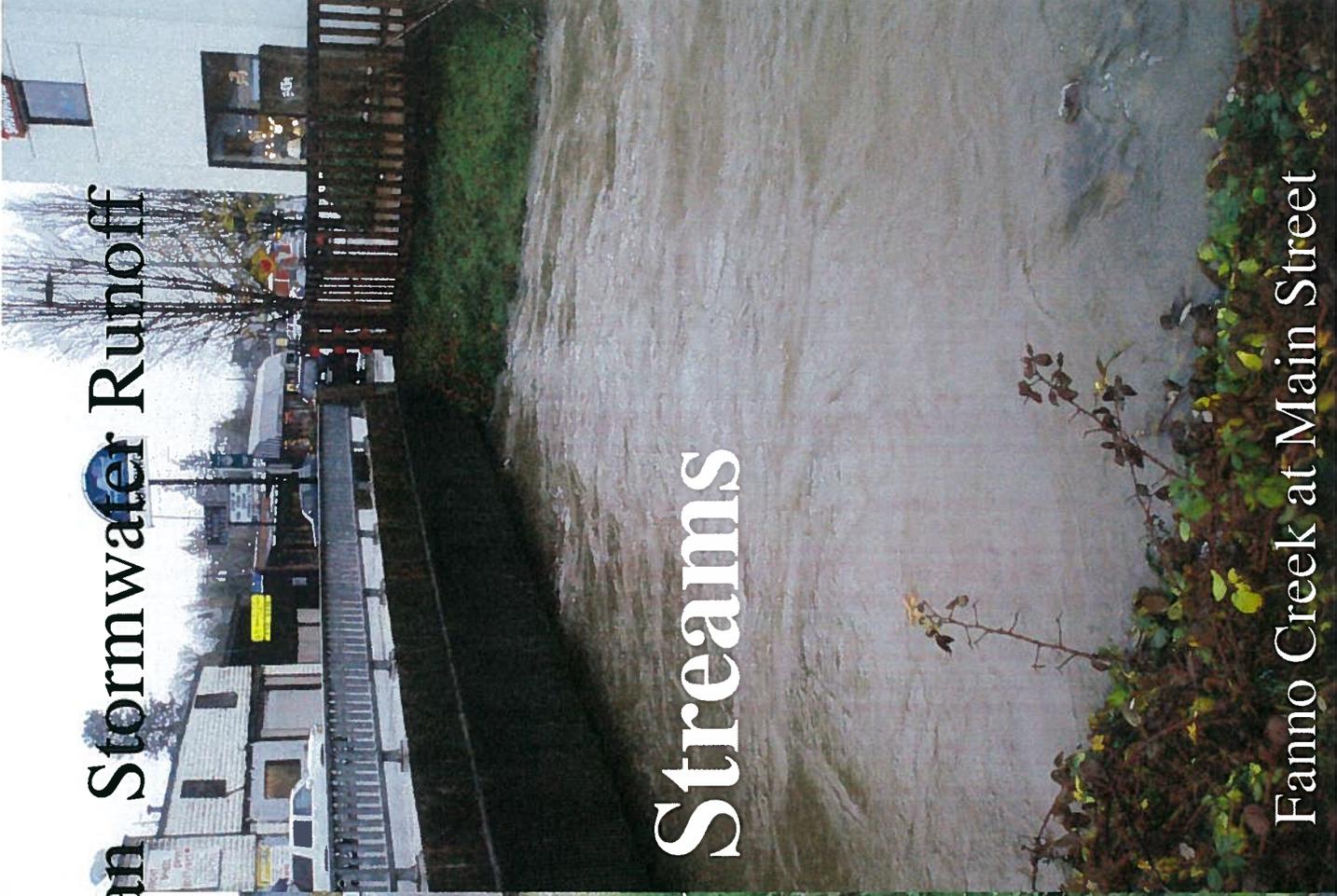
Mouth of Willowbrook Creek in Tigard



The Trouble with Urban Stormwater Runoff



Flashy Streams

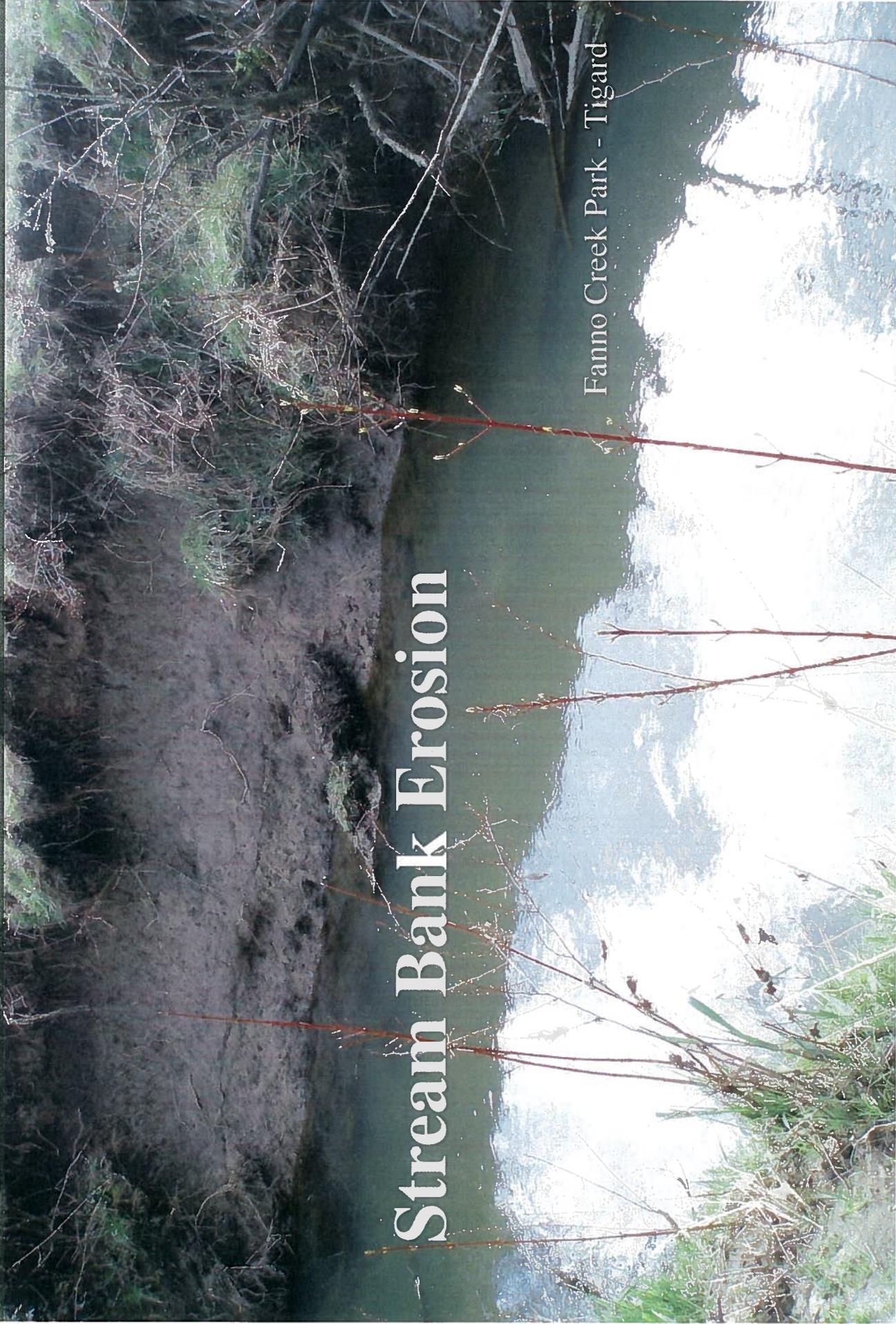


Fanno Creek at Main Street

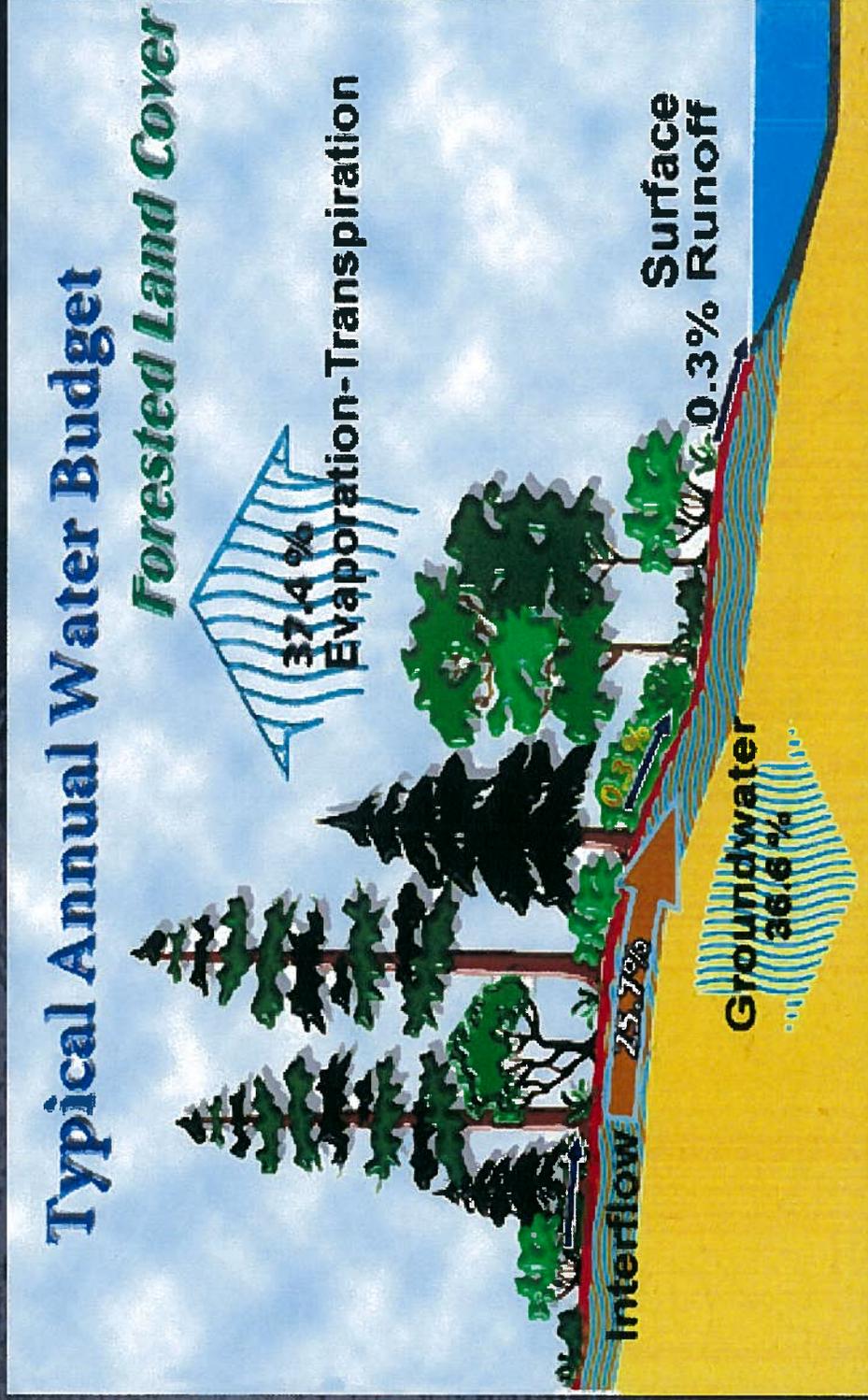
The Trouble with Urban Stormwater Runoff

Stream Bank Erosion

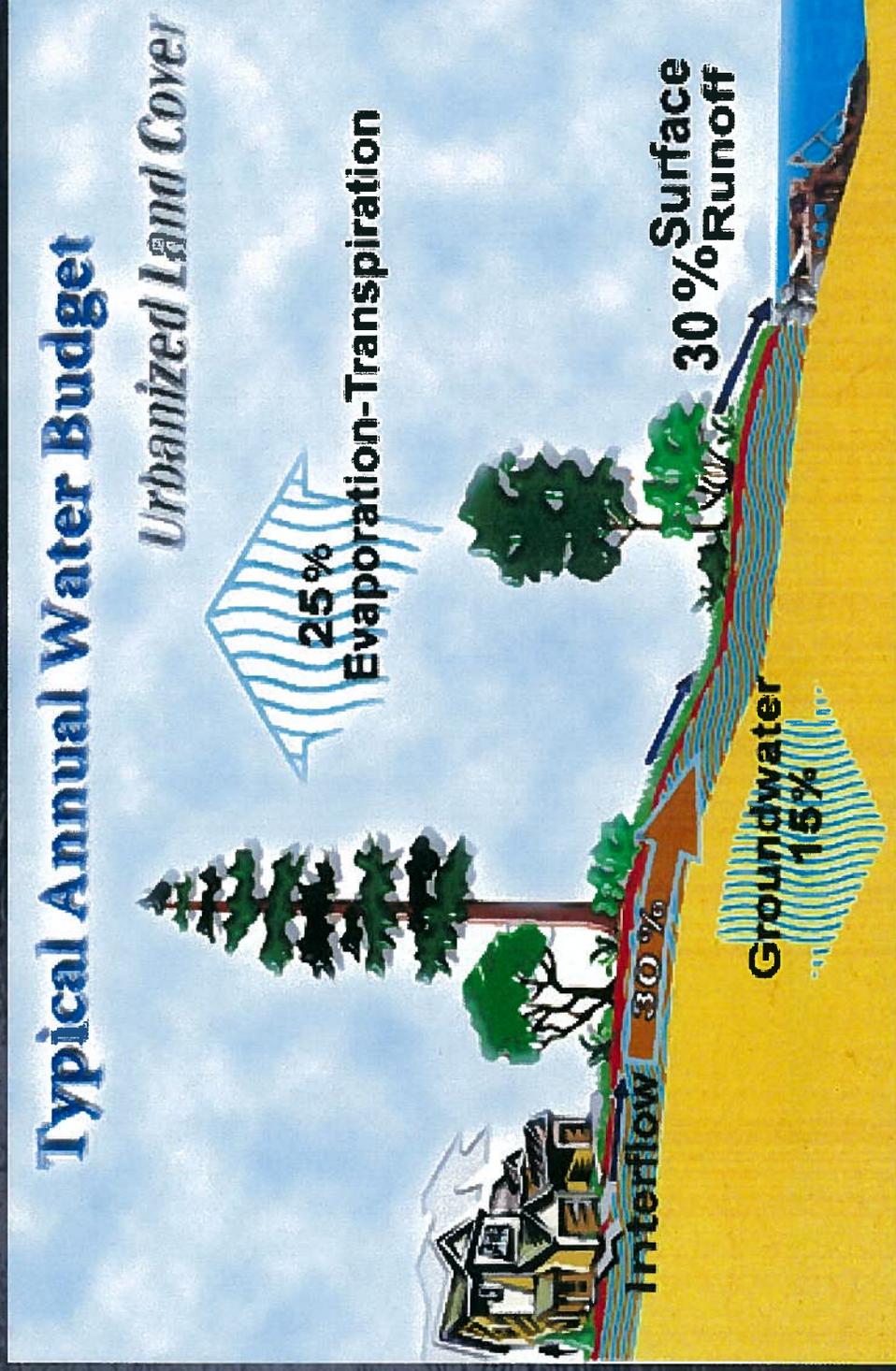
Fanno Creek Park - Tigard

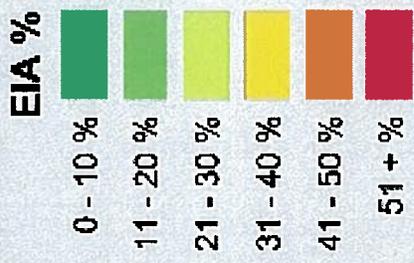
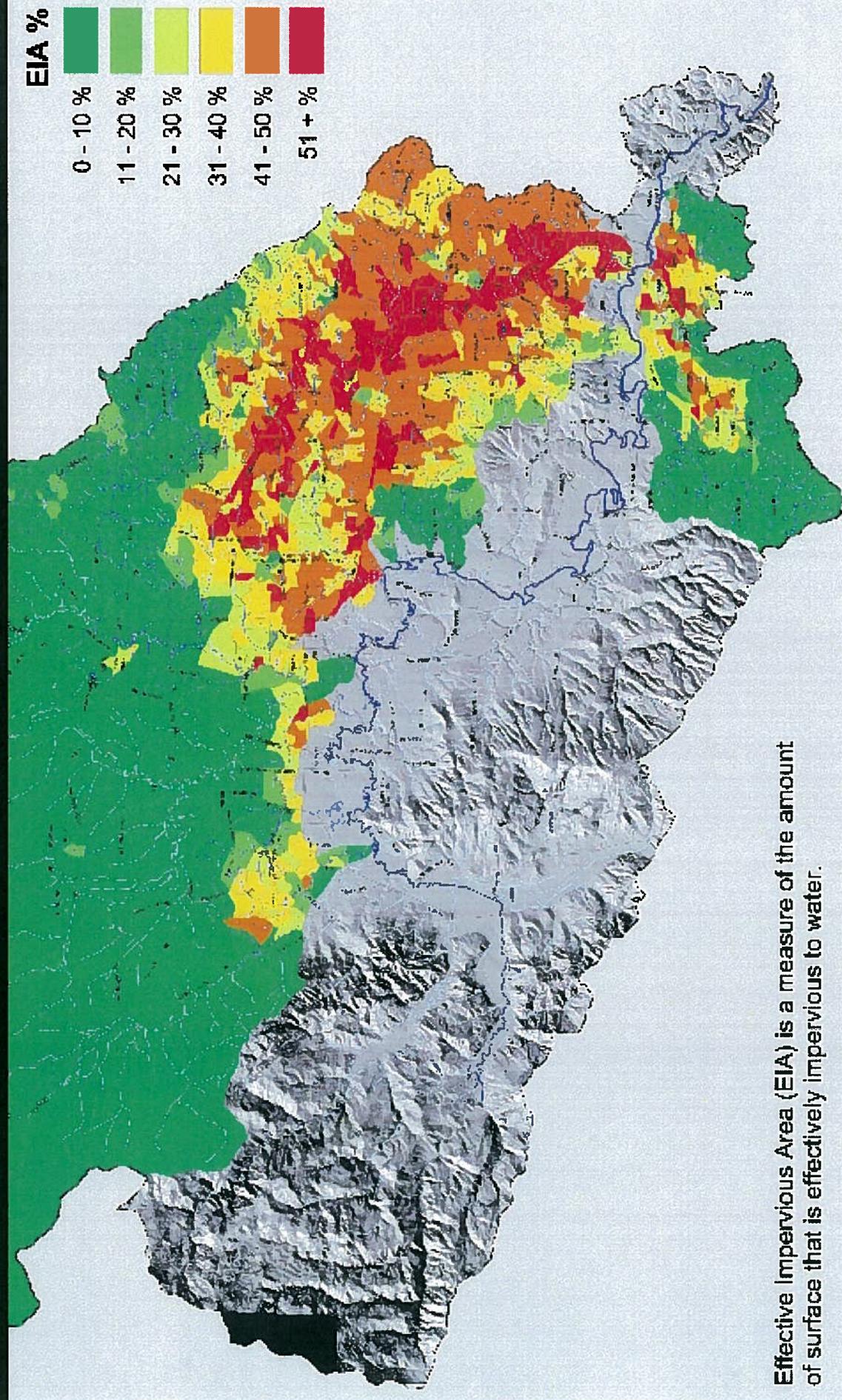


Natural Forested Conditions

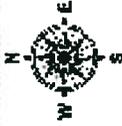


Developed Conditions





Effective Impervious Area (EIA) is a measure of the amount of surface that is effectively impervious to water.



The data for this map was derived from the 2000 National Wetlands Inventory (NWI) and the 2000 National Impervious Surface Inventory (NISI). The NWI and NISI are products of the National Wetlands Inventory (NWI) and National Impervious Surface Inventory (NISI) projects. The NWI and NISI are products of the National Wetlands Inventory (NWI) and National Impervious Surface Inventory (NISI) projects. The NWI and NISI are products of the National Wetlands Inventory (NWI) and National Impervious Surface Inventory (NISI) projects.



Since 1987

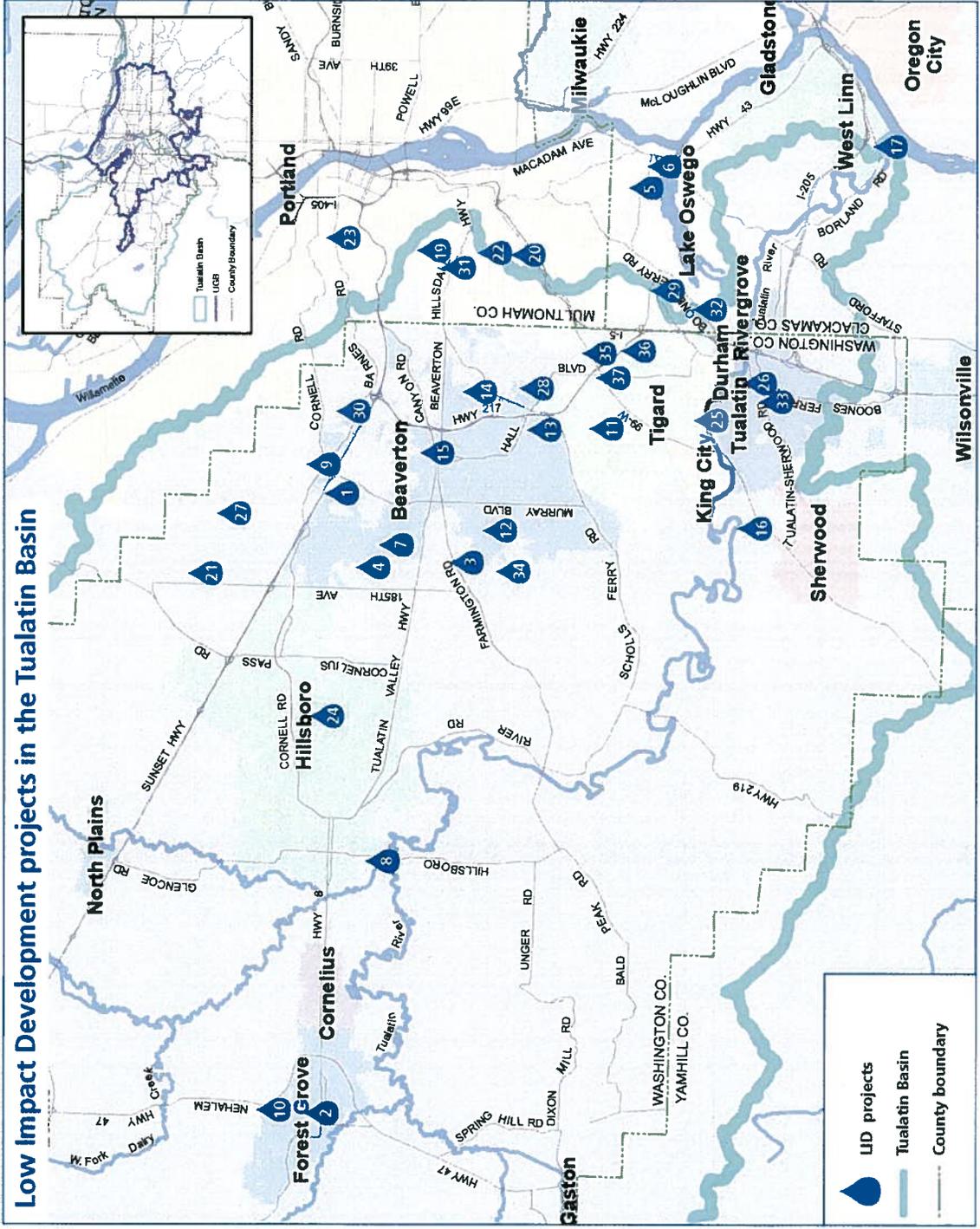
A Different Approach

Low Impact Development

- ◆ Treat rain where it falls
- ◆ De-centralized treatment
- ◆ Slow the flow
- ◆ Recharge the groundwater system
- ◆ View rain as a resource, not waste
- ◆ Reduce Infrastructure Costs

Roadmap to Sustainability

Demonstration Projects



- 1 Residential greenroofs
- 2 Sunset Drive green street
- 3 Stream restoration
- 4 Demonstration garden and rain harvesting
- 5 Green street
- 6 Stormwater planter
- 7 Field Operations facility
- 8 Administrative building complex
- 9 Cornell/Barnes Road project
- 10 Highway 47 Road project
- 11 Rain garden parking lot
- 12 Green street
- 13 Artistic on site stormwater management
- 14 Operations facility
- 15 Lombard Plaza/AWS Station
- 16 Pervious parking lot
- 17 Willamette Park Grassyrete parking
- 18 Home and grounds remodel
- 19 Parking Lot Improvements
- 20 The Headwaters at Iyon Creek
- 21 Rock Creek Recreation Complex parking
- 22 Pervious parking lot
- 23 Hopkins Play Field parking lot
- 24 Landscape design
- 25 Jurgens Park parking lot
- 26 Tualatin Police Station parking lot
- 27 Greenroof
- 28 Olson Woods Community
- 29 Trillium Woods Development
- 30 Petorkort Woods Development
- 31 "More Than Green" Ultimate Home
- 32 "Paramount" Ultimate Home
- 33 "The Gannett" Ultimate Home
- 34 "The Noble" Ultimate Home
- 35 Fanno Creek Care Center
- 36 Igard Library
- 37 Igard WES Station

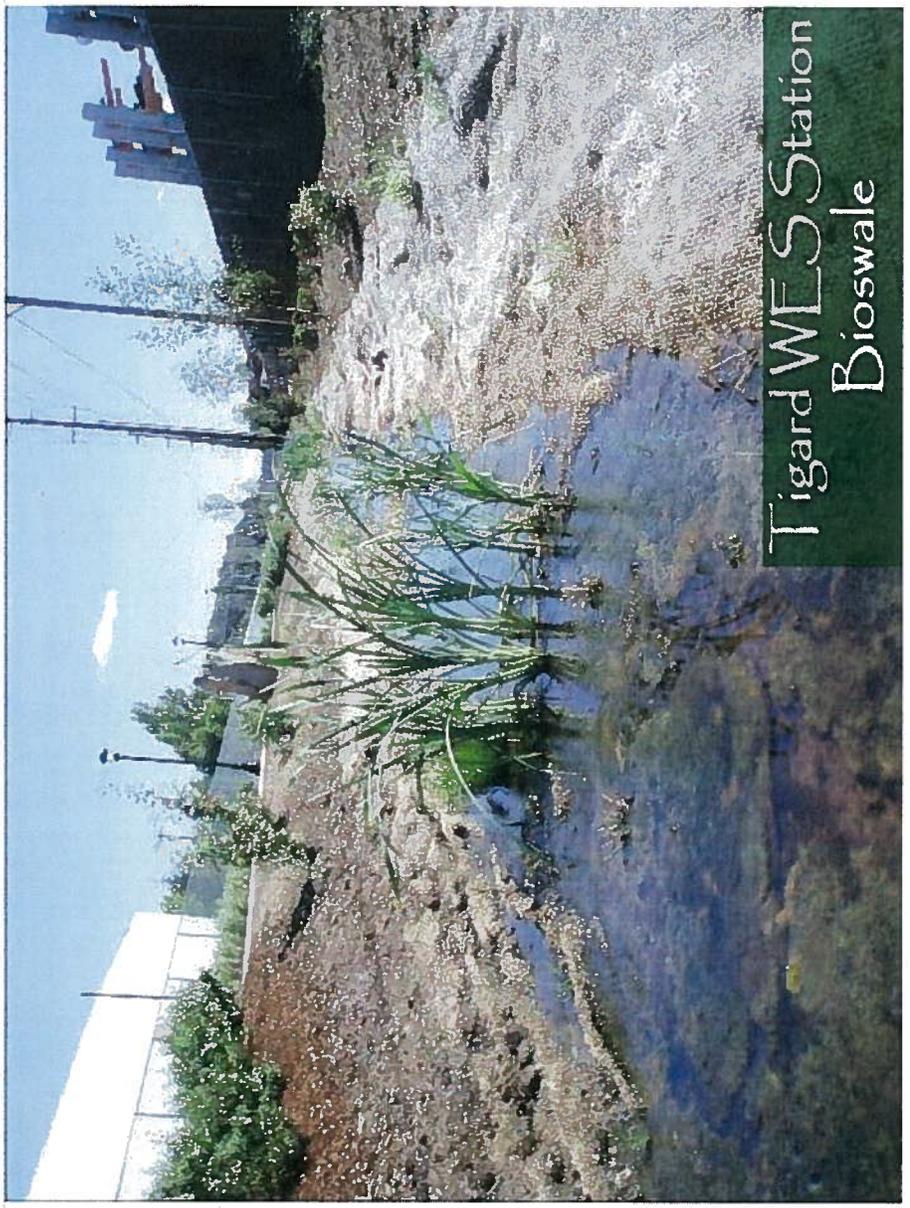
For a pdf electronic version of this map or to add your Low Impact Development project to the map, go to www.tualatinriverkeepers.org/connect_the_drops.html

Roadmap to Sustainability

Education & Guidance

Connect the Drops

Low Impact Development Projects in the Tualatin Basin

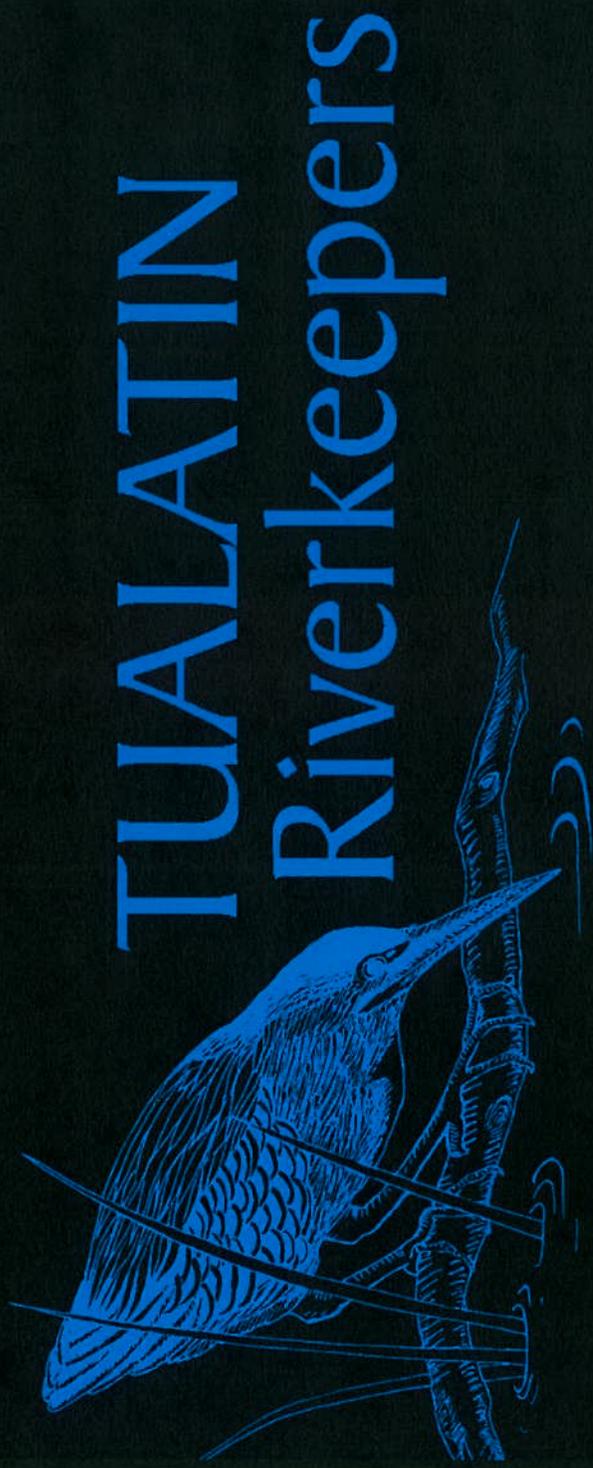


Tigar WES Station
Bioswale

Home
List of projects
Map of projects
Submit your project
Glossary
More Info & Fact Sheets For Home Owners For Builders & Developers Low Impact Manual Rain Gardens & Swales Sustainable Stormwater Green Streets Pervious Pavement Smart Site Design Rain Catchment Water Efficient Garden Urban Runoff Newshour Video
Partners Tualatin Riverkeepers Clean Water Services Metro OSU Sea Grant Washington County Tualatin Valley Water District Oregon Environmental Council

Low Impact Development Projects in the Tualatin Basin

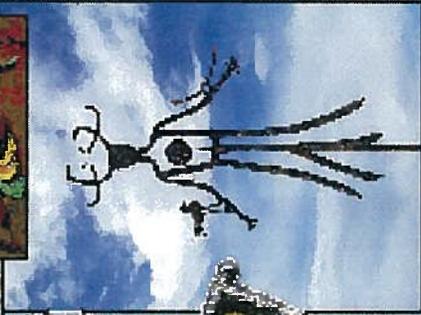
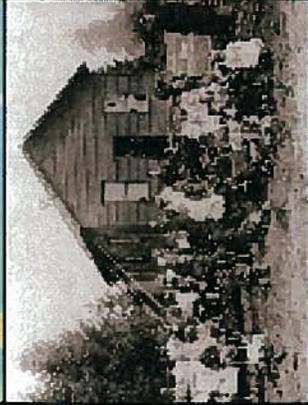




TUALATIN Riverkeepers

www.tualatinriverkeepers.org

Tualatin Studio Tour 2009



November 27-29, 2009 10 am-5 pm

Tualatin Studio Tour Locations <http://tualatinstudiotour.com>

1. **Starbucks at Martinazzi Square**
19321 SW Martinazzi Ave.
 - **Anna Lancaster**
Contemporary Oil
2. 20440 SW Pindle Road
 - **Hamish Corstorphine**
Metal Sculpture
3. 9080 SW Stono Drive
 - **Rick French**
Ocean Inspired Art
4. 22875 SW Miami Drive
 - **Judy Pozo**
Portrait Artist
5. 21810 SW 103rd Court
 - **Deb Steele**
Fine Silver Artisan Jewelry
 - **Ann Cavanaugh**
Fused Glass
6. **Juanita Pohl Center**
8513 SW Tualatin Rd. (inside Community Park)
 - **Barbara Sparks-Shively**
Glass
 - **Mark Feeny**
Paintings
 - **Dorothy Moore**
Watercolors
 - **Laurie Svec**
Watermedia
 - **Jude Dobson**
Fiber Art
 - **Pat Wallis**
Copper Kinetic Sculpture
 - **Jerry Kissler**
Oregon Wines on Canvas
 - **Tualatin Quilters**
Quilts
7. **Tualatin Public Library**
18878 SW Martinazzi Ave.
 - *Historical Photo Display*

