



TELEVISED

FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER
4755 SW GRIFFITH DRIVE
BEAVERTON, OR 97005

REGULAR MEETING
APRIL 12, 2004
6:30 p.m.

CALL TO ORDER:

ROLL CALL:

PRESENTATIONS:

- 04061 Overview of the Washington County Cooperative Library Services Levy of May 18, 2004, Measure 34-77
- 04062 Project Update – Beaverton Software-Focused Business Incubator

CITIZEN COMMUNICATIONS:

COUNCIL ITEMS:

STAFF ITEMS:

ACTION ITEM:

- 04063 Authorize Mayor to Sign IGA with Clean Water Services for the Cooperative Operation of Sanitary Sewer, Storm and Surface Water Facilities

ORDINANCES:

First Reading:

- 04064 An Ordinance Amending Ordinance No. 2050, the Development Code, Chapter 20 (Land Use) and 90 (Definitions); TA 2004-0002 (Regional Center Commuter Rail Text Amendments) (Ordinance No. 4295)
- 04065 An Ordinance Amending Ordinance No. 4187, Figure III-I, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located at 1250 NW Waterhouse Avenue, CPA 2003-0018/ZMA 2003-0020 (Ordinance No. 4296)

Second Reading:

04059 An Ordinance Adopting TA 2004-0001 to Amend Development Code
Section 10.70 (Enforcement) (Ordinance No. 4294)

EXECUTIVE SESSION:

In accordance with ORS 192.660 (1) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (1) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations and in accordance with ORS 192.660 (1) (e) to deliberate with persons designated by the governing body to negotiate real property transactions. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

ADJOURNMENT

This information is available in large print or audio tape upon request. In addition, assistive listening devices, sign language interpreters, or qualified bilingual interpreters will be made available at any public meeting or program with 48 hours advance notice. To request these services, please call 526-2222/voice TDD.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Overview of the Washington County
Cooperative Library Services Levy of May
18, 2004, Measure 34-77

FOR AGENDA OF: 04/12/04 **BILL NO:** 04061

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: Library *[Signature]*

DATE SUBMITTED: 03/02/04

CLEARANCES:

Finance *[Signature]*
City Attorney *[Signature]*

PROCEEDING: Presentation

EXHIBITS: None

BUDGET IMPACT

EXPENDITURE REQUIRED \$/A	AMOUNT BUDGETED \$/A	APPROPRIATION REQUIRED \$/A
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HISTORICAL PERSPECTIVE:

The Washington County Cooperative Library Services had an operating levy on the November 2002 ballot that was defeated by only 611 votes. As a result of the levy's defeat, member libraries had to make significant budget cuts which resulted in the reduction of hours, book budgets and various services. The Washington County Commissioners have placed a similar Local Option Levy to Restore and Maintain Countywide Library Services, Measure 34-77, on the May 18, 2004 ballot. The operating levy would provide financial resources with which WCCLS member libraries may restore hours of operation, book budgets, and related services.

INFORMATION FOR CONSIDERATION:

Eva Calcagno, Manager of the Administrative Offices for the Washington County Cooperative Library Services, will make an informational presentation on the Local Option Levy, Measure 34-77.

RECOMMENDED ACTION:

City Council to listen to presentation and ask questions about the Levy.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

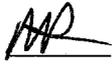
SUBJECT: Project Update –Beaverton Software-
Focused Business Incubator

FOR AGENDA OF: 04-12-04 **BILL NO:** 04062

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Mayor's Office 

DATE SUBMITTED: 04-06-04

CLEARANCES: City Attorney 

PROCEEDING: PRESENTATION

EXHIBITS:

BUDGET IMPACT

EXPENDITURE REQUIRED \$-0-	AMOUNT BUDGETED \$-0-	APPROPRIATION REQUIRED \$-0-
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HISTORICAL PERSPECTIVE:

On January 12, 2004, City Council approved the Business Plan for a software-focused business incubator and authorized staff to move forward to implementation. This report is the second update on progress toward opening the incubator.

INFORMATION FOR CONSIDERATION:

Since the last update, efforts have been focused in two main areas: finding appropriate space for the incubator and setting up the legal structure for operations of the incubator.

Staff and consultants developed criteria for evaluating real estate options. Based on the criteria, five spaces were toured in detail, and numerous others in a cursory fashion. Detailed budget figures will be developed for two to three of these spaces and negotiations will then begin.

Because of the time needed to establish a new non-profit corporation, it is common for a new incubator to work under the auspices of an existing non-profit as it gets started, then convert to the new organization after it is formally accepted as a 501(c)(3) corporation. At this point, it appears the best option to pursue is minor modifications to the non-profit created to manage public spaces downtown, called the Beaverton Central Plaza Management Group. A final decision on pursuing this structure will occur within a week.

Staff made a presentation to the Chamber of Commerce Opportunity Knocks conference on the Business Incubator. It was a well attended session. Staff also presented information on the incubator to the Board of Directors of the Software Association of Oregon. They are keenly interested in the incubator and are considering ways to support it as they complete their strategic planning for the upcoming year.

RECOMMENDED ACTION:

Staff respectfully recommends that the City Council listen to the update and provide feedback on implementation of the business incubator.

Agenda Bill No: 04062

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Authorize Mayor to Sign IGA with Clean Water Services for the Cooperative Operation of Sanitary Sewer, Storm and Surface Water Facilities

FOR AGENDA OF: 4/12/04 **BILL NO:** 04063

Mayor's Approval:

L. Dale G. Lillard
Mayor Pro Temp

DEPARTMENT OF ORIGIN: Operations

DATE SUBMITTED: 03-31-04

CLEARANCES: Finance
City Attorney
Planning
Engineering

[Signatures]

PROCEEDING: Action Agenda

EXHIBITS: Current IGA
Proposed IGA

BUDGET IMPACT

EXPENDITURE REQUIRED\$	AMOUNT BUDGETED\$	APPROPRIATION REQUIRED \$
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HISTORICAL PERSPECTIVE:

Clean Water Services operates wastewater treatment facilities and manages storm and surface water drainage facilities within its boundaries under the terms and conditions of an NPDES/MS-4 permit issued by the Oregon Department of Environmental Quality. The City performs a variety of functions important to the operation, maintenance and management of wastewater conveyance systems, storm and surface water management facilities within the City limits and to a point just "upstream" of City limits in support of the Work Programs and Performance Criteria established by Clean Water Services. The City and District allocate this work under an IGA which provides for the cooperative operation of service facilities under ORS 451.560 and ORS Chapter 190. The City and Clean Water Services have been operating under the current IGA since July 23, 1990 (copy attached). The IGA is subject to periodic review and renewal.

INFORMATION FOR CONSIDERATION:

A new, combined NPDES/MS-4 Permit has recently been issued to Clean Water Services by the Oregon Department of Environmental Quality. This new Permit establishes an integrated Tualatin River basin-based approach to the management of wastewater treatment and discharge and storm and surface water management. Service responsibilities and areas will be adjusted throughout Clean Water Services District boundaries to reflect the change from a jurisdictional approach to wastewater and storm and surface water management to a basin drainage approach that uses natural stream and creek flows to establish some service territories. Using drainage basins to maintain and manage wastewater, storm and surface water conveyance systems is expected to create maintenance efficiencies and to enhance water quality. This new IGA establishes more effective and more definitive criteria for storm and surface water quality management, which is consistent with the requirement to improve overall water quality in the Tualatin River Basin as discussed in the new NPDES/MS-4 Permit. The City will have greater responsibility for managing discharges to streams and creeks within the City and will participate with the other member cities and Clean Water Services in the development and implementation of regional strategies to improve Tualatin Basin water quality. The creation of Service Responsibility Areas will provide for the City and Clean Water Services to achieve greater maintenance efficiencies and to reduce the City's need to acquire new equipment and maintenance personnel due to annexation of areas currently outside the City limits. Under this arrangement, the City will retain the authority to develop and to implement master plans for any newly annexed areas. This new IGA also clarifies the District's funding obligations for system repairs and improvements for future annexations.

RECOMMENDED ACTION:

Authorize Mayor to sign Agreement.

AGREEMENT

THIS AGREEMENT is made and entered into as of the 23rd day of July, 1990, between the City of Beaverton, a municipal corporation of the State of Oregon, hereinafter referred to as "City," and the Unified Sewerage Agency of Washington County, a municipal corporation and county service district, hereinafter referred to as the "Agency."

WHEREAS, the Agency was duly formed and organized under ORS Chapter 451, has the authority to provide sanitary sewerage treatment facilities, and to provide for storm and surface water management within its boundaries; and City is within the Agency by action of its Council and pursuant to an election duly conducted within the boundaries of the Agency; and

WHEREAS, City and Agency have the authority to enter into contracts for the cooperative operation of service facilities under ORS 451.560 and ORS Chapter 190; and

WHEREAS, Agency has developed a master plan and a master plan update for sewerage facilities, and a surface water management plan, and is in a position to coordinate and unify sanitary sewer treatment facilities and storm and surface water management, and regulation of waste water quality and quantity into an integrated system for the areas within the Agency; and

WHEREAS, City and Agency previously entered into an Agreement for the cooperative operation of sanitary sewer service facilities, and said Agreement is in need of amendment to address surface water management functions and other issues; and it would be in the best interest of the Agency and City to consolidate provisions of the original agreement, previous amendments, and additional amendments into a single document.

NOW, THEREFORE, in consideration of the covenants and agreements to be kept and performed by the parties hereto, it is agreed as follows:

Section 1. Definition of Terms

Wherever the following terms are used in this agreement they shall have the following meaning unless otherwise specifically indicated by the context in which they appear:

A. Board shall mean the Board of Directors of the Agency, its governing body.

B. Connection Charge means the amount charged for connection to the sanitary or storm and surface water system.

C. Council shall mean the City Council, governing body of the City.

D. Dwelling Unit (DU) means a separate living unit with kitchen facilities including those in multiple dwellings, apartments, mobile homes and trailers. For nonresidential properties, a DU or Dwelling Unit Equivalent (DUE) shall be determined by Agency Ordinance, and Agency resolutions adopted thereunder.

E. Equivalent Service Unit (ESU) is the unit of impervious surface area which generates the storm and surface water runoff equal to a single family residential property, as determined by Agency Ordinance, and Agency resolutions adopted thereunder.

F. Impervious Surface Area includes all areas that have been altered from their natural state such that they do not allow the infiltration and retention equivalent to that of undisturbed soil. This shall include, but is not limited to pavement, buildings, decks, parking areas, and compacted gravel areas.

G. Industrial Waste means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industrial or manufacturing business, or from the development or recovery of natural resources. For the purposes of this agreement, Industrial Waste shall also include any substance regulated under 33 USC Sec 1317, together with regulations adopted thereunder.

H. Operation and Maintenance means the regular performance of work required to assure continued functioning of the storm and surface water system and the sanitary sewerage system and corrective measures taken to repair facilities to keep them in operating condition.

I. Order means Resolutions, Orders and Directives of the Agency prescribing general standards and conditions for construction or use of the storm and surface water facilities and the sanitary sewerage facilities, and rates and charges therefor.

J. Permit Application and Inspection Fee means fees charged an applicant for permits and related inspections for connections to the storm and surface water system and the sanitary sewerage system.

K. Person means the state of Oregon, any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.

L. Sanitary Sewerage System means any combination of sewer treatment plant, pumping, or lift facilities, sewer pipe, force mains, laterals, manholes, side sewers, laboratory facilities and equipment, and any other facilities for the collection, conveyance, treatment and disposal of sanitary sewage comprising the total publicly-owned sanitary sewerage system within Agency jurisdiction, to which storm, surface and ground waters are not intentionally admitted.

M. Sanitary Sewer Service Charge means a regular charge to a property owner or occupant of designated premises for the use of the sanitary sewerage system.

N. Sewage Treatment Facility means any facility designed for the purpose of the appropriate treating, holding, disposal, and discharge or reuse of sanitary sewage, including byproducts of such treatment processes.

O. Sewage Collection System means any system of pipes, and pumping facilities designed for the collection of sanitary sewage for the purpose of transporting such material to a sewage treatment facility.

P. Standards means the standards and conditions of use of the storm and surface water system and the sanitary sewer system as specified and adopted by the Agency. Standards also shall mean applicable statutes and rules of the United States and the State of Oregon.

Q. Storm and Surface Water Service Charge means a regular charge to a property owner or occupant of designated premises for the contribution of runoff or pollution, (as defined in ORS 468.700), or both to the storm and surface water system.

R. Storm and Surface Water System means any combination of publicly owned storm and surface water quality treatment facilities, pumping, or lift facilities, storm drain pipes and culverts, open channels, creeks and rivers, force mains, laterals, manholes, catch basins and inlets, grates and covers, detention and retention facilities, laboratory facilities and equipment, and any other publicly owned facilities for the collection, conveyance, treatment and disposal of storm and surface water comprising the total publicly owned storm and surface water system within Agency jurisdiction, to which sanitary sewage flows are not intentionally admitted.

S. Storm and Surface Water System Development Fee is a charge for construction or other activity that causes or is likely to cause, an increase from the natural state of storm water runoff quantity or pollution, (as defined in ORS 468.700), or both, to the storm and surface water system. Such fee is for capital improvements associated with such construction or other activity, and may be a reimbursement fee or a fee for improvements to be constructed.

Section 2. Operating Procedures and Relationships

The City agrees to:

- A. Follow and enforce the orders promulgated by the Agency, and to notify Agency of apparent violations thereof which may require Agency legal action. The Agency, in cooperation with the Cities and the Committee formed in Section 5-C, shall adopt policies, standards, specifications, and performance criteria necessary for the proper and effective operation of the Agency and to comply with State and Federal permits, laws and regulations.
- B. Refer persons who may require an industrial waste discharge permit to the Agency. City shall not issue any sanitary sewer permit to non-residential customers without verification that the Agency has issued an industrial waste permit, or the Agency has determined that none is required.
- C. Provide notice to and obtain Agency review and approval of plans and specifications as the Agency may require for any addition, modification or reconstruction (other than repairs) of the publicly-owned sanitary sewerage system prior to undertaking work thereon.
- D. Provide notice to and obtain Agency review and approval of plans and specifications as the Agency may require prior to allowing any addition or construction (other than repairs) of the publicly-owned storm and surface water system to insure conformance to adopted Agency standards, orders, and master plans.
- E. Obtain Agency review and approval prior to entering into any agreement for the use of the storm and surface water system or the sanitary sewerage system, other than for issuance of connection permits.
- F. Inform the Agency in writing not less than 30 days prior to initiating or entering into any agreement for the financing or incurring of indebtedness relating to the storm and surface water system or the sanitary sewerage system. City shall not obligate any Agency revenues of the sewer fund or storm and surface water fund, nor shall facilities of the Agency's sanitary or storm and surface water system be obligated for any debt.

- G. Establish in its record a separate account for the storm and surface water program and one for the sanitary sewerage program for the purpose of accounting for connection and user fees collected and received by the City pursuant to this agreement.] ★
- H. Allow the Agency access at any reasonable time upon reasonable notice to inspect and test storm and surface water facilities and sewerage facilities within the City.
- I. Grant the Agency permits from time to time as may be necessary for the installation of storm and surface water facilities and sewerage facilities in the public streets and ways of the City without imposing permit issuance fees, provided that the Agency shall adhere to any conditions required pursuant to ORS 451.550(6).
- J. Take such curative or remedial action as and when necessary to maintain that portion of the publicly-owned sanitary sewerage system under the jurisdiction of the City in accordance with prescribed Agency standards, subject, however, to budgetary limitations and to the extent that the City may be lawfully authorized to act.
- K. Follow and accomplish the work program developed by the Agency for the storm and surface water program for that portion of the publicly-owned storm and surface water system under the jurisdiction of the City as defined in Section 3-A in accordance with prescribed Agency standards, subject, however, to budgetary limitations and to the extent that the City may be lawfully authorized to act.
- L. To issue no new permit for the construction within, or modification to a wetland, floodway, or floodplain without first receiving the written approval by the Agency to do so. This paragraph shall not apply to permits issued by City pursuant to a current permit under 33 USC Section 1344(e), (a section 404 general permit), and within the scope of such permit.
- M. To pursue when City deems feasible and appropriate the conversion of storm and surface water facilities from private to public ownership, through the acquisition of easements and other property rights as necessary, for those privately owned storm and surface water facilities which are identified as being necessary or appropriately a part of the public system.

Section 3. Ownership and Responsibilities

- A. The City shall be responsible for the installation, construction, operation, maintenance, repair, replacement, and financing; processing of non-industrial and erosion control permit applications; inspection of connections; billing, collection, accounting and recording connection fees, inspection fees, and monthly service charges; within its corporate limits and within the purview of this agreement for the following facilities and functions:
1. Sanitary sewer lines and facilities having a diameter of less than 24 inches, unless otherwise agreed to by the Agency and City.
 2. Storm and surface water facilities within the City, and the portions of the total work program, to be the responsibility of the City are identified and described in the Program Summary and Map, hereby incorporated as Exhibit A. This Program Summary and Map may be modified from time to time by mutual written agreement of the City and Agency.
- B. The Agency shall be responsible for the installation, construction, operation, maintenance, repair, replacement, and the financing thereof, of all publicly owned storm and surface water facilities, and sanitary sewerage facilities within the City not identified in Section A above. In addition, the Agency shall have exclusive jurisdiction over industrial waste discharges with regard to permits, service fees, billings, collection, regulations and enforcement. Upon receipt of any application for an industrial waste discharge permit within a City territory, the Agency shall so inform City and shall coordinate with any other applicable development or construction permits of City.
- C. The City previously transferred to Agency certain real and personal property of the sanitary sewerage system. The City hereby transfers, assigns and set over to the Agency all of the City's ownership interests in and to the storm and surface water facilities of the City listed in Exhibit A and described in Section B above, as being the responsibility of the Agency. City further transfers to Agency all easements, rights-of-way and permits held by the City with respect to the foregoing but subject to the terms and provisions thereof, to all of which the Agency shall be bound and conform and shall save, hold harmless and indemnify the City from any failure to conform thereof, to the extent allowed by law. City and Agency shall execute all documents necessary to transfer title to any real property interests by December 31, 1990.

With respect to all transfers of fee title to real property, each party shall have the right, at its expense, to perform an environmental assessment prior to accepting title to property. Any terms and conditions prescribing cleanup of the property shall be subject to negotiation of the parties and included in the instrument of transfer of the property. Agency agrees that all of its right, title and interest in any and all facilities transferred to it by City under this subsection shall revert to City no later than six months after Agency discontinues operation or use of such facility and Agency agrees to execute any and all documents necessary to effect such conveyance.

- D. The City hereby excepts and reserves to itself all interests in real property not expressly to be transferred by this agreement, including all such property utilized in connection with treatment facilities; provided, however, that the City does hereby grant to the Agency consent for the nonexclusive use of such lands as may be necessary to enable the Agency to own, operate and maintain such facilities.
- E. Agency will not establish local assessment districts within the City, without first obtaining City approval.
- F. Agency will process applications from City pursuant to Section 2-L for Wetland, Floodplain, and Floodway modifications. Upon review and approval by USA, and upon request by City, the Agency shall act as a facilitator and liaison for State and Federal review and permit processes.

Section 4. Administration, Operation and Maintenance of Sewerage Facilities

City and Agency agree that:

- A. City and Agency agree to divide revenues collected pursuant to this agreement as follows:
 - 1. To remit payments on a monthly basis, with a report on Agency-designated forms.
 - 2. Payments shall be due upon 30 days of receipt of the revenue by the billing party, unless the payment has been appealed by the billing party. If the payment has been appealed by the billing party under the dispute resolution process of Section 6, the amount in dispute may be withheld or paid without prejudice to either party.

3. The Agency Board shall determine and certify annually for the sanitary sewerage program, and for the storm and surface water program, the portion of the monthly service charge, and the portion of the connection charge allocated for each of the following:

REMITTED TO
USA AGENCY

CITY PORTION 4A3b →

a. Retirement of revenue bonds

b. The portion required for the City system as defined in Section 3-A

REMITTED TO
USA

c. The portion required for the Agency responsibilities

4. City shall remit to the Agency the portion of sanitary sewer service charges and connection fees collected, and storm and surface water service charges and connection fees collected, as identified in Sections 4-A-3-a and c, and shall retain the service charge and connection fee revenue identified in Section 4-A-3-b.
5. City may charge and collect a service charge or connection fee at a higher rate per DUE and ESU than that set by the Agency when the City determines it is needed for the local City system. The City shall retain 100% of these additional revenues collected. Such additional charge shall be consistent with applicable federal rules in order to preserve eligibility for grants and other funding programs.
6. For connection fees paid by "Bancroft" financing, the billing party shall remit the portion of each payment collected, including interest on the Bancroft payment, as determined in Section 4-A-3.
7. For permit and inspection fees for private development construction of public storm and surface water facilities and sanitary sewer facilities, and for erosion control permit fees, the City shall remit to the Agency a fee to compensate the Agency for its costs for services performed relative to these fees, as prescribed by Agency Order.
8. For Industrial Waste fees, Agency shall remit to City twenty percent (20%) of connection, volume, and monthly service charges collected. Agency shall retain one-hundred percent (100%) of the annual permit fee, and any penalty fees, COD, SS and other fees that may be assessed.

