



FINAL AGENDA

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

REGULAR MEETING
MAY 17, 2004
6:30 p.m.

CALL TO ORDER:

ROLL CALL:

PROCLAMATIONS:

National Bike Month: May, 2004

PRESENTATIONS:

04094 Presentation by Marci Hosier, Executive Director, Tualatin Valley
Television

CITIZEN COMMUNICATIONS:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes of May 10, 2004

04095 Liquor License: New Outlet – Fallbrook Station

04096 Changes to Classifications

04101 Personal Services Contract for Solid Waste Rate Analysis and Services

Contract Review Board:

04097 A Resolution Relating to Personal Service Contracts Involving the Hiring
of Professionals on Retainer to the City and Amending the City of
Beaverton Rules of Procedure for Public and Personal Services Contracts
(Resolution No. 3708, Adopted February 24, 2003). (Resolution No.
3756)

04098 Authorization to Enter into Lease Negotiations with Vendor to Provide
Food Concession Services at City Park Kiosk

04099 Land Purchase for a Future Water Storage Reservoir; and Council Authorization for Mayor to Sign Intergovernmental Agreement with Tualatin Hills Parks and Recreation District

ORDINANCES:

First Reading:

04100 An Ordinance Annexing Property Generally Located at 1115 NW 158th Avenue to the City of Beaverton. Expedited Annexation 2004-0007 (Ordinance No. 4310)

Second Reading:

04093 An Ordinance Relating to the Emergency Management Code Amending Beaverton Code Section 2.01.020 (Ordinance No. 4309)

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) (e) to deliberate with persons designated by the governing body to negotiate real property transactions 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. 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 72 hours advance notice. To request these services, please call 526-2222/voice TDD.

PROCLAMATION

OFFICE OF THE MAYOR CITY OF BEAVERTON



WHEREAS, the bicycle is a viable and environmentally sound form of transportation and an excellent form of recreation; and

WHEREAS, bicycle commuting is an effective means to conserve energy; and

WHEREAS, bicycle commuting helps improve the livability of communities by reducing traffic noise and congestion; and

WHEREAS, 2004 marks the 48th year that the national non-profit bicycling safety and education association the League of American Bicyclists has declared the month of May to be National Bike Month; and

WHEREAS, bicycle clubs, schools, parks and recreation departments, police departments, hospitals, companies and civic groups throughout the state will be promoting bicycling as a wholesome leisurely activity as well as an environmentally-friendly alternative to the automobile during the month of May, 2004; and

NOW, THEREFORE, I, ROB DRAKE, MAYOR, CITY OF BEAVERTON, OREGON, do hereby proclaim the month of **MAY 2004** as:

NATIONAL BIKE MONTH

May 17 through May 21, 2004 as:

BIKE TO WORK WEEK

and Friday, May 21, 2004 as:

BIKE TO WORK DAY

in the City of Beaverton and urge all citizens to support bicycle commuting by riding their bike to work at least one day during the month of May.



Rob Drake, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Presentation by Marci Hosier, Executive Director, Tualatin Valley Television

FOR AGENDA OF: 05/17/04 **BILL NO:** 04094

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Mayor's Office

DATE SUBMITTED: 05/06/04

CLEARANCES:

PROCEEDING: PRESENTATION

EXHIBITS:

BUDGET IMPACT

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

INFORMATION FOR CONSIDERATION:

Marci Hosier, Executive Director, Tualatin Valley Television (T VTV), will introduce new Board Member Paul Sander to Council and review T VTV's activities and programming for the past year.

RECOMMENDED ACTION:

Listen to presentation.

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
MAY 10, 2004

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, May 10, 2004, at 6:35 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Betty Bode, Dennis Doyle, Fred Ruby, Forrest Soth and Cathy Stanton. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Police Chief David Bishop, Emergency Manager Mike Mumaw, Landscape Manager Steve Brennan and City Recorder Sue Nelson.

PROCLAMATIONS:

Mayor Drake proclaimed Emergency Medical Services (EMS) Week, May 16 – 22, 2004, and Peace Officers' Memorial Day, May 15, 2004.

Shane Ryan, Control Center Supervisor at Metro West Ambulance, introduced Brook Landgraf, Emergency Medical Dispatcher. Ms. Landgraf said Metro West provided ambulance service in Oregon since 1953 and they were honored to serve the community. She said the proclamation before Council was important to the emergency medical services workers in the community. She thanked Council for their support of the EMS services in Washington County. She invited the Council to an EMS Barbecue on Friday, May 21, 2004, at 4:00 p.m. in Hillsboro.

Ryan presented a plaque to Mayor Drake honoring the City for its support of EMS.

Coun. Soth stated as Board Chair of the Washington County Consolidated Communications Agency (WCCCA), that represented 19 different agencies, he extended their appreciation for the close working relationship between WCCCA and Metro West Ambulance.

PRESENTATIONS:

04087 Presentation of Shields and Swearing In of Newly Appointed Captain and Lieutenant to the Beaverton Police Department

Police Chief Dave Bishop swore in Captain Ed Kirsch and Lieutenant Steve Stevenson, both of whom were promoted from within the Police Department. He thanked the officer's families and friends for their support of these officers.

Mayor Drake presented the shields to the officers.

04088 Tree City USA Award

Urban Forestry Manager Steve Brennan introduced Mike Capretta, Oregon Department of Forestry/National Arbor Day Foundation.

Capretta said it was his pleasure to present the City with the Tree City USA Award. He stated this was the tenth year the City had received this award and it was a sign that the community cared about and recognized the importance of trees. He explained the City had met the four criteria established by the National Arbor Day Foundation to receive this award (1) tree care ordinance (2) program on tree care (3) program expenditure of \$2.00 per person to care for the trees (4) Arbor Day ceremony held each year. He explained the benefits of the urban forest in reducing air pollution and cooling costs, acting as noise reduction buffers and adding to the livability. He noted a recent study determined that hospital patients who could view treed areas from their windows recovered faster than those who looked out at treeless areas. He presented the award to Mayor Drake.

Coun. Soth asked why some of the white birch trees throughout the community were dying.

Brennan explained there was a brown birch bore that was eating them.

Coun. Stanton confirmed the Tree Care Program spent \$2.00 per person/per year on tree maintenance and all the City's budgeted funds for tree care were credited to this program.

04089 Update on Regional Economic Development Partners and Metropolitan Economic Policy Task Force

Economic Development Manager Janet Young updated Council on the Regional Economic Development Partners (Regional Partners) and the Metropolitan Economic Policy Task Force (Task Force). She reviewed how the Regional Partners and Task Force were formed (in record). She explained for ten years the Regional Partners was an informal organization that worked on business recruitment/retention; it was now a formal non-profit organization with 27 members. She explained the Task Force was a high-level public/private Bi-state Committee (Oregon and Washington) which was chaired by Mayor Drake. The Task Force spent six months in 2003 examining regional plans and strategies, to find common themes, gaps and opportunities for economic development. She summarized the findings of the Task Force (in record) which included: 1) The region operated in a global economy and competition for services was also global; 2) Local strategies were good but insufficient and there was no comprehensive regional economic strategy; 3) It was important to focus on industry clusters; and 4) Marketing of the region was poor.

Young explained the Framework Plan created by the Task Force was intended to be the starting point for discussion and action. She said the Task Force endorsed a Six-Month Work Plan by the Regional Partners to begin work on the Framework Plan. She reviewed the Six Month Plan and what had been accomplished to date (in record).

Young explained the importance of focusing on business clusters. She said industries that had a significant presence in research and development, held the most promise for the long-term growth of companies in this area. She said the Portland Business Alliance had taken the lead in marketing and created a campaign called the "Campaign for Greater Portland." She said the Alliance was in the fundraising process and would be announcing more on this effort in the middle of 2004. She noted from the market perspective, Portland was not on the national corporate "radar screen" and it was important to be on that screen.

Young concluded by noting the Regional Partners were currently working on its 2004 Work Plan and on some of the startup efforts which were still underway for this group. She said the Task Force, because it was created by a grant which had concluded, received its final report in April. She said the Task Force members had a desire to stay involved in the regional economic issues and discussion was currently underway to see how that would work.

Coun. Soth asked if the Task Force was actively involved with Metro, particularly during discussions on the additions to the Urban Growth Boundary, and if it had input on this issue from the region's chambers of commerce.

Young replied the Regional Partners group was more involved in Metro's regional issues than the Task Force. She said the chambers of commerce were involved less directly than other member organizations.

Coun. Stanton asked if the Task Force created the Framework Plan and had it presented by the Regional Partners.

Young explained the Regional Partners wrote the grant to create the Task Force; the Task Force then had the Regional Partners do most of the work that came back to the Task Force, including the report which was written by the Regional Partners.

Mayor Drake added that Ethan Seltzer, Director of Institute of Portland Metropolitan Studies at Portland State, handled oversight and organization for the process to develop the Framework Plan. He said the members of the Regional Partners group were highly-skilled economic development professionals from the public and private sectors.

Coun. Stanton referred to page 12 of the Six Month Plan and asked what was meant by "expand the regional tax base."

Mayor Drake said it meant a broader tax based was created with the expansion of healthier businesses, and full employment meant more corporate and individual taxes were paid.

Coun. Bode stated that as the Regional Partners looked at positioning this area for economic development, it brought up the question of livability. She noted the Regional Partners had not identified the key elements of livability that would be compatible with economic development. She asked if the group was moving in a direction where it could articulate that.

Young replied that the Framework Plan was an overarching document that was the first stages in a vision for an economic development policy for the region. She said the Regional Partners were beginning to look at implementing some pieces of the Plan. She said the Regional Partners group would need to grow a bit more before it would be in a position to

handle all elements of a Framework Plan, including livability. She added that looking at overall strategies in a region for economic development, required a much more extensive way of engaging people in the region. She said that was why the Framework Plan was called a first stage vision of what a regional economic policy document would look like. She said it will take time to determine if there was enough interest in the region to go through these steps. She said the agencies that have an economic development strategy, such as Beaverton, have an important livability component that they work on in various ways. She said she did not think that would be a top issue in the Regional Partners work plan for the upcoming year though the point might be made that livability flows from some of the work that was accomplished.

Coun. Bode noted the Framework Plan acknowledged the value of livability and they needed to look at the interdependent relationship between elements of livability that were compatible with certain types of economic development. She said it was interesting that there was a Framework and yet there was no hint of the type of industries being considered. She said the Framework had not capsulated the direction in which industrial development was headed. She said she was anxious to see the continuing work of this group.

Mayor Drake said some felt there was a strategy and some were concerned that Metro might try to handle this broader economic development task by itself. He said the general consensus was that the partnership between public and private covered a lot of the interests and the idea was to bring all these interests together. He concluded there was a broad framework and the process had started.

Coun. Doyle said the whole concept was over due and he complimented everyone who took the time to get involved. He said he supported the on-going efforts and noted this had to be done in an organized fashion. He asked if the City of Vancouver was included.

Young replied the City of Vancouver had not joined the formal non-profit Regional Partners group, though it had been a member of the informal group. She said the Columbia River Economic Development Council (Washington) was an active member.

Coun. Doyle said that Vancouver was a major player in this region and said he hoped the City would join. He noted this was exciting work.

Coun. Bode noted that Commissioner Pridemore from Clark County was on the Task Force from the beginning and he brought the County perspective to the Task Force.

Coun. Stanton asked if the Columbia Corridor Association was on the Task Force.

Young explained the Columbia Corridor Association was going through some internal changes and had a new director; she said the Association participated in past discussions though they had not participated recently. She added that a new organization was formed in the east county (Gresham, Fairview, Troutdale) which may become a member in the future.

Coun. Stanton asked if the Portland Development Commission was a stand-alone agency.

Young explained the Portland Development Commission was the Urban Renewal Agency of the City of Portland; it was created by the City and had a separate Board. She said the City of Portland was represented by the Commission in the Regional Partners group.

Coun. Stanton asked if Yamhill, Columbia and Clark Counties were not partners although they were on the map.

Young explained the map represented the six-county metropolitan statistical area because that was the economic region. She said jobs and dollars were flowing in that region so they had discussions with them about representation, which will probably happen in time.

Coun. Stanton noted the Council had provided funding for many regional issues. She asked if the five million dollars would be assessed to all the players or would it come from grants.

Young replied the Portland Business Alliance, through the Campaign for Greater Portland, was raising the five million dollars from the private sector.

RECESS:

Mayor Drake called for a brief recess at 7:30 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 7:35 p.m.

CITIZEN COMMUNICATIONS:

Rev Ja West, Beaverton, said the education system had gone down hill and she was proud of her work for her religion. She stated Council Soth had not received the recognition he deserved for the many years he served the City; she thanked him for his service to the City. She added she was voting for Justice Supreme Court Judge Roy Moore for president.

Pavel Goberman, Beaverton, said he applied for a Concealed Weapons Permit which was denied by the Police Department. He questioned why the permit was denied.

Lynne Campbell, Lake Oswego, stated that on May 17, 2004, a class action law suit against the California Department of Health Services was going to trial to challenge the constitutionality of using contaminated, industrial grade chemicals for fluoridation. She said it would be shown that fluoridation of public water did not reduce tooth decay and ingestion of fluoride had no effect on dental caries. She said key players from Christopher Bryson's book "The Fluoride Deception" would be witnesses in the law suit. She urged the Council to delay implementation of fluoridation in order to investigate Bryson's book and review the findings of fact from the California trial. She said if the Council chose to proceed, that it answer the following questions: 1) How will the City warn parents that their children are at risk for dental fluorosis if they use tap water to prepare infant formula. She noted she had three more questions that she would submit to Council. She submitted a copy of her testimony for the record.

Coun. Stanton asked who the class action suit was against.

Campbell replied the City of Escondido and the California Department of Health Services.

Allison Garrett, Beaverton, said she opposed putting fluoride in the drinking water and many Beaverton citizens were not aware this was being done. She asked that the money for fluoridation instead be used to help Beaverton citizens who were out of work. She said though she lived in Beaverton, she would not purchase a home in any area that had fluoridated water. She said she was a volunteer for the Beaverton Police Department and had a vested interest in the community.

Richard Crimi thanked the Council for supporting the Tree City Award. He read passages from Christopher Bryson's book "The Fluoride Deception" and submitted a copy of the book for the record. He asked that Council read the book and reverse its decision on fluoridation.

Susan Miller, Lake Oswego, said she was a teacher in Beaverton and she was writing a book on the biochemistry of emotions. She said she grew up where water was fluoridated and had fluoride treatments, yet she had 26 cavities. She said fluoride was the most electro-negative element in the periodic table; it wanted to combine with other electrons. She said because of this, it would affect other organs in the body. She asked that Council think this through carefully before proceeding.

Coun. Bode asked Miller where she taught school.

Miller said she taught French at Valley Catholic High School.

Alan Yoder, Beaverton, said his family decided if fluoride was added to the water they would install a filter because there were enough questions unanswered; they did not feel fluoridation was in the best interest of their children. He said forced mass medication was not the best way to advance society. He noted there were many ways to provide fluoride topically as individual applications and a mass application was not beneficial to the citizens.

Coun. Stanton asked if his children were immunized to School District and State standards.

Yoder said they had some immunizations and they were home schooled.

Coun. Bode explained the Councilors were also citizens of Beaverton and the citizens asked Council to implement the fluoride.

Yoder stated the vote was not an overwhelming majority.

Keith R. Slavin, Beaverton, said he became concerned about fluoride ingestion two years ago when he was diagnosed with osteosclerosis, also known as osteofluorosis. He said since then he had cutback on all fluoride sources and he was feeling better. He said deciding to fluoridate Beaverton's water was a blow to him. He spoke on the detrimental effects of fluoride to body and reviewed how fluoride was present in the food chain. He asked that Council err on the side of caution on this issue.

Teresa Vogelsang, Beaverton, said the book "The American Fluoridation Experiment" written in 1957 was the first book regarding the misrepresentations of the benefits of fluoridation. She stated fluoride was in constant contact with the body (externally and internally) through water. She said fluoride was stored in the brain, absorbed into bones and was a proven factor in osteoporosis. She urged Council to reconsider fluoridating the water.

Claire Darling, Beaverton, stated UNICEF was the largest international organization devoted to children's welfare in the world. She quoted from UNICEF *"While it has long been known that excessive fluoride intake carries serious side effects, scientists are now debating whether fluoride confers any benefit at all."* She said people were already getting excessive doses of fluoride from food sources. She demonstrated with colored cups with different levels of fluoride to illustrate her point. She asked Council to reconsider this issue. She asked if the City chose to proceed, could a notice be put in the water bills that fluoridated water should not be used for baby formula or ingested by pregnant women.

Melissa Powers, attorney, Pacific Environmental Advocacy Center, Portland, said the Center was a non-profit, public-interest law firm that worked to protect the environment. She said she was not opposed to fluoridation until recently when she learned of the toxic nature of fluoride. She said there were significant reasons why the City should not fluoridate its water. She said under the Resource Conservation & Recovery Act, it was questionable if the City had the legal authority to use hazardous waste as a fluoridating agent. She said the Environmental Protection Agency (EPA) said it could authorize uncontrolled disposal of hazardous waste, based on the EPA's conclusion that these wastes were useful. She said this theory was not subjected to judicial review and was not based on any findings of safety. She said placing these hazardous wastes in drinking water may be an unlawful disposal of hazardous waste for which the City could be liable. She explained the Clean Water Act prohibited the discharge of a pollutant into water in the United States without a permit. She said the City and Clean Water Services had not gone to the Department of Environmental Quality to ask for modifications of their wastewater treatment permits or stormwater distribution permits, to regulate the fluoride that will be discharged through these systems. She said not doing this could put the City in a position of liability. She added that there may be liability under the Endangered Species Act because fluoride could cause harm to salmon. She urged Council to consider these legal implications of its decision to fluoridate and delay implementation until it has explored these environmental concerns.

Coun. Stanton thanked Powers for bringing a new perspective to the situation.

Tom Long, President of Citizens for Safe Water, Portland, stated new water regulations regarding toxic elements were being studied in the country today. He said fluoride was a toxic element, along with other elements that were under investigation. He stated new regulations would carry a cost to implement. He suggested, in consideration of the possible changes ahead, that there were ways to work together to protect the cities and the citizens. He asked Council to delay its decision to fluoridate until this new information was available.

Marilyn Melvin, Beaverton, said she had severe kidney and liver problems. She said she grew up with fluoridated water and she was now extremely allergic to fluoride and it was hard to live with this condition. She said she used to be active in the neighborhood association and she was emotionally attached to Beaverton. She asked Council to look at this further before others developed health problems.