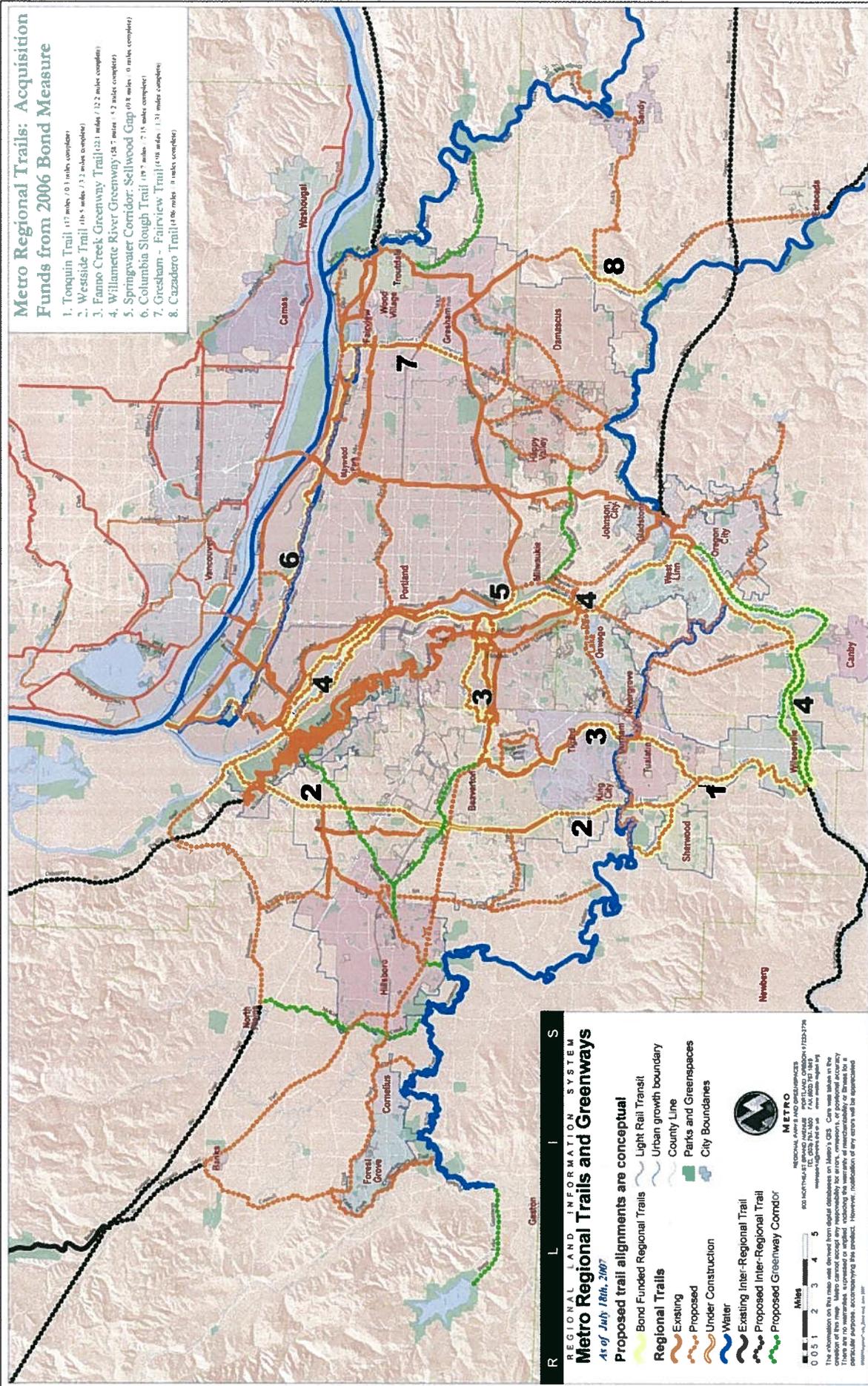
Tonquin Trail Master Plan Open House

**Tuesday, December 8, 2009
6:30 p.m. – 8:30 p.m.
Tualatin Council Chambers**



Metro Regional Trails: Acquisition Funds from 2006 Bond Measure

1. Tokquin Trail (17 miles, 0 miles complete)
2. Westside Trail (16.5 miles, 1.2 miles complete)
3. Fanno Creek Greenway Trail (22.1 miles, 4.2 miles complete)
4. Willamette River Greenway (28.7 miles, 4.2 miles complete)
5. Springwater Corridor: Sellwood Cipp (18.8 miles, 0 miles complete)
6. Columbia Slough Trail (19.7 miles, 2.15 miles complete)
7. Greatkan - Fairview Trail (18 miles, 1.31 miles complete)
8. Cazadero Trail (16 miles, 0 miles complete)



R E G I O N A L L A N D I N F O R M A T I O N S Y S T E M

Metro Regional Trails and Greenways
As of July 18th, 2007

Proposed trail alignments are conceptual

- Bond Funded Regional Trails
- Light Rail Transit
- Urban growth boundary
- County Line
- Parks and Greenspaces
- City Boundaries
- Existing
- Proposed
- Under Construction
- Water
- Existing Inter-Regional Trail
- Proposed Inter-Regional Trail
- Proposed Greenway Corridor

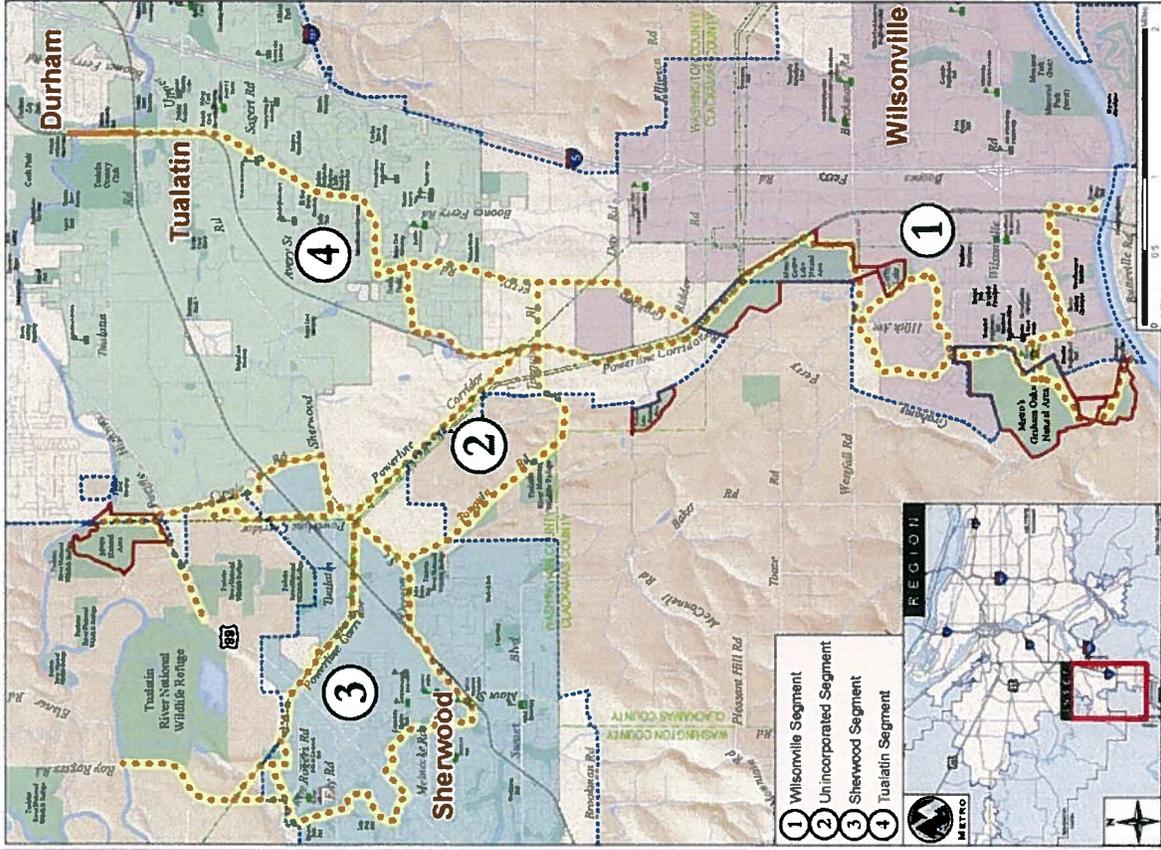
METRO
REGIONAL AUTHORITY
500 BOSTON STREET, SUITE 1000
PORTLAND, OREGON 97203-3706
503.586.7000 FAX 503.586.7001
www.metroregional.gov

The information on this map was derived from digital databases on Metro's GIS. Care was taken on the conditions of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy of the information shown on this map. The user assumes all liability for any errors or omissions in a particular analysis, interpretation, or application of the information shown on this map.

Scale: 0 0.5 1 2 3 4 5 Miles

Regional Trail System - "Great Eight"

February 2007 - February 2009
Master Planning the Tonquin Trail
 Connecting the Willamette and Tualatin rivers



January 2007
 METRO
 Proposed trail alignments are conceptual
 Existing Trail
 Proposed Trail
 Powerline
 Railroads
 Urban growth boundary
 Parks & Open spaces
 Sherwood
 Tualatin
 Wilsonville

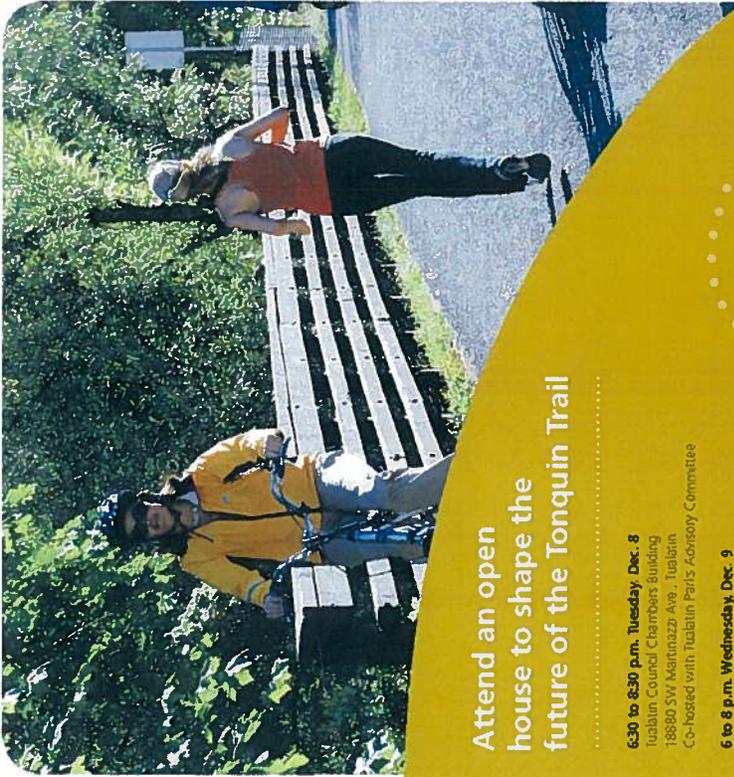
Tonquin Trail
 Feasibility Study
 was completed in
 2005



Tonquin Trail
 Master Plan just
 starting

Tonquin Trail

MASTER PLAN



Attend an open house to shape the future of the Tonquin Trail

6:30 to 8:30 p.m. Tuesday, Dec. 8
Tualatin Council Chambers Building
18880 SW Martinazzi Ave., Tualatin
Co-hosted with Tualatin Parks Advisory Committee

6 to 8 p.m. Wednesday, Dec. 9
Wilsonville City Hall, Council Chambers
29799 SW Town Center Loop E., Wilsonville
Co-hosted with Wilsonville Planning Commission

5:30 to 7:30 p.m. Thursday, Dec. 10
Sherwood Community Room
Sherwood City Hall
21560 SW Fire St., Sherwood
Co-hosted with the City of Sherwood

For more information about the Tonquin Trail master plan, visit www.oregonmetro.gov/tonquintrail. If you are unable to attend one of the open houses, but would like to share your thoughts and ideas, an online questionnaire will be available between Dec. 7 and Dec. 21, 2009.
Metrolink's funds for trail acquisition were included in Metro's 2009 Natural Area bond measure.



The Tonquin Trail is part of The InterTwine, our connected network of park trails and multi-use paths in Portland, Oregon and Vancouver, Washington. To learn how you can help us expand and promote the InterTwine, visit www.theintertwine.org.

Metro | People places. Open spaces.
Printed on recycled-content paper. 092907/mtr

Tonquin Trail Master Plan Open House

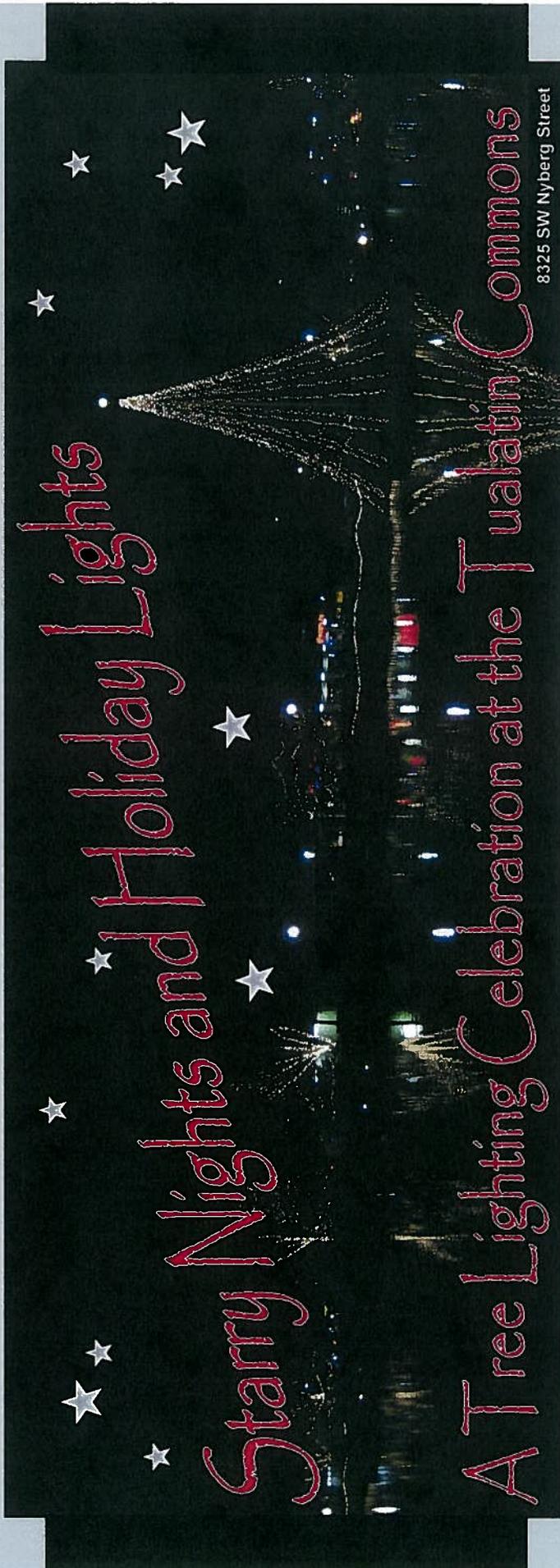
Tuesday, December 8
6:30 p.m. – 8:30 p.m.
Tualatin Council Chambers

For more information go to
www.oregonmetro.gov/tonquintrail

Starry Nights and Holiday Lights

A Tree Lighting Celebration at the Tualatin Commons

8325 SW Nyberg Street



Friday, December 4, 6:00 p.m. - 9:00 p.m.

Join us for the lighting of the floating tree, children's choirs, free children's crafts & activities, free refreshments, and Santa!

Please bring non-perishable food items to donate to the Tualatin School House Food Pantry.

Free!



City of Tualatin



REMOVED

~~1/23/09~~ By Tualatin City Council

Date 11-23-09

Recording Secretary M. Smith

STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

FROM: Sherilyn Lombos, City Manager 

DATE: November 23, 2009

SUBJECT: APPROVAL OF THE MINUTES FOR THE WORK SESSION AND MEETING NOVEMBER 9, 2009

[The minutes will be distributed later in the week.]



STAFF REPORT

CITY OF TUALATIN

Approved By Tualatin City Council
Date 11-23-09
Recording Secretary M. S. [Signature]

TO: Honorable Mayor and Members of the City Council

FROM: Sherilyn Lombos, City Manager *4*

DATE: November 23, 2009

SUBJECT: APPROVAL OF A CHANGE OF OWNERSHIP LIQUOR LICENSE APPLICATION FOR PINZ'S

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve a change of ownership liquor license application for Pinz's.

RECOMMENDATION:

Staff respectfully recommends that the Council approve endorsement of the liquor license application for Pinz's.

EXECUTIVE SUMMARY:

Pinz's, formerly Players, has submitted a change of ownership liquor license application for Full On-Premises Sales, Commercial Establishment. The business is located at 17880 SW McEwan Road. The application is in accordance with provisions of Ordinance No. 680-85 which established a procedure for review of liquor licenses by the Council.

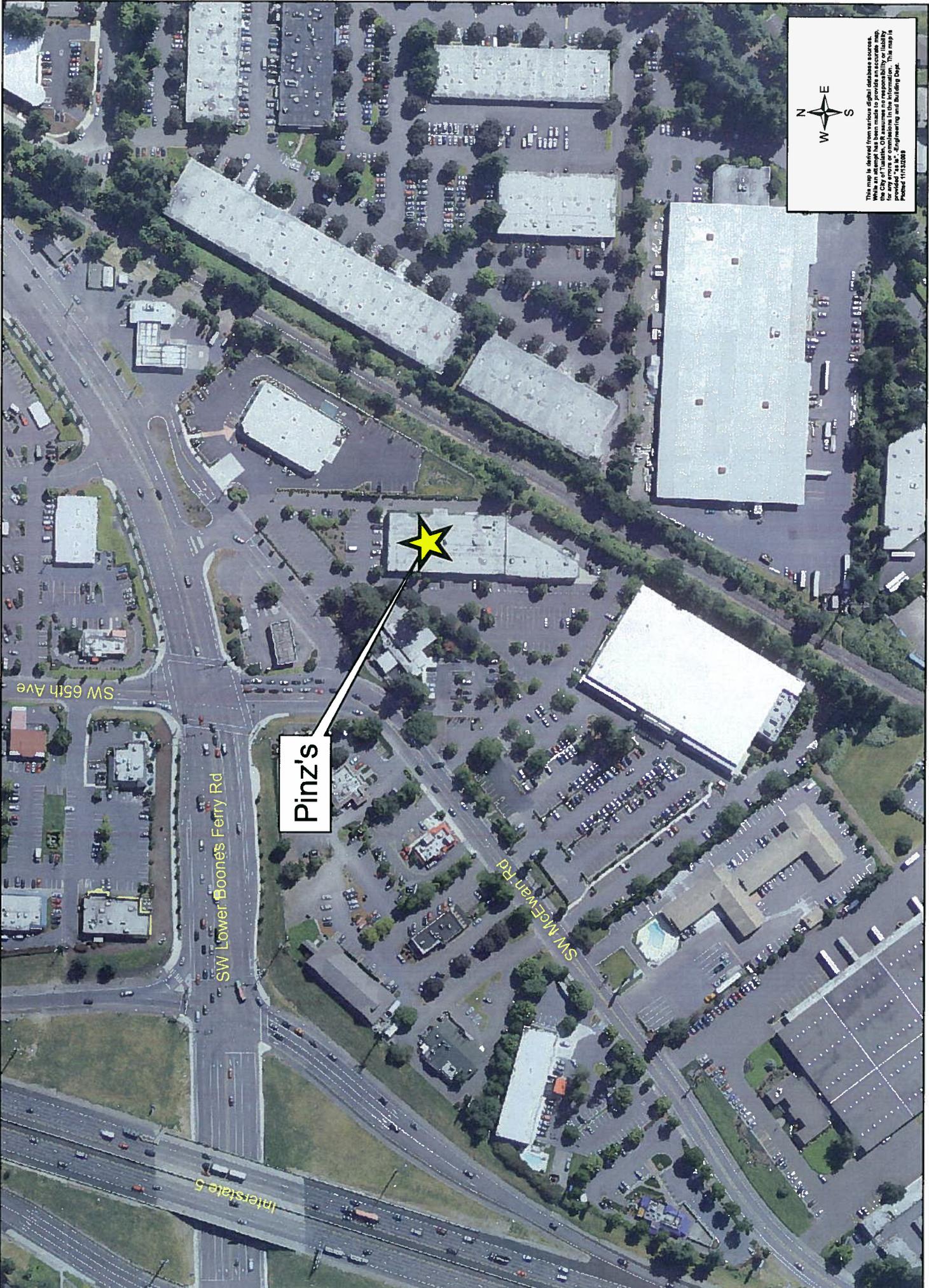
Ordinance No. 680-85 establishes procedures for liquor license applicants. Applicants are required to fill out a City application form, from which a review by the Police Department is conducted, according to standards and criteria established in Section 6 of the ordinance. The Police Department has reviewed and signed off on this application.

According to the provisions of Section 5 of Ordinance No. 680-85 a member of the Council or the public may request a public hearing on any of the liquor license requests. If such a public hearing request is made, a hearing will be scheduled and held on the license. It is important that any request for such a hearing include reasons for said hearing.

FINANCIAL IMPLICATIONS:

A fee has been paid by the applicant.

- Attachments:**
1. Vicinity Map
 2. OLCC License Types
 3. Liquor License Application



This map is derived from various digital database sources. It is not intended to be used as a substitute for a professional survey. The City of Tualsis does not provide any warranty, express or implied, for any errors or omissions in the information. This map is provided for informational purposes only.
Pinz's - 17880 SW McEwan Road

OREGON LIQUOR CONTROL COMMISSION LICENSE TYPES & PRIVILEGES

Brewery – public house

Allows the manufacture & sale of malt beverages to wholesalers, & the sale of malt beverages, wine & cider for consumption on or off the premises. [ORS 471.200]

Brewery

Allows the manufacture, importation, storage, transportation & wholesale sale of malt beverages to OLCC licensees. Malt beverages brewed on the premises may be sold for consumption on the premises & sold in kegs to the public. [ORS 471.220] designates a licensee that does not allow tastings or other on premises consumption.

Certificate of Approval

This certificate allows an out-of-state manufacturer, or an importer of foreign wine or malt beverages, to import wine & malt beverages to Oregon licensees. [ORS 471.289]

Distillery

Allows the holder to import, manufacture, distill, rectify, blend, denature & store distilled spirits. A distillery that produces distilled liquor may permit tastings by visitors. [ORS 471.230]

Direct Shipper Permit

Allows manufacturers & retailers to ship wine & cider directly to Oregon residents for their personal use. [ORS 471.282]

Full On Premises Sales

Allows the sale & service of distilled spirits, malt beverages & wine for consumption on the licensed premises. Also allows licensees who are pre-approved to cater events off of the licensed premises [ORS 471.175] license sub-type designates the type of business licensed: F-CAT- caterer; F-CLU- private club; F-COM - commercial establishment; F-PC - passenger carrier; F-PL - other public location.

Growers Sales Privilege

Allows the importation, storage, transportation, export, & wholesale & retail sales of wines made from fruit or grapes grown in Oregon [ORS 471.227]. Designates a licensee that does not allow tastings or other on premises consumption.

Limited On Premises Sales

Allows the sale of malt beverages, wine & cider for consumption on the licensed premises & the sale of kegs of malt beverages for off premises consumption. Also allows licensees who are pre-approved to cater events off of the licensed premises. [ORS 471.178]

Off Premises Sales

Allows the sale of malt beverages, wine & cider in factory sealed containers for consumption off the licensed premises & allows approved licensees to offer sample tasting of malt beverages, wine & cider. [ORS 471.186]

Warehouse

Allows the storage, importing, exporting, bottling, producing, blending & transporting of wine & malt beverages. [ORS 471.242]

Wholesale Malt Beverage & Wine

Allows the importation, storage, transportation & wholesale sale of malt beverages & wine to OLCC licensees & limited retail sales to the public (dock sales). [ORS 471.235]

Wine Self Distribution Permit

Allows manufacturers to sell & ship wine & cider produced by the manufacturer directly to Oregon retailers for resale to consumers. May ship to businesses which have an OLCC endorsement to receive the shipments. [ORS 471.274]

Winery

Allows the licensee to import, bottle, produce, blend, store, transport & export wines, & allows wholesale sales to OLCC & licensees, & retail sales of malt beverages & wine for consumption on or off the licensed premises. [ORS 471.223]



CITY OF TUALATIN

LIQUOR LICENSE APPLICATION

Date 11/4/09

IMPORTANT: *This is a three-page form. You are required to complete all sections of the form.* If a question does not apply, please indicate N/A. Please include full names (last, first middle) and full dates of birth (month/day/year). Incomplete forms shall receive an unfavorable recommendation.
Thank you for your assistance and cooperation.

SECTION 1: TYPE OF APPLICATION

- Original (New) Application - \$100.00 Application Fee.
- Change in Previous Application - \$75.00 Application Fee.
- Renewal of Previous License - \$35.00 Application Fee. Applicant must possess current business license. License # _____
- Temporary License - \$35.00 Application Fee.

SECTION 2: DESCRIPTION OF BUSINESS

Name of business (dba): PINZ INC

Business address 17880 SW McEwen Rd City Lake Oswego State OR Zip Code 97035

Mailing address Same City _____ State _____ Zip Code _____

Telephone # (503) 726-5493 Fax # (503) 726-5494

Name(s) of business manager(s) First Valene Middle Anne Last JOHNSON

Date of birth 1/23/68 Social Security # [REDACTED] DDL# 3907613 M _____ F X

Home address 12414 SE Central Pkct City Happy Valley State OR Zip Code 97086
(attach additional pages if necessary)

Type of business Family Entertainment Center

Type of food served Full menu, Salads, burgers, pizza, sandwiches, entrees

Type of entertainment (dancing, live music, exotic dancers, etc.) None Bowling, Videogame

Days and hours of operation 12-11 Sun-Thur, 12-1 Fri-Sat

Food service hours: Breakfast N/A Lunch 12-11/12-1 All Dinner 12-4/12-1 All

Restaurant seating capacity 76 Outside or patio seating capacity 0

How late will you have outside seating? 0 How late will you sell alcohol? 1 AM

How many full-time employees do you have? 3 Part-time employees? 15

SECTION 3: DESCRIPTION OF LIQUOR LICENSE

Name of Individual, Partnership, Corporation, LLC, or Other applicants Pinz Incorporated

Type of liquor license (refer to OLCC form) Full services / on premise

Form of entity holding license (check one and answer all related applicable questions):

INDIVIDUAL: If this box is checked, provide full name, date of birth, and residence address.
Full name _____ Date of birth _____
Residence address _____

PARTNERSHIP: If this box is checked, provide full name, date of birth and residence address for each partner. If more than two partners exist, use additional pages. If partners are not individuals, also provide for each partner a description of the partner's legal form and the information required by the section corresponding to the partner's form.
Full name _____ Date of birth _____
Residence address _____
Full name _____ Date of birth _____
Residence address _____

CORPORATION: If this box is checked, complete (a) through (c).
(a) Name and business address of registered agent.
Full name National Registered Agents Inc.
Business address 3533 Fairway Industrial Dr. SE
Salem, OR 97302

(b) Does any shareholder own more than 50% of the outstanding shares of the corporation? If yes, provide the shareholder's full name, date of birth, and residence address.
Full name Valerie Johnson (anne) Date of birth [REDACTED]
Residence address 124104 SE Central PK Ct. Happy Valley, OR 97086

(c) Are there more than 35 shareholders of this corporation? Yes No If 35 or fewer shareholders, identify the corporation's president, treasurer, and secretary by full name, date of birth, and residence address.
Full name of president: Valerie A. Johnson Date of birth: [REDACTED]
Residence address: 124104 SE Central PK Ct HV, OR 97086
Full name of treasurer: Valerie A. Johnson Date of birth: [REDACTED]
Residence address: 124104 SE Central PK Ct HV, OR 97086
Full name of secretary: Valerie A. Johnson Date of birth: [REDACTED]
Residence address: 124104 SE Central PK Ct HV, OR 97086

LIMITED LIABILITY COMPANY: If this box is checked, provide full name, date of birth, and residence address of each member. If there are more than two members, use additional pages to complete this question. If members are not individuals, also provide for each member a description of the member's legal form and the information required by the section corresponding to the member's form.
Full name: _____ Date of birth: _____
Residence address: _____

Full name: HATIEA G. JOHNSON (u) Date of birth: 1-23-68 (u)
Residence address: _____

OTHER: If this box is checked, use a separate page to describe the entity, and identify with reasonable particularity every entity with an interest in the liquor license.

SECTION 4: APPLICANT SIGNATURE

A false answer or omission of any requested information on any page of this form shall result in an unfavorable recommendation.

Hatiena G. Johnson Resident 11/4/09
Signature of Applicant Date

For City Use Only

Sources Checked:

DMV by MG LEADS by MG TuPD Records by MG
 Public Records by MG

0 Number of alcohol-related incidents during past year for location.
 2 Number of Tualatin arrest/suspect contacts for Location only - Applicant not involved

It is recommended that this application be:

Granted
 Denied
Cause of unfavorable recommendation: _____

Kent W. Barker 11/17/09
Signature Date

Kent W. Barker
Chief of Police
Tualatin Police Department



OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

COPY



PLEASE PRINT OR TYPE

Application is being made for:

LICENSE TYPES

- Full On-Premises Sales (\$402.60/yr)
- Commercial Establishment
 - Caterer
 - Passenger Carrier
 - Other Public Location
 - Private Club
- Limited On-Premises Sales (\$202.60/yr)
- Off-Premises Sales (\$100/yr)
 - with Fuel Pumps
- Brewery Public House (\$252.60)
- Winery (\$250/yr)
- Other: _____

ACTIONS

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other CFW

P41836
L119565

FOR CITY AND COUNTY USE ONLY

The city council or county commission:
City of Tualatin, OR

(name of city or county)

recommends that this license be:

Granted Denied

By: [Signature] 11-23-09
(signature) (date)

Name: Lou Ogden

Title: Mayor

OLCC USE ONLY

Application Rec'd by: _____

Date: _____

90-day authority: Yes No

Applying as:

- Limited Partnership
- Corporation
- Limited Liability Company
- Individuals

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

- ① PINZ'S Incorporated. ③ _____
- ② _____ ④ _____

2. Trade Name (dba): PINZ'S

3. Business Location: 17880 SW McEwan Rd Lake Oswego, Clackamas, OR 97035
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: 17880 SW McEwan Rd Lake Oswego, OR 97035
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: (503) 726-4263 (503) 726-5494
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? Yes No

7. If yes to whom: Get Your Home On Inc Type of License: Full On Premise

8. Former Business Name: Player's

9. Will you have a manager? Yes No Name: Valerie Johnson
(manager must fill out an individual history form)

10. What is the local governing body where your business is located? City of Tualatin
(name of city or county)

11. Contact person for this application: Valerie Johnson (503) 550-9202
(name) (phone number(s))
17880 SW McEwan rd Lake Oswego, OR 97035
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

- ① [Signature] Date 9/7/09 ③ _____ Date _____
- ② _____ Date _____ ④ _____ Date _____



OREGON LIQUOR CONTROL COMMISSION
INDIVIDUAL HISTORY

COPY

PLEASE PRINT OR TYPE

YOU MUST ANSWER ALL QUESTIONS ON THIS FORM. IF THE QUESTION DOES NOT APPLY, WRITE N/A IN THE SPACE. ATTACH ADDITIONAL SHEETS IF NECESSARY.

Trade Name (d.b.a.): PINZ City: Tualatin

1. Name: JOHNSON Valene Anne (last) (first) (middle)

2. Other names used (maiden, other): modjeski Fields

3. Residence Address: 14464 SE Central Park Court Happy Valley, OR (number and street) (city) (state) (ZIP code)

4. Home Phone: (503) 719-6109 Business Phone: (503) 726-4203

5. *SSN: 542-86-7888 Place of Birth: (State/Country) DOB: 1/23/1960 Sex: M F

6. Driver License or State ID #: 3907613 State: OR Spouse's name: Corey Johnson

7. List all states, other than Oregon, where you have lived during the past ten years: N/A

8. Do you currently hold, or have you ever held a liquor license in this or any other state? Yes No If yes, when, where and name of premises? Playas 12/00

9. In the past twelve years, have you been convicted of any violation, misdemeanor or felony? Yes No If yes, what, when and where? traffic tickets, speeding

10. Have you ever entered into a diversion agreement? Yes No If yes, when and where? OSP/DMV Search Completed

11. Do you have any arrests or citations that have not been resolved? Yes No If yes, arrested/cited for: Date: OCT 19 2000

12. If you are applying for a retail liquor license: a. Do you have any financial interest, direct or indirect, in any manufacturer or distributor of alcohol? Yes No If yes, what and where: INITIALS: b. Does any person having a financial or ownership interest in a manufacturer or distributor have an interest in, or potential claim upon your business or premises, for instance through investment, a loan, lease or contract? Yes No If yes, who?

13. Have you ever had a warning, violation, suspension, fine, cancellation or refusal as a licensee or service permittee, in Oregon or any other state? Yes No If yes, when: where:

I UNDERSTAND THE OLCC WILL USE THE ABOVE INFORMATION TO CHECK FOR CRIMINAL RECORDS. I UNDERSTAND IF MY ANSWERS ARE NOT TRUE AND COMPLETE, THE OLCC MAY DENY MY LICENSE APPLICATION.

Applicant Signature: JOHNSON Date: 9/7/09

*SOCIAL SECURITY NUMBER DISCLOSURE As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). The OLCC will refuse a license to any applicant or licensee who fails to provide his/her SSN. Your SSN will be used only for child support enforcement purposes unless you sign below. Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your voluntary consent to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a)). If you consent to these uses, please sign here: Applicant Signature: JOHNSON Date: 9/7/09



1-800-452-OLCC (6522) www.oregon.gov/olcc

(rev. 12/07)



OREGON LIQUOR CONTROL COMMISSION
BUSINESS INFORMATION

COPY

Please Print or Type

Applicant Name: PINZ INCORPORATED Phone: (503) 550-9262

Trade Name (dba): PINZ K...