- B. City will institute administrative procedures within a reasonable time to diligently maintain regular billings and collection of fees, adjust complaints thereto, and pursue delinquency follow-ups and take reasonable steps for collection thereof.
- C. Agency or City may at any reasonable time upon reasonable notice inspect and audit the books and records of the other with respect to matters within the purview of this agreement. Additionally, the City and Agency shall prepare and submit to each other a performance report of the storm and surface water functions, and the sanitary sewer functions for which each is responsible. The performance report shall be prepared every 6 months, and shall be provided to the other no later than September 1 and March 1 of each year. The performance report, for each function, shall address the performance in those areas necessary for permit compliance.
- D. The City and the Agency may each need extra help from time to time that might be supplied by the other. In such a case, either City or the Agency in utilizing the services of an employee of the other shall pay the lending government the employee's salary rate plus direct salary overhead currently in effect for the time worked.
- E. Interest shall accrue on late payments at a rate of three-quarters of one percent (0.75%) per month on the unpaid balance.
- F. The City and Agency may, each at its own cost, install permanent and temporary volume and quality monitoring stations to determine the effectiveness of City and Agency programs.
- G. The performance reports from each City will be reviewed by the Committee established in Section 5-C, following the procedure defined in a separate agreement between the Agency and member Cities.

Section 5. Other Provisions

The City and the Agency further agree that:

- A. The Agency will not extend sewer service to areas outside the City except with prior approval of the City where such areas are included in the Urban Planning Area Agreement between the City and the appropriate county or counties.

- B. The City and the Agency will each obtain such insurance contracts as necessary to cover the liabilities of the City and the Agency respectively for the risks and liabilities arising from activities and operations under this agreement. In the event that either party chooses to be self insured, that party shall maintain and furnish proof of separately identified and unencumbered reserves for the maximum liability allowed under state law.
- C. Establish a Committee made up of one representative from Washington County and one representative from each member City within the Agency, which will meet quarterly, or more frequently if needed, to review, advise, and be heard by the Agency on the standards, regulations and specifications, work programs, capital improvement programs, rates and charges, long range planning, and other matters covered by the Agreements with the member Cities.
- D. At such time as the Agency shall discontinue operation or use of any facilities on City-owned premises, the Agency shall remove such equipment, facilities or fixtures therefrom within a period of six months after such discontinuance unless otherwise determined by the parties. The Agency shall demolish or remove facilities, the sites thereof shall be left free and clear of all demolition waste and debris. Any environmental clean-up necessitated by Agency operation shall be the sole responsibility of Agency. In the event of cleanup involving acts of third parties, the cleanup costs therefor shall be subject to negotiation by the parties.
- E. City and Agency shall each be responsible for the negligent or wrongful acts of its officers, employees, agents, and volunteers, while performing work related to this agreement. Each party shall be solely responsible for defense, costs or payments arising from legal challenge alleging improper use by that party of funds derived from this agreement, or otherwise held by that party. Each party shall be responsible for any liability arising out of its ownership of real property and interests therein, activities governed by an NPDES permit or other air or water discharge permit issued by competent authority to that party, and any conduct of that party subject to direct regulation by state or federal authority.

- F. Nothing in this agreement shall be construed as a limitation upon or delegation of the statutory and home rule powers of the City, nor as a delegation or limitation of the statutory powers of the Agency. This Agreement shall not limit any right or remedy available to City or Agency against third parties arising from illegal acts of such third parties.
- G. Where this Agreement calls for review or approval of a fee or charge, Agency shall perform such review in a timely manner, shall not unreasonably withhold approval, and shall provide its decision to the City in writing. If, within 30 days of written request by City for approval by Agency, the Agency has failed to provide a written response, the request shall be deemed approved.

Section 6 Dispute Resolution; Remedies

- A. In the event of a dispute between the parties regarding their respective rights and obligations pursuant to this Agreement, the parties shall first attempt to resolve the dispute by negotiation. If a dispute is not resolved by negotiation, the exclusive dispute resolution process to be utilized by the parties shall be as follows:
 - 1. Step 1. Upon failure of those individuals designated by each party to negotiate on its behalf to reach an agreement or resolve a dispute, the nature of the dispute shall be rendered to writing and shall be presented to the City's Chief Executive Officer and Agency General Manager, who shall meet and attempt to resolve the issue. If the issue in the dispute is resolved at this step, there shall be a written determination of such resolution, signed by the City's Chief Executive Officer and Agency General Manager, which determination shall be binding on the parties. Resolution of an issue at this step requires concurrence of both parties' representatives.
 - 2. Step 2. In the event a dispute cannot be resolved at Step 1, the matters remaining in dispute after Step 1 shall be reduced to writing and forwarded to the Mayor and the Chairman of the Board of Directors. Upon receipt of the written issue statement, the Mayor and Chairman shall meet and attempt to resolve the issue. If the issue is resolved at this step, a written determination of such resolution shall be signed by the Mayor and Chairman. Resolution of an issue at this step requires concurrence of both the Mayor and the Chairman.

3. Step 3. In the event a dispute cannot be resolved at Step 2, the parties shall submit the matter to mediation. The parties shall attempt to agree on a mediator. In the event they cannot agree, the parties shall request a list of five (5) mediators from the American Arbitration Association, or such other entity or firm providing mediation services to which the parties may further agree. Unless the parties can mutually agree to a mediator from the list provided, each party shall strike a name in turn, until only one name remains. The order of striking names shall be determined by lot. Any common costs of mediation shall be borne equally by the parties, who shall each bear their own costs and fees therefor. If the issue is resolved at this step, a written determination of such resolution shall be signed by both parties. Resolution of an issue at this step requires concurrence of by both parties. In the event a dispute is not resolved by mediation, the aggrieved party may pursue any remedy available to it under applicable law.

B. Neither party may bring a legal action against the other party to interpret or enforce any term of this Agreement in any court unless the party has first attempted to resolve the matter by means of the dispute resolution of subsection A above. This shall not apply to disputes arising from a cause other than interpretation or enforcement of this Agreement.

Section 7 Effect of this Agreement

This Agreement shall supersede all prior agreements and amendments between the parties with respect to sanitary sewerage and service, storm and surface water management; provided that, except as expressly modified herein, all rights, liabilities, and obligations of such prior agreements shall continue. This agreement shall be effective upon its execution by both parties hereto, and shall continue in effect for four renewable terms of five years each. This agreement shall be deemed automatically renewed for a succeeding five year term up to a limit of 20 years, unless either party gives the other written notice not less than one year prior to the nominal expiration of a term of its intent not to renew this agreement. This agreement may be modified only by written amendment.

Section 8 Severability

In the event a court of competent jurisdiction shall deem any portion or part of this Agreement to be unlawful or invalid, only that portion or part of the Agreement shall be considered unenforceable. The remainder of this Agreement shall continue to be valid.

IN WITNESS WHEREOF, this instrument has been executed in duplicate by authority of lawful actions by the City Council and Agency Board of Directors.

UNIFIED SEWERAGE AGENCY
OF WASHINGTON COUNTY, OREGON

CITY OF BEAVERTON, OREGON

By Bonnie L. Hays
Chairman, Board of Directors

By [Signature]
Mayor

Approved as to Form:

Attest: [Signature]
City Recorder

[Signature]
Attorney for Agency

[Signature]
City Attorney

APPROVED UNIFIED SEWERAGE AGENCY
BOARD OF DIRECTORS

MINUTE ORDER # 90-114

DATE 6/20/90

BY [Signature]
CLERK OF THE AGENCY

EXHIBIT A

PROGRAM SUMMARY
 CITY OF BEAVERTON, OREGON
 ANNUAL BUDGET
 FY 1990-91

DEPARTMENT OVERVIEW

DEPARTMENT: 85 OPERATIONS

FUND: 513 STORM DRAINAGE

MANAGER: STEVE BAKER

REQUIREMENTS	FY 1987-88 ACTUAL	FY 1988-89 ACTUAL	FY 1989-90 BUDGETED	FY 1990-91 PROPOSED	FY 1990-91 ADOPTED
POSITION	2.90	3.50	6.50	7.70	
PERSONAL SERVICES	\$112,742	\$142,722	\$226,928	\$354,628	
MATERIALS & SERVICES	4,292	4,944	38,725	69,060	
CAPITAL OUTLAY		70,920	426,540	622,500	
TRANSFERS			95,164	324,982	
CONTINGENCY			191,987	53,302	
TOTAL	\$117,034	\$218,586	\$979,344	\$1,424,472	

Funding Sources:

	<u>FY 1987-88</u>	<u>FY 1988-89</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>	<u>FY 1990-91</u>
- Storm Sewer Connection Fees	\$4,710	\$8,840	\$71,664	\$120,000	
- Services Fees			733,561	970,000	
- Miscellaneous Revenues	844	457	46	41,666	
> Transfer from Street Fund	117,034	218,419	159,389		
- Beginning Working Capital		5,554	14,684	292,806	

Funding of projects FY 1990-91:

Storm Drain Inventory	\$400,000
Impervious Area Base Maps	100,000

CITY OF BEAVERTON, OREGON
ANNUAL BUDGET
FY 1990-91

STORM DRAINAGE MAINTENANCE

The Storm Drainage Program, maintains the public drainage system by preventing standing water in roadways and flooding, by allowing maximum water flow within the system. This is accomplished through cleaning and repair of catch basins, storm ditch grates, and the culvert system. This maintenance is accomplished through use of specialized equipment, high velocity cleaning truck, storm culvert rodding and video inspection equipment. In utilizing two sweepers, we maintain debris-free street and storm gutter systems.

INVENTORY SUMMARY

<u>ASSETS</u>	<u>NUMBER OF UNITS</u>
Storm Drain Culverts	159 Miles*
Manholes	1,841 Each*
Catch Basins	4,874 Each*
Storm Ditches	7.47 Miles*
Storm Grates	30 Each*
Storm Detention Pipes	69 Each
Storm Detention Ponds	5 Each

INVENTORY DETAIL

<u>SIZE</u>	<u>LENGTH (MILES)*</u>	<u>PERCENT</u>
6"	.78 Miles	49%
8"	9.07 Miles	5.70%
10"	22.74 Miles	14.30%
12"	60.37 Miles	37.97%
15"	18.44 Miles	11.60%
18"	6.45 Miles	4.06%
21"	2.00 Miles	1.26%
24"	22.72 Miles	14.29%
30"	6.19 Miles	3.89%
36"	3.90 Miles	2.45%
48"	2.67 Miles	1.68%
60"	1.65 Miles	1.04%
70"	1.53 Miles	.96%
108"	.49 Miles	.31%
TOTAL 159.00 Miles		100.00%

*Until base maps and field investigation is complete these figures are estimates.

CONDITION ASSESSMENT

The video van was delivered in late December 1989. After receiving training, field inspections began in January 1990, with emphasis on new developments prior to the City's acceptance. A detailed assessment of the culverts will not be available for several years depending on development workload.

<u>TYPE</u>	<u>EXCELLENT</u>	<u>GOOD</u>	<u>FAIR</u>	<u>POOR</u>	<u>TOTAL</u>
Storm Grates	5	19	6	0	30
Storm Detention Pipes	16	39	9	5	69
Storm Detention Ponds	0	0	0	5	5
TOTAL					<u>104</u>

**ASSET MAINTENANCE SCHEDULE
SERVICE LEVELS**

Service Level - Low - \$

- Video storm drain inspection. Visual, lamp-mirror inspect, limited video scanning only where flagger traffic control is not required. An estimate of 500 feet per day or 10 miles in 106 days, unit cost is \$____ per mile.

Service Level - Low - \$

- Storm drain culvert maintenance. Inspect, flush and high velocity clean obstructed areas, repair as needed. String lines for video crew. Estimate of 10 miles at \$____ per mile.

Service Level - Low - \$

- Storm culvert root control. Rodder clean root obstructed areas only. Estimate of 640 man hours or at \$____ per manhour.

Service Level - Low - \$

- Catch basin maintenance. Deep and surface clean 2,500 plus catch basins annually - maintain grate tops. Estimate 800 manhours at \$ 22 per catch basin.

CITY OF BEAVERTON, OREGON
ANNUAL BUDGET
FY 1990-91

Service Level - Low - \$

5. Storm ditch grate cleaning and repair. Inspect all 30 grates after heavy rainfall remove obstructing debris. Estimate 225 grate cleaning activities which unit cost will be \$___ per grate.

Service Level - Low - \$

6. High velocity clean storm detention pipes. Schedule cleaning of plugged outlets. Estimate 15 days at 2 per day, unit cost or \$___ per pipe.

Service Level - Low - \$

7. Drainage ditch cleaning. Annually inspect and remove loose debris only from roadside ditches. Estimate 5 days at 1.7 miles per day, unit cost \$___ per mile.

Service Level - High - \$

8. Street sweeping. Sweep entire city of 156 miles of improved streets in 35 work days, core area once a week, and Library parking lot once each month. Estimate of one complete cycle in 35 working days, unit cost \$___ per curb mile.

Service Level - High - \$

9. Water sampling. Surface water sample and laboratory testing of 20 locations from May through October, at \$_____ per location.

These service levels ranging from low to high, provide a maximum service for the revenues received and allocated to the maintenance program. The implementation of a city wide drainage utility is generating revenue to support a higher service level that will significantly improve overall service.

CITY OF BEAVERTON, OREGON
ANNUAL BUDGET
FY 1990-91

PROGRAM GOALS AND OBJECTIVES

PROGRAM: 0734 STORM DRAINAGE MAINTENANCE

Goals:

To prevent local flooding through proper maintenance and up-keep of storm drainage system.

REQUIREMENTS	FY 1987-88 ACTUAL	FY 1988-89 ACTUAL	FY 1989-90 BUDGETED	FY 1990-91 PROPOSED	FY 1990-91 ADOPTED
POSITION	2.90	3.50	6.50	7.70	
PERSONAL SERVICES	\$112,742	\$142,722	\$226,928	\$328,299	
MATERIALS & SERVICES	4,292	4,944	38,725	34,655	
CAPITAL OUTLAY		70,920	146,540	112,500	
TRANSFERS			95,164	318,322	
CONTINGENCY			191,987	53,302	
TOTAL	\$117,034	\$218,586	\$699,344	\$847,078	

Objectives:

FY 1990-91

1. Perform emergency high pressure flushing and rodding in obstructed areas to prevent drainage line flooding.

RESULTS: This objective has been met.

2. Clean 1,000 catch basins from October 1 through March 31 to ensure correct water collection and reduce standing water.

RESULTS: This objective has been met.

3. Provide complete city sweeping cycle in 65 work days to ensure debris-free streets and storm system throughout the fiscal year.

RESULTS: This objective has been met.

4. Provide video emergency line scanning.

RESULTS: This objective has been met.

5. Respond to and arrive at problem locations for all after

FY 1989-90 Cont.

RESULTS: This objective has been met.

FY 1990-91

1. Perform high pressure flushing and rodding in obstructed areas to prevent drainage line flooding and reduce after hour call-outs to less than five per year.

2. Clean 2,500 catch basins from October 1 through March 31 to ensure unobstructed flow and reduce standing water.

3. Provide scheduled video line scanning of new subdivisions for acceptance within three weeks of request.

4. Provide complete city sweeping cycle in 35 work days to ensure debris-free streets and storm system throughout the fiscal year.

5. Perform emergency line cleaning and clear plugged lines within one day of notification.

AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 1990, between the Cities of Beaverton, Cornelius, Forest Grove, Hillsboro, North Plains, Sherwood, Tigard, and Tualatin, all municipal corporations of the State of Oregon, hereinafter referred to as "Cities," and the Unified Sewerage Agency of Washington County, a municipal corporation and county service district, hereinafter referred to as the "Agency."

WHEREAS, the Agency provides sanitary sewerage and storm and surface water management, and Cities are within the Agency; and

WHEREAS, City and Agency have the authority to enter into contracts under ORS 451.560 and ORS Chapter 190; and

WHEREAS, Agency has entered into agreements with each of the Cities within its boundary which specify the duties and responsibilities of each party; and

WHEREAS, Agency and Cities desire to establish a process to review matters of common concern to the parties, including but not limited to the performance of each City and the Agency relative to the requirements of the agreements, matters addressed in Section 5-A-5 of the agreements, by means of a review Committee made up of representatives of each City.

NOW, THEREFORE, in consideration of the covenants and agreements to be kept and performed by the parties hereto, it is agreed as follows:

Section 1. City committee

- A. The parties hereby establish a Committee made up of one representative from each City within the Agency that is a party to this Agreement. The Committee shall meet quarterly, or more frequently if needed. It shall have authority to review and advise the Agency on the standards, regulations and specifications, work programs, capital improvement programs, rates and charges, long range planning, and other matters covered by the Agreements for Sanitary Sewer and Storm and Surface Water Management (Operating Agreements) with the member Cities.
- B. The Committee shall also have the authority to review the performance of the Cities as to the work programs and standards of the Operating Agreements. Each City hereby agrees to be bound by the decisions of the Committee, subject to the procedures of Section 2.

- C. The agency shall staff the Committee and provide written notice to each City no less than 14 days prior to each meeting. A quorum shall be necessary to transact business, and vote of a majority of the members present is required to act on any matter. All meetings of the Committee shall be open to the public.

Section 2. Procedures

- A. Each City shall prepare and submit to the Agency September 1 and March 1 of each year a performance report of the storm and surface water functions, and the sanitary sewer functions for which the City is responsible under the Operating Agreement. The performance report, for each function, shall address the performance in those areas identified by the Agency as related to NPDES and other permit compliance.
- B. The performance reports from each City will be reviewed by the Committee. If the Committee determines that a City is not meeting the standards, regulations, or work programs adopted by the Agency, then the affected City shall be notified in writing of the deficiencies. The City shall have 60 days to develop and submit to the Agency a plan and schedule to bring the City into compliance with applicable standards. At the next semi-annual review, the Committee will determine whether or not the City is in compliance.
- C. If, within 180 days of the Notice of Deficiency, the Committee determines the City has not remedied the identified deficiencies, written notice thereof shall be sent to the Mayor and City Manager. The City shall have 60 days to develop and submit to the Agency a revised plan and schedule to bring the City into compliance. At the next semi-annual review, the Committee will determine whether or not the City is in compliance.
- D. If, within 180 days of the second Notice of Deficiency, the Committee determines the City has not remedied the identified deficiencies, the Agency shall assume the responsibility for any portion of the program the Agency determines is necessary to bring the City into compliance. The Agency shall make appropriate adjustments to the division of revenue to reflect the change in responsibility. A decision to transfer program responsibility under this section shall constitute an amendment to the Agreement between the Agency and that City.

- E. The Committee, upon making a finding that a City is out of compliance to the extent that immediate action is necessary, may accelerate the process of Sections 2-B, C, and D.
- F. In the event the Agency assumes all or a portion of the responsibilities of the City, the Agency shall at a later date, after receiving appropriate evidence that the City is or will be able to remain in compliance, negotiate with the City to return the program responsibilities to the City. The Agency may require payment of funds to reimburse the Agency for system improvements made to bring the City into compliance.
- G. Nothing in this agreement shall be construed as a limitation upon or delegation of the statutory and home rule powers of the City, nor as a delegation or limitation of the statutory powers of the Agency.

Section 3. Dispute Resolution; Remedies

In the event a dispute under this Agreement is not resolved by negotiation the aggrieved party may pursue any remedy available to it under applicable law.

Section 4. Effect of this Agreement

This agreement shall be effective upon its execution by all parties hereto, and shall continue in effect for a term of thirty (30) years from and after the date hereof. This agreement may be modified only by written amendment of all the parties. This agreement shall continue upon the legal reorganization or consolidation of any party.

Section 5. Severability

In the event a court of competent jurisdiction shall deem any portion or part of this Agreement to be unlawful or invalid, only that portion or part of the Agreement shall be considered unenforceable. The remainder of this Agreement shall continue to be valid.

IN WITNESS WHEREOF, this instrument has been executed in duplicate by authority of lawful actions by the City Councils and Agency Board of Directors.

