CITY OF BEAVERTON COUNCIL AGENDA

FINAL AGENDA

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

REGULAR MEETING
JULY 17, 2006
6:30 P.M.

6:00 P.M.
City Council Annual Inspection of
Police Department Holding Facility

CALL TO ORDER:

ROLL CALL:

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

06125	Liquor License: Change of Ownership - Thai Derm Original Thai Cooking
06126	Approval of Land Use Order Denying TA 2004-0012 (TC-MU Commercial Use Restriction Amendment)
06127	Approval of the Intergovernmental Agreement With Washington County Oregon, to Participate in the State Homeland Security Exercise Program Grant Awarded to Washington County for Planning, Conducting and Evaluating a Homeland Security Exercise and Authorize the Mayor to Sign the Agreement (Resolution No. 3866)

PUBLIC HEARINGS:

06128	Biggi Ballot Measure 37 Claim for Compensation

ORDINANCES:

First Reading:

06129 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 8111 SW West Slope; CPA 2006-0002/ ZMA 2006-0001 (Ordinance No. 4398)

06130 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Four Properties in Northeast Beaverton; CPA 2006-0003/ZMA 2006-0002 (Ordinance No. 4399)

EXECUTIVE SESSION:

In accordance with ORS 192.660 (2) (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 (2) (e) to deliberate with persons designated by the governing body to negotiate real property transactions and in accordance with ORS 192.660 (2) (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 503-526-2222/voice TDD.

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: LIQUOR LICENSE

CHANGE OF OWNERSHIP
Thai Derm Original Thai Cooking
3800 SW Cedar Hill Blvd., #302B
Beaverton, OR

FOR AGENDA OF: 07/17/06 **BILL NO:** 06125

MAYOR'S APPROVAL:

DEPARTMENT OF ORIGIN: Police

DATE SUBMITTED: 07/05/06

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 request.

INFORMATION FOR CONSIDERATION:

Siam Restaurant, formerly licensed by the OLCC to Lek Jermsak, is undergoing a change of ownership. Phichet Srikasem, has made application for a Limited On-Premises Sales License under the trade name of Thai Derm Original Thai Cooking. The establishment will serve Thai food. It will operate seven days a week, serving lunch from 11:00 a.m. to 3:00 p.m., and dinner from 5:00 p.m. to 10:00 p.m. 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.

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Approval of Land Use Order Denying TA 2004-0012 (TC-MU Commercial Use Restriction Amendment)

FOR AGENDA OF: 07-17-06 **BILL NO:** 06126

Mayor's Approval:

DEPARTMENT OF ORIGIN: City Attorney

DATE SUBMITTED: 07-08-06

CLEARANCES: CDD

Mayor

PROCEEDING: Consent Agenda

EXHIBITS: Order

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

Council considered and rejected the above-listed Development Code text amendment proposal on June 12, 2006. The matter came upon de novo review of a Planning Commission order lawfully filed by persons aggrieved by the lower body's decision.

INFORMATION FOR CONSIDERATION:

This order constitutes the City's written decision upon the text amendment application. The Order will become a final written decision upon signature by the Mayor and City Recorder as listed upon the document's last page.

RECOMMENDED ACTION:

Consent to land use order.

BEFORE THE CITY COUNCIL
OF THE CITY OF BEAVERTON, OREGON

IN THE MATTER OF A REQUEST TO AMEND ORDINANCE 2050, THE DEVELOPMENT CODE, TO ALLOW AN INDIVIDUAL RETAIL USE FOOTPRINT UP TO 90,000 SQUARE FEET IN THE TOWN CENTER-MULITPLE USE ZONE, GRAMOR DEVELOPMENT, INC., APPLICANT	NO. TA 2004-0012 ORDER DENYING AN AMENDMENT TO ORDINANCE 2050, THE DEVELOPMENT CODE

SUMMARY OF THE PROPOSAL

The Development Code section proposed for change is part of the city zoning district for Town Center, Multiple Use developments (TC-MU). Council adopted this district in 1999 to partially implement Metro's 2040 Growth Concept and Urban Growth Management Functional Plan. The Functional Plan outlines, generally, how the Portland metropolitan area will accommodate expected future growth. Council also applied the TC-MU zone to a large area of town within the study area entitled Murray Scholls Town Center (MSTC) Planning Study. This area is in the southern part of the city, generally located around the intersection of Murray Boulevard and Scholls Ferry Road. Council later applied the district to parcels northerly in the City, near the Cedar Mill Town Center.[1]

[1] The TC-MU district in Cedar Mill comprises the Teufel holdings, north of Barnes Road. The proposed text amendment would affect these premises and is the basis for interest and participation of Save Cedar Mill. Neither the Gramor company generally, nor it's requested development agreement specifically, propose any development in the Teufel area of the city.

The TC-MU zone generally provides for a new vision and development concept. Departing from existing trends for suburban commercial strip development and "big box" stores, which are highly automobile dependent, the TC-MU district fosters development which is more human scaled and which facilitates pedestrian movement; its structures and designs serve as points of community gathering. The concept encourages access by public transit, pedestrian traffic, and other modes of transportation, while at the same time retaining automobile access.

Traditional "big box" developments are diametrically opposed to multiple use development envisioned by the MSTC study. A key planning tool to encourage multiple-use development over traditional "big box" development is a limitation on the building "footprint" of commercial structures. This is to say, a smaller building size on the ground encourages upward building construction, as opposed to a building which spreads outwards. Accordingly, the MU-TC zone contains a maximum 50,000 square foot limitation on a building footprint.

PROCEDURAL BACKGROUND

Gramor Development, Inc., applied to amend the Development Code to expand the 50,000 commercial building footprint limitation to 90,000 square feet, an expansion designed for the specific purpose of accommodating a Fred Meyer store on the Murray Scholls site through the companion Development Agreement. For the Fred Meyer to ever become a reality, the Agreement requires the text change, however, the Agreement (being a separate action) is not a part of the present City Council decision.

The matter came before the Beaverton Planning Commission in a series of public hearings beginning on March 8, 2006 and proceeding through April 20, 2006. The Commission considered testimony and evidence both in support and opposition to the proposed text modifications. Appearing in support were Gramor Development, Inc., by and through their attorney Steve Abel, Esq. Appearing in opposition, among others, were Kim Levin and Sarah Yahna, along with Jeffrey Kleinman, Esq., on behalf of his client Save Cedar Mill, Inc. Upon deliberation and a vote of 5-2 the Commission approved a recommendation that Council adopt the requested Code amendment.

Levin and Yahna, opponents below, timely filed a notice of appeal on March 31, 2006, invoking their right to request Council consider the text amendment *de novo* or, in other words, as a new land use matter. Council took up the matter on June 12, 2006 and considered evidence and testimony in support and opposition to the proposal. Following deliberations, Council concluded the appellant's assertions against the text amendment were meritorious and well taken.

Therefore, Council denies Gramor's request for an amendment to the Development Code. Council's basis for the denial is set forth below.

DISCUSSSION AND FINDINGS

The City Council specifically concludes that the following factual basis adequately supports rejecting the proposed text amendment to the Beaverton Development Code (BDC). Council finds the application fails to satisfy the approval criteria in the following particulars:

A. Want of compliance with the Beaverton Comprehensive Plan (BDC 40.85.15.1.C.4).

This criterion requires a text amendment to demonstrate consistency with the Comprehensive Plan. The requested allowance for 90,000 square feet of commercial building footprint contradicts requirements contained within the Plan.

Plan section 3.5 addresses mixed use areas of the city and specifically guides town center regulations. Expanding the commercial building footprint can allow buildings which do nothing to increase floor-area ratios. The expansion may allow FARs lower than allowable at present under the 50,000 limitation. This contravenes the requirement of subsection 3.5.1.a.

Plan section 3.5.1.b specifically requires code language which, when applied, will encourage mixed use development and pedestrian-oriented design. This requirement joins land use, building design, site configurations, and the like, to the presence of pedestrian traffic. Large-format buildings do not necessarily contradict the plan subsection, but an increase to 90,000 square feet of building footprint disserves the plan subsection. For instance, the "big box" development which is possible under the proposed amendment necessitates a massing of vehicle traffic and trips, to generate business sufficient to support such a concern. The heavy reliance upon vehicular traffic contradicts pedestrian-oriented planning. Too, large-format buildings present design elements such as massive, empty walls which create foreboding environments for pedestrian traffic.

In sum, the presence of these unfavorable design aspects demonstrate that the proposed amendment would not be applied in a manner which would promote multiple uses and pedestrian-oriented designs.

The above facts and analysis also demonstrate the proposal fails to satisfy Plan subsection 3.5.1.c. This subsection requires implementing regulations which "ensure a setting that is attractive and accessible to multiple transportation modes . . . ." The subsection particularly requires, "design standards related to building height, massing, siting, and detailing, to achieve an appearance, micro climate, and scale along designated streets to encourage walking." The proposed amendment would not apply to parcels surrounded by streets. However, development of a 90,000 square foot commercial pad would involve nearby streets for connectivity, and would require substantial on-site vehicular circulation. Such a large development would also place a large, uninterrupted development between streets, which is contrary to this district's requirement for interesting pedestrian-scale development between such streets. Council concludes that a regulation which allows a 90,000 square foot foundation—even if not somehow touched on all sides by streets—quite squarely contradicts the Plan's requirements for pedestrian circulation along streets.

For these reasons, Council concludes the proposed text amendment fails to satisfy criterion 40.85.15.1.C.4.

B. Want of compliance with the Metro Functional Plan (BDC 40.85.15.1.C.3).

Metro's Functional Plan favors a compact urban form within the Urban Growth Boundary (UGB). Beaverton is completely situated within the UGB. One of the Plan's techniques for achieving urban density is infill development and redevelopment, emphasizing higher density and mixed-use development in key centers and corridors.

The proposed text amendment contravenes this planning technique. Adding 40,000 square feet to the allowable retail footprint approaches

doubling the allowable size of a single retail use. It is interesting to note the obvious conclusion that increasing the allowable building footprint will reduce land available for creating a mix of other structures, uses, rights of way, and so forth, in the town center. Interestingly enough this includes reducing land available for automobile parking, or directs parking into areas better occupied by multiple use structures. Council concludes that expanding the size of an allowed single retail footprint promotes less dense (and less desirable) development in the Murray Scholls and Cedar Mill areas.

Mixed use districts also connect structures to alternative transportation choices such as public transit, bicycle, and pedestrian-oriented development. The proposed text amendment, however, contradicts this policy by allowing big-box types of retail usage. This weakens the town center concept by creating a more auto and parking oriented development pattern. Council finds this weakening effect undermines transit-oriented multiple use planning in this district.

For these reasons the application fails to satisfy criterion 40.85.15.1.C.3.

C. Want of compliance with the Teufel Ordinance (BDC 40.85.15.1.C.6).

This approval criterion requires a text amendment to comply with other land use ordinances which have a direct bearing upon the subject matter of the proposed amendment. The Teufel Ordinance, more specifically entitled the "Teufel Property Development Review Procedure," is one such ordinance. The Ordinance applies to premises in Cedar Mill zoned TC-MU, and Council recognizes its applicability here.

An increase of square footage to 90,000 in conjunction with a development agreement contradicts a number of Ordinance provisions. A development agreement is a matter between Council and a developer and, as such, contradicts Ordinance Section 1 requiring a public hearing process at least as procedurally beneficial as that provided for a Planned Unit Development under existing Beaverton procedures.

A large building footprint lacks the complexity and variety of a more multiple use development and contravenes Ordinance Section 3 which requires development with a high degree of urbanism.

Finally, the proposed amendment contradicts a specific transportation component of the Teufel Ordinance. Ordinance Sections 6, 12 and 13 require placing one or more main streets on a development site with design standards which relate to the development. The amendment, though, reduces the number and quality of streets, because big box development under the amendment framework will in all probability lack streets on all sides except for one. Promoting such an asphalt island contradicts the Ordinance.

CONCLUSION

For the reasons set forth above, Council DENIES TA 2004-00012, the Town Center-Multiple Use Commercial restriction amendment.

It is so ordered this ____ day of July, 2006.

AUTHORIZED REPRESENTATIVE	ATTESTING PARTY
_____	_____
Rob Drake, Mayor	Sue Nelson, City Recorder

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Approval of the Intergovernmental Agreement With Washington County Oregon, to Participate in the State Homeland Security Exercise Program Grant awarded to Washington County for Planning, Conducting, and Evaluating a Homeland Security Exercise and Authorize the Mayor to Sign the Agreement

FOR AGENDA OF: 7/17/06 **BILL NO:** 06127

Mayor's Approval:

DEPARTMENT OF ORIGIN: **Emergency Management**

DATE SUBMITTED: **6/16/06**

CLEARANCES: Finance
Police
City Attorney
Mayor's Off.

PROCEEDING: Consent Agenda

EXHIBITS:
- Resolution
- IGA with County
- IGA between County and Oregon Emergency Management
- Summary of amount to be awarded to Beaverton

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

The OCEM (Office of Consolidated Emergency Management) member jurisdictions, including the City of Beaverton, and several other jurisdictions in Washington County participated in the planning, conduct, and evaluation of a terrorism exercise under the State Homeland Security Exercise Program, which is administered by the Oregon Office of Emergency Management (OEM). The State's Homeland Security Exercise Program made federal grant funding available to reimburse local governments and other eligible organizations involved in the exercise for certain costs associated with the exercise including overtime and backfill for participants, and expendable supplies. Washington County is the subgrantee from the State and is requiring that IGAs (Intergovernmental Agreements) be signed by the local jurisdictions involved in the exercise to protect itself and ensure that every recipient of these grant funds complies with the grant requirements. These agreements are intended to ensure compliance with applicable grant and legal requirements.

INFORMATION FOR CONSIDERATION:

The federal grant funds were provided to the State, who, in turn, agreed to make Homeland Security Exercise Program funds available to the County and other eligible local governments and organizations for the purpose of planning, conducting, and evaluating a terrorism exercise. OEM entered into an agreement with the County, wherein the County accepted responsibility for managing the exercise budget and coordinating the reimbursement process for the other eligible local governments and organizations, and agreed to comply with specific legal and grant-related requirements.

The agreements between the County and other eligible local governments and organizations are necessary to ensure those local governments and organizations comply with the applicable grant and legal requirements.

The exercise was conducted on June 14, 2006 and the grant funds will be provided on a reimbursement basis. There are no matching requirements for the City.

RECOMMENDED ACTION:
Council authorize the Mayor to sign the IGA with Washington County.

RESOLUTION NO. 3866

APPROVAL OF THE INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY OREGON, TO PARTICIPATE IN THE STATE HOMELAND SECURITY EXERCISE PROGRAM GRANT AWARDED TO WASHINGTON COUNTY FOR PLANNING, CONDUCTING, AND EVALUATING A HOMELAND SECURITY EXERCISE AND AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT

WHEREAS, the Oregon Office of Emergency Management (OEM) is administering the State's Homeland Security Exercise Program, and

WHEREAS, the State's Homeland Security Exercise Program has federal grant funding available to reimburse local governments and other eligible organizations for certain costs associated with scheduled and approved homeland security exercises; and

WHEREAS, the City and many other eligible local governments and organizations participated in a scheduled and approved homeland security exercise in June 2006; and

WHEREAS, OEM had agreed to make Homeland Security Exercise Program funds available to the City and other eligible local governments and organizations; and

WHEREAS, OEM has approved a multi-agency exercise budget submitted by the County on behalf of itself and other eligible local governments and organizations; and

WHEREAS, OEM has entered into an agreement with the County, wherein the County accepted responsibility for managing the exercise budget and coordinating the reimbursement process for the other eligible local governments and organizations, and agreed to comply with specific legal and grant-related requirements; and

WHEREAS, an agreement between the City and the County is necessary to ensure compliance with the applicable grant and legal requirements

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Beaverton approves the Intergovernmental Agreement for the receipt of State Homeland Security Exercise Program Grant funds and authorizes the Mayor to execute said agreement.

Adopted by the Council this _____ day of _____, 2006

Approved by the Mayor this _____ day of _____, 2006

Ayes: _____ Nays: _____

ATTEST: APPROVED:

_____ _____

SUE NELSON, City Recorder ROB DRAKE, Mayor

INTERGOVERNMENTAL AGREEMENT

Between

Washington County, Oregon
and
the cities of Beaverton, Forest Grove, Hillsboro, Tigard, and Tualatin;
the Tri-County Metropolitan Transit District (TriMet); the Washington County
Consolidated Communications Agency (WCCCA); and
the Tualatin Valley Fire and Rescue (TVFR) Rural Fire Protection District

THIS IS an intergovernmental (IGA) between Washington County (County) and the cities of Beaverton, Forest Grove, Hillsboro, Tigard, and Tualatin; the Tri-County Metropolitan Transit District (TriMet); the Washington County Consolidated Communications Agency (WCCCA); and the Tualatin Valley Fire and Rescue (TVFR) Rural Fire Protection District (Agencies) entered into pursuant to the authority granted in ORS Chapter 190 for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

Recitals

WHEREAS, the Oregon Office of Emergency Management (OEM) is administering the State's Homeland Security Exercise Program, and

WHEREAS, the State's Homeland Security Exercise Program has federal grant funding available to reimburse local governments and other eligible organizations for certain costs associated with scheduled and approved homeland security exercises; and

WHEREAS, the County and many other eligible local governments and organizations are participating in a scheduled and approved homeland security exercise in June 2006; and

WHEREAS, OEM has agreed to make Homeland Security Exercise Program funds available to the County and other eligible local governments and organizations; and

WHEREAS, OEM has approved a multi-agency exercise budget submitted by the County on behalf of itself and other eligible local governments and organizations; and

WHEREAS, OEM has entered into an agreement with the County, wherein the County accepted responsibility for managing the exercise budget and coordinating the reimbursement process for the other eligible local governments and organizations, and agreed to comply with specific legal and grant-related requirements; and

WHEREAS, agreements between the County and other eligible local governments and organizations are necessary to ensure those local governments and organizations comply with the applicable grant and legal requirements;

NOW, THEREFORE, the Parties agree as follows:

1. The Agencies agree:

   A. To submit paid invoices and/or other required documentation for their respective costs associated with this agreement, and to provide a final reimbursement request to the County no later than July 31, 2006.

   B. That reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the traveler, the purpose of the travel, and the time, date and place of travel, as well as a copy of the travel expense detail sheet.

   C. That all invoices for meals must be accompanied by a roster of the people in attendance. In addition, invoices for meals served at planning or after-action meetings must include a meeting agenda showing a working meal.

   D. That personnel costs must be documented with time sheets, back-up documentation of payroll costs, and the overtime benefit rate used.

   E. To participate in and provide input into the development of an exercise after-action report that will be submitted to OEM.

2. The County agrees:

   A. To receive paid invoices and other authorized forms of expenditure from the Agencies and process them for reimbursement by OEM.

   B. To receive reimbursement payments from OEM and redistribute them to the Agencies consistent with the reimbursements provided by OEM.

   C. To reimburse the Agencies amounts not to exceed the amounts included for them in the exercise budget (attached).

3. If, at the end of the grant period, any of the Agencies have not participated in an exercise meeting the requirements of the program, the County may seek reimbursement of all funds disbursed to the non-performing Agencies.

4. This agreement may be modified at the request of the parties; however, at no point in time may any party cancel the agreement without 45 days notice.

5. Indemnification: The Agencies shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the County, the State of Oregon, and OEM, their officers, employees, agents, and members from all claims, suits and actions of whatever nature resulting from or arising out of the activities of the Agencies, their officers, employees, subcontractors, or agents in connection with this Homeland Security Exercise Program grant funding reimbursement process.

6. The Agencies shall require any of their contractors or subcontractors to defend, save, hold harmless, and indemnify the County, the State of Oregon, OEM, Criminal Justice Services Division (CJSD), and the Oregon State Police, their officers, employees, agents and members from all claims, suits or actions of whatever nature resulting from or arising out of the activities of the contractors or subcontractors in connection with this Homeland Security Exercise Program grant funding reimbursement process.

7. The period of performance for this agreement is May 23 through August 30, 2006. Each participating agency is eligible to request reimbursement pursuant to this agreement once the agreement has been approved by the County and the agency's governing body.

WASHINGTON COUNTY

By _____ Date 6/20/06

Approved as to Form:

By _____

APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS
MINUTE ORDER # 06-224
DATE 6-20-06
BY Barbara Hejtmanek
CLERK OF THE BOARD

Intergovernmental Agreement for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

June 20, 2006

CITY OF BEAVERTON

By _____ Date _____

Approved as to Form:

By _____

Intergovernmental Agreement for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

June 20, 2006

CITY OF HILLSBORO

By _____ Date _____

ATTEST _____

Intergovernmental Agreement for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

June 20, 2006

CITY OF FOREST GROVE

By _____ Date _____

Approved as to Form:

By _____

Intergovernmental Agreement for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

June 20, 2006

CITY OF TIGARD

By _____ Date _____

Approved as to Form:

By _____

Intergovernmental Agreement for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

June 20, 2006

CITY OF TUALATIN

By _____ Date _____

Approved as to Form:

By _____

Intergovernmental Agreement for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

June 20, 2006

WASHINGTON COUNTY CONSOLIDATED
COMMUNCIATIONS AGENCY

By _____ Date _____

Approved as to Form:

By _____

Intergovernmental Agreement for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

June 20, 2006

TUALATIN VALLEY FIRE AND RESCUE

By _____ Date _____

Approved as to Form:

By _____

Intergovernmental Agreement for the coordination of activities related to administration of State Homeland Security Exercise Program grant funds provided by the Oregon Office of Emergency Management (OEM) for planning, conducting, and evaluating a homeland security exercise.

June 20, 2006

TRI-COUNTY METROPOLITAN
TRANSIT DISTRICT

By _____ Date _____

Approved as to Form:

By _____

Homeland Security Exercise and Evaluation Program

Exercise Budget Proposal

Summary

Requesting Agency: Washington County

Contact Person: Steve Muir

Address: 20665 SW Blanton Street
Aloha, Or 97007

Phone: 503-642-0394

Fax: 503-642-4814

Email: steven.muir@tvfr.com

Date: 5/16/06

Exercise Name: TIPOFF 06

Exercise Type: FSE ☑ FE ☐ TT ☐

Exercise Date/Time: From Date 6/14/06 Time 8:00 AM To Date 6/14/06 Time 2:00 PM

Threat: Chemical ☑ Biological ☐ Radiological ☐ Nuclear ☐ Explosive ☑ Agricultural ☐ Cyber ☐ Other ☐

Budget Category	Planning and Admin Costs	Conduct and Evaluation Costs
Travel		$6,481.65
Personnel	$30,606.48	$79,671.25
Administrative	$985.00	$12,823.00
Other Costs	$340.00	$6,660.62
Total Expenditures	**$31,931.48**	**$105,636.52**
Total Funds Requested:	**$137,568.00**	

Brief Description of exercise:

Exercise TIPOFF '06 will test organizational and interagency terrorism incident plans, procedures, and equipment and train and familiarize emergency response and emergency operations center personnel with their terrorism incident response roles and responsibilities The exercise will use a domestic terrorism scenario with improvised explosive, chemical, and other threats. Staff from numerous agencies in Washington and Columbia counties, regional agencies such as the bomb squad, TriMet, and the Red Cross, state agencies, including OSHA, DOJ, DEQ, OSP, OEM, and the Civil Support Team, and the FBI will exercise their respective terrorism incident prevention and response plans and practice all-hazard disaster response operations.

Prepared by: Steve Muir

Title: Emergency Management Supervisor - Washington County

Signature:

Planning & Administration

Travel

Mileage @ $.445 per mile				
Lodging	State Rate			
Per Diem				
Miscellaneous				
		Travel Subtotal		

Description
No travel expenditures anticipated

Personnel

Overtime	$30,606.48		
Backfill			
Staff/Contractor/Consultant			
		Personnel Subtotal	**$30,606.48**

Description
Overtime for fire and dispatch staff for exercise planning/design as well as overtime for law enforcement and emergency management staff to design, conduct, and evaluate pre-exercise drills directly connected to this exercise.