Coun. Stanton asked Melvin if she would have to move from the area.

Melvin said she would need assistance with showering. She said a water filter system for her house was about \$4,000.

Susan Anderson, Beaverton, said she echoed everything that was said. She noted she lived on 99th Street, just outside of the City and Beaverton was their home. She stated she was not an anti-fluoride person; she was concerned about the decision to add something to the water as a treatment for people, rather than to make the water safe to drink. She said she sold water filters and fluoridation could increase her business, but she would rather not have to sell water filters to individuals who would prefer to not have fluoride their drinking water. She said during the swearing in of the police officers, the phrase "bring credit" stuck in her mind and she knew the Councilors tried hard to bring credit to the community through their service to the City. She said she wanted to continue to live in this community and she wanted the City to continue to be known for "rising above the norm." She asked that the Council consider the livability of the community.

COUNCIL ITEMS:

Coun. Stanton that a Theater Night Out was being held in Hillsboro which was a benefit for the Community Action's Head Start Program and Hillsboro School District Health Benefit Trust. She said to see her for additional information.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Soth **MOVED, SECONDED** by Coun. Stanton, that the Consent Agenda be approved as follows:

Minutes of Regular Meeting of May 3, 2004.

04090 Liquor License: New Outlet – Mayuri Indian Cuisine

Contract Review Board:

04091 Contract Award – Stormwater Improvement Services for Beaverton Creek (CIP Project 8022)

Question called on the motion. Couns. Bode, Doyle, Ruby, Soth and Stanton voting **AYE**, the **MOTION CARRIED** unanimously. (5:0)

WORK SESSION:

04092 Revision of the City's Emergency Response and Recovery Plan

Emergency Manager Mike Mumaw explained the purpose of the work session was to review the revision of the City's Emergency Response and Recovery Plan. He said the Plan was originally promulgated by Council in 1999; re-promulgation was required every four to five years. He said in 1999 the Plan had nine functional annexes and four hazard appendices; it now had 22 annexes and eight hazard appendices. He offered to answer Council questions.

Coun. Doyle said he admired Mumaw's attention to detail.

Coun. Bode asked if that amount of detail was required by the grant.

Mumaw explained the grant did not specify the level of detail; however, the level of detail would affect the usability of the Plan. He said the first Plan was in narrative form; the detail would make it a more usable document.

Coun. Bode asked what would be the level of staff training and practice.

Mumaw replied an annual Plan exercise was required and regular training was scheduled.

Coun. Bode noted in the designation of power, the Council has to approve the action taken. She asked if that meant the Council would go into session.

Mumaw said if the Mayor or his representative declared a disaster, within 24 hours the Council would have to convene either by phone or physically in session to ratify the declaration. He said the declaration would expire in two weeks, unless re-ratified by Council.

Coun. Bode asked who was the next in line if the Mayor was gone and if there would be training for Council.

Mumaw said the Chief of Staff was next in line as Mayor Pro Tem. He added there was going to be a higher level of training for the Council, on the importance of the declaration process and on the challenges and decisions the Council will face during a disaster.

Mayor Drake noted he and Coun. Soth attended this training in Maryland in 1986.

Coun. Stanton asked on Annex R, No. 8, regarding volunteer coordination, if these were CERT volunteers.

Mumaw explained these were emerging volunteers from the community, state or country, not pre-existing volunteers. He said these volunteers may have levels of certifications (doctors, EMTs) which would have to be confirmed, before they could work in Oregon. He said the known CERT volunteers would have already been assigned tasks.

Coun. Soth said he was glad to see the Plan included keeping the 911 agencies informed, since people would be calling 911. He added the County dispatch agency (WCCCA) had purchased additional radios from Salt Lake City for communication with other agencies that were assisting during an emergency.

Mayor Drake complimented Mumaw and Washington County Emergency Manager Scott Porter who was in attendance. He said they were a great team. He asked if Councilors had any additional comments, that they get them to Mumaw in the next couple of weeks to be incorporated into the final Plan.

Mumaw stated the Plan would come back to Council in June on the Consent Agenda.

Coun. Stanton noted Plan was very well done.

ORDINANCES:

Suspend Rules:

Coun. Soth **MOVED, SECONDED** by Coun. Doyle, that the rules be suspended, and that the ordinance embodied in Agenda Bill 04093 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Bode, Doyle, Soth, Ruby and Stanton voting **AYE**, the **MOTION CARRIED** unanimously. (5:0)

First Reading:

City Attorney Alan Rappleyea read the following ordinance for the first time by title only:

04093 An Ordinance Relating to the Emergency Management Code, Amending Beaverton Code Section 2.01.020. (Ordinance No. 4309)

Second Reading:

Rappleyea read the following ordinances for the second time by title only:

04078 An Ordinance Amending Ordinance No. 4187, the Comprehensive Plan, Chapter Six Transportation Element, by Adding Provisions Relating to Transportation System Performance, CPA 2003-0015 (Ordinance No. 4301)

04079 An Ordinance Amending Ordinance No. 2050, the Development Code, by Amending and Adding Provisions Relating to Transportation Facilities and Performance, TA 2003-0008 (Ordinance No. 4302)

04080 An Ordinance Amending and Updating Ordinance 4060, Engineering Design Manual and Standard Drawings (Ordinance No. 4303)

04081 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 1020 SW Cedar Hills Boulevard; CPA 2004-0002/ZMA 2004-0002 (Ordinance No. 4304)

04082 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 16300 SW Nora Road; CPA 2004-0004/ZMA 2004-0004 (Ordinance No. 4305)

04083 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 11115 SW Center Street; CPA 2004-0003/ZMA 2004-0003 (Ordinance No. 4306)

04084 An Ordinance Adding and Amending Certain Provisions of Chapters Five and Six of the Beaverton Code (Ordinance No. 4307)

04085 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 on the West Side of SW Murray Boulevard North of SW Walker Road; CPA 2004-0001/ZMA 2004-0001 (Ordinance No. 4308)

Coun. Soth MOVED, SECONDED by Coun. Ruby, that the ordinances embodied in Agenda Bills 04078, 04079, 04080, 04081, 04082, 04083, 04084 and 04085, now pass. Roll call vote. Couns. Bode, Doyle, Ruby and Soth voting AYE, the MOTION CARRIED unanimously. (4:0) Coun. Stanton was excused as she was out of the room.

EXECUTIVE SESSION:

Coun. Stanton returned to the Council Chambers.

Coun. Soth MOVED, SECONDED by Coun. Stanton, that Council move into 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) (f) to consider information or records that are exempt by law from public inspection and in accordance with ORS 192.660 (1)(e) to conduct deliberations with person designated by the governing body to negotiate real property transactions. Couns. Bode, Doyle, Ruby, Soth and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

The executive session convened at 8: 50 p.m.

The executive session adjourned at 9:16 p.m.

The regular meeting reconvened at 9:16 p.m.

Coun. Doyle MOVED, SECONDED by Coun. Stanton, that Council authorize the hiring of outside counsel to assist in an ethics complaint, per the dollar amount in the confidential memorandum considered in executive session. Couns. Bode, Doyle, Ruby, Soth and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 9:15 p.m.

Sue Nelson, City Recorder

APPROVAL:

Approved this _____ day of _____, 2004.

Rob Drake, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: LIQUOR LICENSE

FOR AGENDA OF: 05/17/04 **BILL NO:** 04095

NEW OUTLET

Fallbrook Station
6540 SW Fallbrook Place
Beaverton, OR 97008

MAYOR'S APPROVAL: 

DEPARTMENT OF ORIGIN: Police 

DATE SUBMITTED: 05/04/04

PROCEEDING: Consent Agenda

EXHIBITS: None

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

A background investigation has been completed and the Chief of Police finds that the applicant meets the standards and criteria as set forth in B.C. 5.02.240. The City has published in a newspaper of general circulation a notice specifying the liquor license application.

INFORMATION FOR CONSIDERATION:

Altair Entertainment, Inc., is opening a new establishment and has made application for a Limited On-Premises Sales License under the trade name of Fallbrook Station. The establishment will serve American food. It will operate seven days a week, Sunday through Thursday, 10:00 a.m. to 10:00 p.m., and Friday and Saturday, 9:00 a.m. to 1:00 a.m. There will be only one menu. There will be no entertainment offered. A Limited On-Premises Sales license allows the sale of malt beverages, wine, and cider for consumption at the licensed business, and the sale of kegs of malt beverages to go.

RECOMMENDED ACTION:

The Chief of Police for the City of Beaverton recommends City Council approval of the OLCC license application.

MEMORANDUM

City of Beaverton
Sue Nelson, CMC
City Recorder

To: Mayor Drake and City Council
From: Sue Nelson, City Recorder
Date: May 13, 2004
Subject: **Agenda Bill 04096: Changes to Classifications**

Please note that the agenda bill for the above item was not available at this time.

Please call me at 503 526-2650 if you have questions concerning this item.

MEMORANDUM

City of Beaverton
Sue Nelson, CMC
City Recorder

To: Mayor Drake and City Council
From: Sue Nelson, City Recorder
Date: May 13, 2004
Subject: **Agenda Bill 04101: Personal Services Contract
for Solid Waste Rate Analysis and Services**

Please note that the agenda bill for the above item was not available at this time.

Please call me at 503 526-2650 if you have questions concerning this item.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**


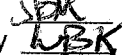


SUBJECT: A Resolution Relating to Personal Service Contracts Involving the Hiring of Professionals on Retainer to the City and Amending The City of Beaverton Rules of Procedure for Public and Personal Services Contracts (Resolution No. 3708, Adopted February 24, 2003).

FOR AGENDA OF: 5-17-04 **BILL NO:** 04097

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Finance

DATE SUBMITTED: 5-6-04

CLEARANCES: Purchasing 
Finance 
City Attorney 
Engineering 

PROCEEDING: Consent Agenda
(City Council & Contract Review Board)

- EXHIBITS:**
1. Resolution
 2. Exhibit A to Resolution: Proposed Exemption
 3. Exhibit B to Resolution: Findings and Conclusions in Support of Proposed Exemption

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

The City of Beaverton adopted a new purchasing manual in February of 2003. The manual closely follows the provisions of state statutes, administrative rules and the Attorney General's Model Public Contract Rules, but the provisions have been tailored to fit Beaverton's circumstances. Generally speaking, the manual requires the City to acquire goods and services through formal competitive procurement. In this context, "formal competitive procurement" means the letting of public contracts through advertised invitations to bid or requests for proposals that are awarded upon formal action of a contract review board.

There are exceptions to this general requirement that the City procure goods and services through formal competitive procurement. Specifically, ORS 279.051(1) authorizes public agencies to create their own procedures for the screening and selection of persons to perform personal services. A contract for personal services is a contract that calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise or the exercise of professional, artistic or management discretion or judgment. One type of personal service contract relates to services to be performed by professionals who exercise professional judgment as an integral part of the services they provide under contract.

Every two years for the past several years, the City of Beaverton has followed a procedure to screen and select professionals to place on retainer to later perform professional engineering services for the City. With the adoption of the City's new purchasing manual in 2003, it is now necessary to revise the procedure to better fit Beaverton's circumstances.

INFORMATION FOR CONSIDERATION:

The City of Beaverton now seeks to revise the procedure it uses for the screening and selecting of persons to perform professional services while on retainer to the City. The proposed procedure mainly

follows the established procedures the City has used in the past to screen, retain and hire professionals, but the procedure has been partly revised based on a similar retainer agreement procedure used by the Oregon University System under Oregon Administrative Rule 580-050-0020.

The proposed procurement procedure will apply to personal service contracts with professional consultants, including architects, engineers, planners, land surveyors and related consultants. A competitive RFP (request for proposal) process will be used to solicit proposals for evaluation and to identify proposers to be invited to sign a retainer agreement. The retainer agreement will contain a price schedule, but the scope of work, delivery schedule and not-to-exceed amount will be left for later negotiation when a specific need to hire the consultant arises. The contract administrator (the department employee responsible for contract administration actions) will negotiate these remaining terms and conditions as specific projects arise. A contract valued at \$25,000 or above must be approved and awarded by the City's contract review board.

The process the contract administrator will follow to select a professional contractor will depend on the anticipated amount of the contract.

If the anticipated total fee is \$250,000 or less:

- Any qualified consultant on retainer may be selected.
- Selection will be made on the basis of the consultant's fee, availability, competency, and project familiarity.
- With written justification approved by department head, a particular consultant on retainer can be selected to work on a specific project.
- A consultant not on retainer can always be selected through formal competitive procurement.
- If the anticipated total contract fee is under \$25,000, a consultant not on retainer can also be selected pursuant to the existing provision of the City's purchasing manual that allows for an informal verbal or written RFP on smaller contracts.

If the anticipated total fee is over \$250,000 and under \$350,000:

- At least two consultants on retainer who appear to have the qualifications for and interest in the proposed assignment must be selected; request from each selected consultant a formal written proposal; evaluate submitted proposals; select the consultant submitting the best responsive proposal.
- With written justification approved by department head, a particular consultant on retainer can be selected to work on a specific project.
- A consultant not on retainer can always be selected through formal competitive procurement.

If the anticipated total fee is \$350,000 or more, a consultant's services must be procured through the formal competitive procurement process, unless otherwise permitted by state law or City's purchasing manual.

Council is requested to adopt the attached resolution in its own capacity and in its capacity as the City's contract review board. This approach to passage of the resolution assures that the proposed amendment to the City's purchasing manual is duly approved and that both the City of Beaverton and the Beaverton Contract Review Board concur that the contracts resulting from the proposed procurement process are properly classified as personal services contracts.

RECOMMENDED ACTION:

- Council adopt attached resolution, thereby creating procedures for the screening and selection of persons to perform personal services as required under ORS 279.051(1).
- Council, acting as the Beaverton Contract Review Board, adopt attached resolution, thereby designating the contracts resulting from the proposed procurement process as personal service contracts as permitted under ORS 279.051(2).

RESOLUTION NO. 3756

A Resolution Relating to Personal Service Contracts Involving the Hiring of Professionals on Retainer to the City and Amending The City of Beaverton Rules of Procedure for Public and Personal Services Contracts (Resolution No. 3708, Adopted February 24, 2003).

WHEREAS, on February 24, 2003, the City of Beaverton adopted Resolution No. 3708 and the City of Beaverton Rules of Procedure for Public and Personal Service Contracts ("the City's Purchasing Rules"); and

WHEREAS, Chapter VI of the City's Purchasing Rules establish procedures for the screening and selection of persons to perform personal or professional services for the City; and

WHEREAS, Section VI-0055 (Competitive Procurement of Personal Services Contracts) of the City's Purchasing Rules states that "the City shall award personal services contracts by Request for Proposal, except as allowed or required by these Rules, including their Exemptions, or as authorized by the Contract Review Board"; and

WHEREAS, attached hereto as Exhibit A is a proposed exemption from formal competitive procurement requirements with regard to certain personal service contracts involving the hiring of professionals on retainer to the City; and

WHEREAS, the City of Beaverton seeks to make the attached proposed exemption part of the City's Purchasing Rules; and

WHEREAS, attached hereto as Exhibit B are findings that provide information to support the conclusions that (a) it is unlikely the proposed exemption will encourage favoritism in the awarding of personal services contracts or substantially diminish competition for such contracts and (b) the awarding of personal service contracts pursuant to the exemption will result in substantial cost savings to the City; and

WHEREAS, the findings offered in support of the City's proposed exemption justify establishment of such an exemption; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL AND THE CONTRACT REVIEW BOARD OF THE CITY OF BEAVERTON, OREGON:

1. The written findings and conclusions submitted in support of the request that a certain class of personal service contracts involving the hiring of professionals on retainer to the City be exempt from the formal competitive procurement requirements, which findings and conclusions are set forth in full in Exhibit B to this Resolution, are hereby approved and accepted.

2. The class of personal service contracts more particularly described in Exhibit A to this Resolution is hereby declared exempt from the formal competitive procurement requirements of the City's Purchasing Rules.
3. The City's Purchasing Rules are hereby amended by adding at Section VI-0103 of those rules the exemption embodied in Exhibit A to this Resolution.
4. The amendment made to the City's Purchasing Rules by this Resolution is effective upon the adoption and approval of this resolution.

Adopted by the City Council this ____ day of May 2004.

Ayes: ____

Nays: ____

Adopted by the Contract Review Board this ____ day of May 2004.

Ayes: ____

Nays: ____

Approved by the Mayor this ____ day of May 2004.

Attest:

Approved:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

Exhibit A:

Proposed Exemption

VI-0103 Appointment of Professional Consultants

A. Authorization

The City may screen and select professional consultants, including architects, engineers, planners, land surveyors and related engineering professionals (hereinafter "Consultants"), without formal competitive procurement as provided by this section.

B. Screening and Selection of Consultants for Retainer

The City shall screen and select Consultants to be placed on retainer pursuant to this subsection VI-0103 B and section VI-0060.

1. The City shall furnish public notice of a solicitation under this section in accordance with section VI-0065.
2. The City may hold a pre-proposal conference with prospective Proposers prior to closing in accordance with section VI-0080.
3. An RFP under this section shall conform to section VI-0080 and, in addition, shall identify any terms and conditions in the Solicitation Document that are subject to negotiation. The Solicitation Documents may permit Proposers to propose alternative terms and conditions in lieu of the terms and conditions the City has identified as authorized for negotiation. In all cases, the City may negotiate the terms and conditions of a personal services contract in order to provide the City with optimal value and risk protection.
4. An evaluation committee shall evaluate Proposals consistent with the process described in the RFP and applicable law. The Proposal evaluation committee shall consist of any number of City employees and, if desired, members of the community, all with experience relevant to the RFP. Evaluators shall be selected on the basis of their ability to provide an objective, relevant and impartial evaluation of the Proposals. If there is a conflict of interest, the evaluator shall declare this in writing and shall be excluded from participating in the evaluation.
5. The Proposal evaluation committee may evaluate the qualifications of all Proposers without benefit of an interview, or may interview all Proposers prior to evaluation, or may evaluate all Proposers and select one or more Proposers for interview and subsequent re-evaluation. In all instances, the Proposal Evaluation Committee's evaluation of Proposals shall be with regard to the evaluation criteria set out in the RFP. The interview of a Proposer may be conducted through any appropriate medium.

Prior to award, the City may require a Proposer to submit Product Samples, Descriptive Literature, technical data, or other material. Also prior to award, the City may require demonstration, inspection or testing of a product or service.