UNIFIED SEWERAGE AGENCY
OF WASHINGTON COUNTY, OREGON

By *Ronald Hayes*
Chairman, Board of Directors

Approved as to Form:

Keretta Skurdahl
Attorney for Agency

APPROVED UNIFIED SEWERAGE AGENCY
BOARD OF DIRECTORS
MINUTE ORDER # 90-114
DATE 6/26/90
BY *Ann Johnson*
CLERK OF THE AGENCY

CITY OF BEAVERTON, OREGON

John DeLa
Mayor

Attest: *Ann Johnson*
City Recorder

Paula Bay
City Attorney

CITY OF CORNELIUS, OREGON

By _____
Mayor

Attest: _____
City Recorder

City Attorney

CITY OF FOREST GROVE, OREGON

By _____
Mayor

Attest: _____
City Recorder

City Attorney

CITY OF HILLSBORO, OREGON

By _____
Mayor

Attest: _____
City Recorder

City Attorney

CITY OF NORTH PLAINS, OREGON

By _____
Mayor

Attest: _____
City Recorder

City Attorney

CITY OF SHERWOOD, OREGON

By _____
Mayor

Attest: _____
City Recorder

City Attorney

CITY OF TIGARD, OREGON

By _____
Mayor

Attest: _____
City Recorder

City Attorney

CITY OF TUALATIN, OREGON

By _____
Mayor

Attest: _____
City Recorder

City Attorney

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

BY: CITY OF BEAVERTON
AND
UNIFIED SEWERAGE AGENCY

DATE: MAY 29, 1990

SUBJECT: AGREEMENT TO NEGOTIATE IN GOOD FAITH TO CONSIDER CHANGES TO THE PROVISIONS OF THE AGREEMENT BETWEEN CITY AND AGENCY RELATING TO SURFACE AND WASTEWATER MANAGEMENT AND AGREEMENT ESTABLISHING CITY ADVISORY COMMITTEE

- I. By this Memorandum the City of Beaverton (hereafter "City") and Unified Sewerage Agency of Washington County (hereafter "Agency") understand and agree to negotiate in good faith regarding changes to the above captioned agreements on request by either party at any time during the term of the agreement to address the concerns and meet the needs of each other. The following areas are concerns at this time:
- II. A. Regarding Sections 2.B, 4.A.8, and wherever else applicable, relating to Industrial Waste: City desires a provision whereby the agreement can be renegotiated so as to enable City to manage and operate the industrial waste discharge program.
- B. Regarding Sections 2.C, 2.D, 2.E, 2.H, 2.J, 2.K, and 2.L, City desires that the language be modified such that the responsibilities and obligations of City as set forth shall be reciprocal and shall apply equally to the Agency.
- C. Regarding Section 5.A, City wishes to modify language to also include that Agency shall not extend sewer service without City's approval to any area outside the City which lies within an Urban Service Boundary adopted by the City and made a part of the comprehensive land use plans of the City and County.
- D. Regarding Section 2.F, Agency wishes to modify language to increase the Agency's financial protection by rewording the last sentence to read: "City shall not obligate any Agency revenues of the sewer fund or storm and surface water fund, nor shall facilities of the public sanitary or storm and surface water system (excluding movable personal property and building other than pump stations and treatment facilities) be obligated for any debt."
- E. Regarding Section 4.A, the City wishes to negotiate the division of revenues collected on a monthly basis and connection charges (SDC's) for the Storm and Surface Water program.

F. Regarding Section 5.B, Agency wishes to consider modifying the first sentence to read: "The City and the Agency will each obtain such insurance contracts or program of self insurance as necessary to cover the liabilities of the City and the Agency respectively for the risks and liabilities arising from activities and operations under this agreement.

G. Regarding Section 7, the Agency wishes to review the format of opening the agreement for revision, and the term of the agreement. Agency further wishes to consider adding the following to the end of the last sentence: "In the event of termination or expiration of this Agreement, City agrees to make available to Agency all public facilities owned by City for transportation and treatment of sanitary and storm and surface water which are necessary to enable Agency to render public service to persons within and without City, and to prevent a hazard to public health".

H. Regarding Section 8, the City wishes to consider adding the following to the end of the last sentence: "to the maximum extent practical".

III. City Advisory Committee Agreement

A. Regarding Section 1.B, the City wishes to add language to state that the Committee's authority includes the authority to review the performance of the Agency.

B. Regarding Section 2, the City wishes to discuss language such that the review procedure would also apply to the Agency's performance.

IV. The parties agree that upon failure to reach agreement on renegotiation of any or all of these matters of concern within 90 days of the start of negotiations as to a matter, either party may refer the matter to the dispute resolution process set out in Section 6 of the Agreement.

UNIFIED SEWERAGE AGENCY
OF WASHINGTON COUNTY, OREGON

CITY OF BEAVERTON, OREGON

By Stanton L. Sears
General Manager

By Judy O'Connell
Mayor

EXHIBIT "A"

STORM DRAINAGE AND SURFACE WATER
JURISDICTION ASSIGNMENT

As per Section 3 of this agreement and unless otherwise indicated on the attached map, the City assumes ownership, maintenance and other associated functions of the storm drainage and surface water program within the City limits conforming to the work program maintenance standards of this agreement and attached City service levels, subject to budgetary limitations and to the extent that the City may be lawfully authorized to act.

The Agency shall be responsible for those functions described in Section 3.(B.) and for the reach of Fanno Creek as indicated on the attached map. The Agency shall have jurisdiction over said reach of Fanno Creek only where flowing in an open channel and not in culverts, pipes or other enclosed conduits or under bridges. The extent of the City's jurisdiction under bridges shall be drawn at the right-of-way lines on each side of a bridge.

INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF BEAVERTON AND
CLEAN WATER SERVICES

THIS AGREEMENT is made and entered into as of the ___ day of ____, 2004, between the **City of Beaverton** a municipal corporation of the State of Oregon, hereinafter referred to as "City," and **Clean Water Services**, formerly Unified Sewerage Agency, a municipal corporation and county service district, hereinafter referred to as the "District."

WHEREAS as a county service district organized under ORS 451, the District has legal authority for the sanitary sewerage and storm water (surface water) management programs within its boundaries consistent with relevant laws, rules and agreements. The District is the NPDES/Watershed/MS-4 Permit holder, and operates and maintains wastewater treatment facilities, surface water collection system and sanitary sewer systems within unincorporated areas and within certain cities within its boundaries; and

WHEREAS the City has certain legal authority relative to the operation and maintenance of the sewerage and surface water management systems as provided for under its charter, relevant laws, rules and the Agreement. The City performs a variety of functions critical to the operation, maintenance and management of sewerage and surface water management facilities as outlined in the Agreement. It is anticipated that this Agreement may periodically require updating or modification by agreement of the parties; and

WHEREAS in 1989, City consented by action of its Council to have District manage storm and surface water drainage within the District's boundary, including those portions of the system within the City, and consented to the petition to the Portland Metropolitan Area Boundary Commission (Boundary Commission) to expand District's authority to include storm and surface water drainage management, which was granted by the Boundary Commission; and

WHEREAS District and Washington County Cities have enjoyed a strong and effective partnership over more than three decades since District's formation. This partnership has greatly enhanced protection of public health and the environment and has been the foundation of enormous economic growth. Collaboration built through communication must remain as its cornerstone. Accordingly, the District and the City commit to cooperatively and openly engage each other in the timely discussion of topics of interest to the other party. A variety of forums and means will be employed to promote the above such as the Washington County Managers meetings, the City/District Technical Committee as well as ongoing individual communications; and

WHEREAS, City and District have authority to enter into contracts for the cooperative operation of service facilities under ORS 451.560 and ORS Chapter 190; and

WHEREAS, City and District previously entered into an Agreement for the cooperative operation of sanitary sewer and surface water facilities, and said Agreement is in need of amendment.

NOW, THEREFORE, in consideration of the covenants and agreements to be kept and performed by the parties hereto, it is agreed as follows:

Section 1. Definition of Terms

Wherever the following terms are used in this agreement they shall have the following meaning unless otherwise specifically indicated by the context in which they appear:

- A. Area of Assigned Service Responsibility means the areas defined by the map attached as Exhibit A as may be amended.
- B. Board means the Board of Directors of the District, its governing body.
- C. Chief Executive Officer means the City official responsible for managing the day-to-day business affairs of City.
- D. Council means the City Council, governing body of City.
- E. Industrial Waste means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industrial or manufacturing business, or from the development or recovery of natural resources. For the purposes of this agreement, Industrial Waste shall also include any substance regulated under 33 USC Sec 1317, together with regulations adopted thereunder.
- F. Operation and Maintenance means the regular performance of work required to assure continued functioning of the storm and surface water system and the sanitary sewerage system and corrective measures taken to repair facilities to keep them in operating condition, and in compliance with the requirements of applicable laws, regulations, and permits. Operations and Maintenance Activities and responsibilities are defined in Appendix A.
- G. Order means Resolutions, Orders and Directives of the District prescribing general standards and conditions for construction or use of the storm and surface water facilities and the sanitary sewerage facilities, and Rates and Charges.
- H. Person means the state of Oregon, any individual, public or private corporation, political subdivision, governmental agency, municipality,

industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

- I. Program Funding means the revenues allocated to the City through Section 4 of this agreement to follow the adopted work programs and performance standards.
- J. Rates and Charges are defined in the District's "Rates and Charges" Resolution and Order (R&O) No. 01-34, or as may be amended. The following terms when used in this agreement shall be as defined in that R&O:
1. Dwelling Unit Equivalent (DUE)
 2. Equivalent Service Unit (ESU)
 3. Impervious Surface Area
 4. Permit Application and Inspection
 5. Sanitary Sewer Service Charge
 6. Sanitary System Development Charge (SDC; Connection Charge)
 7. Storm and Surface Water Service Charge
 8. Storm and Surface Water System Development Charge
- K. Sanitary Sewerage System means any combination of sewer treatment plant, pumping or lift facilities, sewer pipe, force mains, laterals (to the limit of the public ROW and those which are subject to active rehabilitation), manholes, side sewers, laboratory facilities and equipment, and any other facilities for the collection, conveyance, treatment and disposal of sanitary sewage comprising the total publicly-owned Sanitary Sewerage System within District boundaries, to which storm, surface and ground waters are not intentionally admitted.
- L. Standards means the standards and conditions of use of the storm and surface water system and the sanitary sewer system as specified and adopted by the District. Standards also shall mean applicable statutes and rules of the United States and the State of Oregon. Nothing in this agreement shall prevent the City from establishing more restrictive standards than those established by the District or standards that raise performance requirements.
- M. Storm and Surface Water System means any combination of publicly owned storm and surface water quality treatment facilities, pumping or lift facilities, storm drain pipes and culverts, open channels, creeks and rivers, force mains, laterals, manholes, catch basins and inlets, grates and covers, detention and retention facilities, laboratory facilities and equipment, and any other publicly owned facilities for the collection, conveyance, treatment and disposal of storm and surface water comprising the total

publicly owned Storm and Surface Water System within District's boundaries, to which sanitary sewage flows are not intentionally admitted.

- N. Work Program and Performance Standards are adopted by the District in cooperation with the Cities, to define the activities required to operate and maintain the sanitary sewer and storm and surface water systems.

Section 2. Determination of Programs, Rules, Policies and Standards

The District as the Permit holder is responsible for the management and operation of the sanitary sewer and storm and surface water systems within its boundaries. The City shares certain responsibilities for the operation and maintenance of the sanitary sewer and storm and surface water systems within the City limits. The District is the designated permittee who shall obtain and enforce timely compliance with relevant federal and delegated state Clean Water Act permits for treatment plants, collection systems, and stormwater. The District, in cooperation with the cities from time to time may adopt orders, standards, specifications, work programs, and performance criteria for the proper and effective operation of the sanitary sewer and storm and surface water systems and to comply with state and federal permits, laws and regulations.

The District, when it adopts orders, standards, specifications, work programs and performance criteria shall give prior notice to the City of all proceedings wherein District Board shall consider such adoption. The District shall adopt such orders, standards, work programs and performance criteria only after a public hearing wherein the Board shall address and consider the City's concerns, if any. Any such changes to work programs and performance standards that the Board determines are required by state and/or federal permits or regulations shall not be effective prior to 90 days from the date of adoption by District's Board or as otherwise mutually agreed to by the City and the District. The effective date of any changes to work programs and performance criteria not required by state and/or federal permits and regulations, shall be mutually agreed to by the District and City prior to consideration by the District's Board. The District agrees that whenever practical it shall communicate proposed changes not required by state and/or federal permits and regulations in or before September of the year prior to the proposed adoption so as to allow the District and the City to budget appropriately for the following fiscal year.

City agrees to follow and enforce the Orders, Standards, specifications, work programs, and performance criteria promulgated by the District, subject, however, to program funding and to the extent that City may be lawfully authorized to act. The City shall not be responsible for any failure to act or any defect in performance caused by lack of adequate program funding, inadequacies in the Work Program and Performance Standards as adopted by the District, or lack of lawful authority to act. Lack of adequate funding from the District and compliance with the Work Program and Performance Standards as adopted by the District shall be absolute defenses to any claim against the City under this Agreement. City further agrees to notify District of apparent violations of

the subject Orders, Standards, specifications, work programs, and performance criteria, of which it has knowledge, which may require District legal action or enforcement.

Section 3. Division of Responsibilities

A. Division of Responsibilities

1. The purpose of this agreement is to delineate responsibilities for the performance of specific functions. The responsibilities of the District and City are defined in this Section and Appendix A. Exhibit A is a map showing areas of service responsibilities for the District and the City.
2. All functions relating to the subject matter of this Agreement not specifically listed in this Section or Appendix A as being the responsibility of City shall remain the responsibility of the District.

B. Procedure for Modifying the Division of Responsibilities

1. Responsibilities defined in this Section and Appendix A may be modified from time to time with approval in writing by the Mayor or designee and the District General Manager or designee. Responsibilities may also be changed by notice to the District from the City that the City wishes to assume certain maintenance responsibilities for a specific area or areas that are inside the City Limits and inside the City's area of Future Maintenance Responsibility as shown on Exhibit A. The City must provide such notice to the District in writing by January 1 of the year in which a transfer of service responsibilities is anticipated. Any transfer of service responsibilities will be effective July 1 of each year. The District will amend the Exhibit A responsibility map to indicate that an area has been added to the City's "Area of Assigned Service Responsibility".
2. Responsibilities defined in this Section and Appendix A may be modified by the District Board provided that the change is necessary to comply with state or federal permits, laws or regulations. The District Board shall not reduce the total scope of City responsibilities without consent of the City unless:
 - a. the Board, after notice to the City and a public hearing, establishes that the City has failed to correct identified instances of non-performance related to the adopted standards that are necessary to comply with state or federal permits, laws or regulations; or,
 - b. the Board decides that there is no practical alternative to a mid-fiscal year change in the allocation of revenue between the District and the City, as provided for in Section 4 of this agreement and

changes the scope of City responsibility to reflect that different allocation of revenue.

3. Upon reasonable notice from City to District, District shall assume responsibility for any portion of the program defined in this Section and Appendix A. Reasonable notice shall be at least six (6) months, unless otherwise agreed to in writing by the District and City. Corresponding adjustments to the revenue allocation shall be made to reflect the change in responsibility upon implementation of such changes. City shall be responsible for correcting or paying to have corrected any deficiencies in the system resulting from non-performance of the programs under its responsibility, subject, however, to funding availability.
4. Areas of service responsibility as shown on Exhibit A (Service Responsibility Area Map) are established as the areas to be maintained by the City and the District under the terms of this agreement. Annexation by the City of areas within the District's boundary will not change service responsibilities if they are also within an area of service responsibility assigned to the District by Exhibit A. Service area responsibilities may be altered based upon the final version of the Beaverton Urban Service Agreement after formal adoption of that Agreement and subsequent consultation between the District and the City. Areas added to the Beaverton Urban Service Area by expansions to the Urban Growth Boundary will be the responsibility of the City to maintain (to the same extent as the City maintains areas already within its City Limits as described in Appendix A and identified on the Service Responsibility Area Map), so long as the parties agree.

C. Additional City Responsibilities

1. Prior to issuing any non-residential sanitary sewer permit, the City shall require the applicant to prepare and submit to City a District Sewer Use Information form. City shall submit the completed form to the District. The District will determine if an Industrial Waste Discharge Permit is required. The District will respond within 15 days from the date that the completed form is received by the District.
2. The City will require persons who are proposing 'development', as defined in the District's Design and Construction Standards Resolution and Order, to obtain a Service Provider Letter from the District. At anytime during the life of this agreement, the City may choose to issue such Service Provider Letters.

3. Following City review and initial Site Development approval, the City will forward proposed construction drawings to the District for the following:
 - a) Any addition, modification, construction, or reconstruction (other than repairs) of the publicly-owned sanitary sewerage system and storm and surface water system. District will review these drawings to assure conformance to adopted District standards, orders, and master plans.
 - b) Any "development" as defined in the District's Design and Construction Standards Resolution and Order. District will review these drawings to assure conformance with the conditions of the Service Provider Letter issued following the provisions in Section 3.C.2.

The District shall not charge a fee for these types of reviews. The City shall not approve or issue permits for such work until it receives notification of District approval. The District shall complete its reviews within 15 working days from its receipt of complete construction drawings from the City, otherwise the City may consider the drawings as being approved by the District.

4. The City may notify the District in writing that it wishes the District to issue Connection Permits for either or both of the sanitary or storm water systems. In such cases, the District shall not issue Connection Permits until the City indicates in writing that the development complies with the City's standards. The City will collect all connection, permit, and development fees for developments within the City unless City and District agree that the District will collect the fees.
5. Other than for issuance of connection permits, the City will obtain District review and approval prior to entering into any agreement for the use of the Storm and Surface Water System or the Sanitary Sewerage System.
6. The City will inform the District in writing not less than 30 days prior to initiating or entering into any agreement for the financing or incurring of indebtedness relating to the storm and surface water system or the sanitary sewerage system. Revenues allocated to the City for the performance of functions identified in Appendix A are considered restricted, and may only be used to perform those functions (including reasonable administration and security for bonds) delegated to the City for such things as operation and maintenance of the sanitary or storm and surface water system. City shall not obligate any assets or facilities of the District's sanitary or storm and surface water system for any debt. In

general, sanitary sewer lines 24" and over and parallel sanitary lines to a common downstream connection with hydraulic capacity equivalent to a 24" line are the property of the District regardless of location, as are sanitary treatment plants and pump stations.

7. The City will allow the District access at any reasonable time upon reasonable notice to inspect and test storm and surface water facilities and sewerage facilities within City and City Area of Assigned Service Responsibility.
8. The City shall waive fees for permits granted to the District as may be necessary for the installation of storm and surface water facilities and sewerage facilities in the public streets and ways of City without imposing permit issuance fees, but only to the same extent as the City waives such fees for itself, and provided that the District shall adhere to any conditions required pursuant to ORS 451.550(6).
9. The City agrees to issue no new permit for the construction within, or modification to, a wetland, floodway, or floodplain without first receiving the written approval by the District, pursuant to Section 5.E. This paragraph shall not apply to permits issued by City pursuant to a current permit under 33 USC Section 1344(e) (a section 404 general permit), and within the scope of such permit. This section does not apply to actions related to City flood insurance program. The City has statutory authority to control land use in flood plain areas and to issue building permits within the City limits.
10. The City agrees to pursue, when City deems feasible and appropriate, the conversion of storm and surface water facilities from private to public ownership, through the acquisition of easements and other property rights as necessary, for those privately owned storm and surface water facilities which are identified as being necessary or appropriately a part of the public system.
11. To the extent that it is so required by law or regulation, City shall comply with Oregon Administrative Rules (OAR) Chapter 340, Division 49, "Regulations Pertaining to Certification of Wastewater System Operator Personnel," including the obligation that City shall have its wastewater collection system supervised by one or more operators certified at a grade level equal to or higher than the system classification shown on page 1 of District's NPDES permit, issued by the State. The District shall notify City of any modification to the NPDES permits affecting their operations.

D. City Responsibilities Outside of its City Limits

1. City is not obligated by this agreement to accept responsibility for any programs or work activities outside of its City Limits other than by mutual agreement of the parties.
2. To the extent City has agreed to responsibilities both inside and outside of its City limits, for activities which are the responsibility of City, City shall perform the work to meet the minimum requirements specified in the District's adopted Work Programs and Performance Standards. When the same type of service is being performed by City or District both inside and outside City, the service shall be prioritized and performed in a like manner in each area, including the response to storms and other emergencies. The exception shall be if City provides a higher degree of service inside City due to its own supplemental funding.