Administrative

Supplies			
Meals/Refreshments	$985.00		
Other			
		Admin Subtotal	**$985.00**

Description
Administrative supplies for printings and mailings in preparation of the exercise.

Other Costs

Facility Rental	$340.00		
Equipment			
Other			
		Other Costs Subtotal	**$340.00**
		Planning and Admin Total	**$31,931.48**

Description
Range fees for law enforcement Mobile Response Team (MRT) personnel for pre-exercsie drill.

Conduct & Evaluation

Travel

Mileage @ $0.445 per mile		$2,389 65	
Lodging		$2,640.00	
Per Diem	State Rate	$1,452.00	
Miscellaneous			
		Travel Subtotal	**$6,481.65**

Description
Mileage costs for moulage and evaluation contractors. Lodging, per diem, and mileage for evaluators travelling over 60 miles to particpate in the controller/evaluator briefing, exercise play, and after action review.

Personnel

Overtime	$78,516.73	
Backfill	$983.52	
Staff/Contractor/Consultant	$171.00	
	Personnel Subtotal	**$79,671.25**

Description
Overtime and backfill costs for fire, law enforcement, transit, dispatch, and other agency players. Overtime for exercise evaluation, simulation, contol, set-up, and cleanup personnel. Moulage, evaluation, and custodial contractor costs. Contract ambulance provider overtime for paramedics, EMTs, supervisors, and dispatchers.

Administrative

Supplies	$2,014.00	
Meals/Refreshments	$9,939.00	
Other	$870.00	
	Admin Subtotal	**$12,823.00**

Description
Meals and refreshments for 1,018 anticipated field and EOC participants (controllers, evaluators, simulators, and players) on the day of the event, for the controller/evaluator briefing, and for after action report meetings. Miscellaneouse office supplies used in the various EOC's and specific event sites. Volunteer recognition supplies.

Other Costs

Facility Rental			
Equipment	$1,220.00		
Other	$5,440.62		
	Other Costs Subtotal	**$6,660.62**	
	Conduct & Evaluation Total		**$105,636.52**

Description
Porta potties, moulage supplies and props, media signs, small refrigeration truck, miscellaneous supplies, towing costs for the 40' bus (prop), fuel, medical consumables, duct tape, irrigation markers, garbage bags, plywood, EMS supplies, hazmat supplies. Fuel reimbusement for contract ambulance provider exercise participation

Washington County Age

	Planning and Administration Costs				Conduct and Evaluation Costs				Totals	Conduct & Eval Meals Requested			
	Travel	Personnel	Admin	Other	Travel	Personnel	Admin	Other					
Washington County	$0 00	$0.00	$0 00	$0 00	$6,317.00	$171.00	$5,715.00	$220.00	$12,423.00	450	$11.00	$4,950.00	
WCSO	$0 00	$23,800.00	$680.00	$340 00	$0.00	$9,800.00	$400 00	$0.00	$35,020.00	108	$10.00	$1,080 00	
City of Beaverton	$0 00	$0.00	$0.00	$0 00	$0.00	$10,000.00	$1,500.00	$0.00	$11,500.00			$0.00	
City of Forest Grove	$0.00	$0.00	$0.00	$0.00	$0.00	$1,184.00	$682 00	$0 00	$1,866 00	62	$11 00	$682 00	
City of Tigard	$0.00	$5,250.00	$305 00	$0.00	$0.00	$3,750.00	$850.00	$1,640.00	$11,795.00	91	$11.00	$1,001 00	Estimated,
City of Hillsboro	$0.00	$0.00	$0.00	$0.00	$0.00	$5,794.87	$1,016.00	$0 00	$6,810.87	127	$8.00	$1,016.00	
City of Tualatin	$0.00	$0.00	$0.00	$0 00	$0 00	$7,600 00	$600 00	$0.00	$8,200 00	60	$10 00	$600 00	
City of												$0 00	
City of												$0.00	
City of												$0.00	
Tualatin Valley Fire Dist	$0.00	$1,064 72	$0.00	$0.00	$164.65	$23,454.66	$820.00	$2,300 62	$27,804 65	40	$5 50	$220.00	
Fire District												$0.00	
Fire District												$0.00	
Fire District												$0 00	
WCCCA	$0.00	$491 76	$0 00	$0.00	$0.00	$3,110.72	$70.00	$0 00	$3,672 48	10	$7 00	$70.00	
MEDU - Bomb Squad												$0.00	
TriMet	$0 00	$0 00	$0 00	$0.00	$0 00	$4,500.00	$0 00	$1,000 00	$5,500 00	0		$0 00	
Tuality Hospital												$0.00	
Metro West Ambulance	$0 00	$0.00	$0 00	$0.00	$0.00	$10,306.00	$650 00	$1,500 00	$12,456 00	48	$10 00	$480 00	
Red Cross	$0 00	$0.00	$0.00	$0 00	$0 00	$0.00	$520.00	$0.00	$520.00	130	$4.00	$520 00	
												$0 00	
												$0.00	
Total Washington County Request	**$0.00**	**$30,606.48**	**$985.00**	**$340.00**	**$6,481.65**	**$79,671.25**	**$12,823.00**	**$6,660.62**	$137,568 00	1126		#########	
									$137,568 00		$ 9 43	Avg Meal Cost	

15

INTERGOVERNMENTAL AGREEMENT

Between

THE OREGON OFFICE OF EMERGENCY MANAGEMENT
and
WASHINGTON COUNTY, OREGON

WHEREAS, Oregon Emergency Management, hereinafter called OEM, is administering the State's Homeland Security Exercise Program, and

WHEREAS, Washington County is seeking funds to conduct a Homeland Security exercise in June of 2006 involving improvised explosive and chemical device scenarios, now therefore;

1. OEM agrees to reimburse Washington County an amount not to exceed $137,568.00 per the County's budget proposal (attached) for the following:

   A. Personnel expenses for planning and administration to include overtime expenses incurred by agencies to allow personnel to participate in planning conferences, meetings, and pre-exercise drills.

   B. Personnel expenses for exercise conduct and evaluation to include contract evaluation, moulage, and custodial costs and overtime and backfill expenses incurred by agencies to allow personnel to participate in exercise activities and post-exercise critique meetings.

   C. Lodging, per diem, and privately owned vehicle mileage for contract evaluators and for agency personnel traveling more than 60 miles to participate as exercise evaluators.

   D. Refreshments for pre-exercise planning conferences and meals and refreshments for participants on the day of the exercise and at post-exercise critique meetings.

   E. Volunteer recognition expenses.

   F. Consumable emergency medical services (EMS), moulage, and hazmat supplies and contract ambulance provider fuel used for day-of-exercise mass casualty simulation, hazardous material response, and decontamination operations and props and media signs for simulated mass casualty incident sites.

   G. Equipment rental and transport for pre-exercise drill, exercise operations, and exercise support.

2. Washington County agrees to bill for all costs associated with this agreement, and to provide a final billing to OEM no later than July 31, 2006. Washington County also agrees to provide documentation for all costs per this agreement.

3. Washington County agrees that reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the traveler, the purpose of the travel, and the time, date and place of travel, as well as a copy of the travel expense detail sheet.

4. Washington County agrees that all invoices for meals must be accompanied by a roster of the people in attendance. In addition, invoices for meals served at planning or after-action meetings must include a meeting agenda showing a working meal.

5. Washington County agrees that personnel costs must be documented with time sheets, documentation of payroll costs, and the overtime benefit rate used.

6. Washington County agrees to provide a draft performance report to OEM no later than August 15, 2006. Washington County also agrees to provide OEM all documentation required to receive funding through the Homeland Security Exercise Grant Program as outlined in the Homeland Security Exercise Evaluation Program (HSEEP) guidance. Additionally, Washington County agrees to provide OEM with an EMERS report form to document exercise conduct.

7. This agreement may be modified at the request of both parties; however, at no point in time may either party cancel the agreement without 45 days notice.

8. If, at the end of the grant period, Washington County has not performed an exercise meeting the requirements of the program, OEM may seek reimbursement of all funds disbursed to the County.

9. Indemnification: Washington County shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon and OEM, their officers, employees, agents, and members from all claims, suits and actions of whatever nature resulting from or arising out of the activities of Washington County, its officers, employees, subcontractors, or agents under this grant.

10. Washington County shall require any of its contractors or subcontractors to defend, save, hold harmless, and indemnify the State of Oregon, OEM, Criminal Justice Services Division (CJSD), and the Oregon State Police, their

officers, employees, agents and members from all claims, suits or actions of whatever nature resulting from or arising out of the activities of the contractor or subcontractor under or pursuant to this grant.

11. The period of performance for this grant is May 23 through August 30, 2006.

FOR WASHINGTON COUNTY

_____
Name

_____
Title

_____
Date

FOR OREGON EMERGENCY MANAGEMENT

_____
Name

_____
Title

_____
Date

TIPOFF EXERCISE *June 14, 2006*

Budget Development Checklist

Agency Name: CITY OF BEAVERTON

Point of Contact MICHAEL MUMAW

	Planning & Admin Costs	Conduct & Evaluation Costs	Estimated Total Costs	Description
1. Estimate the travel costs (POV mileage, per diem, lodging, etc.) necessary to support exercise design, conduct, and evaluation activities	$0.00	$0.00	$0.00	
2. Estimate the personnel costs necesaary to support exercise design, conduct, and evaluation activities. Eligible costs inlcude designer and player overtime, backfill costs to allow designer and player participation, and contractor costs.	$0.00	$10,000.00	$10,000.00	OT for Beaverton MRT members to participate including officers to backfill their normal patrol positions
3. Estimate the administrative costs necessary to support exercise design, conduct, and evaluation activities. Eligible costs include office supplies and meals.	$0.00	$1,500.00	$1,500.00	Meals for the EOC staff and some field personnel for the City's smaller incident scenes Also, includes expendable EOC supplies
4. Estimate the costs of other materials and services necessary to support exercise design, conduct and evaluation. Eligible costs include facility, porta potty, and generator rental; moulage supplies; modesty clothing for decon operations; expendable PPE; consumable medical supplies; crime scene tape; and more.	$0.00	$0.00	$0.00	
Estimated Total Costs	$0.00	$11,500.00	$11,500.00	

If you have any comments, please list them on the additional information sheet (second tab)

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Biggi Ballot Measure 37 Claim for Compensation

FOR AGENDA OF: 7-17-06 **BILL NO:** 06128

Mayor's Approval:

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 7-11-06

CLEARANCES: City Attorney
Dev. Serv.

PROCEEDING: Public Hearing

EXHIBITS: Staff Report dated 7/11/06 with exhibits 1 through 5

BUDGET IMPACT

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

The amount of compensation claimed by Biggi is $1,767,125 as a result of City zoning regulations affecting the subject properties.

HISTORICAL PERSPECTIVE:

On August 2, 2005, representatives for Biggi Investment Partnership (Biggi) filed a claim for compensation against the City as authorized by Ballot Measure 37. The claim is for $1,767,125. In the claim, Biggi alleges that due to zoning regulations concerning building orientation, use limitations, sidewalk requirements, floodway and floodplain regulations, and the administration of Clean Water Services (CWS) standards, the subject properties have been devalued. The subject properties are located at 3661-3775 SW Hall Boulevard and 3720 SW Cedar Hills Boulevard (also known as TLID#s 1S109DD00105, 00107, and 00109 respectively).

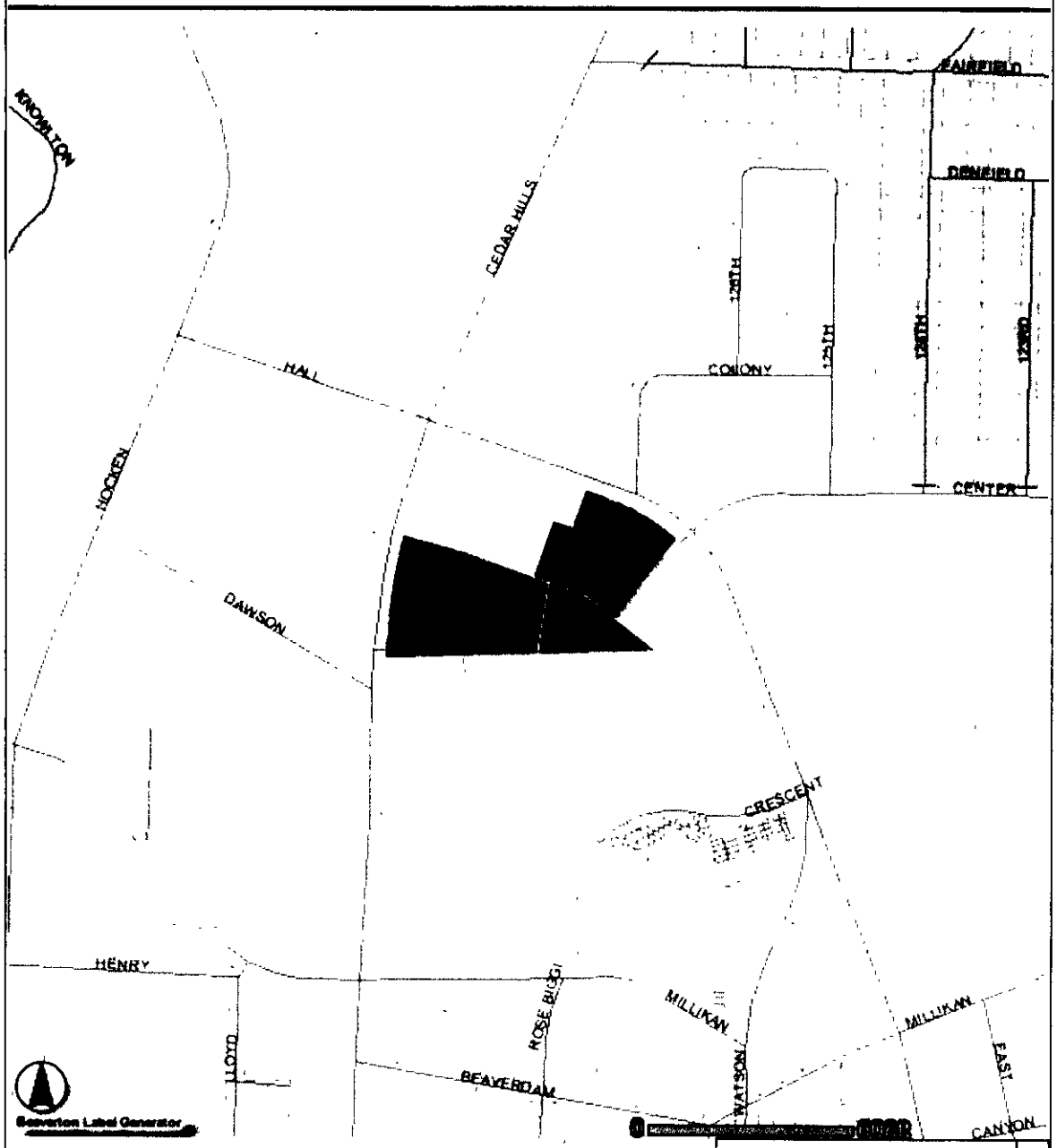
INFORMATION FOR CONSIDERATION:

Attached staff report.

RECOMMENDED ACTION:

Deny claim for compensation and waive sections of the Development Code identified in the attached staff report.

Exhibit Name:DETAIL MAP



Project: BIGGI CLAIM	Date: 02/23/06
	Map Number 1S109DD00105 1S109DD00107 1S109DD00109
Department:COMMUNITY DEVELOPMENT ***Division: Development Services***	Application # M372005-0001

N

Measure 37 Claim 2005-0001

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CITY of BEAVERTON

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

CITY OF BEAVERTON
STAFF REPORT AND RECOMMENDATION

TO:	Mayor Drake and City Council
STAFF REPORT DATE:	Tuesday, July 11, 2006
STAFF:	Steven A. Sparks, AICP, Development Services Manager
SUBJECT:	**M37 2005-0001 (Biggi Claim)**
REQUEST:	Payment of $1,767,125 to Biggi in compensation for the imposition of land use restrictions on the properties located at 3661-3775 SW Hall Boulevard and 3720 SW Cedar Hills Boulevard or waiver of the zoning current regulations affecting these same properties.
APPLICANT:	**Biggi Investment Partnership (Biggi)** 3825 SW Hall Boulevard Beaverton OR 97005
APPLICABLE CRITERIA:	Municipal Code Section 2.07.030.D.1-3 (City Council Hearing)
HEARING DATE:	Monday, July 17, 2006
RECOMMENDATION:	**DENIAL** of the claim for payment, WAIVER of Development Code regulations for the affected property, and DENIAL of claim for others regulations including those of Clean Water Services.

A. HISTORY

In November 2004, the voters of the State of Oregon passed Ballot Measure 37 which, in its essence, allows property owners to file for claims of compensation against local jurisdictions if that jurisdiction has adopted zoning regulations which has devalued property. Measure 37 provides local jurisdictions an alternative to payment of a claim by allowing a jurisdiction to waive the zoning regulations which have devalued the property. Measure 37 fails to provide any direction on how to evaluate claims for compensation. The Measure does state that local jurisdictions may establish procedures by which to process any claims, but claimants are under no obligation to follow such procedures.

On November 22, 2004, the Beaverton City Council adopted Ordinance 4333, amending the Municipal Code, which established procedures for the filing, evaluation, and resolution of claims filed pursuant to Measure 37. Attorneys for Biggi filed a claim with the City on August 2, 2005. In the claim, Biggi states that imposition of Clean Water Services (CWS) regulations on the property reduces the value of the property by $772,125 and the imposition of City zoning regulations concerning building orientation, flood plain restrictions, use limitations, and sidewalk requirements reduces the value of the property by $995,000. Pursuant to Section 2.07.015, the Community Development Director informed Mr. Biggi that the materials submitted for the claim were incomplete. Biggi nor its representatives amended their materials by submitting the additional information requested by the Director.

Since January 2006, the City, CWS, and Biggi have been negotiating a potential solution to Biggi's claim. The City offered to waive the City's regulations raised by Biggi. However, CWS and Biggi were unable to come to an agreement. Further, Biggi insisted upon transferability of the waivers granted by the City to future property owners. Therefore, the negotiations between Biggi and the City and CWS have come to a conclusion which necessitates the public hearing before the City Council.

B. Subject Properties

The subject properties are located at 3661-3775 SW Hall Boulevard and 3720 SW Cedar Hills Boulevard (also known as TLID#s 1S109DD00105, 00107, and 00109 respectively). A vicinity map is attached to this report. Two of the subject properties have structures located on them. The Hall Street address has a building which is occupied by the Hall Street Grill and the Cedar Hills Boulevard address has a building which was formerly occupied by the Best Bet. The third property is located between the other two and is improved with a parking lot.

C. Analysis of Claim for Compensation

In the August 2, 2005 claim for compensation filed by Biggi's representatives, it asserts that Biggi Investment Partnership took possession of the properties on March 11, 1988. Under ORS 67.060 and ORS 67.065, the property owner is the partnership and not the individual partners. Furthermore, ORS 67.190 makes it clear that the partners are not co-owners of the property. Thus, under the definition of "owner" in Measure 37, ("the present owner of the property or any interest therein') the partnership is the owner of the property. The partners have no ownership interest in the property, only an interest in the partnership. As a partnership is not a person, it cannot have a family member so the provisions of Measure 37 regarding regulations enacted prior to acquisition by a "family member of owner" do not apply. The claim here is rightly in the name of the partnership based on the transfer in 1988. Any waiver that the City grants need only reach back to 1988 under section (8) of Measure 37. In March 1988, the subject properties were zoned TC (Town Center) which was a commercial zone. The applicable Development Code was Ordinance 2050 as amended through Ordinance 3602. The attached Development Code sections in Exhibit 5 to this report contains all the applicable code requirements in effect on March 11, 1988 for the subject properties. Exhibit E of Biggi's materials lists the four (4) items for which Biggi is claiming compensation. The four (4) items are building orientation requirements, use limitations, sidewalk requirements, and floodplain regulations.

<u>Building Orientation Requirements</u>

In the 1988 Development Code, there were no specific building orientation requirements for new development in the TC zone. In 1988, any development of the subject properties would require that development to be reviewed by the City's design review process. The only new development that was exempt from design review in 1988 were single family dwellings or duplexes. If any of the subject properties were to be developed with a new structure or substantially redeveloped in 1988, the development was subject to a public hearing before the City's Board of Design Review. The development would be subject to a total of eighteen approval criteria, ten of which were technical in scope and eight were design oriented. While the 1988 code does not contain requirements for building orientation, it is possible that the decision making authorities in 1988 could have conditioned building orientation with the City's design review process with the subjective decision making process.

In the current Code, <u>there are no building orientation requirements</u>. The Code does contain design standards which speak to building orientation for new development to which the subject properties <u>could be</u> subject. The City's current design review process became effective January 1, 2005. The intent of the revised design review process was to provide two (2) options for design review of new development. The

first option is a clear and objective design review process by providing clear design standards for new development. An applicant could use this "safe harbor" process and proceed through an administrative level review if a size threshold is met and if all the applicable design review standards are met. It is the safe harbor approach in the current code which specifies building orientation standards. If an applicant did not want to or could not meet the design standards for building orientation, or any other design standard, the second design review process option of appearing before the Board of Design Review is the solution. Before the Board of Design Review, an applicant addresses the applicable design guidelines for a new development. If Biggi does not want to meet the design standards for building orientation, the solution is to appear before the Board of Design Review with a proposal and demonstrate how the proposal meets the applicable design guidelines.

Because Biggi has not submitted any development proposal for the subject properties, staff cannot respond to the extent of which Biggi is "constrained" by the City's design standards relating to building orientation. Regardless of Biggi's perception, such "constraints" are not code requirements.

Use Limitations

In November 1999, the subject properties were rezoned from TC (Town Center) to RC-TO (Regional Center-Transit Oriented) which is a multiple use zone. The key difference between a commercial zone and a multiple use zone is that there are limitations on residential uses in commercial zones which are not as limited in multiple use zones.

As to the specific comparison of uses between the TC zone and the RC-TO zone, the 1988 TC zoning lists five (5) principally permitted uses, four (4) conditional uses, and one (1) prohibited use. The RC-TO zone contains the same uses with minor variation. The table below lists the uses listed in 1988, if they are listed in 2005, and if they are subject to use restriction:

Uses	TC	RC-TO	Use Restrictions
Auto, boat, and other vehicle sales	C	C	TC & RC-TO
Churches/ Places of worship	P	P/C	TC & RC-TO
Major automotive services	X	X	
Minor automotive service	C	P	TC & RC-TO
Multi-family dwellings/ Attached dwellings	P	P	TC only
Parking as a principle use	C	C	TC only
Parks and playgrounds	P	C	
Retail trade	P	P	TC & RC-TO
Service Businesses	P	P	TC & RC-TO
Service station	C	C	TC only
Single family dwellings	P		TC only

Social & fraternal organizations	P	P/C	TC & RC-TO
Trailers or mobile home sales/rentals	C		TC only
Transit centers	C	C	TC only

c = conditional p = permitted x = prohibited

The RC-TO list of uses is much more expansive and allows many more uses. However, it may be argued that the code was interpreted in 1988 to allow uses which are now listed separately in the RC-TO zone. For example, eating and drinking establishments are listed as a separate use in the RC-TO zone. They were likely interpreted as a retail or service use in 1988.

In the August 2, 2005 materials submitted by Biggi's representatives, there is no reference to what specific code or use restriction is preventing Biggi from developing his properties. Exhibit E of Biggi's materials lists the items for which Biggi is claiming compensation. For the uses which are found in both in the 1988 Code and the current Code, the use limitations are virtually identical. The difference between the two Codes with respect to uses that can be construed as more restrictive is that the current code requires:

1. Churches; social and fraternal organizations require a Conditional Use approval if the size of the use is more than 20,000 square feet in size.
2. New detached dwellings and two-attached dwellings (aka duplexes) are not allowed.
3. Parks and playgrounds currently require a Conditional Use approval.