6. In evaluating Proposals, the City may seek clarification from a Proposer. Such clarification shall not vary, contradict or supplement the Proposal. A Proposer must submit written and signed clarifications and such clarifications shall become part of the Proposer's Proposal.

7. If an initial evaluation of Proposals reveals no likely satisfactory Proposer, the Solicitation may be cancelled or reduced in scope at any time the City determines it is in the public interest to do so.

8. The City shall evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. Evaluation criteria may include, but are not limited to, the following:

- a. Availability and capability to perform the work;
- b. Experience of key staff on comparable projects, or in performing comparable services;
- c. Design talent and technical competence, including an indication of the planning process expected to be used in the work;
- d. Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget;
- e. References from past clients, public and private;
- f. Past record of performance on contracts with governmental agencies and private owners with respect to such factors as cost control, quality of work, ability to meet schedules, contract administration and;
- g. Performance history in meeting deadlines, submitting accurate estimates, responding to change orders, producing quality work, and meeting financial obligations;
- h. Status and quality of any required licensing or certification;
- i. Familiarity with the City, including knowledge of local infrastructure and/or City design and construction specifications or techniques;
- j. Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs;
- k. Fees or costs and any cost management techniques proposed for use;
- l. Results from oral interviews, if conducted;
- m. Availability of any specific required resources or equipment;
- n. Geographic proximity to the project or the area where the services will be performed;
- o. Identity of proposed subcontractors and their qualifications;
- p. Ability to communicate effectively; and
- q. Any other identified criteria deemed relevant to the provision of services.

9. If no evaluation criteria are set forth in a Request for Proposal, all the evaluation criteria listed above (except criterion q) shall be considered equally in evaluating submitted Proposals. After evaluation of all Proposals, the City will rank the Proposers. Before ranking Proposers, the City may establish a minimum level of qualification. The level of minimum qualification may be adjusted if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers are closely competitive and more likely than not minimally qualified.

10. If the City establishes a minimum level of qualification, then upon concluding the evaluation of Proposals, the City shall provide written notice to all Proposers identifying those Proposers at or above the minimum level of qualification.

11. A Proposer found to rank below the minimum level of qualification may protest the City's evaluation and determination of the ranking in accordance with II-0160 Protest of Contractor Selection, Contract Award. This initial protest period forecloses the right of Proposers who are found below the minimum level of qualification to protest final selection for a specific project.

12. After the protest period expires, or after the City has provided a final response to any protest, whichever date is later, the City shall invite each selected consultant to enter into a retainer agreement. The retainer agreement may have up to a three-year term and must be a form of agreement approved by the City Attorney.

C. Maintenance of Roster

The Purchasing Agent or designee shall maintain and publish a current roster of all Consultants chosen for retainer agreements by the City. The Contract Administrator shall maintain a record of the Consultants hired to work on a specific project.

D. Screening and Selection of Consultant for a Specific Project

The procedures the City shall follow when contracting for professional consulting services with regard to a specific project will depend upon a combination of factors including the total anticipated fee and the Contract Administrator's evaluation of which Consultant will likely provide the best value to the City in the context of a specific project.

1. For professional service contracts involving an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at under \$250,000, the Contract Administrator shall select from the Consultants on retainer to the City the Consultant who the Contract Administrator considers the most qualified to provide the best value to the City on a specific project.

a. The Contract Administrator's selection shall be made upon the evaluation of the following equally-weighted criteria:

- Consultant's cost as shown by fee schedule;
- Consultant's technical competencies relevant to the specific project;
- Consultant's availability to perform desired services in a timely manner; and
- Consultant's familiarity with the specific project, if such familiarity is likely to result in a significant saving of time or money to the City.

b. Upon Written justification approved by a Department Head, the Contract Administrator may select from those Consultants on retainer to the City a particular Consultant to work on a specific project valued at under \$250,000. For purposes of this section, sufficient justification for approval of such a request exists if, without limiting other grounds that may justify approval, a Consultant has specialized knowledge about a specific project or a well-developed expertise regarding a needed professional service.

c. A Consultant on retainer who is not selected to perform work for the City on a specific project may protest the selection of a Consultant in accordance with VI-0085 B.

2. For professional service contracts involving an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at \$250,000 or more, but under \$350,000, the Contract Administrator shall first select from the Consultants on retainer to the City a minimum of two Consultants who the Contract Administrator considers most qualified to provide the best value to the City on a specific project.

a. The Contract Administrator's selection of these consultants shall be made upon the Contract Administrator's evaluation of the following equally-weighted criteria:

- Consultant's cost as shown by fee schedule;
- Consultant's technical competencies relevant to the specific project;
- Consultant's availability to perform desired services in a timely manner; and
- Consultant's familiarity with the specific project, if such familiarity is likely to result in a significant saving of time or money to the City.

b. The Contract Administrator shall next prepare an RFP for personal services to notify each of the selected Consultants of the proposed work for the specific project. The RFP shall conform to the standards set forth in VI-0080 and shall include Consultant's retainer agreement and a supplemental contract to meet the requirements of VI-0080 (17).

c. The City need not furnish public notice of the solicitation under this subsection D2. Except as provided by this subsection D2, the procedure for screening and selecting the Consultant to provide professional services with regard to a specific project shall conform to VI-0060.

d. Upon Written justification approved by a Department Head, the Contract Administrator may select from those Consultants on retainer to the City a particular Consultant to work on a specific project valued at \$250,000 or more, but under \$350,000. For purposes of this section, sufficient justification for approval of such a request exists if, without limiting other grounds that may justify approval, a Consultant has specialized knowledge about a specific project or a well-developed expertise regarding a needed professional service.

3. For professional service contracts with an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at \$350,000 or more, the City shall procure personal services through formal competitive procurement, unless otherwise permitted by state law or these Rules.

E. Negotiation of Supplemental Contract

The Contract Administrator shall negotiate the supplemental terms and conditions of the retainer agreement with the selected Consultant. If a mutually satisfactory supplemental contract cannot be agreed to, the Contract Administrator may select another Consultant to work on the project using any method permitted by these Rules. In those instances where more than one Responsive

Proposal has been received by the City for a specific project, the Contract Administrator may select the Consultant submitting the next best Responsive Proposal if a mutually satisfactory supplemental contract cannot first be agreed to with the Consultant submitting the best Responsive Proposal.

F. Exemption Nonexclusive

Nothing in this section prevents the City from selecting a Consultant through formal competitive procurement or as permitted by section VI-0115.

G. Contract Review Board Approval

Before the City executes a Personal Services Contract valued at \$25,000 or more, the Contract Review Board shall approve the Contract.

Exhibit B:

Findings and Conclusions

Regarding Proposed Exemption

From Formal Competitive Procurement

A. Description of Proposed Exemption

The proposed exemption applies to personal service contracts with professional consultants, including architects, engineers, planners, land surveyors and related consultants.

A competitive RFP process is used to solicit proposals for evaluation and to identify proposers who will be invited to sign a retainer agreement. Retainer agreement will contain a price schedule, but scope of work, delivery schedule and not-to-exceed amount will be left for later negotiation when a specific need to hire the consultant arises. Contract Administrator will negotiate these terms and conditions. A contract valued at \$25,000 or above must be approved and awarded by the Contract Review Board.

Consultant is selected consistent with the following:

1. If the anticipated total fee is \$250,000 or less:
 - Any qualified consultant on retainer may be selected.
 - Selection will be made on a reasoned basis: fee, availability, competency, and project familiarity.
 - With written justification approved by department head, a particular consultant on retainer can be selected to work on a specific project.
 - A consultant not on retainer can always be selected through formal competitive procurement.
 - A consultant not on retainer can be selected pursuant to VI-0015 A of the City's Purchasing Rules, describing an informal verbal or written RFP process, provided the anticipated total fee is under \$25,000,
2. If the anticipated total fee is over \$250,000 and under \$350,000:
 - Select at least two consultants on retainer who appear to have the qualifications for and interest in the proposed assignment; request written proposals from each selected consultant; evaluate submitted proposals; select the consultant submitting the best responsive proposal.
 - With written justification approved by department head, a particular consultant on retainer can be selected to work on a specific project.
 - A consultant not on retainer can always be selected through formal competitive procurement.
3. If the anticipated total fee is \$350,000 or more:

- Consultant's services must be procured through the formal competitive procurement process, unless otherwise permitted by state law or City's Purchasing Rules.

B. Findings

This exemption permits the City to enter into personal service contracts with professionals who are on retainer with the City. A competitive RFP process is used to select the professionals to be invited to be placed on retainer. A formal retainer agreement is entered into, but certain terms of the agreement are left open, to be negotiated when a specific need for the professional's services arises. Awarding a contract under this exemption is unlikely to encourage favoritism in the awarding of personal service contracts. The exemption has a variety of safeguards against favoritism.

Contracts valued under \$250,000 will be let among the professionals on retainer with the desired expertise. Selection requires consideration of the consultant's fee, availability, competency, and familiarity with a specific project. Distributing work among consultants on this type of rational basis discourages favoritisms in the letting of personal services contracts. In those instances where legitimate reasons justify the selection of a particular consultant to work on a specific project (despite, for example, the consultant having a higher fee schedule or less familiarity with a specific project), a department head may approve the direct assignment of work to the particular consultant. A written record justifying the selection of all consultants must be kept.

Contracts valued over \$250,000 and under \$350,000 will be let through an informal competitive process. A minimum of two proposals will be solicited and evaluated by the Contract Administrator. The consultant submitting the best responsive proposal will be awarded the contract. Again, in those instances where legitimate reasons justify the selection of a particular consultant to work on a specific project, a department head may approve directly hiring the consultant to work on the project. A written record justifying the selection of any consultant must be kept.

Contracts valued at \$25,000 or above must be approved and awarded by the City's Contract Review Board.

Contracts valued at \$350,000 or above must be awarded through formal competitive procurement (*e.g.*, RFP or ITB), unless otherwise permitted by state law or City's Purchasing Rules.

For at least three reasons, awarding a contract under this exemption is unlikely to substantially diminish competition for personal service contracts. First, a competitive RFP process is used to identify firms to be invited to be on retainer to the City. The process is open to all firms and individuals. Any firm or individual submitting a proposal that meets the City's evaluation criteria will be offered a place on the City's retainer list.

Second, awarding contracts under the proposed exemption is unlikely to substantially diminish competition because the proposed exemption only creates an option for the City to use to hire

consultants, not a mandatory procedure. If the City doesn't believe it will receive the best value for its money by using a consultant on retainer, the City may retain the services of a consultant by using conventional purchasing methods or by using another exemption established in the City's purchasing manual. Under the proposed exemption, the City always has the option of choosing to hire a consultant who is not on retainer. This option should promote competition among consultants, not restrain it.

Third, in the context of the Portland metropolitan area, the City of Beaverton is not a large consumer of professional services. For that reason, it is unlikely that the City's use of a retainer agreement from which to select professionals to provide services to the City on specific projects will have any affect whatsoever on the overall competition for personal services contracts by professionals in the community.

Awarding a contract under this exemption is likely to result in substantial cost savings to the City. Based on information available with regard to the City's Engineering Department, from July 1, 2002, to January 30, 2004, the Engineering Department hired approximately eight consultants to work on projects valued in excess of \$25,000. Of the eight contracts, all but one of the contracts were valued under \$100,000. The remaining contract was valued at approximately \$106,000.

But for the existence of the current retainer agreement arrangement in the Engineering Department during that 19-month period, a formal solicitation would have had to have taken place to retain consultant services for those eight contracts. Typically, the formal solicitation process spans five weeks from solicitation document preparation to bid award. Publishing notice of the solicitation is not inexpensive. The cost of advertisement can range from \$75 to \$250. Printing costs for bid or proposal packets and the staff costs for evaluating each submitted proposal can also be significant.

The proposed exemption strikes an appropriate balance between the need for operational efficiency and Contract Review Board oversight. The public will benefit by virtue of the speed with which the purchasing process can be accomplished, but the Contract Review Board will still oversee and approve the letting of contracts when the anticipated value of the contract is \$25,000 or more.

C. Conclusions

Awarding a contract under this exemption is unlikely to encourage favoritism in the awarding of personal service contracts or substantially diminish competition for personal service contracts and will result in substantial cost savings to the City.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Authorization to Enter into Lease
Negotiations with Vendor to Provide Food
Concession Services at City Park Kiosk

FOR AGENDA OF: 05-17-04 **BILL NO:** 04098

Mayor's Approval: [Signature]

DEPARTMENT OF ORIGIN: Mayor's Office [Signature]

DATE SUBMITTED: 05-04-04

CLEARANCES: Purchasing [Signature]
Finance [Signature]
City Attorney [Signature]
Econ. Devel. [Signature]

PROCEEDING: Consent Agenda
(Contract Review Board)

EXHIBITS: Evaluation Matrix

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

The City of Beaverton installed two kiosks as part of the Hall/Watson Beautification Project – Phase 1 (CIP 3308). The City has agreed to lease the kiosk within Bakery Plaza to Beaverton Bakery through a separate agreement. The kiosk at City Park will be leased to a qualified vendor to sell coffee, pastries, and snack food in addition to renting play equipment to park patrons. The City advertised in January, 2004 for a vendor and received one proposal that was deemed non-responsive by Council.

INFORMATION FOR CONSIDERATION:

A revised request for proposal (RFP) to provide food concession services at the City Park Kiosk was advertised in the *Daily Journal of Commerce* on March 23, 2004. Eight (8) individuals attended an optional pre-proposal meeting on March 31, 2004 and one (1) proposal was received and opened on April 15, 2004, at 4:00PM in the Finance Department. The sole proposer was George Vajiranochana from Beaverton, Oregon. The single proposal met all requirements listed within the RFP as shown in the attached evaluation matrix.

RECOMMENDED ACTION:

Council, acting as Contract Review Board, accept proposal as responsive and authorize staff to enter into lease negotiations with proposed vendor to provide concessions at the City Park Kiosk.

**EVALUATION MATRIX
CITY PARK KIOSK VENDOR
APRIL 15, 2004**

Criteria	Points Possible	Points Awarded
Completed Proposal submitted on time	Pass/Fail	Pass
An original plus three (3) copies of the complete proposal	Pass/Fail	Pass
Firm qualifications	35 points	25
Rental rate	40 points	35
Menu profile, rental equipment, and associated costs	15 points	15
Hours of Operation	10 points	8
Total Evaluation Points	100 points	83

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**




SUBJECT: Land Purchase for a Future Water Storage Reservoir; and Council Authorization for Mayor to Sign Intergovernmental Agreement with Tualatin Hills Park and Recreation District

FOR AGENDA OF: 5-17-04 **BILL NO:** 04099

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Engineering 

DATE SUBMITTED: 5-11-04

CLEARANCES: City Attorney 
Finance 
Purchasing 

PROCEEDING: Consent Agenda
(Contract Review Board)

- EXHIBITS:**
1. Agreement for Sale of Real Property
 2. Property Deed and Exhibits
 3. Property Location Map
 4. Intergovernmental Agreement with THPRD
 5. Water Reservoir Conceptual Siting Plan

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$1,000,000	BUDGETED \$1,000,000 *	REQUIRED \$-0-

* Funding of the land (real property) purchase is from the General Fund Account No. 001-13-0003-651 approved in the adopted FY 2003-04 budget (\$400,000) and in the Supplemental Budget S-04-1 (\$600,000).

HISTORICAL PERSPECTIVE:

Land Purchase

Beginning in 1991 as a result of recommendations in the City's Water System Facility (master) Plan, the undeveloped 29.64-acre Mt. Williams site owned by Clifford and Margaret Dernbach, was identified by staff as a likely site for up to two 15 million-gallon water storage reservoirs needed in the future to serve the City's lower-pressure zone and largest single service zone.

At the time, engineering staff recognized the Dernbach property at 15820 SW Davis Road as the most suited in elevation and undeveloped size for future large water reservoirs. The Dernbach property (also known as Mt. Williams) was and is undeveloped except for the Dernbach single-family residential house.

Mr. Dernbach passed away prior to 2001. According to an article in *The Oregonian*, dated May 22, 2003, County Commissioner Dick Schouten 'knew that Margaret Dernbach was interested in her land remaining as a park, so he introduced her to officials from the Trust for Public Land.' The Trust for Public Land (TPL) negotiated and signed an exclusive and irrevocable option to purchase the entire property with Ms. Dernbach (trustee) on December 13, 2001.

According to TPL published information, the Trust for Public Land is a national nonprofit organization specializing in real estate, law and finance which works in partnership with public agencies, businesses and citizens' groups to acquire and protect recreational, scenic, historic and ecologically significant land. TPL states that as a non-membership organization, it protects land through acquisition until it can be conveyed to a public agency or nonprofit conservation group. What is not generally stated in published information is in exchange for tax benefits or other considerations, TPL collects from the land owner (seller) up to 20 percent of the land purchase price as a finder's fee to assist the land owner with finding public agency/nonprofit buyers so that the land will pass into public ownership.

Below is a chronology assembled to list events and actions taken which led up to the multi-intergovernmental and contractual arrangements with the Trust for Public Land and Ms. Dernbach to purchase an initial approximately 14.75 acres:

Chronology of Events

<i>Date</i>	<i>Event</i>
April 1991	Water System Facility (master) Plan was completed by a consultant for the City which identified a need for up to two large reservoirs at the elevation and general area of the Mt. Williams (Dernbach) undeveloped site.
November 10, 1999	SW 155 th Avenue Reservoir Preliminary Siting Evaluation was prepared by an engineering consultant on contract to the City to develop siting concepts for one and two large reservoirs to determine which part of the Dernbach property would be suitable for a future reservoir.
September 18, 2001	Preliminary Title Report prepared for TPL prepared by Fidelity National Title Company of Oregon is submitted to TPL as an initial step toward an option to purchase the 29.64-acre tract of land owned by Margaret Dernbach in trust.
December 13, 2001	Option to purchase the 29.64-acre tract owned by Margaret Dernbach in trust is signed this date between Ms. Dernbach and Trust for Public Land.
October 2002	City staff is contacted by the Trust for Public Land (TPL) regarding the City's plans for possible purchase of the Mt. Williams site, owned by Margaret Dernbach in trust, for a possible future water storage reservoir. TPL option to purchase entire Dernbach property in effect.
February 13, 2003	Letter from Ron Willoughby, General Manager, Tualatin Hills Park and Recreation District, to Mayor Drake requesting City participation in a partnership of THPRD, City, and Washington County, with additional funding (\$250,000) from a pending Oregon State Parks & Recreation Department grant for recreation trails. The proposed partnership is to fund initial phase of purchase of 29.64-acre Dernbach property. The partnership would purchase first phase tracts from TPL, which holds an exclusive and irrevocable option to the Dernbach property. Not mentioned in the letter, but as a condition of the purchase option held by TPL, TPL would keep a percentage finders fee (brokering fee) from the amount paid by the public agencies before paying the difference to Margaret Dernbach.
March 17, 2003	Phase 1, Environmental Site Assessment completed by consultant under contract to the Trust for Public Land as due diligence for purchase of the Dernbach property.