E. Additional District Responsibilities

1. The District will inform the City in writing not less than 30 days prior to initiating or entering into any agreement for the financing or incurring of indebtedness relating to the storm and surface water system or the sanitary sewerage system. Revenues allocated to the District for the performance of functions identified in Appendix A are considered restricted, and may only be used to perform those functions (including reasonable administration and security for bonds) delegated to the District for such things as operation and maintenance of the sanitary or storm and surface water system. The District shall not obligate any assets or facilities of the City's sanitary or storm and surface water system for any debt. In general, sanitary sewer lines 24" and over and parallel sanitary sewer lines to a common downstream connection with hydraulic capacity equivalent to a 24" inch line are the property of the District regardless of location, as are sanitary treatment plants and pump stations.
2. The District will allow the City access at any reasonable time upon reasonable notice to inspect and test storm and surface water facilities and sewerage facilities within City and District Area of Service Responsibility.
3. To the extent District provides services inside the Beaverton City limits, the District shall perform the work to meet the minimum requirements specified in the District's adopted Work Programs and Performance Standards. When the same type of service is being performed by City or District both inside and outside the City, the service shall be prioritized and performed in a like manner in each area, including the response to storms and other emergencies. If the City provides a higher level of service inside its adopted service area due to its own supplemental funding, the District shall provide that same level of service provided

that the allocation of revenue between the parties reflects the cost of the higher level of service.

4. Upon transfer of maintenance responsibilities for an area to the City, the District and the City shall conduct a joint inspection of the sanitary sewer and storm and surface water system. The District shall confirm that it will provide funding for the correction of identified deficiencies in a manner that is consistent with the priorities established by the District's work program. The annexation of an area by the City or the transfer of maintenance responsibilities to the City for an area will not change the priority for repairs or improvements assigned by the District.

Section 4. Determination and Division of Revenue; Operating Procedures and Rules Relating to Revenue

- A. After consultation between City and District staff, the District Board shall determine and certify annually for both the sanitary sewerage system and for the storm and surface water system the monthly service charge and system development charge. The District Board shall make such certification after a public hearing and shall consider and respond to the City's concerns. The City agrees to impose these charges as a minimum. The City may impose additional charges as allowed in Section 4.E.
- B. The District Board shall determine and certify annually for both the sanitary sewerage system and for the storm and surface water system the portion of the monthly service charge and system development charge to be allocated to the City for performance of the functions defined in this Agreement and for the City's share of annual debt service payment. This revenue allocation shall apply to all areas within the City Limits, whether the District or the City provides maintenance, with the understanding that the District and the City will be compensated for all the work which each has been assigned responsibility. The District Board shall make such a certification after a public hearing and after the Board considers and responds to the City's concerns, if any, as to the proposed division of revenue. For purposes of this provision, the current percentages of the monthly service charges and the system development charges retained by the City shall establish the minimum funding allocated to the City for fiscal year 2004-05, except for the following:
 1. The Board may make routine principal and interest adjustments for debt service repayment.
 2. The Board may make adjustments in response to significant increases or decreases in program responsibilities

C. Changes in the division of revenue for the reasons described in Section 4.B 1 & 2 will typically be made as a part of the annual Fiscal Year budget process. However, the division of revenue may be adjusted by the District to recognize changes in responsibilities that occur outside the normal budget cycle when the Board determines that such a change is necessary to comply with state or federal permits, laws or regulations. The Board shall provide prior notice to the City of any need to make any mid-year change in the division of revenue. The Board shall not change the division of revenue without a determination that no other practical alternatives to increase revenues are available and can reasonably be implemented. The Board shall not change the division of revenue during a current fiscal year unless the Board acts to reduce the City's responsibilities to reflect the reduction in revenue.

D. Operating Procedures Relating to Revenue

1. City shall remit to the District the portion of sanitary sewer service charges and systems development charges collected, and storm and surface water service charges and systems development charges collected, less the City Portion, as identified in Section 4.B.
2. Payments shall be remitted on a monthly basis, with a report on District designated forms.
3. Payments to the District of revenue collected by the billing party shall be due within 20 days following the end of each month, unless the payment has been appealed by the billing party.
4. City may charge and collect a service charge or system development charge for areas within the City Limits at a higher rate per DUE and ESU than that set by the District when the City determines it is needed for the system within the City Limits. The City shall retain 100% of these additional revenues collected. Such additional charge shall be consistent with the services provided by City and with applicable federal rules in order to preserve eligibility for grants and other funding programs.
5. City may request District to perform permit and inspection services for private development construction of public storm and surface water facilities and sanitary sewer facilities, and for erosion control. City shall remit to the District the fee set forth in District's Rates and Charges to compensate District for its costs for such services performed relative to these fees, as prescribed by District Order or separate agreement with City.
6. For Industrial Waste fees, District shall remit to City a percentage of system development charges, volume, and monthly service charges

collected equal to the percentages of service charges retained by the City as defined in Section 4.B. District shall retain one hundred percent (100%) of the annual Industrial Waste permit fee, and any penalty fees, COD, SS (as those terms are defined in the Rates and Charges) and other fees related to Industrial Waste that may be assessed.

7. City will institute administrative procedures to diligently maintain regular billings and collection of fees, adjust complaints thereto, and pursue delinquency follow-ups and take reasonable steps for collection thereof.
8. City and District shall each establish separate accounts for the storm and surface water program and sanitary sewerage program for the purpose of accounting for service charges and systems development charges collected and received pursuant to this agreement.
9. District or City may at any reasonable time upon reasonable notice inspect and audit the books and records of the other with respect to matters within the purview of this Agreement.
10. City and District shall each prepare and submit to each other a performance report of the storm and surface water functions, and the sanitary sewer functions for which each is responsible. The District will specify the requirements, frequency, and content of the performance report after considering and responding to the City's concerns.
11. The City and District may, each at its own cost, install permanent and temporary volume and quality monitoring stations, and other monitoring equipment, to determine the effectiveness of City and District programs.
12. Interest may accrue on late monthly payments as specified in Section 4.E.1 at a rate of 1.25 times the monthly Local Government Investment Pool (LGIP) earnings rate as posted for the previous month, and will be applied each month to the unpaid balance.
13. For those services provided by the District within the City Limits and within the District Areas of Service Responsibility as defined by Exhibit A and Appendix A, the division of revenue will be adjusted to compensate the District for the additional cost of any higher service levels required by the City.

Section 5. Administrative and Operating Provisions

- A. The District will not extend sanitary sewer or storm and surface water service to areas within the Beaverton Urban Service Area without prior notice to the City. The District will require new connections to the sanitary sewer system and to the storm and surface water system to occur at locations that are within

the control of the City, provided that a reasonable engineering approach can result in such a connection. For the purposes of this provision a sanitary or storm line that is within the City Limits shall be considered to be within the City's control.

- B. Each party shall obtain and maintain in full force and effect for the term of this agreement, at its own expense, comprehensive general liability and automobile insurance policies for bodily injury, including death, and property damage, including coverage for owned, hired or non-owned vehicles, as applicable, for the protection of the party, and the other party, its elected and appointed officials, officers, agents, employees and volunteers as additional insureds. The policies shall be primary policies, issued by a company authorized to do business in the State of Oregon and providing single limit general liability coverage of \$2,000,000 and separate automobile coverage of \$1,000,000 or the limit of liability contained in ORS 30.260 to 30.300, whichever is greater. If either party is unable to obtain insurance as required by this sentence, the parties shall cooperate on amending this Section to require types and levels of insurance that are available. The certificates shall provide that the other party will receive thirty (30) days' written notice of cancellation or material modification of the insurance contract at the address listed below. Each party shall provide certificates of insurance to the other party prior to the performance of any obligation under this agreement. If requested, complete copies of insurance policies shall be provided to the other party. Each party shall be financially responsible for their own deductibles, self-insurance retentions, self-insurance, or uninsured risks.
- C. District will not establish local assessment districts within City, without first obtaining City approval.
- D. District will process applications from City pursuant to Section 3.C.9 for Wetland, Floodplain, and Floodway modifications within 15 days of receiving such applications. Upon review and approval by District, and upon request by City, the District shall act as a facilitator and liaison for State and Federal review and permit processes.
- E. The City shall report all sanitary sewer overflows that it becomes aware of to the District within 24 hours of learning of the overflow. The City shall require all permittees of the City to report sanitary sewer overflows to the City. City agrees to reimburse District for any expense, costs, damages, claims, fines, or penalties incurred by District that result from or are related to City's failure to so timely and adequately report. For those areas of service responsibility within the Beaverton Urban Service Area and the City Limits that are delegated to the District, the District shall report all sanitary overflows that it becomes aware of to the City within 24 hours of learning of the overflow. The District agrees to reimburse the City for any expense, costs,

damages, claims, fines or penalties incurred by the City that result from or are related to the District's failure to so timely and adequately report.

- F. This agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property or the environment on account of or rising out of the operation of this Agreement, including the performance or non-performance of duties under this Agreement, or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees, and agents. In addition, each party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this agreement. Inability to perform an activity or to properly perform because of insufficient funding from the District is not a negligent act or omission or willful misconduct of the party charged with the activity but shall be the responsibility of the District. Performance of any activity in compliance with the Work Program and Performance Standards as adopted by the District is not a negligent act or omission or willful misconduct.
- G. District and City acknowledge that District may receive notices of violation or fines from state or federal agencies for violations of state or federal rules. As the permittee and the entity that establishes standards and controls payment, District shall be responsible for responding to notices of violations and for payment of all fines. District shall invite the City to participate in any discussions with state and federal agencies regarding notices of violation involving City actions or responsibility. City will cooperate with District in the investigation and response to any notice of violation involving actions relating to actions or responsibilities of the City and shall allow the City to defend its own interests in any contested case proceeding concerning an alleged violation both in the proceeding and in any appeal therefrom. If a fine is imposed, City shall reimburse District to the extent that the fine results from non-performance of adopted programs or non-compliance with District, state, or federal rules or policies by the City and those acting on behalf of the City. If possible, the City shall reimburse the District prior to the date due for payment of the fine. The City shall not be responsible for reimbursement if the City's non-performance or non-compliance was caused by lack of adequate funding by District. If more than one party is responsible, the City's responsibility for reimbursement payment will be allocated based on the degree of responsibility and degree of fault of the City. Disputes over the amount of reimbursement shall be resolved by the dispute resolution process set out in Section 6 of this Agreement. To the extent that the City is required to perform any work to correct a violation, District shall provide adequate funding for the work to be performed, unless the violation was caused by the City's omission or misconduct.

- H. Nothing in this Agreement shall be construed as a limitation upon or delegation of the statutory and home rule powers of City, nor as a delegation or limitation of the statutory powers of District. This Agreement shall not limit any right or remedy available to City or District against third parties arising from illegal acts of such third parties.
- I. Where this Agreement calls for review or approval of a fee or charge, District shall perform such review in a timely manner, shall not unreasonably withhold approval, and shall provide its decision to City in writing. If, within 15 days of written request by City for approval by District, the District has failed to provide a written response, the request shall be deemed approved.

Section 6. Dispute Resolution; Remedies

- A. In the event of a dispute between the parties regarding their respective rights and obligations pursuant to this Agreement, the parties shall first attempt to resolve the dispute by negotiation. If a dispute is not resolved by negotiation, the exclusive dispute resolution process to be utilized by the parties shall be as follows:
 - 1. In the event a dispute cannot be resolved, the matters remaining in dispute shall be reduced to writing and forwarded to the Mayor and the Chairman of the Board of Directors. Upon receipt of the written issue statement, the Mayor and Chairman shall meet and attempt to resolve the issue. If the issue is resolved at this step, a written determination of such resolution shall be signed by the Mayor and Chairman. Resolution of an issue at this step requires concurrence of both the Mayor and the Chairman.
 - 2. In the event a dispute cannot be resolved at the earlier steps, the parties shall submit the matter to mediation. The parties shall attempt to agree on a mediator. In the event they cannot agree, the parties shall request a list of five (5) mediators from the American Arbitration Association, or such other entity or firm providing mediation services to which the parties may further agree. Unless the parties can mutually agree to a mediator from the list provided, each party shall strike a name in turn, until only one name remains. The order of striking names shall be determined by lot. Any common costs of mediation shall be borne equally by the parties, who shall each bear their own costs and fees therefor. If the issue is resolved at this step, a written determination of such resolution shall be signed by both parties. Resolution of an issue at this step requires concurrence by both parties. In the event a dispute is not resolved by mediation, the aggrieved party may pursue any remedy available to it under applicable law.

- B. Neither party may bring a legal action against the other party to interpret or enforce any term of this Agreement in any court unless the party has first attempted to resolve the matter by means of the dispute resolution of subsection A above. This shall not apply to disputes arising from a cause other than interpretation or enforcement of this Agreement.

- C. Parties may mutually agree in writing to waive any of the above steps, or to enter into alternate processes or additional processes such as binding arbitration prior to filing legal action.

Section 7. Effect of this Agreement

This Agreement shall supersede all prior agreements of similar scope and subject matter, including amendments and the "City Committee Agreement" between the parties with respect to sanitary sewerage and service, storm and surface water management; provided that, except as expressly modified herein, all rights, liabilities, and obligations of such prior agreements shall continue. This Agreement shall be effective upon its execution by both parties hereto, and shall continue in effect for five years. This Agreement shall be renewable for a series of succeeding five year terms up to a limit of 25 years, with the mutual agreement of the City and the District. If the District enters into an intergovernmental agreement with any other city in its territory covering the same subject as this Agreement and if any of the provisions of the other agreement differ from this Agreement, the City may elect to replace any provision of this Agreement with the parallel provision from the other agreement, with the exception of Appendix A and Exhibit A. The replacement shall be effective on receipt by District of written notice from the City. This Agreement may not otherwise be modified except by written amendment or as otherwise specified in this Agreement.

Section 8. Amendments

At any time, either party may request in writing to open this Agreement for specific amendment. If such request is made, the other party must respond within 90 days. If the parties do not agree and the party requesting such amendment desires to proceed with the amendment, then remedies pursuant to Section 6 shall apply. All amendments shall be in writing, approved by the governing body of the respective parties and incorporated into the agreement.

Section 9. Severability

In the event a court of competent jurisdiction shall deem any portion or part of this Agreement to be unlawful or invalid, only that portion or part of the Agreement shall be considered unenforceable. The remainder of this Agreement shall continue to be valid.

IN WITNESS WHEREOF, this instrument has been executed in duplicate by authority of lawful actions by the Council and District Board of Directors.

CLEAN WATER SERVICE
OF WASHINGTON COUNTY, OREGON

CITY OF BEAVERTON, OREGON

By _____
Chairman, Board of Directors

By _____
Mayor

Approved as to Form:

Attest: _____
City Recorder

Attorney for District

City Attorney

APPENDIX A			
DIVISION OF RESPONSIBILITIES		EFFECTIVE THROUGH JUNE 30, 2004	
Beaverton			
Basic Workplan		Inside City Limits	Outside City Limits
Sanitary Maintenance			
Lines under 24"			
Line Cleaning	City	District	
Root Cutting	City	District	
Emergency response	City	District	
Overflow and Complaint response and investigation	City	District	
Cross connection investigation and response	City	District	
Manhole adjustment	City	District	
Non-structure line sealing and point repair	City	District	
Manhole rehabilitation (sealing)	City	District	
TV inspection	City	District	
Compilation of TV reports and system evaluation	City	District	
I&I abatement and system rehabilitation projects	District and City	District	
Root Foaming	City	District	
Structural line repairs	City	District	
Line replacements	City	District	
Pump station maintenance	District	District	
Lines 24" and Larger			
All maintenance, inspection, repair, and replacement	District	District	
SWM Maintenance			
Line Cleaning	City	District	
Root Cutting	City	District	
Catch Basin cleaning	City	District	
Water quality manhole maintenance	City	District	
Storm and emergency response	City	District	
Complaint response and investigation	City	District	
Street Sweeping	City	District	
Water Quality facility maintenance	City for local District for Regional	District	
Water Quantity facility maintenance	City for local District for Regional	District	
Maintenance of public Streams/creeks/open channels	City	District	
Processing and disposal of sweeper, catch basin and storm line material	City	District	
Structural line repairs	City	District	
Line replacements	City	District	
Pump station maintenance and operation	District	District	

APPENDIX A	March 29, 2004			
DIVISION OF RESPONSIBILITIES	EFFECTIVE JULY 1, 2004 to JUNE 30, 2005			
Beaverton	Inside City Limits	Outside City Limits		
Sanitary Maintenance				
Lines under 24"				
Line Cleaning	City	District		
Root Cutting	City	District		
Emergency response	City	District		
Overflow and Complaint response investigation and reporting	City	District		
Cross connection investigation and response	City	District		
Manhole adjustment	City	District		
Non-structure line sealing and point repair	City and District	District		
Manhole rehabilitation (sealing)	City and District	District		
TV inspection	City	District		
Compilation of TV reports and system evaluation	District	District		
I&I abatement and system rehabilitation projects	City and District	District		
Root Foaming	City and District	District		
Structural line repairs	City	District		
Lateral Repairs in Public Right of Way	City	District		
Line replacements	City	District		
Pump station maintenance	District	District		
Vector Control	City	District		
Offroad inspection and locator post maintenance	City	District		
Easement and Access Road Maintenance	City	District		
		District		
Lines 24" and Larger		District		
All maintenance, inspection, repair, and replacement	District	District		
SWM Maintenance				
Line Cleaning	City	District		
Root Cutting	City	District		
Catch Basin cleaning	City	District		
Water quality manhole maintenance	City	District		
Storm and emergency response	City	District		
Complaint response investigation and reporting	City	District		
Street Sweeping	City	District		
Water Quality facility maintenance	City for local, District for Regional	District		
Water Quantity facility maintenance	City for local, District for Regional	District		
Maintenance of public Streams/creeks/open channels	City	District		
Processing and disposal of sweeper, catch basin and storm line material (excluding leaves)	City and District	District		
Structural line repairs	City	District		
Line replacements	City	District		
Pump station maintenance and operation	District	District		
Roadside ditches and piping system in County Roads	District/City	District		
Roadside ditches and piping system in City Roads	City, Funded by Street Fund	District		

TV inspection	City	District		
Compilation of TV reports and system evaluation	District	District		
Proactive Leaf management program	City	District		
Utility Locates	City	District		
ENGINEERING, INSPECTION, AND SUPPORT ELEMENTS				
Development Process (development review, plan review)	City	District		
Sanitary Sewer connection permit issuance	City	District		
SWM connection permit issuance	City	District		
Billing and collection of monthly service charges	City	District		
Inspection of developer projects	City	District		
Installation of Sanitary Sewer Masterplan Projects	City 21" and under, District 24" & up	District		
Installation of Masterplan Pump Station Projects	District	District		
Installation of SWM Masterplan Projects	City	District		
Erosion control permit issuance	City	District		
Erosion control inspection	City	District		
Accounting	City	District		
Industrial Waste Program	District	District		
Fat, Oil and Grease Program	City and District	District		
Maintaining GIS information	City and District	District		
Maintaining system mapping	City and District	District		
Maintaining Engineering records of systems	City and District	District		
Preparing and revising sanitary sewer masterplans	District/City	District		
Preparing and revising SWM masterplans	City and District	District		
Response to customer billing inquiries	City	District		
Public information, newsletters, etc., for SWM and Sanitary programs	City and District	District		
Flow Monitoring	District/City	District		
Formation and Administration of LID's	City and District	District		
Inspection of Private Facilities	City	District		
Marking Utilities	City	District		
Fixture Counting	City	District		
Field Yard General Maintenance	City	District		