Without a specific indication of how the City is constraining the use of his property by the zone's use restrictions, staff is unable to ascertain an impact to property value. Nevertheless, staff can support application of the use provisions contained in the 1988 code to the subject properties.

Sidewalk Requirements

In March 1988, there were no specific Code requirements for sidewalk dimensions although it was standard to provide a minimum sidewalk width of four (4) feet. Under the current code, the relevant design standard for properties which front a Major Pedestrian Route call for a sidewalk width of ten (10) feet. Two of the three subject parcels front Major Pedestrian Routes. As was discussed earlier in this report under the building orientation heading, the sidewalk width is also a design standard. Therefore, the ten (10) foot sidewalk width design standard is not a development requirement. Again, the design standard approach to design review is a "safe harbor" approach. If an applicant wishes to pursue an administrative level of project review, the clear and objective safe harbor design standard is to provide a ten (10) foot wide sidewalk. If an applicant wishes to provide a sidewalk of a different width, then the City's Board of Design Review is the decision making authority and would be subject to the City's design review guidelines.

Because Biggi has not submitted any development proposal for the subject properties, staff cannot respond to the extent of which Biggi is "constrained" by the City's design standards relating to sidewalk width.

Floodway and Floodplain Regulations

In March 1988, the City's Code did contain floodway and floodplain regulations. The 1988 and 2005 floodway and floodplain regulations found in the Development Code are attached in exhibits 5.3 and 5.4 of this report. The Development Code regulations are virtually identical with the exception that more recent floodplain elevation data is used in determining minimum floor elevations above flood waters. In March 1988, the regulatory 100-year flood elevation on the east side of Cedar Hills Boulevard, just upstream of the bridge face, was 175.60 feet. Currently, the regulatory 100-year flood elevation at the same location is now 175.82 feet.

The history of floodplain development standards in Beaverton is a story of a constant evolution addressing objections raised by property owners in opposition to the demands and mandates of the various levels of government to which the City is obligated. The obligations take the form of compliance to State and Federal law, requirements associated with participation in the National Flood Insurance Program, Metro's Title 3, or through intergovernmental agreements. As wetlands, sensitive stream areas, floodplains, and floodways all co-exist geographically; however, with their own unique definitions, the regulations associated with them also coincide and compound to create significant encumbrances on private property.

There are several sets of overlapping standards and requirements: Beaverton Code 9.05 (the Site Development Ordinance), Beaverton Development Code (Ordinance 2050, originally Sections 116-121, currently Chapter 60.10), Clean Water Services Design and Construction Standards (Resolution and Order 2004-009, Chapter 3; originally Unified Sewerage Agency (USA) as Resolution and Order (R&O) 91-47 / Chapter 6, made effective in Beaverton through the intergovernmental agreement, dated July 23, 1990), the City Engineering Design Manual and Standard Drawings (most recently adopted as Ordinance 4303), Oregon Revised Statutes, and FEMA regulations which enable the City to participate in the National Flood Insurance Program, found in Title 44 of the US Code of Federal Regulations.

The evolution occurred as a result of many conflicts regarding interpretation of these requirements, meeting the intent of previous City Council directives, adoption of new standards imposed regionally, and resolving conflicts between standards. Additionally in 1993, 1999, and 2004, FEMA staff have reviewed Beaverton's Ordinances and required updates and modifications as a condition of continued participation in the National Flood Insurance Program.

Previous Beaverton City Councils have directed staff to prepare code language that exempted private properties within an old flood control local improvement district along the main stem of Beaverton Creek between the Canyon Road bridge and Murray Boulevard culverts from certain floodplain development standards. The purpose of this exemption was to foster redevelopment of affected areas with as minimal floodplain regulation as possible. The adoption by the City of these code revisions has created extra scrutiny during the subsequent periodic reviews by FEMA staff. In particular, the exemption of a portion of the City from the "cut and fill balance" provisions common in model floodplain ordinances is an unusual feature of Beaverton Code. The subject properties are within the area of the City which is exempt from the cut and fill balance provisions.

The decision to treat the old flood control local improvement district (FCLID) properties different than all other areas of the City violated the FEMA concept of equal protection and relative exposure to flood risk for all property owners within the City's FEMA designated flood zones. Additional code revisions were mandated by FEMA to compensate for the Beaverton Code exemptions given to the old FCLID properties and theoretically restore the equity of risk to flood damage caused by the lack of a cut and fill balance. The primary revision added an additional foot of elevation, or "freeboard" above what was otherwise required for new buildings or substantially reconstructed old buildings affected by flooding.

All of the adopted floodplain and floodway (central part of a floodplain) standards can be summed up in three concepts:

1. Keeping floodways clear and unobstructed to allow for the conveyance of major flood flows.

2. Preserving floodplain water storage capacity so that flood water elevations and risk of property damage do not increase as a result of human activity within the floodplain. Otherwise known as "cut and fill balancing". These provisions are mostly waived or not applied to the old FCLID properties by Beaverton Code and thereby allows development with minimal regulation as opposed to other floodplain areas in the City.

3. Elevating or floodproofing buildings so that risk of flood damage is minimized within and adjacent to flood hazard areas.

The first concept regarding floodways translates clearly into very strict prohibitions of anything that negatively affects the conveyance of flood waters in the designated floodways. There is little to disagree about or misinterpret regarding these provisions found in the "overlapping standards".

The second concept is the troublesome one. Many of the problems can be traced back to original legislation creating the National Flood Insurance Program (NFIP) itself. These provisions are the source of most of the conflict in determining what is a minimum standard to participate in the NFIP and what is just prudent floodplain management to prevent flood hazards from increasing incrementally with each new development within or adjacent to the floodplain. In other words, these provisions focus on making sure development occurs while creating "no adverse impact" to neighboring properties.

The third concept of elevating or floodproofing buildings, like the floodway prohibitions, is relatively non-controversial. It is important to note that decisions made in regard to how development is regulated under the second concept have a direct effect on the third as it relates to participation in the NFIP and the relative flood risk assigned to each property in the floodplain.

The insurance industry does not recognize building elevation and floodproofing that is not certified to be at least *one foot above* the base flood elevation or in the case where the cut and fill balance standard is not imposed, the requirement is *two feet above* the base flood elevation. The cost of elevating or floodproofing for just one or two additional feet is minor in comparison to the total cost of a building or the potential loss in the event of flood. Additionally, depending on the financing of a new development, more stringent flood proofing requirements can be imposed by the lender regardless of City regulation. Therefore, imposition of the building elevation or floodproofing standards found in Beaverton Code in flood hazard areas are impossible to quantify absent a specific building design proposal but are truly insignificant compared to the liability created both individually to each building owner and corporately to the entire city.

D. Clean Water Services (CWS) Standards

In the August 2, 2005 materials submitted by Biggi's representative, Biggi asserts that the City is restricting the use and value of the subject properties by requiring compliance with CWS standards. CWS is the special district in Washington County that implements the Clean Water Act and attempts to protect the health and safety of the public, including the prevention of the waters of the Tualatin River Basin, through adoption of sanitary sewer and storm sewer regulations. The City does not have any authority under state law to override CWS's regulations, or to permit activities that CWS' regulations prohibit. Biggi claims that the City is liable for the regulations adopted by CWS because the City requires a service provider letter from CWS for any new development. Regardless of the City requiring a service provider letter from CWS, Biggi's claim for compensation is misdirected at the City since the development regulations are from CWS and since CWS has the independent authority to enforce its regulations. CWS has already denied the same claim directed to it as evidenced in Exhibit 5 attached to this report. For the reasons provided in that letter, in addition to the reasons described above, the City should deny this part of the Biggi claim.

E. Beaverton Creek Consent Decree

The City and the Biggi's and TriMet entered into a modification of a consent decree dated June 24, 1994. Part of that agreement states:

> "The City shall commit staff time and resources necessary to prepare a plan for the long-term maintenance of Beaverton Creek in the City. One purpose of the plan will be to relieve the Biggis of the obligation and necessity to maintain the creek channel. In this context, "maintenance" includes assuring the flood carrying capacity of the channel through appropriate means, while meeting all applicable state, federal and local requirements
> * * *
> The Biggis shall consent in appropriate legal form (e.g., easement, right of entry) to grant access over their properties fronting along the creek so that the appropriate authority can provide maintenance of the creek channel."

The Biggis have not given the City a right of entry or an easement for this property. Gary Brentano has stated the City's willingness to maintain this channel as the City maintains other portions of this creek. The modified consent decree does not appear to be a land use regulation and even if it is, it was voluntarily entered into by the Biggis. Furthermore, the City paid the Biggi's $250,000 in consideration for the modified consent decree and the City has agreed to perform its required work under the modified consent decree.

The Biggis received a service provider letter from CWS attached exhibit D to their claim. CWS imposed a number of conditions of approval to that letter, a few of which appear relevant to the modified consent decree, such as condition 18, requiring the removal of invasive vegetation from the corridor. As described above, CWS regulations are not applicable to this claim. Furthermore, removal of invasive vegetation and enhancement of the vegetated corridor is relevant to federal water quality issues. The City's agreement concerns on "flood carrying capacity." As such, it does not appear that anything in the modified consent decree is relevant under a Measure 37 claim. Even if it does, the City has expressed willingness to comply with the modified consent decree.

F. Timeliness of Claim

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or

2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Staff Finding: The claim was submitted to the City on August 2, 2005. This date is within two years of the effective date of Measure 37. The claim is based on land use regulations enacted or adopted prior to December 2, 2004. Therefore, the claim is timely filed.

G. Claim Evaluation Criteria

Section 2.07.025.D of the Municipal Code specifies how a claim for compensation will be evaluated by the City Council. The criteria are as follows:

The Council shall determine whether the following criteria have been met:

1. The application is complete;

Staff Finding: As identified in the attached letter dated August 24, 2005, Joe Grillo, AICP, Beaverton Community Development Director found the materials submitted by Biggi's representatives to be incomplete. Biggi nor his representatives supplemented or amended the August 2, 2005 claim for compensation. Therefore the application remains and is incomplete.

2. The claimant is a qualifying Property Owner under Measure 37 as follows:

a. The subject property is located within the City and is subject to the ordinance or regulation, which is the basis of the application for claim;

Staff Finding: The three (3) subject properties identified as 3661-3775 SW Hall Boulevard and 3720 SW Cedar Hills Boulevard (also known as TLID#s 1S109DD00105, 00107, and 00109 respectively) are located within the city limits of the City of Beaverton. The subject properties are subject to Ordinance 2050, the Beaverton Development Code. As such, the subject properties are subject to current code requirements regarding building orientation, use limitations, sidewalk requirements, and floodway and floodplain regulations. Staff has addressed the applicability of the claims for each of these requirements in Section C of this report. Claims of regulation of CWS standards is addressed in Section D of this report.

b. The use which the claimant alleges is restricted under a City regulation and does not constitute a nuisance;

Staff Finding: Biggi has not identified any use for the subject properties in his claim for compensation. Therefore, staff cannot respond to how the City is restricting a use of the subject properties. If any proposed use involves impacts to the flood carrying capacity then such uses would be considered a nuisance and not compensable under Measure 37.

c. *The City regulation is not required as part of any federal requirement and is not an exempt regulation;*

Staff Finding: Biggi has identified building orientation, use limitations, sidewalks, and floodway and floodplain regulations as the basis for his claim of compensation. Building orientation nor the list of uses in the subject zoning district are federal requirements. Federal requirements do state that sidewalks must meet minimum widths pursuant to the Americans with Disabilities Act (ADA). However, the sidewalk width identified in the City's code as a design standard is not a federal requirement. The City's floodway and floodplain regulations are required by the Federal Emergency Management Agency (FEMA) in order for the City to participate in the federal Flood Insurance program and therefore are not compensable under Measure 37. The CWS regulations referred to in Biggi's claim for compensation are regulations to implement the federal Clean Water Act and designed to protect the public health and safety, and again are not compensable.

d. *The owner of the property as shown on the application was the owner of the property prior to the date the regulation was adopted, first enforced or applied;*

Staff Finding: Biggi has submitted a "property history report" which shows that Biggi, under the title Biggi Investments, acquired tax lot 105 in March 1988. This documentation is not a title report and clearly states as much in the submitted materials dated June 8, 2005 from Pacific Northwest Title. Therefore, staff cannot confirm with absolute certainty that Biggi is the correct property owner.

e. *There is substantial evidence to support the claim of reduction in the fair market value of the subject property;*

Staff Finding: As identified in throughout this report, neither Biggi or his representatives have submitted any evidence demonstrating how the City's Development Code has reduced the value of his properties other than his claim that reduction has occurred. No plans for development of any kind have been submitted as a part of this claim or any other prior development process which demonstrates the City applying any regulation to the subject properties.

f. *The amount of compensation claimed or determined to be potentially due;*

Staff Finding: Biggi has specified a claim of $1,767,125 in the materials dated August 2, 2005.

g. *The availability of public financial resources to pay the claim in consideration of competing priorities in the public interest;*

Staff Finding: The Finance Director in consultation with the City Attorney have advised staff that there are no funds appropriated to pay this claim. Additionally, they have advised that a grant of a waiver for any regulation that reduces value is advised over paying any claims.

h. *The impact of waiving enforcement of the regulation(s) or otherwise permitting the use on other properties and the public interest; and*

Staff Finding: If the Council were to elect to waive the current code and apply the Development Code provisions in effect in March 1988, staff recommend that the only provisions that can be waived are the provisions relating to design review and use. Staff discussed these items in Section C of this report. Floodway and floodplain regulations and CWS regulations cannot be waived as they are federal requirements and designed to protect the public health and safety.

i. *Such other factors as are determined to be in the interest of the property owner and the public to consider to adjudicate the claim.*

Staff Finding: Staff do not identify any other factors which may be of interest to the property owner or the public.

3. *The cited regulation(s) reduce the fair market value of the property and entitle the Owner to compensation or waiver of enforcement of the regulation pursuant to Measure 37.*

Staff Finding: Staff recommend that Biggi has not provided adequate evidence that the cited regulations do in fact reduce the value of his properties. No development plans have been submitted as a part of the claim for compensation nor have any plans been presented to the City in any development review process to which the City could respond to the claim that the subject properties have been devalued by City regulations. As identified in Section C of this report, building orientation and sidewalk width, apart from ADA minimum sidewalk width, are not development regulations. Further, Section C identifies that the use limitations in March 1988 are virtually the same as the current Code. Nevertheless, staff can support waiving the current use limitations applicable to the subject property. The other claims are procedural and requiring a public hearing process is not a limitation on use; therefore, not a devaluation of property.

As for the floodway and floodplain regulations and CWS requirements, these are implementing federal requirements and are designed to protect the public health and safety and not subject to compensation or waiver.

H. Recommendation

Biggi and representatives have not provided the City with evidence of how the City has applied or enforced any regulations on the development of any of the three (3) subject properties. Further, Biggi has not provided the City with a development proposal which illustrates how the City's regulations would prevent Biggi from achieving his development goals for the subject properties. By failing to provide any evidence with sufficient specificity to the City Council, Biggi has prevented the Council an opportunity to respond to each issue in a manner anticipated by Measure 37. Nevertheless, staff can support waiving the current use limitations applicable to the subject property. The other land use regulation claims are procedural requirements. Requiring a public hearing process is not a limitation on use; therefore, not a devaluation of property.

Therefore, based on the facts and findings outlined in this report, staff recommend that the Council deny the request for compensation. Staff further recommend that the Council waive the use restrictions of the current Development Code and apply the use restrictions contained in the 1988 Development Code (Ordinance 2050 as amended through Ordinance 3602). This use waiver is in the form of a license as described in BCC 2.07.045 and is non-transferable and is issued to Biggi Investment Partnership. Furthermore, the waiver license shall be construed to mean that upon a land use application for a permit by Biggi Investment Partnership, the City shall waive any land use regulations (as defined by Measure 37 in section (11)(B) as limited by section (3)) that were enacted after March 1988 that the City believes restricts the use of private real property and reduces the value of the property. Except as specifically noted in this paragraph, the claim is denied.

I. Exhibits

1. Filed Claim dated August 2, 2005 with exhibits.
2. Incomplete letter from Joe Grillo, AICP, Community Development Director
3. Second letter from Joe Grillo, AICP, Community Development Director
4. CWS correspondence denying claim dated June 23, 2006.
5. Staff identified relevant sections of Ordinance 2050, as amended through Ordinance 3602.
    - 5.1 TC Zoning
    - 5.2 RC-TO Zoning
    - 5.3 1988 Floodway and Floodplain regulations
    - 5.4 2005 Floodway and Floodplain regulations

EXHIBIT 1

B L A C K | H E L T E R L I N E LLP

STARK ACKERMAN
E-mail sa@bhlaw.com
Admitted in Oregon and Washington

ATTORNEYS AND COUNSELORS AT LAW

August 2, 2005

RECEIVED
AUG 2 2005
COMMUNITY DEVELOP DEPT.

VIA MESSENGER

City of Beaverton
Community Development Department
Development Services Division
4755 SW Griffith Drive
P.O. Box 4755
Beaverton, OR 97076

Reference: Ballot Measure 37 Claim

Dear Sir or Madam:

We represent Biggi Investments Partnership ("Biggi"), the owner of Tax Lots 105, 107 and 109 on Map 1S 1 09DD in Washington County. These tax lots are in the City of Beaverton ("City"). Tax Lot 105 is more commonly referred to as 3661-3775 SW Hall Boulevard in the City ("Tax Lot 105"). Tax Lots 107 and 109 are more commonly referred to as 3720 SW Cedar Hills Boulevard in the City ("Tax Lot 107/109") (together these Tax Lots are referred to as the "Property").

On behalf of Biggi, we are submitting this letter as a claim under Measure 37 against the City ("Claim"). The City Measure 37 Claim Form has been completed and is attached as **Exhibit "A."** This letter supplements that form with additional relevant information related to the Claim. To the extent that we have not provided all the information requested by the City for filing a claim, we point out that Section 7 of Measure 37 prohibits any prerequisites for filing a compensation claim under the Measure.

Biggi Investments Partnership is an assumed business name registered to Biggi Investments Limited Partnership, an Oregon limited partnership owned by members of the Biggi family. As the Property History Report prepared by Pacific Northwest Title of Oregon and attached hereto as **Exhibit "B"** attests, the Property has been owned by Biggi or a Biggi family member or a legal entity owned by a family member since August 30, 1948. Biggi took title on March 11, 1988.

The Property is currently zoned Regional Center-Transit Oriented. Tax Lot 105 is currently improved with a multi-tenant retail and office building and the Hall Street Grill. Tax Lot 107/109 is currently improved with a restaurant and associated parking lot. Biggi has an immediate desire to redevelop Tax Lot 107/109, and to do so without having to comply with

certain City development restrictions and standards and the current Clean Water Services ("CWS") restrictions that the City is applying through its land use approval process. Alternatively, Biggi wishes to be compensated for the reduction in the fair market value of Tax Lot 107/109 as a result of the application of these restrictions to Tax Lot 107/109. Biggi wants to obtain the right under Measure 37 to redevelop Tax Lot 105 in the future without these restrictions, or to be compensated for the reduction in the fair market value of Tax Lot 105 as a result of the application of these restrictions to Tax Lot 105. These restrictions are more specifically identified on **Exhibit "C"** attached hereto. At the time of the initial acquisition of the Property by a family member (1948), and also at the time Biggi took title to the Property, none of the restrictions on Exhibit "C" applied to the Property.

The restrictive regulations reducing the fair market value of the Property are of two types, those imposed by the City directly and those imposed by the City by requiring compliance with CWS standards. The City restrictions decrease the amount of land that Biggi can develop on the Property and increase the costs of developing the land remaining for development. The CWS restrictions also decrease the amount of land available for development and increase costs through mitigation requirements. As an illustration, CWS issued a Service Provider Letter to Biggi related to a proposal for redevelopment of Tax Lot 107/109 that required a 25 foot setback from the top of bank and additional mitigation measures. *See* **Exhibit "D."**

In addition, and related to any CWS mitigation requirements, Biggi believes that the City is responsible for mitigation in Beaverton Creek under a December 16, 1992 Consent Decree, as modified by a June 24, 1995 Agreement to Modify Consent Decree. Under the Modified Decree, the City is responsible for maintaining the creek channel while meeting all applicable federal, state and local requirements. The City has not done so. The City, therefore, is responsible for any requirements imposed by CWS in the creek channel, or Biggi will look to the City for reimbursement of any expenses Biggi incurs for such work.

Furthermore, the City agreed, in conjunction with the establishment and implementation of the Murray Culvert Local Improvement District ("LID") (formed in 1982), that the Property would have no floodplain restrictions outside the floodway. The City has not met its obligations under the LID related agreement to the extent it has consented or acquiesced to CWS requirements in conflict with that prior agreement. Biggi will look to the City for reimbursement of any costs or expenses Biggi incurs due to the City's failure to live up to its responsibilities related to the LID agreement.

While the City does not directly impose the CWS regulations on the Property, it does so indirectly by requiring persons proposing development in the City to obtain a Service Provider Letter from CWS and by not approving or issuing permits for development until it

receives notification of CWS approval. These City responsibilities with regard to the application and enforcement of the CWS restrictions (arising from the City's Intergovernmental Agreement with CWS and incorporated in the City's Development Code) make the City a public entity enforcing the CWS standards, and therefore subject to a claim for compensation for such under Measure 37. Concurrent with the submission of this Claim to the City, Biggi is submitting Measure 37 claims against CWS and Washington County with regard to the CWS standards because both those entities have authority over the CWS restrictions, and at least one of those entities and/or the City must be subject to a Measure 37 claim for the restrictions. The City and CWS and Washington County might want to coordinate among themselves as to which has responsibility here. If the City and CWS regulations continue to apply to the Property more than 180 days after the date of this Claim, Biggi shall have a cause of action for compensation under Measure 37, and shall be entitled to attorneys' fees, expenses, costs, and other disbursements to collect such compensation. *See* Measure 37 Sections (4) and (6).

The imposition of the current CWS restrictions on the Property results in an estimated reduction in the fair market value of the Property of $772,125, as described more specifically in **Exhibit "E."** The imposition of the additional City restrictions on the property results in an additional estimated reduction in the fair market value of the Property of $995,000 as also described more specifically in **Exhibit "E."**

Based upon the above, Biggi hereby makes written demand on the City for just compensation in the amount of $1,767,125 representing the reduction in the fair market value of the Property as of this date due to the restrictions the City has imposed on the Property since it was acquired by the Biggi family. In the alternative, Biggi would accept a decision by the City to modify, remove, or not apply the restrictions enacted since Biggi acquired the Property.

Very truly yours,

Stark Ackerman

SA:jjs
Enclosures
H \Client\B651\Docs\Claim Letter Beaverton (3) doc

cc w/encs: Mr. Steve Biggi

Exhibit "A"

Claim Form

RECEIVED
AUG 2 2005
COMMUNITY DEVELOP DEPT.

CITY OF BEAVERTON
Community Development Department
Development Services Division
4755 SW Griffith Drive
PO Box 4755
Beaverton, OR. 97076
Tel: (503) 526-2420
Fax: (503) 526-3720
www.ci.beaverton.or.us

OFFICE USE ONLY

FILE #: _____
FILE NAME: _____

TYPE: _____ RECEIVED BY: _____
FEE PAID: _____ CHECK/CASH: _____
SUBMITTED: _____ LWI DESIG: _____
LAND USE DESIG: _____ NAC: _____

MEASURE 37 CLAIM FORM

PROPERTY OWNER(S): ☐ *Attach additional sheet if necessary* ☐ *Check box if Primary Contact*

COMPANY: Biggi Investments Partnership
ADDRESS: 3825 SW Hall Blvd.
(CITY, STATE, ZIP) Beaverton, OR 97005
PHONE: (503) 646-2030 FAX: _____ E-MAIL: _____
SIGNATURE: _____ **CONTACT:** Steve Biggi
(Original Signature Required)

SIGNATURE: _____ **SIGNATURE:** _____
(Original Signature Required) *(Original Signature Required)*

REPRESENTATIVE: ☒ *Check box if Primary Contact*

COMPANY: Black Helterline LLP
ADDRESS: 805 SW Broadway, Suite 1900
(CITY, STATE, ZIP) Portland, OR 97205
PHONE: (503) 224-5560 FAX: (503) 224-6148 E-MAIL: sa@bhlaw.com
SIGNATURE: _____ **CONTACT:** Stark Ackerman
(Original Signature Required)

PROPERTY INFORMATION (REQUIRED)

SITE ADDRESS: 3661-3775 SW Hall Blvd; 3720 SW Cedar Hills Blvd.