Date	Event (continued)
April 22, 2003	Certified Appraisal by the consultant PGP (Palmer Goth and Pietka) Valuation Incorporated which appraised the "hypothetical market value" of the 29.64-acre Dernbach property at \$5,800,000. Assumed no reduction in value for the City's Tree and Vegetation Ordinance No. 4224.
May 28, 2003	Meeting hosted by TPL is held with staff of various interested parties (TPL, THPRD, City, Washington County, and Metro) to discuss possible public purchase of the 29.64-acre Dernbach property under option to TPL. Meeting discussion covered different scenarios for funding the purchase and those agencies to hold title to the land.
July 17, 2003	Mt. Williams Property Tour sponsored by Tualatin Hills Park and Recreation District held at the Mt. Williams (Dernbach) site. Elected officials and/or staff from the City, THPRD, Washington County, State Parks and Recreation Department, and TPL were in attendance.
October 2003	Meeting of the Mayor and City staff with representative of TPL to discuss the City's interest in purchasing a tract of the Dernbach property under option to TPL for the purpose of a future storage reservoir(s).
November 6, 2003	Letter from TPL to City staff member David Winship confirming the outcome of the meeting in October 2003 regarding the City's desire to purchase at least a 5.2-acre parcel of land for a possible future water storage reservoir.
Mid-December 2003	TPL option to purchase Dernbach 29.64-acre tract set to expire. Undisclosed agreement to renew option apparently signed near this date to extend into the future.
January 30, 2004	Trust for Public Land contacts the City to restart serious discussions for a purchase arrangement to acquire land for a future reservoir. Undisclosed TPL option to purchase the entire 29.64-acre Dernbach tract still in effect and will extend at least until the end of May 2004.
February 2, 2004	Engineering consultant hired by the City to begin route evaluation for purposes of easement acquisition of rights-of-way easements for inlet and outlet piping in the PGE and BPA existing rights-of-way to a future water storage reservoir with up to 20-million gallon volume located on the Mt. Williams (Dernbach) property.
March 12, 2004	Coordination meeting with Trust for Public Land, City staff representatives, Tualatin Hills Park and Recreation District (THPRD) and Washington County to finalize arrangements for first phase purchase of approximately an 8.78-acre tract (Parcel No. 1) to the City and a 5.97-acre tract (Parcel No. 2) to THPRD.
April 15, 2004	City issues a notice for a Land Division Preliminary Plat with TPL as the applicant. Proposed plat to accommodate a land purchase in two phases by the public of the Dernbach 29.64 acres.

As noted above, staff have been working with engineering consultants to produce preliminary water storage reservoir plans. The engineering work is to ensure that the site can support the intended use and to obtain needed rights-of-way for inlet and outlet piping and utilities for eventual development of a large reservoir and any additional water system related facilities. The attached Exhibit 5 shows a conceptual siting plan for a 20-million gallon reservoir on the property proposed for purchase. Staff have contacted both the City of Tigard (Tigard Water District) and the Tualatin Valley Water District regarding potential future joint projects to construct a large reservoir. A jointly funded project could reduce City cost when the need for a reservoir at this site is warranted.

As a part of due diligence by TPL to sell the property to the City and THPRD, a phase 1 Environmental Site Assessment was completed by a certified consultant on March 17, 2003. The consultant found that the assessment did not reveal evidence of recognized environmental conditions in connection with the property. The only remarkable findings in the report which impact the City's tract is potential asbestos in the house and possible presence of residue of pesticides used by the owners on fruit trees in the 1940s and 50s.

Intergovernmental Agreement with Tualatin Hills Park and Recreation District

As an integral part of the arrangements between the City and THPRD to purchase the two phase 1 tracts of land on Mt. Williams, the Park District has prepared an intergovernmental agreement by which it will manage the overall property, approximately 14.75 acres, generally for recreational use by the public. However, on the City's property, the intergovernmental agreement states that the primary use of the City land is for water system purposes and its secondary purpose is to allow public recreation.

INFORMATION FOR CONSIDERATION:

As a condition of the sale of the property and to protect Ms. Dernbach's right to occupy her land, the City's purchase agreement includes a 0.34-acre life estate for her benefit within the City's 8.78-acre tract. In any case, development of the City's tract to construct a storage reservoir which requires use of the life estate property cannot take place as long as the life estate is in effect.

Since the real property is purchased with the intent of use for a future water storage reservoir(s), reimbursement by the Water Fund and/or Water Construction Fund will take place over the next three years as funds are available for transfer.

RECOMMENDED ACTION:

1. Council, acting as Contract Review Board, authorize the Mayor to sign the attached Agreement for Sale of Real Property, escrow title closing documents and other applicable documents related to the land purchase of approximately 8.78 acres described above, as approved as to form by the City Attorney, in the amount of \$1,000,000. Funding of the purchase is from the budgeted account in the General Fund, noted above.
2. Authorize the Mayor to execute an Intergovernmental Agreement between the City of Beaverton and the Tualatin Hills Park and Recreation District to manage upon purchase the City's Mt. Williams' property for joint use consistent with the City's primary intended use of the property for water storage reservoir(s).

AGREEMENT FOR SALE OF REAL PROPERTY

This Agreement for Sale of Real Property is made this _____ day of April, 2004, between THE CITY OF BEAVERTON, a municipal corporation of the State of Oregon, ("Buyer"), and THE TRUST FOR PUBLIC LAND, a nonprofit California public benefit corporation, ("Seller").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

BUYER:

The City of Beaverton
Beaverton, Oregon

Attn:
Tel: (503)
FAX: (503)

Copies of any notices to Buyer
should also be sent to:

SELLER:

The Trust for Public Land
806 SW Broadway
Suite 300
Portland, Oregon 97205
Attn: Geoff Roach, Director
Tel: (503) 228-6620
FAX: (971) 244-0518

Copies of any notices to Seller
should also be sent to:

The Trust for Public Land
1011 Western Avenue, Suite 605
Seattle, Washington 98104
Attn: Thomas E. Tyner
Tel: (206) 587-2447
Fax: (206) 382-3414

B. Seller holds an exclusive and irrevocable option to purchase certain real property located in the City of Beaverton, Washington County, Oregon, more particularly described on Exhibit A attached hereto and hereby incorporated by this reference.

C. Said real property, together with any improvements, fixtures, timber, water and minerals located thereon, and any and all rights appurtenant thereto owned or hereafter acquired by Seller, including but not limited to timber rights, water rights, grazing rights, access rights and mineral rights, shall be referred to in this Agreement as "the Subject Property."

D. Buyer wishes to purchase the Subject Property from Seller and Seller wishes to sell the Subject Property to Buyer on the terms and conditions set forth in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Subject Property on the terms and conditions set forth herein.

2. **Purchase Terms.**

(a) **Price.** The purchase price for the Subject Property shall be One Million Dollars (\$1,000,000.00) (the "Purchase Price").

(b) **Method of Payment.** The Purchase Price shall be payable in cash, which cash shall be deposited in escrow at or prior to the close of escrow.

3. **Condition Precedent to Buyer's Obligation to Purchase Subject Property.** Buyer shall have no obligation to purchase the Subject Property under this Agreement unless and until:

(a) Seller has completed its purchase of the Subject Property from its current owner and is vested with full fee simple title to the Subject Property;

(b) Buyer has received approval from the City of Beaverton City Council to purchase the Subject Property;

(c) Buyer shall have received, reviewed (or had reviewed) and approved an independent appraisal of the entire Mt. Williams property, of which the Subject Property is a part, in support of the Purchase Price;

(d) Buyer shall have received, reviewed and approved a copy of the Phase I environmental site assessment of the Subject Property performed by an independent environmental consultant, a copy of which Seller shall provide to Buyer;

(e) Buyer, Washington County and the Tualatin Hills Park and Recreation District ("THPRD") shall have entered into an Intergovernmental Agreement dealing with the use, ownership, maintenance and improvement of both the Subject Property and that portion of the real property adjacent to the Subject Property that THPRD

intends to purchase from Seller (the "THPRD Property"). The location and configuration of the THPRD Property in relation to the Subject Property is shown on the map or diagram attached hereto as Exhibit B and hereby incorporated by this reference; and

(f) Seller shall have entered into a purchase and sale agreement with THPRD providing for the purchase of the THPRD Property by THPRD from Seller. It is anticipated by the parties that Buyer's purchase of the Subject Property and THPRD's purchase of the THPRD Property will occur simultaneously, and that, while evidenced by separate agreements between the respective parties, both THPRD's purchase of the THPRD Property and Buyer's purchase of the Subject Property are each conditioned and contingent on the simultaneous or concurrent closing of the other sale.

4. **Condition of the Subject Property.** Buyer acknowledges that it has had the opportunity to conduct an investigation or inspection of the Subject Property, and agrees to accept the same "as is" in its present condition, except (i) as such condition may be affected by the representations and warranties made by Seller to Buyer with regard to the Subject Property in Section 9 of this Agreement, (ii) as such condition may be affected by the warranties arising under the deed conveying title from Seller to Buyer.

5. **Escrow.** Upon execution of this Agreement, or as soon thereafter as is convenient, the parties shall open an escrow with Fidelity National Title Company of Oregon, 900 SW Fifth Avenue, Portland, Oregon, 97204, telephone number (503) 222-2424 (the "Escrow Holder") for the purpose of closing the purchase and sale of the Subject Property. Escrow shall close on or before May 31, 2004, provided that closing will be subject to Seller being in a position to convey title to the Subject Property and subject to the satisfaction of the conditions precedent set forth in Paragraph 3 above.

6. **Title.** Title shall be conveyed to Buyer, free and clear of all title defects, liens, encumbrances, deeds of trust, and mortgages except (a) the standard printed exceptions on the form of title insurance policy issued pursuant to Section 7; (b) special exceptions 9-27 set forth in title commitment number 10-1101092-28 dated September 18, 2001 issued by Escrow Holder; (c) a life estate in favor of Margaret C. Dernbach; and (d) such other matters as are approved by Buyer in writing. In addition, Buyer shall receive a grant of an easement for ingress, egress, construction, maintenance and utilities over and across the THPRD Property as necessary. The location of the easement, and the terms and conditions applicable to its use, must be acceptable to Buyer.

7. **Title Insurance.** Buyer shall be provided with a standard owner's policy of title insurance in the full amount of the Purchase Price insuring that title to the Subject Property is vested in Buyer upon close of escrow subject only to the exceptions noted in Section 6.

8. **Possession.** Possession shall be delivered to Buyer on close of escrow.

9. **Seller's Representations.** Seller makes the following representations:

(a) Seller has full power and authority to enter into this Agreement and the person signing this Agreement for Seller has full power and authority to sign for Seller and to bind it to this Agreement and, at closing, will have full power and authority to sell, transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement.

(b) Seller is not a "foreign person" and is not otherwise subject to back-up withholding of tax under Section 1445 of the Internal Revenue Code.

(c) The conveyance of the Subject Property in accordance with this Agreement will not violate any provision of state or local subdivision laws.

(d) The Subject Property has insurable access to a public road.

(e) Within Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Subject Property, or any portion thereof, affect the value of the Subject Property, or any portion thereof, or subject an owner of the Subject Property, or any portion thereof, to liability.

(f) Within Seller's knowledge, there are no:

(i) Intended public improvements or private rights which will result in the creation of any liens upon the Subject Property securing an obligation to pay money.

(ii) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Subject Property or any portion thereof.

(iii) Actual or impending mechanics liens against the Subject Property or any portion thereof.

(iv) Notices or other information giving Seller reason to believe that any conditions existing on the Subject Property or in the vicinity of the Subject Property or in ground or surface waters associated with the Subject Property may have a material affect on the value of the Subject Property or subject the owner of the Subject Property to potential liabilities under environmental laws.

(g) Except for an unrecorded lease in favor of Western PCS I Corporation for a cell tower, and that reservation of a life estate for the life of Margaret C. Dernbach,

there is no lease, license, permit, option or right of first refusal which affects the Subject Property or any portion thereof which will not be terminated by closing.

(h) Within Seller's knowledge, and except for those matters identified in the Phase I Environmental Site Assessment, a copy of which report Seller has provided to Buyer, there is no condition at, on, under or related to the Subject Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any hazardous substance on the Subject Property nor any release or threatened release of any hazardous substance, pollutant or contaminant into, upon or over the Subject Property or into or upon ground or surface water at the Subject Property. Within Seller's knowledge, no hazardous substance is now or ever has been stored on the Subject Property in underground tanks, pits or surface impoundments.

Each of the above representations and warranties is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing representations and warranties, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the close of escrow, Seller shall be obligated to remedy the problem before the close of escrow. If the problem is not remedied before close of escrow, Buyer or Seller may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the Subject Property, or (b) defer the closing date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

10. **Buyer's Representations.** Buyer makes the following representations:

(a) Buyer has all requisite authority and power to enter into this Agreement.

(b) Neither Buyer's execution of this Agreement nor its taking any of the actions contemplated hereunder will violate any City, County, State or Federal Codes or Ordinances, or other governmental regulations.

The representations and warranties of Buyer contained herein shall be effective through the close of escrow.

11. **Closing Expenses and Fees.** The escrow fee shall be paid one-half by Buyer and one-half by Seller. Seller will pay the premium on the title policy referred to in Paragraph 7. Real estate taxes shall be prorated and paid by Seller as of the close of escrow based upon the latest available tax bill. Other fees and charges shall be allocated in accordance with the customary practices of Washington County, Oregon.

12. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties hereto personally by hand, courier service or Express Mail, or by first class mail, postage prepaid, at the addresses set forth in Recital A. All notices shall be deemed given when deposited in the mail, first class postage prepaid, addressed to the party to be notified; or if delivered by hand, courier service or Express Mail, shall be deemed given when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

13. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.

14. **Time of the Essence.** Time is of the essence of this Agreement.

15. **Binding on Successors.** This Agreement shall be binding not only upon the parties but also upon their heirs, personal representatives, assigns, and other successors in interest.

16. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

17. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Seller and Buyer pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action to enforce this Agreement shall be commenced in Washington County, Oregon.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

BUYER:

THE CITY OF BEAVERTON

By: _____

Title: _____

Date: _____

SELLER:

THE TRUST FOR PUBLIC LAND

By: _____

Title: _____

Date: _____

State of Oregon)
) ss.
County of Washington)

On this _____ day of April, 2004, before me _____, the undersigned Notary Public in and for the state of Oregon, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as _____, on behalf of The City of Beaverton, and acknowledged to me that The City of Beaverton executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he/she was authorized to so execute said instrument.

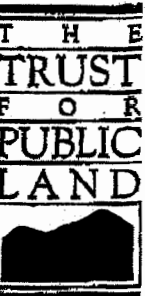
Print Name:
Notary Public in and for the State
of Oregon.
Residing at _____.
My commission expires _____.

State of Washington)
) ss.
County of King)

On this ____th day of April, 2004, before me, Daniel K. Wilson, the undersigned Notary Public in and for the state of Washington, personally appeared Thomas E. Tyner, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Regional Counsel on behalf of The Trust for Public Land, the corporation therein named and acknowledged to me that the corporation executed said instrument as its free and voluntary act and deed for the purposes therein mentioned, and on oath stated that he was authorized to so execute said instrument.

Print Name: Daniel K. Wilson
Notary Public in and for the State
of Washington
Residing at _____.
My commission expires _____.

EXHIBIT 2



Conserving Land for People

FACSIMILE COVER SHEET

RECEIVED
MAY 10 2004
ENGINEERING DEPT.

DATE: 5.10.04

TO: ALAN RAPPLEY

COMPANY: BEAVERTON CITY ATTORNEY

FAX NUMBER: (903) 526-2277

NUMBER OF PAGES (INCLUDING COVERSHEET): 19

FROM: TOM TYNER

RE: MT. WILLIAMS-DERNBACH ; DEED

The Trust for Public Land
 Northwest Regional Office
 1011 Western Avenue, Suite 605
 Seattle, WA 98104
 Tel:(206)587-2447
 Fax:(206)382-3414

REMARKS:

ALAN: AS PER MY E-MAIL, ATTACHED IS THE PROPOSED DEED FROM DERNBACH TO TPL WITH THE RELEVANT EXHIBITS. I UNDERSTAND THAT THE CONSTRUCTION ACCESS EASEMENTS WILL NOT BE INCLUDED ON THE PLAT ITSELF, WHICH MAKES SENSE TO ME.

I'VE ALSO ATTACHED A COPY OF THE PLAT MAP ITSELF FOR CONTEXT.

CONFIDENTIALITY NOTICE

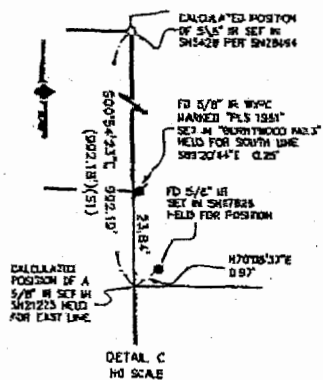
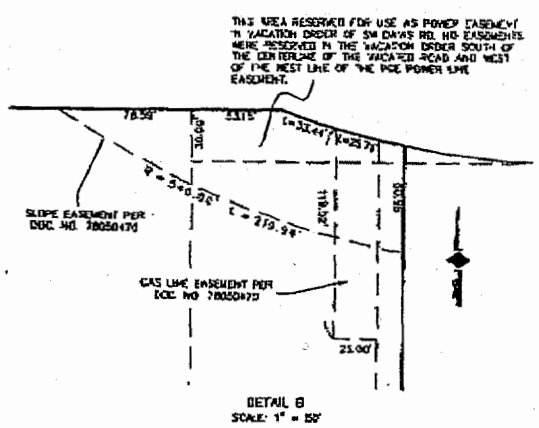
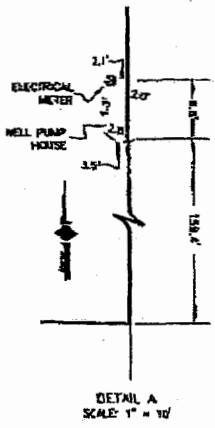
The documents accompanying this fax contain confidential information which is intended only for the use of the recipient named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the contents of the transmitted information, except its direct delivery to the intended recipient named above, is strictly prohibited. If you have received this fax in error, please notify us immediately at (206)587-2447 to arrange for return of the original documents to us. Thank You.