APPENDIX A		March 29, 2004		
DIVISION OF RESPONSIBILITIES		EFFECTIVE JULY 1, 2005		
	Inside City, and Inside "Areas of Assigned Service Responsibility"	Outside City, and Inside "Areas of Assigned Service Responsibility"	Inside City, and Outside "Areas of Assigned Service Responsibility"	Inside "Future Maintenance Area" Designation -- ** See Note Below
Beaverton				
Sanitary Maintenance				
Lines under 24"				
Line Cleaning	City	City	District	
Root Cutting	City	City	District	
Emergency response	City	City	District/City	
Overflow and Complaint response investigation and reporting	City	City	District/City	
Cross connection investigation and response	City	City	District	
Manhole adjustment	City	City	District	
Non-structure line sealing and point repair	District/City	District	District/City	
Manhole rehabilitation (sealing)	District/City	District	District/City	
TV inspection	City	City	District	
Compilation of TV reports and system evaluation	District	District	District	
I&I abatement and system rehabilitation projects	District/City	District	District/City	
Root Foaming	District	District	District	
Structural line repairs	District/City	District	District/City	
Lateral Repairs in Public Right of Way	District/City	District	District/City	
Line replacements	District/City	District	District/City	
Pump station maintenance	District	District	District	
Vector Control	City	City	District/City	
Offroad inspection and locator post maintenance	City	City	District	
Easement and Access Road Maintenance	City	City	District	
Lines 24" and Larger				
All maintenance, inspection, repair, and replacement	District	District	District	
SWM Maintenance				
Line Cleaning	City	City	District	
Root Cutting	City	City	District	
Catch Basin cleaning	City	City	District	
Water quality manhole maintenance	City	City	District	
Storm and emergency response	City	City	District/City	
Complaint response investigation and reporting	City	City	District/City	
Street Sweeping	City	City	District	
Water Quality facility maintenance	City for local, District for Regional	City for local, District for Regional	District	
Water Quantity facility maintenance	City for local, District for Regional	City for local, District for Regional	District	
Maintenance of public Streams/creeks/open channels	City	City	District	
Processing and disposal of sweeper, catch basin and storm line material (excluding leaves)	District	District	District	
Structural line repairs	District/City	District	District/City	
Line replacements	District/City	District	District/City	
Pump station maintenance and operation	District	District	District	
Roadside ditches and piping system in County Roads	District/City	District	District	

Roadside ditches and piping system in City Roads	City, Funded by Street Fund	None	City, Funded by Street Fund	
TV inspection	City	City	District	
Compilation of TV reports and system evaluation	District	District	District	
Proactive Leaf management program	City	City	District	
Utility Locates	City	City	City	
ENGINEERING, INSPECTION, AND SUPPORT ELEMENTS				
Development Process (development review, plan review)	City	District	City	
Sanitary Sewer connection permit issuance	City	District	City	
SWM connection permit issuance	City	District	City	
Billing and collection of monthly service charges	City	District	City	
Inspection of developer projects	City	District	City	
Installation of Sanitary Sewer Masterplan Projects	City 21" and under, District 24" & up	District	City 21" and under, District 24" & up	
Installation of Masterplan Pump Station Projects	District	District	District	
Installation of SWM Masterplan Projects	City	District	City	
Erosion control permit issuance	City	District	City	
Erosion control inspection	City	District	City	
Accounting	City	District	City	
Industrial Waste Program	District	District	District	
Fat, Oil and Grease Program	District/City	District	District/City	
Maintaining GIS information	City and District	City and District	City and District	
Maintaining system mapping	City and District	City and District	City and District	
Maintaining Engineering records of systems	City and District	City and District	City and District	
Preparing and revising sanitary sewer masterplans	District/City	District	District/City	
Preparing and revising SWM masterplans	District/City	District	District/City	
Response to customer billing inquiries	City	District	City	
Public information, newsletters, etc., for SWM and Sanitary programs	City and District	City and District	City and District	
Flow Monitoring	District/City	District	District/City	
Formation and Administration of LID's	City and District	District	City and District by permission	
Inspection of Private Facilities	City	District	City	
Marking Utilities	City	City	City	
Fixture Counting	City	District	City	
Field Yard General Maintenance	City	City	District	
** "Future Maintenance Area" property, if outside the city limits, city shall have no responsibility. If inside the city limits, responsibilities shall be as defined in the "Inside City, and Outside Areas of Assigned Service Responsibility" Column.				

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

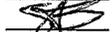
SUBJECT: An Ordinance Amending Ordinance No. 2050, The Development Code, Chapter 20 (Land Use) and 90 (Definitions); TA 2004-0002 (Regional Center Commuter Rail Text Amendments)

FOR AGENDA OF: 04-12-04 **BILL NO:** 04064

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CDD 

DATE SUBMITTED: 04/01/04

CLEARANCES: City Attorney 
Dev. Serv. 

PROCEEDING: First Reading

- EXHIBITS:**
1. Ordinance
 2. Land Use Order No.1687
 3. Letter from Jill S. Gelineau, March 22, 2004
 4. Draft PC Minutes
 5. Staff Report Dated 03-17-04

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

HISTORICAL PERSPECTIVE:

On March 24, 2004, the Planning Commission held a public hearing to consider TA 2004-0002 (Regional Center Commuter Rail Text Amendments) to amend Development Code Sections 20.20.43.1, 20.20.43.2.A, 20.20.45.2.A, 20.20.47.1, 20.20.47.2.A, and Chapter 90 to add new passenger rail tracks and related facilities to the list of permitted uses in the Regional Center - Transit Oriented, Regional Center - Old Town, and Regional Center - East zones and add definitions related to passenger rail uses in Chapter 90 of the Development Code.

Following the close of the public hearing on March 24, 2004, the Planning Commission voted 4-2 (Johansen absent) to recommend approval of the proposed text amendment to Sections 20.20.43.1, 20.20.43.2.A, 20.20.45.2.A, 20.20.47.1, 20.20.47.2.A, and Chapter 90, as memorialized in Land Use Order No. 1687.

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill are Land Use Order No. 1687, a letter from Jill S. Gelineau which was given to the Planning Commission at the time of the March 24, 2004 public hearing, the draft Planning Commission meeting minutes, and the Planning Commission staff report.

RECOMMENDED ACTION:

Staff recommend the City Council adopt the recommendation of the Planning Commission for TA 2004-0002 (Regional Center Commuter Rail Text Amendments) as set forth in Land Use Order No. 1687. Staff further recommend the Council conduct a First Reading of the attached ordinance.

ORDINANCE NO. 4295

AN ORDINANCE AMENDING ORDINANCE NO. 2050,
THE DEVELOPMENT CODE, CHAPTER 20 (LAND USE)
AND CHAPTER 90 (DEFINITIONS); TA 2004-0002
(Regional Center Commuter Rail Text Amendments)

WHEREAS, the Beaverton Community Development Department has proposed a text amendment to: Development Code Sections 20.20.43.1, 20.20.43.2.A, 20.20.45.2.A, 20.20.47.1, 20.20.47.2.A, and Chapter 90 to add new passenger rail tracks and related facilities to the list of permitted uses in the Regional Center - Transit Oriented, Regional Center - Old Town, and Regional Center - East zones, and add definitions related to passenger rail uses to Chapter 90 of the Development Code; and,

WHEREAS, pursuant to Section 50.50.2-4 of the Development Code, the Beaverton Community Development Department conducted required public noticing for the Text Amendment application; and,

WHEREAS, pursuant to Section 50.50.5 of the Development Code, the Beaverton Community Development Department, on March 17, 2004, published a written staff report and recommendation a minimum of seven (7) calendar days in advance of the scheduled public hearing before the Planning Commission on March 24, 2004; and,

WHEREAS, on March 24, 2004, the Planning Commission conducted a public hearing for TA 2004-0002 (Regional Center Commuter Rail Text Amendments) at the conclusion of which the Planning Commission voted to recommend the Beaverton City Council adopt the proposed amendments to the Development Code as summarized in Planning Commission Land Use Order No. 1687; and,

WHEREAS, no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2004-0002 (Regional Center Commuter Rail Text Amendments) following the issuance of the Planning Commission Land Use Order No. 1687; and,

WHEREAS, in accordance with City Council Rules of Procedure, the Council conducted a first reading of the ordinance on April 12, 2004; and,

WHEREAS, specific to the proposed amendments to Sections 20.20.43.1, 20.20.43.2.A, 20.20.45.2.A, 20.20.47.1, 20.20.47.2.A, and Chapter 90 of the Development Code as summarized in Planning Commission Land Use Order No. 1687, the Council adopts as to facts and findings for this Ordinance the materials described in Land Use Order 1687 dated March 30, 2004, all of which the Council incorporates by their reference herein and finds constitute an adequate factual basis for this Ordinance; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2050, effective through Ordinance No. 4265, the Development Code, Chapter 20 (Land Uses), is amended as follows:

SECTION 20.20.43.1

Purpose. The intent for the Regional Center - Transit Oriented (RC-TO) District, which is served by light rail and commuter rail, is to promote a transit-supportive multiple-use land use pattern and to create over time a pedestrian-oriented commercial center within approximately ¼ mile of the light rail stations while supporting existing and future businesses in moving toward and achieving the vision of a Regional Center.

SECTION 20.20.43.2.A

Permitted Uses:

5. Passenger rail tracks and related facilities, such as transit stops, submitted for development after <fill in effective date of this ordinance>

SECTION 20.20.45.2.A

Permitted Uses:

5. Passenger rail tracks and related facilities, such as transit stops, submitted for development after <fill in effective date of this ordinance>

SECTION 20.20.47.1

Purpose. The intent for the Regional Center - East (RC-E) District, adjoining Highway 217 and located generally more than ¼ mile from the nearest light rail station, is to support existing and future businesses and accommodate more highly automobile-oriented uses and lower-intensity uses which are inappropriate in either the Transit Oriented (TO) or Old Town (OT) Districts while still maintaining pedestrian linkages to the transit stations and transit-served land uses.

SECTION 20.20.47.2.A

Permitted Uses:

5. Passenger rail tracks and related facilities, such as transit stops, submitted for development after <fill in effective date of this ordinance>

Ordinance No. 2050, effective through Ordinance No. 4265, the Development Code, Chapter 90 (Definitions), is amended as follows:

Commuter Rail. A railway for passenger train service consisting of travel between or within metropolitan areas, central cities and suburbs. Commuter rail service may be either locomotive-hauled or self-propelled and is generally characterized by a limited number of stations, multi-trip tickets, specific station-to-station fares and railroad employment practices. Such commuter service may share the right-of-way of an inter-city or long-haul railroad or use new or vacated right-of-way.

Intermodal. The connection of one type of transportation mode with another.

Passenger Rail Track. A permanent course for passenger rail cars, including commuter rail.

Section 2. Severance Clause.

The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any appendix or part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to effect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this ___ day of _____, 2004.

Passed by the Council this ___ day of _____, 2004.

Approved by the Mayor this ___ day of _____, 2004.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

BEFORE THE PLANNING COMMISSION
FOR THE CITY OF BEAVERTON, OREGON

IN THE MATTER OF A REQUEST)	ORDER NO.1687
)	
TO AMEND THE DEVELOPMENT)	TA 2004-0002
)	
CODE SECTIONS 20.20.43.1, 20.20.43.2.A,)	RECOMMENDING
)	
20.20.45.2.A, 20.20.47.1, 20.20.47.2.A, AND)	TO CITY COUNCIL
)	
CHAPTER 90 (REGIONAL CENTER)	APPROVAL OF TEXT
)	
COMMUTER RAIL TEXT AMENDMENTS),)	AMENDMENT
)	
CITY OF BEAVERTON, APPLICANT)	

The matter of TA 2004-0002 (Regional Center Commuter Rail Text Amendments) was initiated by the City of Beaverton, through the submittal of a text amendment application to the Beaverton Community Development Department.

TA 2004-0002 proposes to amend Development Code Sections 20.20.43.1, 20.20.43.2.A, 20.20.45.2.A, 20.20.47.1, 20.20.47.2.A, and Chapter 90 to add new passenger rail tracks and related facilities to the list of permitted uses in the Regional Center-Transit Oriented, Regional Center-Old Town, and Regional Center-East zones, and add definitions related to passenger rail uses toto Chapter 90 of the Development Code.

Pursuant to Ordinance 2050 (Development Code), effective through Ordinance No. 4265, Section 40.85 (Text Amendment) and Section 50.50 (Type 4 Application), the Planning Commission conducted a public hearing on March 24, 2004 and considered oral and written testimony and exhibits for the proposed amendment to the Beaverton Development Code. At the March 24, 2004 public hearing, Assistant City Attorney Ted Naemura recommended additional changes to the Development Code to be included in the proposed text amendments.

1. *Sections 20.20.43.2.A, 20.20.45.2.A, and 20.20.47.2.A.* Staff consultant Beverly Bookin AICP, presented suggested revisions to Sections 20.20.43.2.A, 20.20.45.2.A, and 20.20.47.2.A of the Development Code, as recommended by Assistant City Attorney Ted Naemura. Ms. Bookin suggested clarifying the proposed *passenger rail tracks and related facilities* use will apply only to new tracks and facilities, instead of existing, which are allowed by right. After discussing the suggested amendments with Ms. Bookin, the Commission finds the proposed revisions as stated by staff in response to Mr. Naemura's suggestions are appropriate.

2. *Chapter 90 (Definitions).* Ms Bookin provided testimony offering suggested revisions concerning the proposed definition of *Commuter Rail*, as recommended by Assistant City Attorney Ted Naemura. Ms Bookin suggested broadening the definition of *Commuter Rail* so that future potential alignments would not be limited by any geographic constraints

implied by the definition. After deliberating on these suggestions, the Commission finds an expanded definition is necessary. The Commission finds the proposed revisions as stated by staff in response to Mr. Naemura's suggestions are appropriate.

The Planning Commission adopts by reference the March 17, 2004 staff report and attachments, as amended and the findings therein as applicable to the approval criteria contained in Section 40.85.15.1.C.1-7 for the subject text amendment; now, therefore:

IT IS HEREBY ORDERED that pursuant to Section 50.50.1 of the Beaverton Development Code, the Planning Commission **RECOMMENDS APPROVAL** of TA 2004-0002 (Regional Center Commuter Rail Text Amendments) to the Beaverton City Council. The Planning Commission finds that evidence has been provided demonstrating all of the approval criteria specified in Section 40.85.15.1.C.1-7 are satisfied.

CARRIED by the following vote:

AYES: Maks, Winter, Bliss, and Barnard.
NAYS: Pogue, Voytilla.
ABSTAIN: None.
ABSENT: Johansen.

Dated this 30th day of March, 2004.

Appeals of a Type 4 decision are to be conducted in conformance to Section 50.75 of the Beaverton Development Code. To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 1687, an

appeal must be filed with the City of Beaverton Recorder's Office by no later than 5:00 p.m. on Friday, April 9, 2004.

PLANNING COMMISSION
FOR BEAVERTON, OREGON:

ATTEST:

APPROVED:



LAURA KELLY
Assistant Planner



BOB BARNARD
Chairman



STEVEN SPARKS, AICP
Development Services Manager

The Development Code, Ordinance No. 2050, Chapter 20, Land Uses, Section 20.20.43 REGIONAL CENTER - TRANSIT ORIENTED: RC-TO, will be amended to read as follows:

SECTION 20.20.43.1

Purpose. The intent for the Regional Center - Transit Oriented (RC-TO) District, which is served by light rail and commuter rail, is to promote a transit-supportive multiple-use land use pattern and to create over time a pedestrian-oriented commercial center within approximately ¼ mile of the light rail stations while supporting existing and future businesses in moving toward and achieving the vision of a Regional Center.

SECTION 20.20.43.2.A

Permitted Uses:

5. Passenger rail tracks and related facilities, such as transit stops, built after <fill in effective date of this ordinance>

SECTION 20.20.45.2.A

Permitted Uses:

5. Passenger rail tracks and related facilities, such as transit stops, built after <fill in effective date of this ordinance>

SECTION 20.20.47.1

Purpose. The intent for the Regional Center - East (RC-E) District, adjoining Highway 217 and located generally more than ¼ mile from the nearest light rail station, is to support existing and future businesses and accommodate more highly automobile-oriented uses and lower intensity uses which are inappropriate in either the Transit Oriented (TO) or Old Town (OT) Districts while still maintaining pedestrian linkages to the transit stations and transit-served land uses.

SECTION 20.20.47.2.A

Permitted Uses:

5. Passenger rail tracks and related facilities, such as transit stops, built after <fill in effective date of this ordinance>

Ordinance No. 2050, effective through Ordinance No. 4265, the Development Code, Chapter 90 (Definitions), is amended as follows:

Commuter Rail. A railway for passenger train service consisting of travel between or within metropolitan areas, central cities and suburbs. Commuter rail service may be either locomotive-hauled or self-propelled and is generally characterized by a limited number of stations, multi-trip tickets, specific station-to-station fares and railroad employment practices. Such commuter service may share the right-of-way of an inter-city or long-haul railroad or use new or vacated right-of-way.

Intermodal. The connection of one type of transportation mode with another.

Passenger Rail Track. A permanent course for passenger rail cars, including commuter rail.



SCHWABE, WILLIAMSON & WYATT, P.C.
ATTORNEYS AT LAW

PACWEST CENTER, SUITES 1600-1900 • 1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795
TELEPHONE: 503.222.9981 • FAX: 503.796.2900 • www.schwabe.com

JILL S. GELINEAU
Admitted in Oregon and Washington
Direct Line: (503) 796-2887
E-Mail: jgelineau@schwabe.com

March 22, 2004

RECEIVED
MAR 23 2004
COMMUNITY DEVELOP DEPT.

VIA FACSIMILE AND US MAIL

City of Beaverton Planning Commission
c/o Community Development Department
Development Services Division
4755 S.W. Griffith Drive
P.O. Box 4755
Beaverton, OR 97076

Re: Proposed Text Amendment
Your Case File No. TA2004-0002 Regional Commuter Rail Amendment
Our File No. 111281-135258

Dear Planning Commission:

I represent Shadrall Associates, which owns the property at S.W. Broadway in Beaverton. My client leases the property to Bed, Bath & Beyond.

The proposed text amendment being considered by the Planning Commission on March 24, 2004 would modify the City of Beaverton Development Code to add commuter rail to the current list of permitted uses.

Last year, my client was notified that one possible--and perhaps likely--consequence of the construction of the proposed commuter rail was that it would adversely impact their property, the initial engineering plans indicate both a closure of the access and the condemnation of their property which would eliminate some valuable and already limited parking on my client's site. Needless to say, reasonable access and sufficient parking are vital to my client's ability to operate this site as a viable commercial use. Loss of access and loss of parking adversely affects our property and a valuable business that is an asset to the City of Beaverton.

Accordingly, we question whether the City of Beaverton and TriMet have properly evaluated the impacts of construction of the commuter rail and whether they have properly balanced out the perceived need for additional public transportation with the negative impacts on private property that will result should the commuter rail be constructed. We accordingly ask you to ensure that you fully evaluate the benefit in light of this concern before making a decision to grant the requested text amendment.

City of Beaverton Planning Commission

March 22, 2004

Page 2

Further, if the Planning Commission and the City agree to go forward with the text amendment to allow commuter rail as a permitted use, we believe it is crucial for my client and other commercial businesses in the neighborhood similarly affected to be consulted regarding the design. My client objects to the closure of its access and to any loss of parking. We hope the Commission understands such consequences will create great difficulties in the operation of our business.

Thank you for your consideration.

Very truly yours,


Jill S. Gelineau

JG:ams

cc: Ms. Christine Felix



DRAFT

PLANNING COMMISSION MINUTES

March 24, 2004

CALL TO ORDER:

Chairman Bob Barnard called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Bob Barnard, Planning Commissioners Gary Bliss, Dan Maks, Shannon Pogue, Vlad Voytilla, and Scott Winter. Commissioner Eric Johansen was excused.

Senior Planner Alan Whitworth, Senior Planner John Osterberg, Associate Planner Sambo Kirkman, Assistant Planner Laura Kelly, Assistant City Attorney Ted Naemura and Recording Secretary Sheila Martin represented staff.

The meeting was called to order by Chairman Barnard, who presented the format for the meeting.

VISITORS:

Chairman Barnard asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATION:

At the Commissions request from the March 17, 2004, hearing, Associate Planner Sambo Kirkman provided the Commissioners with the findings and conditions of the Blackstone Subdivision application. She concluded and offered to respond to any questions.

Commissioner Maks commended staff for an excellent job on capturing the motions, findings and facts as was cited for the Land Use Order.