ASSESSOR'S MAP & TAX LOT #	LOT SIZE	ZONING DISTRICT
1S1 09DD 105	2.04 acres	RC-TO
1S1 09DD 107	.96 acres	RC-TO
1S1 09DD 109	3.07 acres	RC-TO

CONTIGUOUS SITES UNDER SAME OWNERSHIP:

ASSESSOR'S MAP & TAX LOT #	LOT SIZE	ZONING DISTRICT

PRE-APPLICATION DATE: _____

Exhibit "B"

Property History Report

PACIFIC NORTHWEST TITLE
of Oregon, Inc.

PACIFIC NORTHWEST TITLE
TRI-COUNTY
9020 SW Washington Sq Rd
Suite 220
Tigard, OR 97223
Title· (503) 671-0505 Fax· (503) 671-0515(503) 292-9753

AMENDED PROPERTY HISTORY REPORT

June 8, 2005

Order Number: 05267458-W
Premium: $1,400.00

Steve Biggi
Post Office Box 1698
Beaverton Oregon

Reference: Biggi

A Effective Date: May 2, 2005 at 5:00 p.m

B. Name of Assured:

BLACK HELTERLINE LLP

C. The land referred to in this report is situated in the County of Washington, State of Oregon, and described as follows:

See Exhibit A attached hereto and made a part hereof

D Pacific Northwest Title of Oregon, Inc., finds that a search of the public records of Washington County, Oregon discloses the following Deeds and Real Estate Contracts thereof describing the land referred to in this report recorded during the period beginning August 30, 1948 and ending on the effective date above.

The public records are those records established under State Statutes for the purpose of imparting constructive notice of matters relating to real property to purchasers of value and without knowledge

E As of the effective date above we find that the last Deed of Record runs to:

BIGGI INVESTMENTS PARTNERSHIP, an Oregon general partnership, as to Parcel I and Parcel II, and BIGGI DEVELOPMENT LIMITED PARTNERSHIP, an Oregon Limited Partnership, as to Parcel III

PACIFIC NORTHWEST TITLE
of Oregon, Inc.

PACIFIC NORTHWEST TITLE
TRI-COUNTY
9020 SW Washington Sq Rd
Suite 220
Tigard, OR 97223
Title. (503) 671-0505 Fax. (503) 671-0515(503) 292-9753

PROPERTY HISTORY DOCUMENT LIST

1 Type of Document : Indenture
Recorded : August 30, 1948
Book : 288
Page : 438
First Party : E J McAlear, the duly appointed, qualified and acting executor of the Last Will and Testament of Tillie Kuratli, deceased
Second Party : John Biggi and Gene Biggi
(Affects Tax Lots 107, 109, and 105 and other property also)

2. Document type : Warranty Deed
Dated : August 30, 1957
Recorded : September 13, 1957
Book : 397
Page : 754
Grantor : Raymond Edward Doherty, Jr , Eleanor E Richen, Lawrence Jerome Doherty, David Philip Doherty, and William Byrne Doherty
Grantee : John S. Biggi and Gino L. Biggi
(Affects Tax Lot 3100 and other property also)

3 Document type : Bargain and Sale Deed
Dated : June 30, 1964
Recorded : July 6, 1964
Book : 516
Page : 541
Grantor : Gene Biggi, also known as Gene L. Biggi
Grantee : John Biggi and Ed Clemens, Trustees, their successor trustees and assigns
(Affects Tax Lot 3100 and other property also)

4. Document type : Bargain and Sale Deed
Dated : December 29, 1971
Recorded : March 2, 1972
Book : 856
Page : 632
Grantor : Blanche Delores Biggi
Grantee : John Steve Biggi
(Affects Tax Lot 3100 and other property also)

5. Document type : Deed
Dated : November 2, 1974
Recorded : November 21, 1974
Book : 1001
Page : 565
Grantor : Rose Biggi
Grantee : John S Biggi and Gene L. Biggi, co-partners
(Affects Tax Lots 107, 109, and 105 and other property also)

PACIFIC NORTHWEST TITLE
of Oregon, Inc.

PACIFIC NORTHWEST TITLE
TRI-COUNTY
9020 SW Washington Sq Rd
Suite 220
Tigard, OR 97223
Title· (503) 671-0505 Fax. (503) 671-0515(503) 292-9753

6 Document type : Quitclaim Deed of Trustees
Dated : February 22, 1979
Recorded : March 22, 1979
Fee No : 79010966
Grantor : John S Biggi and Ed Clemens, Trustees under Trust Agreement dated June 30, 1964, between Gene Biggi, also known as Gino L Biggi
Grantee : Gene L. Biggi
(Affects Tax Lot 3100 and other property also)

7. Document type : Bargain and Sale Deed
Dated : February 22, 1979
Recorded : March 22, 1979
Fee No : 79010967
Grantor : Gene L Biggi
Grantee : John S. Biggi and Gene L Biggi, co-partners doing business as Biggi Brothers
(Affects Tax Lot 3100 and other property also)

8 Document type : Bargain and Sale Deed
Dated : February 22, 1979
Recorded : March 22, 1979
Fee No : 79010968
Grantor : John S. Biggi
Grantee : John S. Biggi and Gene L. Biggi, co-partners doing business as Biggi Brothers
(Affects Tax Lot 3100 and other property also)

9 Document type : Bargain and Sale Deed
Dated : October 30, 1980
Recorded : June 17, 1981
Fee No. : 81020909
Grantor : John S. Biggi and Gene L Biggi, dba Biggi Brothers, an Oregon co-partnership
Grantee : Biggi Investment Company, an Oregon corporation
(Affects Tax Lots 105, 107, 109, and 3100 and other property also)

10. Document type : Bargain and Sale Deed
Dated : December 27, 1985
Recorded : December 31, 1985
Fee No. : 85051821
Grantor : Biggi Investment Company, an Oregon corporation
Grantee : Biggi Family Partnership, an Oregon general partnership consisting of John S Biggi, John S Biggi, Jr , Michael L. Biggi, Vincent L. Biggi, Gina M. Biggi, Gene L. Biggi, Dean L. Biggi, Linda Biggi as Custodian for Anthony S Biggi, Dana M Biggi and Domonic G Biggi, Partners with varying ownership interest in the partnership as set forth in that certain Partnership Agreement dated December 27, 1985
(Affects Tax Lots 105, 107, 109, and 3100 and other property also)

PACIFIC NORTHWEST TITLE
of Oregon, Inc.

PACIFIC NORTHWEST TITLE
TRI-COUNTY
9020 SW Washington Sq Rd
Suite 220
Tigard, OR 97223
Title (503) 671-0505 Fax. (503) 671-0515(503) 292-9753

11 Document type : Warranty Deed
Dated : March 11, 1988
Recorded : March 24, 1988
Fee No : 88-11780
Grantor : Biggi Family partnership, an Oregon general partnership
Grantee : Biggi Investments partnership, an Oregon general partnership
(Affects Tax Lot 105 and other property also)

12 Document type : Warranty Deed
Dated : February 1, 1988
Recorded : March 24, 1988
Fee No. : 88-11892
Grantor : Biggi Family Partnership, an Oregon general partnership
Grantee : Biggi Development Partnership, an Oregon general partnership
(Affects Tax Lot 3100)

13 Document type : Bargain and Sale Deed
Dated : February 1, 1988
Recorded : March 31, 1988
Fee No. : 88-12997
Grantor : Biggi Development Partnership, an Oregon general partnership
Grantee : Biggi Development Partnership, an Oregon general partnership
(Affects Tax Lot 3100)

14 Document type : Warranty Deed
Dated : October 8, 1996
Recorded : October 16, 1996
Fee No : 96092939
Grantor : Biggi Development Partnership
Grantee : Biggi Development Limited Partnership
(Affects Tax Lot 3100)

NOTE: Taxes paid in full for 2004-2005:
Levied Amount : $29,938.11
Account No. : 1S19DD-00105
Levy Code : 051.58
Key No. : R57217
(Affects Parcel I)

NOTE: Taxes paid in full for 2004-2005:
Levied Amount : $2,197.16
Account No : 1S19DD-00107
Levy Code : 051 58
Key No : R57235
(Affects a portion of Parcel II)

PACIFIC NORTHWEST TITLE
of Oregon, Inc.

PACIFIC NORTHWEST TITLE
TRI-COUNTY
9020 SW Washington Sq Rd
Suite 220
Tigard, OR 97223
Title· (503) 671-0505 Fax (503) 671-0515(503) 292-9753

NOTE: Taxes paid in full for 2004-2005:

Levied Amount	:	$29,243.09
Account No	:	1S19DD-00109
Levy Code	:	051 58
Key No	:	R1165517

(Affects the remainder of Parcel II)

NOTE: Taxes paid in full for 2004-2005:

Levied Amount	:	$86,178 10
Account No	:	1S19DD-03100
Levy Code	:	051.58
Key No	:	R65146

(Affects Parcel III)

PROPERTY HISTORY REPORT, CONTINUED

THIS IS NOT A TITLE REPORT, since no examination has been made of the title to the above described property Our search for apparent encumbrances was limited to our Tract Indices, and therefor, above listings do not include additional matters which might have been disclosed by an *examination of the record title. We assume no liability in connection with this Report and will not be* responsible for errors or omissions therein. The charge for this service will not include supplemental reports, rechecks or other services

PACIFIC NORTHWEST TITLE OF OREGON, INC

By_____
Elliott Potts
Title Officer

EDP:mlj

25

Exhibit A

PARCEL I:

A tract of land in Lots 17 and 18, STEEL'S ADDITION TO BEAVERTON, in Section 9, Township 1 South, Range 1 West, Willamette Meridian, in the City of Beaverton, County of Washington and State of Oregon, described as follows:

COMMENCING at the Southwest corner of that certain 10 acre tract described in Deed to Rose Biggi as recorded at Page 79 of Deed Book 176, being a point in the center of County Road No 397 on the Northerly right of way line of the Oregon Electric Railroad; thence South 60°38'45" East 34 06 feet on said Northerly line to the East right of way line of County Road No 1013; thence North 01°06'28" East on said county road right of way line 445 0 feet; thence leaving said county road North 86°43'54" East 196 93 feet; thence North 03°16'06" West 328.95 feet to the South line of a tract under assignment of lease as recorded under Fee No 8872, Book 882, Page 526, Washington County Film Records; thence on said South line South 76°12'39" East 53 02 feet to the Southeast corner of said leased tract; thence South 72°37'02" East 209.83 feet to the true point of beginning; thence North 17°33'20" East 176.34 feet; thence South 72°26'40" East 60 00 feet; thence North 17°33'20" East 116 00 feet to the intersection with the South line of Center Street as widened by dedication as recorded at Pages 162 and 156 of Book 949 said Film Records; thence along said street South 72°26'40" East 83 32 feet to a point of tangency with a 570.0 foot radius curve to the right; thence continuing along said dedication on said curve to the right an arc length of 237 05 feet (the chord bears South 60°31'50" East 235 35 feet); thence South 37°32'55" West 302 86 feet; thence North 50°27'29" West 110 47 feet; thence North 72°37' West 167 62 feet to the true point of beginning

PARCEL II:

A tract of land in Lots 14, 15, 16, 17, 18, and 20, STEEL'S ADDITION TO BEAVERTON, in Section 9, Township 1 South, Range 1 West, Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

COMMENCING at the Southwest corner of that certain 10 acre tract described in Deed to Rose Biggi as recorded at Page 79 of Deed Book 176, being a point in the center of County Road No. 397, on the Northerly right of way line of the Oregon Electric Railroad; thence South 60°38'45" East 34.06 feet on said Northerly line to the East right of way line of County Road No 1013; thence North 01°06'28" East on said county road right of way line 445 0 feet to an iron rebar at the true point of beginning; thence continuing North 01°06'28" East 12 03 feet; thence on a 1,879.86 foot radius curve to the right, 363.89 feet along the arc (the long chord bears North 06°39'12" East 363.32 feet) to the Southwest corner of a tract under assignment of lease as recorded under Fee No 8872, Book 882, Page 526, Washington County Deed Records; thence on the South line of said leased tract; South 76°12'39" East 192 57 feet; thence South 72°37'00" East 377 45 feet to an angle point in the Southwesterly line of that tract of land leased to Thomas Usher and Walter Mescrole as described in Deed Book 1178, Page 596, as recorded June 29, 1977; thence South 50°27'29" East 265 28 feet; thence South 86°43'54" West 29 44 feet to an iron rebar; thence continuing South 86°43'54" West 765.99 feet to the true point of beginning

SUBJECT TO a 10 foot slope easement along County Road No. 1013 (Cedar Hills Boulevard).

PARCEL III.

A parcel of land in Lots 18, 19, 30 and 84 and part of vacated Meander Street in STEEL'S ADDITION, a duly recorded plat in Sections 9 and 10, Township 1 South, Range 1 West, Willamette Meridian, in the City of Beaverton, County of Washington and State of Oregon, described as follows:

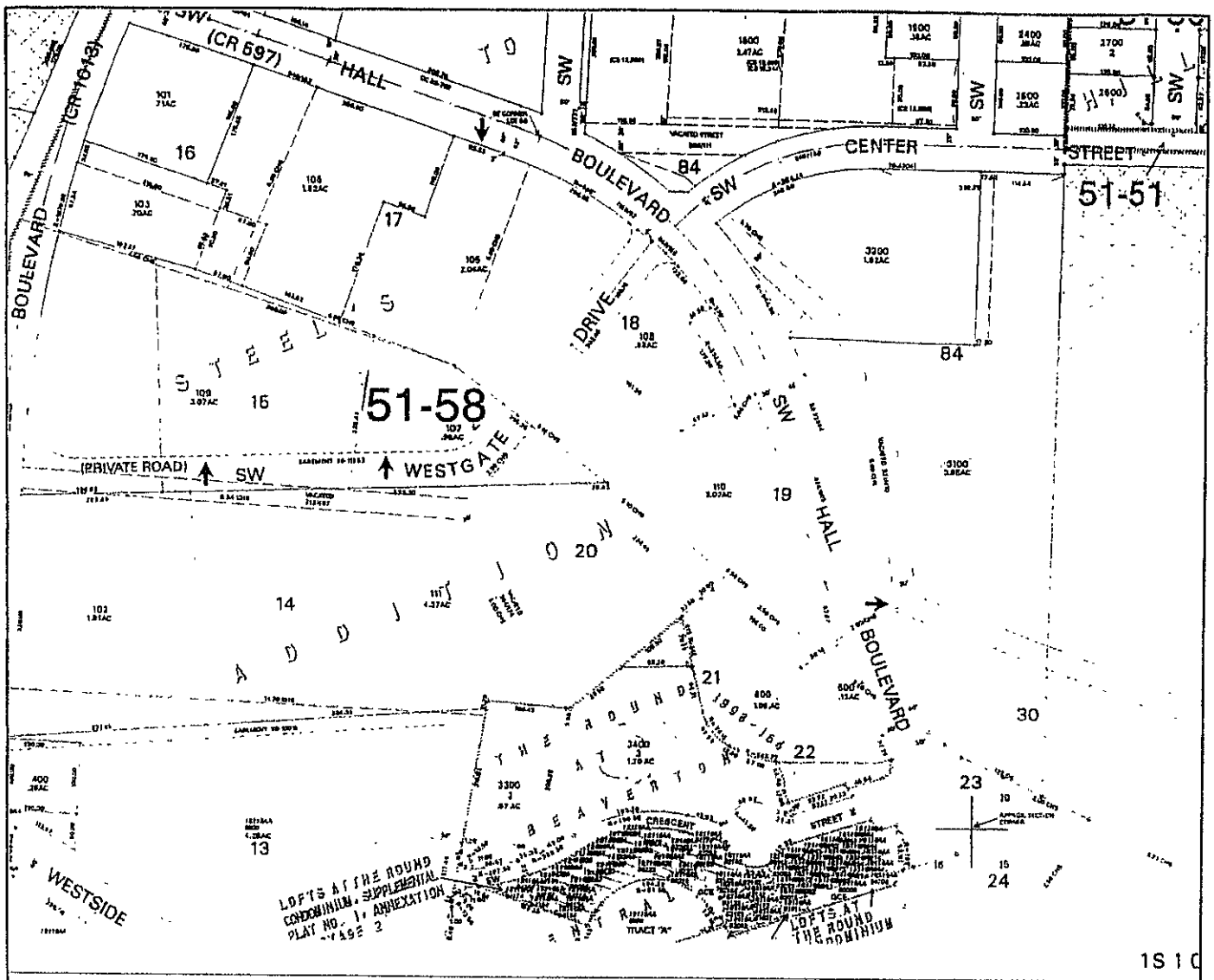
BEGINNING at a point on the East line of said Lot 84 which bears South 00°04'23" East 20.00 feet from the Northeast corner thereof; thence South 00°04'23" East on said East line 728 75 feet to the corner of Lots 82 and 84 on the North line of Lot 30 of said plat, thence South 00°04'23" East 205 96 feet to the South line of said Lot 30; thence North 66°18'53" West on last said South line of Lot 30, a distance of

125 06 feet to the East line of Parcel I as described in Deed Book 974, Page 3; thence North 22°33'10" West on said East line 599.68 feet to a tangent curve whose radius point bears South 67°26'50" West 630 00 feet; thence on the arc of said curve to the left 227.12 feet (chord bears North 32°52'50" West 225 89 feet); thence North 03°09'10" East 30 10 feet to a point of curve; thence on last said curve to the right an arc distance of 244 82 feet (chord bears North 69°51'57" East 240 19 feet) (radius 362 24 feet) to point of tangency; thence North 89°13'40" East 151 93 feet; thence North 00°46'20" West 5.00 feet to the South right of way line of County Road No 597; thence North 89°13'40" East on the road line 86 98 to the point of beginning

EXCEPTING THEREFROM the following described parcel:

COMMENCING at the Northeast corner of said Lot 84, from which a ½ inch iron pipe bears South 00°46'20" East 1 43 feet; thence along the North line of said Lot 84, West, a distance of 114.44 feet; thence South 00°04'23" East, parallel with the East line of said Lot 84, a distance of 25 00 feet to the South line of S W Center Street as re-aligned by dedication deed recorded in Book 949, on Page 158 of the Washington County Deed Records to the true point of beginning; thence continuing South 00°04'23" East 238 00 feet; thence at right angles to said East line South 89°55'37" West 261.15 feet to a point on the East right of way line of S W Hall Boulevard, as dedicated in Deed recorded in Book 974, Page 3; thence along said dedication deeds on a non tangent 630 00 foot radius curve to the left, 153 97 feet along the arc (the long chord bears North 36°12'24" West 153.59 feet and the delta angle equals 14°00'12"); thence North 03°09'10" East 30.10 feet; thence on a 362 24 foot radius curve to the right 244.82 feet along the arc (the delta angle equals 38°43'25" and the long chord bears North 69°51'57" East 240 19 feet); thence North 89°13'40" East 124.41 feet to the true point of beginning

ALSO EXCEPTING THEREFROM those portions lying within the roads, streets and highways



THIS MAP IS FURNISHED AS A CONVENIENCE BY PACIFIC NORTHWEST TITLE

This map is not a survey and does not show the location of any improvements
The company assumes no liability for errors therein

MAP # 1S109DD 00109

Exhibit "C"

Restrictions Reducing the Fair Market Value of the Property

<u>City Restrictions Directly Applied to the Property and Imposed on the Property Since March 11, 1988:</u>

1. Regional Center-Transit Oriented Zone.
    a. Including but not limited to parking restrictions, setback requirements, building orientation requirements, use limitations, and sidewalk requirements (requiring a 10 foot width instead of a 5 foot width).
2. Floodway and floodplain regulations above those required by federal law.

<u>Clean Water Services Restrictions Applied to the Property Since March 11, 1988:</u>

1. All CWS stormwater and other requirements, including but not limited to CWS Design and Construction Standards.

Exhibit "D"

Service Provider Letter

Clean Water Services
Our commitment is clear.

File Number

Clean Water Services
Service Provider Letter

Jurisdiction	Beaverton	Date	10/19/04
Map & Tax Lot	1S109DD 0109, 0107	Owner	Steve Biggi
Site Address	SW Cedar Hills Blvd	Contact	Schott and Associates
		Address	11977 S. Tolliver Rd
			Molalla, OR 97038
Proposed Activity	Office and retail and parking	Phone	503-829-6318

This form and the attached conditions will serve as your Service Provider Letter in accordance with Clean Water Services Design and Construction Standards (R&O 04-9).

	YES	NO		YES	NO
Natural Resources Assessment (NRA) Submitted	☒	☐	Alternatives Analysis Required (Section 3.02.6)	☐	☒
District Site Visit Date:	☒	☐	Tier 1 Alternatives Analysis	☐	☒
Concur with NRA/or submitted information	☒	☐	Tier 2 Alternatives Analysis	☐	☒
Sensitive Area Present On-Site	☒	☐	Tier 3 Alternatives Analysis	☐	☒
Sensitive Area Present Off-Site	☒	☐	Vegetated Corridor Averaging	☒	☐
Vegetated Corridor Present On-Site	☒	☐	Vegetated Corridor Mitigation Required	☐	☒
Width of Vegetated Corridor (feet)	**25 feet from 2-year/24-hr storm**		On-Site Mitigation	☐	☒
Condition of Vegetated Corridor	Degraded		Off-Site Mitigation	☐	☒
Enhancement Required	☒	☐	Planting Plan Attached	☐	☒
Encroachment into Vegetated Corridor (Section 3.02.4)	☒	☐	Enhancement/restoration completion date	TBD	
Type and Square Footage of Encroachment	**Variable**		Geotechnical Report required	☐	☒
Allowed Use (Section 3.02.4)	☐	☒	Conditions Attached	☒	☐

This Service Provider Letter does NOT eliminate the need to evaluate and protect water quality sensitive areas if they are subsequently discovered on your property.

File Number

In order to comply with Clean Water Services (the District) water quality protection requirements the project must comply with the following conditions:

1. No structures, development, construction activities, gardens, lawns, application of chemicals, uncontained areas of hazardous materials as defined by Oregon Department of Environmental Quality, pet wastes, dumping of materials of any kind, or other activities shall be permitted within the sensitive area which may negatively impact water quality, except those allowed by Section 3.02.3

2. No structures, development, construction activities, gardens, lawns, application of chemicals, uncontained areas of hazardous materials as defined by Oregon Department of Environmental Quality, pet wastes, dumping of materials of any kind, or other activities shall be permitted within the vegetated corridor which may negatively impact water quality, except those allowed by Section 3.02.4. **No encroachment permitted by parking lot. Vegetated corridor averaging allowed by office and retail building.**

3 Prior to any site clearing, grading or construction the vegetated corridor and water quality sensitive areas shall be surveyed, staked, and temporarily fenced per approved plan. During construction the vegetated corridor shall remain fenced and undisturbed except as allowed by Section 3.02.5 and per approved plans.

4. Prior to any activity within the sensitive area, the applicant shall gain authorization for the project from the Oregon Division of State Lands (DSL) and US Army Corps of Engineers (USACE) The applicant shall provide the District with copies of all DSL and USACE project authorization permits.

5. An approved Oregon Department of Forestry Notification is required for one or more trees harvested for sale, trade, or barter, on any non-federal lands within the State of Oregon.

6. Appropriate Best Management Practices (BMP's) for Erosion Control, in accordance with the CWS Erosion Control Technical Guidance Manual shall be used prior to, during, and following earth disturbing activities.

7. Prior to construction, a Stormwater Connection Permit from the District or its designee is required pursuant to Ordinance 27, Section 4.B.