Business Location Address: 17880 SW MCEWAN RD

City: Lake Oswego, OR (City of Tualatin) ZIP Code: 97035

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday	<u>12</u>	to	<u>11</u>
Monday	<u>12</u>	to	<u>11</u>
Tuesday	<u>12</u>	to	<u>11</u>
Wednesday	<u>12</u>	to	<u>11</u>
Thursday	<u>12</u>	to	<u>11</u>
Friday	<u>12</u>	to	<u>11</u>
Saturday	<u>12</u>	to	<u>11</u>

Outdoor Area Hours:

Sunday	_____	to	_____
Monday	_____	to	_____
Tuesday	_____	to	_____
Wednesday	<u>N/A</u>	to	<u>N/A</u>
Thursday	_____	to	_____
Friday	_____	to	_____
Saturday	_____	to	_____

The outdoor area is used for:

- Food service Hours: NONE
- Alcohol service Hours: _____ to _____
- Enclosed, how _____

The exterior area is adequately viewed and/or supervised by Service Permittees.

(Investigator's Initials)

Seasonal Variations: Yes No If yes, explain: WINTER HOURS OPEN WEEKDAYS AT 4PM CLOSE AT 10, WEEKENDS 12 TO 12

ENTERTAINMENT

Check all that apply:

- Live Music
- Recorded Music
- DJ Music special events only
- Dancing
- Nude Entertainers
- Karaoke
- Coin-operated Games
- Video Lottery Machines
- Social Gaming
- Pool Tables / Shuffleboard
- Other: Bowling

DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday	_____	to	_____
Monday	_____	to	_____
Tuesday	_____	to	_____
Wednesday	_____	to	_____
Thursday	_____	to	_____
Friday	_____	to	_____
Saturday	_____	to	_____

special events only!

SEATING COUNT

Restaurant: 74 Outdoor: 0

Lounge: 59 Other (explain): 68 Bowling

Banquet: 100 Total Seating: 303

OLCC USE ONLY

Investigator Verified Seating: ____ (Y) ____ (N)

Investigator Initials: _____

Date: _____

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: [Signature] Date: 9/7/09



Oregon

Theodore R. Kulongoski, Governor

Liquor Control Commission

9079 SE McLoughlin Blvd.

Portland, OR 97222-7355

(503) 872-5000

1-800-452-6522

October 22, 2009

Pinz's Inc.
Attn: Valerie Johnson
17880 SW McEwan Rd.
Lake Oswego, OR 97035

COPY

**Re: Full On-Premises
Commercial Sales
Pinz
17880 SW McEwan Rd.
Lake Oswego, OR 97035**

Dear Ms. Johnson:

I erroneously advised you to take your application materials to the City of Lake Oswego. As we discussed yesterday, your application materials will need to go instead to the City of Tualatin. Here is the correct address and contact information:

**City of Tualatin
Attn: Maureen
18880 SW Martinazzi Ave
Tualatin OR 97062
(503) 692-2000**

I apologize for the mistake.

If you have questions, please call me at 503.872.5197. I look forward to working with you, and wish you success.

-Eric Hildebrand,
License Investigator.





STAFF REPORT

CITY OF TUALATIN

Approved By Tualatin City Council

Date 11-23-09

Recording Secretary ll Smith

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager 

FROM: Maureen Smith, Executive Assistant

DATE: November 23, 2009

SUBJECT: COMMUNITY INVOLVEMENT COMMITTEE APPOINTMENTS

ISSUE BEFORE THE COUNCIL:

The City Council approve appointments to various Advisory Committees and Boards.

RECOMMENDATION:

Staff recommends the City Council approve the Community Involvement Committee recommendations and appoint the below listed individuals.

EXECUTIVE SUMMARY:

On November 9, 2009, the Community Involvement Committee met and interviewed citizens interested in participating on City Committees and Boards. The Committee recommends appointing the following individual:

Individual	Committee/Board	Term
Gimena Olguin (Student)	Library Advisory Committee	One year term ending 11/23/10

FINANCIAL IMPLICATIONS:

Not applicable.



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *[Signature]*

FROM: Doug Rux, Community Development Director *[Signature]*
Eric Underwood, Development Coordinator *[Signature]*

DATE: November 23, 2009

SUBJECT: RESOLUTION ACCEPTING DEED OF DEDICATION AND EASEMENT ASSOCIATED WITH THE SW LEVETON DRIVE EXTENSION PROJECT (L & T PROPERTIES, LLC)

ISSUE BEFORE THE COUNCIL:

Whether the Tualatin City Council should adopt a resolution accepting a Deed of Dedication and Slope/Utility Easement as part of the SW Leveton Drive Extension Project.

RECOMMENDATION:

Staff recommends that the City Council adopt the attached resolution.

EXECUTIVE SUMMARY:

- This action is not a public hearing.
- The Fiscal Year 09/10 Leveton Tax Increment District Project Fund contains a capital project to design roadway improvements, and acquire rights-of-way and easements for the SW Leveton Drive Extension Project.
- The project area extends west from SW 128th Avenue to SW 130th Avenue then northerly to Highway 99W (Attachment A Vicinity Map).
- This public improvement project is funded by the Tualatin Development Commission ("Commission").
- The primary purpose of constructing the roadway is to better facilitate freight mobility and industrial traffic flow within the District.
- As part of the project, rights-of-way and slope/utility and temporary easements have been identified.

- The acceptance of the Deed of Dedication and Easement are conditioned on the Commission at their November 23, 2009 meeting adopting a resolution authorizing compensation for the Deed of Dedication and Easement for the amounts noted in the attached documents.
- The Commission at its May 26, 2009 meeting directed the acquisition of rights-of-ways and easements.
- The document to be accepted is from the following:
 - L & T Properties, LLC (Deed of Dedication and Slope/Utility Easement).
- The Deed of Dedication and Easement are being presented to the Council for acceptance because the subject project is for a public street improvement and the Commission does not accept these types of documents.
- There are no criteria to apply to this request.

OUTCOMES OF DECISION:

Approval of the request to accept Deed of Dedication and Easement will result in the following:

1. Allow the Commission to obtain the right-of-way and easement needed to construct roadway improvements.
2. Allow the SW Leveton Drive Project to maintain its current timeline.

Denial of the request to accept Deed of Dedication and Easement will result in the following:

1. The project will be delayed.
2. The Commission will need to decide whether or not to renegotiate right-of-way and easement acquisition costs.

ALTERNATIVES TO RECOMMENDATION:

Alternatives evaluated to acceptance of Deed of Dedication and Easement are as follows:

1. Renegotiate right-of-way and easement need and acquisition costs with current property owners.
2. Put project on hold.

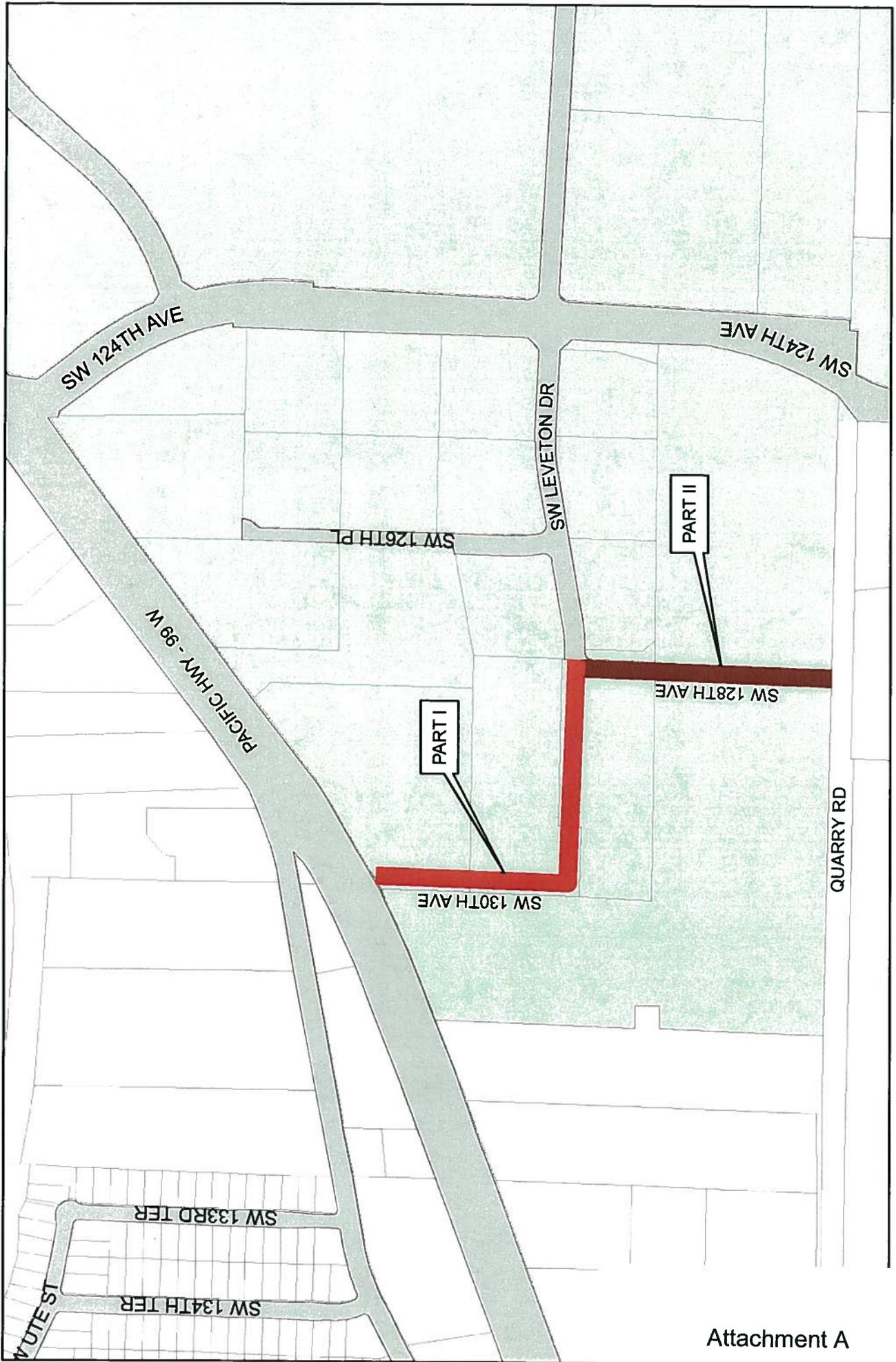
FINANCIAL IMPLICATIONS:

Compensation for the Deed of Dedication and Easement was addressed by the Commission at their November 23, 2009 meeting and is not applicable to acceptance of these documents.

PUBLIC INVOLVEMENT:

Public involvement is not required as part of this action.

- Attachments:**
- A. Vicinity Map
 - B. Resolution with Exhibits



RF 1:4,500

Leveton Tax Increment District

This map is derived from various digital database sources. The City of Tualgis GIS Department has made every effort to provide the most accurate information possible. However, the City of Tualgis does not warrant the accuracy of the information provided "as is". Engineering and Building Dept. Project 10/11/2007

RESOLUTION NO. 4939-09

RESOLUTION ACCEPTING DEED OF DEDICATION AND EASEMENT IN ASSOCIATION WITH THE SW LEVETON DRIVE EXTENSION PROJECT (L & T PROPERTIES, LLC)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The attached documents, Exhibit 1 and 2 are hereby accepted by the City of Tualatin:

- a. Deed of Dedication From L & T Properties, LLC
- b. Slope/Public Utility Easement from L & T Properties, LLC

Section 2. The City Recorder shall be instructed to cause said Deed of Dedication and Slope/Public Utility Easement to be recorded in the Book of Records of the Washington County Recorder.

Section 3. The acceptance of the Deed of Dedication and Easement are conditioned on the Tualatin Development Commission adopting a resolution authorizing compensation for the Deed of Dedication and Easement.

INTRODUCED AND ADOPTED this 23rd day of November, 2009.

CITY OF TUALATIN, OREGON

By _____
Mayor

ATTEST:

By 
City Recorder

APPROVED AS TO LEGAL FORM


CITY ATTORNEY



CITY OF TUALATIN, OREGON

DEED OF DEDICATION

KNOW ALL MEN BY THESE PRESENTS, that L & T Properties, LLC, an Oregon Limited Liability Company (the "GRANTOR"), grants to the City of Tualatin (the "CITY"), its successors in interest and assigns, the following real property with the tenements, hereditaments and appurtenances, situated in the County of Washington, State of Oregon, for the use of the public as a public way forever, for street, road, right-of-way and public utility purposes, bounded and described as follows, to wit:

*See attached legal description
and attached map of description*

TO HAVE AND TO HOLD, the described and granted premises unto the said CITY, its successors in interest and assigns forever.

The true consideration of this conveyance is **Two Hundred Thirty-One Thousand Six Hundred Twenty-Four and No/100 Dollars (\$231,624.00)** and other valuable consideration, the receipt of which is acknowledged by GRANTOR.

The GRANTOR covenants to the CITY, and CITY'S successors in interest and assigns that GRANTOR is lawfully seized in fee simple of the granted premises, free from all encumbrances, except encumbrances stated in the attached and incorporated exhibit entitled "Excepted Encumbrances", and that GRANTOR, GRANTOR'S heirs, and personal representatives shall warrant and forever defend the premises to the CITY, its successors in interest and assigns against the lawful claims and demands of all persons claiming by, through, or under the GRANTOR.

EXECUTED this 28 day of July, 2009

L & T Properties, LLC, an Oregon Limited Liability Company

Deborah Sue Smith
Name (print or type)

Deborah Sue Smith
Signature

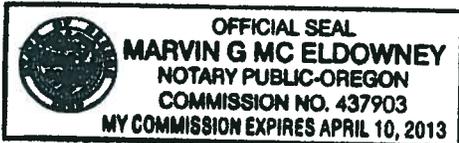
member
Title

STATE OF OREGON)
County of Washington) ss

On this 28 day of JULY, 2009, before me, the undersigned, a Notary Public, personally appeared DEBORAH SUE SMITH who is known to be the MEMBER of L & T Properties, LLC, an Oregon Limited Liability Company and acknowledged the foregoing instrument to be his/her voluntary act and deed.

Before me: Marvin G. Eldowney
Notary Public for Oregon

My commission expires: April 10, 2013



CITY OF TUALATIN, OREGON
By _____
Mayor

ATTEST:
By [Signature]
City Recorder

EXECUTED this 28 day of July, 2009

L & T Properties, LLC, an Oregon Limited Liability Company

GARY D. SMITH
Name (print or type)

[Signature]
Signature

Member
Title

STATE OF OREGON)
County of Washington) ss)

On this 28 day of JULY, 2009, before me, the undersigned, a Notary Public, personally appeared GARY D. SMITH who is known to be the A MEMBER of L & T Properties, LLC, an Oregon Limited Liability Company and acknowledged the foregoing instrument to be his/her voluntary act and deed.

Before me: [Signature]
Notary Public for Oregon

My commission expires: April 10, 2013



CITY OF TUALATIN, OREGON
By [Signature]
Mayor

ATTEST:
By [Signature]
City Recorder

EXHIBIT A

Tualatin Development Commission
SW Leveton Drive Extension Project
December 3, 2008
Revised January 14, 2009

L&T Properties, LLC
Assessor No. 2S 1 21A 002201
Doc. No. 2005-155211

Parcel 1 – Right-of-Way Dedication

A portion of that property conveyed to L&T Properties, LLC by Warranty Deed recorded as Document No. 2005-155211, Washington County Deed Records, located in the northeast quarter of Section 21, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, Washington County, Oregon, being more particularly described as follows:

All that portion of said L&T Properties, LLC property lying south and west of the following described line:

BEGINNING at a 5/8-inch iron rod with a yellow plastic cap stamped “Westlake Consultants” marking the southwest corner of Lot 10, “Leveton Commons No. 2”, a duly recorded plat in the Washington County Plat Records; thence N88°58’44”W 359.41 feet to Point “A”, the point of curvature of a 365.00 foot radius curve to the left; thence along said curve, through a central angle of 19°54’48” (which chord bears S81°03’52”W 126.22 feet), an arc distance of 126.86 feet to the point of reverse curvature of a 305.00 foot radius curve to the right; thence along said curve, through a central angle of 19°54’48” (which chord bears S81°03’52”W 105.47 feet), an arc distance of 106.00 feet to the point of tangency; thence N88°58’44”W 56.53 feet to an angle point; thence N43°38’09”W 35.57 feet to an angle point and the east line of that easement described in Document No. 88-009424, Washington County Deed Records; thence N01°42’26”E along said east line 124.60 feet, thence, leaving said easement line, S88°17’34”E 3.00 feet; thence N01°42’26”E 160.25 feet, more or less, to the north line of said L&T Properties, LLC property and the terminus of the line being described.

Bearings are based Survey No. 31065, Washington County Survey Records.

The area of land to which this description applies contains 0.83 acre (36,184 square feet), more or less.

Parcel 2 – Permanent Slope and Utility Easement

All that portion of said L&T Properties, LLC property lying south and west of a line parallel with and 6.00 feet right, when measured at right angles, of the line described in Parcel 1.

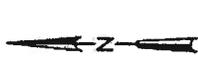
EXCEPT THEREFROM Parcel 1.

The area of land to which this description applies contains 0.13 acre (5,804 square feet), more or less.

EXHIBIT B

ACQUISITION MAP
TUALATIN DEVELOPMENT COMMISSION
NE 1/4 SECTION 21, T.2S., R.1W., W.M.

SOUTH ROW
SW PACIFIC HWY



1"=100'

2S121A-02201
DOC. NO. 2005-155211

C1
R = 365.00'
 $\Delta = 19^\circ 54' 48''$
L = 126.86'
CH = 126.22'
BRG = S81°03'52"W

C2
R = 305.00'
 $\Delta = 19^\circ 54' 48''$
L = 106.00'
CH = 105.47'
BRG = S81°03'52"W

N01°42'26"E
124.60'

S88°17'34"E
3.00'

N43°38'09"W
35.57'

N88°58'44"W
56.53'

POINT "A"

N88°58'44"W 359.41'

LOT 10
LEVETON COMMONS NO. 2

SW CORNER LOT 10
LEVETON COMMONS NO. 2

SW LEVETON DR

LOT 9
LEVETON COMMONS NO. 2

SW LEVETON DRIVE EXTENSION PROJECT
PAGE 1 OF 2
DECEMBER 3, 2008
REVISED JANUARY 14, 2009

CH2MHILL

PARCEL 1
ROW DEDICATION
AREA = 36,184 S.F. ±





CITY OF TUALATIN, OREGON

SLOPE AND PUBLIC UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that L & T Properties, LLC, an Oregon Limited Liability Company (the "GRANTOR"), grants to the City of Tualatin (the "CITY"), its successors in interest and assigns, the permanent right to construct, reconstruct, operate and maintain a Slope and Public Utilities, including but not limited to water, sewer, storm drain, power, telephone, cable television, and natural gas lines and facilities on the following described land:

See attached legal description and map

This Slope and Public Utility Easement is granted for the purpose of design, construction, operation, reconstruction, maintenance, and repair of a slope and utility in support of and to protect and save from damage the adjacent public right-of-way used for a public roadway, sidewalk, and related improvements and to allow installation of public utilities systems in this area.

TO HAVE AND TO HOLD, the described easement unto the CITY, its successors in interest and assigns forever.

GRANTOR reserves the right to use the surface of the land for walkways, plantings, parking, landscape maintenance, and related uses. Uses by the GRANTOR shall not be inconsistent or interfere with the use of the easement area by the CITY. No building or utility shall be placed upon, under, or within the property subject to the easement during its term without the written permission of the CITY.

Except as otherwise provided, upon completion of construction by CITY, the CITY shall restore the disturbed surface of the property to the condition reasonably similar to the previous state, and shall indemnify and hold the GRANTOR harmless against all loss, costs, or damage arising out of the exercise of the rights granted. Nothing contained in this easement shall be construed as requiring the CITY, its successors in interest or assigns to maintain landscaping, walkways, parking, or other surface or subsurface improvement made or constructed by or on behalf of the GRANTOR, its heirs, successors in interest or assigns.

The true and actual consideration paid for this transfer consists of **Five Thousand Five Hundred Seventy-Two and No/100 Dollars (\$5,572.00)** or includes other property or other value given or promised, the receipt of which is acknowledge by the GRANTOR.

The GRANTOR covenants to the CITY, and CITY'S successors in interest and assigns that GRANTOR is lawfully seized in fee simple of the granted premises, free from all encumbrances, except encumbrances, easements, restrictions and rights-of-way of record and those common and apparent on the land, and that GRANTOR, GRANTOR'S heirs, and personal representatives shall warrant and forever defend the premises to the CITY, its successors in interest and assigns against the lawful claims and demands of all persons claiming by, through, or under the GRANTOR.

EXECUTED this 28 day of July, 2009

L & T Properties, LLC, an Oregon Limited Liability Company

GARY D. SMITH.
Name (print or type)

[Signature]
Signature

Member
Title

STATE OF OREGON)
) ss
County of Washington)

On this 28 day of JULY, 2009, before me, the undersigned, a Notary Public, personally appeared GARY D. SMITH who is known to be the MEMBER of L & T Properties, LLC, an Oregon Limited Liability Company and acknowledged the foregoing instrument to be his/her voluntary act and deed.

Before me: [Signature]
Notary Public for Oregon

My commission expires: April 10, 2013



CITY OF TUALATIN, OREGON
By [Signature]
Mayor

ATTEST:
By [Signature]
City Recorder

EXECUTED this 28 day of July, 2009

L & T Properties, LLC, an Oregon Limited Liability Company

Deborah Sue Smith
Name (print or type)

Deborah Sue Smith
Signature

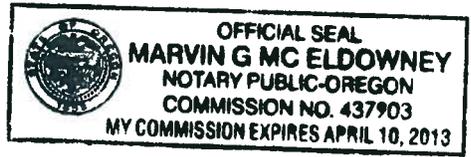
member
Title

STATE OF OREGON)
) ss
County of Washington)

On this 28 day of July, 2009, before me, the undersigned, a Notary Public, personally appeared DEBORAH SUE SMITH who is known to be ~~the~~ A MEMBER of L & T Properties, LLC, an Oregon Limited Liability Company and acknowledged the foregoing instrument to be his/her voluntary act and deed.

Before me: Marvin G. Eldowney
Notary Public for Oregon

My commission expires: April 10, 2013



CITY OF TUALATIN, OREGON
By [Signature]
Mayor

ATTEST:
By [Signature]
City Recorder

EXHIBIT A

Tualatin Development Commission
SW Leveton Drive Extension Project
December 3, 2008
Revised January 14, 2009

L&T Properties, LLC
Assessor No. 2S 1 21A 002201
Doc. No. 2005-155211

Parcel 1 – Right-of-Way Dedication

A portion of that property conveyed to L&T Properties, LLC by Warranty Deed recorded as Document No. 2005-155211, Washington County Deed Records, located in the northeast quarter of Section 21, Township 2 South, Range 1 West of the Willamette Meridian, in the City of Tualatin, Washington County, Oregon, being more particularly described as follows:

All that portion of said L&T Properties, LLC property lying south and west of the following described line:

BEGINNING at a 5/8-inch iron rod with a yellow plastic cap stamped “Westlake Consultants” marking the southwest corner of Lot 10, “Leveton Commons No. 2”, a duly recorded plat in the Washington County Plat Records; thence N88°58’44”W 359.41 feet to Point “A”, the point of curvature of a 365.00 foot radius curve to the left; thence along said curve, through a central angle of 19°54’48” (which chord bears S81°03’52”W 126.22 feet), an arc distance of 126.86 feet to the point of reverse curvature of a 305.00 foot radius curve to the right; thence along said curve, through a central angle of 19°54’48” (which chord bears S81°03’52”W 105.47 feet), an arc distance of 106.00 feet to the point of tangency; thence N88°58’44”W 56.53 feet to an angle point; thence N43°38’09”W 35.57 feet to an angle point and the east line of that easement described in Document No. 88-009424, Washington County Deed Records; thence N01°42’26”E along said east line 124.60 feet, thence, leaving said easement line, S88°17’34”E 3.00 feet; thence N01°42’26”E 160.25 feet, more or less, to the north line of said L&T Properties, LLC property and the terminus of the line being described.

Bearings are based Survey No. 31065, Washington County Survey Records.

The area of land to which this description applies contains 0.83 acre (36,184 square feet), more or less.

Parcel 2 – Permanent Slope and Utility Easement

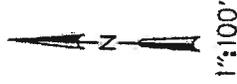
All that portion of said L&T Properties, LLC property lying south and west of a line parallel with and 6.00 feet right, when measured at right angles, of the line described in Parcel 1.

EXCEPT THEREFROM Parcel 1.

The area of land to which this description applies contains 0.13 acre (5,804 square feet), more or less.

EXHIBIT B

ACQUISITION MAP
TUALATIN DEVELOPMENT COMMISSION
NE 1/4 SECTION 21, T.2S., R.1W., W.M.



25121A-02200

25121A-02201
DOC. NO. 2005-155211

C2
R = 272.00'
 $\Delta = 19^\circ 54' 48''$
L = 94.53'
CH = 94.06"
BRG = S81°03'52"W

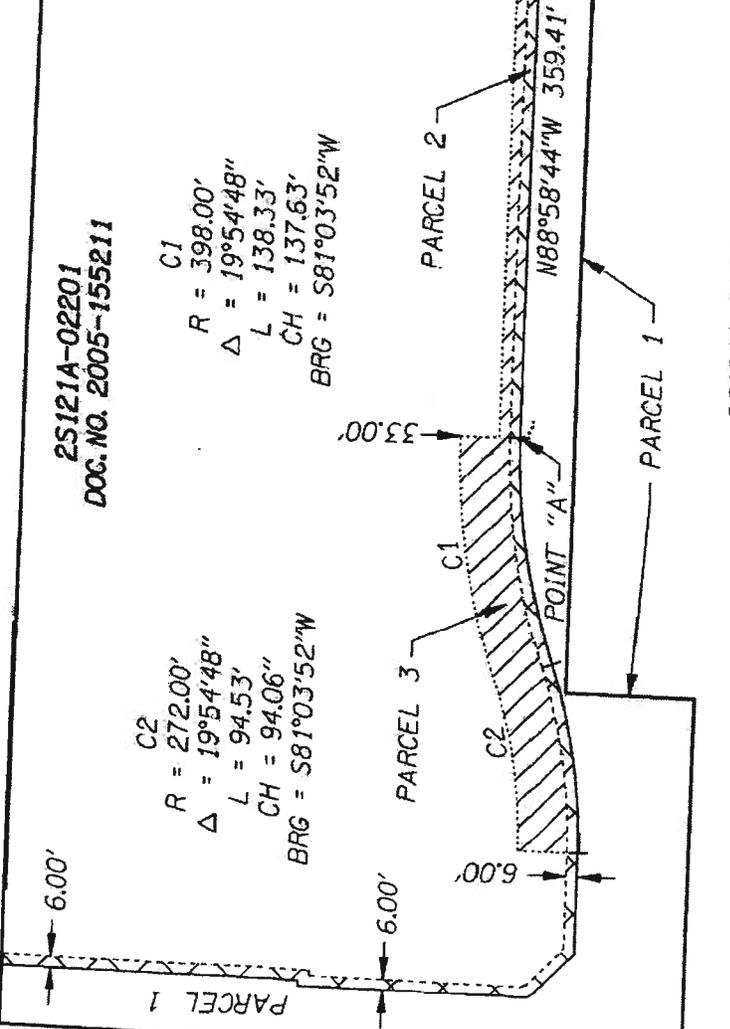
C1
R = 398.00'
 $\Delta = 19^\circ 54' 48''$
L = 138.33'
CH = 137.63"
BRG = S81°03'52"W

LOT 10
LEVETON COMMONS NO. 2

SW CORNER LOT 10
LEVETON COMMONS NO. 2
SW LEVETON DR
LOT 9
LEVETON COMMONS NO. 2

SW LEVETON DRIVE EXTENSION PROJECT
PAGE 2 OF 2
DECEMBER 3, 2008
REVISED JANUARY 14, 2009

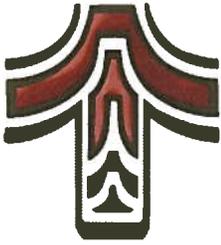
CH2MHILL



25121A-02202

PARCEL 2
PERMANENT SLOPE
& UTILITY EASEMENT
AREA = 5,804 S.F. ±

PARCEL 3
TEMPORARY CONSTRUCTION EASEMENT
AREA = 8,444 S.F. ±



Approved By Tualatin City Council
Date 11-23-09
Recording Secretary MSM

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Doug Rux, Community Development Department *DR*
Mike McKillip, City Engineer *MMK*
William Harper, Associate Planner *WH*

DATE: November 23, 2009

SUBJECT: RESOLUTION AUTHORIZING A REVOCABLE PERMIT FOR WALL SIGNS ON THE SENECA BUILDING OVERHANGING PUBLIC RIGHT-OF-WAY OF SW SENECA STREET & SW MARTINAZZI AVENUE

ISSUE BEFORE THE CITY COUNCIL:

A request for a revocable permit authorizing the placement of wall signs on the 2nd floor exterior walls of the Seneca Building that will overhang the public right-of-way (ROW) of SW Seneca Street and SW Martinazzi Avenue. The wall sign features will not interfere with the necessary ROW or public access or obstruct pedestrian use of the public sidewalk in the ROW.

RECOMMENDATION:

Staff recommends the City Council adopt the attached resolution (Attachment E).

EXECUTIVE SUMMARY:

- This is not a legislative or quasi-judicial action, but a permit authorization.
- The applicant is David Emami, the owner of the 2-story Seneca Building that was originally approved in Architectural Review AR-78-15 as the "Berry Building". Mr. Emami requests a revocable permit to allow wall signage on the Seneca Building 2nd floor exterior wall to extend over public right-of-way and over City-owned property (Attachment A). The building is multi-tenant, with retail and office on the first floor and office on the 2nd floor. Exterior building renovations proposed and completed by Mr. Emami were approved in AR-05-18. The Seneca Building property is in a CC (Central Commercial) Planning District located at 7995-7997 SW Seneca Street & 18885-18893 SW Martinazzi Avenue (2S1 24BC 2701).

The property is also located in the Central Urban Renewal District (CURD) Block 20, the Central Design District (CDD) and the Core Area Parking District (CAPD) (Attachments B-D).

- The proposed wall sign locations are on the overhanging 2nd floor exterior walls on the east, south and west elevations of the Seneca Building (Attachment D). In April 1979 the City authorized easements for the Seneca Building 2nd floor overhang and support columns to extend 6-10 ft. into/over the abutting SW Martinazzi ROW sidewalk (east), SW Seneca ROW sidewalk (south) and a common service driveway and walkway in the Tualatin Development Commission - Owned Core Area Parking Lot property (Tax Lot 2703) (west). Resolution #4699-05 authorized a Revocable Permit for the Seneca Building lobby entrance, landscaping, a canopy, window replacement and building modifications into and over the SW Martinazzi ROW that were approved and constructed under AR-05-18.
- During the construction of the building renovations approved in AR-05-18, tenant exterior wall signs were removed. Currently there are no wall signs on the building. The Sign Code allows one (1) wall sign for each owned or leased wall located on a designated sign band [TDC 38.220(d)(i)]. On multi-level buildings such as the Seneca Building, one sign band is allowed for the building wall (not one sign band per building floor or level). A multi-tenant building owner must designate the wall sign band location, identify the adjoining tenant space walls that are eligible for a sign and decide how to arrange and allocate the wall signs allowed by the code.
- The proposed wall sign locations will be on a sign band located on the lower portion of the extended 2nd floor walls that will correspond to the exterior walls of the stores and office tenants on the 1st floor (Attachment D). Currently, there are five 1st floor storefront tenant spaces on the Martinazzi Avenue east elevation, two storefront tenant spaces on the south elevation and three tenant spaces on the west elevation.
- The proposed sign band is located approximately 10 ft above the sidewalks (Attachment D-Elevations). The sign code allows a wall sign to extend up to a maximum of 16 inches from the attaching wall. The proposed sign band and wall sign locations will not interfere with ROW improvements and pedestrian use of the sidewalks adjoining the building.
- Revocable permits have been issued in the past for encroachment of signs and other features in the ROW or City-owned property including a revocable permit for wall signs and architectural features on the Pointe at Bridgeport walls abutting the SW Hazel Fern Road ROW, Martinazzi Square sign and Whole Foods architectural features.
- If the revocable permit is approved, the developer can proceed with applying for sign permits for wall signs on the Seneca Building 2nd floor sign band.

OUTCOMES OF DECISION:

Approval of the request will result in the following:

1. Allows the applicant to attach wall signs to an identified sign band on the east, and south 2nd floor exterior walls of the Seneca Building that extend above the public sidewalks in the SW Seneca Street & SW Martinazzi Avenue public ROW.
2. The terms of the Revocable Permit require the building owner's responsibility for the maintenance and liability associated with wall signs on the building that extends over ROW and allows the City to require the signs to be removed at the building owner's expense.
3. The action is consistent with the issuance of revocable permits for signs and architectural features extending over a public ROW and there are no current conflicts with use or improvements in the public ROW.

Denial of the request will result in the following:

1. The Building Owner will not have the authorization of the City to place wall signs in the ROW and a sign or building permit cannot be issued for wall signs on portions of the building that extend into the ROW.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the staff recommendation for the City Council are:

- Approve the requested revocable permit with or without conditions.
- Deny the request for the revocable permit.
- Continue consideration of the requested permit and return to the matter at a later date.

FINANCIAL IMPLICATIONS:

Approving or denying the requested permit will not result in financial outlays by the City of Tualatin. Funds have been budgeted in Community Development to process revocable permits.

PUBLIC INVOLVEMENT:

No public involvement is required for the revocable permit process.

- Attachments:**
- A. David Emami Request
 - B. Vicinity Map
 - C. Site Plan
 - D. Seneca Building Elevations
 - E. Resolution and Revocable Permit (with Exhibits)



CITY OF TUALATIN
RECEIVED

NOV 04 2009

COMMUNITY DEVELOPMENT
ECONOMIC DEV DIVISION

November 3, 2009

City of Tualatin
Doug R. Rux, AICP
Community Development Director
18880 SW Martinazzi Ave.
Tualatin, OR 97062

RE: Seneca Plaza 7995 SW Nyberg Street/18855-18893 SW Martinazzi Street

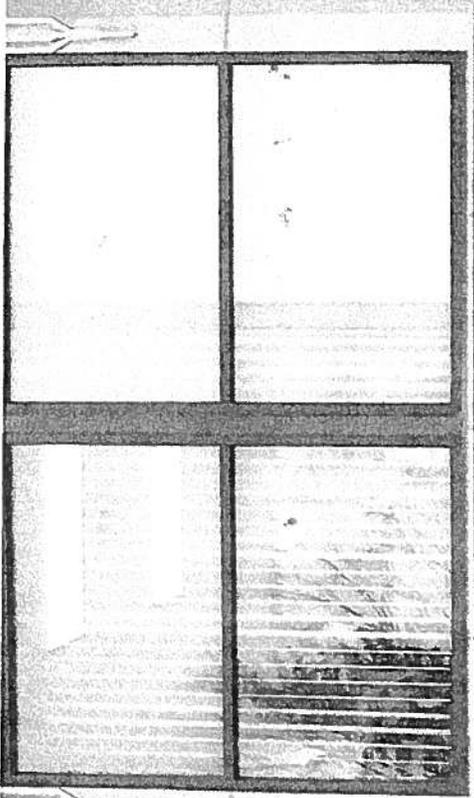
Dear Mr. Rux,

We are proposing signs on three sides of the Seneca Plaza building as per marked elevations (see attached plan). We are requesting Revocable Permit to be able to install our sign over public right-of-way as per marked elevations and provided pictures for NY Reuben (previously known as Lunch Box). The sign would extend out by 18 inches or less. We look forward to obtaining a Revocable Permit from City of Tualatin Commission at the next scheduled meeting or as soon as possible.

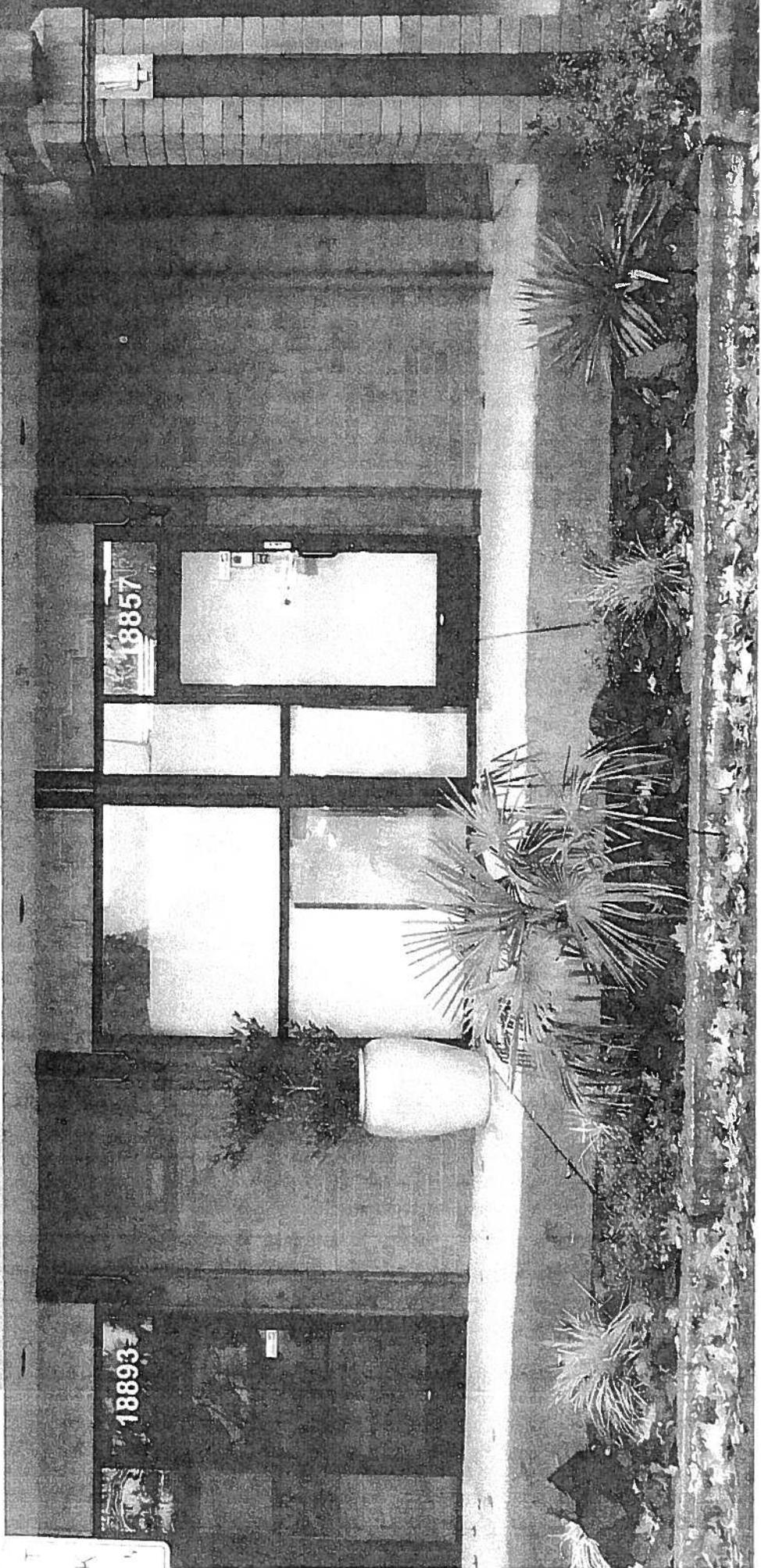
Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

David Emami



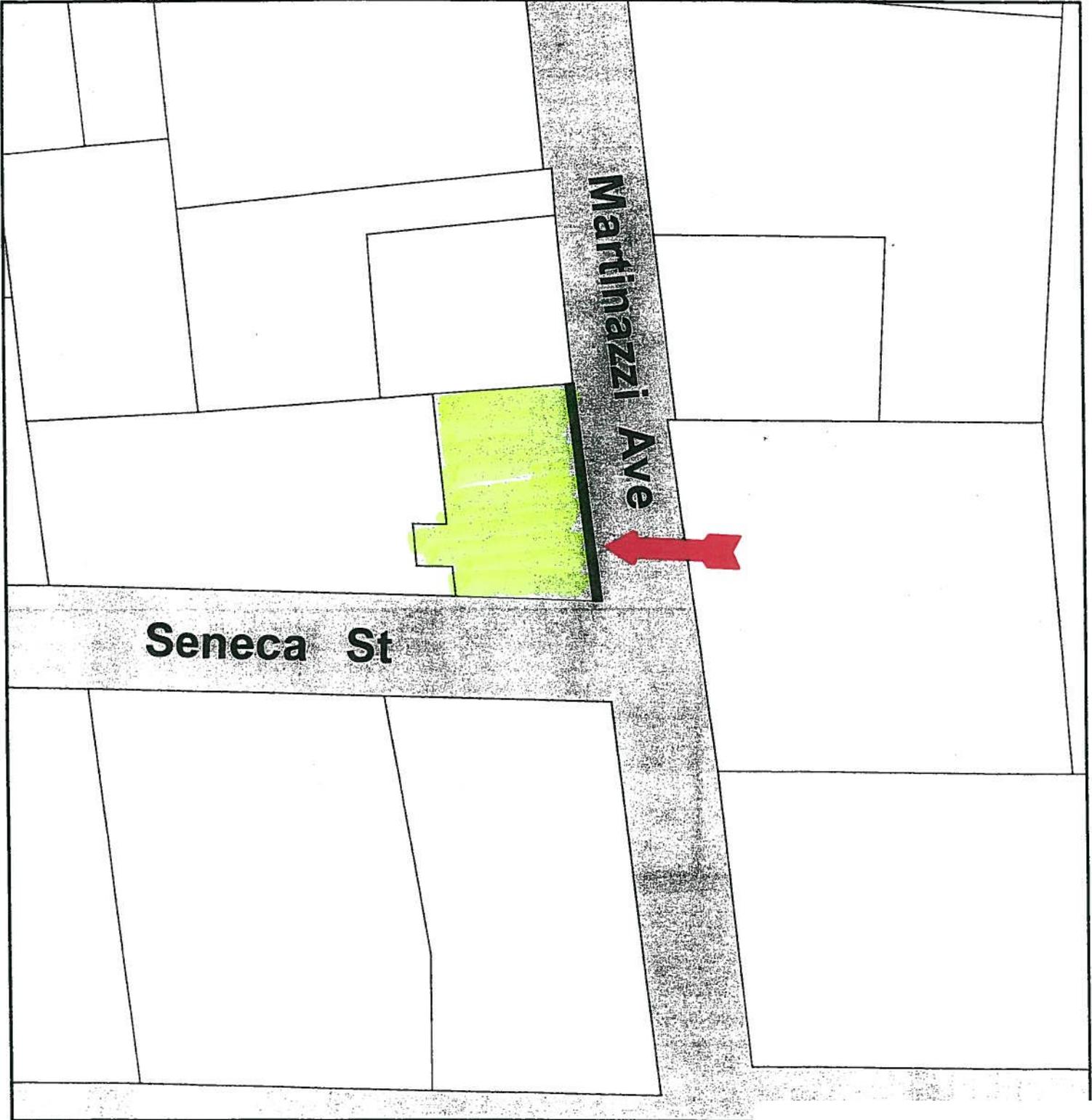
New York
Rubens



18893

18857

Area of Interest



-  Subject Property
-  Revocable Permit Area



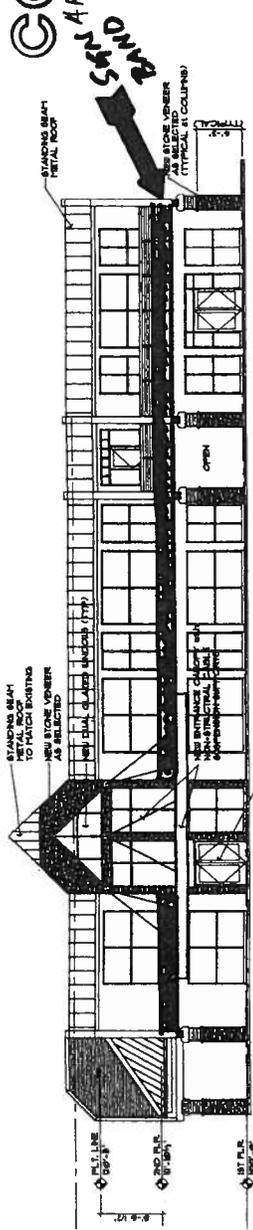
COPY
AR-05-8

JERRY C. ROBINSON, AIA, CSI
ARCHITECT
P.O. BOX 2284
TUALATIN, OREGON 97146-0284
(503) 261-2121 FAX (503) 264-9741

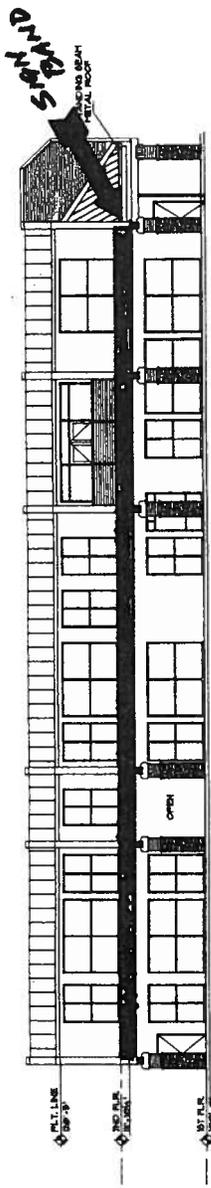
A NEW REMODEL FOR:
THE SENECA BUILDING
XXX STREET
TUALATIN, OREGON

DATE	BY
4-18-05	JCR
AS NOTED	AS NOTED
DATE	BY
4-18-05	JCR

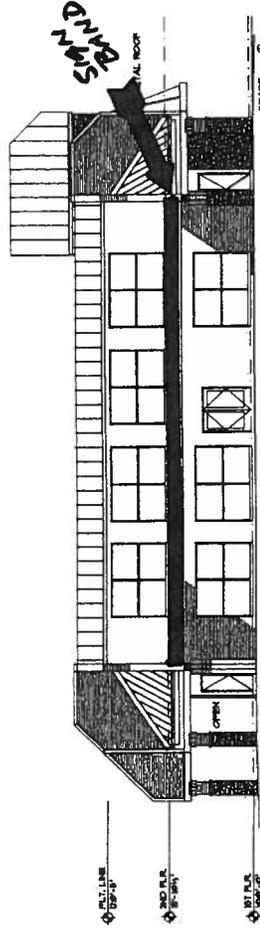
A4
SHEETS



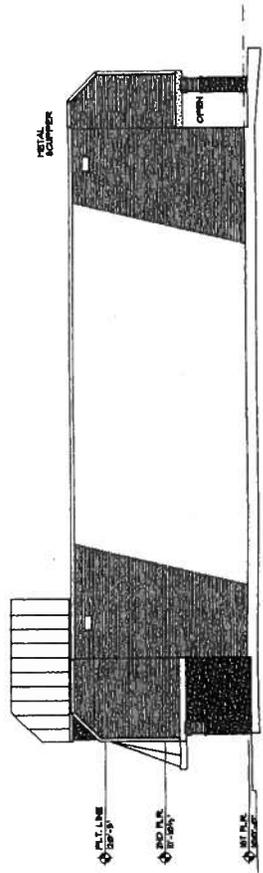
2 EAST ELEVATION
18' - 11 1/2"



4 WEST ELEVATION
18' - 11 1/2"



1 SOUTH ELEVATION
18' - 11 1/2"



3 NORTH ELEVATION
18' - 11 1/2"

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A REVOCABLE PERMIT FOR WALL SIGNS ON THE SENECA BUILDING OVERHANGING PUBLIC RIGHT-OF-WAY OF SW SENECA STREET & SW MARTINAZZI AVENUE

WHEREAS the City of Tualatin ("City") wishes to encourage the viability of businesses in the commercial areas of the City; and

WHEREAS the developer of the Seneca Building (Assessors Map 2S124 BC Tax Lot 2701) seeks to erect tenant wall signs on the 2nd floor exterior walls of the building that extend over the public right-of-way (ROW) and property under the jurisdiction of the City; and

WHEREAS the City desires commercial development in the downtown area of Tualatin to have a pedestrian orientation and provide architecture compatible with Central Design District; and

WHEREAS the City through a Revocable Permit may grant use of public ROW and property; and

WHEREAS the Permittee will obtain Sign Permits and Building Permits for the subject tenant wall signs.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON that:

Section 1. The attached Revocable Permit is for the purpose of allowing Permittee to obtain Sign Permits and Building Permits for tenant wall signs on the 2nd floor exterior walls of the Seneca Building that extend over the SW Seneca Street and SW Martinazzi Avenue ROW.

Section 2. The attached Revocable Permit is approved and the Mayor is authorized to sign said permit for the purposes stated in this resolution.

INTRODUCED AND ADOPTED this 23rd day of November, 2009.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO LEGAL FORM



CITY ATTORNEY

ATTEST:
BY _____
City Recorder

RESOLUTION NO. 4940-09

RESOLUTION AUTHORIZING A REVOCABLE PERMIT FOR WALL SIGNS ON THE SENECA BUILDING OVERHANGING TUALATIN DEVELOPMENT COMMISSION PROPERTY (CORE AREA PARKING DISTRICT "WHITE LOT")

WHEREAS the Tualatin Development Commission ("Commission") wishes to encourage the viability of businesses in the commercial areas of the Central Urban Renewal District (CURD); and

WHEREAS the developer of the Seneca Building (Assessors Map 2S124 BC Tax Lot 2701) seeks to erect tenant wall signs on the 2nd floor exterior walls of the building that extend over the property under the jurisdiction of the Commission; and

WHEREAS the Commission desires commercial development in the downtown area of Tualatin to have a pedestrian orientation and provide architecture compatible with Central Design District; and

WHEREAS the Commission through a Revocable Permit may grant use of public ROW and property; and

WHEREAS the Permittee will obtain Sign Permits and Building Permits for the subject tenant wall signs.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON that:

Section 1. The attached Revocable Permit is for the purpose of allowing Permittee to obtain Sign Permits and Building Permits for tenant wall signs on the 2nd floor exterior walls of the Seneca Building that extend over the adjoining property known as Tax Map 2S124BC, Tax Lot 2703.

Section 2. The attached Revocable Permit is approved and the Chairman is authorized to sign said permit for the purposes stated in this resolution.

INTRODUCED AND ADOPTED this 23rd day of November, 2009.

CITY OF TUALATIN, OREGON

BY  _____
Chairman

ATTEST:

BY  _____
Administrator

APPROVED AS TO LEGAL FORM


CITY ATTORNEY

REVOCABLE PERMIT

Sent for Signatures
By: Planning

The City of Tualatin, Oregon ("City") grants to David Emami, Barrington Management ("Permittee"), a revocable permit to use the public sidewalks in the SW Seneca Street and SW Martinazzi Avenue public right-of-way (ROW) under the jurisdiction of the City of Tualatin and located in the City of Tualatin, Washington County, State of Oregon, for the purposes and subject to the conditions stated:

See Exhibits "A" (Assessor's Map showing Subject portion of ROW) and "B" (Assessors Map) that are attached and incorporated by this reference.

The general location of the area is shown on Exhibit "C" (Vicinity Map). This permit is granted to the Permittee for the specific and limited purpose of the installation of wall signs on the Seneca Building 2nd Floor exterior walls that overhang SW Seneca Street and SW Martinazzi Avenue public ROW adjacent to Permittee's building as generally depicted in Exhibit "D" (Site Plan; Elevation Plan).

This permit is granted subject to the following conditions:

(1) Permittee shall not construct, place or locate or allow others to construct, place or locate any features or structures within the permit area described in Exhibits "A", "B" and "D-Staff Report and Site Plan" except for improvements approved by City;

(2) Permittee shall keep and maintain the areas free from all conditions that create a risk of injury or damage to those lawfully using the area, and shall indemnify and hold the City, its officers, agents and employees harmless from any claims for injury, damage or loss of whatsoever nature arising out of or related to the use of the permit area.

(3) At all times during the term of this permit, Permittee shall obtain and continue to carry public liability and property damage insurance in a responsible company with limits of not less than \$500,000.00 for injury to one person, \$1,000,000.00 for injury to two or more persons in one occurrence, and \$100,000.00 for damage to property (or, a single premium and limits policy providing the same coverages) issued by a company or companies authorized to issue such policies in Oregon and naming the City as an insured on said policy or policies of insurance. Certificates evidencing such insurance and bearing endorsements requiring ten (10) days written notice to City prior to any change or cancellation shall be furnished to the City prior to Permittee's occupancy of the permit area.

(4) Permittee shall obtain sign permits, building permits and other applicable permits for wall signs erected on the sign band depicted on Exhibit "D" at Permittee's expense.

(6) Permittee shall provide all necessary maintenance and repair of the public right-of-way, sidewalk, walkways, landscaping, street trees & grates, and irrigation located adjacent to and within the Revocable Permit area during construction and during on-going maintenance of wall signs on the sign band to the satisfaction of the City.

Sent for Signatures
By: _____

This Permit may be revoked by the City upon:

- (1) A determination of the City Council that the Permittee has violated or failed to satisfy any of the conditions of this permit, or
- (2) Upon determination by the City Council that the permit area is required for public purposes, the City Council shall provide written notice of revocation that shall be effective, without further action of either party, 120 days after the date of the notice.

If the City Council declares a revocation of this permit under subparagraph (1), the written declaration shall be mailed to Permittee at the Permittee's address shown on the records of the Washington County Department of Assessment and Taxation. The revocation shall be effective ten (10) days after the date of the written declaration. All rights and interests of the Permittee shall automatically terminate upon the effective date of the revocation.

Prior to the effective date of revocation of this permit, the Permittee, at its expense, shall cause all improvements to be removed from the permit area if so requested in the Declaration of Revocation and re-establish area to its pre-existing condition.

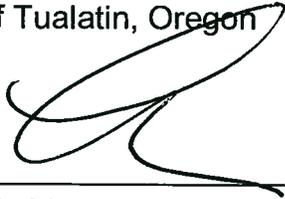
It is acknowledged by the City and the Permittee, that the wall signs must be in compliance with the requirements of the Sign Regulations in the Tualatin Development Code and the Oregon Structural Specialties Code (OSSC).

This Permit is granted for the benefit of and the heirs, successors in interest and assigns of the Permittee who shall be bound by the conditions of this Permit.

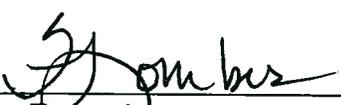
The parties have executed this permit on the date indicated below.

City of Tualatin, Oregon

David Emami
Barrington Management

BY  11-23-09
Mayor Date

BY _____
Date

BY  11/23/09
City Recorder Date

APPROVED AS TO LEGAL FORM

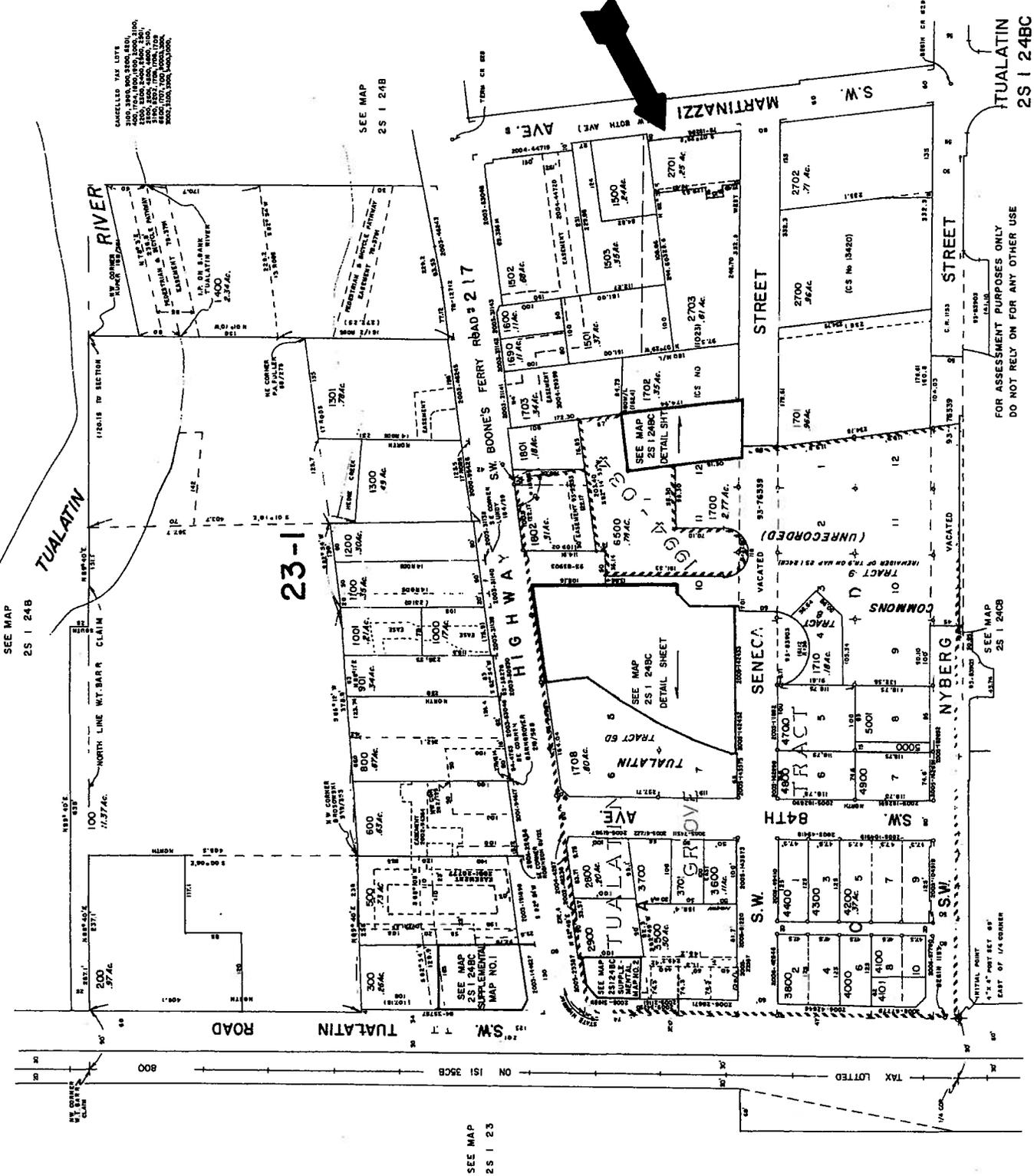
CITY ATTORNEY

2 S | 24 BC

SW 1/4 NW 1/4 SECTION 24 T2S R1W WM

WASHINGTON COUNTY OREGON

SCALE 1" = 100'



Sent for Signatures
By: _____

TUALATIN
2 S | 24 BC

FOR ASSESSMENT PURPOSES ONLY
DO NOT RELY ON FOR ANY OTHER USE

Sent for Signatures
By: _____

Area of Interest

TUALGIS 

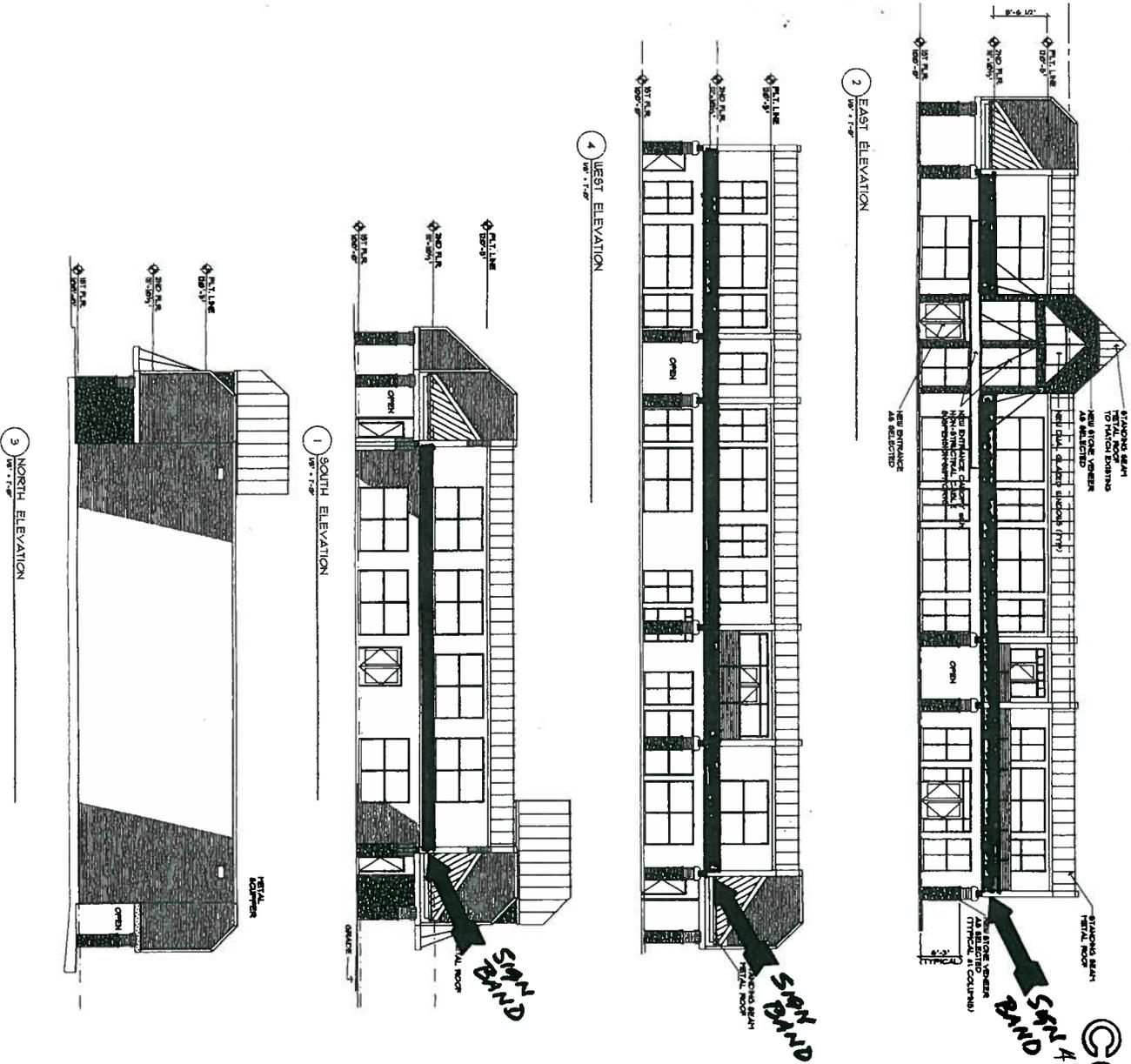


-  Subject Property
-  Revocable Permit Area



Exhibit C
Vicinity Map

Sent for Signatures
By: _____



DATE	11/11/05
BY	JCR
CHECKED	JCR
DATE	11/11/05
AS NOTED	
DATE	11/11/05
BY	JCR

A NEW REMODEL FOR:
THE SENECA BUILDING
XXX STREET
TUALATIN, OREGON

ARCHITECT:
JERRY C. ROBINSON, AIA, CSI
P.O. BOX 328-4
TUALATIN, OREGON 97146-3844
(503) 624-5722 FAX (503) 624-5741

COPY
4-05-06

REVISIONS
COPY
 APR-05-18

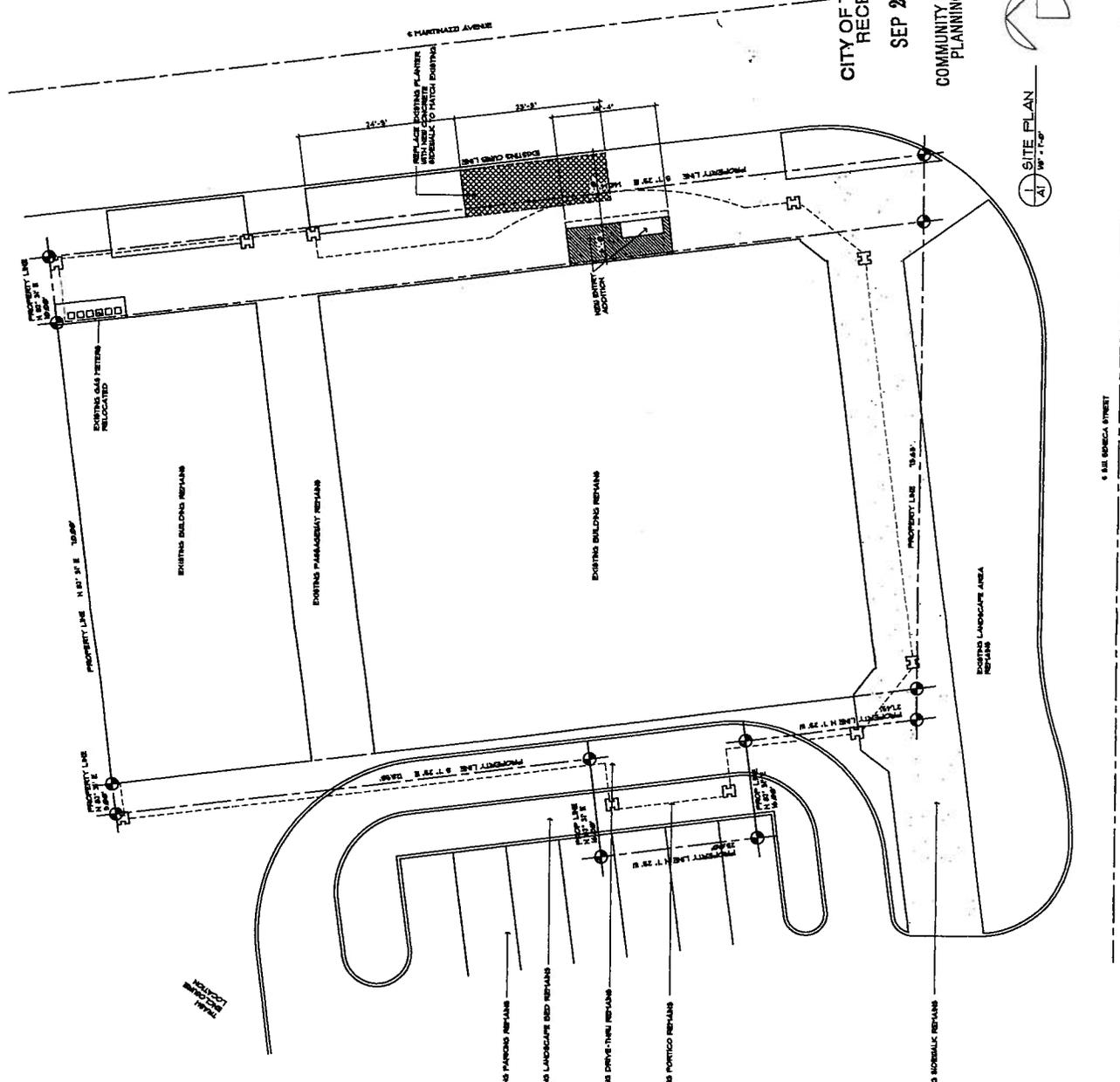
JERRY C. ROBINSON, AIA, CSI
 ARCHITECT
 PO BOX 22844
 TUALATIN, OREGON 97061-2844
 (503) 626-7172 FAX (503) 624-8941

A NEW REMODEL FOR
THE GENECA BUILDING
 XXXX STREET
 TUALATIN, OREGON

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 4/18/05
 AS NOTED
 05/20/05
 05/20/05
 A1
 SHEET

CITY OF TUALATIN
 RECEIVED
 SEP 27 2005
 COMMUNITY DEVELOPMENT
 PLANNING DIVISION

Sent for Signatures
 By: _____



STATISTICS:

ZONE: CC CENTRAL COMMERCIAL

SITE AREA (SEE ATTACHED TIED TRAKERS AND EXISTENT LOCATIONS)

PARCELS: 5
 PARCEL No. 1: 134,408 SQ. FT.
 PARCEL No. 2: 198,337 SQ. FT.
 PARCEL No. 3: 188,517 SQ. FT.
 PARCEL No. 4: 188,517 SQ. FT.
 PARCEL No. 5: 188,517 SQ. FT.

TOTAL AREA: 758,196 SQ. FT.

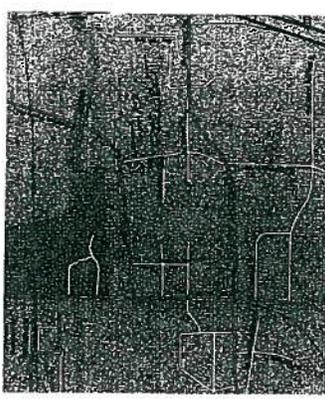
BUILDINGS AREA: 5,773 SQ. FT.
 FIRST FLOOR: 5,773 SQ. FT.
 SECOND FLOOR: 0 SQ. FT.

TOTAL: 5,773 SQ. FT.

LANDSCAPE AREA: 2,848 SQ. FT.
 NEW LANDSCAPE AREA: 2,848 SQ. FT.
 NEW AREA: 0 SQ. FT.

TOTAL: 2,848 SQ. FT.

PARKING AREA: NONE (EXISTING BUILDINGS)
 PARKING LOT/LANDSCAPING: NONE (EXISTING BUILDINGS)
 APPLICABLE PARKING AREA: NONE (EXISTING BUILDINGS)
 PARKING SPACES: NONE (EXISTING BUILDINGS)
 EXISTING: NONE (EXISTING BUILDINGS)
 NEW: NONE (EXISTING BUILDINGS)



A1 SITE PLAN
 1/8" = 1'-0"



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Doug Rux, Community Development Director *DR*
Aquilla Hurd-Ravich, Senior Planner *AHR*

DATE: November 23, 2009

SUBJECT: A RESOLUTION TO APPROVE A JOINT POSITION STATEMENT BY THE CITIES OF TUALATIN AND WEST LINN REGARDING THE FUTURE URBANIZATION OF THE STAFFORD AREA NORTH OF I-205 AND THE NORTHERN PORTION OF PETE'S MOUNTAIN ALONG THE TUALATIN RIVER

ISSUE BEFORE THE COUNCIL:

The issue before the Council is consideration of a resolution to approve a joint statement between the Cities of Tualatin and West Linn regarding our opposition to urbanization in the Stafford area.

RECOMMENDATION:

Staff recommends the City Council consider the staff report and supporting attachments and adopt the attached resolution.

EXECUTIVE SUMMARY:

- This matter was initiated by the City of West Linn.
- The objective of this position statement is to formulate one position that the Councils' of Tualatin and West Linn feel comfortable adopting by resolution. If a unified position about not urbanizing the Stafford area is agreed to via resolution, then the position statement will be shared with the Core 4 and Metro Councilors. This matter was first discussed by West Linn's City Council on October 20, 2009 during their work session. The impetus behind formulating a unified position statement is the Urban and Rural Reserve discussions that have been occurring around the region. The two cities have each separately expressed their unwillingness and lack of ability to provide services to an urbanized Stafford

area. Yet, despite our communications with Clackamas County and Metro, a portion of Stafford has been recommended by the Clackamas County Board of Commissioners and Metro's Chief Operating Officer for an urban reserve. The intent of a unified position statement is to present a strong opposition against urbanization and not allow the cities to become divided and pitted against each other.

- On November 9, 2009 the Council met in a work session to discuss the merits of this statement and possible wording changes. Tom Coffee, a consultant for the City of West Linn, presented background information about the need for such a statement and his proposed language amendments. The Council agreed with proposed changes with some slight modifications. Generally, the position statement reflects the City's comments to Clackamas County, the Regional Steering Committee and the Core 4, and Metro's Chief Operating Officer regarding opposition to urbanization of the Stafford area in Clackamas County.
- A revised joint position statement is included as Attachment A.
- The revised statement will be presented to the City of West Linn for review and approval by resolution.
- The City of Lake Oswego was approached to be part of this position. On November 18, 2009 members of their Council heard a presentation from Tom Coffee and discussed the matter during a work session. However, Mayor Hoffman and Councilor Jordan were not present and the members in attendance did not take a position on the joint statement. As a result, the cities of Tualatin and West Linn are pursuing a joint statement between the two cities.

OUTCOMES OF DECISION:

Approval of the Resolution will result in the following:

- A final version of the joint position statement will include the date of approval by resolution. If the City of West Linn takes a similar action the joint position statement will be forwarded to the Core 4 and Metro Councilors.

Denial of the Resolution will result in the following:

- The City of Tualatin will not be a partner with the City of West Linn in this joint position statement.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the staff recommendation for the Council are:

- Approve the proposed joint position statement with modifications the Council deems necessary.
- Not adopt a resolution approving the joint position statement

FINANCIAL IMPLICATIONS:

Funds have been budgeted for Fiscal Year 09-10 to address Urban/ Rural Reserve issues.

PUBLIC INVOLVEMENT:

Public involvement is not necessary to approve this resolution. However, it should be noted that public involvement through the Tualatin Tomorrow *Community Vision and Strategic Action Plan*, and public involvement through Local Aspirations work has shaped the City's position about urbanization in the Stafford area.

- Attachments:**
- A. Revised Joint Position Statement
 - B. Map of Stafford Area and Northern Portion of Pete's Mountain
 - C. Resolution

Attachment A



Tualatin, Oregon
18880 SW Martinazzi Ave
Tualatin, OR 97062



CITY OF
West Linn

Joint Position Statement by the Cities of Tualatin and West Linn Regarding the Future Urbanization of the Stafford Area North of I-205 and the Northern Portion of Pete's Mountain Along the Tualatin River

The Cities of Tualatin and West Linn, by separate resolutions of their Councils, dated _____, and _____ respectively, hereby declare united opposition to the urbanization of the Stafford area and the designation of this area as an urban reserve by Metro.

Each city has communicated to Metro an unwillingness to serve the Stafford area with municipal services. Also, each city has communicated a general unwillingness to subject the Stafford area to the negative impacts of urbanization. Despite these communications, the Stafford area has been recommended by the Metro Chief Operating Officer for urbanization, and the Stafford area continues to be an area that the Metro Council wishes to "discuss further."

Our cities do not wish to discuss the prospect of urbanizing the Stafford area any further. The shared opposition to urbanizing the Stafford area is longstanding. Over time, the reasons for opposing urbanization have become even more relevant and more consistent with the current and long term interests of the cities and residents.

Evaluation of the Stafford area for urbanization in 1993 led the cities to conclude that the area was not suitable for urbanization. Recently, detailed analysis completed in 2009 by the City of Tualatin for the Borland Road area of Stafford showed that urbanization of the Stafford area would not be cost effective and would be of such great financial magnitude that no local government would or should be expected to attempt given the development costs the public would have to subsidize.

Since 1993, the acquisition of land by public agencies and some development has resulted in even less capacity for urban development in the Stafford area over which to spread the increasing costs of infrastructure, while the availability of public financing has decreased. There is little reason to believe these circumstances would be reversed in the future.

Our cities oppose urbanization because it would not be cost effective, and because it would have significant negative impacts on existing neighborhoods. Those impacts would include increased traffic on major streets and cut-through traffic on local streets; reduced air, water and land resource quality; and diversion of public funds from needed improvements to existing utility and street systems.

Our cities also oppose urbanization because of how the Stafford area has and continues to evolve into a semi-rural area with a pastoral setting that is enjoyed by its residents for the lifestyle it affords them and by its neighbors for the relief it provides from the adjacent urban areas. The uses and related activities in the Stafford Area such as plant nurseries, landscaping materials, vineyards and small scale agriculture are supportive of the adjacent urban areas. Their location in the Stafford area means that they will not compete with more valuable farmland in other parts of the region.”

The Stafford area’s extensive drainage system; steep slopes; significant natural landscape features; limited transportation access; and parcelization make it unsuitable for urbanization and highly suitable for a buffer area between cities. There are few such areas remaining in the Portland Metropolitan Region. Rather than criticize our cities for wanting to preserve it for its unique qualities, Metro should be supportive of our efforts to protect what is also a significant regional resource.

Finally, the Stafford Area does not meet the factors for designation as urban reserve. This is evidenced by the detailed analysis of the factors prepared by the City of Tualatin for the Borland Area of Stafford that was presented to the Reserves Steering Committee and the CORE 4 on October 13, 2009. This analysis reiterates what has been known about the entire Stafford area since the Alternatives Analysis was completed by Metro in 2002 and prior to that in the late 1990’s when Metro conducted its Urban Reserve Study Areas Analysis.”

Our cities have all stated in our previously submitted aspirations to Metro that an urbanized Stafford is not part of our city's futures. Our cities are more focused on making our communities more complete and compact; on redeveloping their centers and corridors; on correcting deficiencies in existing transportation and utility systems and in maximizing the return on our investment in these systems; on ensuring that our communities are more sustainable and energy efficient; and on improving the quality of life for our residents. None of these goals would be served by expansion of our cities into the Stafford area.

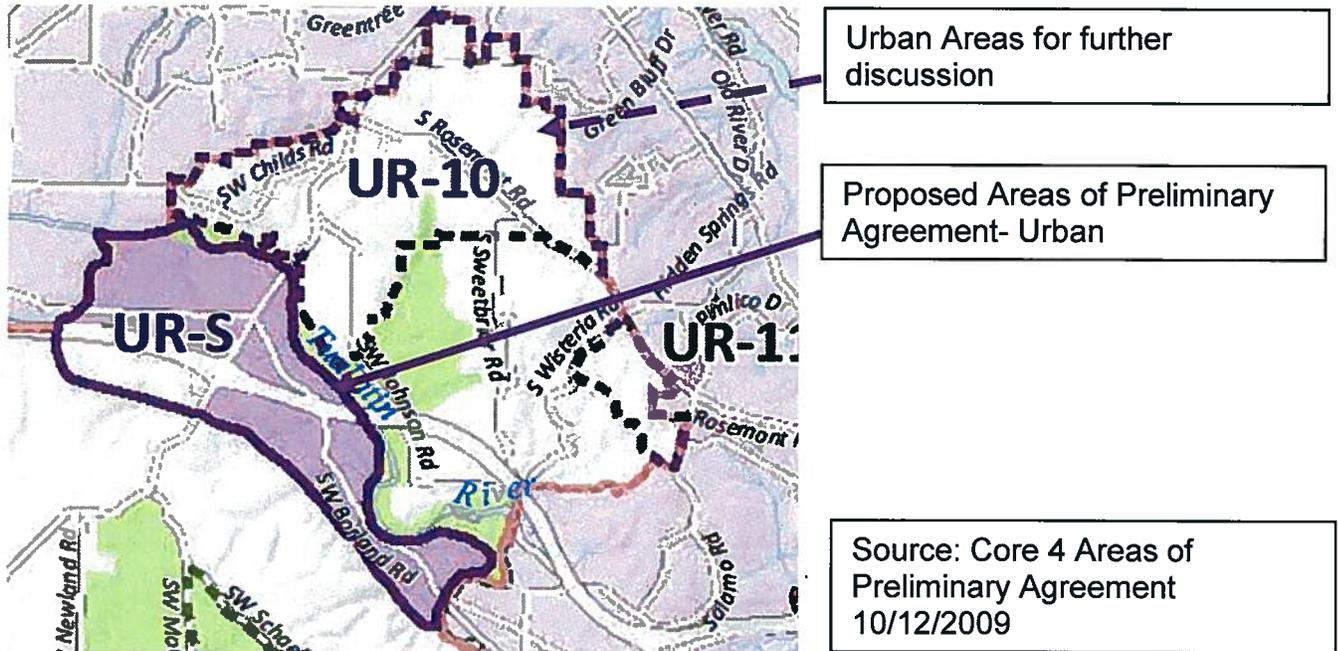
We are confident that this unified position statement is consistent with our cities' positions on Stafford over the past 16 years. We are also confident that this unified position statement is consistent with the wishes of our citizens today and that it will remain so into the future.

Lou Ogden, Mayor
City of Tualatin

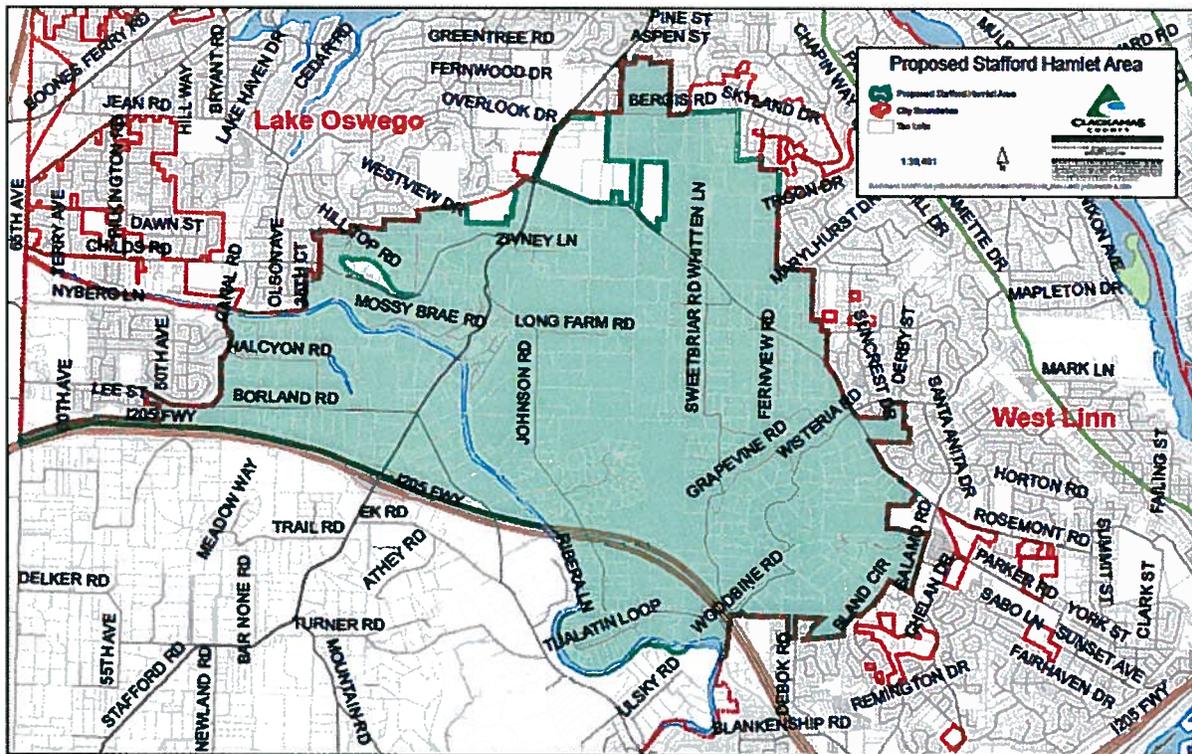
Patti Galle, Mayor
City of West Linn

Attachment B

Map of Core 4 Areas of Preliminary Agreement and Areas for Further Discussion



Map of Stafford Hamlet



RESOLUTION NO. _____

A RESOLUTION TO APPROVE A JOINT POSITION STATEMENT BY THE CITIES OF TUALATIN, WEST LINN AND/OR LAKE OSWEGO REGARDING THE FUTURE URBANIZATION OF THE STAFFORD AREA NORTH OF I-205 AND THE NORTHERN PORTION OF PETE'S MOUNTAIN ALONG THE TUALATIN RIVER

WHEREAS Metro and Clackamas County are continuing to discuss which areas in the county should be designated as Urban and Rural Reserves for future growth; and

WHEREAS the Cities of Tualatin and West Linn have each separately expressed their unwillingness and lack of ability to provide services to an urbanized Stafford area; and

WHEREAS despite the Cities' communications with Clackamas County and Metro, a portion of Stafford has been recommended by the Clackamas County Board of Commissioners and Metro's Chief Operating Officer for urban reserve designation; and

WHEREAS the Cities of Tualatin and West Linn wish to adopt a strong, unified position to oppose urbanizing the Stafford area to present to the Core 4 and Metro Councilors.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

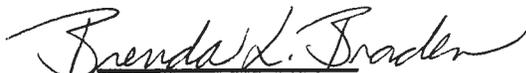
Section 1. The City Council authorizes the Mayor to sign the joint position statement (Exhibit 1).

INTRODUCED AND ADOPTED this 23rd day of November, 2009.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO LEGAL FORM


CITY ATTORNEY

ATTEST:

BY _____
City Recorder

Exhibit 1



Tualatin, Oregon
18880 SW Martinazzi Ave
Tualatin, OR 97062



CITY OF
West Linn

Joint Position Statement by the Cities of Tualatin and West Linn Regarding the Future Urbanization of the Stafford Area North of I-205 and the Northern Portion of Pete's Mountain Along the Tualatin River

The Cities of Tualatin and West Linn, by separate resolutions of their Councils, dated _____, and _____ respectively, hereby declare united opposition to the urbanization of the Stafford area and the designation of this area as an urban reserve by Metro.

Each city has communicated to Metro an unwillingness to serve the Stafford area with municipal services. Also, each city has communicated a general unwillingness to subject the Stafford area to the negative impacts of urbanization. Despite these communications, the Stafford area has been recommended by the Metro Chief Operating Officer for urbanization, and the Stafford area continues to be an area that the Metro Council wishes to "discuss further."

Our cities do not wish to discuss the prospect of urbanizing the Stafford area any further. The shared opposition to urbanizing the Stafford area is longstanding. Over time, the reasons for opposing urbanization have become even more relevant and more consistent with the current and long term interests of the cities and residents.

Evaluation of the Stafford area for urbanization in 1993 led the cities to conclude that the area was not suitable for urbanization. Recently, detailed analysis completed in 2009 by the City of Tualatin for the Borland Road area of Stafford showed that urbanization of the Stafford area would not be cost effective and would be of such great financial magnitude that no local government would or should be expected to attempt given the development costs the public would have to subsidize.

Since 1993, the acquisition of land by public agencies and some development has resulted in even less capacity for urban development in the Stafford area over which to spread the increasing costs of infrastructure, while the availability of public financing has decreased. There is little reason to believe these circumstances would be reversed in the future.

Our cities oppose urbanization because it would not be cost effective, and because it would have significant negative impacts on existing neighborhoods. Those impacts would include increased traffic on major streets and cut-through traffic on local streets; reduced air, water and land resource quality; and diversion of public funds from needed improvements to existing utility and street systems.

Our cities also oppose urbanization because of how the Stafford area has and continues to evolve into a semi-rural area with a pastoral setting that is enjoyed by its residents for the lifestyle it affords them and by its neighbors for the relief it provides from the adjacent urban areas. The uses and related activities in the Stafford Area such as plant nurseries, landscaping materials, vineyards and small scale agriculture are supportive of the adjacent urban areas. Their location in the Stafford area means that they will not compete with more valuable farmland in other parts of the region.”

The Stafford area’s extensive drainage system; steep slopes; significant natural landscape features; limited transportation access; and parcelization make it unsuitable for urbanization and highly suitable for a buffer area between cities. There are few such areas remaining in the Portland Metropolitan Region. Rather than criticize our cities for wanting to preserve it for its unique qualities, Metro should be supportive of our efforts to protect what is also a significant regional resource.

Finally, the Stafford Area does not meet the factors for designation as urban reserve. This is evidenced by the detailed analysis of the factors prepared by the City of Tualatin for the Borland Area of Stafford that was presented to the Reserves Steering Committee and the CORE 4 on October 13, 2009. This analysis reiterates what has been known about the entire Stafford area since the Alternatives Analysis was completed by Metro in 2002 and prior to that in the late 1990’s when Metro conducted its Urban Reserve Study Areas Analysis.”

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We are confident that this unified position statement is consistent with our cities' positions on Stafford over the past 16 years. We are also confident that this unified position statement is consistent with the wishes of our citizens today and that it will remain so into the future.

Lou Ogden, Mayor
City of Tualatin

Patti Galle, Mayor
City of West Linn

RESOLUTION NO. 4941-09

A RESOLUTION TO APPROVE A JOINT POSITION STATEMENT BY THE CITIES OF TUALATIN AND WEST LINN REGARDING THE FUTURE URBANIZATION OF THE STAFFORD AREA NORTH OF I-205 AND THE NORTHERN PORTION OF PETE'S MOUNTAIN ALONG THE TUALATIN RIVER

WHEREAS Metro and Clackamas County are continuing to discuss which areas in the county should be designated as Urban and Rural Reserves for future growth; and

WHEREAS the Cities of Tualatin and West Linn have each separately expressed their unwillingness and lack of ability to provide services to an urbanized Stafford area; and

WHEREAS despite the Cities' communications with Clackamas County and Metro, a portion of Stafford has been recommended by the Clackamas County Board of Commissioners and Metro's Chief Operating Officer for urban reserve designation; and

WHEREAS the Cities of Tualatin and West Linn wish to adopt a strong, unified position to oppose urbanizing the Stafford area to present to the Core 4 and Metro Councilors.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Council authorizes the Mayor to sign the joint position statement (Exhibit 1).

INTRODUCED AND ADOPTED this 23rd day of November, 2009.

CITY OF TUALATIN, OREGON

BY  _____
Mayor

APPROVED AS TO LEGAL FORM



CITY ATTORNEY

ATTEST:
BY  _____
City Recorder



Tualatin, Oregon
18880 SW Martinazzi Ave
Tualatin, OR 97062



CITY OF
West Linn

Exhibit A

Joint Position Statement by the Cities of Tualatin and West Linn Regarding the Future Urbanization of the Stafford Area North of I-205 and the Northern Portion of Pete's Mountain Along the Tualatin River

The Cities of Tualatin and West Linn, by separate resolutions of their Councils, dated November 23, 2009, and Nov. 23, 2009 respectively, hereby declare united opposition to the urbanization of the Stafford area and the designation of this area as an urban reserve by Metro.

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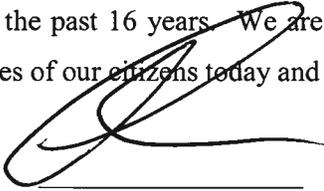
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Finally, the Stafford Area does not meet the factors for designation as urban reserve. This is evidenced by the detailed analysis of the factors prepared by the City of Tualatin for the Borland Area of Stafford that was presented to the Reserves Steering Committee and the CORE 4 on October 13, 2009. This analysis reiterates what has been known about the entire Stafford area since the Alternatives Analysis was completed by Metro in 2002 and prior to that in the late 1990’s when Metro conducted its Urban Reserve Study Areas Analysis.”

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We are confident that this unified position statement is consistent with our cities' positions on Stafford over the past 16 years. We are also confident that this unified position statement is consistent with the wishes of our citizens today and that it will remain so into the future.



Lou Ogden, Mayor

City of Tualatin

Date: 11-23-09



Patti Galle, Mayor

City of West Linn

Date: 11/23/09



STAFF REPORT CITY OF TUALATIN

Approved By Tualatin City Council
Date 11-23-09
Recording Secretary MS

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Brenda Braden, City Attorney *BB*

DATE: November 23, 2009

SUBJECT: A RESOLUTION DENYING THE APPEAL OF THE JULY 23, 2009 INTERPRETATION ANSWERING "WHAT IS THE STATUS OF THE NON-CONFORMING USE RIGHTS OF THE LAND AND STRUCTURE LOCATED AT 8250 SW TONKA STREET?" (TAX MAP 2S124CB TAX LOT 1700). (INT-09-01)

ISSUE BEFORE THE COUNCIL:

The council will consider resolution to deny the appeal of the Sposito Family Trust and uphold the Community Development Director's Interpretation as modified regarding the non-conforming use rights of the land and structure located at 8250 SW Tonka Street.

RECOMMENDATION:

Staff recommends that the Council approve the resolution denying the appeal of INT-09-01 and affirming the interpretation of the Community Development Director as modified.

EXECUTIVE SUMMARY:

On September 28, 2009 the City Council held a quasi-judicial public hearing on a request for review of INT-09-01. The hearing was continued to November 9, 2009. At the conclusion of the continued hearing, the Council voted to deny the appeal and affirm the Community Development Director's interpretation, adopting the findings in the Staff Reports with a modification. The Council found that there had been a non-conforming use on the property but agreed with the Interpretation that the use had been discontinued for more than twelve months. The Council then directed staff to bring back a resolution affirming the Interpretation and denying the appeal.

Staff Report: Resolution affirming INT- 09-01
November 23, 2009
Page 2 of 2

PUBLIC INVOLVEMENT: Notice was mailed to property owners within 300 feet of the property.

Attachments: Resolution

ITEMS REFERRED TO AS EXHIBITS IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL. THEY HAVE BEEN OMITTED FROM THE COUNCIL PACKET AS A CONSERVATION MEASURE. IF THESE EXHIBITS NEED TO BE EXAMINED, PLEASE CONTACT THE CITY RECORDER.

RESOLUTION NO. 4942-09

A RESOLUTION DENYING THE APPEAL OF THE JULY 23, 2009 INTERPRETATION ANSWERING "WHAT IS THE STATUS OF THE NON-CONFORMING USE RIGHTS OF THE LAND AND STRUCTURE LOCATED AT 8250 SW TONKA STREET?" (TAX MAP 2S124CB TAX LOT 1700). (INT-09-01)

WHEREAS, upon the request for review submitted by Stan Sposito and the Sposito Family Trust, and further described in the Staff Report dated November 9, 2009, a public hearing was held before the City Council of the City Of Tualatin on September 28, 2009 and continued on November 9, 2009.

WHEREAS notice of the initial public hearing was given as required by the Tualatin Development Code by mailing a copy of the notice to affected property owners located within 300 feet of the property, which is evidenced by the Affidavit of Mailing marked "Exhibit A," attached and incorporated by this reference, and by posting a copy of the notice in two public and conspicuous places within the City, which is evidenced by the Affidavit of Posting marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council heard and considered the testimony and evidence presented on behalf of the applicant, the City staff, the appellant, and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in denial of the appeal and affirmation of the Community Development Director's decision [Vote4-2] with Mayor Ogden absent and Councilors Davis and Truax opposed; and

WHEREAS based upon the evidence and testimony heard and considered by the Council, the Council makes, enters, and adopts as its findings of fact the staff responses to appeal in the City staff report, dated November 9, 2009, marked "Exhibit C," attached and incorporated by reference; and

WHEREAS based upon the foregoing Findings of Fact, the Council finds that the applicant has not provided sufficient evidence to demonstrate that all legal requirements for non-conforming uses to continue set forth in the Tualatin Development Code have been satisfied.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

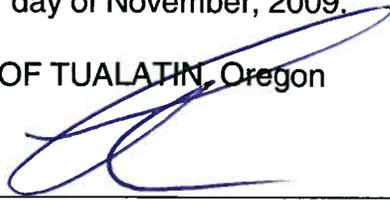
Section 1. The appeal submitted by Stan Sposito and the Sposito Family Trust is denied.

Section 2. The Interpretation of the Community Development Director's Decision is affirmed and adopted with the following amendment:

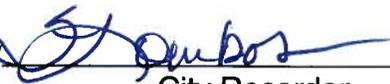
The City Council finds that a non-conforming use had existed on the property but the use has been discontinued for more than 12 months.

INTRODUCED AND ADOPTED this 23th day of November, 2009.

CITY OF TUALATIN, Oregon

By  _____
Mayor

ATTEST:

By  _____
City Recorder

APPROVED AS TO LEGAL FORM


CITY ATTORNEY

AFFIDAVIT OF MAILING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

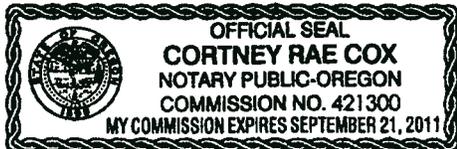
I, Stacy Crawford, being first duly sworn, depose and say:

That on the 9th day of September, 2009, I served upon the persons shown on Exhibit "A," attached hereto and by this reference incorporated herein, a copy of a Notice of Hearing marked Exhibit "B," attached hereto and by this reference incorporated herein, by mailing to them a true and correct copy of the original hereof. I further certify that the addresses shown on said Exhibit "A" are their regular addresses as determined from the books and records of the Washington County and/or Clackamas County Departments of Assessment and Taxation Tax Rolls, and that said envelopes were placed in the United States Mail at Tualatin, Oregon, with postage fully prepared thereon.

Stacy Crawford
Stacy Crawford

SUBSCRIBED AND SWORN to before me this 9th day of Sept., 2009.

Courtney Rae Cox
Notary Public for Oregon
My commission expires: 9/21/2011



RE: INT-09-01—REQUEST FOR REVIEW APPEAL OF THE JULY 23, 2009 INTERPRETATION ANSWERING "WHAT IS THE STATUS OF THE NON-CONFORMING USE RIGHTS OF THE LAND AND STRUCTURE LOCATED AT 8250 SW TONKA STREET?"

EXHIBIT A

Exhibit "A"

2S124CB02600
Martinazzi Square LLC
By API/Pichon VIII LLV
112 Third Street
Lake Oswego, OR 97034

2S124CB03300
Tualatin Valley Lodge #2780
PO Box 1535
Tualatin, OR 97062

2S124CB02800
J LO LLC
8340 SW Tonka Street
Tualatin, OR 97062

2S124CB01500
Portland Rose LLC
1801 NW Iowa
Bend, OR 97701

2S124CB00500
Harvey Clark & David Emami
3380 Barrington Drive
West Linn, OR 97068

2S124CB02900
Vandolay Properties LLC
8375 SW Warm Springs Street
Tualatin, OR 97062

2S124CC00102
KC Propco LLC
650 NE Holliday Street #1400
Portland, OR 97232

2S124CB01900
Melbo Land & Investment Co
PMB #123
1115 Madison Street NE
Salem, OR 97301

2S124CB03000
KOWBOY C LLC
DBA: Bushwackers
8200 Tonka Road
Tualatin, OR 97062

2S124CB03400
Warm Springs Crossing LLC
8220 SW Warm Springs Street
Tualatin, OR 97062

2S124CB01600
Oregon Village Pizza Associate LLC
Attn: Jake Matthews
121 Spear Street #250
San Francisco, CA 94105

2S124CB00201
Century Hotel LLC
4601 NE 78th Street, Suite 130
Vancouver, WA 98665

Exhibit "A"

Bill Campbell
Bill Campbell & Associates
PO Box 843
Manzanita, OR 97130

Stan Sposito
Sposito Family Trust
5283 SW 201 Avenue
Aloha, OR 97007

City Manager

City Attorney

Jay Harris
City Council

Monique Beikman
City Council

Donna Maddux
City Council

Ed Truax
City Council

Chris Barhyte
City Council

Joelle Davis
City Council

Community Development Director

Building Official



Exhibit "B"

City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

A public hearing will be held before the Tualatin City Council on **Monday, September 28, 2009** at 7:30 p.m. in the Council Building, Tualatin City Center, 18880 SW Martinazzi Avenue, Tualatin, Oregon to consider the following quasi-judicial action:

Request for Review of INT-09-01 – Appeal of the July 23, 2009 Interpretation Answering "What is the Status of the Non-Conforming Use Rights of the Land and Structure located at 8250 SW Tonka Street?" (2S124CB1700). The property is in the General Commercial (CG) Planning District.

A Request for Review of the Community Development Director's Interpretation Decision determining that a "small equipment rental" non-conforming use on the 8250 SW Tonka Street property that was subject to the definitions and conclusions in Interpretation INT-88-01 was not retained after December 31, 2008; and determining that a light truck leasing and rental use or an auto leasing and rental use with greater than five vehicles on site are not permitted uses nor previously established legal non-conforming uses and are not allowed uses on the property as permitted uses nor as non-conforming uses, along with written comments, was filed on August 5, 2009, during the appeal period. The issues raised in the Request for Review of the Interpretation Decision are:

Reason #1. "Activities on the subject property may have changed but they have not been terminated or abandoned and United Rentals has maintained a visible presence on the property." The on-site uses of the leaseholder have been changed, but have not been discontinued, terminated or abandoned."

Reason #2. "We provided photographic evidence United Rental equipment rented/leased from the property that included vans, light trucks, tanker trucks, and related equipment. These activities continued until United Rentals began a transition in use in 2007-2008." "Photos of the site and the United Rentals equipment and rental vehicles corroborate the statement, which in turn supports the rights of the property owner and United Rentals to sublet the property for truck and auto leasing to include vans and light trucks while exceeding the five vehicle limitation of the permitted auto leasing in the General Commercial Zone." "The uses proposed by Enterprise Rent-a-Car and The Sposito Family Trust limits proposed uses to vehicle rental to include autos, vans, and light trucks. The City ordinance does not define auto leasing, although the activity in general includes vans, light trucks up to 14 feet in length and related equipment."

Reason #3 "...business activities that constitute a nonconforming use are allowed to expand, or to adjust or modify uses in response to changing market conditions." "The property owner has the right to a continuity of use under the provisions of the city ordinance and state law." "The property owner has the right to adjust the business operations on the site, in accordance with the local ordinance and changing market conditions."

Other issues that were raised include:

- The history of leases on the property, the presence of a current lease on the property and the terms of leases.

- The investment and expense value of various building, stormwater, landscaping and other site improvements to the property by the owners and lessees.

Before affirming the July 23, 2009 Interpretation Decision with regard to the issues raised by Mr. Campbell and Mr. Sposito, the City Council must find that the requirements of the Tualatin Development Code (TDC) 35.020-040 relating to Non-Conforming Uses were correctly applied and the Community Development Director's interpretation of allowed uses for the General Commercial (CG) Planning District in TDC Chapter 54 is correct.

Persons are invited to attend and be heard upon the issues being appealed. Failure to raise an issue in the hearing, in person or by letter, or failure to provide sufficient specificity to allow the City Council an opportunity to respond to the issue precludes an appeal to the State Land Use Board of Appeals (LUBA) based on that issue. The failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the City Council to respond to the issue precludes an action for damages in circuit court.

Individuals wishing to submit written comments may submit their comments to the Planning Division prior to the hearing, or they may present written or oral testimony to the City Council at the hearing. The Request for Review hearing will commence with a staff presentation, followed by testimony by proponents, testimony by opponents and rebuttal. The Council will consider only the issues raised in the Requests for Review. The time of individual testimony may be limited. If a participant requests before the hearing is closed, the record shall remain open for seven (7) days after the hearing.

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at a reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at a reasonable cost. **For information, contact Associate Planner Will Harper at 503.691-3027.**

Assisted Listening Devices for persons with impaired hearing can be scheduled for this meeting by calling 503.692.2000 (voice) or 503.692.9574 (telephone text) no later than 24 hours prior to the meeting.

The City will also, upon request, endeavor to arrange for a qualified sign language interpreter for persons with speech or hearing impairments. Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. two working days prior to the meeting date at 503.692.2000 (voice) or 503.692.0574 (text telephone).

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

file: INT-09-01

Mailed: 9/9/2009

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Stacy Crawford, being first duly sworn, depose and say:

That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted two copies of the Notice of Hearing on the 9th day of September, 2009, a copy of which Notice is attached hereto; and that I posted said copies in two public and conspicuous places within the City, to wit:

1. City of Tualatin Police Department
2. City of Tualatin City Center Building

Dated this 9th day of September 2009.



Stacy Crawford

Subscribed and sworn to before me this 9th day of Sept., 2009.





Notary Public for Oregon
My Commission expires: 9/21/2011

RE: INT-09-01—REQUEST FOR REVIEW APPEAL OF THE JULY 23, 2009 INTERPRETATION ANSWERING "WHAT IS THE STATUS OF THE NON-CONFORMING USE RIGHTS OF THE LAND AND STRUCTURE LOCATED AT 8250 SW TONKA STREET?"

EXHIBIT B



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

A public hearing will be held before the Tualatin City Council on **Monday, September 28, 2009** at 7:30 p.m. in the Council Building, Tualatin City Center, 18880 SW Martinazzi Avenue, Tualatin, Oregon to consider the following quasi-judicial action:

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A Request for Review of the Community Development Director's Interpretation Decision determining that a “small equipment rental” non-conforming use on the 8250 SW Tonka Street property that was subject to the definitions and conclusions in Interpretation INT-88-01 was not retained after December 31, 2008; and determining that a light truck leasing and rental use or an auto leasing and rental use with greater than five vehicles on site are not permitted uses nor previously established legal non-conforming uses and are not allowed uses on the property as permitted uses nor as non-conforming uses, along with written comments, was filed on August 5, 2009, during the appeal period. The issues raised in the Request for Review of the Interpretation Decision are:

Reason #1. “Activities on the subject property may have changed but they have not been terminated or abandoned and United Rentals has maintained a visible presence on the property.” The on-site uses of the leaseholder have been changed, but have not been discontinued, terminated or abandoned.”

Reason #2. “We provided photographic evidence United Rental equipment rented/leased from the property that included vans, light trucks, tanker trucks, and related equipment. These activities continued until United Rentals began a transition in use in 2007-2008.” “Photos of the site and the United Rentals equipment and rental vehicles corroborate the statement, which in turn supports the rights of the property owner and United Rentals to sublet the property for truck and auto leasing to include vans and light trucks while exceeding the five vehicle limitation of the permitted auto leasing in the General Commercial Zone.” “The uses proposed by Enterprise Rent-a-Car and The Sposito Family Trust limits proposed uses to vehicle rental to include autos, vans, and light trucks. The City ordinance does not define auto leasing, although the activity in general includes vans, light trucks up to 14 feet in length and related equipment.”

Reason #3 “...business activities that constitute a nonconforming use are allowed to expand, or to adjust or modify uses in response to changing market conditions.” “The property owner has the right to a continuity of use under the provisions of the city ordinance and state law.” “The property owner has the right to adjust the business operations on the site, in accordance with the local ordinance and changing market conditions.”

Other issues that were raised include:

- The history of leases on the property, the presence of a current lease on the property and the terms of leases.

- The investment and expense value of various building, stormwater, landscaping and other site improvements to the property by the owners and lessees.

Before affirming the July 23, 2009 Interpretation Decision with regard to the issues raised by Mr. Campbell and Mr. Sposito, the City Council must find that the requirements of the Tualatin Development Code (TDC) 35.020-040 relating to Non-Conforming Uses were correctly applied and the Community Development Director's interpretation of allowed uses for the General Commercial (CG) Planning District in TDC Chapter 54 is correct.

Persons are invited to attend and be heard upon the issues being appealed. Failure to raise an issue in the hearing, in person or by letter, or failure to provide sufficient specificity to allow the City Council an opportunity to respond to the issue precludes an appeal to the State Land Use Board of Appeals (LUBA) based on that issue. The failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the City Council to respond to the issue precludes an action for damages in circuit court.

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CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

file: INT-09-01

Mailed: 9/9/2009

ATTACHMENT E1

INT-09-01: STAFF RESPONSES TO APPEAL

The Interpretation process and Non-Conforming Use provisions of the Tualatin Development Code (TDC) 31.070 and 35.020-35.040 respectively and the allowed uses for the General Commercial (CG) Planning District in TDC Chapter 54 must be considered when deciding the Request for Review of the July 23, 2009 Community Development Director's Interpretation Decision for INT-09-01 (Attachment B). A Request for Review of the July 23, 2009 Decision was received by the 5 p.m. August 5, 2009 deadline (Attachment A). The Request was submitted by Bill Campbell & Stan Sposito (applicants). The issues raised in the Request for Review that are relevant to the Interpretation question and the TDC, followed with a staff response are:

Reason #1 "“Activities on the subject property may have changed but they have not been terminated or abandoned and United Rentals has maintained a visible presence on the property.” The on-site uses of the leaseholder have been changed, but have not been discontinued, terminated or abandoned.” (Attachment A, pp.1-3)

Staff Response: Reason #1 is statements by the applicants related to the INT-09-01 conclusions on discontinuance of a non-conforming use and is relevant to TDC 35.020-35.040.

TDC 35.020 Continuation of Nonconforming Uses or Structures.

(1) Any nonconforming use of a structure or land existing on the date of the adoption of the Tualatin Community Plan, or any use of a structure or land becoming nonconforming subsequent to the effective date of the adoption of said Plan, may be continued, used, occupied or maintained only in accordance with the provisions of this chapter.

TDC 35.040 Discontinuance of a Nonconforming Use.

(1) If a nonconforming structure or use of land is discontinued for more than 12 months, it shall not be re-established unless specifically approved by the City Council. Approval by the City Council shall be granted or denied only after a public hearing is conducted on the proposed continuance. Notice of such public hearing shall be given in the manner required in TDC 31.077.

The INT-09-01 Decision addressed this question as follows (Attachment B, pp.6-7):

Based on the provisions of Non-conforming Uses in TDC Chapter 35 and the definitions of “use” and “non-conforming use”, a lease agreement between a property owner and a tenant and the language of the document do not create a “use” and do not constitute, establish or serve to continue a non-conforming use. Mention and photos of a vehicle or vehicles on the site were cited in the Application, but the vehicles were parked on the site sometime after United Rentals vacated the site. The presence of a vehicle parked on the site absent a verifiable use does not serve

to continue a non-conforming use. When United Rentals closed the business at 8250 SW Tonka Avenue and vacated the small equipment rental business on the property on December 31, 2007, all legal non-conforming uses ceased on December 30, 2008 and no use or activity was re-established. There is no evidence that any legal non-conforming uses were continued since that date. While the lease between the property owner and United Rental may continue beyond that date, no legal non-conforming uses associated with United Rental on the property continued and the discontinuance provisions of TDC 35.040(1) are applicable.

A 12-month time period beginning December 30, 2007 when United Rentals discontinued operations and use on the 8250 SW Tonka Street property, ended December 30, 2008. In accordance with TDC 31.040(1), any legal non-conforming use associated with the property discontinued over 12 months may not be re-established without the approval of the City Council.

Reason #1 restates the applicant's contention that non-conforming uses that existed on the 8250 SW Tonka Street property continue because 1) the most recent non-conforming use activity, United Rentals, holds a lease on the property and because; 2) the applicant has documented photos of trucks with a United Rentals sign on the property. As repeated above, INT-09-01 concludes that a lease and photos of parked vehicles are not evidence of the continuation of a non-conforming use. The applicant/appellants do not provide substantive facts or evidence (either in the INT-09-01 application or Request for Review) that the non-conforming "use" or physical activities that constitute the non-conforming use remained on the property after December 30, 2008. As per TDC 35.040(1), the nonconforming use of land at 8250 SW Tonka was discontinued for more than 12 months, and shall not be re-established unless specifically approved by the City Council.

Reason #2 "We provided photographic evidence United Rental equipment rented/leased from the property that included vans, light trucks, tanker trucks, and related equipment. These activities continued until United Rentals began a transition in use in 2007-2008." "Photos of the site and the United Rentals equipment and rental vehicles corroborate the statement, which in turn supports the rights of the property owner and United Rentals to sublet the property for truck and auto leasing to include vans and light trucks while exceeding the five vehicle limitation of the permitted auto leasing in the General Commercial Zone." "The uses proposed by Enterprise Rent-a-Car and The Sposito Family Trust limits proposed uses to vehicle rental to include autos, vans, and light trucks. The City ordinance does not define auto leasing, although the activity in general includes vans, light trucks up to 14 feet in length and related equipment." (Attachment A, pg. 2)

Reason #2 re-states the applicants' claims that truck and auto leasing activities were part of, or the same as, the legal non-conforming use that United Rentals operated under at the 8250 SW Tonka property and in the CG Planning District. It is relevant to the requirements that apply when a non-conforming use is discontinued in TDC

35.040(1) (addressed under Reason #1 above), to the definitions and interpretations in INT-88-01 related to small equipment rental, and to the allowed uses in the CG Planning District listed in TDC 54.020(2). The INT-09-01 Decision addressed this question as follows (Attachment B, pg. 6):

The interpretation of INT-08-01 requested for Anderson Oregon Rental (succeeding the Rabbit Hutch auto repair business) for this property and history of use specifically limited the Anderson and United activities on the Sposito property to rental of "small equipment, tools and devices" and restricted powered equipment and vehicles with motors greater than 20 h.p. There is no evidence that Anderson and United legally included rental or leasing of large machinery & equipment, light trucks or autos on the property. Staff finds that the United Rental operation which ended in December 2007 did not create or continue large machinery & equipment and light truck/auto leasing/rental use as a legal non-conforming uses on the property in the CG Planning District.

Truck & auto leasing/rental were not legal non-conforming uses on the 8250 SW Tonka Avenue property during the tenure of Anderson Oregon Rental and United Rental and therefore are not applicable to current allowed uses on the property. Rental and leasing of autos and light trucks is listed as a conditional use in the ML & MG (Light & General Manufacturing) Planning Districts (restricted within the Special Commercial Setback on SW Tualatin-Sherwood Road & SW 124th Avenue shown on TDC Map 9-5) but not listed in other Planning Districts. Truck leasing or rental is not an allowed use in the CG Planning District. Auto rental and auto leasing with more than five vehicles on the property are not allowed uses in the CG Planning District. The appellants do not provide any evidence to change a conclusion that truck leasing/rental or auto rental/leasing (greater than 5 vehicles) were not a legal non-conforming use on the 8250 SW Tonka Street property or allowed uses in the CG Planning District.

Reason #3 "...business activities that constitute a nonconforming use are allowed to expand, or to adjust or modify uses in response to changing market conditions." "The property owner has the right to a continuity of use under the provisions of the city ordinance and state law." "The property owner has the right to adjust the business operations on the site, in accordance with the local ordinance and changing market conditions." (Attachment A, pp. 2-4)

Staff Response: The standards and requirements for continuing, altering, and enlarging non-conforming uses are provided in TDC 35.030(1) as follows:

"TDC 35.030(1) A nonconforming structure or use of land may be continued, but shall not be altered or enlarged, except for warehouse and distribution center uses existing on April 12, 2000 in the Manufacturing Park District which can be altered and enlarged. "

While recognizing that the specific non-conforming use may continue as established through changes in business or property ownership, TDC 35.030(1) clearly requires that if the use is altered, the legal non-conforming status will be lost. The TDC does not have allowances or exceptions to allow "...expand, or to adjust or modify uses", for "changing market conditions" when determining the status of a legal non-conforming use. If the particular non-conforming use is enlarged, "altered", or changed into another use, then the non-conforming use is discontinued regardless of the business or property owner's reasons for changing it. The statements in Reason #3 are not consistent with the Non-conforming use provisions of TDC35.030(1) and do not lead to a conclusion that legal non-conforming use can be expanded, adjusted or modified.

Other issues that were raised by Mr. Campbell and Mr. Sposito (but not applicable to TDC 35 020-040 and TDC Chapter 54 CG Planning District) include:

Reason #4. The history of leases on the property, the presence of a current lease on the property and the terms of leases.

Reason #5. The investment and expense value of various building, stormwater, landscaping and other site improvements to the property by the owners and lessees.

Staff Response: As noted under Reason #1 above, the definition of a use and non-conforming use is associated with the "activity" and with the terms and standards of the allowed uses in a particular Planning District. A lease between a landowner and a tenant is a private agreement or contract that has no bearing on the TDC and does not define or determine whether a use is allowed or non-conforming. Improvements and investments on a property may be associated with the operation of a particular non-conforming use and compliance with TDC standards such as landscaping and stormwater management, but they do not exempt a property from the standards and requirements for continuing or discontinuing a non-conforming use.

Public notice and opportunity for comment were provided during the review of the Interpretation INT-09-01 and following the issuance of the Community Development Director's Decision.

ATTACHMENT E2

INT-09-01: STAFF RESPONSES TO APPEAL

The public hearing of the appeal of INT-09-01 was conducted before the City Council on September 28, 2009. At the request of the applicants/appellants, the hearing for INT-09-01 was continued to October 26, 2009. On October 7, 2009, Mr. Stan Sposito (Applicant/Appellant) submitted a letter granting an extension of 60 days toward the 120 day rule for a quasi-judicial land use decision and requesting a 2nd Continuance of INT-09-01 to November 9, 2009. The Council granted the 2nd Continuance.

In response to Council questions at the hearing, the applicants agreed to provide additional information regarding the establishment of legal non-conforming truck and auto leasing and rental activities on the subject property and evidence of the continuance of the uses in compliance with the Non-Conforming Use provisions of TDC Chapter 35. City staff was asked to research the City Ordinances and Resolutions for relevant actions and dates that apply to the Sposito property. The research was focused from the time Mr. Sposito first owned the property through 1983 when the Tualatin Development Code (in its current form) was adopted and changes or amendments to the CG Planning District Standards and Non-conforming Use provisions are listed and had been obtained. The Staff research was made available to the applicants on October 16, 2009.

The applicants/appellants submitted a packet of information on October 21, 2009 with Exhibits #4 & #5 on October 26 (Attachment A2). Staff prepared responses to the additional information submitted by the applicants on October 21, 2009 as follows:

DATES OF ORDINANCES

In a summary of the Staff research of Tualatin Ordinances & Resolutions from the 1960's thru the present, the table below lists the key dates associated with the subject property and its history of uses:

- 5-13-1968** City approves amendment changing zoning on subject property from Residential R-7500 to M-3 (predecessor to Light Manufacturing) and grants a Conditional Use Permit for Plastic Molding business on the subject property.
- 2-10-1969** Tualatin Zoning Ordinance allows Auto, truck sales & rental (C-2 & M-3) and Truck storage or rental in M-3 Zone as permitted uses.
- 8-22-1977** Ordinance 401-77 changes M-3 designation to ML (Light Manufacturing). Tool & equipment rental, Truck sales & service are permitted uses in ML.
- 10-24-1977** Ordinance 410-77 Rezones Sposito property from ML to C-G.
- 10-22-1979** Ordinance 491-79 Adopts Tualatin Community Plan & Development Standards. Truck sales & rental/Auto Sales & rental not an allowed use in G-G.
- 4-11-1983** Ordinance 590-83 Adopts Tualatin Development Code. Truck sales & rental/Auto Sales & rental not an allowed use in CG.
- 2-13-1994** Ordinance 913-94 adds auto leasing/less than 5 vehicles as permitted use in CG.

**APPLICANTS/APPEALANTS ADDITIONAL DOCUMENTATION OF SPOSITO PROPERTY
NON-CONFORMING USES AND TIMELINE (SUBMITTED OCTOBER 21 & 26, 2009)**

The Applicants/Appellants submitted a packet of information on October 21, 2009 found in Attachment A2 and listed below.

Timeline Summary Matrix

Timeline Narrative

- Exhibit 1 Copy of "Tualatin Plan" 2-page excerpt.
- Exhibit 2 Copies of Tualatin Zoning Map from August, 1969.
- Exhibit 3 Copy of Real Estate Appraisal of Quality Plastics 8250 SW Tonka.
- Exhibit 4 Photo with Sposito Property in background 1-18-74 (during 1974 Flood).
- Exhibit 5 Photo of Sposito Property 1-22-1975.
- Exhibit 6 Photos of Sposito Property (no dates).
- Exhibit 7 Copy of Planning Director Letter 1-19-87.
- Exhibit 8 Copy of Planning Director Letter 1-19-87.
- Exhibit 9 Copy of United Rentals Letter 2-1-99.
- Exhibit 10 Copy of United Rentals Memo 2-26-99.
- Exhibit 11 Copy of United Rentals Attorney Letters 3-3-99.
- Exhibit 12 Copy of United Rentals Letter 3-29-99.
- Exhibit 14 Copy of Sposito Attorney Letter to United Rentals 12-17-2003.
- Exhibit 15 Copy of United Rentals Letters 7-27-2006.
- Exhibit 16 Copy of Real Property Tax Statement for subject property 7/1/07-6/30/08.
- Exhibit 17 Copy of United Rentals Billing Invoices for rentals billed from SW Tonka site.
September 2007 thru 1-10-2008.
- Exhibit 18 Copy of Christmas Tree Lot Proposal Letters 11-12-2008.
- Exhibit 19 Copy of City of Tualatin staff Email and meeting notes 1-28-2008.
- Exhibit 20 Copy of City of Tualatin staff meeting notes 1-20-2009.
- Exhibit 21 Copy of 1999 & 2007 City of Tualatin Business Licenses for 8250 SW Tonka.

STAFF RESPONSE:

Based on the ordinance research by Staff and information submitted by the applicants/appellants listed above (Attachment A2), Staff finds that Truck Sales & Rental were no longer an allowed use on the subject property after 10-22-1979. Prior to October 1979, the primary uses on the site were the Plastic Molding business, the cabinet shop and the Rabbit Hutch auto service shop. From October 1979 to January 2008, the primary uses on the site were the Rabbit Hutch, PM Mechanix (small engine repair), Anderson Oregon Rentals (small equipment rental) and United Rentals (small equipment rental) and does not find evidence that truck leasing and rental was a legal non-conforming activity during the time period. After January 10, 2008 (considering United Rentals equipment rental transaction receipts for the SW Tonka location submitted in Attachment A2), United Oregon Rentals no longer occupied or conducted business on the property and there was no longer business activity associated with United Rentals or other similar business on the property.

Staff again does not agree with the applicants' contention that truck leasing and rental activities exist as a legal non-conforming use on the property. To support the contention, the applicant must show that the use was established on the property as a legal non-conforming use on a specific date and provide evidence that the use was continued from that date as a legal non-conforming use. There is no substantial documentary evidence in the record or in the applicants' submittals that shows:

1. Truck sales and rentals were established on the property prior to October 1979 and sustained on the property after that time as a legal non-conforming use during the Rabbit Hutch, PM Mechanix, Anderson Oregon Rental and United Rental operations. None of the letters, photos or other documents presented in the public hearing or in Attachments A1 or A2 are sufficient to show that truck leasing or rental was established and continued as a legal non-conforming use on the property from October 1979 when Ordinance 491-79 removed the activity as an allowed use in the C-G Planning District.
2. Any legal non-conforming use or activity associated with the United Rental operation on the site was continued beyond the documented date of January 10, 2008 to the present. The Non-conforming use provision of TDC 35.040 specifies that if a non-conforming use is discontinued for a 12 month period, it cannot be re-established unless reinstated by the City Council. The 12-month period of discontinuance for any non-conforming use or activity held by United Rentals on the Sposito property would have elapsed on January 10, 2009. None of the letters, photos or other documents presented in the public hearing or in Attachments A1 or A2 show that United Rentals or any successor continued any activity as a legal non-conforming use on the property after January 10, 2008.



Approved By Tualatin City Council
Date 11-23-09
Recording Secretary [Signature]

STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *[Signature]*

FROM: Michael A. McKillip, City Engineer *MMK*
Kaaren Hofmann, Civil Engineer *[Signature]*

DATE: November 23, 2009

SUBJECT: CONSIDERATION OF INSTALLATION OF STOP SIGNS
ON SW DOGWOOD STREET AT SW 106TH AVENUE

ISSUE BEFORE THE COUNCIL:

Shall the City Council allow the installation of two additional stop signs at the SW Dogwood Street/SW 106th Avenue intersection.

RECOMMENDATION:

City Engineer recommends against installation of stop signs.

EXECUTIVE SUMMARY:

There are seven policies used to determine the location of stop signs within the City. They are:

1. Intersection of arterial streets with other arterial streets are four-way stops.
2. All side streets entering onto arterial streets stop at the intersection with the arterials.
3. Intersection of collector streets with collector streets are four-way stops.
4. Intersection of all other streets with collector streets stop at the intersection with the collector street.
5. In the case of one collector street having a significantly higher volume of traffic, the lower volume collector street stops and the high volume collector street proceeds.
6. In some cases, to provide for a smoother flow of traffic, a collector that is more commonly used as a through route will be allowed to pass through the intersection without stopping and the entering collectors will stop.

7. In considering the intersection of two local streets, the following process is used.
 - A. The overall area is examined and through or continuous streets are identified.
 - B. Cul-de-sacs and deadend streets intersecting with the through or continuous streets are required to stop at the intersection.
 - C. When two through or continuous streets intersect, the street providing the most direct access to a collector or arterial becomes a through street.
 - D. If two through or continuous streets intersect, with neither one of them leading directly to a collector or arterial, the through or continuous street serving the largest area becomes a through street, and the remaining through streets are required to stop.

Currently there are stop signs installed on SW 106th Avenue which meets the City's Policy #7.

A neighbor has requested the installation of stop signs on SW Dogwood Street at SW 106th Avenue due to speeding and sight distance concerns. The installation of stop signs on SW Dogwood Street does not meet the City's policy.

Stop signs should not be used to control speed. In fact, they are more likely to cause an increase in speeding as the vehicles move away from the stop sign. Also, there is an increase in noise due to the idling and braking vehicles at the stop sign location.

Speed/volume counts indicate there is no speeding problem; which is typical for what we see on most residential streets. Based on field observations, there is no documentable sight distance issue.

Additionally, studies have shown that the installation of stop signs where they are not warranted causes a larger safety concern due to lack of compliance. This point was discussed with the installation of the stop sign on SW 108th Avenue at SW Cottonwood Street. Further conversations with the neighbors in this area bear this out. The speed counts taken before and after the installation show no change in speed.

The City Engineer recommends not installing stop signs at the SW Dogwood Street/SW 106th Avenue intersection for the following reasons:

- ♦ No speeding in the area
- ♦ No sight distance issue
- ♦ Lack of compliance with the City's stop sign policy

OUTCOMES OF DECISION:

If the Council accepts the City Engineer's recommendation, no additional stop signs will be installed at this intersection.

If the Council disagrees, a resolution will be brought before the Council to approve the installation.

FINANCIAL IMPLICATIONS:

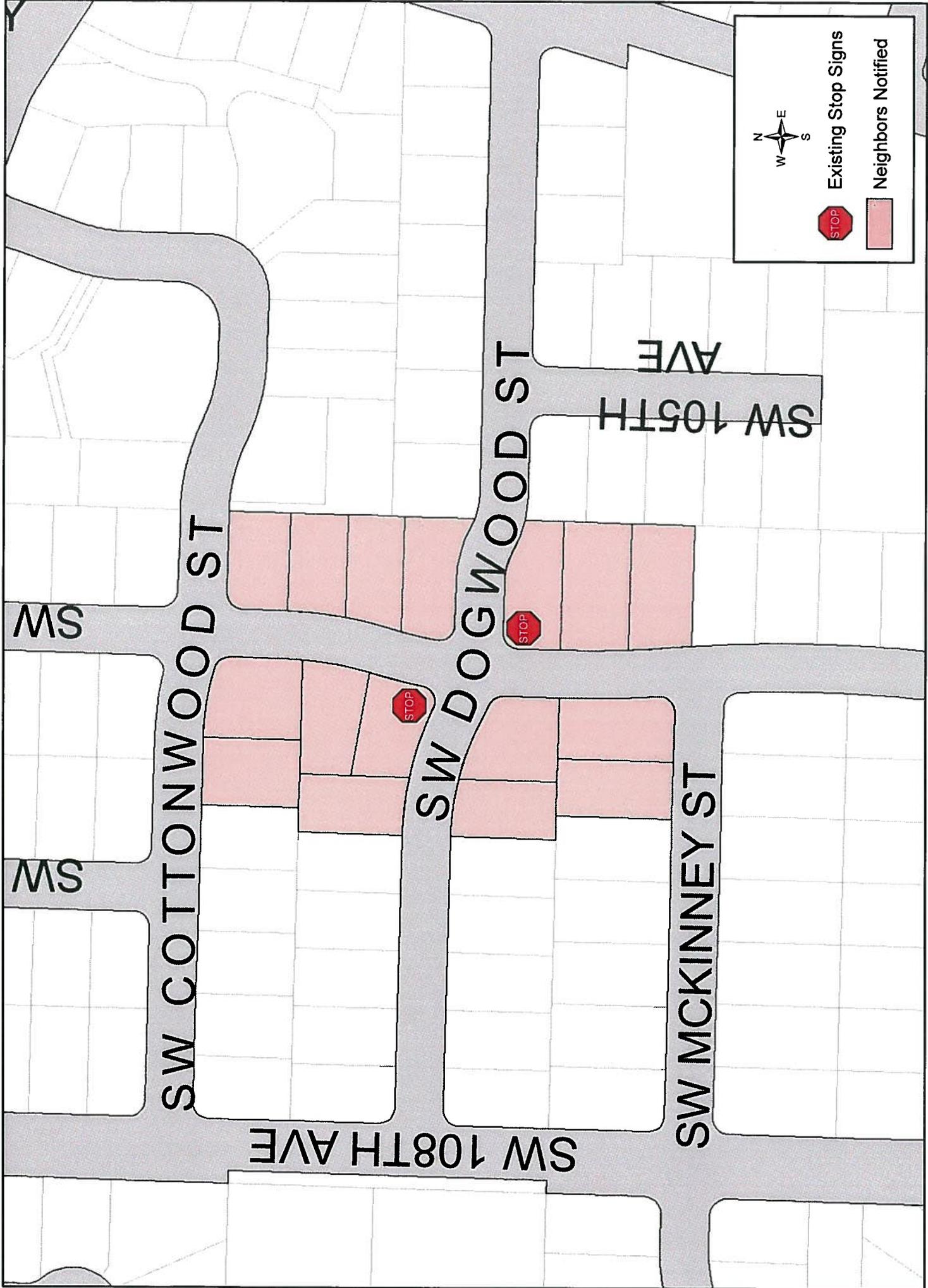
The cost for stop signs will come from the Road Fund.

PUBLIC INVOLVEMENT:

Letters were sent to the neighbors near this intersection to solicit their opinion. Of the eight responses, five were in favor of the installation; three were against the installation of stop signs. The responses are attached.

M/Staff Reports/KLH 112309 Stop Signs Dogwood_106

- Attachment:**
- A. Map
 - B. Neighbor Responses



Kaaren Hofmann

From: Randi Johnson [randi@copiagr.com]
Sent: Wednesday, September 16, 2009 8:29 AM
To: Kaaren Hofmann
Subject: Stop Sign - 106th and Dogwood

Hi Kaaren,

I received your letter in the mail regarding a potential stop sign on 106th and Dogwood. I completely support a stop sign being put in. There are many cars that go way to fast down Dogwood and there are many families with small children in the area. Many people from the neighboring communities use it as a pass through street and go way to fast. This will cause people to slow down.

Thanks for your time.

Randi

email signature 1 2 9.29

Kaaren Hofmann

From: Kristen Grau [kristengrau@gmail.com]
Sent: Wednesday, September 16, 2009 6:37 PM
To: Kaaren Hofmann
Subject: Fwd: Stop Sign Installation on SW Dogwood & SW 106th Avenue - Vote = No

----- Forwarded message -----

From: Kristen Grau <kristengrau@gmail.com>
Date: Wed, Sep 16, 2009 at 6:36 PM
Subject: Stop Sign Installation on SW Dogwood & SW 106th Avenue - Vote = No
To: khoffman@ci.tualatin.or.us

I am responding to the notice we received dated 9/14/09. This intersection is a four-way stop, however, we have two stop signs on both cross streets. We do not need any more stop signs. My vote to the installation of additional stop signs is no.

Thank you!
Kristen Grau
22663 SW 106th Ave

--
Thanks!
Kristen MJ Grau

Kaaren Hofmann

From: Eric Johnson [ejohnson@serena.com]
Sent: Wednesday, September 16, 2009 11:37 AM
To: Kaaren Hofmann
Cc: Randi Johnson; ebjohnson_us@yahoo.com
Subject: stop sign at 106th ave and Dogwood

Hi Kaaren,

My wife (Randi) and I received a letter today letting us know that a neighbor had requested stop signs be placed at the intersection of Dogwood with 106th to help slow down traffic on Dogwood. We sincerely appreciate this consideration and your help in making this happen. We live on that corner at 22674 SW 106th ave. Having lived in this location for almost 5 years we have consistently observed cars driving way to fast on this neighborhood street. Given the high volume of children living on this street and in the neighborhood it is very dangerous. Our son Luke who is 2 1/2 years old was nearly run over a few months ago. Thankfully the car screeched to a stop and tragedy was averted. Unfortunately cars going to other neighborhoods use Dogwood as a pass through street and see it as a place to drive fast. Putting stop signs at this intersection would slow down cars to appropriate neighborhood speeds, dramatically increase safety of children, and improve the quality of life for the citizens of our neighborhood.

Please let us know what we can do to help. I know several of our neighbors will also email you voicing their support. Thanks again for your help.
Best Regards,

--
Eric Johnson
Vice President, WW Sales Operations
Serena Software Inc.
503-617-2407

Kaaren Hofmann

From: BEZATES@comcast.net
Sent: Wednesday, September 16, 2009 8:55 AM
To: Kaaren Hofmann
Subject: Support of stop sign

We live at 22658 SW 106th Ave. in Tualatin. I totally support a stop sign on the corner of Dogwood and 106th for the safety of the children in our neighborhood.

Sincerely,

Joni Bezates

Steve Johnson

Kaaren Hofmann

From: Lori Queen [lori@longtrails.com]
Sent: Saturday, September 19, 2009 1:59 PM
To: Kaaren Hofmann
Subject: No stop sign on Dogwood

Hi Kaaren,

I'm responding to your letter about the request for a stop sign to be installed on SW Dogwood at SW 106th Ave. I live two houses up from that intersection and would very much oppose a stop sign here. I agree that speed is an issue but I notice people speeding during the two "staightaways." People seem to speed up from 108th to 106th, slow down a bit due to the intersection and the drop off/curve of the hill, and then speed up again as they head down to Grahams Ferry, and vice versa. I don't think a stop sign would change that behavior.

I also don't think a stop sign is a good idea there because it is right at the crest of a hill. I think if it is at all slippery out then it will be difficult to start up again as you're coming up Dogwood. In a similar context I am concerned about the extra traffic noise or activity at that corner as everyone is coming to a stop and starting up.

We have lived here for about 7 years and at no point in that time have I noticed a problem with that intersection due to the hill or cross street. I know people have talked about a stop sign there so I have considered it on several occasions and each time come to the conclusion that it would be more of a pain than it was worth. I ran this issue past my husband who agreed that he also would not want a stop sign here. Now if we could get a speed hump, that would be something different and likely more effective where the problem actually occurs.

Thank you for considering this position.

Sincerely,

Lori Queen
10644 SW Dogwood St
Tualatin, OR 97062
(503)691-2161

Kaaren Hofmann

From: redbird916@comcast.net
Sent: Wednesday, September 23, 2009 2:47 PM
To: Kaaren Hofmann
Subject: Stop Sign at Dogwood/106th

I have two young children and live at the top of the hill on SW Dogwood Street. Living near that intersection has worried me, because the speed that some drivers take the hill is absurd. When a car is traveling that fast, there is no way a driver can see pedestrians or cars crossing in time to stop. A stop sign at Dogwood and 106th would address both the speed issue and the sight distance, and I think that this matter should be brought before the city council.

Robin Mendez
10651 SW Dogwood St.

Kaaren Hofmann

From: Bryan [bryanpe@verizon.net]
Sent: Friday, September 25, 2009 4:28 PM
To: Kaaren Hofmann
Subject: Stop Sign

Dear Kaaren,

I received your letter regarding the new proposed stop sign at SW Dogwood and SW 106th Ave. I believe a stop sign at this location is a very good idea. I daily see vehicles speeding up the hill and around the corner at this intersection. Visibility is also very restricted at this location. Please authorize a new stop sign at this location as soon as possible.

I also believe we need speed bumps on 106th Ave. The street is long and straight and vehicles tend to drive well above the posted speed of 25 mph. I know there have been several requests made to your office for speed bumps on this street and I would like to reinforce these requests.

Best Regards,

Bryan Perry
22710 SW 106th Ave

Kaaren Hofmann

From: deyoungphil@gmail.com
Sent: Wednesday, September 23, 2009 3:51 PM
To: Kaaren Hofmann
Subject: Stop Sign

Dear Kaaren,

This is in request for feedback regarding a stop sign at the corner of SW Dogwood and 106th Ave. I believe a stop sign westbound (up hill) would be a poor idea for the following reason. Dogwood has a very seep grade as you drive up and currently you can only drive 25 mph because of the incline, installation of a stop would require cars to stop and if driving a manual transmission it would be very tough to stop and start without rolling backwards at a significant rate of speed. There is already a stop on 106th so a four way stop on a corner with low traffic volume would not seem to make sense. Cottonwood, one street to the north does not have a stop and the street is not as steep and has more traffic.

I'm not sure who is making the request, but one of the homes on Dogwood just east of 106th puts a (child at play sign) about ten feet from the curb in the afternoons and weekends. This sign represents a huge hazard as any car driving up the hill needs to move into the middle of the street to avoid the sign. Yesterday I was almost hit by a car proceeding down the hill at the steep limit as a result of trying to avoid the sign, there is a blind spot after you go through the intersection once the street starts it's decline. Bottom line the hill creates a blind spot regardless if you were to stop or if you were proceeding at the speed limit., you may want to install speed recording equipment to see if speed is an issue. My suspicions is that it is not, the issue is a steep grade with a blind spot at the top, you would need a stop sign in the middle of the hill to address the concern that has been raised by my neighbor.

Kaaren Hofmann

From: Kristen Grau [kristengrau@gmail.com]
Sent: Friday, November 20, 2009 10:20 AM
To: Kaaren Hofmann
Subject: Re: Stop Sign Installation at Dogwood

Thank you for sending me this email. I do not think I will be able to attend. However, I believe we need a stop sign at the corner of Dogwood as vehicles drive to quickly up the hill and it is not clear whether or not there are pedestrians, etc due to the incline. In addition, we have several children in this neighborhood and it would help encourage cars to slow down.

Thank you!
Kristen

On Wed, Nov 18, 2009 at 8:47 AM, Kaaren Hofmann <KHOFMANN@ci.tualatin.or.us> wrote:

The Council will discuss this issue at their meeting on November 23rd.

Here is the link to the agenda
<http://www.ci.tualatin.or.us/government/docs/epacket20091123.pdf>. The staff report for this issue starts on page 59.

You are more than welcome to attend to participate in the discussion. The meeting starts at 7 pm. Let me know if you have any questions.

-Kaaren Hofmann

DISCLAIMER: This email is a public record of the City of Tualatin and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

Kaaren Hofmann

From: Eric Johnson [ejohnson@serena.com]
Sent: Thursday, November 19, 2009 2:52 PM
To: Kaaren Hofmann
Cc: Randi Johnson
Subject: Re: Stop Sign Installation at Dogwood

Hi Kaaren,

Thanks for letting us know and getting it on the agenda. The write-up you put together and various emails by our neighbors were quite insightful. I can see there are many different ways to look at the situation. My family will come to the meeting.

Best Regards,

--

Eric Johnson
Vice President, WW Sales Operations
Serena Software Inc.
503-617-2407

On Wed, Nov 18, 2009 at 8:47 AM, Kaaren Hofmann <KHOFMANN@ci.tualatin.or.us> wrote:

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-Kaaren Hofmann

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STAFF REPORT

CITY OF TUALATIN

Approved By Tualatin City Council
Date 11-23-09
Recording Secretary [Signature]

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Michael McKillip, City Engineer *MMK*
Kaaren Hofmann, Civil Engineer *Kaaren*

DATE: November 23, 2009

SUBJECT: CONSIDERATION OF THE REMOVAL OF STOP SIGNS AT THE SW ALSEA DRIVE/SW 99TH AVENUE INTERSECTION AND AT THE SW ALSEA COURT/SW 100TH DRIVE INTERSECTION

ISSUE BEFORE THE COUNCIL:

Should the Council approve the removal of existing stop signs at two intersections along SW Alsea Street/SW 99th Avenue and SW Alsea Court/SW 100th Drive.

RECOMMENDATION:

The City Engineer recommends that the stop signs not be removed.

EXECUTIVE SUMMARY:

In 1989, at the Council's direction stop signs were installed on SW Alsea Drive at SW 99th Avenue. Staff recommended at the time to not install stop signs because the installation did not meet the City's policy for Stop Sign Installation. The stop sign at SW Alsea Street/SW 100th Drive were installed as part of the subdivision in 1989.

In 2009, staff received a request to have the stop signs removed at that location and at the SW Alsea Court/SW 100th Drive intersection.

SW Alsea Drive/SW 99th Avenue:

The City Engineer recommends that the stop signs not be removed for the following reasons:

- They have been in place for 10 years with no incidents.
- The travel pattern is well established.
- There appears to be no reason to change the existing situation.

Consideration of the Removal of Stop Signs

November 23, 2009

Page 2 of 2

SW Aalsea Court/SW 100th Avenue:

The City Engineer recommends that the stop signs not be removed for the following reason:

- They meet the City's policy for Stop Sign Installation.

OUTCOMES OF DECISION:

If the Council agrees, the existing stop signs in these locations will remain.

If Council disagrees, a resolution removing the stop signs will be prepared.

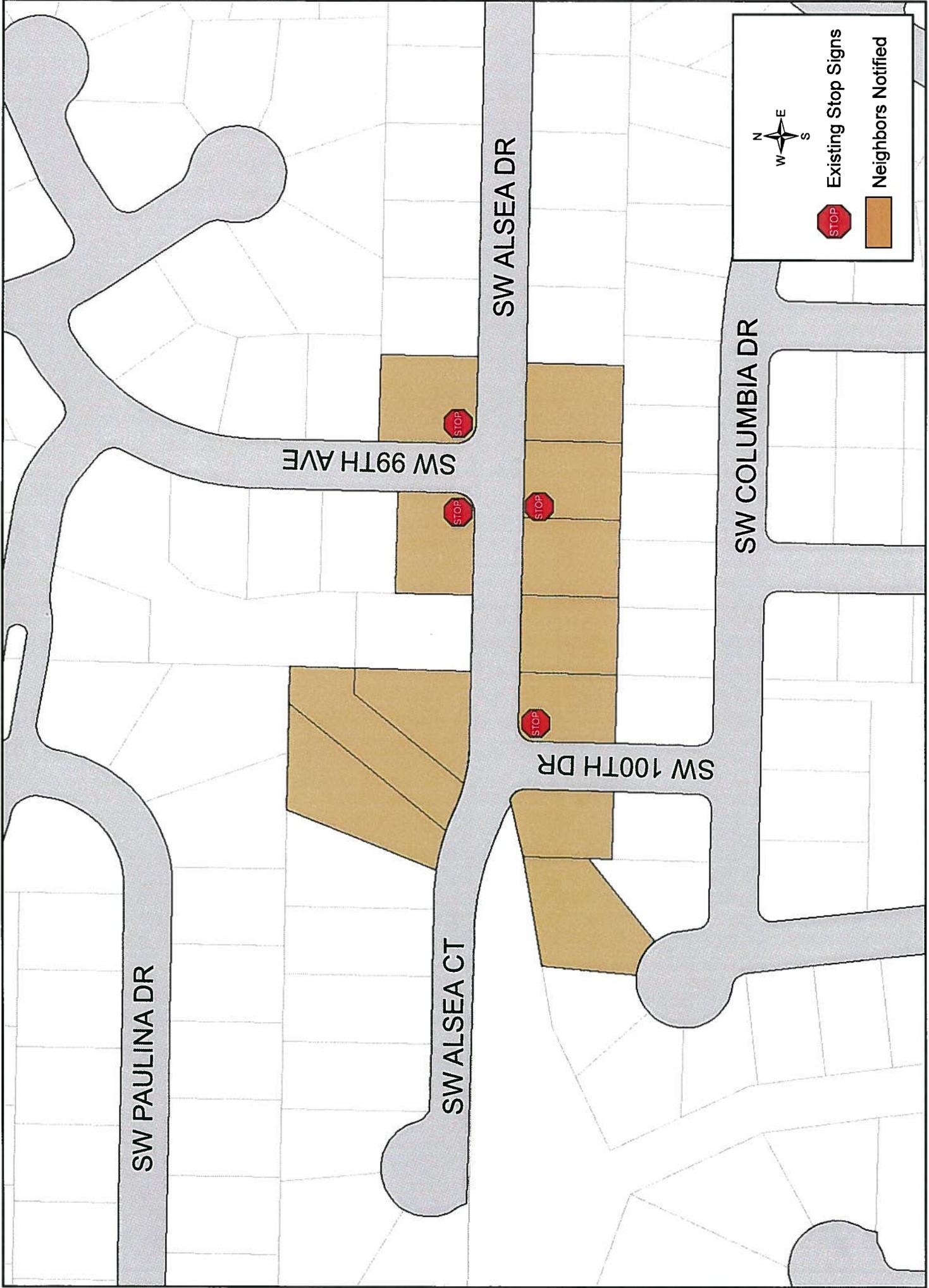
PUBLIC INVOLVEMENT:

Letters were sent to the surrounding property owners requesting their opinion on the removal of the stop signs. All of the property owners indicated that they were opposed to the removal of these stop signs. The responses are attached.

M/Staff Reports/KLH Aalsea Stop Sign Removal_112309

- Attachments:**
- A. Map (indicating properties that received a letter and location of existing stop signs)
 - B. Neighbor Responses

Stop Sign Removal - Alsea Dr.



Kaaren Hofmann

From: Joe & Alicia Young [Young3457@comcast.net]
Sent: Thursday, October 08, 2009 8:27 AM
To: Kaaren Hofmann
Subject: Stop signs on 99th / 100th & Alsea

Good morning Ms. Hofmann,

In response to your letter dated 9.28.09 regarding stop signs in our neighborhood, we would like to provide our input.

We have noticed that plenty of people do obey the stop signs while almost half of the other people do not stop properly. During the summer, we see very young drivers driving fast and ignoring the signs. That is a worry especially since this neighborhood is home to numerous pets and a few children.

Actually we would NOT want the stop signs to be removed as that would provide greater incentive to speed for some people. It is highly annoying to see people going far faster than 25 mph on Alsea Drive presently. It has been a relief from speeders recently as the City is working on the sizeable water line piping and paving. That project has slowed people down.

Thank you so much for asking us for our input. We appreciate it. Hopefully your office will decide to keep the stop signs. Have a great day.

Joe & Alicia Young

October 6, 2009

Kaaren Hofmann
City of Tualatin
18880 SW Martinazzi Avenue
Tualatin, OR 97062-7092

RE: Stop Sign Removal

Dear Ms. Hofmann:

This letter is in response to a letter I received from the City of Tualatin sent to gather input from neighbors regarding stop sign removal along 99th Avenue and Alsea Drive. First off, I would like to thank you for the efforts you are putting forth in soliciting our opinions.

I am opposed to having the stop signs removed.

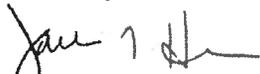
My home is located at the corner of 99th and Alsea, and my home office window affords me a very good view of that intersection. It is true, that some people merely slow down when they come to the intersection. However, it does seem like they are at least looking, and when there are other vehicles or pedestrians at the intersection, vehicles do stop. I have never seen an accident, or even a near miss. I don't know how removing stop signs would decrease the danger from people not stopping. I think the opposite is true, that there would be more potential for accidents if they are removed.

I work for a local builder/developer and we have several communities in the Portland metro area, and some of the intersections within our communities didn't have stop signs installed. I can tell you that a few years into the project, in each of those situations, the residents who are living in those communities have all begun working to have signs installed as they have seen many near accidents at those intersections.

The person who contacted you regarding the stop signs has a valid concern; however, I don't think that removing the signs is the correct solution. Perhaps the City could have the police actively enforce some of the intersections for a period of time.

Again, I appreciate the efforts in gathering opinions.

Sincerely,



Jacki T. Herb
21587 SW 99th Avenue
Tualatin, OR 97062

Kaaren Hofmann

From: janokes@aol.com
Sent: Sunday, October 04, 2009 4:53 PM
To: Kaaren Hofmann
Subject: stop sign at Alsea drive and 99th

Hello Kaaren,

I received a notice about possibly removing the stop signs at 100th And Alsea Court and 99th and Alsea Drive.

I am strongly opposed to removing the stop signs. I have lived at 9998 SW Alsea Drive for about 23 years.

There are people that drive down our street speeding all of the time.

If the stop signs were removed, this would give the go ahead to just whip down the entire length of Alsea and I am afraid people would really pick up the speed. There are many children in the neighborhood as well as pets. Many commuters cut through on my street because of the stop light at Alsea and Boones Ferry Road.

If the stop sign were removed, I am really afraid of the traffic and the speed impact on my neighborhood.

Please call me if you would like more input regarding my feelings. As a long time resident in this neighborhood, and the fact that I live only two houses down from the stop sign, again I urge the city not to remove the two stop signs.

Thanks

Julie A. Nokes
503 407-8418

Kaaren Hofmann

From: janokes@aol.com
Sent: Monday, November 23, 2009 12:39 PM
To: Kaaren Hofmann
Subject: Re: Stop Sign Removal

Hi Kaaren,

Thanks so much for the notification about the meeting for the removal of the stop sign. I just want to reiterate my opposition for the removal of the stop signs. I have lived in the same house on Alsea since 1984. (I am sure much longer than the neighbor that has asked for the removal) I feel the removal of these signs will have a negative impact on the livability of our neighborhood.

The traffic has increased significantly and without that stop sign on 99th and Alsea cars will just zoom down the street toward the culdisack . There are children and pets in the neighborhood and those of us that live right at this intersection would be the most impacted. There are already speeding issues on Alsea Drive. Unless you are planning to put in a speed bump, I believe the stop signs are the most effective way to slow down traffic and keep our neighborhood safe.

Thanks for your consideration.

I am available for comment but unsure that I can make the meeting tonight so I wanted my input included.

I am not sure how this has even become an issue since the stop signs obviously slow traffic down. Otherwise, the signs should stay.

Thanks so much,

Julie Nokes
9998 SW Alsea Drive
Tualatin, OR 97062

503 692-1085 or 503 407 8418

-----Original Message-----

From: Kaaren Hofmann <KHOFMANN@ci.tualatin.or.us>
To: Young3457@comcast.net; janokes@aol.com; vsilkey50@hotmail.com; barkley@comcast.net; JHerb@legendhomes.com
Sent: Wed, Nov 18, 2009 8:44 am
Subject: Stop Sign Removal

The Council will discuss this issue at their meeting on November 23rd.

Here is the link to the agenda

<http://www.ci.tualatin.or.us/government/docs/epacket20091123.pdf>. The staff report for this issue starts on page 52. You are more than welcome to attend to participate in the discussion. The meeting starts at 7 pm. Let me know if you have any questions. -Kaaren Hofmann

Kaaren Hofmann

From: KENT BARKER
Sent: Thursday, November 19, 2009 2:43 PM
To: Kaaren Hofmann; Mike McKillip; Sherilyn Lombos
Cc: GREG PICKERING; BRENT SCHNEIDER
Subject: RE: Stop Sign Removal

Kevin,

If I may chime in on this...there are a couple of issues here. The city council will review the matter to determine if the stop signs should be removed or not. It gives you and any other neighbors the opportunity to be heard about this issue. There are many times that the City Council has made decisions and then changed their decisions after hearing public testimony. I confident that the emails you have written will be taken into consideration during the City Council Discussion.

The police department is responsible for the "enforcement" of the signs if they remain as they are. Every time I have talked with you in person or received an email from you, I have contacted our Traffic Supervisor and he has sent district officers and traffic officers (on motorcycles) to monitor the intersection and issue citations to violators. Unfortunately, the violations don't occur when an officer is up there, but the visibility at least sends a message that we're trying to keep an eye on it.

I'm sending a copy of this email to our Traffic Supervisor again, as a reminder that more enforcement is needed as time allows. Sgt. Pickering or one of our officers will probably contact you to get more information to help identify the regular violators.

I would also ask for your assistance and the assistance of any other neighbor that is tired of the problem. If you or someone else witnesses a person driving through the stop sign without stopping, please jot the license plate down and give us a call or send us an email. At the very least, we can send a letter to the registered owner advising them of the witnessed violation. We use this tool for other violations and it's fairly effective. Especially if it's a high school kid driving their parents' car.

I can tell you're frustrated over this and I would like to work collectively to resolve the issue if at all possible.

Sincerely,

Kent W. Barker
Chief of Police
Tualatin Police Department
8650 SW Tualatin Road
Tualatin, OR 97062
503.691.4800
email: kbarker@ci.tualatin.or.us

From: Kaaren Hofmann
Sent: Thursday, November 19, 2009 1:05 PM
To: Mike McKillip; KENT BARKER; Sherilyn Lombos
Subject: FW: Stop Sign Removal

From: Kevin Moore [mailto:barkleym@comcast.net]
Sent: Wednesday, November 18, 2009 5:24 PM
To: Kaaren Hofmann
Subject: RE: Stop Sign Removal

Well, all of us neighbors are really tired of people driving right through them fairly regularly, and especially the kids who give people the finger as they fly through. It makes no sense for us to assume that people will stop at the stop signs here, especially with no enforcement.

We're tired of the traffic we have to put up with. A lot of it is from the high school, and we all often wonder if the drivers think "stop" means "speed up." If we thought the council might recommend some enforcement, we would all be happy. If we get the impression that the issue gets tossed aside, then I'm not sure the city is doing its job. It will be interesting to learn what the ultimate response will be.

Kevin Moore

From: Kaaren Hofmann [mailto:KHOFMANN@ci.tualatin.or.us]
Sent: Wednesday, November 18, 2009 1:38 PM
To: Kevin Moore
Cc: Mike McKillip; KENT BARKER; Sherilyn Lombos
Subject: RE: Stop Sign Removal

Actually, Staff is recommending that the stop signs not be removed. The Council has to make the decision one way or the other and we are assuming that there will be discussion on the matter.

-Kaaren Hofmann

From: Kevin Moore [mailto:barkleym@comcast.net]
Sent: Wednesday, November 18, 2009 11:42 AM
To: Kaaren Hofmann
Subject: RE: Stop Sign Removal

Let me get this straight; You are going to discuss the removal of a stop sign because people roll through and the city hasn't the ability to enforce the traffic laws, right?

Kevin Moore

From: Kaaren Hofmann [mailto:KHOFMANN@ci.tualatin.or.us]
Sent: Wednesday, November 18, 2009 8:44 AM
To: Young3457@comcast.net; janokes@aol.com; vsilkey50@hotmail.com; barkleym@comcast.net; JHerb@legendhomes.com
Subject: Stop Sign Removal

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You are more than welcome to attend to participate in the discussion. The meeting starts at 7 pm. Let me know if you have any questions.

-Kaaren Hofmann



Approved By Tualatin City Council

Date 11-23-09

Recording Secretary M. Giff

STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Michael A. McKillip, City Engineer
John Stelzenmueller, Building Official

DATE: November 23, 2009

SUBJECT: AN ORDINANCE RELATING TO BUILDING CODES; AMENDING TMC 4-1-040, 4-1-050, 4-1-070, 4-1-090, 4-2-020, 4-2-040, AND 4-3-100; ADDING TABLE 4-2A

ISSUE BEFORE THE COUNCIL:

The Council will consider an ordinance that would adopt the updated Oregon Fire Code and the process for enforcing building codes within the City of Tualatin Municipal Code (TMC) to comply with state law.

RECOMMENDATION:

Staff recommends that the Council approve the ordinance amending the Tualatin Municipal Code.

EXECUTIVE SUMMARY:

The 2009 Oregon legislature approved Senate Bill 915, which the Governor signed into law. This legislation changes the way local cities may impose civil penalties on persons that fail to comply with building codes. As a result of these changes, TMC Chapter 4 has to be rewritten to reflect the requirement of this legislation.

The State of Oregon Building Code Division has updated and adopted the 2007 International Fire Code as the 2007 Oregon Fire Code. Each local jurisdiction must then adopt that code independently and revise its municipal code to reflect the most current edition of the State adopted code. Table 4-2 in the Tualatin Municipal Code has also been updated to reflect changes made to the 2007 Oregon Fire Code. This ordinance also adopts the most current Tualatin Valley Fire & Rescue (TVF&R) Ordinance 07-01, which allows TVF&R to operate and enforce its codes within the City of Tualatin, and the latest edition of the State of Oregon Fire Code Handbook.

M/Staff Reports/BldgCodeAmend112309

Attachment: Ordinance

ORDINANCE NO. 1292-09

AN ORDINANCE RELATING TO BUILDING CODE; AMENDING TMC 4-1-040, 4-1-050, 4-1-070, 4-1-080, 4-1-090, 4-2-010, 4-2-020, 4-2-040, AND 4-3-100, AND ADDING TABLE 4-2A.

THE CITY OF TUALATIN, OREGON ORDAINS AS FOLLOWS:

Section 1. TMC 4-1-040 is amended to read as follows:

In addition to the provisions of Section ~~104.8~~104.1 through ~~104.10~~104.12 of the ~~2004~~2007 Oregon Structural Specialty Code and similar provisions of other specialty codes, the Building Official may approve an alternate material or a method of construction not specifically prescribed by this ordinance, provided he or she finds that the proposed design is satisfactory and that the material, method or work offered is for the purpose intended at least the equivalent of that specifically prescribed by this chapter in quality, effectiveness, fire resistance, durability, safety, and energy conservation, and that the Administrator of the Building Codes Division has not issued a report disapproving the material or method for the purpose. A person affected by a ruling of the Building Official on an alternate material or method of construction may appeal such ruling to the Board of Appeals within 30 days of the date of the ruling. This section shall not be interpreted to preclude a person from requesting a ruling from the Administrator of the Building Codes Division prior to submitting an application to the City for a permit or after withdrawing a previously submitted application.

Section 2. TMC 4-1-050 is amended to read as follows:

The City of Tualatin adopts the 2006 International Existing Building Code as the code providing for the abatement of unsafe buildings and building nuisances.

Section 3. TMC 4-1-070 is amended to read as follows:

For application in this City, Oregon Revised Statutes 445.475 through 445.690, [Section ~~111~~112 of the ~~2004~~2007 Oregon Structural Specialty Code and Section 109 of the ~~2004~~2007 Oregon Mechanical Specialty Code], as adopted by the Administrator of the State Building Codes Division, is the procedure for appeals of decision of the Building Official.

Section 4. TMC 4-1-080 is amended to read as follows:

It is unlawful and a civil infraction for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain a building or structure in the City, or cause the same to be done, contrary to or in violation of this ordinance. A person, firm or corporation violating this ordinance is guilty of an offense a civil infraction and is punishable by penalty of not more than \$1000 per violation. Each violation and each day that a violation continues shall

~~constitute a separate offense, and each person shall be guilty of a separate offense for each day or portion of a day during which a violation of this ordinance is committed, continued or permitted, and upon conviction of such violation, such persons shall be punished by a fine of not more than \$500~~

Section 5. TMC 4-1-090 is amended to read as follows:

The ~~2003~~2008 edition of the Oregon One and Two Family Dwelling Specialty Code as adopted by the Administrator of the State Building Codes Division is adopted by the City of Tualatin.

Section 6. TMC 4-2-010 is amended to read as follows:

(1) Every application for a building permit and accompanying plans shall be submitted to the ~~fire department~~Building Division for review of water used for fire protection, the approximate location and size of hydrants to be connected, and the provisions for access and egress for firefighting equipment. If upon such review it is determined that the fire protection facilities are not required or that they are adequately provided for in the plans, the ~~fire department~~Fire and Life Safety Reviewer shall recommend approval to the City Building Official.

(2) If adequate provisions for such facilities are not made, the ~~fire department~~ Fire and Life Safety Reviewer shall either recommend against approval of the plans or indicate to the applicant in writing where the plans are deficient or recommend approval of plans subject to conditions.

Section 7. TMC 4-2-020 is amended to read as follows:

(1) For the purpose of prescribing regulations and governing conditions hazardous to life and property from fire or explosion, the ~~2004~~2007 State of Oregon Fire Code as adopted by the Oregon State Fire Marshal's Office and Tualatin Valley Fire and Rescue Ordinance No. ~~04-04~~ 07-01 is adopted as part of this Code.

(2) The ~~2004~~2007 State of Oregon Fire Code Handbook, a companion document to the Uniform Fire Code, as adopted by Tualatin Valley Fire & Rescue Ordinance No. ~~04-04~~07-01, is adopted as part of this Code.

Section 8. TMC 4-2-040 is amended to read as follows:

Violation of this ordinance is punishable by a fine not to exceed \$1000 per violation. Each violation and each day that a violation continues shall constitute a separate offense.

Section 9. TMC 4-3-100 is amended to read as follows:

Any person who is the owner of, in possession of, or in responsible charge of a dangerous building within the City and who shall knowingly suffer or permit the building to be or remain dangerous for as long as 30 days after receipt of the notice specified in

TMC 4-3.060 shall be guilty of a violation of this ordinance and shall, upon conviction, be fined not to exceed \$500. civil infraction and is punishable by penalty of not more than \$1000 per violation. Each violation and each day that a violation continues shall constitute a separate offense.

Section 10. TMC Table 4-2 is added to read as follows:

NUMBER AND DISTRIBUTION OF FIRE HYDRANTS

<u>Fire-Flow Requirement</u> (gallons per minute)	<u>Minimum Number of Hydrants</u>	<u>Average Spacing Between Hydrants</u> ^{a, b, c} (feet)	<u>Maximum Distance From Any Point on Street or Road Frontage to a Hydrant</u> ^d (feet)
<u>1,750 or less</u>	<u>1</u>	<u>500</u>	<u>250</u>
<u>2,000-2,500</u>	<u>2</u>	<u>450</u>	<u>225</u>
<u>2,500</u>	<u>3</u>	<u>450</u>	<u>225</u>
<u>3,000</u>	<u>3</u>	<u>400</u>	<u>225</u>
<u>3,500-4,000</u>	<u>4</u>	<u>350</u>	<u>210</u>
<u>4,500-5,000</u>	<u>5</u>	<u>300</u>	<u>180</u>
<u>5,500</u>	<u>6</u>	<u>300</u>	<u>180</u>
<u>6,000</u>	<u>6</u>	<u>250</u>	<u>150</u>
<u>6,500-7,000</u>	<u>7</u>	<u>250</u>	<u>150</u>
<u>7,500 or more</u>	<u>8 or more</u> ^e	<u>200</u>	<u>120</u>

For SI: 1 foot = 304.8 mm, 1 gallon per minute = 3.785 L/m.

^a Reduce by 100 feet for dead-end streets or roads.

^b Where streets are provided with medial dividers which can be crossed by fire fighters pulling hose lines, or where arterial streets are provided with four or more traffic lanes and have a traffic count of more than 30,000 vehicles per day, hydrant spacing shall average 500 feet on each side of the street and be arranged on an alternating basis up to a fire-flow requirement of 7,000 gallons per minute and 400 feet for higher fire-flow requirements.

^c Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 1,000 feet to provide for transportation hazards.

^d Reduce by 50 feet for dead-end streets or roads.

^e One hydrant for each 1,000 gallons per minute or fraction thereof.

INTRODUCED AND ADOPTED THIS 23RD DAY OF NOVEMBER, 2009.

APPROVED AS TO LEGAL FORM

Brenda L. Braden
CITY ATTORNEY

CITY OF TUALATIN, Oregon

BY *[Signature]*

ATTEST:

BY: *[Signature]*



Approved By Tualatin City Council
Date 11-23-09
Recording Secretary [Signature]

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *[Signature]*

FROM: Brenda Braden, City Attorney *[Signature]*

DATE: November 23, 2009

SUBJECT: AN ORDINANCE RELATING TO REQUIRING GUTTERS AND DOWNSPOUTS BE MAINTAINED ON RENTAL PROPERTIES AND AMENDING TMC 6-13-040(4)(a).

ISSUE BEFORE THE COUNCIL:

The council will consider an ordinance that would require that gutters and downspouts be maintained on rental properties by amending TMC 6-13-040(4)(a).

RECOMMENDATION:

Staff recommends that the council approve the ordinance amending the Tualatin Municipal Code.

EXECUTIVE SUMMARY:

When the Rental Housing Maintenance ordinance was adopted, the ordinance did not include gutters and downspouts in the items to be maintained. There have been several properties where leaks have occurred due to lack of maintenance of gutters and drainspouts.

Gutters and drain spouts are a part of the roofing system meant to prevent water leakage into a dwelling. The city requires maintenance of other components designed to prevent water leakage into rental dwellings. In order to limit the number of leaky roof problems in rental properties, staff is requesting the ordinance be adopted.

Attachments: Ordinance

ORDINANCE NO. 1293-09

AN ORDINANCE REQUIRING GUTTERS AND DOWN SPOUTS TO BE MAINTAINED ON RENTAL PROPERTIES; AND AMENDING TMC 6-13-040(4)(A)

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TMC 6-13-040(4)(a) is amended to read as follows:

(4) Weatherproofing.

(a) Roof, exterior walls, windows, gutters, down spouts, and doors shall be maintained to prevent water leakage into the living areas that may cause damage to the structure or its contents or may adversely affect the health and safety of an occupant.

The remainder of TMC 6-13-040 shall remain unchanged.

INTRODUCED AND ADOPTED this 23rd day of November, 2009.

CITY OF TUALATIN, Oregon

By _____
Mayor

APPROVED AS TO LEGAL FORM

Brenda L. Braden
CITY ATTORNEY

ATTEST:

By [Signature]
City Recorder



Approved By Tualatin City Council
Date 11-23-09
Recording Secretary [Signature]

MEMORANDUM CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager 

FROM: Donald A. Hudson, Finance Director 

DATE: November 23, 2009

SUBJECT: AN ORDINANCE AMENDING TMC 2-7, BANCROFT BONDING

ISSUE BEFORE THE COUNCIL:

Council will consider whether to amend Tualatin Municipal Code Chapter 2-7, to establish a sliding scale for overhead and administrative fees for Bancroft Bonds.

EXECUTIVE SUMMARY:

- On September 28th and October 26th, the City Council, in work session, had discussions related to the current Tualatin Municipal Code (TMC) sections allowing installment payments for system development charges (SDC), commonly referred to as Bancroft Bonding. Staff presented the Council with information regarding the pros and cons to continuing the practice of Bancroft Bonding, as well as the costs to administer the program.
- TMC Chapter 2-7 requires the property owner to pay for legal fees, publication costs and printing costs incurred for the issuance and sale of Bancroft Bonds, as well as a 15% administrative and overhead charge.
- The overhead and administrative fee covers the cost of processing the application and reviewing of the project for Bancroft Bonding, processing the necessary paperwork, including Council approval, and the staff time to bill and collect the semi-annual payments.
- Council asked staff to return with changes to TMC 2-7-010(1)(d), replacing the 15% overhead and administrative fee with a sliding schedule, related to the value of the connection fee and length of payment plan, as follows:
 - 15% up to \$50,000 and 10 years
 - 10% between \$50,001 and \$100,000 and up to 10 years
 - 5% over \$100,000 and up to 10 years
 - Add 0.5% for each year after 10 years

MEMORANDUM: An Ordinance Amending TMC 2-7, Bancroft Bonding

Date: November 23, 2009

Page 2 of 2

RECOMMENDATION:

Staff recommends that the City Council adopt the changes to TMC 2-7, instituting a sliding scale, for overhead and administrative costs, related to value of connection fees, as well as length of payment plan.

Attachment: Ordinance

ORDINANCE NO. 1294-09

AN ORDINANCE RELATING TO BANCROFT BONDS; AND AMENDING
TMC 2-7-010

THE CITY OF TUALATIN, OREGON ORDAINS AS FOLLOWS:

Section 1. TMC 2-7-010 is amended to read as follows:

When the owner or agent of the owner of property which is subject to a development or connection charge as defined by ORS 223.208 makes application to the City to pay the development or connection charge by installments under ORS 223.205, 223.210 to 223.295 (the Bancroft Bonding Act), the following costs and expenses shall be added to and become a part of the charge and assessment of the charge against the benefitted property.

(1) An amount equal to the estimated cost to the City for the following items:

(a) Legal fees incurred for the issuance and sale of the Bancroft bond or bonds of the applicant, including legal fees incurred by the City in connection with the issuance of the bonds and legal fees incurred by the City for obtaining a legal approving opinion from bond counsel selected by the City;

(b) Publication costs incurred to advertise the notice of sale of the Bancroft bond or bonds;

(c) Printing costs incurred for the printing of the bond or bonds and coupon or coupons; and

~~(d) Fifteen per cent of the amount of the development or connection charge prior to the inclusion of (a) through (c) above~~ For the purpose of paying the general administrative and overhead expenses of the City to process any such a Bancroft bond application, the rate shall be a percentage of the amount of development or connection charge prior to the inclusion of (a) through (c) above, as follows:

(i) 15% up to \$50,000 and 10 years

(ii) 10% between \$50,001 and \$100,000 and up to 10 years

(iii) 5% over \$100,000 and up to 10 years

(iv) Add 0.5% for each year after 10 years

INTRODUCED AND ADOPTED THIS 23RD DAY OF NOVEMBER, 2009.

CITY OF TUALATIN, Oregon

BY  _____

Mayor

ATTEST:

BY  _____

City Recorder

APPROVED AS TO LEGAL FORM



CITY ATTORNEY



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager 

FROM: Dan Boss, Operations Director
Brenda Braden, City Attorney
Don Hudson, Finance Director
Mike McKillip, Engineering & Building Director

DATE: November 23, 2009

SUBJECT: AN ORDINANCE GRANTING PORTLAND GENERAL ELECTRIC A FRANCHISE FOR TEN YEARS TO ERECT, CONSTRUCT, MAINTAIN AND OPERATE WITHIN THE CITY OF TUALATIN AN ELECTRIC LIGHT AND POWER SYSTEM; PROVIDING AN EFFECTIVE DATE; AND REPEALING ORDINANCE NO. 1038-99

ISSUE BEFORE THE COUNCIL:

Should the City Council adopt a new electric franchise agreement with PGE?

RECOMMENDATION:

Staff recommends that the City Council adopt the attached franchise agreement.

EXECUTIVE SUMMARY:

The current PGE franchise with the City expires December 2009. Representatives of PGE and the City have been meeting for several months to negotiate a new franchise.

The intent of an electric franchise is to set in place regulations and agreements around the electric utility's use of the public right of way for distributing electricity. The attached proposal is the result of careful thought and discussion and protects the interest of the city. Highlights include:

- *Term*: this is a 10-year agreement with an automatic renewal for another 10 years unless notice is given by either party within 180-days of expiration (section 2.B).
- *Franchise Fee*: PGE will pay the city 3.5% of gross revenues (defined in section 2.B.11) with the city retaining the right to charge a privilege tax (section 12). Currently state law provides that a franchise fee can be no more than 5% (3.5% franchise fee and up to an additional 1.5% for a privilege tax upon Council approval). The agreement provides a process for audits and late fees.
- *Location of Facilities*: section 4 deals with construction and how PGE and the City will coordinate with development regarding space availability in the public right of way.
- *Work in the ROW*: the franchise requires PGE to get permits from the city and for ROW to be restored and repaired to an agreed upon standard.
- *Relocation*: the franchise allows the city to require the relocation of facilities for a public project (the franchise defines a public project in section 8.A). The franchise provides for both permanent relocation and temporary relocation. It also allows for relocation at the request of a third party at the third parties expense.
- *Undergrounding*: the franchise requires PGE to underground utilities on a public project. (section 8.C)
- *Termination & Service Provision*: Section 14 details cause for termination, remedies, penalties and provision of service in case of termination.

From engineering and operations perspectives, this agreement continues the process of PGE obtaining permits for work in the City ROW. It provides the flexibility for the City and PGE to work toward good solutions to construction and phasing problems that occur on projects involving the City, PGE, and private developers and allows for appropriate remedies when problems are encountered.

Based on direction from the Council at the November 9th work session, changes were made on page 2 of the franchise, Section 1.A, adding substations to the list of exclusions in the right of way.

FINANCIAL IMPLICATIONS:

Franchise Fees account for 17.4% of current General Fund revenue and is the second largest revenue source in the fund, behind property taxes and not including beginning cash balances. PGE's payment in fiscal year 2008-2009 was \$1,109,823 and makes up approximately half of the total franchise fees for the year.

Attachments:

PGE Franchise Agreement

Sent for Signatures
By: Legal

ORDINANCE NO. 1295-09

COPY

AN ORDINANCE GRANTING PORTLAND GENERAL ELECTRIC A FRANCHISE FOR TEN YEARS TO ERECT, CONSTRUCT, MAINTAIN AND OPERATE WITHIN THE CITY OF TUALATIN AN ELECTRIC LIGHT AND POWER SYSTEM; PROVIDING AN EFFECTIVE DATE; AND REPEALING ORDINANCE NO. 1038-99.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

FRANCHISE AGREEMENT

This Franchise Agreement grants Portland General Electric Company (“Grantee”) a non-exclusive franchise for ten years to erect, construct, maintain, repair, update and operate an electric light and power system within the City of Tualatin (“City”), sets the terms and conditions of the franchise and provides an effective date.

WHEREAS, Grantee has been providing electric light and power service within the City; and

WHEREAS, Grantee is duly authorized by the Oregon Public Utility Commission (“OPUC”) to supply electric light and power within the City; and

WHEREAS, the City has the authority to regulate the use of the Public ROW (as defined below) within the City and to establish the terms by which Grantee shall use and occupy the Public ROW;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Nature and Term of Franchise.

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(A) The City grants to Grantee and its successors and assigns, subject to the terms and conditions in this Franchise, a nonexclusive franchise to erect, construct, repair, maintain, upgrade and operate an electric light and power system within the City as it now exists or may be extended in the future, including related communication equipment and Grantee Facilities (as defined below). This Franchise includes the privilege to install, repair, maintain, upgrade and operate Facilities necessary for the operation of Grantee's Electric Light and Power System upon, over, along, and across the surface of and the space above and below the streets, alleys, roads, highways, sidewalks, bridges, and other public ways (collectively, "Public ROW"), as well as public utility easements on third party property that have been acquired by the City, dedicated to the City, or on which a preliminary subdivision plat has been approved by the City, and which will be managed by the City thereafter ("PUEs"), for the provision of public utility services within the City as Grantees' Electric Light and Power System now exists or is extended or upgraded in the future. Nothing in this Franchise limits the City from granting others the right to carry on activities similar to, or different from the ones described in this Franchise. The rights granted in this Franchise do not include the right to build or site electric generating facilities or substations in the Public ROW.

(B) This Franchise also includes the privilege to repair, maintain, upgrade and operate Grantee Facilities located in City park property that are existing as of the effective date of this Franchise. Grantee's right to install Grantee Facilities in City park property on or after the effective date of this Franchise, and to repair,

maintain, upgrade and operate such after-installed Grantee Facilities, shall be subject to the City's permitting process. With respect to Grantee Facilities located in City park property existing as of the effective date of this Franchise, and Grantee Facilities installed in City park property on or after the effective date of this Franchise in accordance with the City permitting process, City park property shall be treated the same as the Public ROW for purposes of Sections 4, 6, 7, 8, 10, 12, 14, 16 and 19.

(C) All Grantee Facilities in possession of Grantee currently or during the Term (as defined in Section 2(B)) that are located within the Public ROW are covered by this Franchise and the location and placement thereof is hereby approved for the purposes of this Franchise.. The City may require relocation of Grantee Facilities as permitted by law and specified in Section 8.

Section 2. Term and Effective Date.

(A) Effective Date. The effective date of this Franchise shall be thirty (30) days after the City Council passes an ordinance adopting this Franchise and Grantee accepts this Franchise in writing in accordance with Section 25.

(B) Duration of Franchise. The term of this Franchise, and all rights and obligations pertaining thereto, shall be ten years from the effective date of the Franchise ("Term") unless renegotiated or terminated as provided in this Franchise. The Term shall automatically renew for an additional ten years after the expiration of the initial Term; unless either party provides

the other party written notice, at least 180 days prior to the expiration of the initial Term, that it does not desire to renew this Franchise.

(C) Charter and General Ordinances to Apply. To the extent authorized by law, this Franchise is subject to the Charter of the City of Tualatin, Chapter 74 of the Tualatin Development Code requiring underground utilities in subdivisions or partitions, and state statutes and regulations existing during the Term. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid that are generally applicable to other similar businesses operating within the City, or the manner of construction.

Section 3. Definitions.

(A) Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

(B) Definitions. For purposes of this Franchise, the following terms, phrases, and their derivations shall have the meaning given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word, "shall" is always mandatory and not merely directory.

- (1) "City" means the City of Tualatin, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
- (2) "City Council" means the duly elected legislative body of the City.
- (3) "City Engineer" means the City Engineer of the City or the City Engineer's designee.
- (4) "City Manager" means the City Manager of the City or the City Manager's designee.
- (5) "City Recorder" means the Recorder of the City or the City Recorder's designee.
- (6) "Director of Finance" or "Finance Director" means the Finance Director of the City or the Finance Director's designee.
- (7) "Franchise" means this Franchise Agreement as fully executed by the City and Grantee and adopted by the City Council pursuant to Ordinance No. 1295-09.
- (8) "Grantee" means Portland General Electric Company, an Oregon corporation.
- (9) "Grantee Facility" means any tangible component of Grantee's Electric Light and Power System, including but not limited to any poles, guy wires, anchors, wire, textures, equipment, conduit, circuits, vaults, switch cabinets, transformers, secondary junction cabinets, antennas, communication equipment and other property necessary or convenient to supply electric light and power by Grantee within the City.

(10) "Grantee's Electric Light and Power System" means all the real property and Grantee Facilities used by Grantee in the transmission and distribution of its services that are located inside the boundaries of the City.

(11) "Gross Revenues" shall include all revenues derived by Grantee within the City from Grantee's Electric Light and Power System, and includes, but is not limited to, the sale of and use of electricity and electric service, and the use, rental, or lease of Grantees Facilities, after adjustment for the net write-off of uncollectible accounts. "Gross Revenues" do not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, or sales at wholesale by one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer. "Gross Revenues" also do not include revenue from joint pole use. For purposes of this Franchise, revenue from joint pole use includes any revenue collected by Grantee from other franchisees, permittees, or licensees of the City for the right to attach wires, cable or other facilities or equipment to Grantee's poles or place them in Grantee's conduits.

(12) "NESC" means the National Electrical Safety Code.

(13) "OPUC" means the Oregon Public Utility Commission.

(14) "Term" has the meaning described in Section 2(B).

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- (15) "Person" means any individual, sole proprietorship, partnership, association, corporation, cooperative, People's Utility District, or other form of organization authorized to do business in the State of Oregon, and includes any natural person.
- (16) "Public ROW" has the meaning described in Section 1(A).
- (17) "PUE" has the meaning described in Section 1(A).
- (18) "Year," "annual" or "annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in the Franchise.

Section 4. Construction.

(A) Construction. Subject to the NESC, Grantee's Electric Light and Power System shall be constructed and maintained in such manner as to not interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits or facilities that may have been laid in the Public ROW by or under the City's, County's or State's authority. Grantee and the City shall work together during any design process affecting the Public ROW to establish suitable locations for Grantee's Facilities and minimize cost to both parties. Assuming there is sufficient space in the Public ROW, all poles shall be placed between the sidewalk and the edge of the Public ROW unless another location is approved by the City Engineer. For any land use development in the City requiring Grantee's services, the City shall notify Grantee of such pending land use development and Grantee shall notify the City of Grantee's construction

standards that are provided to the OPUC and NESC requirements that are applicable to the pending land use development. The City shall impose a condition on its land use development approval that the developer either (i) provide a sufficient location in the Public ROW located in the land use development for Grantee Facilities that meet the applicable construction standards and NESC requirements, or (ii) obtain an easement for Grantee Facilities that meet the applicable construction standards and NESC requirements. .

(B) Acquisition. Subsequent to the effective date of this Franchise, upon Grantee's acquisition of additional Grantee Facilities in the Public ROW, or upon an addition or annexation to the City of an area in which Grantee retains Grantee Facilities in the Public ROW of such addition or annexation, Grantee shall submit a statement to the City describing all Grantee Facilities involved, whether authorized by a franchise agreement or upon any other form of prior right, together with a map, as described in Section 5, specifying the location of all such Grantee Facilities. Such Grantee Facilities shall immediately be subject to the terms of this Franchise.

(C) Emergency Repairs. In the event emergency repairs to Grantee's Facilities are necessary, Grantee shall as soon as reasonably possible notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs and apply for appropriate permits the next

business day or as soon as reasonably possible following discovery of the emergency.

(D) Reasonable Care. All work completed by Grantee within the Public ROW shall be conducted with reasonable care and with the goal of minimizing the risk to those using the Public ROW and to minimize the risk of damage to public and third party property. All work shall be performed in accordance with all applicable laws and regulations, including but not limited to the NESC. Any work completed by Grantee within the Public ROW may be inspected by the City to determine whether it has been placed in its approved location according to Grantee's permit issued by the City. If emergency work has been completed by Grantee in the Public ROW and the City determines such work was not completed in a City approved location, the City shall notify Grantee and provide Grantee with sixty (60) days after the emergency passed to reperform the work in a City approved location in the Public ROW.

Section 5. Supplying Maps. Grantee shall maintain maps and data pertaining to the location of Grantee Facilities on file at its corporate offices or at an office in Oregon. After providing Grantee with twenty-four (24) hours prior notice, the City may inspect the maps (excluding Grantee proprietary information) at any time during Grantee's business hours. Upon request of the City and without charge, Grantee shall furnish current maps to the City by electronic data in read-only format showing the general location of Grantee Facilities, excluding Grantee proprietary information. Unless required by law, the City will not sell or provide Grantee prepared maps or

data to third parties without written permission from Grantee. Upon request of Grantee, the City will make available to Grantee any relevant City prepared maps or data at no charge to Grantee.

Section 6. Excavation. Subject to Sections 4 and 7, and after obtaining any permits required by the City, Grantee may make all necessary excavations within the Public ROW for the purpose of installing, repairing, upgrading or maintaining Grantee Facilities, except that in the case of an emergency, no permit shall be required prior to excavation. Should there be a direct conflict between any terms or conditions stated in a permit granted by the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall control. All excavations made by Grantee in the Public ROW shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Section shall be completed in strict compliance with all applicable rules, regulations and ordinances of the City. If a customer of Grantee is required to make excavations that are located in the Public ROW pursuant to Grantee's tariff on file with the OPUC, the City agrees that Grantee shall not be responsible or liable for any failure by such customer to comply with any applicable rules, regulations, ordinances of the City and/or with City standards.

Section 7. Restoration after Excavation. Except as otherwise provided for in this Section, Grantee shall restore the surface of the Public ROW disturbed by any excavation by Grantee to at least the same condition that it was in prior to excavation. If Grantee excavates the surface of the Public ROW, Grantee shall be responsible for restoration of the Public ROW and the area affected by the

excavation. If Grantee fails to restore the Public ROW to at least the same condition that it was in prior to the excavation, the City shall give Grantee written notice and provide Grantee a reasonable period of time, not to exceed thirty (30) days, to restore the Public ROW. If Grantee's work creates a public safety hazard as determined by the City Engineer, Grantee may be required to repair or restore the Public ROW within twenty-four (24) hours notice from the City, or such time as agreed between the City Engineer and Grantee, taking into consideration weather and other relevant factors. If Grantee fails to make such repairs or restorations within the specified time frames, after providing notice to Grantee and a reasonable opportunity to cure, the City may refill or repave any opening made by Grantee in the Public ROW and Grantee shall pay that expense. The City reserves the right, after providing notice to Grantee, to remove or repair any work completed by Grantee, which, in the determination of the City Engineer is inadequate, using a qualified contractor in accordance with applicable state and federal safety laws and regulations, and Grantee's construction standards as provided to the OPUC and applicable NESC requirements. The cost of such work, including the cost of inspection and supervision, shall be paid by Grantee. If Grantee's work is coordinated with other construction work in the Public ROW, the City Engineer may excuse Grantee from restoring the surface of the Public ROW, provided that as part of the coordinated work, the Public ROW is restored to good order and condition.

Section 8. Relocation.

(A) Permanent Relocation Required by City and Commission

Projects. This subsection (A) covers permanent relocation of

overhead Grantee Facilities that will remain overhead, and underground Grantee Facilities that will remain underground. When it is necessary or convenient in the interest of the public for a City or a Tualatin Development Commission project, the City has the right to require Grantee to change the location of Grantee's Electric Light and Power System located in the Public ROW, and unless otherwise agreed Grantee shall pay the expenses of the relocation. However, when the City requests a subsequent relocation of all or part of the same Grantee Facilities less than two years after the initial relocation that is necessary or convenient for a public project, and not at the request of or to accommodate a third party, the subsequent relocation shall be at the expense of the City. This Section 8(A) shall not apply if either of the following is true: (1) the project or improvement necessitating the change in location will not be owned by the City or Commission; or (2) the majority of the funding for the project or improvement does not come from the City, state or federal government sources. The City agrees to provide a suitable location in the Public ROW, as mutually agreed, for Grantee Facilities that meets the Grantee's construction standards as provided to the OPUC and NESC requirements. If sufficient space is not available in the Public ROW for Grantee Facilities, the City agrees to obtain sufficient easements from private property owners to accommodate Grantee Facilities in order to maintain service and permit upgrades to Grantee Facilities. If Grantee

fails to remove or relocate such Grantee Facilities within ninety (90) days after the date established by the City, which, except in the event of a public emergency, shall not occur sooner than ninety (90) days after the City provides written notice to remove/relocate to Grantee, the City may cause or effect such removal or relocation, performed by a qualified contractor in accordance with applicable state and federal safety laws and regulations and Grantee's construction standards as provided to the OPUC, and Grantee shall pay that expense. In the event a public project is delayed and could result in damages to the City, City agrees to convene a meeting among all parties who potentially could have caused the delay to discuss who was responsible for the delay. City shall provide notice to Grantee of anticipated damages as a result of a public project delay as soon as reasonably practicable after City has received notice of such anticipated damages. Unless otherwise agreed to by the parties, Grantee will not be liable for any delay damages before the delayed public project is completed. The City shall use commercially reasonable efforts to mitigate any damages it may incur as a result of a delay in the completion of a public project. If the City incurs delay damages as a result of Grantee's negligence or willful misconduct, as determined by the City, Grantee and City agree to negotiate a mutually agreeable settlement with the City. In the event a settlement is not reached between the City and Grantee within ninety (90) days after the

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completion of the delayed public project, City may pursue any other remedies at law or equity available to City.

(B) Notice. The City will provide as much notice prior to requiring Grantee to relocated Grantee Facilities as is reasonably possible. The notice shall specify the date by which the existing Grantee Facilities must be removed or relocated. Nothing in this provision shall prevent the City and Grantee from agreeing, either before or after notice is provided, to another schedule for relocation. The City and Grantee agree to cooperate in the design phase to minimize the economic impact of such relocation on Grantee and the City.

(C) Permanent Relocation- Undergrounding. This subsection (C) applies to conversions of Grantee Facilities from overhead to underground regardless of whether or not such conversion is made in conjunction with a public project. As permitted by, and in accordance with City Ordinance and any applicable law, administrative rule, or regulation, the City may require Grantee to convert any overhead Grantee Facilities to underground Grantee Facilities at the same or different locations, subject to the NESC and Grantee's engineering and safety standards. This subsection does not apply to Grantee Facilities used for or in connection with the transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other aboveground equipment. In the event aboveground equipment must be relocated as part of the conversion of overhead Grantee

Facilities, Grantee agrees to provide City an opportunity to comment on the location and aesthetic design of such aboveground equipment. Such relocation shall be consistent with applicable long-term development plans or projects of the City or Commission, or as approved by the City. Grantee shall pay the expense of such conversion, and Grantee may recover its costs from its customers in accordance with state law, administrative rule, or regulation. The City agrees to provide a suitable location in the Public ROW, as mutually agreed, that meets Grantee's construction standards as provided to the OPUC and NESC requirements and if sufficient space is not available in the Public ROW, then the City will obtain sufficient easements from private property owners to accommodate Grantee Facilities in order to maintain service and permit upgrades of Grantee Facilities. Nothing in this subsection prevents the City and Grantee from agreeing to a different form of cost recovery consistent with applicable statutes, administrative rules, or regulations on a case-by-case basis.

Within sixty (60) days, or as mutually agreed upon by the Grantee and the City, the Grantee shall remove the overhead facilities that have been replaced by underground facilities.

(D) Temporary Relocation at Request of City. This subsection (D) covers temporary relocation of overhead Grantee Facilities that will remain overhead, as well as underground Grantee Facilities that will

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remain underground. The City may require Grantee to temporarily remove and relocate Grantee Facilities by giving sixty (60) days notice to Grantee. Prior to such relocation, the City agrees to provide a suitable location in the Public ROW, as mutually agreed, that meets the Grantee's construction standards as provided to the OPUC and NESC requirements, or a temporary construction easement that meets the Grantee's construction standards as provided to the OPUC and NESC requirements, and that allows Grantee to place Grantee Facilities on the easement, in order to maintain sufficient service and permit upgrades to Grantee Facilities until such time as the Grantee moves such Grantee Facilities to their permanent location. The City will assist in acquiring easements from private property owners if sufficient square footage is not available in the Public ROW or the City has not obtained construction easements for the public project necessitating the temporary relocation of Grantee Facilities. The cost of temporary removal or relocation of Grantee Facilities that is necessary or convenient for public projects, as well as the cost of replacing Grantee Facilities in their permanent location, shall be paid by Grantee. However, when the City requests a subsequent relocation of all or part of the same Grantee Facilities less than two years after the initial relocation, that is necessary or convenient for a public project and not at the request of or to accommodate a third party request, the subsequent relocation shall be at the expense of the City.

(E) Permanent Relocation at Request of Third Party. If a relocation is requested by or is to accommodate a third party, Grantee shall seek reimbursement from the third party and not from the City. Such relocation shall be consistent with any applicable long-term development plan or projection of the City or approved by the City; however, if relocation of Grantee Facilities is caused or required by conditions placed by the City on approval for projects of third parties, such relocation shall in no event fall under the provisions of subsections (A), (C) or (D) of this Section 8. The City and Grantee agree to cooperate to minimize the economic impact of such relocation on each party.

(F) Temporary Relocation at Request of Third Parties. Whenever it is necessary to temporarily relocate or rearrange a Grantee Facility in order to permit the passage of a building, machinery or other object, Grantee shall perform the work after receiving sixty (60) business days written notice from the persons desiring to move the building, machinery or other object. The notice shall:

- (1) demonstrate that the third party has acquired at its expense all necessary permits from the City;
- (2) detail the route of movement of the building, machinery, or other object;
- (3) provide that the person requesting the temporary relocation is responsible for Grantee's costs;

- (4) provide that the requestor shall indemnify and hold harmless the City and Grantee from all damages or claims resulting either from moving the building, machinery or other object or from the temporary relocation of Grantee Facilities; and
- (5) be accompanied by a cash deposit or other security acceptable to Grantee for the costs of relocation.

Grantee in its sole discretion may waive the security obligation. The cash deposit or other security shall be in an amount reasonably calculated by Grantee to cover Grantee's costs of temporary relocation and restoration. All temporary relocations under this subsection shall comply with ORS 757.805.

Section 9. Public ROW Vacation. If all or a portion of the Public ROW used by Grantee is proposed to be vacated by the City during the Term, the Grantee shall be notified of the pending public hearing for the Public ROW vacation. The Grantee shall notify City if Grantee has facilities in the Public ROW that must be maintained. Unless Grantee and the future owner of the property to be vacated agree on a plan for the relocation of Grantee's Facilities, the City shall impose a condition on the vacation that the property owner provide an easement of Grantee Facilities in their then-current location and that prohibits any use of the vacated property that interferes with Grantee's full enjoyment and use of its easement. . If a condition on the vacation is not reasonably possible and Grantee and the future owner of the property to be vacated have not agreed on a plan for the relocation of Grantee's Facilities located in the vacated Public ROW,

Grantee shall, after notice from the City and without expense to the City, remove Grantee Facilities from such vacated Public ROW, restore, repair or reconstruct the Public ROW where such removal has occurred, and place the Public ROW in good order and condition as may be required by the City. In the event of failure, neglect or refusal of Grantee, after providing Grantee with ninety (90) days prior written notice, to repair, restore, or reconstruct such Public ROW, the City may complete such work or cause it to be completed by a qualified contractor in accordance with applicable state and federal safety laws and regulations, and Grantee shall bear that cost. Upon request, the City will cooperate with Grantee to identify alternative locations within the Public ROW for Grantee Facilities if they are not permitted to remain in the vacated area.

Section 10. City Public Works and Improvements. Nothing in this Franchise shall be construed to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or completing any work that may be needed or convenient in the Public ROW that is consistent with the NESC. The City shall coordinate such work with Grantee to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use by Grantee of any Grantee Facilities, and the City shall be responsible for the costs to repair any damage to Grantee Facilities arising out of such work. Nothing in this Section relieves Grantee from its obligations stated in Section 8.

Section 11. Use of Grantee Facilities. City shall maintain attachment agreements and permits to string wires on Grantee's poles or run wires in Grantee's trenches and/or conduit for municipal purposes and to attach fire and police alarm and

communication equipment to Grantee's poles, provided that such wires and equipment:

- (a) do not unreasonably interfere with Grantee's operations;
- (b) conform to the NESC; and
- (c) the City's excess capacity on such wires and equipment is not leased to, sold to or otherwise used by non-governmental third parties.

Grantee shall not charge the City for such attachments to its poles or in its conduits; however, the City shall be responsible for paying for any make-ready and inspections Grantee must perform in order to provide access to Grantee Facilities for City wires and equipment in accordance with the NESC. If any of the City's attachments to Grantee Facilities violate the NESC, the City shall work with Grantee to address and correct such violations in an agreed-upon period of time. The City shall indemnify and hold Grantee harmless from loss or damage resulting from the presence of City's wires and equipment on or in Grantee Facilities. For purposes of this Franchise, "make-ready" means engineering or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities.

Section 12. Payment for use of Public ROW

(A) Use of Public ROW. In consideration for its use of the Public ROW in accordance with the terms of this Franchise, Grantee agrees to pay the City an amount equal to 3 ½ percent of the Gross Revenue received by Grantee

from its customers within the City. The payment for each year shall be based on the Gross Revenue collected by Grantee during the previous calendar year from Grantee's customers, and shall be paid on an annual basis. To the extent permissible under state law and regulation, the payment imposed by this subsection shall be considered an operating expense of Grantee and shall not be itemized or billed separately to consumers within the City.

(B) Property Tax Limitations Do Not Apply. The payment described in this Section 12 is not subject to the property tax limitations of Article XI, Sections 11(b) and 11(19) of the Oregon Constitution and is not a fee imposed on property or property owners by fact of ownership.

(C) Privilege Tax. As permitted by Oregon law, the City retains the right, to charge a privilege tax based on a percentage of the Gross Revenue earned from Grantee's customers within the City in addition to the payment amounts set forth in subsection (A). The City shall provide Grantee at least ninety (90) days notice prior to such privilege tax becoming effective. Grantee shall follow state regulations regarding inclusion of such privilege tax as an itemized charge on the electricity bills of its customers within the City.

(D) Remittance of Annual Payment. Grantee shall remit the annual 3 ½% franchise fee payment, as well as payment of any additional privilege tax, to the Finance Director on or before the first (1st) day of April of each year. Payment shall be made in immediately available federal funds. With its annual payment, Grantee shall provide the City a statement under oath showing the Gross Revenue for the preceding year.

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(E) Acceptance of Payment. The City's acceptance of any payment due under this Section shall not be a waiver by the City of a breach of this Franchise occurring prior to the acceptance, nor shall the City's acceptance preclude the City from later establishing that a larger amount was actually due, or from collecting the balance due to the City.

(F) Late Payments. Interest on late payments shall accrue from the due date based on PGE's cost of debt as approved by the OPUC plus 100 basis points (1%). as of the due date, and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency.

(G) No Exemption From Other Fees or Taxes. Payment of the amounts described in this Section 12 shall not exempt Grantee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City or other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, tax or charge.

(H) Direct Access and Volumetric Methodologies. Consistent with state law, the City may direct that the payments made under this Section 12 be based on volume-based methodologies as specifically described in ORS 221.655 instead of the formula set out in subsections 12 (A) and (C). Notice must be given to Grantee in writing for the subsequent payments to be made using volume-based methodology. The volumetric calculation shall apply to payments made in one calendar year (based on January 1 to December 31

billings from the previous calendar year). The choice to use volumetric methodology must be renewed annually by the City. No notice is necessary if the City chooses to remain on the revenue-based calculation.

(I) Payment Obligation Survives Franchise. If the parties do not finish negotiation of a new franchise agreement prior to the expiration of this Franchise, the obligation to make the payments impose by this Section 12 shall survive expiration of this Franchise until a new franchise agreement becomes effective and supersedes this Franchise. If this Franchise is terminated before expiration, Grantee shall make the remaining payments owed, if any, within ninety (90) days of the termination date.

Section 13. AUDIT.

(A) Audit Notice and Record Access. The City may audit Grantee's calculation of Gross Revenues. Within ten (10) business days after receiving a written request from the City, or such other time frame as agreed by both parties, Grantee shall furnish the City and any auditor retained by the City: (a) information sufficient to demonstrate that Grantee is in compliance with this Franchise; and (b) access to all books, records, maps and other documents maintained by Grantee with respect to Grantee Facilities that are necessary for the City to perform such audit. Grantee shall provide access to such information to City within the City, or the Portland, Oregon metropolitan area, during regular Grantee business hours.

(B) Audit Payment. If the City's audit shows that the amounts due to the City are higher than those based on the Grantee's calculations of Gross Revenue, then Grantee shall make a payment for the difference within sixty (60) days after the deliver to Grantee of the audit results. In addition to paying any underpayment, Grantee shall pay interest at the prevailing annual average yield of the State of Oregon's local government investment pool (also called the Oregon Short-Term Fund – OSTF), but not penalties, as specified in this Franchise, from the original due date. If the City's audit shows that Grantee's calculation of Gross Revenue resulted in an overpayment to the City by five percent (5%) or more in any one year, the Grantee may deduct such overpayment from the next annual franchise fee payment. If the City's audit shows that the amounts due to the City based on the Grantee's calculation of Gross Revenue deviated by five percent (5%) or more in any one year from the City's calculation during the audit, Grantee shall reimburse City for the cost of the audit, not to exceed one percent (1%) of the total annual franchise payment for the applicable audit period.

Section 14. TERMINATION AND REMEDIES.

(A) By City for Cause. If Grantee ceases to maintain Grantee Facilities in accordance with the maintenance commitments outlined in the Service Quality Measures review filed with the OPUC, and this causes an increase in the risk to the public of personal injury or property damage, the City shall notify Grantee. Grantee shall have thirty (30) days after

the date of the notice to eliminate such risk or, if such risk can not be eliminated within thirty (30) days, such reasonable time period as is required to eliminate such risk. Grantee shall bear all costs related to remedying the risk. If Grantee does not eliminate the risk in accordance with the preceding sentence, the City may then terminate this Franchise by providing Grantee written notice of termination.

(B) By City if City Will Provide Service. The City may terminate this Franchise upon one year's written notice to Grantee if the City decides to engage in public ownership of the electric facilities located in the Public ROW and the public distribution of electric energy to customers throughout the City in accordance with ORS 758.470.

(C) City Reserves Right to Terminate. In addition to any other rights provided for in this Franchise, the City reserves the right, subject to subsections 14(E) and (F), to terminate this Franchise in the event that:

- 1) The Grantee materially violates a material provision of this Franchise;
- 2) The Grantee is found by a court of competent jurisdiction to have practiced any material fraud or deceit upon the City;
- 3) There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain or maintain Grantee's service territory designation required by

- a federal or state regulatory body regarding Grantee's operation of Grantee's Electric Light and Power System; or
- 4) Grantee becomes unable or unwilling to pay its debts, or is adjudged bankrupt.

(D) Material Provision. For purposes of this Section 14, the following are material provisions of this Franchise, allowing the City to exercise its rights under this Section 14 or as set forth elsewhere in this Franchise:

- 1) The invalidation, failure to pay or suspension of Grantee's payments of franchise fees or privilege taxes to the City for use of the Public ROW under this Franchise;
- 2) Failure by Grantee to submit timely reports as may be requested by the City, regarding the calculation of its franchise fees or privilege taxes paid or to be paid to the City;
- 3) Failure by Grantee to maintain the liability insurance or self insurance required under this Franchise;
- 4) Failure by Grantee to provide copies of requested information as provided under Sections 4, 5, and 13 above; and
- 5) Failure by Grantee to otherwise substantially comply with the requirements of Section 4 through Section 20 of this Franchise, unless otherwise agreed.

(E) Notice and Opportunity to Cure. The City shall provide Grantee thirty (30) days prior written notice of its intent to exercise its rights under this Section 14, stating the reasons for such action. If Grantee cures the basis for termination or if the Grantee initiates efforts satisfactory to the City to remedy the basis for termination and the efforts continue in good faith within the thirty (30) day notice period, the City shall not exercise its remedy rights. If Grantee fails to cure the basis for termination or if the Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the basis for termination within the thirty (30) day notice period, then the City Council may impose any or all of the remedies available under this Section 14.

(F) Remedies. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate. Nothing in this subsection shall be construed to limit the City's authority to pursue any legal remedy it deems appropriate.

(G) Financial Penalty. In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code or other law, the City reserves the right at its sole option to impose a financial penalty of up to \$500.00 per day per material violation of a material provision of this Franchise when the opportunity to cure has passed.

Section 15. ASSIGNMENT OF FRANCHISE. Grantee shall not sell, assign, transfer, or convey this Franchise to a third party without the City Council giving its consent in a duly passed ordinance. Upon obtaining such consent, this Franchise shall inure to and bind such third party. Grantee shall not sell or assign this Franchise to an entity that is not authorized by the OPUC to provide electric service to retail consumers under Oregon law. Prior to any proposed transfer, Grantee shall be in full compliance with this Franchise and the proposed transferee shall agree in writing to be bound by this Franchise. In the event Grantee is purchased by or merged into another entity and Grantee survives such purchase or merger as a public entity, Grantee shall provide notice to the City of such purchase or merger, but shall have no obligation under this Franchise to obtain the consent of the City Council for such purchase or merger.

Section 16. REMOVAL OF FACILITIES. If this Franchise is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, the City may determine whether Grantee Facilities are to be removed from the Public ROW or remain in place. The City shall provide written notice of any requirement to remove Grantee Facilities and shall provide Grantee sixty (60) days to comment on such requirement to move Grantee Facilities. Following consideration of such comments, the City Manager may issue an order requiring removal of Grantee Facilities within nine (9) months after such order is declared.

Section 17. NONDISCRIMINATION. Grantee shall provide service to electric light and power consumers in the City without discriminating against persons

based upon race, color, religion, sexual orientation, creed, or national origin, or, in accordance with Oregon law.

Section 18. INDEMNIFICATION. To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the City against all claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a result of any negligent or willful misconduct of Grantee, or its affiliates, officers, employees, agents, contractors or subcontractors, arising out of the rights and privileges granted by this Franchise. The obligations imposed by this Section are intended to survive termination of this Franchise.

Section 19. INSURANCE. Grantee shall obtain and maintain in full force and effect, for the entire Term, the following insurance covering risks associated with Grantee's ownership and use of Grantee Facilities and the Public ROW:

(A) Commercial General Liability insurance covering all operations by or on behalf of Grantee for Bodily Injury and Property Damage, including Completed Operations and Contractors Liability Coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate.

(B) Business Automobile Liability insurance to cover any vehicles used in connection with its activities under this Franchise, with a combined single limit not less than One Million Dollars (\$1,000,000.00) per accident.

(C) Workers' Compensation coverage as required by law and Employer's Liability Insurance with limits of \$1,000,000. With the exception of

Workers' Compensation and Employers Liability coverage, Grantee shall name the City as an additional insured on all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is provided to the City. Grantee shall provide the City with a certificate of insurance evidencing such coverage as a condition of this Franchise and shall provide updated certificates upon request.

(D) In Lieu of Insurance. In lieu of the insurance policies required by this Section 19, Grantee may self-insure any and all of the coverage outlined in this Section 19. If Grantee elects to self-insure, it shall do so in an amount at least equal to the coverage requirements of this Section 19 in a form acceptable to the City. Grantee shall provide proof of self-insurance to the City before this Franchise takes effect and thereafter upon request by the City.

Section 20. DAMAGE TO FACILITIES. The City shall not be liable for any consequential damages or losses resulting from any damage to or loss of any facility as a result of or in connection with any work by or for the City unless the damage or loss is the direct and proximate result of willful, intentionally tortuous, negligent or malicious acts or omissions by the City, its employees, or agents. In such case, the City shall indemnify and hold harmless Grantee against all claims, damages, costs and expenses, including attorney's fees and costs, arising from such acts or omissions, subject to any applicable limitations in the Oregon

Constitution and the Oregon Tort Claims Act. The obligations imposed by this Section are intended to survive termination of this Franchise.

Section 21. LIMITATION ON PRIVILEGES. All rights and authority granted to Grantee by the City under this Franchise are conditioned on the understanding and agreement that the privileges in the Public ROW shall not be an enhancement of Grantee's properties or an asset or item of ownership of Grantee.

Section 22. FRANCHISE NOT EXCLUSIVE. This Franchise is not exclusive and shall not be construed to limit the City from granting rights, privileges and authority to other persons similar to or different from those set forth in this Franchise.

Section 23. REMEDIES AND PENALTIES NOT EXCLUSIVE. All remedies and penalties under this Franchise, including termination, are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of a penalty is not a bar to recovery or enforcement of any other remedy or imposition of any other penalty. The City reserves the right to enforce the penal provisions of any City ordinance or resolution and to avail itself to any and all remedies available at law or in equity. Failure to enforce any term, condition or obligation of this Franchise shall not be construed as a waiver of a breach of any term, condition or obligation of this Franchise. A specific waiver of a particular breach of any term, condition or obligation of this Franchise shall not be a waiver of any other subsequent or future breach of the same or any other term, condition or obligation of this Franchise.

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Section 24. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of this Franchise that are not held to be invalid or unconstitutional shall remain in effect until this Franchise is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this Franchise, either party may demand that the other party meet to discuss amending the terms of this Franchise to conform to the original intent of the parties. If the parties are unable to agree on a revised franchise agreement within ninety (90) days after a portion of this Franchise is found to be invalid or unconstitutional, either party may terminate this Franchise by delivering one hundred and eighty (180) days notice to the other party.

Section 25. ACCEPTANCE. Within thirty (30) days after the ordinance adopting this Franchise is passed by the City Council, Grantee shall file with the City Recorder its written unconditional acceptance of this Franchise. If Grantee fails to do so, the City may withdraw this Franchise an any time prior to January 1, 2010. If the City elects not to withdraw this Franchise on or before January 1, 2010, the Grantee shall be deemed to accept the terms of this Franchise, whether or not a written acceptance has been filed with the City.

Section 26. NOTICE. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express or UPS), or (4) sent by facsimile transmission with verification of receipt,

addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City: City Manager, City of Tualatin, Oregon

18880 SW Martinazzi

Tualatin, Oregon 97062

FAX # (503) 692-5421

With a copy to: City Attorney

City of Tualatin, Oregon

-18880 SW Martinazzi

Tualatin, OR 97062

If to the Grantee: Regional Manager

Portland General Electric Company

2213 SW 153rd Drive

Beaverton, Oregon 97006

FAX: (503) 672-5595

With a copy to: Portland General Electric Company

Attn: General Counsel

One World Trade Center, 17th Floor

121 SW Salmon Street

Portland, Oregon 97204

FAX: (503) 464-2200

Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days

after deposition in the United States mail, one (1) business day after shipment by commercial air courier or the same day as confirmed facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

Section 27. EFFECTIVE DATE AND REPEAL OF PRIOR ORDINANCE. This ordinance is effective on January 1, 2010. Ordinance No. 1038-99 is repealed, effective on January 1, 2010.

The parties, through their duly authorized representatives, have executed this franchise as of the dates indicated below.

PORTLAND GENERAL ELECTRIC
COMPANY

CITY OF TUALATIN

BY: _____

BY:  _____

NAME: _____

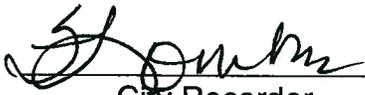
NAME: Lou Ogden

TITLE: _____

TITLE: Mayor

DATE: _____

DATE: 11-23-09

ATTEST:
 _____
City Recorder

COPY

Sent for Signatures
By: Legal