1 **NEW BUSINESS:**
2

3 Chairman Barnard opened the Public Hearing and read the format for
4 Public Hearings. There were no disqualifications of the Planning
5 Commission members. No one in the audience challenged the right of
6 any Commissioner to hear any of the agenda items, to participate in
7 the hearing or requested that the hearing be postponed to a later date.
8 He asked if there were any ex parte contact, conflict of interest or
9 disqualifications in any of the hearings on the agenda. There was no
10 response.
11

12 **PUBLIC HEARINGS:**
13

- 14 **I. CPA2004-0001-MURRAY BOULEVARD/WALKER ROAD**
15 **LAND USE MAP AMENDMENT**
16 **II. ZMA2004-0001-MURRAY BOULEVARD/WALKER ROAD**
17 **ZONING MAP AMENDMENT**

18 This proposal is to amend the Land Use Map in the
19 Comprehensive Plan and Zoning Map to designate one parcel
20 being annexed into the City, by a separate process, Corridor on
21 the Land Use Map and Urban Standard Density Residential – 7
22 (7,000 square foot per lot) on the Zoning Map in place of the
23 current Washington County designation of Residential – 5 (units
24 to the acre) with a Transit Corridor overlay. These are
25 Beaverton's most similar land use and zoning designations to
26 those that Washington County has placed on this property. This
27 parcel does not have an assigned address; it is identified on tax
28 map 1S1104CA as lot 03600.
29

30 Senior Planner Alan Whitworth presented the Staff Report and
31 mentioned that there was a minor setback with the application.
32 He explained that the Corridor land use designation and the
33 city's comprehensive plan zoning matrix does not allow R-7
34 zoning. He pointed out that the commission should expect a
35 request from the owner to rezone the parcel at a future date
36 either to office commercial or an R-4 zone.
37

38 Commissioner Pogue **MOVED** and Commissioner Voytilla
39 **SECONDED** a motion to approve CPA2004-0001 – Murray
40 Boulevard/Walker Road Land Use Map Amendment based on
41 the facts and findings in the Staff Report dated March 4, 2004.
42

43 Motion **CARRIED** by the following vote:
44

1 **AYES:** Pogue, Voytilla, Bliss, Maks, Winter and Barnard.
2 **NAYS:** None.
3 **ABSTAIN:** None.
4 **ABSENT:** Johansen.

5
6 Motion **CARRIED, unanimously**

7
8 Commissioner Pogue **MOVED** and Commissioner Voytilla
9 **SECONDED** a motion to approve ZMA2004-0001 – Murray
10 Boulevard/Walker Road Zoning Map Amendment based on the
11 facts and findings in the Staff Report dated March 4, 2004.

12
13 Motion **CARRIED, unanimously**

14
15
16 **III. TA2004-0002 – REGIONAL CENTER COMMUTER RAIL**
17 **AMENDMENTS**

18 The proposed text amendment will modify Development Code
19 Sections 20.20.43.2.A, 20.20.45.2.A, and 20.20.47.2.A, to add
20 commuter rail to the list of permitted uses in the Regional
21 Center – Transit Oriented, Regional Center – Old Town, and
22 Regional Center – East zones. The proposed text amendment
23 will also amend Chapter 90 of the Development Code to modify
24 and/or add definitions related to commuter rail uses.

25
26 Beverly Bookin, AICP introduced Laura Kelly, Assistant
27 Planner with the City of Beaverton. Ms. Bookin presented the
28 Staff Report and gave a background on the proposed
29 amendment, which included minimal changes to the language of
30 the proposal in relation to passenger rail tracks and related
31 facilities.

32
33 Commissioner Maks **MOVED** and Commissioner Winter
34 **SECONDED** a motion to approve TA2004-0002 – Regional
35 Center Commuter Rail Amendments based on the facts and
36 findings in the staff report dated March 17, 2004, as amended on
37 March 24, 2004.

38
39 Motion **CARRIED** by the following vote:

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41 **AYES:** Maks, Winter, Bliss, and Barnard.
42 **NAYS:** Voytilla and Pogue.
43 **ABSTAIN:** None.
44 **ABSENT:** Johansen.

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APPROVAL OF MINUTES:

Minutes of the meeting of February 11, 2004, were submitted. Commissioner Pogue **MOVED** and Commissioner Bliss **SECONDED** a motion that the minutes be approved as amended.

Motion **CARRIED** by the following vote:

- AYES:** Pogue, Bliss, Maks, and Barnard.
- NAYS:** None.
- ABSTAIN:** Winter.
- ABSENT:** Johansen.

Minutes of the meeting of March 10, 2004, were submitted. Commissioner Maks **MOVED** and Commissioner Bliss **SECONDED** a motion that the minutes be approved as written.

- AYES:** Maks, Bliss, Pogue, Winter, and Barnard.
- NAYS:** None.
- ABSTAIN:** None.
- ABSENT:** Johansen.

Motion **CARRIED**, unanimously.

MISCELLANEOUS BUSINESS:

The meeting adjourned at 8:28 pm



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

CITY OF BEAVERTON STAFF REPORT AND RECOMMENDATION

TO: Planning Commission

STAFF REPORT DATE: Wednesday, March 17, 2004

STAFF: Beverly Bookin, AICP
Laura Kelly, Assistant Planner *JK*

SUBJECT: TA2004-0002 (Regional Center Commuter Rail Amendments)

REQUEST: City- initiated Text Amendment to modify Development Code Sections 20.20.43.2.A, 20.20.45.2.A, and 20.20.47.2.A, to add passenger rail tracks and related facilities to the list of permitted uses in the Regional Center- Transit Oriented, Regional Center- Old Town, and Regional Center- East zones. The proposed text amendment will also amend Chapter 90 of the Development Code to modify and add definitions related to passenger rail uses.

APPLICANT: City of Beaverton - Development Services Division

AUTHORIZATION: Ordinance 2050 (Development Code), effective through Ordinance 4265)

APPLICABLE CRITERIA: Ordinance 2050, effective through Ordinance 4265, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, March 24, 2004

RECOMMENDATION: Staff recommend APPROVAL of text amendment application TA2004-0002 (Regional Center Commuter Rail Amendments).

I. Proposed Legislative Text Amendment

The purpose of this City-initiated text amendment is to create new text in the Permitted Uses sections of the three (3) Regional Center zones in order to add passenger rail tracks and related facilities as an outright permitted use. Although no physical development is proposed for review at this time, staff anticipates that a Commuter Rail facility may be proposed in the future. At this time, it is contemplated that the commuter rail proposal would locate new passenger rail tracks through all three (3) Regional Center zones. Currently, the Development Code does not specify whether passenger rail tracks and facilities are permitted in the Regional Center zones. In order to provide a consistent policy framework for the future development of a commuter rail system, passenger rail tracks and related facilities are being proposed as an outright permitted use in the Regional Center zones.

Sections 20.20.43, 20.20.45, and 20.20.47 of the Development Code contain regulations and standards for the Regional Center - Transit Oriented (RC-TO), Regional Center - Old Town (RC-OT), and Regional Center - East (RC-E) districts respectively. Pursuant to the aforementioned sections, the purpose of the Regional Center zoning districts are as follows:

Regional Center- Transit Oriented (RC-TO) zone

The intent for the Regional Center - Transit Oriented (RC-TO) District, which is served by light rail, is to promote a transit-supportive multiple-use land use pattern and to create over time a pedestrian-oriented commercial center within approximately 1/4 mile of the light rail stations while supporting existing and future businesses in moving toward and achieving the vision of a Regional Center.

Regional Center- Old Town (RC-OT) zone

The intent for the Regional Center - Old Town (RC-OT) District, which encompasses the City of Beaverton's original downtown, is to maintain the mix of uses, scale of development, and appearance that are characteristic of this historically significant area while supporting existing and future businesses in moving toward and achieving the vision of a Regional Center.

Regional Center- East (RC-E) zone

The intent for the Regional Center - East (RC-E) District, adjoining Highway 217 and located generally more than 1/4 mile from the nearest light rail station, is to support existing and future businesses and accommodate more highly automobile oriented uses and lower intensity uses which are inappropriate in either the Transit Oriented (TO) or Old Town (OT) Districts while still maintaining pedestrian linkages to the transit stations and transit-served land uses.

Sections 20.20.43, 20.20.45, and 20.20.47 currently do not specify passenger rail tracks as a permitted, conditional, or prohibited use in the Regional Center zoning districts. In addition, the Development Code does not contain definitions related to passenger rail uses. Therefore, this text amendment proposes both the authorization of passenger rail tracks and related facilities in the Regional Center zones, and the addition of definitions for *commuter rail*, *passenger rail tracks*, and *intermodal* in Chapter 90, Definitions.

The proposed amendments to the Development Code text are attached in Exhibit 1.1.

II. Facts and Findings

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA 2004-0002 (Regional Center Commuter Rail Amendments):

1. The proposal satisfies the threshold requirements for a Text Amendment application.

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed any change to the Development Code, excluding changes to the zoning map. TA2004-0002 (Regional Center Commuter Rail Amendments) proposes to amend Sections 20.20.43.2.A, 20.20.45.2.A, and 20.20.47.2.A, and portions of Chapter 90 of the Beaverton Development Code currently effective through Ordinance 4265 (October 2003). Therefore, staff finds that approval criterion one has been met.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Development Services Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required. Staff finds that approval criterion two is not applicable.

3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.

Metro's Urban Growth Management Functional Plan is comprised of the following titles:

TA2004-0002 (Regional Center Commuter Rail Amendments)

- Title 1: Requirements for Housing and Employment Accommodations
- Title 2: Regional Parking Policy
- Title 3: Water Quality and Flood Management Conservation
- Title 4: Retail in Employment and Industrial Areas
- Title 5: Neighbor Cities and Rural Reserves
- Title 6: Central City, Regional Centers, Town Centers and Station Communities
- Title 7: Affordable Housing
- Title 8: Compliance Procedures
- Title 9: Performance Measures
- Title 10: Functional Plan Definitions
- Title 11: Planning for New Urban Areas
- Title 12: Protection of Residential Neighborhoods

The City is required to bring its land use regulations into conformance with the Metro Urban Growth Management Functional Plan (UGMFP). Section 3.07.130 of the UGMFP identifies that Regional Centers will “become the focus of compact development, redevelopment and high-quality transit service and multimodal street networks”. This Section further identifies that Regional Centers are a 2040 Growth Concept design type. The adopted Metro Regional Framework Plan, which the UGMFP implements, specifies, “In developing new transportation system infrastructure, the highest priority should be providing accessibility and mobility to and from central city, regional centers and industrial areas and intermodal facilities.”

Based on the preceding descriptions of Regional Centers, staff finds the legislative intent of this designation is more intensive use of the land resulting in higher density development served by a highly efficient and multimodal transportation system. Further, this designation is intended to implement regional growth management goals and policies represented in the 2040 Growth Concept Plan. Staff finds that permitted use authorizations of passenger rail tracks and related facilities in the Regional Center zones are consistent with the legislative intent of the Regional Centers designation. Specifically, the proposed text amendment would authorize commuter rail, a mode which is consistent with the UGMFP provision for “high-quality transit” within regional centers.

Pursuant to Section 3.07.210 of the UGMFP, staff has evaluated the proposed text amendment for its land use efficiency. The permitted use authorization of passenger rail tracks is an efficient use of land and would provide for a more compact urban form due to increased connectivity to the central city between the regional centers and other centers. This is consistent with the UGMFP vision that regional centers “act as major nodes along regional through routes”. Therefore, staff finds that approval criterion three has been met.

4. The proposed text amendment is consistent with the City's Comprehensive Plan.

The proposed text amendments will not change the intent of the existing Development Code regulations, such that goals and policies of the Comprehensive Plan will be impacted. Rather, the authorization of passenger rail tracks and related facilities in the Regional Center zones will provide consistency between Comprehensive Plan goals and policies, specifically, the Transportation Element, and Development Code standards.

Chapter 6 – Transportation Element

TA 2004-0002 (Regional Center Commuter Rail Amendments) proposes to modify Development Code Sections 20.20.43.2.A, 20.20.45.2.A, and 20.20.47.2.A, to add passenger rail tracks and related facilities to the list of permitted uses in the Regional Center- Transit Oriented, Regional Center- Old Town, and Regional Center- East zones. The proposed text amendment will also amend Chapter 90 of the Development Code to modify and add definitions related to passenger rail uses. The following transportation policies are addressed generally:

6.2.1. Goal Transportation facilities designed and constructed in a manner to enhance Beaverton's livability and meet federal, state, regional, and local requirements.

6.2.2 Goal A Balanced transportation system

The proposed text amendment increases opportunities for providing a balanced multi-modal transportation system within public rights-of-way. As required by Goal 6.2.1. Policy "a", the proposed text amendment will help locate transportation facilities through high-density Regional Center zones by authorizing passenger rail. Further, the authorization of passenger rail facilities is consistent with the Goal 6.2.2 Policy "a", which requires multi-purpose street rights-of-way "for a combination of utility, pedestrian, bicycle, transit, truck, and auto uses".

6.2.4. Goal: An efficient transportation system that reduces the percentage of trips by single occupant vehicles, reduces the number and length of trips, limits congestion, and improves air quality.

The proposed text amendment helps encourage an efficient transportation system by allowing opportunities for passenger rail to connect with the existing transportations system. Specifically, the authorization of passenger rail uses is consistent with Policy "g", which encourages opportunities to, "improve access and frequency of service, and to increase ridership potential and service area" and encourage, "the development of regional high capacity transit, including light rail transit and commuter rail."

Finally, the development of a commuter rail system is contemplated in 6.3.3, Transit System Improvements, as follows:

The transit system includes the proposed Beaverton to Wilsonville commuter rail, MAX light rail, and TriMet bus service. Existing and proposed future bus routes are identified in Beaverton's Transit Route Master Plan Figure 6.3.A. The proposed commuter rail system and Regional Transportation Plan bus designations are shown on the Transit Route Master Plan Figure 6.3.B. The commuter rail alignment is general in nature. It follows existing Portland & Western railroad tracks from the south into downtown Beaverton. It then turns in a northerly direction along Lombard Avenue at Beaverton-Hillsdale Highway and follows Lombard Avenue into the Beaverton Transit Center. Precise alignment of the tracks in the downtown will be determined during the design phase of the commuter rail project.

By authorizing passenger rail tracks and related facilities in the Regional Center zones, this proposed text amendment provides consistency between the Development Code and the policy framework of the Comprehensive Plan, for the future development of a commuter rail system. Therefore, staff finds that approval criterion four has been met.

5. The proposed text amendment is consistent with other provisions within the City's Development Code.

The proposed amendments do not change or create impacts or conflicts with other provisions within the Development Code. The Development Code currently contains the land use category "Railroad tracks and facilities such as switching yards, spur or holding tracks, freight depots" in the Campus Industrial (CI), Industrial Park (IP), Light Industrial (LI), and Station Community-Employment (SC-E) zones. This text amendment proposes substantially similar language in the Regional Center zones, and also provides definitions for *commuter rail*, *passenger rail tracks*, and *intermodal*, terms which are related to both the existing and proposed code language. Staff finds, therefore, that approval criterion five has been met.

6. The proposed amendment is consistent with all applicable City ordinance requirements and regulations.

The current Development Code and Ordinance No. 4187, which adopted the current Comprehensive Plan, are applicable to the proposed text amendment and are addressed in the findings of fact for approval criterion four and five. Staff did not identify any other applicable City ordinance requirements and regulations that would be affected by the proposed text amendments. Therefore, staff finds that approval criterion six has been met.

7. **Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.**

Staff has determined that there are no other applications and documents related to the request that will require further City approval. Therefore, staff finds that approval criterion seven has been met.

III. Conformance with Statewide Planning Goals

Because the proposal is for a text amendment to the Development Code, a demonstration of compliance with the Statewide Planning Goals is not required. ORS 197.225 requires that Statewide Planning Goals only be addressed for Comprehensive Plan Amendments. Nevertheless, the Statewide Planning Goals are useful to support the City's position on the proposed amendments. The proposed text amendment's conformance to relevant Statewide Planning Goals is briefly discussed below:

GOAL ONE - CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City is in compliance with this Statewide Planning Goal through the establishment of a Committee for Citizen Involvement (CCI). The City has gone even further by establishing Neighborhood Association Committees (NACs) for the purpose of providing widespread citizen involvement, and distribution of information. The proposed text amendments to the Development Code will not change the City of Beaverton's commitment to providing opportunity for citizen involvement, or place the City out of compliance with Statewide Planning Goal One.

GOAL TWO - LAND USE PLANNING

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

The City of Beaverton has adopted a Comprehensive Plan that includes text and maps (Ordinance 1800, and most recently amended by Ordinance 4187) along with implementation measures such as the Development Code (Ordinance 2050, effective through Ordinance No. 4265). These land use planning processes and policy framework form the basis for decisions and actions, such as the subject text amendment proposal. The proposed Development Code amendment has been processed in accordance with Section 40.85 (Text Amendment) and Section 50.50 (Type 4 Application) of the Development Code. Section 40.85 contains specific approval criteria for the decision-making authority to apply during its consideration

of the text amendment application. Section 50.50 (Type 4 Application) specifies the minimum required public notice procedures to insure public input into the decision-making process. The City of Beaverton's Comprehensive Plan is consistent with Statewide Planning Goal 2.

GOAL TWELVE – TRANSPORTATION

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

The City is in compliance with this Statewide Planning Goal by having an acknowledged Transportation Element as part of the Comprehensive Plan. In addition, the City has developed and continues to maintain a Transportation System Plan in conformance with the State Transportation Planning Rule in an effort to reduce overall Vehicle Miles Traveled (VMT). The proposed text amendment provides consistency with the policy framework established in the Comprehensive Plan for the future development of a commuter rail system. The development of this system has been identified as part of the Transportation Element of the Comprehensive Plan. The proposed text amendment will not change Beaverton's commitment to providing and encouraging a safe, convenient and economic transportation system and is therefore consistent with Statewide Planning Goal 12.

IV. Conclusion and Staff Recommendation

Based on the facts and findings presented, staff concludes that the proposed amendments to the Development Code are consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7. Therefore, staff recommends the Planning Commission **APPROVE** TA2004-0002 (Regional Center Commuter Rail Amendments) at the March 24, 2004, regular Commission hearing.

V. Exhibits

Exhibit 1.1 Proposed Text Amendments, Sections 20.20.43.2.A, 20.20.45.2.A, 20.20.47.2.A and Chapter 90

The Development Code, Ordinance No. 2050, Chapter 20, Land Uses, Section 20.20.43 REGIONAL CENTER - TRANSIT ORIENTED: RC-TO, will be amended to read as follows:

20.20.43.

1. **Purpose.** The intent for the Regional Center - Transit Oriented (RC-TO) District, which is served by light rail and commuter rail, is to promote a transit-supportive multiple-use land use pattern and to create over time a pedestrian-oriented commercial center within approximately ¼ mile of the light rail stations while supporting existing and future businesses in moving toward and achieving the vision of a Regional Center.
2. **District Standards and Uses.** The Regional Center - Transit Oriented District and uses shall comply with the following:

A. Permitted Uses:

Unless otherwise prohibited or subject to a conditional use, the following uses are permitted:

5. Passenger rail tracks and related facilities, such as transit stops. (Ordinance XXXX, date).

The Development Code, Ordinance No. 2050, Chapter 20, Land Uses, Section 20.20.45 REGIONAL CENTER - OLD TOWN DISTRICT: RC-OT, will be amended to read as follows:

20.20.45.

2. **District Standards and Uses.** The Regional Center - Old Town District and uses shall comply with the following:

A. Permitted Uses.....

5. Passenger rail tracks and related facilities, such as transit stops. (Ordinance XXXX, date).

The Development Code, Ordinance No. 2050, Chapter 20, Land Uses, Section 20.20.47 REGIONAL CENTER - EAST DISTRICT: RC-E, will be amended to read as follows:

20.20.47.

1. **Purpose.** The intent for the Regional Center - East (RC-E) District, adjoining Highway 217 and located generally more than ¼ mile from the nearest light rail station, is to support existing and future businesses and accommodate more highly automobile-oriented uses and lower-intensity uses which are inappropriate in either the Transit Oriented (TO) or Old Town (OT) Districts while still maintaining pedestrian linkages to the transit stations and transit-served land uses.

2. **District Standards and Uses.** The Regional Center - East District and uses shall comply with the following:

A. Permitted Uses.....

Unless otherwise prohibited or subject to a Conditional Use, the following uses are permitted:

5. Passenger rail tracks and related facilities, such as transit stops. (Ordinance XXXX, date).

The Development Code, Ordinance No. 2050, Chapter 90, DEFINITIONS, will be amended to read as follows:

Commuter Rail. [Ordinance XXXX, XXXXX 2004] A railway for urban-passenger train service consisting of local short-distance travel within a metropolitan area operating between a central city and its suburbs and/or between suburbs. Commuter rail service may be either locomotive-hauled or self-propelled and is generally characterized by a limited number of stations, multi-trip tickets, specific station-to-station fares and railroad employment practices. Such commuter service may share the right-of-way of an inter-city or long-haul railroad or use new or vacated right-of-way.

Intermodal. [Ordinance XXXX, XXXXX 2004] The connection of one type of transportation mode with another.

Passenger Rail Track. [ORD XXX, XXXXX 2004] A permanent course for passenger rail cars, including commuter rail.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located at 1250 NW Waterhouse Avenue; CPA 2003-0018/ZMA 2003-0020.