8. The District or City/County may require an easement over the vegetated corridor conveying storm, surface water management, and/or sanitary sewer rights to the District or City that would prevent the owner of the vegetated corridor from activities and uses inconsistent with the purpose of the corridor and any easements therein.

9. Activities located within the 100-year floodplain shall comply with Section 3.13 of R&O 04-9.

10. Removal of native, woody vegetation shall be limited to the greatest extent practicable.

11. Removal of invasive non-native species by hand is required in all vegetated corridors rated "good" Replanting is required in any cleared areas larger than 25 square feet.

12. Should final development plans differ significantly from those submitted for review by the District, the applicant shall provide updated drawings, and if necessary, obtain a revised Service Provider Letter.

SPECIAL CONDITIONS

13. Maximum encroachment allowed for averaging on site is 20% of frontage length of the Vegetated Corridor by no more than 20 of the required width. The area of encroachment must be replaced at a 1:1 ratio. The replacement area must be incorporated into the remaining Vegetated Corridor on the project site and meet the "Good Corridor Condition" standards as defined in Table 3 2

14. The vegetated corridor width for sensitive areas within the project site shall be a minimum of 25 feet wide, as measured horizontally from the delineated boundary of the sensitive area.

15. The delineated boundary of the sensitive area is the 2 year 24 hour storm line.

16. For vegetated corridors less than 50 feet wide, the entire vegetated corridor shall be equal to or better than a "good" corridor condition as defined in Section 3.02.7, Table 3.2.

17. Clean Water Services shall be notified 72 hours prior to the start and completion of enhancement/restoration activities. Enhancement/restoration activities shall comply with the guidelines provided in Landscape Requirements (R&0 04-9: Appendix D).

18. Prior to installation of plant materials, all invasive vegetation within the vegetated corridor shall be removed. During removal of invasive vegetation care shall be taken to minimize impacts to existing native trees and shrub species.

19. Enhancement/restoration of the vegetated corridor shall be provided in accordance with the attached planting plan and R&O 04-9, Appendix D.

20. Prior to any site clearing, grading or construction, the applicant shall provide the District with the required vegetated corridor enhancement/restoration plan in compliance with R&O 04-9.

21. Maintenance and monitoring requirements shall comply with Section 2.11.2 of R&O 04-9. If at any time during the warranty period the landscaping falls below the 80% survival level, the Owner shall reinstall all deficient planting at the next appropriate planting opportunity and the two year maintenance period shall begin again from the date of replanting.

22. Performance assurances for the vegetated corridor shall comply with Section 2.06.2, Table 2-1 and Section 2.10, Table 2-2.

23. For any developments, which create multiple parcels or lots intended for separate ownership, the District shall require that the vegetated corridor and the sensitive area be contained in a separate tract. The tract plat shall include language protecting the vegetated corridor and sensitive areas.

24. The water quality swale and detention pond shall be planted with District approved native species, and designed to blend into the natural surroundings.

CONDITIONS TO BE INCLUDED ON CONSTRUCTION PLANS

25. **Final construction plans shall include landscape plans.** Plans shall include in the details a description of the methods for removal and control of exotic species, location, distribution, condition and size of plantings, existing plants and trees to be preserved, and installation methods for plant materials. Plantings shall be tagged for dormant season identification. Tags to remain on plant material after planting for monitoring purposes.

26 **A Maintenance Plan shall be included on final plans** including methods, responsible party contact information, and dates (minimum two times per year, by June 1 and September 30).

27. **Final construction plans shall clearly depict the location and dimensions of the sensitive area and the vegetated corridor (indicating good, marginal, or degraded condition)**. Sensitive area boundaries shall be marked in the field.

28. Protection of the vegetated corridors and associated sensitive areas shall be provided by the installation of permanent fencing and signage between the development and the outer limits of the vegetated corridors. **Fencing details to be included on final construction plans**.

Please call (503) 681-5157 with any questions.

Astrid Dragoy
Environmental Plan Review

Attachments (1)

Exhibit "E"

Reduction in Fair Market Value

A. Reduction Due to City Restrictions

1. Reduction for Regional Center-Transit Oriented Zone.
   (Minimum estimates for the Property)
   a. Building orientation requirements: $400,000 - $600,000
   b. Use limitations: $500,000
   c. Sidewalk requirements: $95,000

   Minimum total estimate: $995,000
2. Reduction for floodway and floodplain regulations above those required by federal law.
   a. See below: Reduction Due to Clean Water Services Restrictions

B. Reduction Due to Clean Water Services Restrictions

1. Reduction for 25 foot setback from Beaverton Creek
   a. Tax Lot 105
      (1) Beaverton Creek Frontage = 278 feet (approximately)
      (2) Total Setback Area = 278 x 25 = 6,950 square feet
      (3) Property Value = $25 per square foot
         (a) Based upon the Appraised Value in a recent Washington County Real Property Auction listing for nearby surplus property (See attached)
      (4) Reduction in Value
         (a) 6,950 x $25 = $173,750[1]
   b. Tax Lots 107/109
      (1) Beaverton Creek Frontage = 735 feet (approximately)
      (2) Total Setback Area = 735 x 25 = 18,375 square feet
      (3) Property Value = $25 per square foot
         (a) Based upon the Appraised Value in a recent Washington County Real Property Auction listing for nearby surplus property (See attached)
      (4) Reduction in Value for loss of use of land
         (a) 18,375 x $25 = $459,375
      (5) Estimated Mitigation Costs as Required by Service Provider Letter for Mitigation: $139,000

[1] Using the County Tax Assessor's Value of the Land Portion of Tax Lot 105 ($12.43/square foot) would give a reduction in value of $86,388 (6,950 x $12.43).

(a) Removal of existing gravel, importation of soil, planting and irrigating buffer = $75,000

(b) Replanting creek channel = $46,000

(c) 5 year monitoring, irrigation and survival = $18,000

(6) Total Reduction in Value

(a) $459,375 + $139,000 = $598,375[2]

c. Total Reduction for Tax Lots 105, 107 and 109

(1) $173,750 + $598,375 = $772,125

C. Total Reduction for Claim

Total: $995,000 + $772,125 = $1,767,125

[2] Using the County Tax Assessor's Value of the Land Portion of Tax Lots 107 and 109 (which equals $10.38 /square foot on a blended basis) would give a reduction in value of $190,732 (18,375 x $10.38) for the land alone and a total reduction of $329,732 including the additional required mitigation costs.

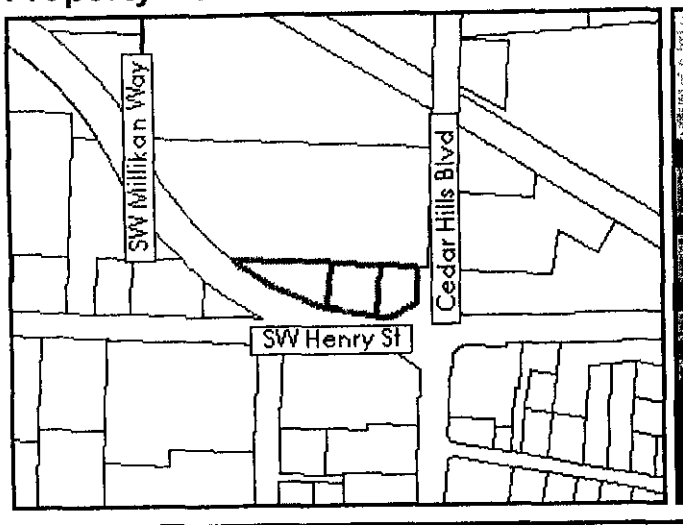
Washington County, Oregon

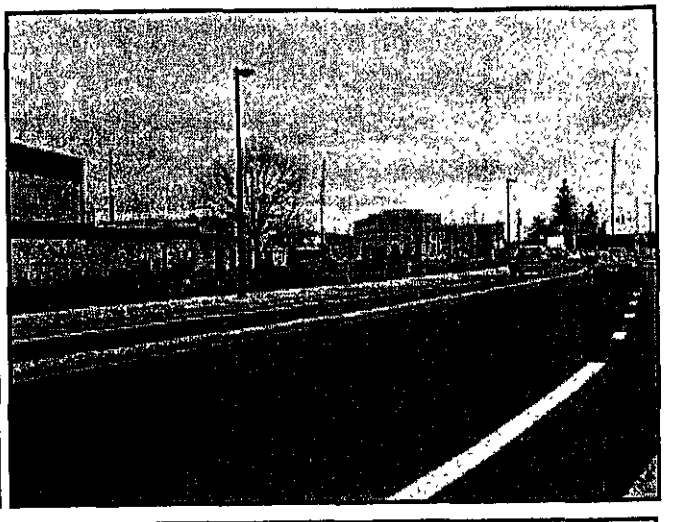
Real Property Auction -- April 28, 2004

last modified: 05/14/2004 11:46:12

Support Services Department
Facilities Management Division

Property Number 4 --





PARCEL NUMBER	MAP/TAX LOT	GENERAL LOCATION	APPRAISED VALUE	MINIMUM BID
4	1S116AB-00500 1S116AB-00501 1S116AB-00600	**Approximately .66 acre** • Vacant land located at the intersection of SW Henry, SW Millikan, and SW Cedar Hills Blvd. • Access from Millikan Way only; subject to access restriction in deed • Zoned RC-TO • Bargain & Sale Deed	$718,740	$575,000

Return to Real Property Auction

Washington County
Facilities Management Division
Support Services Department
169 N. First Avenue
Hillsboro, OR 97124

phone: 503-846-3491
FAX: 503-846-4851
E-Mail to: webmaster@co.washington.or.us

Home

Property Auction Map

Subject Index

Top of Page.

Comp- Appraisal

37

EXHIBIT 2

CITY of BEAVERTON

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

August 19, 2005

Stark Ackerman
Black Helterline, LLP
805 SW Broadway
Portland OR 97205-3359

RE: Biggi Measure 37 Claim

Mr. Ackerman:

As you have noted in your letter of August 2, 2005, you state that you are claiming compensation on the behalf of your client, Biggi Investment Partnership, pursuant to Ballot Measure 37. You also state in your letter that your client will not process their claim in accordance with Beaverton Municipal Code Section 2.07.001 through 080. This is unfortunate because this information is essential for the City to determine how it should handle this claim. As it stands now, your application is incomplete. We hope that you will reconsider and submit the following necessary information.

Pursuant to Section 2.07.015, the following information must be submitted to find that the application for a compensation claim is complete:

1. A specific and detailed reference to each and every regulation that the claimant asserts will restrict the use of property and has the effect of reducing the value of the Property. The reference shall identify by number or section the law, rule, ordinance, resolution, goal or other enforceable enactment, or a copy of the regulation for which claim is submitted.

2. Evidence that the City has enforced on the subject property a regulation for which the claim has been filed.

3. A written description addressing the approval criteria, including the impact of the specific City regulation on the subject property and the reason(s) why under Measure 37 such regulation restricts the use of the property and impacts the value of the property. The claimant shall describe the land use that was applied for and the results of that application.

4. A title report and proof of ownership issued within 30 days of the date of the application as provided for in the City Code. The report must include the names of all persons or entities with legal, equitable, and secure interest in the property and the dates the ownership were established. I appreciate that you attached a "Property History Report" but it specifically states in capital letters "THIS IS NOT A TITLE REPORT." If the City is to properly measure the validity of your claim and measure any lost value, a title report is necessary.

5. A complete list of all interests of encumbrances, including without limitation leases and encroachments, of which the claimant is aware or has reason to think may exist. As the title companies warning mentioned in paragraph 4 states, it was not a thorough list of the encumbrances. As you know, encumbrances can significant effect value.

6. The names and addresses of all property owners on the most recent property tax assessment roll for the subject site and within 500 feet of the subject property.

7. An itemization of any prior payments made to the Property Owner relating to a claim on the property, including any contiguous parcels under substantially the same ownership, if any.

8. An appraisal of the subject property prepared by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board showing the reduction in the fair market value of the property as that reduction is defined under Measure 37 as described in the City Code.

9. Copies of all appraisals, market studies, economic feasibility studies, development schemes, environmental assessments or similar studies related to the property prepared within the 2-year period prior to submittal of the claim.

10. A statement, including analysis, as to why the regulations are not exempt from application for compensation under Measure 37.

11. A copy of all enforcement actions taken by any governmental body as regards the Property;

12. An application deposit of $1,000 as established by resolution by the Beaverton City Council.

Please submit this information by September 9, 2005. If I do not hear back from you by that time it may result in the scheduling a public hearing before the Beaverton City Council for the purposes of reviewing your claim based only on the very limited information you have provided. The Council may deny the claim because you did not submit a complete application. The lack of this crucial information will make it very difficult for the Council to determine the appropriate response to this claim. Your assistance in helping the City Council make this very important decision by providing the above information would be greatly appreciated.

Sincerely

Steven A. Sparks, for

Joe Grillo, AICP
Community Development Director

c Alan Rappleyea, AICP
Steven A. Sparks, AICP

EXHIBIT 3

CITY of BEAVERTON

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

August 24, 2005

Stark Ackerman
Black Helterline, LLP
805 SW Broadway
Portland, OR 97205-3359

RE: BIGGI MEASURE 37 CLAIM

Dear Mr. Ackerman:

As you have noted in your letter of August 2, 2005, you state that you are claiming compensation on behalf of your client, Biggi Investment Partnership, pursuant to Ballot Measure 37. You also state in your letter that your client will not process their claim in accordance with Beaverton Municipal Code Section 2.07.001 through 080, which is unfortunate because this information is essential for the City to determine how it should handle this claim. As it stands now, your application is incomplete. We hope you will reconsider and submit the following necessary information.

Pursuant to Section 2.07.015, the following information must be submitted to find that the application for a compensation claim is complete:

1. A specific and detailed reference to each and every regulation that the claimant asserts will restrict the use of property and has the effect of reducing the value of the property. The reference shall identify by number or section the law, rule, ordinance, resolution, goal, or other enforceable enactment, or a copy of the regulation for which the claim is submitted.

2. Evidence that the City has enforced on the subject property a regulation for which the claim has been filed.

3. A written description addressing the approval criteria, including the impact of the specific City regulation on the subject property and the reason(s) why under Measure 37 such regulation restricts the use of the property and impacts the value of the property. The claimant shall describe the land use that was applied for and the results of that application.

4. A title report and proof of ownership issued within 30 days of the date of the application as provided for in the City Code. The report must include the names of all persons or entities with legal, equitable, and secure interest in the property and the dates the ownership were established. I appreciate that you attached a "Property History Report", but it specifically states in capital letters "THIS IS NOT A TITLE REPORT." If the City is to properly measure the validity of your claim and measure any lost value, a title report is necessary.

5. A complete list of all interests of encumbrances, including without limitation leases and encroachments, of which the claimant is aware or has reason to think may exist. As the title company's warning mentioned in paragraph 4 states, it was not a thorough list of the encumbrances. As you know, encumbrances can significantly affect value.

6. The names and addresses of all property owners on the most recent property tax assessment roll for the subject site and within 500 feet of the subject property.

7. An itemization of any prior payments made to the property owner relating to a claim on the property, including any contiguous parcels under substantially the same ownership, if any.

8. An appraisal of the subject property prepared by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board, showing the reduction in the fair market value of the property as that reduction is defined under Measure 37 as described in the City Code.

9. Copies of all appraisals, market studies, economic feasibility studies, development schemes, environmental assessments, or similar studies related to the property prepared within the two-year period prior to submittal of the claim.

10. A statement, including analysis, as to why the regulations are not exempt from application for compensation under Measure 37.

11. A copy of all enforcement actions taken by any governmental body as regards the property.

12. An application deposit of $1,000 as established by resolution by the Beaverton City Council.

Please submit this information by September 22, 2005. If I do not hear back from you by that time, it may result in the scheduling of a public hearing before the Beaverton City Council for the purposes of reviewing your claim based only on the very limited information you have provided. The Council may deny the claim because you did not submit a complete application. The lack of this crucial information will make it very difficult for the Council to determine the appropriate response to this claim. Your assistance in helping the City Council make this very important decision by providing the above information would be greatly appreciated.

Sincerely,

Joseph M. Grillo, AICP
Community Development Director

JMG/SS/pal

c: Alan Rappleyea, AICP, City Attorney
Steven Sparks, AICP, Principal Planner

G:/patricia/JoeCorr/Biggi 37 Ltr – Incomplete.doc

EXHIBIT 4

SENT VIA FACSIMILE AND FIRST CLASS MAIL

June 23, 2006

Stark Ackerman
Black Helterline LLP
1900 Fox Tower
805 SW Broadway
Portland, OR 97205-3359

Re: *Biggi Measure 37 Claim*

Dear Mr. Ackerman:

This letter responds to the Measure 37 claim dated August 2, 2005 that you submitted to Clean Water Services ("District") on behalf of Biggi Investments Partnership. The Measure 37 claim is based on the "Design and Construction Standards that Clean Water Services is currently applying to the Property or any other stormwater related restrictions."

For the reasons discussed in more detail below, the claim is rejected for several reasons. First, Measure 37 applies only to "public entities" as defined by the measure; the District is not included within the definition of a "public entity." Second, the District's regulations themselves are not included within the types of regulations giving rise to claims under Measure 37. The regulations covered by Measure 37 are (1) "land use regulations" (as defined by Measure 37); (2) that "restrict the use" of property; and (3) have the effect of reducing the fair market value of the property. Even if a regulation meets those three conditions, the regulation still may not be covered by Measure 37 if it falls within one of five exemptions, including regulations that (1) prohibit certain types of public nuisances; (2) restrict or prohibit activities "for the protections of public health and safety, such as . . . pollution control regulations"; and (3) "to the extent . . . required to comply with federal law." The District's regulations do not meet Measure 37's requirements, and moreover, fall within Measure 37's exemptions.

THE DISTRICT IS NOT A "PUBLIC ENTITY" FOR PURPOSES OF MEASURE 37.

Subsection 1 of Measure 37 does not entitle a property owner to compensation unless a "public entity" enacts or enforces certain regulations. Subsection 11(D) of Measure 37 defines "public entity" as "the state, a metropolitan service district, a city, or a county." As discussed below, the District is not a "public entity" as that term is defined by Measure 37.

The District is not a city, county, metropolitan service district or the state. Instead, it is a county service district created under ORS chapter 451. County services districts, like other

2550 SW Hillsboro Highway • Hillsboro, Oregon 97123
Phone: (503) 681-3600 • Fax: (503) 681-3603 • www.CleanWaterServices.org

special districts, are not included within the definition of "public entity." Therefore, even if the District enacts or enforces a regulation that otherwise would be covered by Measure 37, a property owner would not be entitled to any compensation from the District under Measure 37. A property owner likewise would not be entitled to (and the District would have no authority to grant) a waiver of a regulation under Measure 37.

In your August 2, 2005 letter, you assert that the District is a "public entity" under Measure 37 for two reasons. First, you argue that Measure 37's definition of public entity is not intended to be all inclusive, but instead, examples of public entities. However, nothing supports that broader reading of the definition itself, and the ballot title demonstrates that the measure is limited to the listed public entities. The ballot title stated, in part: "Measure enacts statutes requiring that when state, city, county, metropolitan service district enacts or enforces land use regulation . . ., government must pay owner reduction in fair market value . . . or forgo enforcement." The explanatory statement for Measure 37 similarly refers <u>only</u> to the state, county, city and metropolitan service district. Nowhere is there any suggestion that a "public entity" includes all public entities instead of just the four specifically identified types of public entities.

Second, you assert that the District "would be found to be a County entity" for purposes of Measure 37. Again, nothing in the measure or elsewhere supports that assertion. The District is a separate legal entity. It has separate powers, separate governing-statutes, a separate budget, separate meetings, separate employees, separate counsel, etc. In short, the District is not the County.

THE DISTRICT'S REGULATIONS ARE NOT COVERED BY MEASURE 37.

Even if the District were a "public entity" under Measure 37, its regulations still would not be covered. Regulations giving rise to a claim under Measure 37 must meet all four of the following criteria. First, the regulation must be a "land use regulation" as defined by the measure. Second, the regulation must "restrict the use" of real property. Third, the regulation must have "the effect of reducing the fair market value of the property." And fourth, the regulation must fall outside of the exemptions contained in the measure.

The District's regulations are not covered by Measure 37 for at least two reasons. First, the regulations do not meet Measure 37's definition of "land use regulation." Second, the District's regulations fall within at least one of the types of exempt regulations, and many of the regulations fall within other exemptions. In addition, many of the regulations would not constitute "restrictions on use of property" and would not have the effect of reducing the fair market value of property.

The District's regulations are not "land use regulations" under the measure.

As noted previously, Measure 37 applies only to certain "land use regulations." Subsection (11)(B) of the measure defines land use regulation to include:

"(i) Any statute regulating the use of land or any interest therein;

"(ii) Administrative rules and goals of the Land Conservation and Development Commission;

"(iii) Local government comprehensive plans, zoning ordinances, land division ordinances and transportation ordinances;

"(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

"(v) Statutes and administrative rules regulating farming and forest practices."

The first two categories, and the fifth category, of regulations are ones that are adopted by the State. The fourth category are regulations adopted by Metro. Only the third category covers regulations adopted by local (as opposed to state or regional) governments.

With respect to regulations adopted by local governments (i.e., not state or regional (Metro) governments), Measure 37 defines "land use regulation" as "comprehensive plans," "zoning ordinances," "land division ordinances," and "transportation ordinances." "Comprehensive plan" is not defined by Measure 37, but is defined by ORS 197.015, in part as "a generalized, coordinated land use map and policy statement of the governing body of a *local government* that interrelates all functional and natural systems and activities relating to the use of lands"; "local government" is defined (again by ORS 197.015) as a city, county or metropolitan service district. The District's regulations do not meet the definition of a "comprehensive plan." Nor do the District's regulations meet definitions of "zoning," "land division" or "transportation" ordinances.

In your August 2nd letter, you assert that Measure 37's definition is (like the definition of "public entity") not intended to be controlling, but instead, a list of some of the types of regulations covered. Again, however, the assertion is not supported by the text of the measure, its history, or the court's rules on statutory construction. Moreover, your interpretation of the word "statute" would render superfluous the rest of Measure 37's definition of "land use regulation" – a result that the courts reject.

Even if the District's regulations are "land use regulations" under Measure 37, the regulations are exempt.

Subsection 3 of Measure 37 contains five categories of exempt "land use regulations." Thus, even if a regulation meets the measure's definition of land use regulation, and that regulation restricts the use of property and has the effect of reducing the value of property, a property owner will not have a claim under Measure 37 if it falls within one of the types of exemptions. Three of the exemptions cover the District's regulations: (1) public health and safety regulations, (2) regulations restricting or prohibiting activities commonly and historically recognized as public nuisances under common law, and (3) regulations required to comply with federal law.

The general purpose of the District's regulations is to establish requirements for the sanitary sewerage system and for the storm and surface water system. The regulations are intended to:

> "accomplish the objectives of **protecting the health and safety of the public, preventing pollution** of the waters of the Tualatin River basin, and furthering the objectives and purposes of the Federal Water Pollution Control Act, 33 USC Sec 1251-1387." A-Engrossed Ordinance No. 27, Section 1.C (emphasis added).

The District attempts to achieve those objectives through regulating:

> "1) the discharge of water, wastewater, and pollutants to public sanitary sewerage facilities and to USA treatment facilities; 2) the timing, quantity and quality of such discharges; 3) the construction, operation, and maintenance of public and private sewerage and stormwater facilities within the Agency or otherwise within the Agency's jurisdiction; [and] 4) . . . activities affecting discharges of stormwater and nonpoint sources of pollution, and which affect the timing, quantity and quality of all pollutant, storm water and waste water discharges to public facilities, the Tualatin River, its tributaries and other waters of the state within the Agency. . . ." *Id.* at Section 1.B.

The District's regulations qualify for the "public health and safety exemption." Paragraph (B) of subsection (3) provides that a property owner is not entitled to file a claim under Measure 37 for land use regulations "[r]estricting or prohibiting activities for the **protection of public health and safety**, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and **pollution control regulations**."

(Emphasis added.) The regulations are designed to protect the "health and safety of the public" and the prevention of "pollution of the waters of the Tualatin River basin. . ."

Some of the regulations also qualify for the exemption for regulations required by federal law, and regulations restricting nuisances. Paragraph (C) of subsection (3) provides that regulations are exempt "[t]o the extent the land use regulation is required to comply with federal law." One of the purposes of the District's regulations is "to meet . . . federal permit and regulatory requirements." In addition, Ordinance 27 states that it shall be "broadly interpreted to accomplish . . . the objectives and purposes of the Federal Water Pollution Control Act, 33 USC Sec 1251-1387."

For the reasons discussed above, the Biggi's Measure 37 claim is rejected.

Sincerely,

Robert C. Cruz
Deputy General Manager
Clean Water Services

RCC:ceg

EXHIBIT 5.1

46.2 **Town Center District.** T.C. uses shall meet the following conditions:

A. Permitted Uses:

1. Unless otherwise prohibited or a Conditional Use, uses are permitted as follows:

1.1 Retail trade.

1.2 Services: e.g., personal; business; professional; amusement and recreation; educational (including public and private); automotive; equipment rental; and other similar services as determined by the Planning Director.

1.3 Churches; social and fraternal organizations.

1.4 Parks and playgrounds.

1.5 Single or multi-family dwellings.

2. Uses shall be subject to the following conditions (excludes parks and playgrounds):

2.1 Activity is conducted wholly within an enclosed structure, except for outside play area for day care and school facilities and as allowed in Section 2.2 (ORD 3352)

2.2 Accessory open air sales/display/storage shall be permitted for horticultural and food merchandise only and shall constitute no more than 5% of the gross building floor area of any individual establishment.

B. Conditional Uses: (Subject to Section 97)

1. Gasoline service stations; minor automotive service or repair such as tire sales and installation, glass installation, radiator repair, detail shops, and other similar uses.

2. Auto, boat, and other motor vehicle sales; trailer or mobile home sales/rentals.

0 3. Parking as a principle use.

4. Transit Centers (ORD 3543)

5. Conditional uses shall be subject to the following conditions: (excludes parking) (ORD 3543)

5.1 Activity is conducted wholly within an enclosed structure, except transit centers and those uses allowed in Section 5.2, below. (ORD 3543)

5.2 Accessory open air sales/display/storage shall be permitted for horticultural and food merchandise only and shall constitute no more than 5% of the gross building floor area of any individual establishment, except for auto, boat and other motor vehicle sales in existence at the time this ordinance is adopted. (ORD 3543)

C. Prohibited Uses:

1. Major automotive service or repair such as body and frame, painting, rebuilding, and other similar uses.

EXHIBIT 5.2

20.20.43. Regional Center - Transit Oriented: RC-TO

1. **Purpose.** The intent for the Regional Center - Transit Oriented (RC-TO) District, which is served by light rail and commuter rail, is to promote a transit-supportive multiple-use land use pattern and to create over time a pedestrian-oriented commercial center within approximately 1/4 mile of the light rail stations while supporting existing and future businesses in moving toward and achieving the vision of a Regional Center. [ORD 4295; April 2004]

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

   A. Permitted Uses:

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

   1. Administrative Facilities

   2. Automotive Services, Minor (subject to Use Restriction a.)

   3. Commercial Amusements (subject to Use Restriction b. See also Section 60.50.25.1. and 5.)

   4. Commercial Schools

   5. Passenger rail tracks and related facilities, such as transit stops, submitted for development after May 21, 2004. [ORD 4295; April 2004]

   6. Convalescent Facilities

   7. Attached Dwellings [ORD 4224; August 2002]

   8. Detached Dwellings: existing [ORD 4224; August 2002]

   9. Two Attached Dwellings: existing [ORD 4224; August 2002]

   10. Eating or Drinking Establishments (subject to Use Restriction g.)

   11. Financial Institutions

20.20.43.2.A.

12. Home Occupations (See also Section 40.40)

13. Manufacturing (subject to Use Restrictions c. and i.)

14. Nursery Schools, Day or Child Care Facilities (see also Section 60.50.25.8.)

15. Offices

16. Places of Worship (subject to Use Restriction c. See also Section 60.50.25.4.)

17. Recreation Facilities (subject to Use Restriction b.)

18. Research Facilities

19. Residential Care Facilities

20. Retail Trade (subject to Use Restrictions d., e., h., and i.)

21. Service (Repair other than auto repair) Businesses (subject to Use Restriction j.)

22. Social Organizations (subject to Use Restriction c.)

23. Temporary Living Quarters (subject to Use Restriction k.)

24. Temporary Uses (See Section 40.80)

25. Utility Transmission Lines (See also Section 60.50.25.11.)

26. Warehousing as an accessory use, not to exceed 25% of the principal use.

27. Collocation of wireless communication facilities on an existing wireless communication facility tower [ORD 4248; April 2003]

28. Installation of wireless communication facilities on streetlights, excluding streetlights on power poles, traffic signal lights, and high voltage power utility poles within public road rights-of-way [ORD 4248; April 2003]

20.20.43.2.A.

29. Attachment or incorporation of wireless communication facilities to existing or new buildings or structures that are not exclusively used for single-family residential or multi-family residential purposes [ORD 4248; April 2003]

30. Temporary wireless communication facilities structures (See also Temporary Structures-Section 40.80) [ORD 4248; April 2003]

31. Installation of one (1) replacement wireless communication facility tower on a parent parcel containing an existing tower supporting one (1) carrier for the purpose of providing collocation opportunity consistent with previous land use approvals [ORD 4248; April 2003]

32. Up to and including two (2) satellite antennas greater than two (2) meters in diameter on one (1) lot [ORD 4248; April 2003]

B. Conditional Uses: (Subject to Section 40.15 or Section 40.96 as applicable)

Unless otherwise prohibited, the following uses may be permitted subject to the approval of a Conditional Use (CU):

1. Commercial Amusements that exceed a 20,000 square foot building footprint (subject to Use Restriction b. See also Sections 60.50.25.1. and .5.)

2. Educational Institutions (See also Section 60.50.25.9.)

3. Hospitals (See also Section 60.50.25.4)

4. Live/Work Facilities

5. Manufacturing uses that exceed 10,000 square feet in floor area, abut a Major Pedestrian Route, or both. (Subject to use Restrictions c. and i.)

6. Medical Clinics

7. Parking, as the Principal Use.

20.20.43.2.B.

8. Parks

9. Places of Worship (subject to Use Restriction c. See also Section 60.50.25.4.)

10. Planned Unit Developments

11. Public Services

12. Service Stations

13. Social Organizations (subject to Use Restriction c.)

14. Transit Centers

15. Utility Stations or Installations

16. Vehicle Sales, Lease or Rental (subject to Use Restriction f.)

17. Uses which include drive-in, drive-through or drive-up window facilities beyond 500 feet of a light rail station platform.

18. Construction of a wireless communication facility tower [ORD 4248; April 2003]

19. More than two (2) satellite antennas greater than two (2) meters in diameter on one (1) lot [ORD 4248; April 2003]

20. Direct-to-home satellite service having antennas greater than one (1) meter in diameter [ORD 4248; April 2003]

C. Prohibited Uses:

The following non-transit supportive uses shall not be established as new uses, nor may existing uses or structures be converted to the following uses in the Regional Center - Transit Oriented District:

1. Automotive Services, Major

20.20.43.2.C.

2. Bulk retail uses

3. Cemeteries

4. Detached Dwellings: new [ORD 4224; August 2002]

5. Two Attached Dwellings: new [ORD 4224; August 2002]

6. Kennels

7. Mobile Homes

8. Mobile or Manufactured Home Parks

9. Mobile or Manufactured Home Subdivisions

10. Recreational Vehicle Parks or Campgrounds

11. Rental Business: of construction equipment

12. Retail Trade: of automobile parts or equipment

13. Riding Stables or Academies

14. Salvage Yards

15. Solid Waste Transfer Stations

16. Storage Facilities

17. Storage Yards

18. Truck Stops

19. Warehouses, as the principal use

20. Uses which include drive-in, drive-through or drive-up window facilities within 500 feet of a light rail station platform.

21. Attachment of a wireless communication facility to existing or new non-residential buildings that does not utilize stealth design [ORD 4248; April 2003]

20.20.43.2.C.

22. Other similar uses which in the determination of the Director are non-transit supportive and do not meet the intent and purpose of the Transit Oriented (RC-TO) district.

D. Use Restrictions: [ORD 4224; August 2002]

1. Subsections A and B of the Regional Center - Transit Oriented zoning district indicate permitted and conditional uses subject to restrictions. The restrictions are described in this subsection. The letter reference in parenthesis found for each use permitted with restrictions in subsections A and B refer to the restrictions below.

a. Service stations shall require the approval of a Conditional Use.

b. Except for theaters, a building with a gross ground floor area larger than 20,000 square feet is subject to the approval of a Conditional Use.

c. Buildings larger than 10,000 square feet are subject to the approval of a Conditional Use. Regardless of building size, proposed development abutting a Major Pedestrian Route is subject to the approval of a Conditional Use.

d. Activity is conducted wholly within an enclosed structure.

e. Accessory open air sales or display related to the principal use may be permitted, provided that the outdoor space devoted to these uses does not occupy an area greater than the equivalent of fifteen percent of the building gross floor area.

f. All uses established after December 9, 1999 shall be conducted wholly within an enclosed structure. Accessory open air sales or display related to permitted uses in existence on a site at the time this Code is adopted may be expanded on that site.

20.20.43.2.D.1.

g. Accessory outdoor seating related to the primary eating or drinking establishment use may be permitted provided that the outdoor space devoted to this use does not exceed:

   1. an area greater than the equivalent of fifteen percent of the dining, drinking, or both floor area; or

   2. 750 square feet.

   If outdoor dining is to exceed either fifteen percent of the dining, drinking, or both floor area or 750 square feet, the additional area in excess of 750 square feet must provide additional parking at a ratio as provided by the appropriate zoning district.

   Eating, drinking, or both establishments may combine accessory outdoor seating areas, provided that the outdoor seating area not exceed the total combined allowed area. Such establishments may combine their outdoor seating provided that the accessory outdoor seating does not exceed thirty percent of the total enclosed dining, drinking, or both, not to exceed 1,500 square feet.

h. Retail Trade: Permitted uses for building materials, home equipment and improvements, or landscape or nurseries sales shall not occupy more than 15,000 gross square feet of space in an individual building, site or parcel.

i. Book Binderies shall have a maximum size of 2,000 square feet.

j. The maximum gross ground floor area for a building involving a single use shall be 10,000 square feet. The maximum square footage for these uses within a multiple use development shall be 25% of the total square footage of the development.

k. Motel use is a prohibited use.

20.20.43.2.

E. District Requirements.

None identified for this district.

20.20.50.

E. REGIONAL CENTERS [ORD 4075; November 1999]

The purpose of the following site development requirements and standards is to support existing and future businesses and development consistent with the intent and purpose of each of the three Regional Center District subareas as set forth in this ordinance [RC-TO: Section 20.20.43; RC-OT: Section 20.20.45; RC-E: Section 20.20.47]

	RC-TO	RC-OT	RC-E
1. Lot Area: (in square feet)			
A. Minimum	none	none	none
B. Maximum	none	none	none
2. Lot Dimensions: (in feet)			
A. Minimum	none	none	none
B. Maximum	none	none	none
3. Yard Setbacks: (in feet)			
A. Front			
1. Minimum	0'	0'	0'
2. Maximum for developments without Residential units on the ground floor:			
a. Fronting on a Major Pedestrian Route	5'	5'	20'
b. Not fronting on a Major Pedestrian Route	10'	10'	20'
3. Maximum for developments with Residential units on the ground floor.	20'	20'	20'
B. Side			
1. Minimum	none	none	none
2. Maximum	none	none	none
C. Rear			
1. Minimum	none	none	none
2. Maximum	none	none	none

20.20.50.E.3.

D. Modification to setback standards. Up to twenty (20) feet additional front yard setback is allowed upon a demonstration that not less than 60% of the additional setback area is used to provide enhanced pedestrian amenities such as plazas, courtyards, benches, street furniture or similar useable pedestrian space. Modifications under this provision may be allowed in addition to other variances and adjustments available under this ordinance.

E. Maximum setbacks do not apply along street that form a boundary of the Regional Center Districts, unless specifically required and identified in Section 20.20.60. [ORD 4312; June 2004]

F. Yards abutting single-family residential zones, when not separated by a public street, shall have a minimum setback of twenty (20) feet.

G. No side or rear yard setbacks are required where side or rear property lines abut a railroad right-of-way or spur track.

[ORD 4332; November 2004]

	RC-TO	RC-OT	RC-E
4. Building Height: (in feet)			
A. Maximum height without an Adjustment or Variance, except as provided by Section 60.50.10 of this Code. [ORD 4224; August 2002]	120'	30'	80'
B. Maximum height with an Adjustment or Variance, except as provided by Section 60.50.10 of this Code. [ORD 4224; August 2002]	200'	60'	200'

C. The height of a stepped or terraced building is the maximum height of any segment of the building.

D. Refer to Section 60.05.15.7 for additional height requirements for structures adjacent to Major Pedestrian Routes. [ORD 4332; November 2004]

E. The maximum height for wireless communication facilities inclusive of antennas in all regional center zoning districts shall be one hundred (100) feet. The maximum height of at-grade equipment shelters for wireless communication facilities in all industrial zoning districts shall be twelve (12) feet. [ORD 4248; April 2003]

5. Floor Area:

Floor Area is dependent upon whether residential development is involved or not. Residential only development is governed by minimum and maximum densities. Whereas non-residential only development and multiple use development that includes residential floor space, is governed by minimum and maximum Floor Area Ratios. For Multiple Use development, no maximum limitation shall be placed on the number of dwelling units permitted.

		RC-TO	RC-OT	RC-E
A.	Minimum Floor Area Ratio (FAR) for multiple use or non-residential developments.	0.60	0.35	0.30

Projects may use the Final Planned Unit Development or the Design Review Build-Out Concept Plan process to develop a site in phases to achieve the minimum FAR established in this subsection. Such projects must demonstrate in the plans how future development of the site, to the minimum development standards established in this ordinance or greater, can be achieved at ultimate build out of the Planned Unit Development or Design Review Build-Out Concept Plan. The Design Review Build-Out Concept Plan may be used if the only Site Development Requirement being phased, altered, or otherwise varied is the minimum FAR. If any other Site Development Requirement is being phased, altered, or otherwise varied, the Planned Unit Development process is to be used. [ORD 4224; August 2002] [ORD 4332; November 2004]

20.20.50.E.5.

B. To accommodate smaller lot sizes within the RC-TO zone that existed prior to December 9, 1999, the required minimum floor area ratio for multiple use or non-residential developments may be further modified based upon lot dimensions, as follows:

	MINIMUM SITE DEPTH			
MINIMUM SITE WIDTH	0-120'	121'-139'	140'-175'	176'+
0-100'	0.1	0.2	0.25	0.25
101'-200'	0.1	0.3	0.45	0.45
201'+	0.1	0.45	0.45	0.60

[ORD 4312; June 2004]
Note: When provisions are made off-site for required parking, the permissible FAR shall be governed by 20.20.50.5.A, .B, .C, .D, and .E, regardless of site dimensions.

		RC-TO	RC-OT	RC-E
C.	Maximum Floor Area Ratio FAR) for multiple use or non-residential developments. [ORD 4259; August 2003]	Unlimited	Unlimited	1.00
D.	Maximum Floor Area Ratio (FAR) for multiple use or non-residential developments with a FPUD or DRBCP. [ORD 4224; August 2002] [ORD 4259; August 2003] [ORD 4332; November 2004]	Unlimited FAR in RC-E zones.		

E. Maximum Floor Area Ratio (FAR) for Multiple Use developments involving Residential Use in RC-E Zone.

The maximum permitted FAR in the RC-E Zone for a multiple-use project involving residential use shall be determined by the mix of uses and ratio thereof in accordance with the following:

20.20.50.E.5.E

% Non-Residential Floor Area	% Residential Floor Area							
	<20	20	30	40	50	60	70	80
20								(1.7)
30							(1.6)	
40						(1.55)		
50					(1.5)			
60				(1.4)				
70			(1.3)					
80		(1.2)						
90	(1.1)							
100	(1.0)							

[ORD 4259; August 2003]

( ) Represents factor to be multiplied times the maximum permitted FAR for a non-residential, - or non-multiple-use development to determine permitted FAR.

		RC-TO	RC-OT	RC-E
F.	Minimum residential density in residential only projects. [ORD 4259; August 2003]	20 units per acre	12 units per acre	N/A

The minimum residential density in residential only projects shall be further restricted based upon lot dimensions, as follows:

	MINIMUM SITE DEPTH		
MINIMUM SITE WIDTH	0-100'	101'-139'	140'+
0-150'	0 DU/Acre	12 DU/Acre	**
151'-200'	10 DU/Acre	24 DU/Acre	**
201'+	10 DU/Acre	**	**

** Governed by standards set forth in 5.F. and G.

Note: When provisions are made off-site for required parking, the permissible density of all lots, regardless of size, shall be governed by 20.20.50.E.5.F and G.

		RC-TO	RC-OT	RC-E
G.	Maximum residential density in residential only projects.	60 units per acre	40 units per acre	40 units per acre

H. Permitted Density (Dwelling Units/Acre-Du/Ac) and (Floor Area Ratio-FAR).

1. General. Except as otherwise approved through the Final Planned Unit Development process, phased development may be proposed, so long as each phase complies with the minimum density. [ORD 4224; August 2002] [ORD 4332; November 2004]

2. Method of Calculating Density and Intensity (FAR). Required minimum densities and FAR shall be calculated on a net acre basis, determined as follows: Gross acreage shall be reduced by:

   a. Unbuildable land, such as wetlands, protected or regulated natural areas under Section 60.60 (Trees and Vegetation) and 40.90 (Tree Plan), other natural resource areas, drainage areas, or drainage facilities, which is set aside in an unbuildable tract of land or dedicated to the public; and

   b. Other lands devoted to public or private streets or street right-of-way.

I. Lot Consolidation

1. In order to discourage development on small lots at densities or intensities that might result in poorly sited and designed structures, require multiple driveways along Major Pedestrian Routes or interfere with pedestrian or vehicular movement, and to encourage consolidation of small lots, the maximum allowable FAR in Non-Residential and Multiple Use projects shall comply with the standards set forth in Section 20.20.50.E.5.E and the allowable density in residential projects with the density standards set forth in Section 20.20.50.E.5.H.

2. A twenty (20) percent increase in the allowable FAR or residential density shall be permitted when a corner lot is located on a Major Pedestrian Route, is a lot of record as of December 9, 1999, and is consolidated with one or more adjoining lots to form a new lot with a minimum frontage of 150 feet on a Major Pedestrian Route, provided that where the newly consolidated lot adjoins a mid-block lot fronting on a Major Pedestrian Route and with a fronting lot width of less than 150 feet, a vehicular easement shall be granted to an adjoining mid-block lot to eliminate the need for vehicular access to the mid-block parcel from the Major Pedestrian Route.

J. Planned Unit Development (PUD) Bonus.

A Floor Area Ratio bonus of 0.2 shall be granted to a project submitted as a Final Planned Unit Development (Development Code Section 40.15.15.6). To be eligible for the FAR bonus, a project shall:

1. Have a minimum site area of one and one half acres or comprise a consolidation of four or more lots of record; and

2. Provide a total area equal to at least twenty percent of the site devoted to outdoor common area(s). This area may include public arcades, decks, or roof surfaces, provided such areas are easily accessible to the public and building tenants, and appropriately landscaped for such uses.

K. For developments or phases that involve multiple buildings, the floor area ratio may be averaged by totaling the square footage of the buildings divided by the square footage of the net acreage of land within such development or phase.

L. Separation of buildings is subject to the State Building Code and the Uniform Fire Code. [ORD 4312; June 2004]

EXHIBIT 5.3

FLOODPLAIN REGULATIONS

Section 116. **Intent and Purpose.** The floodplain district within the City is superimposed as an overlay zone with respect to the lands classified in the various zones established by this ordinance. It is intended to give recognition to the need to protect the health, safety and welfare of the community as a whole through regulation and control of development within the floodplain district and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

A. Protect human life and health;

B. Minimize expenditure of public money and costly flood control projects;

C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. Minimize prolonged business interruptions;

E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and,

H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (ORD 3563)

While the preservation of natural features and topography which are aids in floodplain management is a primary purpose of these regulations, in the administration of these regulations the existing pattern of man-made improvements must in some areas be recognized as a constraint on achieving this purpose.

Section 117. **Floodplain District Establishment.**

117.1 The floodplain district overlay zone is established as those areas subject to inundation by the base flood and coincides with the floodplain.

117.2 The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of Beaverton," dated March 28, 1984, as revised February 4, 1987, with accompanying Flood Insurance Maps hereby is adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file with the City Engineer and the City Recorder. (ORD 3563)

117.3 When interpretation concerning the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the City Engineer may request from the concerned person a detailed hydraulic data report prepared by a registered engineer with background in the area of hydraulics. This report shall include, but is not limited to, water profiles and discharge rates for the channel and the hydrology for the tributary areas. After review of the available data the floodplain elevation shall be established by the City Engineer. A person dissatisfied with the City Engineer's decision may appeal that decision in the same manner as provided in section 4.2B for appealing a decision of the Planning Director. (ORD 3563)

117.4 The zone designation for any parcel located in the floodplain district shall include the designation for the primary zone followed by the notation (FP). (Example: Neighborhood-Commercial, C-N(FP)).

117.5 The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Large floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder. (ORD 3563)

Section 118. **Definitions.** For purposes of this chapter, the following words and phrases shall be construed to have the specific meanings assigned to them by definition as follows:

118.1 "Area of Special Flood Hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V. (ORD 3563)

118.2 "Base Flood" means the flood having a one percent chance of being equalled or exceeded in any given year. Also referred to as the "100-year flood". Designation on maps always includes the letters A or V. (ORD 3563)

118.3 "Channelization" means the improvement of a waterway to ensure containment of flow within a designated alignment. The purpose for such is to minimize erosion and retain a long range capability to convey the maximum flow discharge. This work may be accomplished with the use of native materials, vegetation, rip-rap, as well as structural improvements.

118.4 "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard. (ORD 3563)

118.5 "Fill" means any act by which earth, sand, gravel, rock or any other similar material is deposited, placed, pulled or transported on the site and includes the conditions resulting therefrom. The placement of fill is development of land.

118.6 "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community (ORD 3563)

118.7 "Flood or Flooding" means a general and temporary condition of partial or complete inundation of normally dry areas from:

A: The overflow of inland or tidal waters; and/or,

B: The unusual and rapid accumulation of runoff of surface waters from any source. (ORD 3563)

118.8 "Floodplain" means the zone along a watercourse enclosed by the outer limits of land which is subject to inundation in its natural or lower revised contours by the base flood.

118.9 "Flood Surface Elevation" means those elevations to which flood waters will rise at a given location for a specified flood or base flood if not otherwise specified. The elevations are mean sea level datum.

118.10 "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot (ORD 3563)

118.11 "Floodway Fringe" means the area of the floodplain lying outside of the floodway.

118.12 "Holding Capacity" means the volume over the floodway fringe between the land contour grades and the base flood elevation.

118.13 "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles. (ORD 3563)

118.14 "Primary Zone" means the zone designation of property upon which the floodplain district is overlaid.

118.15 "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground. (ORD 3563)

Section 119. **Development in Floodway.**

119.1 A site development permit shall be obtained before the construction of a structure or of any other development as defined herein begins within any area of special flood hazard established herein. (ORD 3563)

119.2 All manufactured homes to be placed or substantially improved within FIRM zones A1 - A30, AH and AO shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of the Site Development Code. (ORD 3563)

Section 120. **Commercial and Industrial Uses in the Floodway Fringe.** All commercial and industrial uses, if allowed in the primary zone are allowed in the floodway fringe. Such uses are allowed only if the proposed development meets the requirements of the City Site Development Code and has been reviewed and approved by the Facilities Review Committee and the Site and Design Review Board as meeting the requirements and standards of this ordinance. (ORD 3441)

Section 121. **Residential Uses in the Floodway Fringe.**

121.1 Unless property is developed as a planned unit development, single family and two family dwellings even though allowed in the primary zone are prohibited in the floodway fringe on any lot smaller in area than five acres.