Tom Tyner
9

2007 JUL 24 10:17 A.M.

SENDER PUBLIC UTILITIES

11:00 AM



PARTITION PLAT NO. _____
 RECORDED AS DOCUMENT NO. _____

PARTITION PLAT
 LOCATED IN THE NORTHWEST QUARTER OF SECTION 20,
 TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,
 CITY OF BEAVERTOWN, WASHINGTON COUNTY, OREGON
 APRIL 14, 2004

CITY OF BEAVERTOWN APPROVALS
 APPROVED _____ 200____
 CITY OF BEAVERTOWN PLANNING DIRECTOR

APPROVED _____ 200____
 CITY OF BEAVERTOWN ENGINEER

WASHINGTON COUNTY APPROVALS
 APPROVED THIS _____ DAY OF _____
 WASHINGTON COUNTY SURVEYOR

STATE OF OREGON } S.S.
 COUNTY OF WASHINGTON }
 I DO HEREBY CERTIFY THAT THIS PARTITION PLAT WAS
 RECEIVED FOR RECORD ON THIS _____ DAY OF _____
 AT _____ O'CLOCK _____ A.M.
 AND RECORDED IN THE COUNTY CLERK RECORDS.

BY _____
 COUNTY CLERK

ALL TAXES, FEES, ASSESSMENTS OR OTHER CHARGES
 AS PROVIDED BY O.R.S. 92.090 HAVE BEEN PAID AS OF _____

DIRECTOR, DIVISION OF ASSESSMENT & TAXATION
 WASHINGTON COUNTY, OREGON

BY _____
 DEPUTY

SURVEYOR'S CERTIFICATE

I, KEVIN WILLIAMS, HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED ON THE ANNEXED PARTITION PLAT, BEING A PORTION OF THE WEST HALF OF THE W. H. WILLIAMS DONATION LAND CLAIM NO. 50 LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN IN THE CITY OF BEAVERTOWN, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, A 5/8" IRON ROD AT THE NORTHWEST CORNER OF LOT 91 OF THE PLAT OF "BURNWOOD NO. 2", WASHINGTON COUNTY PLAT RECORDS;

THENCE S89°20'44"E, ALONG THE NORTH LINE OF SAID PLAT OF "BURNWOOD NO. 2" AND ALONG THE NORTH LINE OF THE PLAT OF "BURNWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS, 112.18 FEET TO THE SOUTHWEST CORNER OF THAT TRACT OF LAND CONVEYED TO LOIS LYNN BYERS AND JOHN EDWARD BYERS IN DEED DOCUMENT NO. 8701571, WASHINGTON COUNTY DEED RECORDS FROM WHICH A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "CASWELL PLS 737" BEARS S89°20'44"E, 1.00 FOOT;

THENCE N00°30'43"E, ALONG THE WEST LINE OF SAID BYERS TRACT, 150.00 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "CASWELL PLS 737" AT THE NORTHWEST CORNER OF SAID BYERS TRACT;

THENCE S89°20'44"E, ALONG THE NORTH LINE OF SAID BYERS TRACT, 142.34 FEET TO THE WEST LINE OF THE POWER LINE EASEMENT RECORDED BY BOOK 447, PAGE 33, WASHINGTON COUNTY DEED RECORDS, AND THE NORTHEAST CORNER OF SAID BYERS TRACT FROM WHICH A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "CASWELL PLS 737" BEARS N89°20'44"E, 0.77 FEET;

THENCE S00°31'43", ALONG SAID WEST LINE, 150.30 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PLS 1251" ON THE NORTH LINE OF SAID PLAT OF "BURNWOOD NO. 3";

THENCE S89°20'44"E, ALONG SAID NORTH LINE, 125.00 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "TETSUKA ASSOC. INC." AT A POINT HEREAFTER REFERRED TO AS POINT "A" ON THE WEST LINE OF THE BONNEVILLE POWER ADMINISTRATION RIGHT-OF-WAY DESCRIBED IN BOOK 140, PAGE 501, WASHINGTON COUNTY DEED RECORDS;

THENCE N00°31'43" ALONG SAID WEST LINE, 872.70 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "TETSUKA ASSOC. INC." ON THE SOUTH RIGHT-OF-WAY LINE OF SW DAVIS RD. (C.R. 1029) AND THE BEGINNING OF A 160.00-FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT;

THENCE ALONG SAID RIGHT-OF-WAY LINE AND SAID NON-TANGENT CURVE (THE CHORD OF WHICH BEARS N77°14'17"W, 74.17 FEET) THROUGH AN INCLUDED ANGLE OF 63°32", AN ARC DISTANCE OF 74.54 FEET TO THE INTERSECTION OF SAID RIGHT-OF-WAY LINE WITH THE SOUTH LINE OF THE PLAT OF "EMERALD TERRACE NO. 2", WASHINGTON COUNTY PLAT RECORDS, FROM WHICH A 5/8" IRON ROD BEARS S89°20'44"E, 0.70 FEET;

THENCE S89°20'44"E, ALONG THE SOUTH LINE OF SAID PLAT OF "EMERALD TERRACE NO. 2", 895.68 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "CASWELL PLS 737" ON THE EAST LINE OF THE PLAT OF "BURNWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE S00°31'43"E, ALONG SAID EAST LINE AND THE EAST LINE OF THE PLAT OF "BURNWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS, 67.84 FEET TO THE INITIAL POINT;

TOGETHER WITH THE FOLLOWING DESCRIBED TRACT OF LAND:

BEGINNING AT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "TETSUKA ASSOC. INC." AT THE INTERSECTION OF THE EAST LINE OF SAID BONNEVILLE POWER ADMINISTRATION RIGHT-OF-WAY WITH THE NORTH LINE OF SAID PLAT OF "BURNWOOD NO. 3" WHICH BEARS S89°20'44"E, ALONG SAID NORTH LINE, 101.00 FEET FROM THE ABOVE-MENTIONED POINT "A";

THENCE S89°20'44"E, ALONG THE NORTH LINE OF SAID PLAT OF "BURNWOOD NO. 3", 281.40 FEET TO ITS INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF THE W. H. WILLIAMS D/LC NO. 50 FROM WHICH A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP BEARS S89°20'44"E, 0.26 FEET;

THENCE W00°43'23"E, ALONG SAID EAST LINE, 188.33 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "TETSUKA ASSOC. INC." ON THE SOUTH RIGHT-OF-WAY LINE OF SW DAVIS RD. (C.R. 1029);

THENCE S89°20'44"E, ALONG SAID RIGHT-OF-WAY LINE, 257.74 FEET TO A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "CASWELL PLS 737" ON THE EAST LINE OF SAID BONNEVILLE POWER ADMINISTRATION RIGHT-OF-WAY;

THENCE S00°31'43"E, ALONG SAID EAST LINE, 184.53 FEET TO THE POINT OF BEGINNING.

ALL CONTAINING 23.54 ACRES MORE OR LESS.

BASIS OF BEARINGS
 THE BASIS OF BEARINGS FOR THIS PLAT IS S89°20'44"E ALONG A LINE OF MONUMENTS MARKING THE NORTH LINE OF THE PLATS OF "BURNWOOD NO. 2" AND "BURNWOOD NO. 3".

PLAT NOTES
 1.) THIS PLAT IS SUBJECT TO ALL CONDITIONS CONTAINED IN THE FACILITIES REVIEW COMMITTEE CONDITIONS OF APPROVAL DATED MAY 24, 2000 AND CITY OF BEAVERTOWN CASE FILE _____.

DECLARATION
 KNOW ALL PEOPLE BY THESE PRESENTS, THAT I, KEVIN WILLIAMS, THE OWNER OF THE LANDS DESCRIBED IN THE SURVEYOR'S CERTIFICATE AND AS SHOWN ON THE ANNEXED MAP HAS CAUSED THE SAME TO BE SURVEYED AND PARTITIONED INTO 3 PARCELS AS SHOWN HEREON.

XXXXXXXXXXXXXXXXXXXX

STATE OF OREGON } S.S.
 COUNTY OF WASHINGTON }

I DO HEREBY CERTIFY THAT THIS TRACING IS A COPY CERTIFIED TO ME BY THE SURVEYOR OF THIS PARTITION PLAT, TO BE A TRUE AND EXACT COPY OF THE ORIGINAL, AND THAT IT WAS RECORDED

IN THE _____ DAY OF _____ AT _____ O'CLOCK _____ A.M. IN THE COUNTY CLERK RECORDS.

BY _____
 COUNTY CLERK

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 AND THE
 KEVIN WILLIAMS
 1933

RENEWAL DATE 4-30-04

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE PARTITION PLAT.



SHEET 2 OF 2
 JOB NO. 04-1148
TETSUKA ASSOCIATES, INC.
 LAND SURVEY CONSULTING
 1900 S.W. WILSHIRE STREET, #110
 PORTLAND, OR 97225
 503.517.0882 FAX: 503.443.9300

When recorded mail to:
The Trust for Public Land
1011 Western Avenue, Suite 605
Seattle, Washington 98104
Attn: Thomas E. Tyner
(206) 587-2447

STATUTORY WARRANTY DEED

MARGARET C. DERNBACH, Trustee of the Margaret C. Dernbach Trust dated June 11, 1992, and **MARGARET C. DERNBACH**, Trustee of the Clifford J. Dernbach Trust, dated June 11, 1992 (collectively "Grantor"), hereby conveys and warrants to **THE TRUST FOR PUBLIC LAND**, a California non-profit public benefit corporation ("Grantee") that real property situated in Washington County, Oregon, described on Exhibit A attached hereto and hereby incorporated by this reference (the "Phase I Property");

TOGETHER WITH a temporary, nonexclusive easement twenty-five (25) feet in width located and described on Exhibits B and B-1 attached hereto and hereby incorporated by this reference, for the purpose of providing access, ingress and utilities to and from Parcel 1 of the Phase I Property to SW 163rd Drive as shown on Exhibits B and B-1 over and across that real property owned by Grantor and described on Exhibit C attached hereto and hereby incorporated by this reference (the "Phase II Property"), such easement to be in effect until such time as (a) alternative access to Parcel 1 of the Phase I Property is established, or (b) an underground water tank is installed on Parcel 1 of the Phase I Property or plans to do so are abandoned, or (c) Grantee acquires the Phase II Property from Grantor, whichever occurs first;

AND ALSO TOGETHER WITH a temporary construction easement sixty (60) feet in width over and across the Phase II Property located and described on Exhibits D and D-1 attached hereto and hereby incorporated by this reference, such easement to be available to Grantor until such time as (a) the construction of an underground water storage tank on Parcel 1 of the Phase I Property has been completed or plans to do so are abandoned, or (b) Grantee acquires the Phase II Property, whichever occurs first, **provided**, however, that no use of the temporary construction easement shall commence or be permitted so long as the Life Tenant (as defined below) has a Life Estate in the Life Estate Property (as also defined below);

SUBJECT TO the title exceptions identified on Exhibit E attached hereto and hereby incorporated by this reference;

RESERVING AND CONVEYING TO Margaret C. Dernbach a life estate for the life of Margaret C. Dernbach (the "Life Tenant") on and over that portion of Parcel 1 of the Phase I Property located and described on Exhibits F and F-1 attached hereto and hereby incorporated by this reference (the "Life Estate Property"), together with an easement for ingress, egress and utilities over and across a portion of Parcel 1 of the Phase I Property, the location and description of which easement is also set forth in Exhibits F and F-1, and also together with an easement for ingress and egress over and across Parcel 1 of the Phase I Property to allow the Life Tenant pedestrian access and, if necessary, alternative vehicular access, to and from the Phase II Property.

The Life Tenant's life estate in the Life Estate Property, and the Life Tenant's use of the easement provided for above, shall be subject to the following terms and conditions:

1. Life Tenant shall have the right to use, occupy and maintain the existing residential structure on the Life Estate Property for personal residential and personal gardening purposes only. No commercial, industrial, agricultural or other nonresidential use of the Life Estate Property shall be permitted. The Life Tenant shall not construct new buildings or structures on the Life Estate Property, add on to or enlarge existing structures, dig new wells, build new roads, install above or below ground tanks or otherwise significantly alter the existing topography of the Life Estate Property without the prior written permission of Grantee or its successors in interest.
2. The Life Tenant shall reasonably maintain the Life Estate Property, and keep all structures on the Life Estate Property in reasonably good repair. Neither Grantor nor Grantor's successors or assigns shall have any responsibility to maintain or repair the Life Estate Property or any structures located thereon.
3. The Life Tenant shall not be responsible for the payment of ad valorem property taxes on the Life Estate Property.
4. The Life Tenant shall not cut down live trees on the Life Estate Property nor remove any existing vegetation, except for routine trimming and pruning and removal of diseased or dead trees or plants and trees constituting a danger to existing structures.
5. The Life Tenant shall not place or allow to be accumulated on the Life Estate Property any trash, debris, junk or other unsightly materials.
6. The forgoing restrictions and covenants shall run with the land and be binding on the Life Tenant and her successors and assigns. By acceptance of this deed, the Life Tenant agrees that said covenants and restrictions are intended to be mutually beneficial to the Life Estate tenant and to Grantee and

Grantee's successors and assigns, and that Grantee and its successors and assigns shall have the right, but not an obligation to enforce any breach of such covenants and restrictions.

- 7. Grantee and its successors in interest and those in privy with them shall recognize and respect the rights of the Life Tenant under the Life Estate, and shall not interfere with the Life Tenant's quiet and peaceful use and possession of the Life Estate.
- 8. The Life Tenant's interest in the Life Estate Property shall not be assignable or transferable, and any such attempted transfer, assignment or conveyance shall be void.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true and actual consideration for this conveyance is Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000.00).

IN WITNESS WHEREOF, this instrument has been executed as of the date set forth below.

THE MARGARET C. DERNBACH TRUST

By: _____
Margaret C. Dernbach
Trustee

THE CLIFFORD J. DERNBACH TRUST

By: _____
Margaret C. Dernbach,
Trustee

State of Oregon)
) ss.
 County of Washington)

On this _____ day of _____, 2004, before me, _____, the undersigned Notary Public in and for the State of Oregon, personally appeared Margaret C. Dernbach, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Trustee of the Margaret C. Dernbach Trust, the trust named therein, and on oath acknowledged to me that said trust executed said instrument as its voluntary act and deed for the purposes therein mentioned and on oath acknowledged to me that she was so authorized by said trust to execute said instrument.

 Print Name: _____
 Notary Public in and for the State
 of Oregon
 Residing at _____
 My commission expires _____

State of Oregon)
) ss.
 County of Washington)

On this _____ day of _____, 2004, before me, _____, the undersigned Notary Public in and for the State of Oregon, personally appeared Margaret C. Dernbach, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Trustee of the Clifford J. Dernbach Trust, the trust named therein, and on oath acknowledged to me that said trust executed said instrument as its voluntary act and deed for the purposes therein mentioned and on oath acknowledged to me that she was so authorized by said trust to execute said instrument.

 Print Name: _____
 Notary Public in and for the State
 of Oregon
 Residing at _____
 My commission expires _____

EXHIBIT A**LEGAL DESCRIPTION
PARCEL 1**

A PORTION OF THAT TRACT OF LAND CONVEYED TO CLIFFORD J. DERNBACH AND MARGARET C. DERNBACH IN DEED DOCUMENT NUMBERS 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 116 OF THE PLAT OF "BURNTWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE N89°20'44"W, ALONG THE NORTH LINE OF SAID LOT 116, A DISTANCE OF 48.25 FEET TO THE TRUE POINT OF BEGINNING;

THENCE, N00°34'55"E, LEAVING THE NORTH LINE OF SAID LOT 116, A DISTANCE OF 445.00 FEET;

THENCE S89°20'44"E, A DISTANCE OF 552.50 FEET TO THE WEST LINE OF THE 125.00-FOOT WIDE POWER LINE EASEMENT RECORDED IN BOOK 487, PAGE 33, WASHINGTON COUNTY DEED RECORDS;

THENCE N00°31'43"E, ALONG SAID WEST LINE, A DISTANCE OF 250.00 FEET;

THENCE N89°20'44"W, LEAVING SAID WEST LINE, A DISTANCE OF 101.07 FEET;

THENCE N00°11'05"E, A DISTANCE OF 295.13 FEET TO THE SOUTH LINE OF THE PLAT OF "EVERGREEN TERRACE NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE S89°55'34"W, ALONG SAID SOUTH LINE, A DISTANCE OF 156.00 TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SW DAVIS ROAD AND THE BEGINNING OF A 480.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID 480.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (THE CHORD OF WHICH BEARS S74°14'17"E, 74.47 FEET), THROUGH A CENTRAL ANGLE OF 8°53'52", AN ARC DISTANCE OF 74.54 FEET TO THE WEST LINE OF THE BONNEVILLE POWER ADMINISTRATION RIGHT-OF-WAY DESCRIBED IN BOOK 180, PAGE 501, WASHINGTON COUNTY DEED RECORDS;

EXHIBIT A (cont'd)

THENCE S00°31'43"W, ALONG SAID WEST LINE, A DISTANCE OF 972.70 FEET TO THE NORTH LINE OF SAID PLAT OF "BURNTWOOD NO. 3";

THENCE N89°20'44"W, ALONG SAID NORTH LINE, A DISTANCE OF 125.00 FEET TO THE EAST LINE OF THAT TRACT OF LAND CONVEYED TO LORI LYNN BYERS AND JOHN DAVID BYERS IN DEED DOCUMENT NUMBER 97101371, WASHINGTON COUNTY DEED RECORDS;

THENCE N00°31'43"E, ALONG SAID EAST LINE, A DISTANCE OF 150.30 FEET TO THE NORTHEAST CORNER OF PARCEL 2 OF SAID BYERS TRACT;

THENCE N89°29'50"W, ALONG THE NORTH LINE OF SAID BYERS TRACT, A DISTANCE OF 112.36 FEET TO THE NORTHWEST CORNER OF SAID BYERS TRACT;

THENCE S00°35'00"W, ALONG THE WEST LINE OF SAID BYERS TRACT, A DISTANCE OF 150.00 FEET TO THE NORTH LINE OF SAID PLAT OF "BURNTWOOD NO. 3";

THENCE N89°20'44"E, ALONG SAID NORTH LINE, A DISTANCE OF 440.42 FEET TO THE POINT OF BEGINNING.

CONTAINS 382,457 SQUARE FEET (8.78 ACRES), MORE OR LESS.

Exhibit A (cont'd)**LEGAL DESCRIPTION
PARCEL 2**

A PORTION OF THAT TRACT OF LAND CONVEYED TO CLIFFORD J. DERNBACH AND MARGARET C. DERNBACH IN DEED DOCUMENT NUMBERS 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 133 OF THE PLAT OF "BURNTWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE N89°20'44"W, ALONG THE NORTH LINE SAID PLAT OF "BURNTWOOD NO. 3", A DISTANCE OF 281.40 FEET TO THE EAST LINE OF THE BONNEVILLE POWER ADMINISTRATION RIGHT-OF-WAY DESCRIBED IN BOOK 180, PAGE 501, WASHINGTON COUNTY DEED RECORDS;

THENCE N00°31'43"E, ALONG SAID EAST LINE, A DISTANCE OF 964.53 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SW DAVIS ROAD;

THENCE N89°52'53"E, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 257.16 FEET TO THE WEST LINE OF THAT TRACT OF LAND DESCRIBED IN DEED DOCUMENT NUMBER 87045504;

THENCE S00°54'23"E, ALONG SAID WEST LINE, A DISTANCE OF 968.35 FEET TO THE POINT OF BEGINNING.

CONTAINS 260,210 (5.97 ACRES), MORE OR LESS.

EXHIBIT B**LEGAL DESCRIPTION**

A PORTION OF THAT TRACT OF LAND CONVEYED TO CLIFFORD J. DERNBACH AND MARGARET C. DERNBACH IN DEED DOCUMENT NUMBERS 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 91 OF THE PLAT OF "BURNTWOOD NO. 2", WASHINGTON COUNTY PLAT RECORDS;

THENCE N00°39'16"E, LEAVING THE NORTH LINE OF SAID LOT 91, A DISTANCE OF 25.00 FEET;

THENCE S89°20'44"E, PARALLEL WITH SAID NORTH LINE, A DISTANCE OF 296.83 FEET;

THENCE S00°34'55"W, A DISTANCE OF 25.00 FEET TO THE NORTH LINE OF THE PLAT OF "BURNTWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE N89°20'44"W, ALONG THE NORTH LINE OF SAID PLAT OF "BURNTWOOD NO. 3" AND THE NORTH LINE SAID PLAT OF "BURNTWOOD NO. 2", A DISTANCE OF 296.86 FEET TO THE POINT OF BEGINNING.

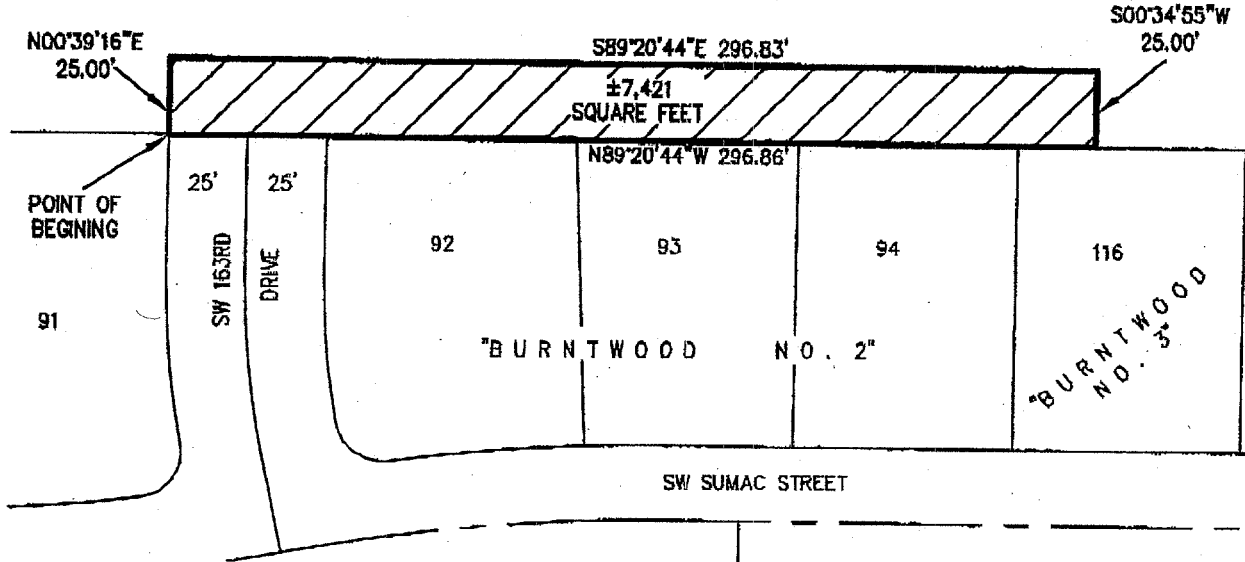
CONTAINS 7,421 SQUARE FEET, MORE OR LESS.

EXHIBIT B-1

EXHIBIT MAP

BEING A PORTION LAND DESCRIBED IN THOSE DEED DOCUMENT NO.'S 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, OREGON

APRIL 14, 2004



SCALE: 1"=60'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JAN. 18, 1994
KEVIN WILLIAMS
2650

RENEWAL DATE 6-30-04

JOB NO.: TPL 1149



TETSUKA ASSOCIATES, INC.
LAND SURVEY CONSULTING

9900 S.W. WILSHIRE STREET, #110
PORTLAND, OR 97225
503.517.0682 FAX: 503.445.1300

EXHIBIT C

LEGAL DESCRIPTION PARCEL 3

A PORTION OF THAT TRACT OF LAND CONVEYED TO CLIFFORD J. DERNBACH AND MARGARET C. DERNBACH IN DEED DOCUMENT NUMBERS 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 116 OF THE PLAT OF "BURNTWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE N89°20'44"W, ALONG THE NORTH LINE OF SAID LOT 116, A DISTANCE OF 48.25 FEET TO THE TRUE POINT OF BEGINNING;

THENCE, N00°34'55"E, LEAVING THE NORTH LINE OF SAID LOT 116, A DISTANCE OF 445.00 FEET;

THENCE S89°20'44"E, A DISTANCE OF 552.50 FEET TO THE WEST LINE OF THE 125.00-FOOT WIDE POWER LINE EASEMENT RECORDED IN BOOK 487, PAGE 33, WASHINGTON COUNTY DEED RECORDS;

THENCE N00°31'43"E, ALONG SAID WEST LINE, A DISTANCE OF 250.00 FEET;

THENCE N89°20'44"W, LEAVING SAID WEST LINE, A DISTANCE OF 101.07 FEET;

THENCE N00°11'05"E, A DISTANCE OF 295.13 FEET TO THE SOUTH LINE OF THE PLAT OF "EVERGREEN TERRACE NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE S89°55'34"W, ALONG SAID SOUTH LINE, A DISTANCE OF 839.66 FEET TO THE EAST LINE OF THE PLAT OF "THORNBROOK", WASHINGTON COUNTY PLAT RECORDS;

THENCE S00°30'19"E, ALONG SAID EAST LINE AND THE EAST LINE OF THE PLAT OF "BURNTWOOD WEST NO. 3", WASHINGTON COUNTY PLAT RECORDS, A DISTANCE OF 979.65 FEET TO THE NORTH LINE OF THE PLAT OF "BURNTWOOD NO. 2", WASHINGTON COUNTY PLAT RECORDS;

THENCE S89°20'44"E, ALONG SAID NORTH LINE AND THE NORTH LINE SAID PLAT OF "BURNTWOOD NO. 3", A DISTANCE OF 371.86 FEET TO THE POINT OF BEGINNING.

CONTAINS 643,965 (14.78 ACRES), MORE OR LESS.

EXHIBIT D**LEGAL DESCRIPTION**

A PORTION OF THAT TRACT OF LAND CONVEYED TO CLIFFORD J. DERNBACH AND MARGARET C. DERNBACH IN DEED DOCUMENT NUMBERS 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 116 OF THE PLAT OF "BURNTWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE N89°20'44"W, ALONG THE NORTH LINE OF SAID PLAT OF "BURNTWOOD NO. 3", A DISTANCE OF 48.25 FEET TO THE TRUE POINT OF BEGINNING;

THENCE N89°20'44"W, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 60.00 FEET;

THENCE N00°34'55"E, LEAVING SAID NORTH LINE, A DISTANCE OF 444.92 FEET;

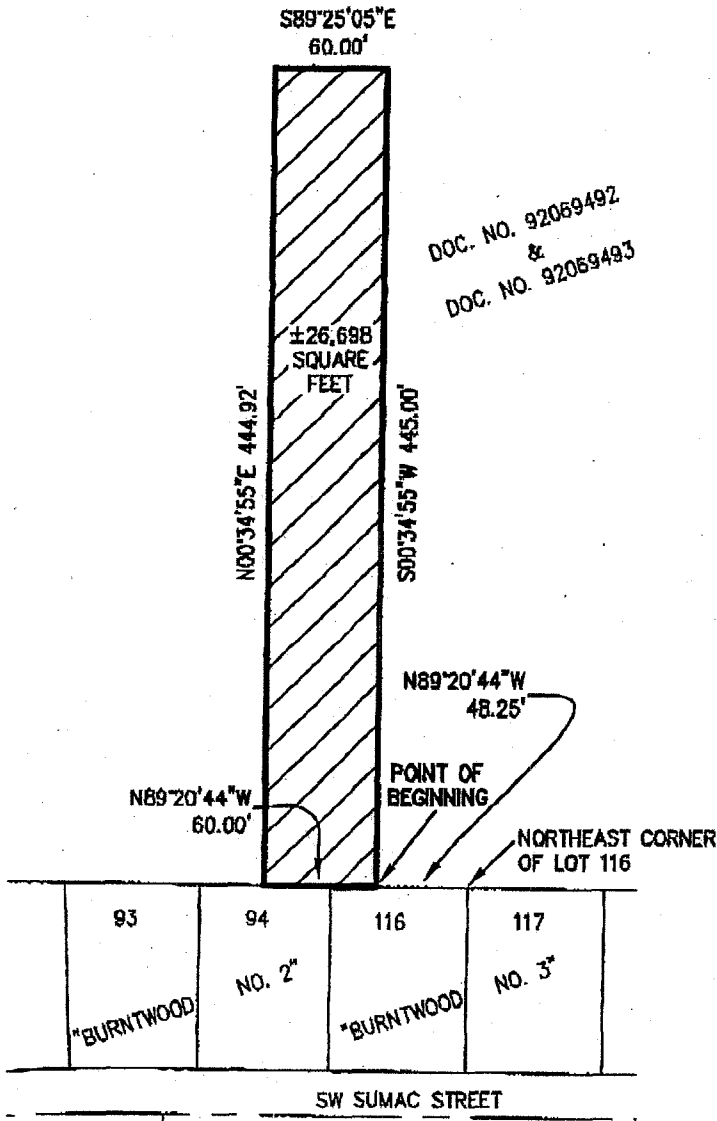
THENCE S89°25'05"E, A DISTANCE OF 60.00 FEET;

THENCE S00°34'55"W, A DISTANCE OF 445.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 26,698 SQUARE FEET, MORE OR LESS.

EXHIBIT MAP

BEING A PORTION LAND DESCRIBED IN THOSE DEED DOCUMENT NO.'S 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, OREGON
APRIL 14, 2004



DOC. NO. 92069492
&
DOC. NO. 92069493



SCALE: 1"=100'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JAN. 18, 1994
KEVIN WILLIAMS
2650

RENEWAL DATE 6-30-04

JOB NO.: TPL 1149



TETSUKA ASSOCIATES, INC.
LAND SURVEY CONSULTING

9900 S.W. WILSHIRE STREET, #110
PORTLAND, OR 97225
503.517.0682 FAX: 503.445.1300

EXHIBIT E
(LIST OF TITLE EXCEPTIONS
FROM TITLE COMMITMENT)

EXHIBIT F

**LEGAL DESCRIPTION
LIFE ESTATE**

A PORTION OF THAT TRACT OF LAND CONVEYED TO CLIFFORD J. DERNBACH AND MARGARET C. DERNBACH IN DEED DOCUMENT NUMBERS 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 122 OF THE PLAT OF "BURNTWOOD NO. 3", WASHINGTON COUNTY PLAT RECORDS;

THENCE N00°35'00"E, ALONG THE WEST LINE (AND ITS NORTHERLY EXTENSION) OF THAT TRACT OF LAND CONVEYED TO LORI LYNN BYERS AND JOHN DAVID BYERS IN DEED DOCUMENT NUMBER 97101371, WASHINGTON COUNTY DEED RECORDS, 192.40 FEET;

THENCE N66°58'48"W, 245.13 FEET TO THE TRUE POINT OF BEGINNING;

THENCE WEST, 122.47 FEET;

THENCE SOUTH, 122.47 FEET;

THENCE EAST, 122.47 FEET;

THENCE NORTH, 122.47 FEET TO THE POINT OF BEGINNING;

CONTAINING 15,000 SQUARE FEET EXACTLY.

TOGETHER WITH AN EASEMENT FOR ACCESS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE AFOREMENTIONED LOT 122;

THENCE N00°35'00"E, ALONG THE WEST LINE (AND ITS NORTHERLY EXTENSION) OF THE AFOREMENTIONED BYERS TRACT, 192.40 FEET;

THENCE N66°58'48"W, 245.13 FEET;

THENCE SOUTH, 27.16 FEET;

THENCE S66°58'48"E, 217.78 FEET;

EXHIBIT F (cont'd)

THENCE S00°35'00"W, 175.64 FEET TO THE NORTHWEST CORNER OF TRACT
"O" OF THE AFOREMENTIONED PLAT OF "BURNTWOOD NO. 3";

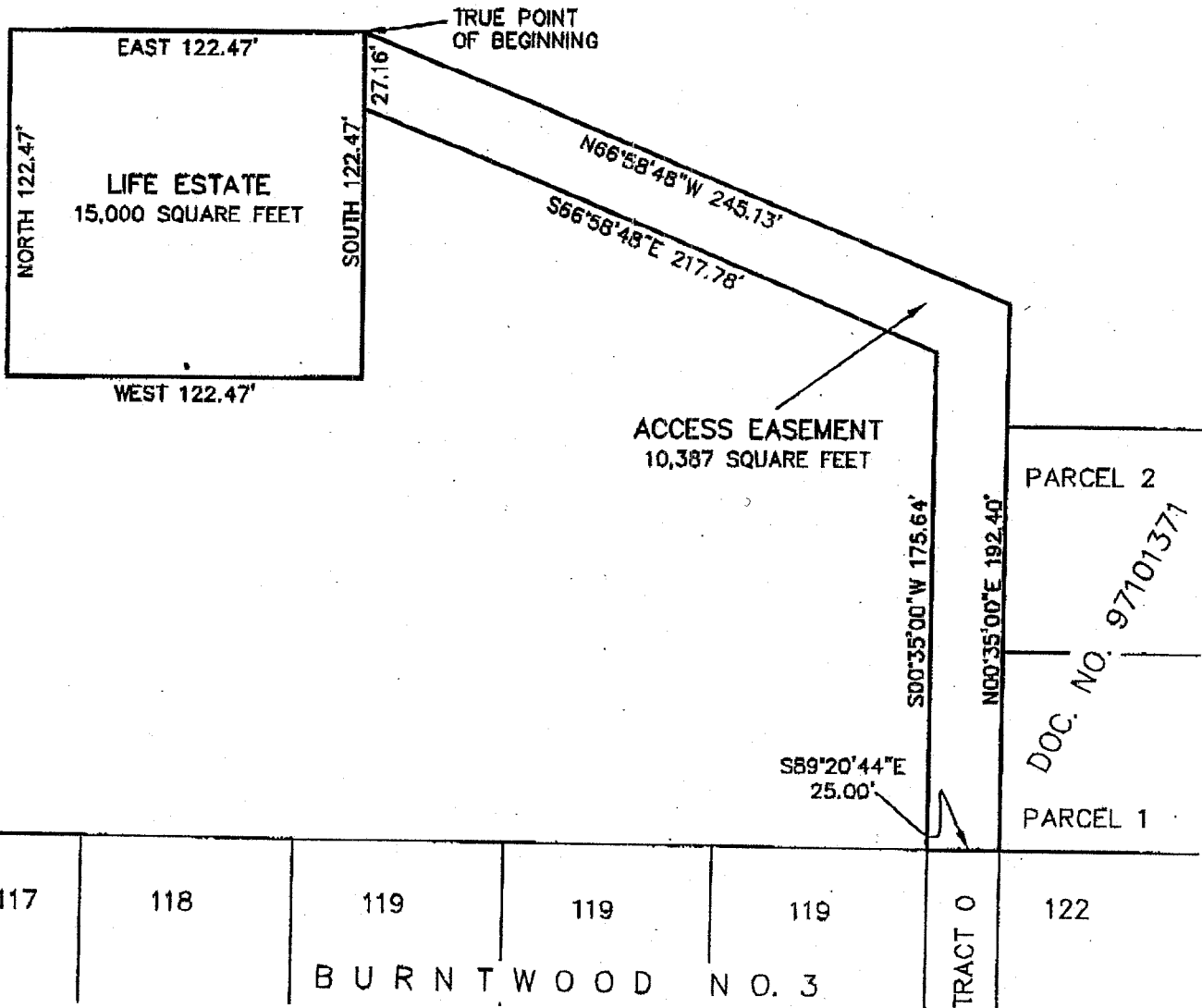
THENCE S89°20'44"E, ALONG THE NORTH LINE OF SAID TRACT "O", 25.00
FEET TO THE POINT OF BEGINNING;

CONTAINING 10,387 SQUARE FEET MORE OR LESS.

EXHIBIT MAP

BEING A PORTION LAND DESCRIBED IN THOSE DEED DOCUMENT NO.'S 92069492 AND 92069493, WASHINGTON COUNTY DEED RECORDS LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF BEAVERTON, WASHINGTON COUNTY, OREGON

APRIL 14, 2004



REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JAN. 18, 1994
KEVIN WILLIAMS
2650

RENEWAL DATE 6-30-04



JOB NO.: TPL 1149

TETSUKA ASSOCIATES, INC.
LAND SURVEY CONSULTING

9900 S.W. WILSHIRE STREET, #110
PORTLAND, OR 97225
503.517.0682 FAX: 503.445.1300

SCALE: 1" = 60'

INTERGOVERNMENTAL AGREEMENT

BETWEEN: The City of Beaverton, a unit of
local government of the State of Oregon (City)

AND: The Tualatin Hills Park and Recreation District, a unit of
local government of the State of Oregon (District)

**EFFECTIVE
DATE:** _____

RECITALS

- A. ORS 190.010 provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the agreement, its officers or agents have the authority to perform.
- B. The City is purchasing approximately 8.78 acres (the exact amount to be determined at closing) of property located in the City of Beaverton and more particularly described in Exhibit "A" for use as a reservoir for public drinking water, hereinafter known as the City Property.
- C. The District is purchasing property separated by a BPA corridor from the City Property for park purposes.
- D. The City intends that the primary purpose of the City Property be for use as a storage reservoir for drinking water and auxiliary facilities such as transmission and drain lines, necessary buildings, parking spaces and groundwater development (hereinafter "reservoir") but that its secondary purpose is to allow for public recreation.
- E. To further that secondary purpose, the City and the District desire to enter this agreement to allow the District to manage the surface recreational use of the City Property.

AGREEMENT

- 1. The City agrees that until such time that the City needs the City Property for the construction of the reservoir; and as limited by other existing property rights, the District shall manage the property for recreational use by the public in a manner as determined by the District. The District's management of the property shall not interfere in any activities of the City in preparing and using the property for a reservoir.

This cover sheet and the City's original contract are to be sent to the City Recorder. The contractor should receive one original. The department is advised to keep a copy of the contract.

2. The District shall not build any structures or improvements on the City Property without prior written approval by the City contact person listed in paragraph 7. The City shall maintain the property until the District begins use of the site for park or trail use and then the District shall be responsible for maintaining the City Property and all improvements it placed on the property in a clean and safe condition. Any construction by the District on the City property is with the express understanding that such improvements may be removed by the City because of the construction of the reservoir. The City shall not be responsible for any replacement costs or reimbursement for any District improvement removed from the City Property.
3. At such time as the reservoir is constructed on City Property, City shall consult with District regarding future recreational use of the City Property. During development review, the City will consider District comments regarding future recreational use of the property and will implement these recommendations if they do not interfere with the functionality and security of the use of the City Property for a water reservoir.
4. At such time as the reservoir is constructed, the parties shall reconvene and consider amendments to this Agreement regarding recreational improvements, trail construction, provision of services, shared parking, landscaping, maintenance, security and public recreational use of the City Property.
5. The City recognizes the interest of the District and the public in providing recreation at the site. In particular, the portion of the City property that is burdened with utility easements is essential for providing connectivity to the District's trail networks and the construction of new trails. The City likely will use this same area for underground water lines or other associated underground utilities. The City's use should not interfere with the surface use of the property for trails and recreation. The City will use its best efforts to make this portion of the property available to the District for the construction of trails.
6. Termination. Upon thirty (180) days' prior written notice delivered to the persons designated in paragraph 7, either party, without cause, may terminate its participation in this contract.

This cover sheet and the City's original contract are to be sent to the City Recorder. The contractor should receive one original. The department is advised to keep a copy of the contract.

7. Contract Administration. Each party designates the following as its representative for purposes of administering this contract:

District: _____

City: David Winship
City Utilities Engineer
Engineering Department
4755 SW Griffith Dr
Beaverton OR 97076

Either party may change its designated representative by giving written notice to the other as provided in paragraph 11.

8. **Indemnification.** To the extent legally possible, District and City shall indemnify and hold the other, its officers, agents and employees, harmless from and against any and all claims, actions, liabilities, costs, including attorney fees and other costs of defense, arising out of or in any way related to any act or failure to act by each other and each other's employees, agents, officers and contractors. The District shall be solely responsible and shall indemnify the City for any actions arising out of the recreational use of the property.
9. **Assignment.** Neither party shall assign this contract, in whole or in part, or any right or obligation hereunder, without the other party's prior written approval.
10. **Compliance with Laws.** District and City shall comply with all applicable Federal, State, and local laws, rules, ordinances and regulations at all times and in the performance of the work.
11. **Notices.** Any notices permitted or required by this contract shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested and addressed to the representative designated in paragraph 6. Either party may change its address by notice given to the other in accordance with this paragraph.
12. **Arbitration.** Any controversy regarding the terms and conditions of this agreement shall be submitted to arbitration. Any party may request arbitration by written notice to the other. If the parties cannot agree on a single arbitrator within 15 days from the giving of notice, each party shall within five days select a person to represent that party and the two arbitrators shall immediately select a third impartial person to complete a three-member arbitration panel. The panel shall conduct the arbitration in accordance with the provisions of ORS Chapter 33, or the corresponding provisions of any such future law. The

This cover sheet and the City's original contract are to be sent to the City Recorder. The contractor should receive one original. The department is advised to keep a copy of the contract.

arbitrator(s) shall assess all or part of the cost of the arbitration, including attorney fees, to any or all parties.

- 13. **Integration.** This contract embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This contract shall supersede all prior communications, representations or agreements, either oral or written, between the parties. This contract shall not be amended except in writing, signed by both parties.
- 14. **Interpretation.** This contract shall be governed by and interpreted in accordance with the laws of the State of Oregon.

City of Beaverton

Tualatin Hills Park and Recreation District

By: _____
(signature)

By: _____
(signature)

Date: _____

Date: _____

This cover sheet and the City's original contract are to be sent to the City Recorder. The contractor should receive one original. The department is advised to keep a copy of the contract.

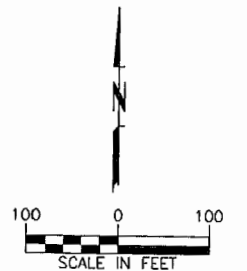


City Of Beaverton

DRAFT

ASSUMPTIONS:

- APPROXIMATE LOT SIZE = 5.25 ACRES.
- ADDITIONAL 0.61 ACRE TEMPORARY CONSTRUCTION EASEMENT MAY BE REQUIRED.
- PERMANENT AND CONSTRUCTION ACCESS NOT INCLUDED IN ESTIMATE OF REQUIRED PROPERTY SIZE.
- CIRCULAR PRESTRESSED TANKS POSITIONED TO MINIMIZE EXCAVATION AND FILL.
- TANKS COMPLETELY BURIED WITH 2' OF FILL OVER ROOF, FINISH GRADE ELEVATION = 470'.
- 1:1 CONSTRUCTION CUT SLOPES FROM TANK FLOOR ELEVATION = 425', TEMPORARY SHORED/SUPPORTED CONSTRUCTION SLOPES REQUIRED.
- MINIMUM DISTANCE OF CONSTRUCTION CUT SLOPES FROM PROPERTY LINE IS 30 FEET, WHICH IS MORE CONSERVATIVE THAN THE UBC CODE REQUIREMENT OF 1/2 HEIGHT OF CUT.
- 2:1 PERMANENT FILL SLOPES. MINIMUM DISTANCE FROM TOE OF FILL TO PROPERTY LINE IS TYPICALLY MORE CONSERVATIVE THAN THE UBC CODE OF 1/2 HALF THE HEIGHT OF FILL.



G:\03\0616\CAD\102\03-0616-102-OR-SITE PLANS.dwg FIGURE 2 11/4/03 17:43 (HCW)

Figure 2 03-0616.102

CITY OF BEAVERTON
 FUTURE MOUNT WILLIAMS RESERVOIR
 SITE (DERNBACH PROPERTY)

MSA Murray, Smith & Associates, Inc.
 Engineers/Planners
 121 S.W. Salmon, Suite 900
 Portland, Oregon 97204
 PHONE 503-225-9010
 FAX 503-225-9022

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: An Ordinance Annexing Property Generally Located at 1115 NW 158th Avenue to the City of Beaverton: Expedited Annexation 2004-0007

FOR AGENDA OF: 05/17/04 **BILL NO:** 04100

Mayor's Approval: [Signature]

DEPARTMENT OF ORIGIN: CDD [Signature]

DATE SUBMITTED: 04/22/04

CLEARANCES: City Attorney [Signature]
Planning Services [Signature]

PROCEEDING: First Reading

EXHIBITS: Ordinance
Exhibit A - Map
Exhibit B - Legal Description
Exhibit C - Staff Report Dated 04/20/04

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

This annexation consists of two parcels with a single address of 1115 NW 158th Avenue developed with a single family house. The owners of this parcel have signed an annexation petition for an Expedited Annexation.

INFORMATION FOR CONSIDERATION:

This ordinance and the attached staff report address the criteria for annexation in Metro Code Section 3.09.

Beaverton Code Section 9.06.035A provides the City Council the option of adding this parcel to an appropriate Neighborhood Association Committee (NAC) at the time of annexation. This property is already within the boundaries of the Five Oaks NAC.

Staff recommends the City Council adopt an ordinance annexing the referenced property, effective 30 days after the Mayor's signature.

RECOMMENDED ACTION:

First Reading

ORDINANCE NO. 4310

AN ORDINANCE ANNEXING PROPERTY GENERALLY
LOCATED AT 1115 NW 158TH AVENUE TO THE CITY OF
BEAVERTON: EXPEDITED ANNEXATION 2004-0007

- WHEREAS,** This expedited annexation was initiated under authority of ORS 222.125, whereby the owners of the property and a majority of the electors have consented to annexation; and
- WHEREAS,** This property is in Beaverton's Assumed Urban Services Area and Policy 5.3.1.d of the City's acknowledged Comprehensive Plan states: "The City shall seek to eventually incorporate its entire Urban Services Area."; and
- WHEREAS,** City policy as adopted in Resolution No. 2660, Sections 2 and 4, is to extend City services to properties through annexation; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

- Section 1.** The property shown on Exhibit A and more particularly described in Exhibit B is hereby annexed to the City of Beaverton, effective 30 days after Council approval and signature by the Mayor.
- Section 2.** The Council accepts the staff report, dated April 20, 2004, attached hereto as Exhibit C, and finds that:
- a. There are no provisions in urban service provider agreements adopted pursuant to ORS 195.065 that are directly applicable to this annexation; and
 - b. This annexation is consistent with the City-Agency agreement between the City and Clean Water Services in that partial responsibility for sanitary and storm sewer facilities within the area annexed will transfer to the City upon this annexation.
- Section 3.** The Council finds this annexation will promote and not interfere with the timely, orderly, and economic provision of public facilities and services, in that:
- a. The part of the property that lies within the Washington County Urban Road Maintenance District will be withdrawn from the district; and
 - b. The part of the property that lies within the Washington County Street Lighting District #1 will be withdrawn from the district; and
 - c. The part of the property that lies within the Washington County Enhanced Sheriff Patrol District will be withdrawn from the district; and
 - d. The City having annexed into the Tualatin Valley Fire and Rescue District in 1995, the property to be annexed by this Ordinance shall be annexed to or remain within that district; and
 - e. The territory will remain within boundaries of the Tualatin Valley Water District.
- Section 4.** The Council finds that this annexation complies with all other applicable criteria set out in Metro Code Chapter 3.09.

Section 5. The City Recorder shall place a certified copy of this Ordinance in the City's permanent records, and the Community Development Department shall forward a certified copy of this Ordinance to Metro and all necessary parties within five days of the effective date.

Section 6. The Community Development Department shall transmit copies of this Ordinance and all other required materials to all public utilities and telecommunications utilities affected by this Ordinance in accordance with ORS 222.005.

First reading this ___ day of _____, 2004.

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

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

ATTEST:

APPROVED:

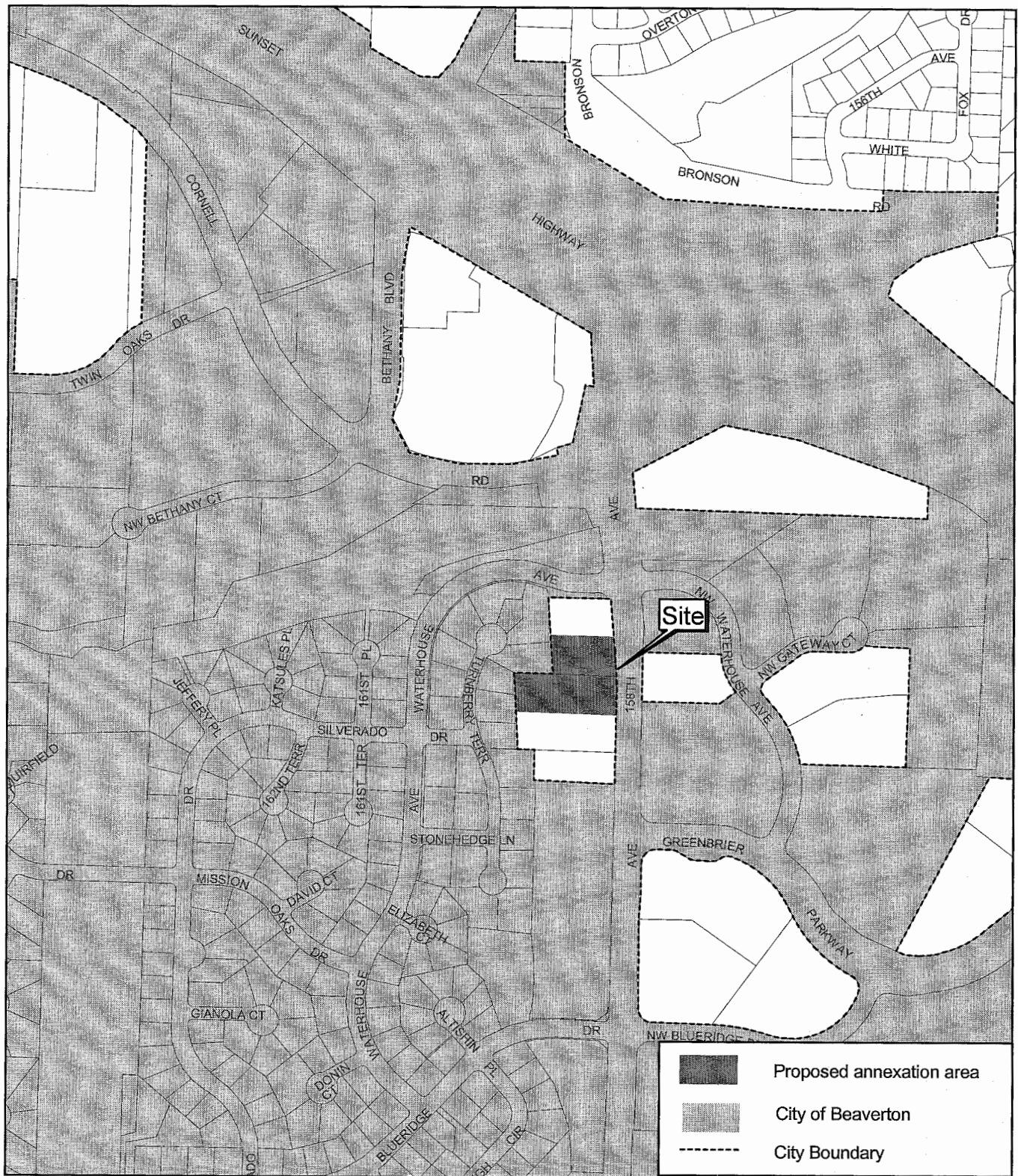
SUE NELSON, City Recorder

ROB DRAKE, Mayor

ANNEXATION MAP

ORDINANCE NO. 4310

Exhibit "A"



City of Beaverton

1115 NW 158TH AVENUE EXPEDITED ANNEXATION

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

03/31/04

Map #
1n132bc00200
1n132bc00300



Application #

ANX 2004-0007

1

LEGAL DESCRIPTION
ANX 2004-0007
1115 NW 158TH AVENUE EXPEDITED ANNEXATION

A parcel of land (consisting entirely of tax lots 1N 1 32BC 200 and 300) situated in the Northwest 1/4 of Section 32, Township 1 North, Range 1 West, Willamette Meridian, Washington County, Oregon; more particularly described as follows:

Beginning at the Northeast corner of Lot 92, WATERHOUSE NO.2, a plat of record, Washington County, Oregon; thence, following the South line of Lot 93, said plat, South 88° 32' 00" East, a distance of 126.17 feet; thence, following the East line of said Lot 93, North 04° 42' 00" West, a distance of 124.15 feet; thence, North 89° 13' East, a distance of 188 feet, more or less, to a point on the West line of SW 158th Avenue (aka County Road No. 2046); thence, following said West line, southerly, a distance of 249.94 feet; thence, South 89° 20' West, a distance of 318 feet, more or less, to a point on the East line of Lot 91, said plat; thence, following said East line, North 04° 42' 00" West, a distance of 125.71 feet, to the point of beginning.



ORDINANCE NO. 4310

Exhibit "C"

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: City Council **REPORT DATE:** April 20, 2004

AGENDA

DATE: May 17, 2004

FROM: Community Development Department
Alan Whitworth, Senior Planner *Alan*

SUBJECT: 1115 NW 158th Avenue Expedited Annexation (ANX 2004-0007)

ACTIONS: Annexation to the City of Beaverton of two tax parcels with one assigned address for both parcels of 1115 NW 158th Avenue that is shown on the attached map and more particularly described by the attached legal description. The annexation of the property is owner initiated (petition attached) and is being processed as an expedited annexation under ORS 222.125 and Metro Code 3.09.045.

NAC: This property is already in the Five Oaks Neighborhood Association Committee (NAC) area.

AREA: Approximately 1.5 acres

TAXABLE BM 50 ASSESSED VALUE: \$ 247,050

ASSESSOR'S REAL MARKET VALUE: \$ 372,800

NUMBER OF LOTS: 2

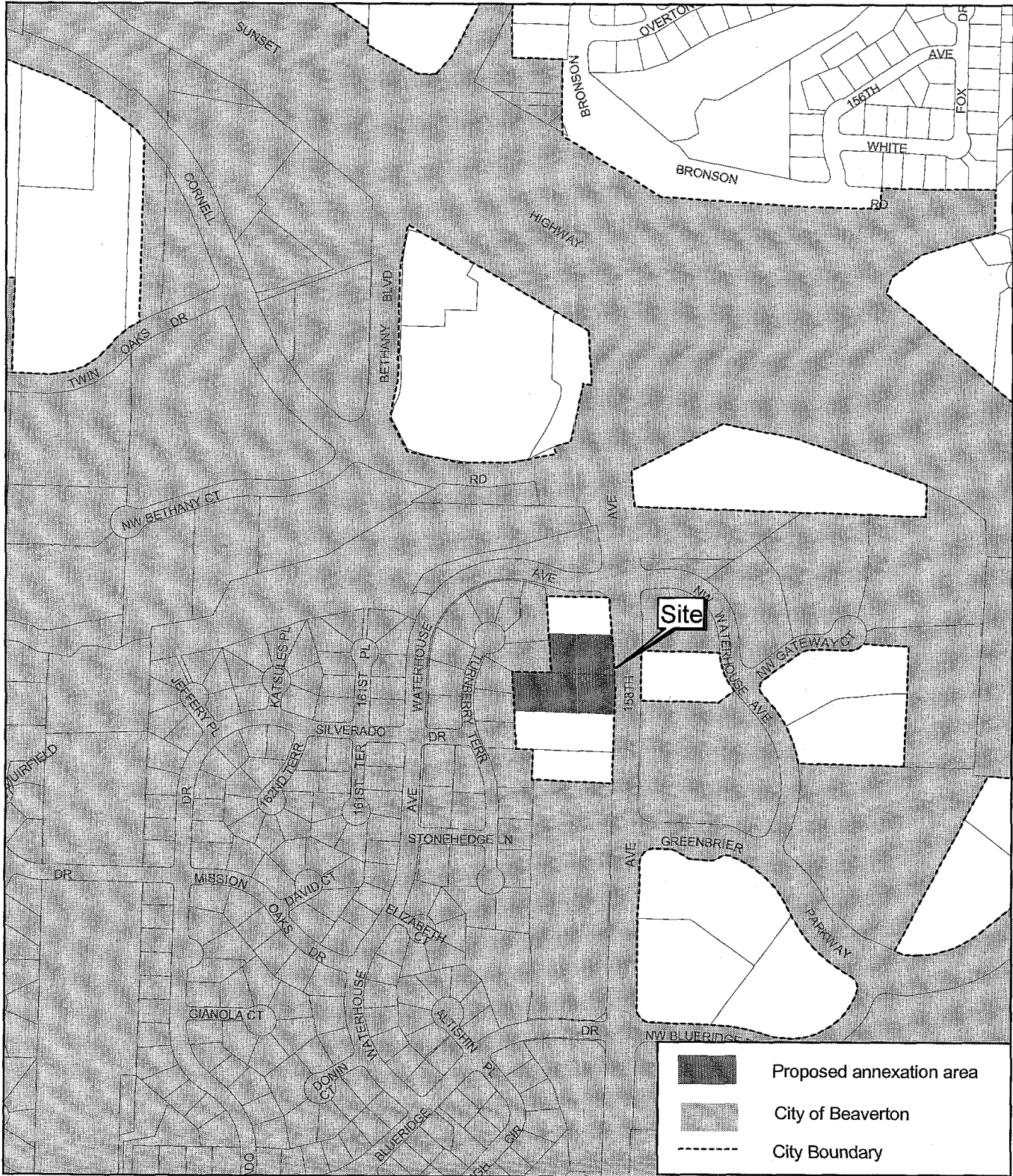
EXISTING COUNTY ZONE: R-15 (Residential 15 units per acre)

SUMMARY AND RECOMMENDATION

This is a request to annex two parcels to the City of Beaverton. The property is shown on the attached map, identified on tax map 1N132BC as lots 00200 and 00300, and more particularly described in the attached legal description.

Staff recommends the City Council adopt an ordinance annexing the referenced property, effective 30 days after the Mayor's signature.

ANNEXATION MAP



City of Beaverton

1115 NW 158TH AVENUE EXPEDITED ANNEXATION

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

03/31/04

Map #
1n132bc00200
1n132bc00300



Application #

ANX 2004-0007

4

BACKGROUND

The request is to annex two tax parcels both with the same site address of 1115 NW 158th Avenue which are on the west side of 158th south of Waterhouse Avenue. The parcels are approximately 1.5 acres and contain a single family house. The property owner has consented to the annexation. This allows this to be processed as an expedited annexation under ORS 222.125 and Metro Code 3.09.045 and no public hearing is required.

The property is already in the Five Oaks Neighborhood Association Committee (NAC) area.

EXISTING CONDITIONS

SERVICE PROVISION:

The following analysis details the various services available to the property to be annexed. Cooperative, urban service and intergovernmental agreements affecting provision of service to the subject property are:

- The City has entered into ORS Chapter 195 cooperative agreements with Washington County, Tualatin Valley Fire and Rescue District, Tualatin Hills Parks and Recreation District, Tualatin Valley Water District and Clean Water Services.
- The City has entered into an agreement with Tualatin Valley Water District that has been designated an ORS 195.065 Urban Service Agreement by the parties. (No other ORS Chapter 195 Urban Service Agreements have been executed that would affect this decision.)
- The City has entered into an ORS Chapter 190 intergovernmental agreement with Clean Water Services (the Unified Sewerage Agency at the time of the agreement).

This action is consistent with those agreements.

POLICE: The property to be annexed currently receives police protection from the Washington County Enhanced Sheriff's Patrol District. Sheriff's protection will be withdrawn and the City will provide police service upon annexation. In practice whichever agency is able to respond first, to an emergency, does so.

FIRE: Tualatin Valley Fire & Rescue (TVF&R) provides fire and ambulance service to the property. The City annexed to TVF&R in 1995. TVF&R is designated as the long-term service provider to this area.

SEWER: Sanitary sewer is available to this property via an 8-inch City maintained pipe that enters this property from the northwest

corner of the southern tax parcel. Upon annexation the City will be responsible for billing.

WATER: Tualatin Valley Water District (TVWD) provides water service to the area. ORS 222.520 allows cities to assume water service responsibilities when annexing less than an entire district. However, the City entered into an intergovernmental agreement with TVWD in 2002 that we would not withdraw property from the District when we annex it. TVWD will continue to provide service, maintenance and perform billing.

STORM WATER DRAINAGE: The site is one and a half acres and developed with a single family house. If the property were to redevelop, storm drainage would be reviewed in the development review process. Storm water improvements have been constructed in this area. Upon annexation billing responsibility will transfer to the City.

STREETS and ROADS: Access to this property is from NW 158th Avenue which is a County maintained Arterial.

PARKS and SCHOOLS: The proposed annexation is within both the Beaverton School District and the Tualatin Hills Parks and Recreation District. This proposed annexation will not affect either district boundary. Neither services nor district boundaries associated with these districts will be affected by the proposed annexation.

PLANNING, ZONING and BUILDING: Washington County currently provides long-range planning, development review and building inspection for the property. Pursuant to the Urban Planning Area Agreement (UPAA) between the City and County, City Comprehensive Plan and Zoning Designations will be applied to these parcels in a separate action within six months of annexation.

PUBLIC INVOLVEMENT

Consistent with Metro Code Section 3.09.045, the City will send notice of the proposed annexation on or before April 27, 2004 (20 days prior to the agenda date) to all necessary parties including Washington County, Metro, affected special districts and County service districts. Additionally, the City will send notice to the following parties:

- Robert and Capitola Brown, (the property owners); and
 - The Five Oaks Neighborhood Association Committee and the Sunset West/Rock Creek/Bethany Citizen Participation Organization (CPO 7);
- interested parties as set forth in City Code Section 9.06.035.

Notices of the proposed annexation will also be posted in the Beaverton Post Office, City Library and City Hall. Notice and a copy of this staff report will be posted on the City's web page.

CRITERIA FOR APPROVAL

REGIONAL ANNEXATION CRITERIA:

In December 1998 the Metro Council adopted Metro Code Section 3.09 (Local Government Boundary Changes). Metro Code Section 3.09.050 includes the following minimum criteria for annexation decisions:

3.09.050 (d) An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:

- (1) Consistency with directly applicable provisions in an urban services provider agreement or annexation plan adopted pursuant to ORS 195.065;

Findings: This staff report addresses the provision of services in detail and the provision of these services is consistent with cooperative agreements between Beaverton and the service providers.

- (2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

Findings: This proposed annexation is consistent with the agreement between the City of Beaverton and Clean Water Services. The acknowledged Washington County - Beaverton Urban Planning Area Agreement (UPAA) does not contain provisions directly applicable to City decisions regarding annexation. The UPAA does address actions to be taken by the City after annexation, including annexation related Comprehensive Plan Land Use Map amendments and rezones. These actions will occur through a separate process.

- (3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facilities plans;

Findings: City of Beaverton Comprehensive Plan Policy 5.3.1.d states: "The City shall seek to eventually incorporate its entire Urban Services Area." The subject property is within Beaverton's assumed Urban Services Area and annexing it furthers this policy. There are no other specific directly applicable standards or criteria for boundary changes in Beaverton's Comprehensive Plan or Public Facilities Plan and, therefore, this criterion is met.

- (4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;

Findings: *The Regional Framework Plan (which includes the RUGGOs and the Urban Growth Management Functional Plan) does not contain policies or criteria directly applicable to annexation decisions of this type.*

- (5) Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

Findings: *The Existing Conditions section of this staff report contains information addressing this criterion in detail. The proposed annexation will not interfere with the provision of public facilities and services. The provision of public facilities and services is prescribed by urban services provider agreements and the City's capital budget.*

- (6) The territory lies within the Urban Growth Boundary; and

Findings: *The property lies within the Urban Growth Boundary.*

- (7) Consistency with other applicable criteria for the boundary change in question under state and local law.

Findings: *OAR 660-001-0310 states "A city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) shall be considered by Land Conservation and Development Commission to have been made in accordance with the goals...". Compliance with the Comprehensive Plan was addressed in number 3 above. The applicable Comprehensive Plan policy cited under number 3 above was acknowledged pursuant to Department of Land Conservation and Development Order 001581 on December 31, 2003. There are no other criteria applicable to this boundary change in State Law or local ordinances. Staff finds this voluntary annexation with no associated development or land use approvals is consistent with State and local laws for the reasons stated above.*

3.09.050 (f) Only territory already within the defined Metro Urban Growth Boundary at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and without the Urban Growth Boundary.

Findings: *This criterion is not applicable to this application because the territory in question has been inside of the Portland Metro Urban Growth Boundary since the boundary was created.*

Exhibits: Annexation Petition
 Legal Description

Annexation Petition



CITY OF BEAVERTON
 COMMUNITY DEVELOPMENT DEPARTMENT
 PLANNING SERVICES
 4755 S.W. GRIFFITH DRIVE
 P.O. BOX 4755
 BEAVERTON, OR 97076-4755
 PHONE: (503) 350-4039

PETITION FOR A CONSENT ANNEXATION

PURSUANT TO ORS 222.025

RECEIVED

MAR 25 2004
 COMMUNITY DEVELOP DEPT.

PLEASE USE ONE PETITION PER TAX LOT

FOR OFFICE USE	FILE NAME: <u>1115 NW 158th Avenue Expedited Annexation</u>
	FILE NUMBERS: <u>ANX 2004-0007; CPA 2004-0007; ZMA 2004-0007</u>

MUST BE SIGNED BY ALL OWNERS. IF THE OWNER IS A CORPORATION OR AN ESTATE THE PERSON SIGNING MUST BE AUTHORIZED TO DO SO. MUST ALSO BE SIGNED NOT LESS THAN 50 PERCENT OF ELECTORS (REGISTERED VOTERS), IF ANY, RESIDING ON THE PROPERTY.

PROPERTY INFORMATION

MAP & TAX LOT	STREET ADDRESS (IF ASSIGNED)	# OF OWNERS	# OF RESIDENT VOTERS	# OF RESIDENTS
<u>1N132BC00300</u> <u>1N132BC-00200</u> <u>RO626120</u>	<u>1115 N.W. 158th AVE BEAVERTON OR 06</u>	<u>2</u>	<u>2</u>	<u>2</u>

CONTACT PERSON USE MAILING ADDRESS FOR NOTIFICATION

<u>Capitola B BROWN AND OR ROBERT EARL BROWN</u>	<u>503-645-1472</u>
PRINT OR TYPE NAME	BUSINESS NAME PHONE #
<u>1115 N.W. 158th AVE BEAVERTON OR 97006</u>	
ADDRESS	

SIGNATURES OF OWNERS AND ELECTORS CONSENTING TO ANNEXATION (CONTINUED ON BACK)

<u>ROBERT EARL BROWN</u>	<u>Robert Earl Brown</u>	<u>3-22-04</u>	<input checked="" type="checkbox"/> OWNER
PRINT OR TYPE NAME	SIGNATURE	DATE	<input checked="" type="checkbox"/> ELECTOR
<u>Capitola B Brown</u>		<u>3-22-04</u>	
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			
<u>953 N.W. 162nd TERRACE BEAVERTON OR 97006</u>			

10

CAPITOLA B BROWN <i>Capitola B. Brown</i>		3-22-04	<input checked="" type="checkbox"/> OWNER <input checked="" type="checkbox"/> ELECTOR
PRINT OR TYPE NAME	SIGNATURE	DATE	
1115 NW 158 TH AVE BEAVERTON OR 97006			
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			

ROBERT EARL BROWN <i>Robert Earl Brown</i>		3-22-04	<input checked="" type="checkbox"/> OWNER <input checked="" type="checkbox"/> ELECTOR
PRINT OR TYPE NAME	SIGNATURE	DATE	
1115 N.W 158 TH AVE BEAVERTON OR 97006			
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			

			<input type="checkbox"/> OWNER <input type="checkbox"/> ELECTOR
PRINT OR TYPE NAME	SIGNATURE	DATE	
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			

			<input type="checkbox"/> OWNER <input type="checkbox"/> ELECTOR
PRINT OR TYPE NAME	SIGNATURE	DATE	
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			

			<input type="checkbox"/> OWNER <input type="checkbox"/> ELECTOR
PRINT OR TYPE NAME	SIGNATURE	DATE	
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			

			<input type="checkbox"/> OWNER <input type="checkbox"/> ELECTOR
PRINT OR TYPE NAME	SIGNATURE	DATE	
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			

			<input type="checkbox"/> OWNER <input type="checkbox"/> ELECTOR
PRINT OR TYPE NAME	SIGNATURE	DATE	
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			

11

LEGAL DESCRIPTION
ANX 2004-0007
1115 NW 158TH AVENUE EXPEDITED ANNEXATION

A parcel of land (consisting entirely of tax lots 1N 1 32BC 200 and 300) situated in the Northwest 1/4 of Section 32, Township 1 North, Range 1 West, Willamette Meridian, Washington County, Oregon; more particularly described as follows:

Beginning at the Northeast corner of Lot 92, WATERHOUSE NO.2, a plat of record, Washington County, Oregon; thence, following the South line of Lot 93, said plat, South 88° 32' 00" East, a distance of 126.17 feet; thence, following the East line of said Lot 93, North 04° 42' 00" West, a distance of 124.15 feet; thence, North 89° 13' East, a distance of 188 feet, more or less, to a point on the West line of SW 158th Avenue (aka County Road No. 2046); thence, following said West line, southerly, a distance of 249.94 feet; thence, South 89° 20' West, a distance of 318 feet, more or less, to a point on the East line of Lot 91, said plat; thence, following said East line, North 04° 42' 00" West, a distance of 125.71 feet, to the point of beginning.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

5-17-04

SUBJECT: An Ordinance Relating To The Emergency Management Code, Amending Beaverton Code Section 2.01.020

FOR AGENDA OF: ~~5-10-04~~ **BILL NO:** 04093

Mayor's Approval: *Linda G. Callad*
Mayor Pro Tem

DEPARTMENT OF ORIGIN: Emergency Management

DATE SUBMITTED: 4-30-04

CLEARANCES: Chief of Staff *La*
City Attorney *AP*
Finance *AP*
Operations *AP*
Police *AP*

PROCEEDING: ~~First reading~~
Second reading and passage.

EXHIBITS: Ordinance
Memorandum on the National Incident Management System

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

Homeland Security Presidential Directive (HSPD) – 5 directed the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). The intent of NIMS is to provide a consistent nationwide template to enable Federal, State, local, and tribal governments; and private-sector and nongovernmental organizations to work together effectively and efficiently to prepare for, prevent, respond to, and recover from domestic incident, regardless of cause, size, or complexity, including acts of catastrophic terrorism. The Directive further requires that federal departments and agencies make adoption of the NIMS by State, tribal, and local organizations a condition for federal preparedness assistance (i.e., grants) beginning in FY2005. While there are some elements of the system that require further development, the initial version of the National Incident Management System has been completed and distributed. Adoption of the basic tenets of the Incident Command System identified in NIMS will meet the compliance requirement.

INFORMATION FOR CONSIDERATION:

The City's Emergency Management Code currently states that, "The City adopts the Incident Command System (ICS) of the National Interagency Incident Management System (NIIMS) as a model for managing emergencies within its jurisdiction. While the two systems are similar in scope and intent, the Code needs to be changed to reflect adoption of the Incident Command System of the National Incident Management System. This system is built upon the basic elements of the National Interagency Incident Management System that the City previously adopted, so the change will be transparent to the majority of the City departments and programs. Since the City is the recipient of numerous federal grants each year, non-adoption could result in the loss of eligibility for these grants, creating a significant financial impact on several City programs.

RECOMMENDED ACTION:

~~First reading~~
Second reading and passage.

Agenda Bill No: 04093

AN ORDINANCE RELATING TO THE EMERGENCY
MANAGEMENT CODE, AMENDING BEAVERTON CODE
SECTION 2.01.020

WHEREAS, Homeland Security Presidential Directive (HSPD) – 5 directed the Secretary of Homeland Security to develop and administer a National Incident Management System; and

WHEREAS, The Directive further requires that federal departments and agencies make adoption of the National Incident Management System by State, tribal, and local organizations a condition for federal preparedness assistance , including grants, beginning in FY2005; and

WHEREAS, Adoption of the basic tenets of the Incident Command System identified in NIMS will meet the compliance requirement; and

WHEREAS, The change will be transparent to the majority of the City departments and programs since the new system is built upon the basic elements of the National Interagency Incident Management System that the City previously adopted, now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Beaverton Code Section 2.01.012 is amended as follows, with deleted material ~~lined through~~ and new matter in **bold**:

2.01.020 Adoption of an Incident Command System. The City adopts the Incident Command System (ICS) of the National ~~Interagency~~ Incident Management System (~~NIIMS~~) (**NIMS**) as a model for managing emergencies within its jurisdiction.

First reading this 10th day of May, 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