FOR AGENDA OF: 04/12/04 **BILL NO:** 04065

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: CDD *[Signature]*

DATE SUBMITTED: 03/29/04

CLEARANCES: City Attorney's *AA*
Planning Services *HB*

PROCEEDING: First Reading

EXHIBITS: Ordinance
Exhibit A – Map
Planning Commission Order No. 1674
PC Minutes of 02/25/04 Hearing
Staff Report Dated 01/27/04

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

On February 25, 2004, the Planning Commission held a public hearing on the request to assign a Comprehensive Plan Land Use Map designation and Zoning Map designation to property being annexed to the City through a different process. The request is to designate this parcel Employment (EMP) on the City's Comprehensive Plan Land Use Map and to designate it Campus Industrial (CI) on the Zoning Map. The Planning Commission voted to approve the requests as submitted. These decisions have not been appealed.

The City land use designations will take effect 30 days after Council approval and the Mayor's signature on this ordinance.

INFORMATION FOR CONSIDERATION:

These Comprehensive Plan Land Use Map and Zoning Map Amendments are to assign designations for a parcel being annexed into the City and are governed by the Washington County – Beaverton Urban Planning Area Agreement (UPAA). In this case, the UPAA was not specific as to the appropriate Land Use Map designation or the Zoning Map designation and discretion was necessary to assign our most similar designations to the County's designations.

This ordinance makes the appropriate changes to Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map.

RECOMMENDED ACTION:

First Reading.

ORDINANCE NO. 4296

AN ORDINANCE AMENDING ORDINANCE NO. 4187, FIGURE III-1, THE COMPREHENSIVE PLAN LAND USE MAP AND ORDINANCE NO. 2050, THE ZONING MAP FOR PROPERTY LOCATED AT 1250 NW WATERHOUSE AVENUE; CPA 2003-0018/ZMA 2003-0020.

WHEREAS, The intent of the proposed amendments to the Comprehensive Plan Land Use Map and Zoning Map is to assign appropriate City land use designations to a parcel annexed into the City through a different process; and

WHEREAS, On February 25, 2004 the Planning Commission held a public hearing to consider these amendments to the Comprehensive Plan Land Use and Zoning Maps and voted to recommend approval of the Employment (EMP) Comprehensive Plan Land Use Map designation and the Campus Industrial (CI) Zoning Map designation in place of the County designation of Industrial with an Employment overlay designation; and

WHEREAS, The Council incorporates by reference the Community Development Department staff report on CPA 2003-0018/ZMA 2003-0020 by Senior Planner Alan Whitworth, dated January 27, 2004; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 4187, the Comprehensive Plan Land Use Map, is amended to designate the subject property located at 1250 NW Waterhouse Avenue [Tax Map 1N132BD, Tax Lot 400] Employment (EMP) on the Comprehensive Plan Land Use Map, as shown on Exhibit "A", in accordance with the Washington County - Beaverton Urban Planning Area Agreement (UPAA).

Section 2. Ordinance No. 2050, the Zoning Map, is amended to zone the same property specified in Section 1 Campus Industrial (CI), as shown on Exhibit "A", in accordance with the UPAA.

First reading this _____ day of _____, 2004.
Passed by the Council this _____ day of _____, 2004.
Approved by the Mayor this _____ day of _____, 2004.

ATTEST:

APPROVED:

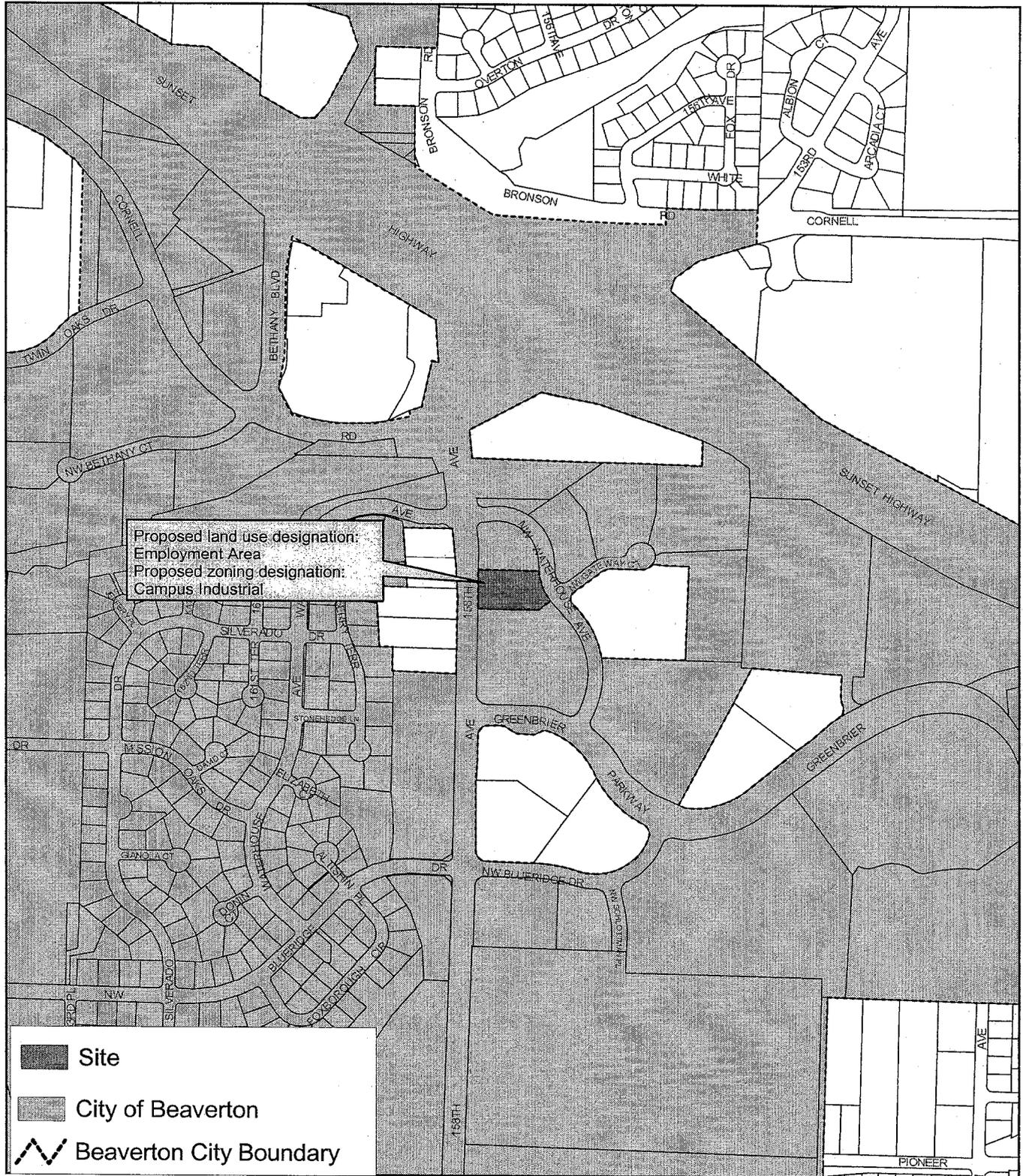
SUE NELSON, City Recorder

ROB DRAKE, Mayor

CPA/ZMA MAP

ORDINANCE NO. 4296

Exhibit "A"



City of Beaverton

1250 NW WATERHOUSE AVENUE COMPREHENSIVE PLAN
LAND USE MAP AMENDMENT & ZONING MAP AMENDMENT

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

12/29/03

Map #

1n132bd00400



Application #

CPA 2003-0018/
ZMA 2003-0020

BEFORE THE PLANNING COMMISSION
FOR THE CITY OF BEAVERTON, OREGON

IN THE MATTER OF A REQUEST TO AMEND)	
THE CITY COMPREHENSIVE PLAN LAND)	ORDER NO. 1674
USE MAP AND ZONING MAP APPLICABLE)	CPA 2003-0018
TO ONE PROPERTY LOCATED AT 1250)	ZMA 2003-0020
NW WATERHOUSE AVENUE (1250 NW)	ORDER APPROVING
WATERHOUSE AVENUE LAND USE MAP)	REQUEST
AMENDMENT AND ZONING MAP)	
AMENDMENT), ALAN WHITWORTH,)	
CITY OF BEAVERTON, APPLICANT)	

The matter came before the Planning Commission on February 25, 2004, on a request for quasi-judicial plan and zoning map amendments to add a City Comprehensive Plan Land Use Map designation of Employment (EMP) and Zoning designation of Campus Industrial (CI) to one lot that is being annexed into the City, through a different process. The proposal provides for these changes applicable to 1250 NW Waterhouse Avenue, and more specifically identified as Tax Lot 00400 on Washington County Tax Assessor's Map 1N1-32BD.

Pursuant to Ordinance 4187 (Comprehensive Plan), Sections 1.3.6.1 and 1.3.6.2 and Ordinance 2050 (Development Code), Sections 50.55 and 50.58, the Planning Commission conducted a public hearing and considered testimony and exhibits.

The Planning Commission adopts the Staff Report dated January 27, 2004 as to applicable criteria contained in Section 1.3.1 of the Comprehensive Plan and Section 40.97.15.4.C and Section 40.97.15.1 of the Development Code and findings thereon; now, therefore:

IT IS HEREBY ORDERED that CPA 2003-0018 is **APPROVED** based on the facts and findings of the Planning Commission on February 25, 2004.

IT IS HEREBY ORDERED that ZMA 2003-0020 is **APPROVED** based on the facts and findings of the Planning Commission on February 25, 2004.

Motion **CARRIED** by the following vote:

AYES: Voytilla, Pogue, Bliss, Johansen, Winter, and Barnard.
NAYS: None.
ABSTAIN: None.
ABSENT: Maks.

Dated this 2nd day of March, 2004.

To appeal the decision of the Planning Commission, as articulated in Order No. 1674, an appeal must be filed with the City of Beaverton Recorder's Office by no later than 5:00 p.m. on March 12, 2004.

PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:



ALAN WHITWORTH
Senior Planner



HAL BERGSMA
Planning Services Manager

APPROVED:



BOB BARNARD
Chairman

1 in the Staff Report dated February 6, 2004, and Staff Memorandum
 2 dated February 25, 2004.

3
 4 Motion **CARRIED** by the following vote:

- 5
 6 **AYES:** Voytilla, Winter, Bliss, Johansen, Pogue, and
 7 Barnard
 8 **NAYS:** None.
 9 **ABSTAIN:** None.
 10 **ABSENT:** Maks.

11
 12 **B. 1250 NW WATERHOUSE AVENUE**

13 **4. CPA 2003-0018 – Land Use Map Amendment**

14 **5. ZMA 2003-0020 – Zoning Map Amendment**

15 This proposal is to amend the Land Use Map in the Comprehensive
 16 Plan and Zoning Map to designate one parcel being annexed into
 17 the City, by a separate process, Employment (EMP) on the Land
 18 Use Map and Campus Industrial on the Zoning Map in place of the
 19 current Washington County designation of Industrial with an
 20 Employment Area overlay. These are Beaverton's most similar
 21 land use and zoning destinations to those that Washington County
 22 has placed on this property. The address of this parcel is 1250 NW
 23 Waterhouse Avenue; it is identified on tax map 1N132BD as Tax
 24 Lot 00400.

25
 26 Chairman Barnard and Commissioner Pogue indicated that he had
 27 visited the site.

28
 29 Senior Planner Alan Whitworth presented the Staff Report and offered
 30 to respond to questions.

31
 32 **PUBLIC TESTIMONY:**

33
 34 No member of the public testified with regard to this application.

35
 36 Mr. Whitworth indicated that staff had no further comments.

37
 38 Mr. Naemura indicated that he had no comments with regard to this
 39 application.

40
 41 The public portion of the Public Hearing was closed.

42
 43 Commissioners Johansen, Winter, Pogue, Bliss, and Voytilla, and
 44 Chairman Barnard expressed their support of the application.

1
2 Commissioner Pogue **MOVED** and Commissioner Bliss **SECONDED** a
3 motion for approval of CPA 2003-0018 – 1250 NW Waterhouse Avenue
4 Land Use Map Amendments, based upon the testimony, reports and
5 exhibits and new evidence presented during the Public Hearings on the
6 matter, and upon the background facts, findings and conclusions found
7 in the Staff Report dated February 6, 2004.

8
9 Motion **CARRIED** by the following vote:

10
11 **AYES:** Pogue, Bliss, Voytilla, Winter, Johansen, and
12 Barnard
13 **NAYS:** None.
14 **ABSTAIN:** None.
15 **ABSENT:** Maks.
16

17 Commissioner Pogue **MOVED** and Commissioner Bliss **SECONDED** a
18 motion for approval of ZMA 2003-0020 – 1250 NW Waterhouse Avenue
19 Zoning Map Amendments, based upon the testimony, reports and
20 exhibits and new evidence presented during the Public Hearings on the
21 matter, and upon the background facts, findings and conclusions found
22 in the Staff Report dated February 6, 2004.

23
24 Motion **CARRIED** by the following vote:

25
26 **AYES:** Pogue, Bliss, Voytilla, Winter, Johansen, and
27 Barnard
28 **NAYS:** None.
29 **ABSTAIN:** None.
30 **ABSENT:** Maks.
31

32 **APPROVAL OF MINUTES:**

33
34 Minutes of the meeting of January 28, 2004, submitted. Commissioner
35 Voytilla requested that the date on the header be amended, as follows:
36 "January ~~21~~ **28**, 2004". Commissioner Pogue **MOVED** and
37 Commissioner Voytilla **SECONDED** a motion that the minutes be
38 amended as amended.

39
40 Motion **CARRIED**, unanimously.

41
42 **MISCELLANEOUS BUSINESS:**



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

STAFF REPORT

TO: Planning Commission

FROM: Alan Whitworth, Senior Planner *Alan*

REPORT DATE: January 27, 2004

HEARING DATE: February 25, 2004

REQUEST: CPA2003-0018/ZMA2003-0020 (1250 NW Waterhouse Avenue CPA and Zoning Map Amendment) Quasi-judicial plan and zoning map amendments to add a City Comprehensive Plan Land Use Map designation of Employment (EMP) and Zoning designation of Campus Industrial (CI) to one lot that is being annexed into the City, through a different process. Involves tax lot 1N132BD 00400 that is shown on the attached map and described by the attached legal description.

APPLICANT: City of Beaverton

APPROVAL CRITERIA: Comprehensive Plan Section 1.3.1 and Development Code Section 40.97.15.4.C.

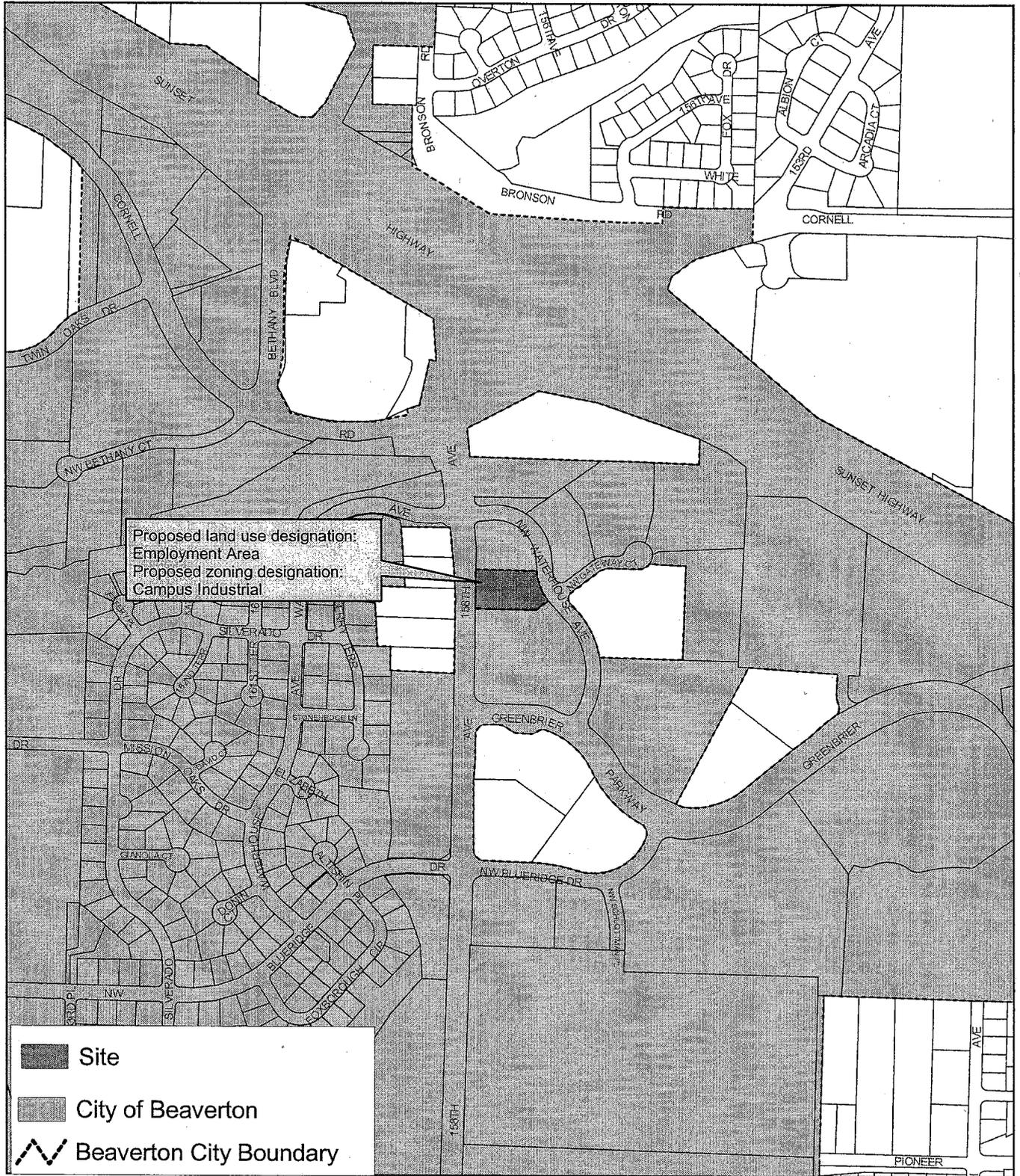
LOCATION: The address is 1250 NW Waterhouse Avenue. The property is located on the west side of NW Waterhouse and the east side of NW 158th Avenue.

EXISTING USE: The property is approximately one acre and developed with an Elmer's Restaurant.

RECOMMENDATION

Based on findings in this report that the criteria contained in Comprehensive Plan Section 1.3.1 and Development Code Section 40.97.15.4.C. are met, staff recommends approval of the Employment Comprehensive Plan Land Use Map designation and Campus Industrial on the Zoning Map for tax lot 1N132BD 00400 that is shown on the attached map and described by the attached legal description.

CPA/ZMA MAP



City of Beaverton

1250 NW WATERHOUSE AVENUE COMPREHENSIVE PLAN
LAND USE MAP AMENDMENT & ZONING MAP AMENDMENT

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

12/29/03

Map #

1n132bd00400

N



Application #

CPA 2003-0018/
ZMA 2003-0020

ANALYSIS OF COMPREHENSIVE PLAN AMENDMENT

The purpose of the proposed amendments to the Comprehensive Plan Land Use Map and Zoning Map is to assign appropriate City Land Use and Zoning designations to a parcel being annexed into the City of Beaverton through a different process. The Washington County - Beaverton Urban Planning Area Agreement (UPAA) calls for the City to assign our most similar Land Use Map and Zoning Map designations to those of the County's. This parcel is designated Industrial by Washington County on the Sunset West Community Plan. In 2000 the County amended their Comprehensive Framework Plan to place an Employment overlay on this property. The UPAA specifies that our Comprehensive Plan designation for their Industrial District is Industrial Park, Campus Industrial or Light Industrial but these land use categories were deleted when the current Comprehensive Plan became effective last year. Their Employment overlay designation does match our Land Use Map designation of Employment. The UPAA does not reference Employment as an overlay district or as a City Land Use Map designation because it did not exist when the UPAA was written. It is clear that the Land Use Map designation applied to the property should allow for industrial use to be our most similar designation to the County's. The Metro 2040 Growth Concept Map also shows this property as Employment. Staff finds that the City Land Use Map designation most similar to the County's Employment overlay and Industrial designation is our Employment designation. For these reasons staff recommends the Comprehensive Plan Land Use Map be amended to show this parcel as Employment.

ANALYSIS OF ZONING MAP AMENDMENT

Washington County has designated this parcel Industrial and the UPAA is specific that we should zone it either Industrial Park, Campus Industrial or Light Industrial. According to Section 3.14 of Beaverton's Comprehensive Plan, the Comprehensive Plan and Zoning District Matrix, Campus Industrial is the only zoning district that can be applied to implement an Employment Land Use Map designation. The current uses on the property fit best in the Campus Industrial as opposed to the other two industrial designations. For these reasons staff recommends the Zoning Map be amended to show this parcel as Campus Industrial.