121.2 All other residential uses, if allowed in the primary zone, are allowed only as conditional uses in the floodway fringe. The request for a Conditional Use Permit shall be processed and reviewed in the manner set forth in this ordinance. In addition to all other findings of fact required to be made in order to grant the Conditional Use Permit, findings shall also be made to support the conclusion that the proposed development meets the site and building design standards and requirements of Ordinance No. 1667 as amended, the City Site Development Code.

121.3 The provisions of Section 121.2 shall not operate to impose the status of nonconforming use on any single family or two family dwelling or use lawfully existing on the effective date of this ordinance.

Single family and two family dwellings and uses located in the floodway fringe and on lots smaller in area than five acres shall be allowed to continue, subject to the provisions of the primary zone, as conforming uses.

A structure or use regulated by this section that does not comply with any regulation provided by this ordinance for the primary zone in which it is located shall be considered nonconforming in those particulars only and shall be treated in a manner consistent with the provisions of Sections 151-162, the nonconforming use provisions.

(Section 122-126 reserved.)

EXHIBIT 5.4

60.10. FLOODPLAIN REGULATIONS

60.10.05. Purpose. Regulations governing development within floodplains are intended to recognize the need to protect the health, safety and welfare of the community, and maintain the functions and values of floodplains through control of development within the floodplain area so as to minimize public and private losses due to flooding. The preservation of natural features and topography as an aid in floodplain management is a primary purpose of these regulations. However, in the administration of these regulations the existing pattern of man-made improvements must in some areas be recognized as a constraint on achieving this purpose. The provisions of this Section are designed to: [ORD 4155; April 2001]

1. Protect human life and health property; [ORD 4155; April 2001]

2. Minimize expenditure of public money, costly repairs of flood damage, and costly flood control projects; [ORD 4155; April 2001]

3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

4. Minimize prolonged business interruptions;

5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

6. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

7. Make information is available upon request to potential buyers that property is in an area of special flood hazard; [ORD 4155; April 2001]

8. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (ORD 3563)

9. Maintain the functions and values of floodplains, such as allowing for the storage and conveyance of stream flows through existing and natural flood conveyance systems. [ORD 4155; April 2001]

60.10.10. Floodplain Designation.

1. Consistent with Clean Water Services Design and Construction Standards, the floodplain is the flood management area and shall include those areas identified by the Department of Homeland Security's Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Beaverton," dated February 18, 2005, with accompanying Flood Insurance Rate Maps (FIRM), is hereby adopted by reference and declared to be a part of this ordinance. In addition, the Letter of Final Determination, dated August 18, 2004, with accompanying Flood Insurance Rate Maps, flood profiles, and related data for Beaverton and Washington County, effective February 18, 2005, revises portions of the 1984 and 1987 studies and maps, and is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and revisions are on file with the City Engineer and the City Recorder. (ORD 3563) [ORD 4130; November 2000] When base flood elevation data has not been provided in accordance with this section, the City shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source in order to administer City of Beaverton Code Section 9.05.060, subsections A and D, relating to site development. (ORD 3563) [ORD 4337; January 2005]

2. When interpretation is requested by a property owner, or designee concerning the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the City Engineer may request the concerned person provide a detailed hydraulic data report prepared by a registered engineer with background in the area of hydraulics. This report shall include, but is not limited to, water profiles and discharge rates for the channel and the hydrology for the tributary areas. After review of the available data the floodplain elevation shall be established by the City Engineer. A person dissatisfied with the City Engineer's decision may appeal that decision in the same manner as provided in Beaverton Code Section 9.05.091. (ORD 3563) [ORD 4155; April 2001]

60.10.10.

3. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Large floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder. (ORD 3563)

4. Uncontained areas of hazardous materials, as defined by the Department of Environmental Quality, are prohibited in the floodplain. Any storage or placement of materials in the floodplain that would obstruct the flow of water or reduce the available flood holding capacity of a site is prohibited. (ORD 3441) [ORD 4093; March 2000] [ORD 4155; April 2001]

60.10.15. Development in Floodway.

1. Development in the floodway is prohibited, with the following exceptions, which are subject to the site development ordinance;

   A. Stormwater outfall pipes and other drainage; improvements;

   B. Bridges;

   C. Culverts;

   D. Public utility lines;

   E. Trails or bikepaths;

   F. Roads and other uses identified on the City's Transportation Plan; and

   G. Grading associated with A through F above.

60.10.20. Commercial and Industrial Uses in the Floodway Fringe. All commercial and industrial uses, if allowed in the primary zone are allowed in the floodway fringe if the proposed development:

1. Meets the requirements of Beaverton Code Section 9.05;

60.10.20.

2. Meets the requirements of the City Engineering Design Manual and Standard Drawings;

3. Meets the requirements of the Unified Sewerage Agency Design and Construction Standards Manual based on affirmative statements in documentation from CWS; and [ORD 4224; August 2002]

4. Has been reviewed and approved by the appropriate City approval authority as meeting the requirements and standards of this ordinance.

(ORD 3441) [ORD 4093; March 2000] [ORD 4155; April 2001]

60.10.25. Residential Uses in the Floodway Fringe.

1. Unless property is developed as a planned unit development, single family and two family dwellings, even though allowed in the primary zone, are prohibited in the floodway fringe on any lot smaller in area than five acres.

2. All other residential uses, if allowed in the primary zone, are allowed only as conditional uses in the floodway fringe. The request for a Conditional Use shall be processed and reviewed in the manner set forth in this ordinance. In addition to all other findings of fact required to be made in order to grant the Conditional Use, the following findings shall also be made: [ORD 4155; April 2001]

   A. The proposed development meets the site and building design standards and requirements of the Beaverton Code Section 9.05; and [ORD 4155; April 2001]

   B. The proposed development meets the building design standards and requirements of the Clean Water Services Design and Construction Standards based on affirmative statements in documentation from CWS. [ORD 4155; April 2001] [ORD 4224; August 2002]

3. The provisions of 2., above, shall not operate to impose the status of nonconforming use on any single family or two family dwelling or use lawfully existing on the effective date of this ordinance.

60.10.25.

4. Single family and two family dwellings and uses located in the floodway fringe and on lots smaller in area than five acres shall be allowed to continue, subject to the provisions of the primary zone, as conforming uses.

5. A structure or use regulated by this section that does not comply with any regulation provided by this ordinance for the primary zone in which it is located shall be considered nonconforming in those particulars only and shall be treated in a manner consistent with the provisions of Chapter 30, the nonconforming use provisions.

6. All manufactured homes to be placed or substantially improved within FIRM zones A1 - A30, AH and AO shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of the Beaverton Code Section 9.05. Site Development Code. (ORD 3563) [ORD 4155; April 2001]

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located at 8111 SW West Slope; CPA2006-0002/ZMA 2006-0001

FOR AGENDA OF: 07/17/06 **BILL NO:** 06129

Mayor's Approval:

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 06/20/06

CLEARANCES: City Attorney

Planning Services HB

PROCEEDING: First Reading

EXHIBITS: Ordinance
Exhibit A - Map
Exhibit B – Staff Report

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

This ordinance is before the City Council to assign City Comprehensive Plan Land Use Map and Zoning designations for the subject property, replacing the Washington County land use designations.

The Urban Planning Area Agreement (UPAA) is specific on the appropriate Land Use Map and Zoning Map designations for the parcels thus no public hearing is required. The appropriate Land Use Map designation is Neighborhood Residential – Standard Density (NR-SD), and the appropriate Zoning Map designation is Residential – 7,000 square foot minimum land area per dwelling unit (R-7). The City land use designations will take effect 30 days after Council approval and the Mayor's signature on this ordinance.

INFORMATION FOR CONSIDERATION:

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

RECOMMENDED ACTION:

First Reading

ORDINANCE NO. 4398

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 8111 SW WEST SLOPE; CPA2006-0002/ZMA 2006-0001

WHEREAS, This property annexed to the City of Beaverton, through Ordinance 4341 in March 2005, thus the property is being redesignated in this ordinance from the County's land use designation to the closest corresponding City designation as specified by the Urban Planning Area Agreement (UPAA); and

WHEREAS, Since the UPAA is specific on the appropriate designations for this parcel, this is not a discretionary land use decision and therefore no public hearing is required; and

WHEREAS, The Council adopts as to criteria applicable to this request and findings thereon the Community Development Department staff report by Senior Planner Barbara Fryer, dated June 22, 2006, attached hereto as Exhibit B; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 4187, the Comprehensive Plan Land Use Map, is amended to designate the subject property located at 8111 SW West Slope (Tax Map 1S101BB, Lot 00100) Neighborhood Residential - Standard Density on the City of Beaverton Comprehensive Plan Land Use Map, as shown on Exhibit "A" and in accordance with the UPAA.

Section 2. Ordinance No. 2050, the Zoning Map, is amended to designate the same property in Section 1 Residential – 7,000 square foot minimum land area per dwelling unit (R-7) on the City of Beaverton Zoning Map, as shown on Exhibit "A" and in accordance with the UPAA.

First reading this _____ day of _____, 2006.

Passed by the Council this _____ day of _____, 2006.

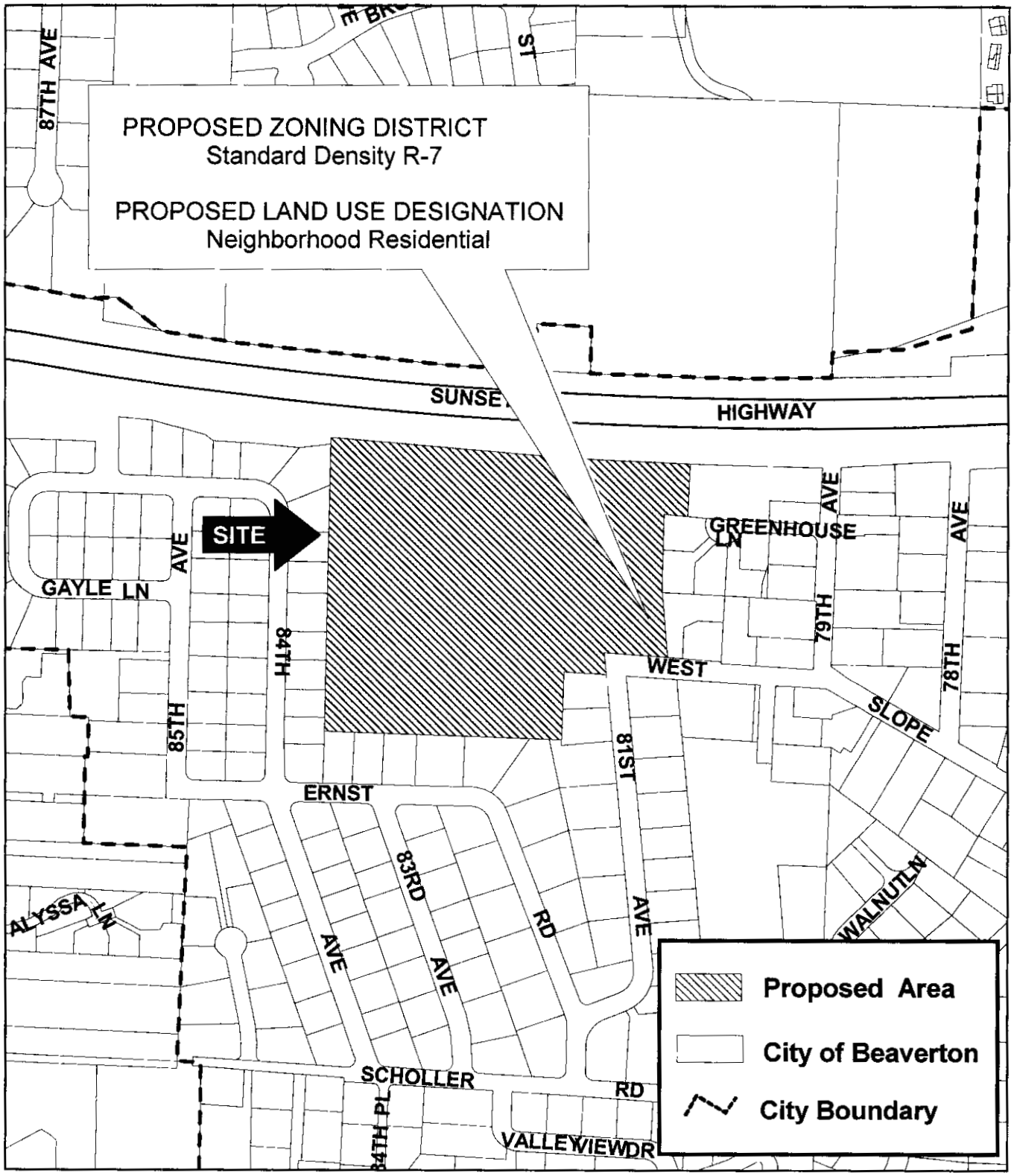
Approved by the Mayor this _____ day of _____, 2006.

ATTEST: APPROVED:

_____ _____

SUE NELSON, City Recorder ROB DRAKE, Mayor

CPA / ZMA VICINITY MAP EXHIBIT "A"



CITY OF BEAVERTON

WEST SYLVAN MIDDLE SCHOOL COMPREHENSIVE PLAN
LAND USE MAP AMENDMENT AND ZONING MAP AMENDMENT

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

2/8/06

Map # 1S112BB00100

Application # CPA2006-0002 ZMA2006-0001

N

002

EXHIBIT "B"

STAFF REPORT

TO: City Council

AGENDA DATE: July 17, 2006 **REPORT DATE:** June 22, 2006

FROM: Barbara Fryer, AICP, Senior Planner BF
Community Development Department

SUBJECT: To assign City Land Use (CPA2006-0002) and zoning (ZMA2006-0001) designations for one property (1S1 12 BB 00100) located in northwest Beaverton annexed into the City by separate action. The annexation became effective on March 30, 2006.

ACTIONS: Amend the City's Comprehensive Plan Land Use Map to show Neighborhood Residential - Standard Density and the Zoning Map to show Residential – 7,000 square feet minimum land area per dwelling unit (R-7).

APPLICANT: City of Beaverton

APPROVAL CRITERIA: Comprehensive Plan Section 1.3.1 and the Development Code Section 40.97.15.3.C

SUMMARY AND RECOMMENDATION

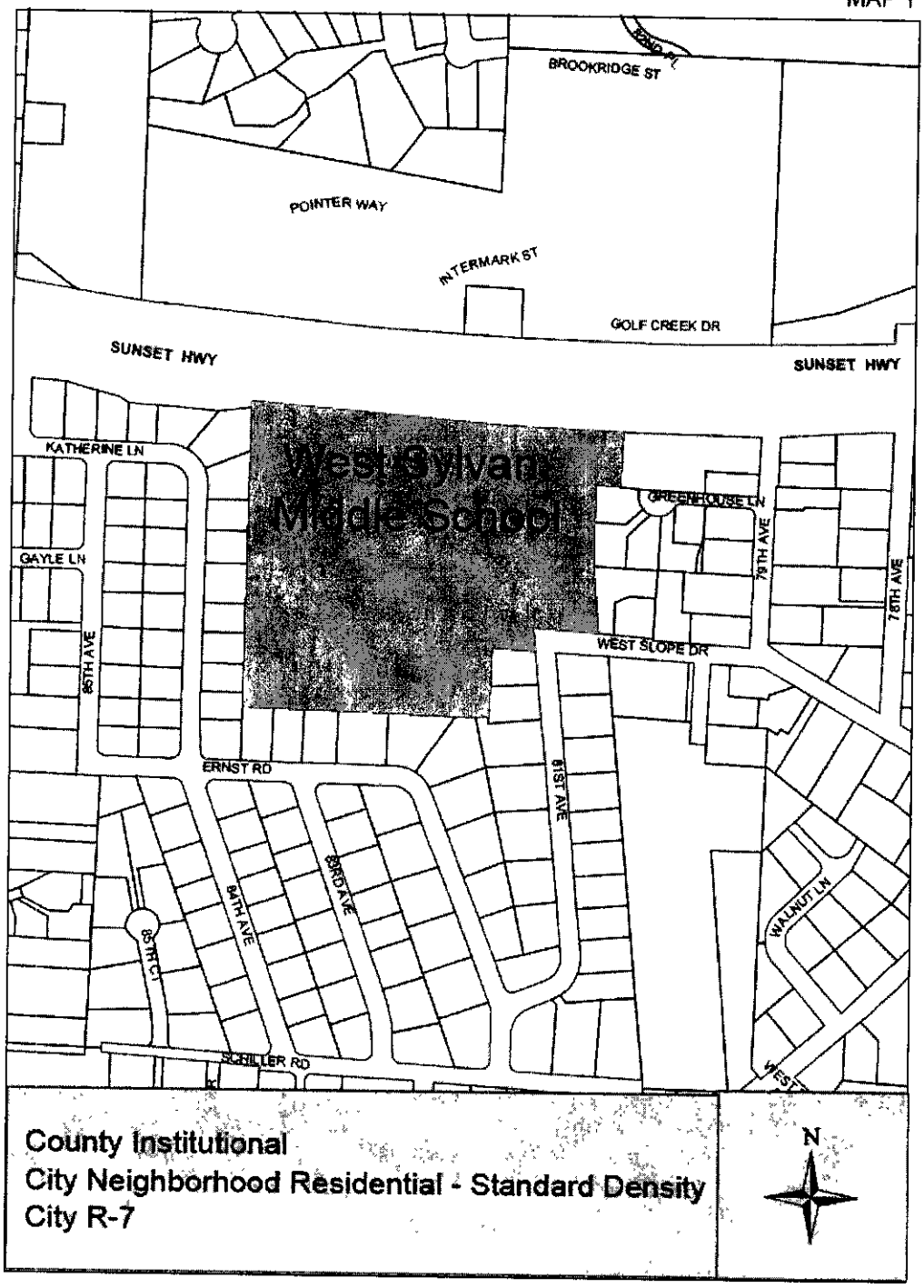
The property is designated Institutional by Washington County. The City assigns Comprehensive Plan and Zoning designations to property being annexed into the City as prescribed by the Washington County – Beaverton Urban Planning Area Agreement (UPAA). The UPAA is specific about the appropriate City Land Use Map designation and zoning district for the Institutional designation as the most restrictive abutting zone (R-7) and the City Land Use shown on plan (Neighborhood Residential – Standard Density).

Pursuant to Section 1.3 of the Comprehensive Plan and Section 40.97.15.3.B. of the Development Code, no public hearing is required because the UPAA is specific as to the Comprehensive Plan Land Use Map and Zoning Map designations. This decision does not qualify as a land use decision under ORS 197.015(10)(b)(A) because it is made under land use standards which do not require interpretation or the exercise of policy or legal judgment.

Staff recommends the City Council adopt an ordinance applying the Land Use and Zoning designation the Neighborhood Residential - Standard Density land use designation and R-7 zoning district to one parcel, effective thirty days after the Mayor's signature.

CPA2006-0002/ZMA2006-0001

MAP 1



EXISTING CONDITIONS

The one parcel totals approximately 13.56 acres and is addressed as 8111 SW West Slope, tax lot 1S1 12 BB 00100. The existing use on the property is West Sylvan Middle School.

COMPREHENSIVE PLANNING AND ZONING

Cedar Hills – Cedar Mill Community Plan

The property depicted Map 1 is located in Washington County's Cedar Hills – Cedar Mill Community Plan Area. The property is designated on the Community Plan map as Institutional. The Urban Planning Area Agreement is specific that the appropriate City Comprehensive Plan Land Use Map designation for Institutional is the most restrictive abutting designations, which is Neighborhood Residential - Standard Density land use designation and R-2 (Residential - 7,000 square feet of net parcel area per dwelling unit) zoning district.

Special Policy II.A. of the UPAA states in part "...the COUNTY will advise the CITY of adopted policies which apply to the annexed areas and the CITY shall determine whether CITY adoption is appropriate and act accordingly." The County has not advised the city of adopted policies which may apply to the annexed area. Staff identified policies which may apply to the area. Staff reviewed the text of the Cedar Mill – Cedar Hills Community Plan and has determined that there are general design elements in the Plan and no design elements for the West Slope Subarea of the Plan Design Elements applicable to the property:

General Design Element

3. *Open space shall be used for a variety of recreational activities, the protection of wildlife habitats, education, scientific research, or aesthetic purposes, such as scenic views.*

The cited Community Plan general design element applies to West Sylvan Middle School. The Significant Natural and Cultural Resources Map for Cedar Hills – Cedar Mill indicates that Open Space includes "Existing parks, recreation sites, golf courses, cemeteries, school play-grounds, power line rights-of-ways, and future park sites owned by the Tualatin Hills Park and Recreation District." As long as Portland Public Schools maintains this property as a school site, the property presumably will continue to include a school play-ground. Additional regulation regarding the school district property is unnecessary.

CRITERIA FOR APPROVAL

COMPREHENSIVE PLAN AMENDMENT CRITERIA

Comprehensive Plan Section 1.3.1 states: "Affirmative findings relative to all of the following criteria are the minimum required for a Plan Amendment (non-discretionary annexation related map amendments need not comply with Plan criteria because they are not land use decisions under Oregon Statutes and are those stipulated by Exhibit "B" of the Urban Planning Area Agreement."

Findings related to the Comprehensive Plan Amendment criteria are not necessary because this map amendment is a non-discretionary annexation related map amendment that is not a land use decision.

ZONING MAP AMENDMENT CRITERIA

Adoption by the City Council of an amendment to the Zoning Map must be supported by findings of fact based on the evidence provided by the applicant demonstrating the criteria of the Development Code Section 40.97.15.3.C (Non-Discretionary Annexation Related Zoning Map Amendment - Approval Criteria) have been met. The City Council may adopt by reference facts, findings, reasons, and conclusions proposed by the City staff or others. Affirmative findings to the following criteria are the minimum requirements for Zone Map amendments.

40.97.15.3.C.1. ***The proposal satisfies the threshold requirements for a Non-Discretionary Annexation Related Zoning Map Amendment application.***

There are two threshold requirements with the first requiring that "The change of zoning to a city zoning designation be the result of annexation of land to the City".

Annexation 2004-0015 annexed the property subject to the zoning map amendment to the City, effective on March 30, 2005. Thus, the first threshold requirement has been met.

The second threshold requires that the UPAA be specific as to the City zoning designations to be applied and does not allow for discretion. The UPAA is specific for the proposed amendment

- Washington County Institutional is equivalent to the most restrictive abutting zone, in this case, City R-7, 7,000 square foot minimum land area per dwelling unit.

No discretion is required; therefore this proposal meets the second threshold.

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

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

The City Council elected to not establish a fee for a Non-Discretionary Annexation Related Zoning Map Amendment application. No fee has been collected

FINDING: ***Staff finds that this criterion is not applicable.***

40.97.15.3.C.3. ***The proposed zoning designation is consistent with the Washington County - Beaverton UPAA.***

The UPAA is specific for the proposed amendment:

- Washington County Institutional goes to the most restrictive abutting zone, in this case, City R-7, Residential - 7,000 square foot land area per dwelling unit.

No discretion is being exercised in assigning a zoning designation.

The UPAA requires the City to review the appropriate Community Plan and in this case it is the Cedar Hills – Cedar Mill Community Plan. The subject property is not in an Area of Special Concern and does not have any specific design elements applicable to it. The property is identified on the County's Significant Natural and Cultural Resources map as Open Space due to the fact that it is a school with a playground.

FINDING: ***Staff finds that the approval criterion is met since the proposed zoning designation is specified by the UPAA and is, therefore, consistent with the UPAA.***

40.97.15.3.C.4. ***Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

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

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

PROCESS

Submission Requirements: An application for a Non-Discretionary Annexation Related Zoning Map Amendment shall be made by the submittal of a valid annexation petition or an executed annexation agreement. A valid annexation petition has been submitted and approved under Ordinance 4341.

Public Notice: Section 1.3.4.3(c) of the Comprehensive Plan prescribes the notice to be provided for these types of applications.

Notice on non-discretionary annexation related CPA's must be provided not less than twenty (20) calendar days prior to when the item first appears on the City Council's agenda.

1. Legal notice will be published in the Beaverton Valley Times on June 22, 2006.
2. Notice will be mailed to the West Slope Neighborhood Association Committee, Cedar Mills – Cedar Hill Citizen Participation Organization, Beaverton Neighborhood Office, and Chair of the Committee for Citizen Involvement (CCI) on or before June 22, 2006.
3. Notice will be mailed to the property owners by certified mail on or before June 22, 2006.

The City Council has not directed staff to provide additional notice for this amendment beyond the notices described above, however, notice and this staff report will be posted on the City of Beaverton's public web site. The notice requirements for this CPA/ZMA will be met.

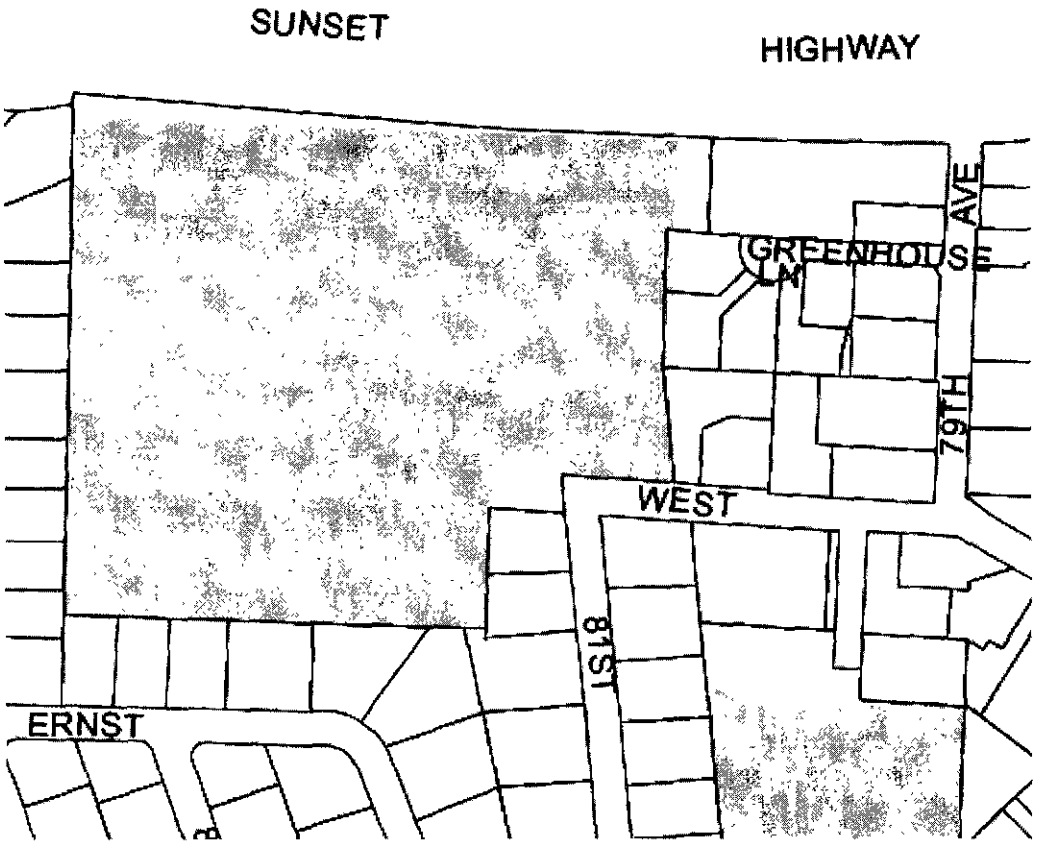
CONCLUSION

Based on the findings in this report, staff concludes amending the Land Use Map to show the City Neighborhood Residential Standard Density Land Use Designation and the Urban Standard Density R-7 Zoning District to the property located at 8111 SW West Slope (Tax lot 1S112BB00100), is appropriate.

Exhibit A: Cedar Hills – Cedar Mill Significant Natural Resources Map depicting the West Sylvan Middle School as Open Space

EXHIBIT A

Washington County
Cedar Hills – Cedar Mill
Community Plan
Significant Natural and Cultural Resources Map



OPEN SPACE/BICYCLE PATHWAYS

Existing parks, recreation sites, golf courses, cemeteries, school play-grounds, powerline rights-of-ways, and future park sites owned by the Tualatin Hills Park and Recreation District.

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Four Properties in Northeast Beaverton; CPA2006-0003/ZMA 2006-0002

FOR AGENDA OF: 07/17/06 **BILL NO:** 06130

Mayor's Approval:

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 06/22/06

CLEARANCES: City Attorney AP
Planning Services HB

PROCEEDING: First Reading

EXHIBITS: Ordinance
Exhibit A - Map
Exhibit B – Staff Report

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

This ordinance is before the City Council to assign City Comprehensive Plan Land Use Map and Zoning designations for the subject property, replacing the Washington County land use designations.

The Urban Planning Area Agreement (UPAA) is specific on the appropriate Land Use Map and Zoning Map designations for the parcels thus no public hearing is required. The appropriate Land Use Map designation for properties 1S101DD02000, 1S101DD02001, and 1S101DD01900 is Neighborhood Residential – Medium Density (NR-MD) and the appropriate Zoning Map designation is Residential – 2,000 square foot minimum land area per dwelling unit (R-2). The appropriate Land Use Map designation for 1S101DD01800 is Corridor and the appropriate Zoning Map designation is Office Commercial (OC). The City land use designations will take effect 30 days after Council approval and the Mayor's signature on this ordinance.

INFORMATION FOR CONSIDERATION:

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

RECOMMENDED ACTION:

First Reading

ORDINANCE NO. 4399

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 IN NORTHEAST BEAVERTON; CPA2006-0003/ZMA2006-0002

WHEREAS, The four properties were annexed under Ordinance 4341 in March 2005, thus the property is being redesignated in this ordinance from the County's land use designations to the closest corresponding City designations as specified by the Urban Planning Area Agreement (UPAA); and

WHEREAS, Since the UPAA is specific on the appropriate designations for this parcel, this is not a discretionary land use decision and therefore no public hearing is required; and

WHEREAS, The Council adopts as to criteria applicable to this request and findings thereon the Community Development Department staff report by Senior Planner Barbara Fryer, dated June 22, 2006, attached hereto as Exhibit B; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 4187, the Comprehensive Plan Land Use Map, is amended to designate the subject properties on Map and Tax Lots 1S101DD02000, 1S101DD02001, and 1S1DD01900 Neighborhood Residential - Medium Density and one property on Map and Tax Lot 1S101DD01800 Corridor on the City of Beaverton Comprehensive Plan Land Use Map, as shown on Exhibit "A" and in accordance with the UPAA.

Section 2. Ordinance No. 2050, the Zoning Map, is amended to designate properties on Map and Tax Lots 1S101DD02000, 1S101DD02001, and 1S1DD01900 Residential – 2,000 square foot per dwelling unit and one property on Map and Tax Lot 1S101DD01800 Office Commercial on the City of Beaverton Zoning Map, as shown on Exhibit "A" and in accordance with the UPAA.

First reading this _____ day of _____, 2006.

Passed by the Council this _____ day of _____, 2006.

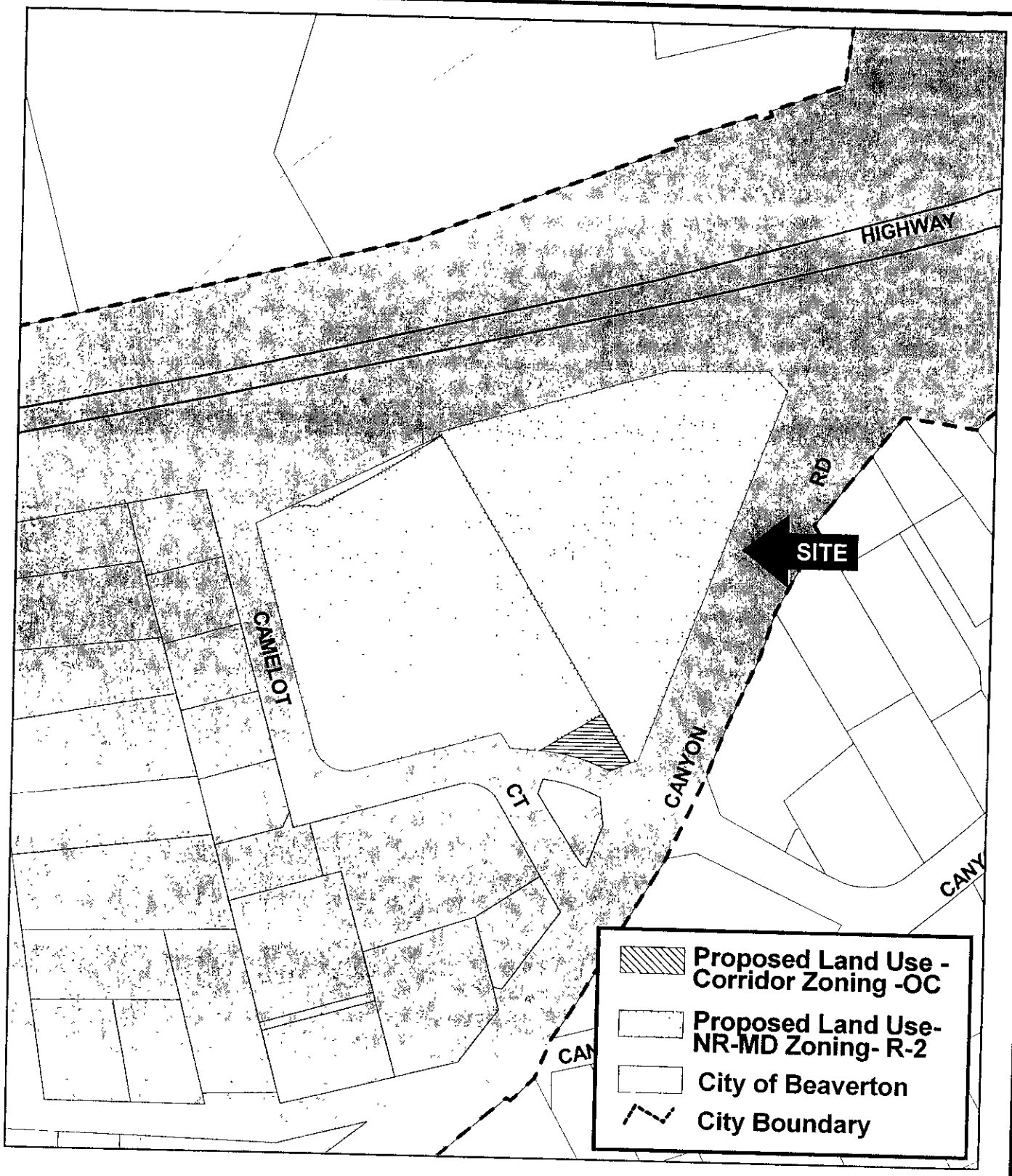
Approved by the Mayor this _____ day of _____, 2006.

ATTEST: APPROVED:

_____ _____

SUE NELSON, City Recorder ROB DRAKE, Mayor

CPA / ZMA VICINITY MAP EXHIBIT "A"



CITY OF BEAVERTON

WEST SLOPE APARTMENTS COMPREHENSIVE PLAN
LAND USE MAP AMENDMENT AND ZONING MAP AMENDMENT

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

2/8/06

Map # VARIOUS

N

Application # CPA2006-0003 ZMA2006-0002

002

EXHIBIT "B"

STAFF REPORT

TO: City Council

AGENDA DATE: 07/17/06 **REPORT DATE:** 06/22/06

FROM: Barbara Fryer, AICP, Senior Planner
Community Development Department BF

SUBJECT: To assign City Land Use (CPA2006-0003) and zoning (ZMA2006-0002) designations for four properties (1S1 01 DD 02000, 1S1 01 DD 02001, 1S1 01 DD 01900, and 1S1 01 DD 01800) located in northeast Beaverton annexed into the City by separate action. The annexation became effective on June 30, 2005.

ACTIONS: Amend the City's Comprehensive Plan Land Use Map to show Neighborhood Residential - Medium Density and Corridor and the Zoning Map to show Residential – 2,000 square feet minimum land area per dwelling unit (R-2) and Office Commercial (OC), respectively.

APPLICANT: City of Beaverton

APPROVAL CRITERIA: Comprehensive Plan Section 1.3.1 and the Development Code Section 40.97.15.3.C

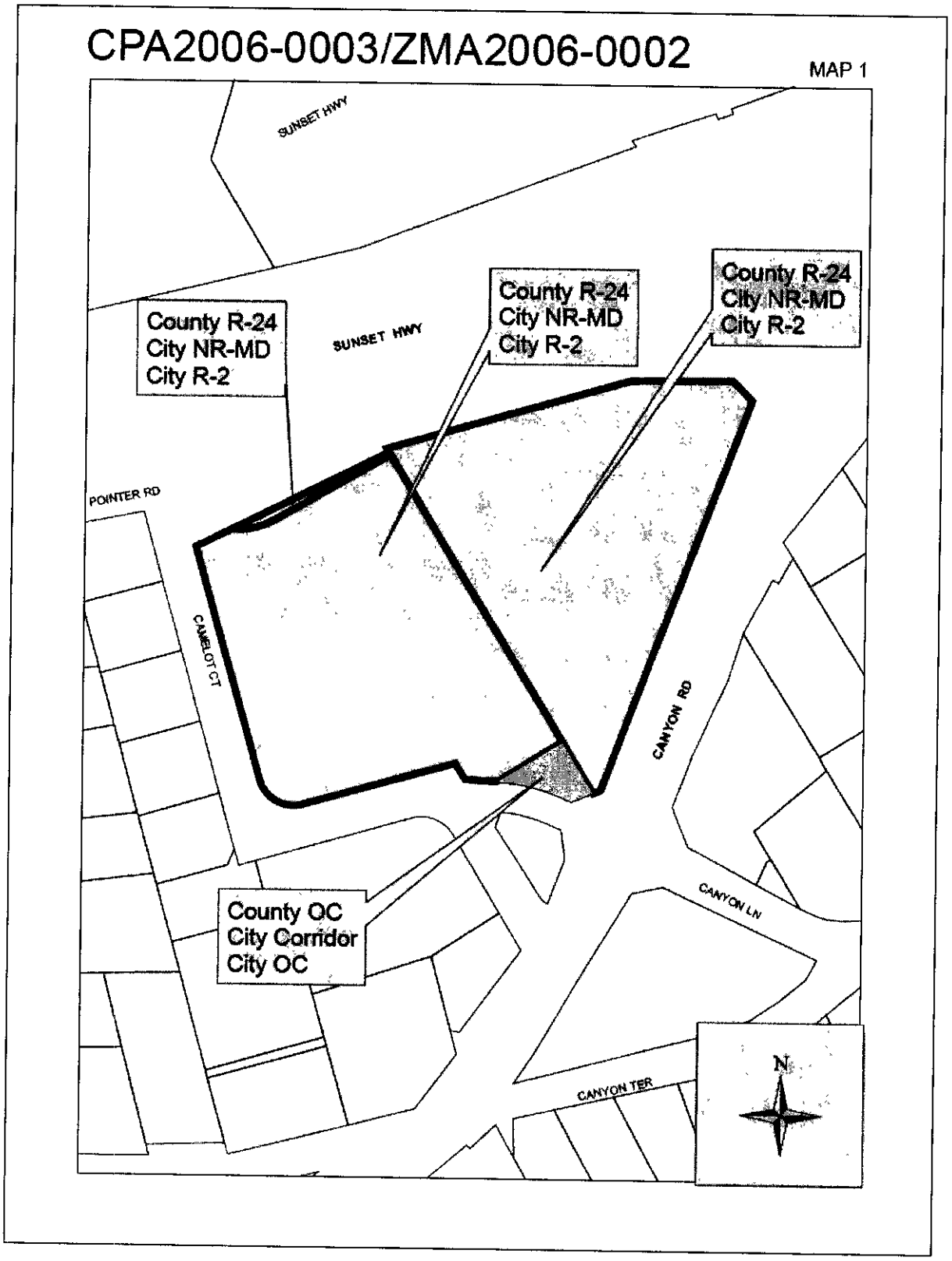
SUMMARY AND RECOMMENDATION

Three properties are designated County R-24 and one property is designated Office Commercial by Washington County. The City assigns Comprehensive Plan and Zoning designations to property being annexed into the City as prescribed by the Washington County – Beaverton Urban Planning Area Agreement (UPAA). The UPAA is specific about the appropriate City Land Use Map designation and zoning district as Neighborhood Residential – Medium Density and R-2 for the properties designated R-24 by the County. The Washington County Comprehensive Framework Plan designates the parcel that is presently in the County Office Commercial (OC) District as Transit Corridor which is equivalent to Beaverton's Corridor Comprehensive Plan Designation. The UPAA is specific that Washington County OC goes to the City OC zone.

Pursuant to Section 1.3 of the Comprehensive Plan and Section 40.97.15.3.B. of the Development Code, no public hearing is required because the UPAA is specific as to the Comprehensive Plan Land Use Map and Zoning Map designations. This decision does not qualify as a land use decision under ORS 197.015(10)(b)(A) because it is made under land use standards which do not require interpretation or the exercise of policy or legal judgment.

Staff recommends the City Council adopt an ordinance applying the Neighborhood Residential - Medium Density land use designation and R-2 zoning district to three parcels and the Corridor land use designation and OC zoning district to one parcel, effective thirty days after the Mayor's signature.

CPA2006-0003/ZMA2006-0002
07/17/06 Agenda Date



CPA2006-0003/ZMA2006-0002
07/17/06 Agenda Date

EXISTING CONDITIONS

The four parcels total approximately 5.34 acres. The property information includes:

Map and Tax Lot	Site Address	Lot Size (acres)	Existing Land Use
1S101DD02000	1950 SW Camelot Court	2.60	Apartments
1S101DD02001	No site address	0.02	Vacant
1S101DD01900	2130 SW Camelot Court	2.63	Apartments
1S101DD01800	No site address	0.09	Vacant

COMPREHENSIVE PLANNING AND ZONING

Cedar Hills - Cedar Mill Community Plan

The property depicted on Map 1 is located in Washington County's Cedar Hills – Cedar Mill Community Plan Area. The property is designated on the Community Plan map as Residential – 24 units to the acre (R-24) and Office Commercial. The Urban Planning Area Agreement is specific that the appropriate City Comprehensive Plan Land Use Map designation for R-24 is Neighborhood Residential – Medium Density and Office Commercial. When the City adopted the new Comprehensive Plan in 2000, the commercial designations were replaced by designations based on design types on the Metro 2040 Growth Concept Map. This area is within a "Corridor" design type on that map, as well as on a map of transit corridors in the County Comprehensive Framework Plan. Thus, the City Comprehensive Plan Land Use Map designation applying to Office Commercial property would be Corridor. The City zoning districts for the properties would be R-2 (Residential – 2,000 square feet per dwelling unit) for the R-24 properties and Office Commercial (OC) for the Office Commercial property.

Special Policy II.A. of the UPAA states in part "...the COUNTY will advise the CITY of adopted policies which apply to the annexed areas and the CITY shall determine whether CITY adoption is appropriate and act accordingly." The County has not advised the city of adopted policies which may apply to the annexed area. Staff identified policies which may apply to the areas.

Staff has reviewed the text of the Cedar Mill – Cedar Hills Community Plan and has determined that there are no general design elements in the Plan and no design elements for the West Slope Subarea of the Plan that are applicable to this property.

CRITERIA FOR APPROVAL

COMPREHENSIVE PLAN AMENDMENT CRITERIA

Comprehensive Plan Section 1.3.1 states: "Affirmative findings relative to all of the following criteria are the minimum required for a Plan Amendment (non-discretionary annexation related map amendments need not comply with Plan criteria because they are not land use decisions under Oregon Statutes and are those stipulated by Exhibit "B" of the Urban Planning Area Agreement."

Findings related to the Comprehensive Plan Amendment criteria are not necessary because this map amendment is a non-discretionary annexation related map amendment that is not a land use decision.

ZONING MAP AMENDMENT CRITERIA

Adoption by the City Council of an amendment to the Zoning Map must be supported by findings of fact based on the evidence provided by the applicant demonstrating the criteria of the Development Code Section 40.97.15.3.C (Non-Discretionary Annexation Related Zoning Map Amendment - Approval Criteria) have been met. The City Council may adopt by reference facts, findings, reasons, and conclusions proposed by the City staff or others. Affirmative findings to the following criteria are the minimum requirements for Zone Map amendments.

40.97.15.3.C.1. ***The proposal satisfies the threshold requirements for a Non-Discretionary Annexation Related Zoning Map Amendment application.***

There are two threshold requirements with the first requiring that "The change of zoning to a city zoning designation be the result of annexation of land to the City". Annexation 2004-0019 annexed the property subject to the zoning map amendment to the City, effective on March 30, 2005. Thus, the first threshold requirement has been met.

The second threshold requires that the UPAA be specific as to the City zoning designations to be applied and does not allow for discretion. The UPAA is specific for the proposed amendment:

- Washington County R-24, 24 units to the acre, is equivalent to R-2, Residential – 2,000 square foot per dwelling unit.
- Washington County Office Commercial is equivalent to the Office Commercial zoning district.

No discretion is required; therefore this proposal meets the second threshold.

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

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

The City Council elected to not establish a fee for a Non-Discretionary Annexation Related Zoning Map Amendment application. No fee has been collected.

FINDING: ***Staff finds that this criterion is not applicable.***

40.97.15.3.C.3. ***The proposed zoning designation is consistent with the Washington County - Beaverton UPAA.***

The UPAA is specific for the proposed amendments:

- Washington County R-24, 24 units to the acre, goes to R-2, Residential – 2,000 square foot per dwelling unit.
- Washington County Office Commercial goes to the Beaverton Office Commercial zoning district.

No discretion is being exercised in assigning a zoning designation.

The UPAA requires the City to review the appropriate Community Plan and in this case it is the Cedar Hills – Cedar Mill Community Plan. The subject properties are not in an Area of Special Concern, do not have general or specific design elements applicable to them, and are not within the County's Significant Natural and Cultural Resources Map.

FINDING: ***Staff finds that the approval criterion is met since the proposed zoning designation is specified by the UPAA and is, therefore, consistent with the UPAA.***

40.97.15.3.C.4. ***Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

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

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

PROCESS

Submission Requirements: An application for a Non-Discretionary Annexation Related Zoning Map Amendment shall be made by the submittal of a valid annexation petition or an executed annexation agreement. A valid annexation petition has been submitted and approved under Ordinance 4341.

Public Notice: Section 1.3.4.3(c) of the Comprehensive Plan prescribes the notice to be provided for these types of applications.

Notice on non-discretionary annexation related CPA's must be provided not less than twenty (20) calendar days prior to when the item first appears on the City Council's agenda.

1. Legal notice will be published in the Beaverton Valley Times on June 22, 2006.
2. Notice will be mailed to the West Slope Neighborhood Association Committee, Cedar Mills – Cedar Hill Citizen Participation Organization, Beaverton Neighborhood Office, and Chair of the Committee for Citizen Involvement (CCI) on or before June 22, 2006.
3. Notice will be mailed to the property owners by certified mail on or before June 22, 2006.

The City Council has not directed staff to provide additional notice for this amendment beyond the notices described above, however, notice and this staff report will be posted on the City of Beaverton's public web site. The notice requirements for this CPA/ZMA will be met.

CONCLUSION

Based on the findings in this report, staff concludes amending the Land Use Map to show the City Neighborhood Residential Medium Density Land Use Designation and the Zoning Map to show the Urban Medium Standard Density R-2 Zoning District for 1S101DD02000, 1S101DD02001, AND 1S101DD01900, and to show the City Corridor Land Use Designation for and the Office Commercial (OC) zoning district for 1S101DD01800, is appropriate.