The UPAA requires the City to review the relevant Community Plan, which in this case is the Sunset West Community Plan. This parcel is not located in an Area of Special Concern and there are no special conditions that apply to this property.

COMPREHENSIVE PLAN AMENDMENT FINDINGS

Adoption by the City Council and Planning Commission of an amendment to the Plan must be supported by findings of fact, based on the record, that demonstrate the criteria of Comprehensive Plan Section 1.3.1 (Amendment Criteria) have been met. The City Council and Planning Commission may adopt by reference facts, findings, reasons, and conclusions proposed by the City staff or others. Affirmative findings to the following criteria are the minimum requirements for Land Use Map amendments.

Compliance with Plan Amendment Criteria:

1.3.1.1. The proposed amendment is consistent and compatible with the Statewide Planning Goals.

Of the 19 Statewide Planning Goals, Goal One: Citizen Involvement and Goal Two: Land Use Planning are applicable to the proposed map amendments.

Goal One: Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

This proposed application for a Comprehensive Plan Land Use Map amendment and zone change is subject to the public notice requirements of the City Charter, Comprehensive Plan Section 1.3.4.3 and Development Code Section 50.45. The following summarizes public involvement opportunities and notification requirements specified in these sections:

- Mailing notice to DLCD, Metro, the City's Neighborhood Office and the CCI Chair at least forty-five days prior to the public hearing.
- A Public Hearing before the Planning Commission that must be advertised 20 days in advance in the Valley Times and posted in three conspicuous places. Thirty days prior to the hearing notice must be mailed to the owners of the subject property by certified mail and twenty days prior to the hearing notice must be mailed to residents and owners of property within 500 feet of the subject property.

The Planning Commission at their hearing considers written comments and oral testimony before they make a decision. The procedures outlined in Comprehensive Plan Section 1.3.4.3 and Development Code Section 50.45 allow for proper notice and public hearing opportunities on the proposed Comprehensive Plan Land Use Map amendment and zone change as required by this Statewide Planning Goal. These procedures have been followed.

Finding: Staff finds that the City through its Charter, Comprehensive

Plan and Development Code and the State through numerous statutes have created proper procedures to insure citizens the opportunity to have input in these proposed Comprehensive Plan Map amendments and that those procedures have been or will be complied with.

Goal Two: Land Use Planning

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

The City of Beaverton adopted a Comprehensive Plan, which includes text and maps, in a three-part report (Ordinance 1800) along with implementation measures, including the Development Code (Ordinance 2050) in the late 1980's. The City adopted a new Comprehensive Plan (Ordinance 4187) in January of 2002 that was prepared pursuant to a periodic review work program approved by the State Department of Land Conservation and Development (DLCD). The proposed Plan, including a new Land Use Map, was the subject of numerous public hearings and considerable analysis before being adopted. The adopted Plan and findings supporting adoption were deemed acknowledged on pursuant to a series of Approval Orders from the Department of Land Conservation and Development, the last of which was issue on December 31, 2003. In 1989, the City and Washington County adopted the Washington County - Beaverton Urban Planning Area Agreement (UPAA), which is now section 3.15 of the Comprehensive Plan. The land use planning processes and policy framework described in the UPAA, Development Code and Comprehensive Plan form the basis for decisions and actions, such as the subject amendments. In addition, both the Development Code and the Comprehensive Plan provide procedures to follow when assigning land use designations and zoning related to annexations.

Section II.D. of the UPAA states:

The CITY and the COUNTY agree that when annexation to the CITY takes place, the transition in land use designation from one jurisdiction to another should be orderly, logical and based upon a mutually agreed upon plan. Upon annexation, the CITY agrees to convert COUNTY plan and zoning designations to CITY plan and zoning designations which most closely approximate the density, use provisions and standards of the COUNTY designations. Such conversions shall be made according to the tables shown on Exhibit "B" to this agreement.

This parcel is currently designated Industrial. The Washington County Comprehensive Framework Plan places the property within an Employment design type, consistent with the Metro 2040 Growth Concept. The UPAA specifies that our Comprehensive Plan designation for their Industrial designation is either Industrial Park, Campus Industrial or Light Industrial but these categories were

deleted when the current Comprehensive Plan became effective last year. It is clear that the Land Use Map designation applied to the subject property should allow for industrial use in order to be the City's most similar designation to the County's. Beaverton's Comprehensive Plan Section 3 has two possible designations those being Employment Area or Industrial. Since the County has designated this property Employment in their Framework Plan staff recommends the Comprehensive Plan Land Use Map be amended to show this parcel as Employment.

Washington County's Comprehensive Framework Plan is implemented by ten Community Plans. County Community Plan documents consist of both adopted Land Use District Maps and related Plan text. Each Community Plan Map shows the adopted land use designation for each parcel within the planning area. The Community Plan text provides a written description of the Community Plan Map, Community Design Elements and Areas of Special Concern. Individual, site-specific policy design elements are sometimes included in the Community Plan text. City staff has reviewed the Sunset West Community Plan for relevant site-specific policies. The subject parcel is not identified as being within an area of special concern nor are there any applicable sub-area policies.

Finding: *Staff finds that the City and Washington County have established a land use planning process and policy framework as basis for assigning land use and zoning designations for recently annexed land. This amendment complies with Goal Two.*

SUMMARY FINDING: *Staff finds that the requested Comprehensive Plan change to Employment is consistent with the Statewide Planning Goals and the requirements of Criterion 1.3.1.1 are met.*

1.3.1.2. The proposed amendment is consistent and compatible with Metro Regional Urban Growth Goals and Objectives and the Metro Regional Framework Plan.

Metro's Urban Growth Management Functional Plan Section 3.07.830 requires that any Comprehensive Plan change must be consistent with the requirements of the Functional Plan. The City is only required to address provisions in the Urban Growth Management Functional Plan, which is an Element of the Framework Plan. The Regional Framework Plan (which includes the RUGGOs and the Urban Growth Management Functional Plan) does not contain policies or criteria directly applicable to decisions of this type.

The Metro 2040 Growth Concept Map shows this property as an Employment design type.

FINDING: *Staff finds that the requested Land Use Map designation of Employment is consistent and compatible with regional plans and guidelines. The requirements of Criterion 1.3.1.2 are met.*

1.3.1.3 *The proposed amendment is consistent and compatible with the Comprehensive Plan and other applicable local plans.*

Section 2.6.3 of the City Comprehensive Plan addresses Annexation Related Map Amendments. This section explains that Comprehensive Plan and Zoning map amendments of annexed properties are subject to the provisions of the UPAA (the UPAA is Section 3.15 of the Plan). The UPAA specifies County Industrial should become Industrial Park, Campus Industrial or Light Industrial, but the City no longer has these designations. When the UPAA is not specific the City is to assign the most similar designations to the County designations. The County has defined this property in its Comprehensive Framework Plan as being an Employment Area which matches our Employment Area Land Use Map designation and allows for industrial uses. Metro has designated this property Employment which is compatible with our Employment Land Use category. Staff is unaware of any other relevant plans affecting this decision. Staff concludes that Employment is the appropriate Land Use Map designation.

FINDING: Staff finds that the requested Comprehensive Plan change to Employment is consistent and compatible with Comprehensive Plan Sections 2.6.3 and 3.15 (UPAA), which are the relevant section of the Plan. The requirements of Criterion 1.3.1.3 are met.

1.3.1.4 *Potential effects of the proposed amendment have been evaluated and will not be detrimental to quality of life, including the economy, environment, public health, safety or welfare.*

It is the intent of the UPAA to provide for a smooth transition from County designations to City designations by adopting designations that most closely approximate the County's designations. The transition does not significantly impact public services, economic factors or environmental elements. Residents and business owners may benefit from the application of City designations to their property when applying for development services since City employees are more familiar with City regulations than County regulations. Staff finds that the proposed amendments will not be detrimental to quality of life, including the economy, environment, public health, safety or welfare.

FINDING: Staff finds that the potential effects of the proposed amendment will not be detrimental to quality of life, including the economy, environment, public health, safety or welfare. Criterion 1.3.1.4 is met for the annexation related Comprehensive Plan Land Use Map amendment of Employment as proposed in this staff report.

1.3.1.5 *The benefits of the proposed amendment will offset potential adverse impacts on surrounding areas, public facilities and services.*

The UPAA was developed to ensure that City designation of annexed parcels would have minimal impact to surrounding areas, public facilities and services. The assumption behind this is that the County went through a proper planning, evaluation and review process prior to assigning plan designations and issuing development approvals. The City reviewed impacts on public facilities and services as part of the annexation review process prior to approving the annexation (ANX 2003-0013). No adverse impacts on public facilities and services were identified.

FINDING: Staff finds the benefits of the proposed Land Use Map amendment will offset potential adverse impacts on surrounding areas, public facilities and services. Criterion 1.3.1.5 is met for the proposed Comprehensive Plan Land Use Map amendment.

1.3.1.6 There is a demonstrated public need, which will be satisfied by the amendment as compared with other properties with the same designation as the proposed amendment.

This amendment is associated with an annexation that will add property to the City. It is necessary for property within the City to have City Comprehensive Plan and zoning designations in place of the County designation.

FINDING: Criterion 1.3.1.6 does not apply to annexation related Comprehensive Plan Land Use Map amendments.

ZONING MAP AMENDMENT FINDINGS

Adoption by the City Council and Planning Commission of an amendment to the Zoning Map must be supported by findings of fact based on the evidence provided by the applicant demonstrating the criteria of the Development Code Section 40.97.15.4.C (Discretionary Annexation Related Zoning Map Amendment - Approval Criteria) have been met. The City Council and Planning Commission may adopt by reference facts, findings, reasons, and conclusions proposed by the City staff or others. Affirmative findings to the following criteria are the minimum requirements for Zone Map amendments.

40.97.15.4.C.1. The proposal satisfies the threshold requirements for a Discretionary Annexation Related Zoning Map Amendment application.

There is one threshold requirement that is "The change of zoning to a City zoning designation as a result of annexation of land to the City and the Urban Planning Area Agreement (UPAA) does not specify a particular corresponding City zoning designation and discretion is required to determine the most similar City zoning designation." The UPAA lists three possible zoning designations. Those are: Industrial Park, Campus Industrial and Light Industrial.

FINDING: Staff finds that the proposed request satisfies the threshold requirement for a Discretionary Annexation Related Zoning Map Amendment application.

40.97.15.4.C.2. All City application fees related to the application under consideration by the decision making authority have been submitted.

FINDING: Since there are no fees for annexation related Land Use Map and Zoning Map Amendments. Staff finds that this criterion is not applicable.

40.97.15.4.C.3. The proposed zoning designation most closely approximates the density, use provisions, and development standards of the Washington County designation which applied to the subject property prior to annexation.

The UPAA specifies that County Industrial goes to City Industrial Park, Campus Industrial or Light Industrial. The County has designated this area Employment in their Framework Plan and staff is recommending that the Land Use Map show this as Employment. The Comprehensive Plan and Zoning District Matrix which is contained in Section 3.14 of the Comprehensive Plan only allows for Campus Industrial in Employment areas. Furthermore, staff has reviewed the current use against the three allowed districts and believes the Campus Industrial is the best fit for the current use.

FINDING: Staff finds that the proposed zoning designation is one of three districts specified by the UPAA and that Campus Industrial is the appropriate choice given the current use and the County's Employment overlay designation of Employment.

40.97.15.4.C.4 The proposed zoning designation is consistent with any guidance contained within the UPAA concerning the application of non-specified zoning district designations.

The UPAA requires that the property be designated Industrial Park, Campus Industrial or Light Industrial. The recommended Campus Industrial zoning designation is one of the three designations specified by the UPAA and is in compliance with the guidance provided by the UPAA

FINDING: Staff finds that the proposed Campus Industrial zoning designation is one of the three designations specified by the UPAA and, therefore, is consistent with it.

40.97.15.4.C.5. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

The City processes Land Use Map and Zoning Map Amendments (CPA/ZMA) for property being annexed into the City and there are no further City approvals related to this request other than the Planning Commission, City Council and Mayor's approvals of this CPA/ZMA. The property owner may, in the future, submit a request to the City for modification or redevelopment of the property, but that is not related to this request.

FINDING: *Staff finds that there are no proposals related to this request that will require further City approvals and, therefore, no additional applications or documents are required.*

PROCESS

Submission Requirements: An application for a Discretionary Annexation Related Zoning Map Amendment shall be made by the submittal of a valid annexation petition or an executed annexation agreement. An annexation petition has been submitted.

Public Hearing: Annexation Related Land Use Map amendments follow the procedures in the Comprehensive Plan and Annexation Related Zoning Map amendments follow the procedures in the City Charter and the Development Code. When the UPAA is not specific as to exactly which designations to assign, both processes require a public hearing before the Planning Commission. In this case the UPAA is not specific about either the Land Use Map or Zoning Map designations. This circumstance requires the Land Use Map and Zoning Map amendments to have a public hearing before the Planning Commission. The Zoning Map amendment will be processed as a Type 3 application. A public hearing has been scheduled before the Planning Commission on February 25, 2004 for the proposed amendments.

Public Notice: Section 43 of the City Charter, Section 1.3.4.3(a) of the Comprehensive Plan and Section 50.45.2 of the Development Code prescribe the notice to be provided for a public hearing on these types of applications.

Notice as described below for hearings on annexation related CPA's must be provided not less than twenty (20) calendar days prior to the City Planning Commission hearing and rezones must provided notice not less than seven (7) days prior to the hearing with the exception of the property owner who must, as required by the City Charter, be sent notice by certified mail at least thirty (30) calendar days prior to the hearing.

1. Legal notice was published in the Beaverton Valley Times on February 5, 2004.

2. Notice was posted at the Post Office, Beaverton Library and City Hall on or before February 5, 2004.
3. Notice was mailed to the Five Oaks Neighborhood Association Committee (NAC), Sunset West/Rock Creek/Bethany Citizen Participation Organization (CPO 7) and persons within 500 feet of the proposed rezones on or before February 5, 2004.
4. Notice was mailed to the property owner by certified mail on or before January 26, 2004.

Notice was also mailed to Metro and the State Department of Land Conservation and Development on January 6, 2004 more than the 45 days in advance of the initial hearing as required by the Metro Code and Section 660-018-0020 of the Oregon Administrative Rules.

The Planning Commission has not directed staff to provide additional notice for this amendment beyond the notices described above. The notice requirements for this CPA/ZMA will be met.

Decision: Following a Planning Commission action, a Planning Commission order will be prepared and mailed to the property owner and any person submitting written comments prior to or at the hearing or testifying before the Planning Commission during the hearing.

Appeals: Appeals of the Commission decision regarding CPA's and rezones are made to the City Council. The procedure for filing such an appeal and the manner of the hearing is governed by Section 1.3.6 of the Comprehensive Plan for the CPA and Section 50.70 of the Development Code for the ZMA. The appeal request must be made in writing and delivered to the City within 10 calendar days of the land use order date. In addition, there is a non-refundable \$620.00 fee, which must accompany the request for hearing.

120-Day Rule: This rezone request is quasi-judicial. The applicant (City of Beaverton) has waived the 120-day rule (Oregon Revised Statutes Chapter 227 Section 178). The CPA is not subject to the 120-day rule.

FINDING: *Applicable procedural requirements have been met for these proposed Land Use Map and Zoning Map amendments.*

Based on the findings in this report, staff concludes amending the Land Use Map to show Employment, and the Zoning Map to show Campus Industrial, is appropriate.

Attachment: Legal Description

Legal Description

ANX 2003-0013

1250 NW Waterhouse Avenue Expedited Annexation

Beginning at a point at the Northwest Corner of Lot 21 of Corporate Center at Cornell Oaks in the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Section 32, T1N; R1W; W.M., Washington County, Oregon, said point also being on the westerly right of way line of NW Waterhouse Avenue; thence southerly along said right of way line, along the arc of a 230 foot radius curve to the left, 134.86 feet; thence southwesterly, perpendicular to said right of way line 63.99 feet; thence westerly, 247 feet to the east right of way line of NW 158th Avenue, said point also being the SW corner of Lot 21 Corporate Center at Cornell Oaks; thence northerly along said easterly right of way line of NW 158th Avenue, 146.70 feet; thence continuing northerly along said right of way line, 12.15 feet to the NW corner of said Lot 21; thence easterly 248.35 feet to the Point of Beginning.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

04/12/04

SUBJECT: An Ordinance Adopting TA 2004-0001 to Amend Development Code Section 10.70 (Enforcement)

FOR AGENDA OF: ~~04-05-04~~ **BILL NO:** 04059

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: CDD *[Signature]*

DATE SUBMITTED: 03-19-04

CLEARANCES: City Attorney *[Signature]*
Dev. Serv. *[Signature]*

PROCEEDING: First Reading
Second Reading and Passage

- EXHIBITS:**
1. Ordinance
 2. Land Use Order No. 1680
 3. Draft PC Minutes
 4. Staff Report dated 03-03-04

BUDGET IMPACT

EXPENDITURE REQUIRED\$0	AMOUNT BUDGETED\$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

The purpose of the newly created Code Section (10.70 Enforcement) in the Development Code is to create a means in which the City can regulate and enforce development agreements between various parties which enter into contracts with the City of Beaverton. This text amendment will give the City of Beaverton a tool to quickly enforce development agreements in situations where the other party does not fulfill their obligation of the contract.

On March 10, 2004, the Planning Commission held a public hearing to consider TA 2004-0001 to provide for the termination of a Development Agreement in the event that there is a violation of the Development Agreement. As a result, a new section to the Development Code was created for Section 10.70 (Enforcement).

Following the close of the public hearing on March 10, 2004, the Planning Commission voted 7-0 to recommend approval of the proposed text amendment to Section 10.70, as memorialized in Land Use Order No. 1680.

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill are Land Use Order No. 1680, the recommended text, the draft Planning Commission meeting minutes, and the staff report.

RECOMMENDED ACTION:

Staff recommend the City Council approve the recommendation of the Planning Commission for TA 2004-0001 (Section 10.70 Enforcement Text Amendment) as set forth in Land Use Order No. 1680. Staff further recommend the Council conduct a First Reading of the attached ordinance and schedule a second reading and adoption of the draft ordinance at the next available City Council hearing.

ORDINANCE NO. 4294

AN ORDINANCE AMENDING ORDINANCE NO. 2050,
THE DEVELOPMENT CODE, CHAPTER 10;
TA 2004-0001 (SECTION 10.70 Enforcement Text
Amendment)

WHEREAS, the Beaverton Community Development Department has proposed a text amendment application to amend Development Code Section 10.70 (Enforcement Text Amendment) to provide for the termination of a Development Agreement in the event that there is a violation of the Development Agreement,

WHEREAS, pursuant to Section 50.50.2-4 of the Development Code, the Beaverton Development Services Division conducted public noticing for a new section to the Development Code; and,

WHEREAS, pursuant to Section 50.50.5 of the Development Code, the Beaverton Development Services Division, on March 3, 2004, published a written staff report and recommendation a minimum of seven (7) calendar days in advance of the scheduled public hearing before the Planning Commission on March 10, 2004; and,

WHEREAS, on March 10, 2004, the Planning Commission conducted a public hearing for TA 2004-0001 (Section 10.70 Enforcement Text Amendment) at the conclusion of which the Planning Commission voted to recommend to the Beaverton City Council to adopt the proposed amendments to the Development Code as summarized in Planning Commission Land Use Order No. 1680; and,

WHEREAS, no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2004-0001 (Section 10.70 Enforcement Text Amendment) following the issuance of the Planning Commission Land Use Order No. 1680; and,

WHEREAS, in accordance with City Council Rules of Procedure, the Council conducted a first reading of the Ordinance on April 5, 2004; and,

WHEREAS, specific to the proposed amendments to Section 10.70 (Enforcement Text Amendment) of the Development Code as summarized in Planning Commission Land Use Order No. 1680, the Council consents to and adopts as to facts and findings for this Ordinance the materials described in Land Use Order No. 1680 dated March 17, 2004, all of which the Council incorporates by their reference herein and finds constitute an adequate factual basis for this Ordinance; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2050, effective through Ordinance No. 4248, the Development Code, Chapter 10, Section 10.70, is amended to read as follows:

9. Violation of Development Agreement. If the City has entered a development agreement with any party concerning the development of land within the City and has mailed or delivered a written notice that the party is in breach or default of the development agreement, the City may deny any application for land use or building permits on such property because of the breach or default of the development agreement.

Section 2. Severance Clause.

The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any appendix or part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to effect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this 5th day of April, 2004.

Passed by the Council this ___ day of _____, 2004.

Approved by the Mayor this ___ day of _____, 2004.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor