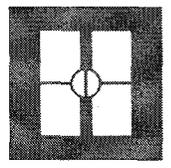


CITY OF HILLSBORO



HILLSBORO CITY COUNCIL

Preliminary Agenda  
Tuesday, October 7, 2008

7 PM  
Hillsboro Civic Center Auditorium

Regular Session  
150 E. Main Street

Hillsboro City Council Meetings are broadcast live by Tualatin Valley Community Television (TVCTV) Government Access Programming. To obtain the monthly programming schedule, contact TVCTV at 503-629-8534 or call the City of Hillsboro at 503-681-6219.

**Please silence all electronic devices. Thank you.**

Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting.

The City will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:

- Qualified sign language interpreters for persons with speech or hearing impairments.
- Qualified bilingual interpreters.

To obtain services, please call 503-681-6100

\*\*\*\*\*

When addressing the Council, please use the witness table (center front of the room). All testimony is electronically recorded. Public participation is encouraged. If you wish to speak, please raise your hand or walk to the witness table as the Mayor calls the item, or, on any item not on the agenda, as the Mayor calls for "Communications and Non-Agenda Items." If you are speaking on an item not on the regular agenda, please fill out the card on the table in the back of the room and give to the City Recorder. You are not required to give your address when speaking to the City Council, only your name.

Ordinances and Resolutions marked with an asterisk will not be read in full unless requested by a member of the City Council. Copies were distributed to Council and posted for at least seven calendar days, and are available on the north side of the auditorium.

\*\*\*\*\*

**\* SEE ATTACHED AGENDA \***  
**Posted – October 2, 2008**

## REGULAR SESSION – 7 PM – AUDITORIUM

### **PLEDGE OF ALLEGIANCE – Mayor Tom Hughes**

### **CALL TO ORDER - Roll Call**

1. **CONSENT AGENDA:** (The items on the Consent Agenda are normally considered in a single motion. Any item may be removed for separate consideration upon request by any member of the Council.)

- A. Schedule joint City Council/Hillsboro School District work session Thursday, November 20, 2008, 6 PM, Hillsboro School District offices, 3083 NE 49<sup>th</sup> Place.
- B. SN 4-08: NW 281<sup>st</sup>/Prahl to NE 15<sup>th</sup> Ave: Schedule a public hearing for November 4, 2008 regarding the renaming and recording of the public street segment of NW 281<sup>st</sup> Avenue (formerly known as NW Prahl Road) to NE 15<sup>th</sup> Avenue.
- C. Endorsement of the liquor license annual renewals: *(These renewal requests have been reviewed by the Police Department and no objections have been filed.)*

Limited On-Premises Sales – *Allows the sale of malt beverages, wine and cider for consumption on the licensed premises, and the sale of kegs of malt beverages for off premises consumption.*

Full On-Premises Sales – *Allows the sale and service of distilled spirits, malt beverages and wine for consumption on the licensed premises.*

Off-Premises Sales – *Allows the sale of malt beverages, wine and cider in factory sealed containers for consumption off the licensed premises and allows sample tastings of malt beverages, wine and cider.*

- 1. Original Joe's a Touch of Italy, 2363 SE TV Hwy – Limited on-premises sales
- 2. Thai Princess Restaurant, 2401 Cornell Rd, Suite H – Limited on-premises sales
- 3. Qdoba Mexican Grill, 2288 NW Allie Ave #850 – Full on-premises sales
- 4. Albertsons #591, 888 NE 25<sup>th</sup> Ave – Off-premises sales
- 5. Merchant of Venice Café, 1341 NE Orenco Station Pkwy – Full on-premises sales

### 2. **PRESENTATIONS AND APPOINTMENTS:**

- A. Proclamation: Crime Prevention Month – October 2008 – presented to Deputy Police Chief Chris Skinner.
- B. Recognition of Deputy City Recorder Debbie Werner for receiving the 2008 President's Award of Distinction from the Oregon Association of Municipal Recorders.

3. **PUBLIC HEARINGS:**

- A. Consider a resolution authorizing the Mayor to enter into an addendum to an agreement for the sale of real property located at the NE corner of the intersection of NW John Olsen Avenue and NW Cornell Road. **Resolution No. \* \_\_\_\_\_ is available.**

4. **UNFINISHED BUSINESS:**

- A. CU 6-08: Fred Meyer Fuel Stop #143: Consider an appeal of Planning and Zoning Hearings Board decision approving the conditional use to allow construction and operation of an automobile fueling station in the C-1 Commercial Zone. The "limited de novo appeal" hearing was originally set on May 20, 2008 and continued on October 7, 2008. Request for a third continuance to January 20, 2009.

5. **NEW BUSINESS:**

- A. ZC 7-07 (MOD 1): Zone Change Request – Heritage Christian School: Consider an ordinance amending the official zoning map, a portion of Hillsboro Zoning Ordinance No. 1945, as amended, by modifying the conditions of a zone change approval on a certain tract of land zoned R-8.5 Single Family Residential. The request is for a modification to Condition No. 2 of an approved zone change from R-10 Single Family Residential to R-8.5 Single Family Residential, on one property approximately 5.86 acres in area generally located south of NE Rogahn Street, west of NE Charlois Drive, north of NE Eaglenest Court, and east of NE Jackson School Road. The property can be specifically identified as Tax Lot 1000 on Washington County Assessor's Tax Map 1N2-30AC. **Ordinance No. \* \_\_\_\_\_ is available.**
- B. Consider adopting a resolution adopting a rate schedule for the transportation utility fee imposed by Hillsboro Municipal Code Article 3.40. **Resolution No. \* \_\_\_\_\_ is available.**
- C. Consider approving an intergovernmental agreement with Washington County for construction management services for the SE 10<sup>th</sup> Avenue Widening Project, and authorize the Mayor and City Recorder to execute the documents.
- D. Consider approving a ground lease agreement with the Port of Portland for approximately 1.1 acres of land adjacent to NE 25<sup>th</sup> Avenue and the Hillsboro Airport to allow the City to construct a fire station, and authorize the Mayor and City Recorder to execute the documents. (This item was discussed in work session on August 16, 2008)
- E. Consider endorsement of liquor license applications: *(These requests have been reviewed by the Police Department and no objections have been filed.)*

Full On-Premises Sales – *Allows the sale and service of distilled spirits, malt beverages and wine for consumption on the licensed premises.*

1. Best Panda Buffet, 1050 SW Baseline Rd #C1 – Change of Ownership – Full on-premises sales
2. Dotty's, 1300 SW Oak #G – Change in Privilege – Full on-premises sales

6. **COMMUNICATION AND NON-AGENDA ITEMS:** (Persons wishing to speak on matters not on the agenda may be recognized at this time. *Please fill out the card on the table in the back of the room and give to the City Recorder.* You are not required to give your address when speaking to the City Council, only your name. Presentations are limited to three minutes, with a maximum total of 15 minutes for this agenda item. More time, if needed, may be provided upon completion of the regular agenda.)

7. **ADVICE/INFORMATION ITEMS:**

- A. Proclamation: Fire Prevention Month – October 2008.
- B. City Council Retreat, October 11, 8 AM, Hillsboro Main Library.
- C. City Hall Day, October 16, 6 PM, Hillsboro Civic Center conference rooms C113B&C.
- D. General Election – November 4.
- E. Veterans Day Holiday – November 11. City offices closed.

**ANNUAL COMMUNITY EVENTS:**

- F. Saturday Farmers' Market in downtown Hillsboro, every Saturday through October 25 from 8 AM to 1:30 PM.

8. **WORK SESSION ITEM (Item A will be discussed in work session following regular session in Conference Room C113B.)**

- A. Discussion: County Island Annexation – Planning Department staff and Clark Worth, Barney and Worth, Inc.

# CITY OF HILLSBORO

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September 29, 2008

## **STAFF REPORT**

TO: City Council

FROM: Planning Department

RE: Request for Street Name Change –  
File No. SN 4-08: NW 281<sup>st</sup> Avenue / NW Prah Road to NE 15<sup>th</sup> Avenue

## **BACKGROUND**

In 1999, jurisdiction of the remaining portions of the NW 281<sup>st</sup> Avenue right-of-way under Washington County's control was transferred to the City of Hillsboro. City staff is requesting that the public street segment of NW 281<sup>st</sup> Avenue (formerly known as NW Prah Road), as shown on the attached map, be officially renamed and recorded NE 15<sup>th</sup> Avenue.

The purpose for this street name change request is to legally record the street as NE 15<sup>th</sup> Avenue. At the present time the street is signed NE 15<sup>th</sup> Avenue, but the formal procedures for changing and recording the street as NE 15<sup>th</sup> Avenue were never taken. The new street name of NE 15<sup>th</sup> Avenue will assist the response of fire, police and other emergency services to addresses located on the subject street. Changing the street name to NE 15<sup>th</sup> Avenue would also make the street name consistent with the existing city street grid.

Recording the street as NE 15<sup>th</sup> Avenue will increase safety and place the street name on appropriate Washington County Tax Assessor's Maps (1N2-29, 1N2-29BA, 1N2-29BB, 1N2-29BC, 1N2-29CA, 1N2-29CB, 1N2-29CC and 1N2-29CD). This change would not affect surrounding properties because these properties are currently addressed off of NE 15<sup>th</sup> Avenue.

On September 24, 2008, the Planning Commission reviewed a request from City Staff to change the name of the public street, as shown on the attached map, from NW 281<sup>st</sup> Avenue to NE 15<sup>th</sup> Avenue.

## REQUEST

ORS 227.120 sets forth the procedure and approval process for naming or renaming streets. The procedure requires a recommendation from the Planning Commission to the City Council for the renaming of any existing street, highway, or road, other than a County road, if the Commission feels the renaming is in the best interest of the City. Upon receiving the Commission's recommendation, the Council is then required to schedule a public hearing to consider the matter.

Pursuant to ORS 227.120, the Planning Staff requests that the Council receive the Planning Commission's recommendation, and schedule a public hearing for the November 4, 2008 meeting to consider renaming the public street NE 15<sup>th</sup> Avenue.

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT



Daniel L. Dias  
Urban Planner I

Attachments: PC Resolution No. 1680-P  
Attachment A: Vicinity Map

PLANNING COMMISSION

RESOLUTION NO. 1680-P

SN 4-08: NW 281<sup>st</sup> AVENUE / NW PRAHL ROAD TO NE 15<sup>th</sup> AVENUE

A RESOLUTION TO THE CITY COUNCIL RECOMMENDING THAT A PUBLIC STREET SEGMENT BE RENAMED NE 15<sup>TH</sup> AVENUE.

WHEREAS, in 1999, the remaining portions of NW 281<sup>st</sup> Avenue right-of-way under county control were transferred from Washington County's jurisdiction to the City of Hillsboro; and

WHEREAS, the street name change from NW 281<sup>st</sup> Avenue to NE 15<sup>th</sup> Avenue was never properly changed and recorded; and

WHEREAS, ORS 227.120 sets forth the procedure for naming and renaming streets and requires the Planning Commission to forward a recommendation to the City Council to hold a public hearing on the proposed private street name, and

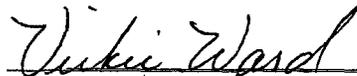
WHEREAS, renaming the public street segment of NW 281<sup>st</sup> Avenue would alleviate potential confusion and provide better emergency service, and

WHEREAS, the Planning Commission considered this matter on September 24, 2008, and supports the proposed public street name changes as acceptable and appropriate.

NOW, THEREFORE, THE CITY OF HILLSBORO RESOLVES AS FOLLOWS, that the City of Hillsboro Planning Commission by and through this resolution hereby recommends that the City Council schedule a public hearing, at a time the Council deems appropriate, to consider officially renaming and recording the public street segment identified on Exhibit A as NE 15<sup>th</sup> Avenue.

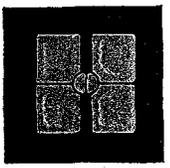
Introduced and passed by the Commission this 24<sup>th</sup> day of September, 2008.

  
Vice-President

ATTEST:   
Secretary



CITY OF HILLSBORO



PROCLAMATION

WHEREAS, the health, vitality, prosperity, and safety of Hillsboro is dependent on the community's willingness to take ownership in it; and

WHEREAS, crime prevention is the responsibility of every community member, not just law enforcement; and

WHEREAS, partnerships play a vital role in any undertaking, and understanding we can do more together, as a community, than as one individual or entity; and

WHEREAS, people of all ages must be educated about the dangers of crime and how they can protect themselves from becoming victims; and

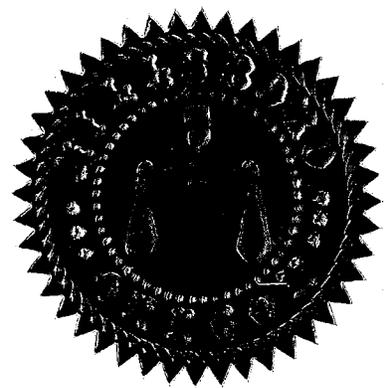
WHEREAS, understanding that although not all crime will be prevented, it can, in many cases, be deterred or delayed until detected; and

WHEREAS, the reporting of crime, attempted crime, or suspicious activity is a key factor in fighting crime.

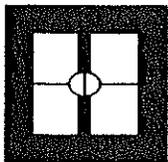
NOW, THEREFORE BE IT RESOLVED, that I, Tom Hughes, Mayor of Hillsboro, do hereby proclaim October 2008 as

**"NATIONAL CRIME PREVENTION MONTH"**

and encourage Hillsboro residents, businesses, faith-based organizations, government and civic institutions to work together in reducing crime and the fear of crime through education, awareness, and communication with neighbors and law enforcement.



\_\_\_\_\_  
Tom Hughes, Mayor  
October 7, 2008



3A  
revised  
agreements sent  
to Facilities &  
Fleet

**Memorandum**

**To:** Mayor and City Council  
**From:** Facilities and Fleet Department  
**Date:** 09-30-08  
**Subject:** Sale of Real Property – Corner of John Olsen and Cornell

---

**Requested City Council/Committee/Commission Action:**

Authorize the Mayor to execute an Addendum to the Purchase and Sale Agreement (PSA) for the sale of real property located at the corner of John Olsen and Cornell; specifically Tax Lots 1N226DD-01600 & 01700.

**Background:**

Subject property was originally purchased in 1999 for \$1,529,000 with the intent to construct a new main library on the site. In September 2005, the City purchased a shelled building and 5.43 acres of land in the Dawson Creek Business Park and completed the build-out of a new main library. In June 2007, City Council declared the vacant John Olsen/Cornell property as surplus, and the property was offered for public sale. In October 2007, NCB Development offered to purchase the property for \$4,954,950 contingent on the due diligence outcome and completion of a pending proposed zoning change. City Council accepted this offer from NCB Development. The process for the land use actions contemplated in the agreement was completed on August 19, 2008. Market conditions have changed considerably from the time the original agreement was accepted; because of the changed market conditions, NCB Development has proposed modifications to the original Purchase and Sale Agreement. Staff presented the substance of the new offer during the Council Executive Session on September 16, 2008 with Council providing direction in the subsequent open session.

**Price:**

NCB Development's revised final offer is \$3,861,500 (Three Million Eight Hundred Sixty One Thousand and Five Hundred Dollars). The Addendum to the Purchase and Sale Agreement reflecting the revised offer is attached as Exhibit A.

**Recommendation:**

Approve the Resolution authorizing the Mayor to enter into an Addendum to the Purchase and Sale Agreement for the sale of real property located at John Olsen/Cornell. Exhibit A to the Resolution (Addendum to the PSA) is currently under review by the City attorneys and will be provided in the final Council packet.

**ADDENDUM TO  
PURCHASE AND SALE AGREEMENT**

**DATE:** October \_\_\_\_, 2008  
**SELLER:** City of Hillsboro, Oregon  
**PURHCASER:** NCB Development, LLC  
**PROPERTY:** Approximately 5.3 Acres of Land located at  
206<sup>th</sup> and NW Cornell Road  
Hillsboro, Washington County, Oregon

---

This ADDENDUM to that certain Purchase and Sale Agreement by and between the parties referenced above is made and entered into as of the date first above written. Modifications are shown below as changes to the original Agreement, as contemplated by Section 13.8 of the original Agreement. New language is shown as underlined. Deleted text is shown as ~~strikethrough~~.

The following provisions of the Purchase and Sale Agreement are hereby modified in the following respects:

4.1 Purchase Price

Purchaser agrees to pay to Seller, in cash on the ~~Closing Date~~ dates and in the amounts set forth below, the sum of ~~\$4,954,950~~ 3,861,500, including principle and interest, as the purchase price for the Property (the "Purchase Price"), subject to any adjustments and credits set forth in this Agreement.

- a. \$1,000,000 in cash or cashier's check on November 2, 2008 (the "Amount Due at Closing.")
- b. \$120,500 in cash or cashier's check on or before November 2, 2009.
- c. \$120,500 in cash or cashier's check on or before November 2, 2010.
- d. \$2,620,500 in cash or cashier's check on or before November 2, 2011.

6.2 Closing Date

The closing date ("Closing" or "Closing Date") shall be November 2, 2008. ~~occur within thirty (30) days after the end of the due diligence period stated in Section 5.1.D, provided that Purchaser shall have the right to extend the Closing Date by thirty (30) days by increasing the Earnest Money by \$50,000 (Fifty Thousand and no/100 Dollars) no later than one (1) business day prior to the then scheduled Closing Date.~~

6.5 Close of Escrow

On the Closing Date, the Title Company shall

6.5.A Deliver the ~~Purchase Price~~ to Seller the Amount Due at Closing, adjusted to account for closing costs;

6.5.B Cause the Deed to be recorded in the Official Records of Washington County, Oregon;

6.5.C. Deliver to Seller a fully executed Deed of Trust and a fully executed Promissory Note securing the performance of Purchaser's payment obligations under this Agreement;

6.5.C-D. Deliver to Purchaser: the Purchaser's Title Policy (defined below) and the executed FIRPTA Certificate.

6.5.D-E. Promptly after Closing, the Title Company shall deliver to each of Purchaser and Seller an accounting of all funds received and disbursed and copies of all executed and recorded or filed documents deposited with the Title Company with the recording or filing information noted on such documents.

6.9 Possession

Seller will deliver possession of the Property to Purchaser at Closing, free of all rights of possession of Seller or any third parties, but subject to Seller's rights and interest in the Property based on the separate financing agreement between the parties addressing Purchaser's payment obligations under this Addendum.

6.11 Conditions to Seller's Obligation

Seller's obligation to sell the Property pursuant to this Agreement is conditioned on satisfaction of the following conditions:

...

6.11.B Purchaser shall have paid the Purchase Price, in full, consistent with the terms of this Addendum and the separate financing agreement between the parties addressing Purchaser's payment obligations under this Addendum; and

6.11.C Purchaser performs all of the obligations to be performed by Purchaser under this Agreement at or before Closing or as otherwise provided in this Addendum and the separate financing agreement between the parties addressing Purchaser's payment obligations under this Addendum.

9 Breach

9.1A. Purchaser's Failure to Close

In the event that Purchaser is obligated under this Agreement to proceed with Closing and pay the ~~Purchase Price~~ Amount Due at Closing and fails to do so, then Seller shall be entitled as Seller's sole remedy, to terminate this Agreement and receive ~~the lesser of the Earnest Money or reimbursement of Seller's actual third party and personnel costs incurred in connection with the transaction contemplated hereby.~~

9.1.B Purchaser's Failure to Perform Payment Obligations

In the event Purchaser fails to make payments on the dates and in the amounts described under Paragraph 4.1 Purchase Price, Seller shall be entitled to retain all prior payments and further shall be entitled to pursue any legal remedy available to Seller at law or in equity including without limitation an action for possession, to recover title or for specific performance.

--SIGNATURES APPEAR ON THE FOLLOWING PAGE--

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IN WITNESS WHEREOF, the parties have executed this ADDENDUM as of the date set forth above.

**SELLER: CITY OF HILLSBORO, OREGON**

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

Thomas Hughes, Mayor

Attest: \_\_\_\_\_

Amber Ames, City Recorder

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

**PURCHASER: NCB DEVELOPMENT, LLC**

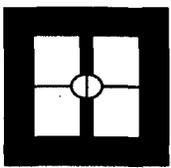
By: \_\_\_\_\_

Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



**Memorandum**

**To:** Mayor and City Council

**From:** Facilities and Fleet Department

**Date:** 09-30-08

**Subject:** Sale of Real Property – Corner of John Olsen and Cornell

**Requested City Council/Committee/Commission Action:**

Authorize the Mayor to execute an Addendum to the Purchase and Sale Agreement (PSA) for the sale of real property located at the corner of John Olsen and Cornell; specifically Tax Lots 1N226DD-01600 & 01700.

**Background:**

Subject property was originally purchased in 1999 for \$1,529,000 with the intent to construct a new main library on the site. In September 2005, the City purchased a shelled building and 5.43 acres of land in the Dawson Creek Business Park and completed the build-out of a new main library. In June 2007, City Council declared the vacant John Olsen/Cornell property as surplus, and the property was offered for public sale. In October 2007, NCB Development offered to purchase the property for \$4,954,950 contingent on the due diligence outcome and completion of a pending proposed zoning change. City Council accepted this offer from NCB Development. The process for the land use actions contemplated in the agreement was completed on August 19, 2008. Market conditions have changed considerably from the time the original agreement was accepted; because of the changed market conditions, NCB Development has proposed modifications to the original Purchase and Sale Agreement. Staff presented the substance of the new offer during the Council Executive Session on September 16, 2008 with Council providing direction in the subsequent open session.

**Price:**

NCB Development's revised final offer is \$3,861,500 (Three Million Eight Hundred Sixty One Thousand and Five Hundred Dollars). The Addendum to the Purchase and Sale Agreement reflecting the revised offer is attached as Exhibit A.

**Recommendation:**

Approve the Resolution authorizing the Mayor to enter into an Addendum to the Purchase and Sale Agreement for the sale of real property located at John Olsen/Cornell. Exhibit A to the Resolution (Addendum to the PSA) is currently under review by the City attorneys and will be provided in the final Council packet.

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

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN  
ADDENDUM TO AN AGREEMENT FOR THE SALE OF REAL PROPERTY**

WHEREAS, the City of Hillsboro acquired the property located at Cornell and John Olsen, Tax Lots 1N226DD-01600 & 01700 for the purpose of constructing a library; and

WHEREAS, said property will not be required for the construction of said library;  
and

WHEREAS, said property was declared surplus by City Council on June 05, 2007 Resolution No. 2209; and

WHEREAS, NCB Development made and the City Council accepted an offer to purchase the property from the City; and

WHEREAS, the City has concluded the land use actions contemplated by the Agreement, but the associated process took longer than originally envisioned and was completed in August, 2008; and

WHEREAS, due to the passage of time and changing market conditions, the City has obtained an updated appraisal of the property; and

WHEREAS, the purchaser has proposed modifications to the original agreement based on the passage of time and changing market conditions; and

WHEREAS, notice of the proposed sale and public hearing have been published in the manner provided by ORS 221.725; and

WHEREAS, the City Council conducted a public hearing on this matter on October 7, 2008, and has found it continues to be necessary, expedient, not prejudicial to the public and in the best interest of the City to sell said property and to enter into the Addendum to the original Purchase and Sale Agreement and does hereby favor such sale.

//

//

NOW, THEREFORE, THE CITY OF HILLSBORO RESOLVES AS FOLLOWS,

Section 1. The Mayor is authorized to sign the Addendum to the Purchase and Sale Agreement, which Addendum is attached hereto as Exhibit A.

Section 2. This resolution is effective immediately following adoption by the City Council and signature by the Mayor.

Introduced and passed by the Council this 7th day of October, 2008.

Approved by the Mayor this 7th day of October, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

00007062

# CITY OF HILLSBORO

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September 30, 2008

## **SUPPLEMENTAL STAFF REPORT**

TO: City Council

FROM: Planning Department

RE: Appeal of Planning and Zoning Hearings Board Decision Approving Conditional Use  
Case File No. CU 6-08: Fred Meyer Fuel Stop #143

### **Background**

On October 7, 2008, the City Council is scheduled to hold a public hearing on an appeal of the Planning and Zoning Hearings Board ("the Board") approval of a Conditional Use, for an automotive fuel station on a portion of the 18.60 acre Fred Meyer property addressed as 6495 SE Tualatin Valley Highway. The property owner is Fred Meyer Stores. The applicant is Great Basin Engineering.

### **Continuance of Appeal to January 20, 2009**

On September 29, 2008, the appellant's representative, Bradley Anderson of Schwabe, Williamson & Wyatt and Fred Meyer's representative Steven Abel of Stoel Rives LLP agreed to a continuance of the public hearing to January 20, 2009 and are requesting City Council agreement with this request for further continuance. Planning staff is not in opposition to the request and feel that the requested continuance is appropriate.

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT

Ruth Klein  
Urban Planner III

Attachments: Letter, from Steven Abel of Stoel Rives LLP, dated September 29, 2008.  
Email, from Bradley Andersen of Schwabe, Williamson & Wyatt, dated September 29, 2008.  
Email, from Chris Davies, dated September 29, 2008.



900 S.W. Fifth Avenue, Suite 2600  
Portland, Oregon 97204  
main 503.224.3380  
fax 503.220.2480  
www.stoel.com

September 29, 2008

STEVEN W. ABEL  
Direct (503) 294-9599  
swabel@stoel.com

**VIA EMAIL**

Hillsboro City Council  
c/o Ruth Klein  
City of Hillsboro Planning Department  
150 E Main Street, 4th Floor  
Hillsboro, OR 97123

**Re: Appeal CU 6-08 and 120-day Waiver**

Dear Councilors:

This office represents Fred Meyer Stores ("Fred Meyer"), the applicant and respondent in the above-referenced matter. The 120-day period in CU 6-08 is due to expire on October 21, 2008. The applicant requests that the expiration date of the 120-day period be reset to January 20, 2008. The attorneys for John Christopher Davies have indicated that they have no objection to this resetting.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. Abel", is written over the typed name "Steven W. Abel".

Steven W. Abel

SWA/pjn

cc: Peter Livingston  
Brad Andersen

---

**From:** Andersen, Bradley W. [mailto:BAndersen@SCHWABE.com]  
**Sent:** Monday, September 29, 2008 2:33 PM  
**To:** Ruth Klein; james.coombes@fredmeyer.com; Albrich, Elaine; Abel, Steve; jcdavies@ix.netcom.com  
**Cc:** Clarke, Tammy; Manulik, Mark; Livingston, Peter  
**Subject:** RE: Tualatin Valley Hwy Fuel Stop (Need Letter Today)

Ruth,

Thanks for your e-mail. The parties are still working on a resolution and simply need more time.

I talked to Steve Abel who confirmed this information. I understand Steve will send a letter, similar to the one he sent before, today or tomorrow confirming his clients' request for a continuance. We concur with his request.

---

**From:** Ruth Klein [mailto:ruthk@ci.hillsboro.or.us]  
**Sent:** Monday, September 29, 2008 12:23 PM  
**To:** james.coombes@fredmeyer.com; Albrich, Elaine; Abel, Steve; jcdavies@ix.netcom.com; Andersen, Bradley W.  
**Subject:** Tualatin Valley Hwy Fuel Stop (Need Letter Today)  
**Importance:** High

Hi Jim,

I heard that you spoke to Colin Cooper on Friday and that an extension would be requested and that it is agreeable to both parties. I'll need the new letter from Steve and Chris today and have attached the letter that was submitted before. The dates will just have to be swapped out. Please call if you have any questions.

Thanks!  
Ruth

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**Ruth Klein, Urban Planner**  
City of Hillsboro Planning Department  
(503) 681-6465 – Phone  
(503) 681-6245 – Fax

**Ruth Klein**

---

**From:** Chris Davies [jcdavies@ix.netcom.com]

**Sent:** Monday, September 29, 2008 5:36 PM

**To:** Ruth Klein

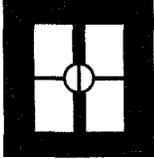
Ruth,

I am in agreement with an extension to January.

Chris Davies

09/30/2008

# CITY OF HILLSBORO



September 29, 2008

**SUPPLEMENTAL STAFF REPORT**

TO: City Council

FROM: Planning Department

RE: Request for Modification of an Approved Zone Change – ZC 7-07 (MOD 1): Heritage Christian School

**REQUEST**

Attached are materials relating to a request from Heritage Christian School for modification of Condition No. 2 of an approved zone change from R-10 Single Family Residential to R-8.5 Single Family Residential, on one property approximately 5.86 acres in area (File No. ZC 7-07: Weber-Wetter II). Condition No. 2 requires reconstruction of the sidewalk and installation of a planter strip and street trees along the site's NE Rogahn Street frontage.

The subject site is generally located south of NE Rogahn Street, west of NE Charlois Drive, north of NE Eaglenest Court and east of NE Jackson School Road. The site may be specifically identified as Tax Lot 1000 on Washington County Tax Map 1N2-30AC. The site address is 770 NE Rogahn Street.

A staff report is attached for your review. The Planning and Zoning Hearings Board has recommended approval of the zone change modification with one condition. Hearings Board Opinion No. 1689, dated September 19, 2008, regarding this matter is attached.

A proposed ordinance has also been attached for your consideration.

Please retain these materials until a final action has been taken on this matter. If you have any questions, please contact the Planning Department at (503) 681-6153.

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT

Jennifer K. Wells  
Urban Planner III

Attachments: Draft Ordinance  
Hearings Board Opinion No. 1689  
Staff report and maps

ORDINANCE NO. \_\_\_\_\_

ZC 7-07 (MOD 1): HERITAGE CHRISTIAN SCHOOL

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP, A PORTION OF HILLSBORO ZONING ORDINANCE NO. 1945, AS AMENDED, BY MODIFYING THE CONDITIONS OF ZONE CHANGE APPROVAL ON A CERTAIN TRACT OF LAND ZONED R-8.5 SINGLE FAMILY RESIDENTIAL.

WHEREAS, the owners of a certain tract of land described herein requested Hearings Board approval to modify a condition previously placed on the zoning of one property approximately 5.86 acres in area, and

WHEREAS, zoning on the subject property was changed from City R-10 Single Family Residential to City R-8.5 Single Family Residential in August 2007 (File No. ZC 7-07), and

WHEREAS, the current owners of the subject property acquired the property after preliminary plat approval for a 24-lot residential subdivision was granted by the Planning Commission in October 2007, and

WHEREAS, the current property owners of the subject property received Conditional Use approval to operate a private school in the existing church buildings on the subject site in January 2008, and

WHEREAS, Heritage Christian School, the applicant, seeks relief from the condition requiring reconstruction of the sidewalk adjacent to the site and to install a planter strip in compliance with the Transportation System Plan requirements, and

WHEREAS, the City of Hillsboro Planning and Zoning Hearings Board held a public hearing on the proposed zone change modification on August 20, 2008, and voted to recommend to the City Council that the subject condition requiring reconstruction of the sidewalk and installation of a planter strip be modified, based on the findings adopted by the Board as Opinion No. 1689, dated September 19, 2008, and

WHEREAS, the City Council hereby adopts the findings of the Planning and Zoning Hearings Board as its own in regard to this matter, and

WHEREAS, based on those findings, the City Council hereby determines that the zone change condition modification conforms with the Hillsboro Comprehensive Plan and Zoning Ordinance.

NOW, THEREFORE, THE CITY OF HILLSBORO DOES ORDAIN AS FOLLOWS:

Section 1. Condition No. 2 of Ordinance No. 5785, the Zone Change approval associated with File No. ZC 7-07 is hereby replaced in its entirety with a new Condition No. 2, to read as follows:

2. Prior to September 30, 2008, Heritage Christian School shall submit to the Planning Department and receive approval for a landscape plan that shows the addition of landscaping along the site's NE Rogahn Street frontage that buffers the sidewalk from the parking lot. The installation of new landscaping shall be limited to the existing landscaped strip located between the parking lot and the NE Rogahn Street sidewalk. Where there is no landscaping between the parking lot and the sidewalk along NE Rogahn Street, the applicant shall install wheel stops to keep cars from encroaching into or driving through the sidewalk. The additional landscaping shall not include trees that could grow to a large size and shall be installed no later than November 30, 2008.

Section 2. The remaining conditions (Condition No. 1 and Condition No. 3) of the Zone Change approval cited in Ordinance No. 5785 shall remain in full force and effect on the following described property:

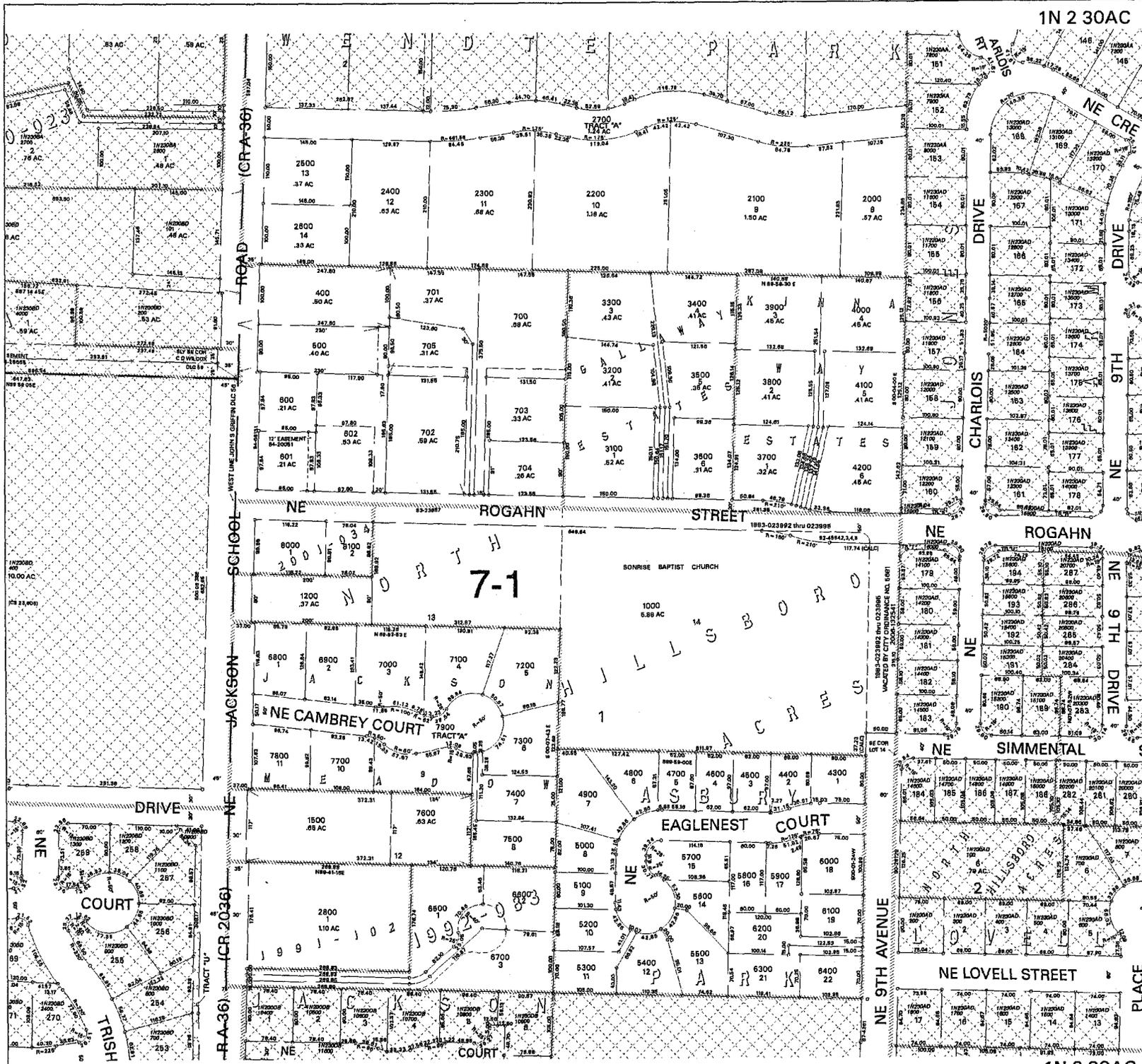
Tax Lot 1000 on Washington County Tax Map 1N2-30AC, Section 30, Township 1 North, Range 2 West, Willamette Meridian, on record as of July 16, 2007, a copy of which is attached hereto and thereby made a part of this Ordinance.

Passed by the Council this 7<sup>th</sup> day of October, 2008

Approved by the Mayor this 7<sup>th</sup> day of October, 2008

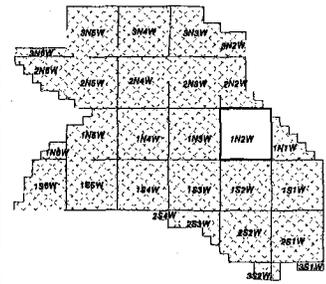
\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Recorder



1N 2 30AC

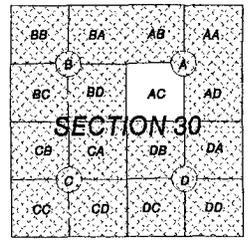
1N 2 30AC



WASHINGTON COUNTY OREGON  
SW 1/4 NE 1/4 SECTION 30 T1N R2W W.M.  
SCALE 1" = 100'

36	37	32	39	34	35	38	31
1	6	5	4	3	2	7	8
12	7	8	9	10	11	12	
13	18	17	18	16	14	13	15
24	19	20	21	22	23	24	19
25	30	28	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	7	8

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT  
[www.co.washington.or.us](http://www.co.washington.or.us)



Cancelled Taxlots For: 1N230AC  
100, 200, 201, 300, 1701  
1800, 1801, 1800, 300, 900,  
2800, 3000, 1300, 1400, 1100,


**Assessment**  
**CARTOGRAPHY**  
**Taxation**

PLOT DATE: July 16, 2007  
FOR ASSESSMENT PURPOSES  
ONLY - DO NOT RELY ON  
FOR OTHER USE

Map areas delineated by either gray shading or a cross-hatched pattern are for reference only and may not indicate the most current property boundaries. Please consult the appropriate map for the most current information.

HILLSBORO  
1N 2 30AC

**BEFORE THE PLANNING AND ZONING HEARINGS BOARD  
FOR THE CITY OF HILLSBORO, OREGON**

In the matter of an application to modify ZC 7-07 (Ordinance No. 5758) by deleting Condition 2, retaining the curb-tight sidewalk and avoiding the construction of a planter strip between the curb and sidewalk for a 5.88-acre site zoned R-8.5 Single-Family Residential in the City of Hillsboro.

City File No. ZC 7-07 (MOD 1)  
(Heritage Christian School)

Opinion No. 1689

**I. Summary:**

This Opinion is the decision of the Planning and Zoning Hearings Board approving with conditions this application to modify the zone change decision by which this site was converted from R-10 to R-8.5 Single-Family Residential by deleting the second condition of approval, which required a 5-foot planter strip between the sidewalk and curb along the site's NE Rogahn Street frontage. The applicant seeks to retain the curb-tight sidewalk along this frontage. This Opinion is based on the August 13, 2008 Staff Report as supplemented by the Findings of Fact and Conclusions of Law and condition of approval set forth below.

**II. Subject Property, Proposal and Applicant:**

This application seeks to modify the zone change decision by which this site was converted from R-10 to R-8.5 Single-Family Residential by deleting the second condition, which required a 5-foot planter strip between the sidewalk and curb along the site's NE Rogahn Street frontage. See Ordinance No. 5758. Condition No. 2 of that zone change decision provides that:

"Approval of any future land use actions, as defined in Implementation Measure (B) of the Transportation Plan, shall be conditioned to require reconstruction of the sidewalk adjacent to the site and to install a planter strip in compliance with Transportation Plan requirements, as approved by the City Engineer."

This same condition is reiterated as Condition 3 to the conditional use permit (CU 12-07) that approved the establishment and operation of the Heritage Christian School. The CUP condition required compliance with the zone change condition or that the applicant obtain a modification to the zone change decision to delete the condition. The current application reflects the applicant's choice to delete the zone change condition rather than comply with the planter strip requirement.

Concurrent with this modification request to the zone change decision, the applicant also seeks a variance from the minimum bicycle parking requirements (VAR 7-08). The variance is unrelated to the zone change modification request. The property is generally located south of NE Rogahn Street, west of NE Charlois Drive, north of NE Eaglenest Court and east of NE Jackson School Road (TL 1000 on Map 1N2-30AC), with a street address of 770 NE Rogahn Street.

### **III. Local Procedure and Applicable Law:**

The City duly noticed and held a public hearing on this application on August 20, 2008 before the Planning and Zoning Hearings Board (the Board), consisting of Chairman Daniel Kearns and members Drake Hood and Walter Hellman. At the commencement of the hearing, the Chairman made the procedural statements required by ORS 197.763(5) and (6) and 197.796. No member of the Board had any ex parte contacts, conflicts of interest or biases to report. There were no procedural objections or objections to the participation of any member of the Board in this matter, and no person requested a continuance or that the record be kept open.

The Staff Report listed the approval criteria, which were recited by Urban Planner Jennifer Wells during her oral presentation, and recommended one condition of approval. The applicable approval criteria are contained in Section 114(2) of Zoning Ordinance No. 1945, governing zone changes generally.

### **IV. Summary of the Proceeding and Record:**

The subject site, surrounding properties, availability of transportation and public utilities and the permitting history of this property and use are described in the Staff Report, and these sections are adopted and incorporated by the Board. David Bissett, the applicant's architect and representative, appeared to answer any questions about the proposal. Mr. Bissett objected to staff's recommended condition of approval requiring mitigation in the form of additional landscaping along the site's NE Rogahn Street frontage. No one else requested the opportunity to testify, and the only written comments in the record on this proposal were submitted by the City's Water Department and Washington County Department of Land Use and Transportation, both of which expressed no objections to the proposal. The record of this matter, therefore, contains the application materials, a copy of the August 13, 2008 Staff Report, and an audio recording of the August 20<sup>th</sup> hearing.

### **V. Conclusion and Decision:**

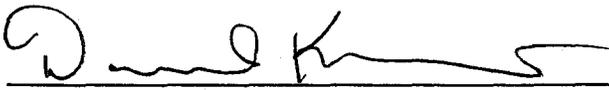
The Board concludes that the application adequately responds to and addresses the approval criteria, based on the applicant's narrative as discussed in the Staff Report. In particular, the applicant has provided convincing evidence that the 5-foot planter strip along the site's NE Rogahn Street frontage is not needed at this time, but shall be required as part of any subsequent land use permit or approval, including development review. In response to the applicant's objections to staff's recommended condition, the Board agrees that additional landscaping is required to buffer the effects of this parking lot, but that a full five feet of landscaping plus trees does not appear to be necessary at this time. Accordingly, the Board has tempered and modified staff's recommended condition. The Board therefore adopts and incorporates herein the section of the Staff Report discussing the Approval Criteria, along with the applicant's narrative explaining how this proposal meets these criteria. On this basis, the Board finds that the zone change approval criteria in Section 114(2) are met by this application, and it is hereby approved subject to the following condition, which is designed to mitigate for the deletion of a full 5-foot landscape strip between the sidewalk and curb along the site's entire NE Rogahn Street frontage:

1. Prior to September 30, 2008, Heritage Christian School shall submit to the Planning Department and receive approval for a landscape plan that shows the addition of landscaping along the site's NE Rogahn Street frontage that buffers the sidewalk from

the parking lot. The installation of new landscaping shall be limited to the existing landscaped strip located between the parking lot and the NE Rogahn Street sidewalk. Where there is no landscaping between the parking lot and the sidewalk along NE Rogahn Street, the applicant shall install wheel stops to keep cars from encroaching into or driving through the sidewalk. The additional landscaping shall not include trees that could grow to a large size and shall be installed no later than November 30, 2008.

**Date of Decision:** September 19, 2008.

PLANNING AND ZONING HEARINGS BOARD

By:   
Daniel Kearns, Chairman

**Board Member Action:**

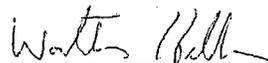
Agree/Object

Date:

  
Drake Hood

Agree

9/17/08

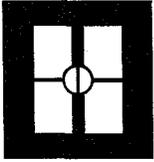
  
Walter Hellman

Agree

9/19/08

# CITY OF HILLSBORO

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August 13, 2008

## **STAFF REPORT**

TO: Planning and Zoning Hearings Board

FROM: Planning Department

RE: Request for Modification of an Approved Zone Change  
**File No. ZC 7-07 (MOD 1): Heritage Christian School**

## **REQUEST**

The applicant, Heritage Christian School, requests a modification to Condition No. 2 of an approved zone change from R-10 Single Family Residential to R-8.5 Single Family Residential, on one property approximately 5.86 acres in area (File No. ZC 7-07: Weber-Wetter II). Condition No. 2 requires reconstruction of the sidewalk and installation of a planter strip and street trees along the site's NE Rogahn Street frontage. The applicant's representative is David Bissett Architecture.

## **BACKGROUND**

The zone change request (File No. ZC 7-07) was heard by the Planning and Zoning Hearings Board on June 6, 2007, and approved with three conditions (Opinion No. 1652, see Exhibit A in application materials). Final approval was granted by City Council on August 7, 2007 (Ordinance No. 5785, see Exhibit B in application materials). The zone change approval was based on the understanding that a subsequent application for a residential subdivision on the subject site would be submitted, which was approved by the Planning Commission on October 24, 2007 (File No. SUB 8-07: Sunrise Estates, Resolution No. 1636-P). After the subdivision approval was granted, the applicant acquired the property and received conditional use approval in January 2008 (File No. CU 12-07, Opinion No. 1169, see Exhibit D in application materials) to operate a private school in the existing church buildings on the subject site.

Condition No. 3 of the conditional use approval requires the applicant to bring the sidewalks into compliance with the requirements of the R-8.5 zone change (ZC 7-07) and gave the applicant two options. The first option was to reconstruct the sidewalk along the NE Rogahn Street frontage to City standards including installation of Option "B" street lights, and the second option was to receive approval of a zone change modification to allow retention of the existing curb-tight sidewalk. The second option also required the installation of Option "B" street lights by the applicant.

**SITE DESCRIPTION**

The subject site is generally located south of NE Rogahn Street, west of NE Charlois Drive, north of NE Eaglenest Court and east of NE Jackson School Road. The site may be specifically identified as Tax Lot 1000 on Washington County Tax Map 1N2-30AC. The site address is 770 NE Rogahn Street.

The property is already developed, as it was formerly occupied by the Sunrise Baptist Church. Site development consists of two large buildings, a shed, and associated parking adjacent to NE Rogahn Street. The subject site is relatively flat with a large tree grove along the south and east sides of the property, extending into the former NE Ninth Avenue right-of-way. NE Rogahn Street is classified as a Neighborhood Route on the Transportation System Plan Functional Classification Plan.

The City’s Goal 5 Significant Natural Resources Inventory identifies no Significant Natural Resources and/or associated Impact Areas on the site. The Clean Water Services (CWS) Sensitive Areas Pre-Screen Map shows the majority of the subject site as being outside of the area of potential impact, with a small western portion of the site as being within the area of potential impact (see attached map).

**DESCRIPTION OF SURROUNDING AREA**

Area	Plan	Zoning	Land Uses
North	RL	R-10: Single Family Residential	SFR
South	RL	R-10: Single Family Residential/ R-7: Single Family Residential	SFR
East	RL	PUD R-7: Single Family Residential	SFR
West	RL	R-10: Single Family Residential/ R-7: Single Family Residential	SFR

**PUBLIC UTILITIES**

Service	Provider	Size	Location	Distance from site
Water	City	6”	NE Rogahn Street	Adjacent (northeast)
		8”	NE Rogahn Street	Adjacent (north)
Sanitary Sewer	City	8”	NE Rogahn Street (two stubs, not across the entire site frontage)	Adjacent (northeast, one stub ends at easternmost driveway) and other stub ends at westernmost driveway)
Storm Drain	City	12”	NE Rogahn Street	Adjacent (north)

**TRANSPORTATION**

	R-O-W	Improvement	*R-O-W	Improvement
NE Rogahn Street	50’ +/-	29’ +/-	54’	32’
<u>Sidewalk Improvements</u>		<u>Existing</u>		<u>Plan Designated</u>
NE Rogahn Street		5-foot		5-foot
<u>Mass Transit</u>		<u>Bus Route</u>		<u>Distance to Site</u>
Transit		#46		About 0.55 mile northwest
<u>Bicycle Lane</u>		<u>Existing</u>		<u>Plan Designated</u>
NE Rogahn Street		None		None

### **APPROVAL CRITERIA**

Zoning Ordinance No. 1945, Section 114(2) specifies the approval criteria for a proposed zone change as follows:

Before the Hearings Board grants a zone change, they shall require that the applicant demonstrate compliance with the following criteria:

- a. That the request must conform with the Hillsboro Comprehensive Plan and this Ordinance;
- b. That, where more than one designation is available to implement the Comprehensive Plan designation (e.g. R-7 vs. R-10), the applicant must justify the particular zoning being sought and show that it is best suited for the specific site, based upon specific policies of the Hillsboro Comprehensive Plan.

Section 114(1) of the Zoning Ordinance lists conditions which may be attached to a zone change approval:

- a. Street improvements abutting/within the development area;
- b. Street dedication abutting/within the development area;
- c. Joint use/access agreement;
- d. Improvement agreements for the installation of necessary on-site public facilities.
- e. Utility easements;
- f. Landscaping;
- g. Off-street parking;
- h. Storm drainage easements;
- i. Off-site public improvements when the rezoning and subsequent development will contribute significantly to the need for such off-site improvements;
- j. Development Review approval by the Planning Commission; for projects in zones or locations for which development requirements and design standards are specified in the Zoning Ordinance;
- k. Screening, fencing;
- l. Limiting access;
- m. Surety/performance bonds;
- n. Non-remonstrance clause.

The applicant's narrative including exhibits is attached for the Board's review.

### **DISCUSSION**

As previously described in the Background section, the zone change was approved based on information provided by the applicant (Weber-Wetter) that a residential subdivision would be developed on the property and the existing buildings on the subject site would be demolished. The proposed subdivision included a public street off of NE Rogahn Street, which would have met the city's street standard for property line sidewalks with a planter strip and street trees. NE Rogahn Street is identified as a Neighborhood Route on the City's Transportation System Plan (TSP). The street is currently improved along the frontage of the site, but the sidewalk is curb-tight rather than separated by a planter strip with street trees as required in the TSP, as the site was developed prior to adoption of the street standard.

Along the south side NE Rogahn Street frontage of the residential development abutting the subject site to the east, the street is improved, with sidewalks and planter strips with street trees (the aerial photo shows this change from curb-tight to property line sidewalks, as does sheet A2 of application plan set). This street cross section wraps around the corner where NE Rogahn Street intersects with NE Charlois Drive, which is also improved with sidewalks and planter strips with street trees on both sides of the street. Condition No. 2 was recommended by staff as it was anticipated the NE Rogahn Street frontage would be partially reconstructed to accommodate the public street built to city standards, in the proposed residential subdivision and because the southeastern portion of NE Rogahn Street was already constructed to city standards.

In the application narrative, the applicant states that replacement of 1,024 feet of curb-tight sidewalk would incur a financial burden on the school including the redesign or possible loss of an existing landscape feature at the entry to Building 1 (see Sheet A1 of the site plan). The applicant documents with photos (see Sheet A2 of the plan set) the existing condition of the curb-tight sidewalks and existing landscaping between the back of the sidewalk and the parking lot and at the entry to Building 1.

Along the parking lot, the existing landscaping consists primarily of low boxwood shrubs and does not meet the City's landscaping requirements which require that off-street parking facilities are visually buffered from the street and adjacent residential properties. Condition No. 4 of the conditional use approval allows this deficiency to be deferred to future phases for Heritage Christian School (as identified in the approved site plan) when a Development Review application(s) are submitted, and requires detailed plans for architecture, landscaping, fencing, off-street parking, exterior lighting, site illumination, street improvements, sidewalks and paths be provided. However, it may be appropriate to address this deficiency at this time as a condition of approval for the requested zone change modification.

#### **COMMENTS FROM CITY DEPARTMENTS**

The Water Department commented that no water improvements are required by the Water Department for the proposed zone change. The Water Department also noted that the two existing water meters (a 1½-inch and a 1-inch, currently serving the property are not protected by an approved backflow device (DCVA), and that the church (occupying Building 1) will be required to install DCVA's behind the meters when they apply for a building permit that impacts the water system or requires a plumbing permit.

#### **PUBLIC TESTIMONY RECEIVED**

Washington County Department of Land Use and Transportation submitted an e-mail dated July 21, 2008, stating the County would not be submitting any requirements or conditions, as the project site is not adjacent to County maintained road sections, nor is it expected to generate considerable off-site impacts to our nearby roadways. No other written comments or testimony have been received to date from adjacent property owners or affected agencies.

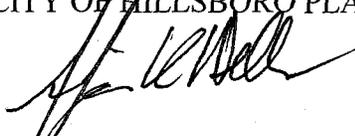
**RECOMMENDATION**

Should the Hearings Board choose to approve the requested zone change modification and remove the requirement for compliance with Condition No. 2 of the zone change (File No. ZC 7-0&), staff recommends that the following condition be attached to the approval:

1. Prior to September 30, 2008, Heritage Christian School shall submit to and receive approval from the Planning Department for a landscape plan which shows the addition of landscaping along the NE Rogahn Street site frontage that buffers the parking lot from the sidewalk to city standards. The additional landscaping shall be installed no later than November 30, 2008.

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT



Jennifer K. Wells  
Urban Planner III

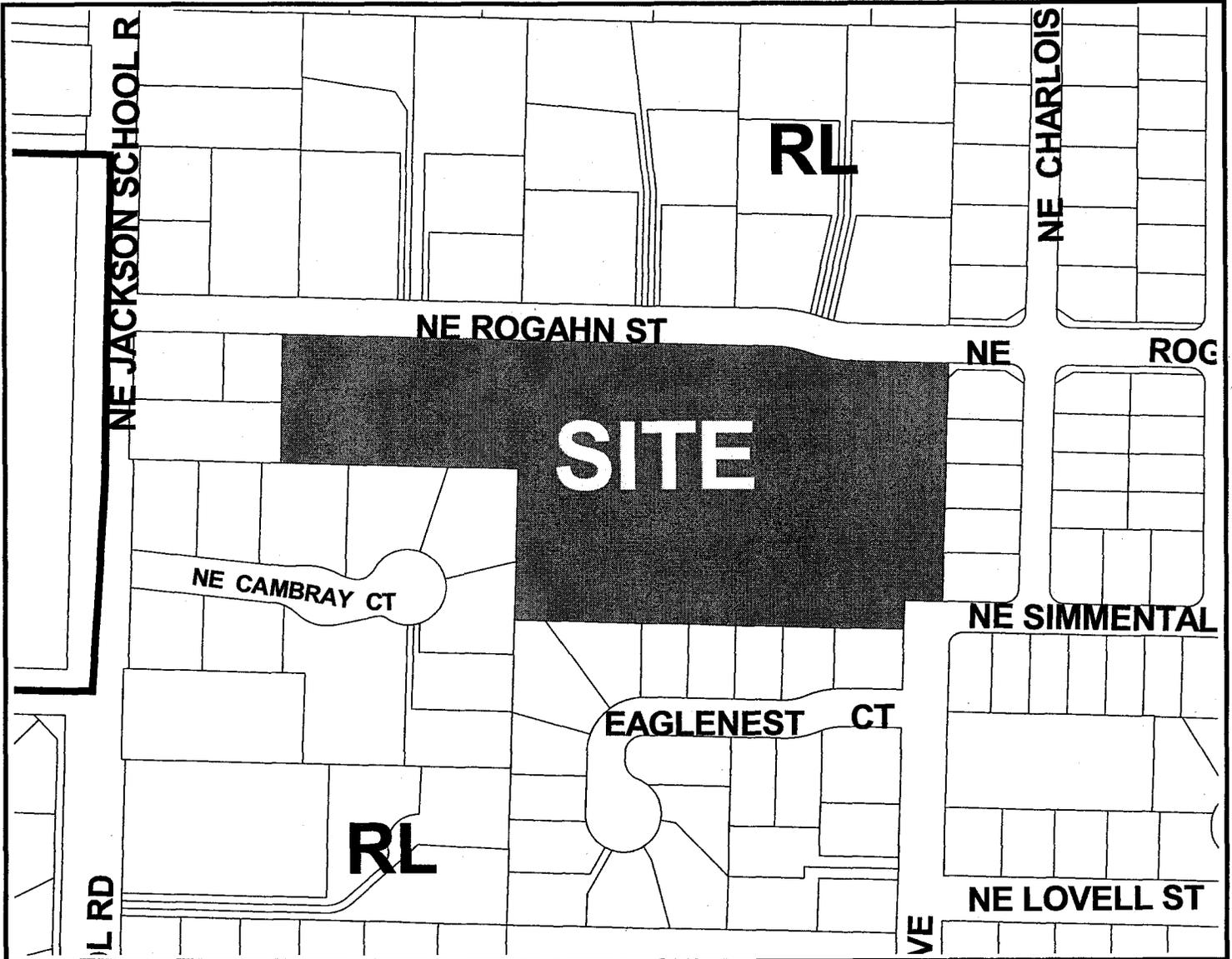
- Attachments: Vicinity maps with Comprehensive Plan and Zoning designations  
Clean Water Services Sensitive Areas Prescreen Map  
Aerial photo  
Application materials



AR 7-08 & ZC 7-07 (MCD 1)  
HERITAGE CHRISTIAN SCHOOL

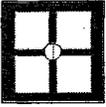


COMPREHENSIVE PLAN MAP



**Comprehensive Plan Designations**

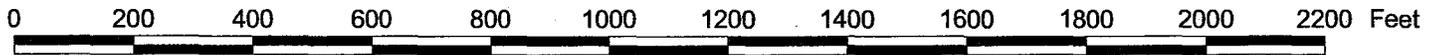
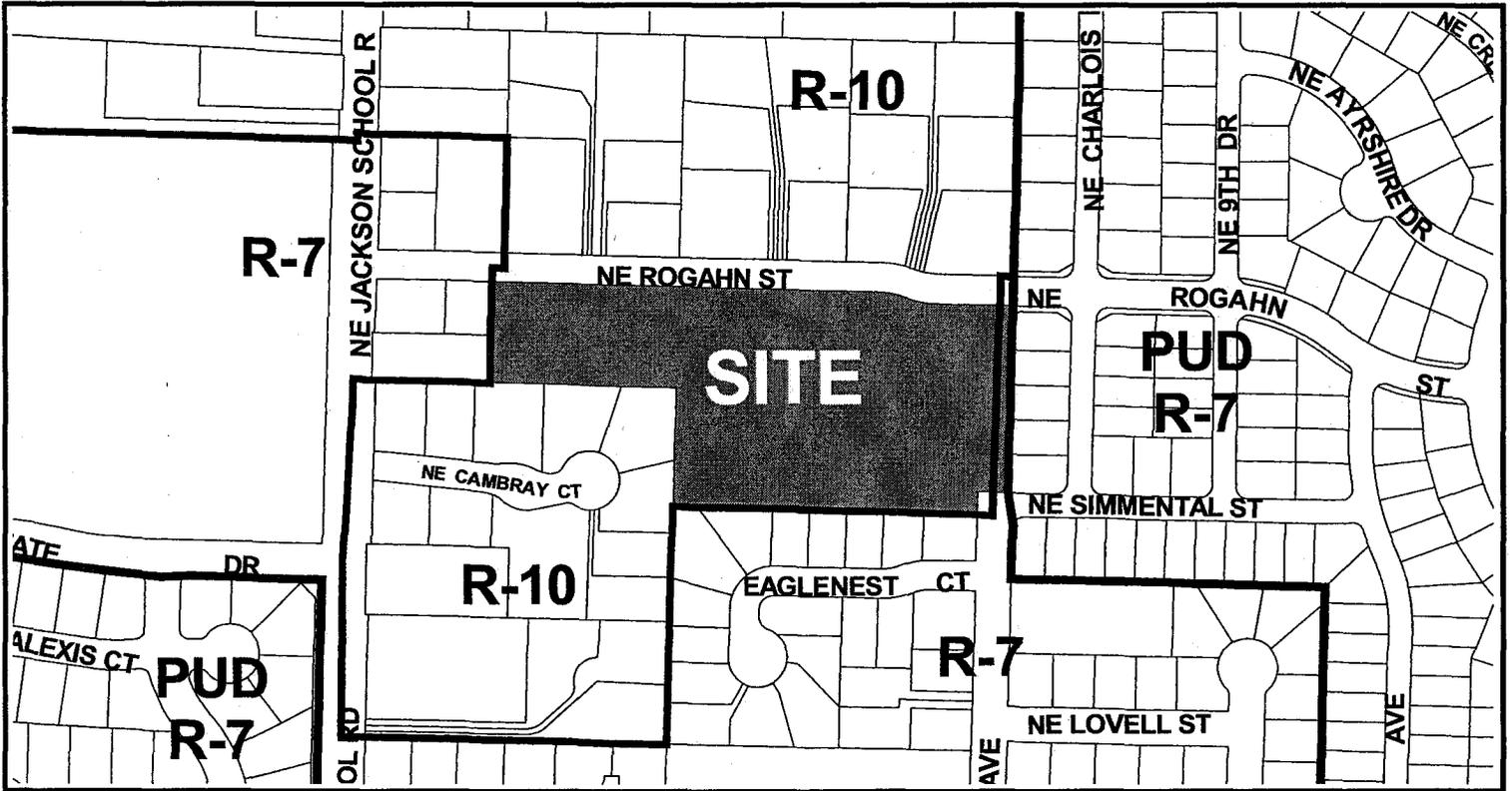
<b>RL</b> - Low Density Residential (3-7 units per acre)	<b>C</b> - Commercial	<b>MU</b> - Mixed Use
<b>RM</b> - Medium Density Residential (8-16 units per acre)	<b>IN</b> - Industrial	<b>CO</b> - County
<b>RH</b> - High Density Residential (17-23 units per acre)	<b>PF</b> - Public Facility	
<b>RMR</b> - Mid-Rise Residential (24 - 30 units per acre)	<b>OS</b> - Open Space	
<b>SCPA</b> - Station Community Planning Area	<b>FP</b> - Floodplain	



# VAR 7-08 & ZC 7-07 (MOD 1) HERITAGE CHRISTIAN SCHOOL



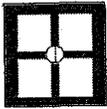
## ZONING MAP



### City of Hillsboro Zoning Designations

<b>R- 4.5</b>	Single Family Residential	<b>R-7</b>	Single Family Residential	<b>R-10</b>	Single Family Residential
<b>R- 6</b>	Single Family Residential	<b>R-8.5</b>	Single Family Residential	<b>A-1</b>	Duplex Residential
<b>SCC-SC</b>	Station Community Commercial - Station Commercial			<b>A-2</b>	Multi-Family Residential
<b>SCC-MM</b>	Station Community Commercial - Multi-Modal			<b>A-3</b>	Multi-Family Residential
<b>SCC-CBD</b>	Station Community Commercial - Central Business District			<b>A-4</b>	Multi-Family Residential
<b>SCC-HOD</b>	Station Community Commercial - Highway Oriented District			<b>C-1</b>	General Commercial
<b>SCBP</b>	Station Community Business Park			<b>C-4</b>	Neighborhood Commercial
<b>SCR-P</b>	Station Community Research Park			<b>PUD</b>	Planned Unit Development
<b>SCI</b>	Station Community Industrial			<b>M-2</b>	Industrial
<b>SCR-HD</b>	Station Community Residential - High Density			<b>M-P</b>	Industrial Park
<b>SCR-MD</b>	Station Community Residential - Medium Density			<b>MU-N</b>	Mixed Use - Neighborhood
<b>SCR-LD</b>	Station Community Residential - Low Density			<b>MU-C</b>	Mixed Use - Commercial
<b>SCR-V</b>	Station Community Residential - Village			<b>SID</b>	Special Industrial District
<b>SCFI</b>	Station Community Fair Complex Institutional			<b>SSID</b>	Shute Special Industrial District
<b>SCR-OTC</b>	Station Community Residential - Orenco Townsite Conservation Overlay			<b>ANX</b>	Recent Annexation
<b>SCR-DNC</b>	Station Community Residential - Downtown Neighborhood Conservation			<b>CO</b>	Unincorporated County

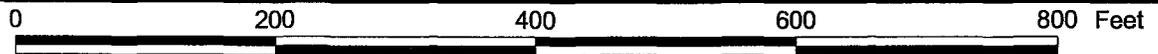
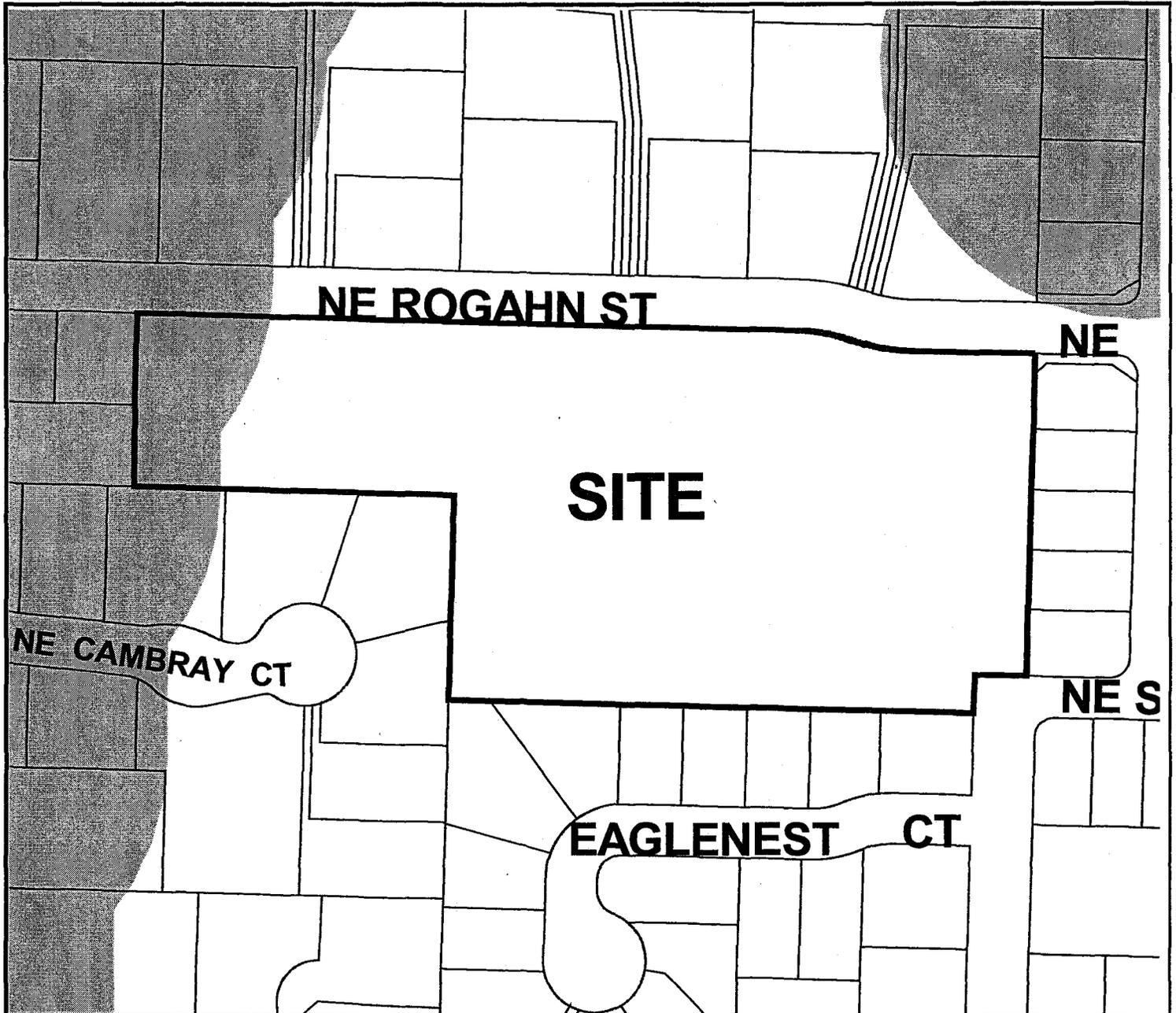
City of Hillsboro Planning Department: (503) 681-6153



**VAR 7-08 & ZC 7-07 (MOD 1)  
HERITAGE CHRISTIAN SCHOOL**



**CLEAN WATER SERVICES SENSITIVE AREAS PRE-SCREEN MAP**



**DISCLAIMER**

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

**SOURCE**  
Clean Water Services

-  Taxlots
-  CWS Stream Buffers



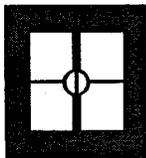
**VAR 7-08 & ZC 7-07 (MOD 1)  
HERITAGE CHRISTIAN SCHOOL**



**2007 AERIAL PHOTOGRAPHY**



# CITY OF HILLSBORO



Public Works Department, Engineering Division

Date: October 7, 2008

To: Mayor and City Council

From: Tom Arnold

Subject: Transportation Utility Program: Resolution to establish rate structure

---

A transportation utility fee program was adopted by City Council on July 1, 2008 by Ordinance No. 5868. That ordinance established Municipal Code Article 3.40 which governs the program whereby sections 3.40.070 and 3.40.100 require that the fee amount and availability of credits and waivers be established by resolution. The accompanying resolution establishes the transportation utility fee for residential and non-residential customers where the rate structure is outlined in Exhibit A. This rate structure was discussed and agreed to by Council at the time the Ordinance was adopted.

Specifically, beginning March 1, 2009, residential customers will be charged \$3.10 per month. Non-residential customers, which include commercial, industrial and institutional businesses, are classified into one of seven non-residential categories based on their trip generation characteristics. Trip generation characteristics for non-residential customers are outlined by the Institute of Transportation Engineers (ITE) and determined by the developed land use type of the property. As a result, a non-residential customer may be charged a fee ranging from \$0.22 to \$18.41 per thousand square feet depending upon which category or group they fall under. For those customers whose average weekly trip generation is not measured by total building area, they are grouped under category 7 and are billed \$0.05 per vehicle trip.

A resolution and associated fee rate structure are attached for you consideration. If acceptable, it is hereby requested that Council authorize and execute the document by signature of the Mayor and City Recorder.

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

**A RESOLUTION ADOPTING A RATE SCHEDULE FOR THE TRANSPORTATION UTILITY FEE IMPOSED BY HILLSBORO MUNICIPAL CODE ARTICLE 3.40**

WHEREAS, the City Council of the City of Hillsboro on July 1, 2008, enacted Ordinance 5868 added a new chapter 3.40 to the Hillsboro Municipal Code imposing a Transportation Utility Fee (TUF); and

WHEREAS, Section 3.40.070 provides that the City Council will by resolution approve the amount of the TUF based on factors listed in that section.

**NOW, THEREFORE, THE CITY OF HILLSBORO REVOLVES AS FOLLOWS:**

Section 1. Transportation Utility Rate Schedule attached as Exhibit A to this Resolution is approved and adopted as the Transportation User Fees (TUF) effective March 1, 2009.

Section 2. City Code section 3.40.100 provides for specific credit, vacancy, and hardship waivers to the TUF that are available by application on City forms.

Section 3. The TUF fess approved by this Resolution are not subject to the limits of Section 11b of Article XI of the Oregon Constitution (Ballot Measure No. 5).

Section 4. A copy of this Resolution and Exhibit A will be maintained in the office of the City Recorder and made available for public inspection during regular business hours.

Section 5. This Resolution is effective immediately upon adoption by the City Council.

Approved by the City Council on October 7, 2008

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

CITY OF HILLSBORO

Resolution No. \_\_\_\_\_

**Exhibit A**

TRANSPORTATION UTILITY FEE RATE SCHEDULE

Effective Date, March 1, 2009

<b>Category</b>	<b>Description</b>	<b>Rate</b>	<b>Unit</b>
R-1	Single-family Residential	\$3.10	Per month
R-2	Multi-family Residential	\$3.10	Per month per dwelling unit
NR-1	Non-residential Category 1	\$0.22	Per month per 1,000 square feet
NR-2	Non-residential Category 2	\$0.53	Per month per 1,000 square feet
NR-3	Non-residential Category 3	\$1.78	Per month per 1,000 square feet
NR-4	Non-residential Category 4	\$3.73	Per month per 1,000 square feet
NR-5	Non-residential Category 5	\$10.18	Per month per 1,000 square feet
NR-6	Non-residential Category 6	\$18.41	Per month per 1,000 square feet
NR-7	Non-residential Category 7	\$0.05	Per month per vehicle trip

# CITY OF HILLSBORO



## Public Works Department, Engineering Division

Date: October 7, 2008

To: Mayor and City Council

From: Tom Arnold

Subject: Intergovernmental Agreement for construction management services  
S.E. 10<sup>th</sup> Avenue Widening Project

An intergovernmental agreement (IGA), necessary to provide construction management services for the subject project, is attached for your consideration.

This project will widen S.E. 10<sup>th</sup> Avenue by adding a second southbound right turn lane between E. Main Street and S.E. Baseline Street. The additional lane is intended to reduce congestion caused by a conflict with vehicles traveling southbound with those wishing to travel westbound. Additionally, the new lane will provide storage capacity necessary to mitigate an existing safety hazard between light-rail trains traveling along Washington Street and southbound vehicles which inadvertently queue across the tracks.

The IGA outlines construction management services, to be provided by Washington County, which satisfy the level of effort necessary to implement construction of a project administered by the Oregon Department of Transportation (ODOT). The Public Works Department currently does not have the resources or expertise needed to manage the construction of an ODOT sponsored project. Furthermore, S.E. 10<sup>th</sup> Avenue falls under Washington County jurisdiction.

This document was modeled after and substantially conforms to a template previously approved by the City Attorney. Approval is hereby requested to authorize and execute this agreement by signature of the Mayor and City Recorder.

# **INTERGOVERNMENT AGREEMENT**

**BETWEEN:**

**Washington County and City of Hillsboro**

**FOR ROADWAY IMPROVEMENTS TO:**

**SE 10<sup>TH</sup> AVENUE, East Main Street to SE Baseline Street**

THIS AGREEMENT is entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "COUNTY"; and the City of Hillsboro, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY".

## **RECITALS**

1. County and City have determined that construction of roadway improvements to NE 10<sup>th</sup> Avenue (Project) within City should be undertaken. NE 10<sup>th</sup> Avenue is a county road under county jurisdiction. These improvements include:

The design and construction of an additional southbound lane, sidewalk, street lighting, landscaping and traffic signal modifications to NE 10<sup>th</sup> Avenue from East Main Street to SE Baseline Street.

2. County and City have agreed that the City shall fund construction of the Project including associated engineering, design, and construction management and inspection costs and that the County will provide staff to administer the construction contract and inspect the work performed by the construction contractor.
3. ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform.
4. It is the desire of the County and City to enter into an agreement to allocate responsibilities for design and construction of the Project.
5. Execution of this Agreement has been authorized by appropriate action of the governing body of each of the parties

## AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

### **1. COUNTY OBLIGATIONS**

- 1.1. Upon execution of this agreement, County shall assign a project manager to be responsible for construction administration, oversight and coordination of the Project with the City. County shall administer, manage and inspect the project in accordance with Oregon Department of Transportation construction administration requirements.
- 1.2. County hereby grants City the right to enter into and occupy County road right-of-way for purposes of survey and design relating to the project. Upon approval of project plans by County, City shall have the right to enter into and occupy said right of way to complete construction of this project.
- 1.3. County shall provide construction inspection for the project on roadway, drainage, signal, and lighting issues, for quality control purposes, and any other issue on an as needed basis upon City request. County shall also have the right to inspect any aspect necessary to assure compliance with county, and state road standards, where applicable, or the approved plans.
- 1.4. County shall review and comment on submittals within the time frames established in paragraph 2.3. Any objection of the County to preliminary or final plans and specifications shall be resolved through consultation between the County Engineer and the City Engineer. The County Engineer shall be the final arbitrator of any remaining differences.
- 1.5. County shall approve final project plans in writing through its County Engineer or designee. This written approval and this Agreement shall serve as the permit to City for the Project. No fee or monetary assurance shall be required.
- 1.6. County shall maintain accurate records of its performance of this Agreement including any expenditure, including staff time for the Project. These records shall be available for examination by the City upon reasonable notice. County shall bill City on a quarterly basis for its staff costs for plan review, project administration, and inspection services provided for the project. County shall provide the following services:
  - Perform onsite field construction monitoring and verification;
  - Perform field measurements and calculations and prepare documentation and monthly progress estimates for payment;
  - Collect, review, and file documentation associated with quality and origin of materials;
  - Perform environmental and permit coordination and compliance monitoring;
  - Provide verification of daily progress;

- Verify certification of project completion;
- Facilitate and distribute pre-construction meeting minutes;
- Facilitate and distribute project progress meeting minutes;
- Take and make available photographs of project construction;
- Review requested design changes;
- Develop project manager's narrative for project construction;
- Provide project information and submit required documentation to City at completion of project;
- Negotiate contract Change Orders.

## **2. CITY OBLIGATIONS**

- 2.1 City shall, upon execution of the Agreement, assign a project manager to be responsible for coordination of the Project with the County.
- 2.2 City shall be responsible for the following services:
- Project Management,
  - Planning and Public Involvement,
  - Preliminary Design,
  - Land Use Approval and Permitting,
  - Final Design,
  - Right-Of-Way Acquisition,
  - Bidding and Contract Award,
  - Other Required Permits,
  - All other services not included under County obligations that are required to complete the project.
- 2.3 City shall design the Project to County and State standards, where applicable, except as otherwise agreed in writing by the County Engineer. City shall provide the County with at least ten (10) work days to review plans and specifications at 100% design completion.
- 2.4 City shall ensure that its construction contractor names both the City and County as additional insured and indemnifies the City and County.
- 2.5 City shall construct the project according to the plans approved by County. City shall remedy any defects in the work that occur within one year of project completion.

### **3. COMPENSATION**

- 3.0 City shall be responsible for all other Project costs including tasks outlined in paragraph 2.2, construction contract costs, and County costs billed pursuant to paragraph 1.6. The estimated County cost is \$72,590.
- 3.1 City shall pay County for Project costs, as billed, within thirty (30) days after receipt of a County invoice.

### **4. GENERAL PROVISIONS**

#### **4.1 LAWS OF OREGON**

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279 to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

#### **4.2 DEFAULT**

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

#### **4.3 INDEMNIFICATION**

This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. In addition, each party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this agreement.

#### **4.4 MODIFICATION OF AGREEMENT**

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both parties.

#### **4.5 DISPUTE RESOLUTION**

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

#### 4.6 REMEDIES

Subject to the provisions in paragraph 4.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

#### 4.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of GOD, governmental restrictions imposed on mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

#### 4.8 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

#### 4.9 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

### 5. TERM OF AGREEMENT

5.1 The term of the Agreement shall be from the date of execution until the completion of the Project, but not to exceed four (4) years.

5.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the parties. It may be canceled or terminated for any

reason by either party. The parties shall, in good faith, agree to such reasonable provisions for completion of the Project and paying for any additional costs as necessary.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**CITY OF HILLSBORO, OREGON**

**WASHINGTON COUNTY, OREGON**

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

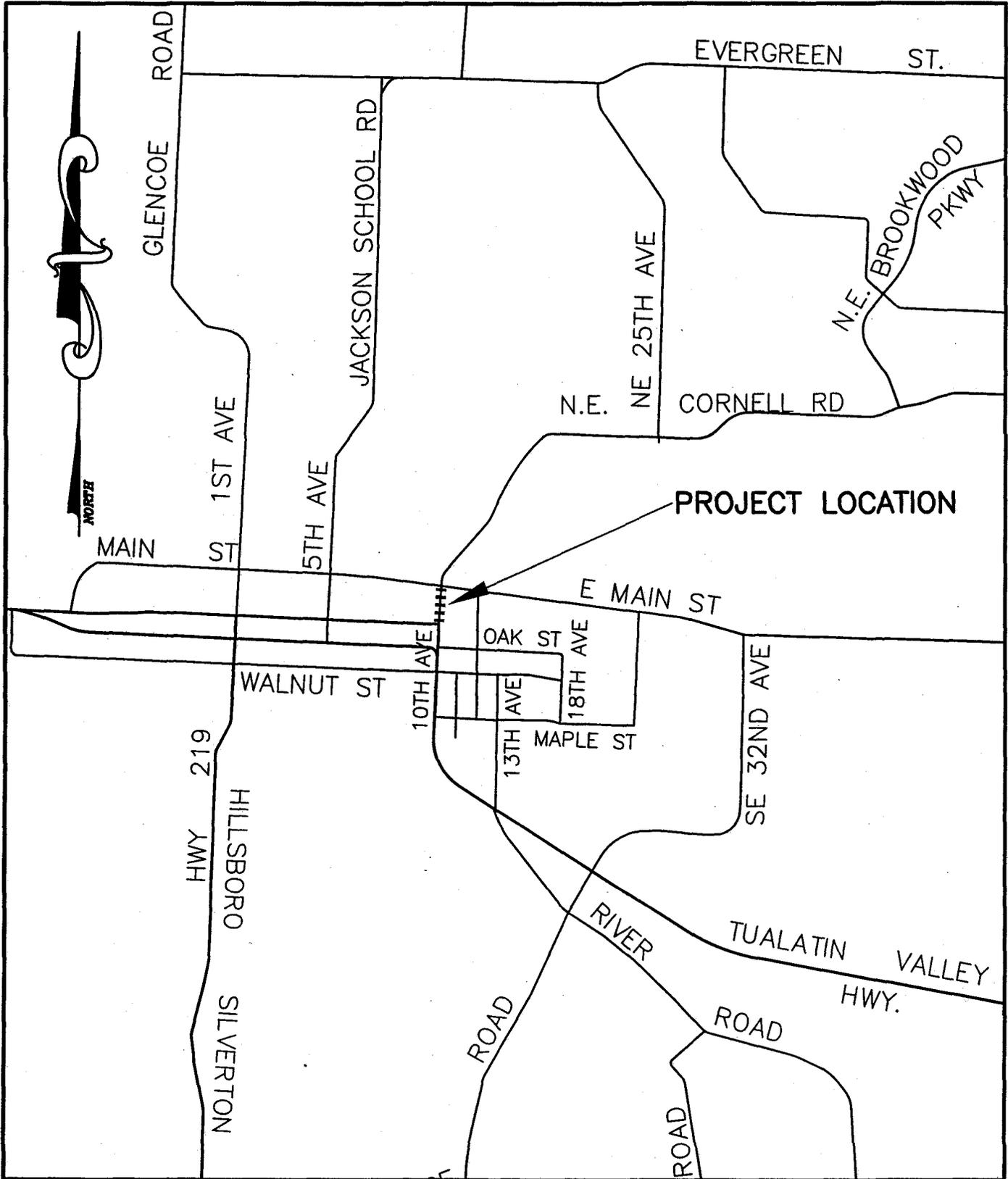
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CITY RECORDER

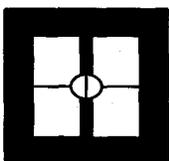
\_\_\_\_\_  
RECORDING SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
COUNTY COUNSEL

VICINITY MAP  
SE 10TH AVENUE  
E MAIN STREET TO SE BASELINE STREET





**Memorandum**

**To:** Mayor and City Council

**From:** Facilities and Fleet Department

**Date:** 09-30-08

**Subject:** Ground Lease Agreement with Port of Portland

---

**Requested City Council/Committee/Commission Action:**

Authorize the Mayor to execute a Ground Lease with the Port of Portland for approximately 1.1 acres adjacent to both N.E. 25<sup>th</sup> Avenue and the Hillsboro Airport.

**Background:**

The City Council has previously directed the construction of a new fire station in the Griffin Oaks Park area. On September 16, 2008, Council reviewed the two options for location of the new fire station: Griffin Oaks Park, or Port of Portland property at Hillsboro Airport. Council selected the Port of Portland property as the best decision. The Ground Lease for the selected property is attached as Exhibit A. This exhibit has been reviewed and cleared by the City's attorneys.

**Term:**

The lease term is for 35 years commencing upon issuance of Certificate of Occupancy, but no later than June 1, 2011. The lease has an option to extend for an additional 5-year term at the expiration of the base term.

**Consideration:**

Section 3 of the lease defines consideration as the design and construction of a fire station and pavement to provide access to the neighboring taxiway.

**Recommendation:**

Authorize the Mayor to execute the Ground Lease with the Port of Portland, attached as Annex A.

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# **GROUND LEASE**

---

*BETWEEN*

**THE PORT OF PORTLAND**

*AND*

**THE CITY OF HILLSBORO**

---

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**EXHIBITS**

Exhibit A  
Exhibit B

Premises  
Notice to Tenants

## GROUND LEASE

This GROUND LEASE ("Lease"), effective as of \_\_\_\_\_ ("Effective Date") is between **THE PORT OF PORTLAND**, a Port district of the State of Oregon ("Port"), and the **CITY OF HILLSBORO**, a municipal corporation of the State of Oregon ("Lessee").

### RECITALS

A. The Port is the owner of certain land located at the Portland-Hillsboro Airport ("Airport").

B. Lessee desires to construct a new fire station ("Fire Station") in the vicinity of the Airport to provide adequate coverage within its jurisdiction.

C. The Port and Lessee have identified a parcel of Airport land which would be an ideal location for Lessee to construct and operate the Fire Station, and thus desire to enter into a Lease agreement.

NOW, THEREFORE, the parties, intending to be legally bound by the terms of this Lease, agree as follows:

### 1. AGREEMENT TO LEASE

#### 1.1 Agreement to Lease and Description of Property

The Port hereby leases to Lessee approximately 1.1 acres of land off of N.E. 25<sup>th</sup> Avenue in Hillsboro, Oregon ("Premises"), as more particularly described on **Exhibit A** attached to this Lease, together with all existing improvements, including infrastructure (collectively, "Improvements"). In order to determine the actual square footage of the Premises, the Port will complete a survey of the Premises upon completion of the Fire Station. Once that survey has been completed, this Lease will be amended to reflect the actual size and the legal description of the Premises and a new **Exhibit A** will replace the one attached hereto.

#### 1.2 Use of Premises

##### 1.2.1 Permitted Use

Lessee may use the Premises for construction, maintenance and operation of a conventional Fire Station and related equipment and vehicles and for access to respond to on-airport emergencies. No other use may be made of the Premises without the prior written consent of the Port, which consent will not be withheld without reason.

##### 1.2.2 Limits on Use

**1.2.2.1** No smoking is allowed on the Premises at any time, excepting as may be permitted outside the Fire Station building.

**1.2.2.2** Lessee shall not, without the prior written consent of the Port, use any device which would violate any local noise ordinance or cause substantial noise, vibration, fumes or electronic interference on the Premises. Lessee agrees to cooperate with the Port in any noise abatement procedures, policies or programs implemented by the Port, as the same may be amended from time to time.

**1.2.2.3** No satellite or electronic transmitting devices (other than office computers, telephone, or fax machines) shall be installed, maintained or operated on the Premises, other than that necessary or appropriate for use of the Premises as a conventional Fire Station, so long as it is in compliance with all Federal Aviation Administration ("FAA") requirements and regulations.

**1.2.2.4** Lessee shall not use or permit anyone else to use the Premises, nor shall Lessee permit anything to be done on the Premises, which: (a) adversely affects or is likely to adversely affect the Premises; (b) creates any condition that may be a safety hazard or violates FAA regulations; (c) creates or tends to create a hazard or a nuisance; or (d) interferes with the Airport operations.

### **1.3 Appurtenant Rights**

Subject to any applicable rules, regulations, or Port policy governing the use of the Airport ("Rules"), the Port grants Lessee the nonexclusive right to use, in common with others, the areas designated by the Port to be public or to be used in common, including but not limited, to the walkways, streets, roadways, waiting rooms, hallways, restrooms and other conveniences at the Airport ("Common Areas") for Lessee's employees, patrons, guests and invitees for the use for which the Common Areas were designed. Lessee's right under this Section includes the right of ingress to and egress from the Premises for Lessee and its employees, patrons, guests, invitees, suppliers of materials and services, along with equipment, vehicles and other property related to Lessee's operations at the Airport under this Lease. No vehicle, equipment, or machinery shall be left in an inoperable condition or stored in the Common Areas by Lessee or its agents, contractors, customers or suppliers, without the prior written consent of the Port. No fees or charges may be made to Lessee for use of the Common Areas, except such fees or charges as are imposed by the Port uniformly on all similarly situated users of such Common Areas.

## **2. TERM**

The term of this Lease ("Lease Term") shall commence upon the issuance of the Certificate of Occupancy by the City of Hillsboro for a conventional Fire Station, but in no event later than June 1, 2011, and shall continue thereafter for an Initial Term of thirty-five (35) years and, if agreed to by both Lessee and the Port in writing, to one (1) Additional Term of 5 years. Lessee must exercise its right to such option in writing to the Port no less than one hundred and eighty (180) days prior to the expiration date of this Lease. The Port may decline this request in writing within sixty (60) Business Days (as defined in Section 13.4) of receipt of request, in which case the Lease will expire on the expiration date. If the Port does not deny Lessee's request pursuant to the terms of this Section, the expiration date shall be extended.

## **3. CONSIDERATION**

As consideration, Lessee will design and construct, at its own expense, a Fire Station and pavement to provide access to the neighboring taxiway ("Airfield Access"), as further described in Section 4.2.

### **3.1 Security Deposit**

There shall be no security deposit required under this Lease.

### **3.2 Taxes, Assessments, User Fees and Other Charges**

The Port and Lessee agree that Lessee is not a taxable entity under current state law for the purposes of paying real property taxes. Nevertheless, to the extent Lessee is not exempt from the payment of any assessment, user fee or other charge, and such fee or charge arises as a direct result of its lease of the Premises, Lessee agrees to pay, when due, all assessments, user fees and other charges, however named, which become due after the Effective Date of this Lease levied by the state, Washington County, the City of Hillsboro, or any district or other body upon the Premises or any Improvements located on the Premises, or upon any interest of Lessee acquired pursuant to this Lease, or any possessory right which Lessee may have in or to the Premises or the Improvements thereon by reason of Lessee's occupancy thereof, as well as all assessments, user fees or other charges on all property, real or personal, owned or leased by Lessee in or about said Premises (collectively, "Taxes"), together with any other tax or charge levied wholly or partly in lieu thereof. In the event that Lessee fails to pay Taxes on or before their due date, then, in addition to all other remedies set forth in Section 10.3, the Port shall automatically have the right, but not the obligation, to pay the Taxes and any interest and penalties due thereon, with no notice to Lessee, and Lessee shall reimburse the Port for any sums so paid within thirty (30) days of notice from the Port of any such payment. In the event that the term of this Lease ends after the end of any tax year, Lessee, unless exempt, shall be responsible for payment of Taxes for the entire tax year without proration, or, in the event of any change in property tax law, for any taxes due under such law (currently the tax year runs from July 1 to June 30). See the *Notice to Tenants* attached to this Lease as **Exhibit B**.

## **4. LESSEE'S CONSTRUCTION OBLIGATIONS**

### **4.1 Construction of Improvements**

Except as otherwise provided in this Lease, Lessee will make no alterations or additions to the Premises ("Lessee's Improvements") without the prior written approval of the Port, which may be granted or withheld in the Port's sole reasonable discretion.

### **4.2 Improvements To Be Constructed by Lessee**

In accordance with the terms of this Lease, Lessee shall construct a Fire Station of approximately twelve thousand (12,000) square feet in size, including as presently proposed, four (4) vehicle bays and corresponding support space. Lessee agrees to work cooperatively with the Port on the design of Improvements to the Premises so that an Airport Rescue and Fire Fighting unit ("ARFF Unit") can be incorporated, if required by future Federal or State regulations. To enhance response times for on-airport emergencies, Lessee shall construct Airfield Access from the Premises to the neighboring taxiway. Lessee agrees to follow the Port's construction permitting and design review process and to cooperate with the Port to determine the pavement's required load bearing capacity for safe Airfield Access. In the event land use approvals from the City of Hillsboro are required, Port agrees to cooperate with Lessee in obtaining said approvals.

#### **4.2.1 Areas Affected by Lessee's Improvements**

Lessee will cooperate with the Port to design the Premises in such a way as to allow for future construction of a parking access entrance for other Airport tenants at the intersection adjacent to the Premises on N.E. 25<sup>th</sup> Avenue.

#### **4.2.2 Utilities**

Lessee shall pay when due any charges for sanitary sewer, storm sewer, water, gas, electricity, telephone and all other charges for utilities which may be furnished to the Premises. Lessee will be responsible to pay all costs and do all work required to connect to those utilities, if not already connected as of the Effective Date. Lessee shall be responsible for the cost of maintenance and repair of all existing and newly-installed utility lines serving the Premises from the lease line, into and continued within the Premises. The Port agrees to give Lessee reasonable access to adjacent Port property, if needed for utility work, subject to the requirement that Lessee keep the property in good condition and repair. Such access will be given pursuant to the Port's standard Permit and Right of Entry.

#### **4.2.3 Landscaping Standards**

In connection with Lessee's construction of new Improvements, Lessee agrees to plant species of plants generally compatible with airport environments, as listed in the Port's current *Hillsboro Airport Wildlife Hazard Management Plan*. Lessee acknowledges receipt of a list of acceptable plant species, excerpted from the *Hillsboro Airport Wildlife Hazard Management Plan*.

#### **4.2.4 Construction Bonds**

Lessee shall not commence the performance of any work upon the Premises, including, but not limited to, construction of the Fire Station, nor permit any contractor working on Lessee's behalf to commence work upon the Premises, until Lessee has obtained a payment bond and a performance bond naming the Port as an additional beneficiary and providing coverage to Lessee and the Port for: (a) full performance of the construction; and (b) payment of all labor and materials expended thereon. Each bond provided under this Section shall be issued in an amount not less than the total costs of the construction work being undertaken. In addition, Lessee shall provide the Port with proof demonstrating that Lessee's contractor has Commercial General Liability, Automobile Liability, Workers' Compensation, and Employer's Liability Coverage Insurance. Each liability policy shall be in an amount of not less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) and name the Port as an additional insured. All coverages shall be in place during all construction activities.

#### **4.2.5 Inspection of Construction**

The Port and its agents, employees and representatives shall, at all reasonable times, with advance notice, have the right to come upon the Premises for purposes of inspecting the construction work. When exercising its rights under this Section, the Port agrees to interfere as little as is reasonably possible with Lessee's use and occupancy of the Premises and the work in progress. The Port shall be entitled to enter onto the Premises at any time, and without notice, in the case of an emergency. The Port shall be responsible for the acts of its employees, agents and contractors who enter the Premises pursuant to this Section.

#### **4.2.6 Submission of Drawings**

Within one hundred and twenty (120) calendar days after the completion of the Fire Station, Lessee shall deliver to the Port complete and fully detailed as built drawings of the completed Improvements prepared by an architect or engineer licensed by the State of Oregon ("As-Builts"). Failure to provide As Builts within one hundred and twenty (120) calendar days will result in the assessment of a FIVE HUNDRED DOLLAR AND NO CENTS (\$500.00) late charge.

#### **4.2.7 Height Restrictions**

By executing this Lease, Lessee agrees that it will not construct any building or facility at a height in excess of the maximum height established by the FAA, for the applicable area of the Premises, in effect at the time such building or facility is constructed, or take any other action that, in the opinion of the Port, will interfere with the navigational aids or flight operations of the Airport. Lessee further agrees to submit for FAA review a 7460-1 Notice of Proposed Construction for any new construction, installation of antennae or other radio-frequency generating equipment, alterations to existing structures which add to their height. Lessee shall be informed in writing from the FAA that the proposed construction, alteration and/or installation meet the requirements of Federal Aviation Regulations Part 77. All 7460-1 Notices of Proposed Construction shall be submitted to the FAA via the Port of Portland Tenant Construction Office.

#### **4.2.8 Substantial Completion**

Once approved and commenced, the construction work shall be performed diligently to completion in a timely and good and workmanlike manner, in accordance with the Port approved plans and specifications, with any conditions imposed upon such approval so that construction is completed by December 31, 2010 ("Substantial Completion").

#### **4.2.9 Port Approval of Subsequent Construction**

Except as otherwise provided in this Lease, Lessee shall make no subsequent Substantial Improvements or alterations to the Premises of any kind without first obtaining the Port's written consent and a "Port Construction Permit." Port Construction Permits are available from the Port's Tenant Construction Coordinator at the Port's main Airport offices. As used herein, "Substantial Improvements" shall mean any Improvements or alterations made to the Fire Station interior costing more than TWENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), in the aggregate, or any Improvements, regardless of cost, made to, or visible from, the outside of the Fire Station or the Premises ("Substantial Improvements"). If Improvements to be made are deemed non-substantial, in accordance with this definition, Lessee must still notify the Port of the Improvements made and the cost thereof. In connection with the approval process, the Port may impose requirements on Lessee and on the contractors and agents performing work on behalf of Lessee, including, but not limited to, the requirement to submit final plans and specifications, in such detail and quantity as is determined necessary by the Port. In requesting the Port's consent to proceed with the work, Lessee must submit the following to the Port for approval at least sixty (60) calendar days in advance of any proposed work: (a) name of the proposed contractor; and (b) proposed final plans and specifications. Lessee must also submit, for Port approval, Lessee's environmental controls for any planned work aimed at preventing Hazardous Substance Releases (as defined in Section 7.1.4. The Port shall have thirty (30) calendar days from the date of the submission of all required information concerning the work to approve, disapprove, or approve subject to conditions, the proposed work. If the submissions are not approved by the Port, Lessee must revise and resubmit all required materials in accordance with this Section before any work may commence. Port approval must be obtained prior to application for any building or similar permits from any other government authority. Notwithstanding the foregoing, Lessee may not install any storm drains or floor drains on the Premises, regardless of cost, without the prior written consent of the Port.

### **4.3 Title to Improvements; Removal and Demolition**

Improvements located on the Premises at the expiration of either the Initial Term or, if extended the Additional Term shall become the property of the Port. Notwithstanding the foregoing, the Port reserves the right, in its sole discretion, to require Lessee to remove any Improvements from the Premises upon the expiration of this Lease. Such Improvements shall be removed within the time frame set forth in Section 10.2, at Lessee's sole expense. Except in the case of early termination, the Port will give Lessee written notice if it will require Lessee to remove any Improvements at least ninety (90) calendar days in advance of the expiration of this Lease. Lessee shall repair all damage done to the Premises or other Port-owned property resulting from the removal of such trade fixtures, signs, and personal property or Improvements.

### **4.4 Lessee Repair and Maintenance**

Lessee shall, keep and maintain the Premises and all Improvements, systems, and equipment located thereon (whether constructed or owned by Lessee or the Port), including without limitation, the interior and exterior thereof, in good repair and operating condition and shall make all necessary and appropriate preventive maintenance, repairs, and replacements. Lessee shall regularly and consistently maintain the Premises, including landscaping, in a clean, orderly, safe and attractive condition. Without limiting the effect of any other provision of this Lease, it is a material term of this Lease that any Improvements which are to become the property of the Port upon the termination or earlier expiration of this Lease shall be in good condition and repair at such time, reasonable wear and tear excepted.

### **4.5 Cost of Construction of Improvements**

Except as otherwise specifically provided for in this Lease, Lessee shall be solely responsible for paying for all of the above-referenced construction and for ensuring that all construction is completed in accordance with the final plans.

## **5. LESSEE'S OTHER OBLIGATIONS**

### **5.1 No Liens**

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities (other than those provided by the Port pursuant to the terms of this Lease), furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent to the Premises. Failure to remove the lien within ten (10) calendar days shall constitute an Event of Default (as defined in Section 11.1) under this Lease and the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Lessee and Lessee shall immediately reimburse the Port for any sums so paid to remove any such lien. Lessee shall not encumber the Premises or any Improvements thereon without prior written approval of the Port.

### **5.2 Signs**

Lessee shall not erect, install, nor permit upon the Premises any sign or other advertising device without first having obtained the Port's written consent, which the Port may withhold in its reasonable discretion upon written notice to Lessee. Lessee shall remove all signs and sign hardware upon termination of this Lease and restore the sign location to its former state, unless the Port elects to retain all or any portion of the signage.

### **5.3 Compliance with Laws**

Lessee's activities on, use or possession of the Premises must comply with all applicable laws, ordinances (including Port ordinances), codes, rules and regulations of state, federal, city, county, the Port or other public government authority or agency, including, but not limited to, Occupational Safety and Health Act and the Americans with Disabilities Act requirements, fire and Building codes and regulations (collectively, "Laws"), and the Port's Rules, as they may be amended from time to time. Current copies of the Port's Rules, if any, may be obtained during normal office hours from the office of the Airport Manager. Lessee shall promptly provide the Port with copies of all communications from any government entity which relate to Lessee's noncompliance or alleged noncompliance with any Laws, regulation or other governmental requirement relating to its operations on the Premises.

### **5.4 Fire Safety**

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

### **5.5 Hazard, Potential Hazard, Nuisance, or Annoyance**

Lessee shall correct any hazardous or potentially hazardous condition, nuisance, or annoyance in or about the Premises immediately upon receipt of oral or written notice from the Port. The Port may order Lessee to vacate the Premises until the corrective action is complete, or if Lessee fails to correct the condition, nuisance, or annoyance within a reasonable time frame stated in the Port's notice, the Port may correct the condition, nuisance, or annoyance and collect from Lessee all of the Port's reasonable costs and expenses associated therewith.

## **6. PORT AUTHORITY AND OBLIGATIONS**

### **6.1 Delivery of Premises**

Lessee shall have the right to possession of such portions of the Premises as specified in writing by the Port as of the Effective Date.

### **6.2 Quiet Enjoyment**

Subject to Lessee performing all of Lessee's obligations under this Lease and subject to the Port's rights under this Lease, Lessee's possession of the Premises will otherwise not be disturbed by the Port.

### **6.3 Condition of Property**

The Port makes no warranties or representations regarding the condition of the Premises, including, without limitation, the suitability of the Premises for Lessee's intended uses. Lessee has inspected and accepts the Premises in "as is" condition upon taking possession. The Port shall have no liability to Lessee, and Lessee shall have no claim against the Port, for any damage or injury caused by the condition of the Premises. Unless otherwise agreed to in writing by the Port, the Port shall have no responsibility to bring the Premises into compliance with any laws, including, without limitation, any building or occupancy codes.

#### **6.4 Port Construction, Maintenance and Repair Obligations**

The Port shall have no construction, maintenance or repair obligations with respect to the Premises. Notwithstanding the foregoing, any repair of damage caused by negligence or breach of this Lease by Lessee, Lessee's subtenants, employees, agents, contractors or invitees, shall be Lessee's responsibility and shall be done at Lessee's sole expense.

#### **6.5 Airfield Access**

Following full completion of the Airfield Access, the Port will thereafter maintain the portion of the Airfield Access pavement located off Lessee's Premises.

#### **6.6 Port Access to Premises**

The Port shall have the right to enter upon the Premises for the purposes of: (a) confirming the performance by Lessee of all obligations under this Lease; and (b) doing any other act which the Port may be obligated or have the right to perform under this Lease. Such entry shall be made with reasonable advance notice and during normal business hours, except in cases of emergency. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry, so long as the Port exercises reasonable care and takes reasonable steps to avoid interference with Lessee business and use and enjoyment of the Premises.

### **7. ENVIRONMENTAL OBLIGATIONS OF LESSEE**

#### **7.1 Definitions**

For the purposes of this Lease, the following definitions shall apply.

##### **7.1.1 Environmental Cost**

"Environmental Cost" includes, but is not limited to, costs and damages arising from or relating to: (a) any actual or claimed violation of or noncompliance with applicable laws, Environmental Laws (as defined in Section 7.1.2) and regulations; (b) claims for damages, response costs, fines, fees or other relief relating to matters addressed in any applicable laws, Environmental Laws or regulations; (c) injunctive relief relating to matters addressed in any applicable laws, Environmental Laws or regulations; (d) Hazardous Substance Releases (as defined in Section 7.1.4); and (e) violations of any environmental provisions of this Lease. Costs and damages as used in this Section shall include but not be limited to: (i) costs of evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring and maintenance; (ii) fees of attorneys, engineers, consultants, and experts, whether or not taxable as costs, incurred at, before or after trial, appeal or administrative proceedings; (iii) lost revenue; and (iv) diminution of value, loss, or restriction on use of property.

##### **7.1.2 Environmental Laws**

"Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, State of Oregon and local statutes, regulations, rules, permit terms, codes and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and/or relate to the protection of health, natural resources, safety or the environment.

### **7.1.3 Hazardous Substance**

"Hazardous Substance" includes any and all substances defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any applicable laws and regulations. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum-derived products.

### **7.1.4 Hazardous Substance Release**

"Hazardous Substance Release" shall be interpreted in the broadest sense to include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under applicable laws, Environmental Laws and regulations.

## **7.2 General Environmental Obligations of Lessee**

Lessee shall manage and conduct all of its activities on or relating to the Premises: (a) in compliance with applicable laws, Environmental Laws and regulations and the environmental provisions of this Lease; (b) in cooperation with the Port in the Port's efforts to comply with applicable laws, Environmental Laws and regulations; and (c) in adherence with best management practices applicable to Lessee's use of the Premises. Lessee shall manage and, as appropriate, secure the Premises and Lessee's occupation or use of the Premises so as to prevent any violation of laws, Environmental Laws or regulations by any party on or relating to the Premises.

### **7.3 Use of Hazardous Substances**

Subject to Lessee's obligations under Section 7, Lessee shall be permitted to use, handle or store Hazardous Substances necessary to conduct its operations and in compliance with applicable laws, Environmental Laws and regulations. No chemical de-icing or anti-icing is allowed.

### **7.4 Hazardous Substance Storage Tanks**

Lessee may not install or operate any mobile storage tanks (including fueling trucks) or aboveground storage tanks ("Storage Tanks") for the storage of Hazardous Substances, without the prior written consent of the Port as set forth in the Port's *Aboveground Storage Tank Use Agreement* and the *Mobile Petroleum Storage Tank or Tanker Vehicle Use Agreement for Self-Fueling*. For the purposes of this Section, Storage Tanks shall mean any tanks with a capacity of greater than fifty-five (55) gallons.

### **7.5 Storm Water Management Responsibilities**

Lessee is authorized to discharge into the Port's Storm Water Management System ("Storm Water Management System"), provided that Lessee must, at all times, comply with all applicable laws and regulations concerning discharges of storm water to the Port's storm water system, including all applicable Environmental Laws and permits applicable to storm water discharge at the Airport. The Port has a National Pollution Discharge Elimination System General Storm Water Discharge Permit ("1200-Z Permit") at the Airport ("Port Storm Water Permits") that regulates the discharge of storm water from the System into the waters of the United States.

#### **7.5.1 Lessee as Co-Permittee**

Lessee shall become a co-permittee on the 1200-Z Permit. Lessee acknowledges receiving a copy of the 1200-Z Permit. Lessee shall comply with all of the applicable terms of the 1200-Z Permit, including the Storm Water Pollution Control Plan applicable to the Airport

("SWPCP"). Except for any monitoring or reporting that may be required of Lessee due to a violation by Lessee of the 1200-Z Permit, or as otherwise required under the terms of the 1200-Z Permit, the Port shall bear the responsibility for the monitoring and reporting requirements of the 1200-Z Permit. Compliance with the SWPCP or the 1200-Z Permit may result in the imposition of additional requirements upon Lessee. If the Port identifies a benchmark exceedance of any regulated pollutant under the provisions of the 1200-Z Permit at an Airport outfall, and the Port determines Lessee is a potential source of the pollutant, Lessee must assist and fully cooperate with the Port in the investigation of the exceedance and must implement appropriate best management practices to mitigate the exceedance. Lessee shall provide written certification to the Port of Lessee's compliance with the 1200-Z Permit by completing, and returning to the Port no later than June 15 of each year, the Port's storm water compliance form which will be mailed to Lessee each May.

### **7.5.2 Storm Water System Use Fee**

The Port imposes a reasonable fee for monitoring and permit compliance of Lessee's discharge to the Storm Water Management System and for the repair and maintenance of the system. Currently, the fee for users of the Storm Water Management System is ONE HUNDRED FIFTY DOLLARS AND NO CENTS (\$150.00) per year. This is an annual fee, subject to increase, with the first (1<sup>st</sup>) annual fee payment being due and payable upon execution of this Lease, and thereafter on July 1 of each year this Lease is in effect. The Port reserves the right to impose additional fees, uniformly applied to similarly situated users, for the monitoring, permit compliance, repair and maintenance of the Storm Water Management System. The Port will provide Lessee with at least thirty (30) calendar days written notice prior to the imposition of any increase in the above fee.

### **7.5.3 Port's Right to Approve Treatment of Storm Water Discharge**

If during the term of the Lease, storm water treatment becomes necessary to comply with Environmental Laws or the 1200-Z Permit, then the Port shall have the right, but not the duty, in its sole discretion, to pre-approve or disapprove Lessee's method, design or installation of any such treatment system in order to ensure the Port's compliance with Environmental Laws, the 1200-Z Permit.

### **7.6 Discharge and Treatment of Industrial Waste Water**

No discharge of industrial waste water or wash water shall be made by Lessee into any Port-owned conveyance or storage system. The Port shall have the right to review and approve or disapprove any industrial waste water discharge treatment system of any kind to be installed or utilized upon the Premises.

### **7.7 Treated or Contaminated Soil or Waste**

Lessee shall not store, treat, deposit, place or dispose of treated or contaminated soil, industrial by-products, or waste on the Premises, without the prior written consent of the Port, which consent may be granted or denied in the Port's sole discretion.

### **7.8 Solid Waste Management and Recycling**

Lessee shall manage all waste stream in accordance with applicable federal, State and local laws and regulations, including meeting recycling goals established by regulatory authorities. Lessee shall place all garbage, refuse, and recyclable materials in the appropriate containers on the Premises. Lessee shall, at its sole expense, provide for the neat and sanitary handling of all trash and

other refuse generated as a result of Lessee's operations. Lessee shall provide and use suitable covered fireproof receptacles for all trash and other refuse. Lessee shall not permit boxes, cartons, barrels, pallets, or other similar items to be piled or stored in view of any Airport public area. Tenants are encouraged to work with their local solid waste and recycling jurisdictions to implement recycling programs. For Hillsboro Airport, contact Washington County Cooperative Recycling Program at (503) 846-8609. The Port has provided Lessee with recycling information. For additional information or assistance, Lessee is encouraged to contact PDX Recycles (503) 460-4679, or the METRO Recycling Hotline (503) 234-3000.

## **7.9 Environmental Audits**

### **7.9.1 Initial Audit**

The Port, at its own expense, will conduct an environmental audit which shall serve as the initial audit for this Lease ("Initial Audit"). The Initial Audit shall serve as a baseline for determination of future environmental liability, as described in more detail in Section 7.9.5.

### **7.9.2 Special Audit**

If the Port, at any time during the term of the Lease or any extension thereof, has reason to suspect that Hazardous Substances are being or have been created, used, handled, stored, generated, disposed, placed and/or transported contrary to the requirements of this Lease, in violation of applicable laws and regulations, or in any manner that has resulted, or is likely to result, in a Hazardous Substance Release, then the Port may, after written communication of those reasons to Lessee, without limiting its other rights and remedies, conduct, a special audit of the Premises with respect to the environmental matters of concern to the Port. If no Hazardous Substance Release or violation of Environmental Laws is discovered, the Port will pay for the special audit. If a Hazardous Substance Release or Environmental Laws violation is discovered, Lessee will pay the cost of the special audit.

### **7.9.3 Exit Audit**

The Port shall conduct, and furnish a copy thereof to Lessee, an environmental exit audit ("Exit Audit") of the Premises to determine, at a minimum: (a) the environmental condition of the Premises; (b) whether any Hazardous Substance Release has occurred or exists on or about the Premises; and (c) whether there is evidence of any violation of Environmental Laws and regulations, or the environmental provisions of this Lease. The Exit Audit shall be performed not more than sixty (60) calendar days prior to the expiration date of this Lease. In the event this Lease is terminated prior to the expiration date of this Lease for any reason, the Port shall cause the Exit Audit to be completed within sixty (60) calendar days of such actual termination date of this Lease. Lessee will reimburse the Port for the cost of the Exit Audit.

### **7.9.4 Audit Requirements**

The scope of all the environmental audits, except the Initial Audit, shall be determined solely by the Port. The Port will, however, advise Lessee of the scope of any environmental audit. If any environmental audit performed under this Lease recommends additional testing or analysis or recommends an additional audit then, unless otherwise agreed to, in writing, by the Port and Lessee, Lessee shall perform the additional recommended testing, analysis or audit and the records and results of such additional work shall be considered a part of the audit that triggered the need for the additional work. The Port and Lessee shall each receive a signed copy of any environmental audit report prepared pursuant to this Lease.

### **7.9.5 Presumption**

The Initial Audit shall be used as a baseline for determination of future Lessee liability. If the presence of a Hazardous Substance, a Hazardous Substance Release, violation of applicable laws and regulations or violation of an environmental provision of this Lease is discovered or disclosed that was not discovered or disclosed in the Initial Audit, then a rebuttable presumption will exist, as to matters within the scope of the Initial Audit, that Lessee is the cause of and is responsible for all response, remediation, restoration and Environmental Cost arising from such Hazardous Substance, Hazardous Substance Release, violation of applicable laws and regulations or violation of any environmental provision of this Lease. The presumption established by this Section shall expire after the results of the Exit Audit have been obtained and all response, remediation and full payment of Environmental Cost for which Lessee is responsible under this Lease have been completed.

### **7.10 Lessee's Liability**

#### **7.10.1 Hazardous Substance Releases**

Lessee shall be liable for any Hazardous Substance Release which occurs during the term of the Lease on the Premises. Any Environmental Cost arising therefrom shall be paid by Lessee on or before the date such Environmental Costs are due as provided for in this Section. Any Environmental Cost incurred by, paid by, or assessed against the Port, for which Lessee is responsible under this Lease, shall be paid by Lessee within thirty (30) calendar days after the date of written notice or invoice from the Port.

#### **7.10.2 Lessee's Liability for Environmental Cost**

Except as provided in Section 7.10.3, Lessee shall be liable for all Environmental Cost arising under this Lease. Any Environmental Cost for which Lessee is obligated under this Lease shall be paid by Lessee within thirty (30) days after the date of written notice or invoice from the Port or from the agency assessing such Environmental Cost directly against Lessee. Any Environmental Cost not paid when due shall bear interest at the Delinquency Rate from the date due until paid in full.

#### **7.10.3 Limitation of Lessee's Liability**

Notwithstanding anything to the contrary provided in this Lease, Lessee shall have no responsibility for Hazardous Substances or Hazardous Substance Releases, or Environmental Costs arising therefrom, that: (a) existed on the Premises prior to the date Lessee first took possession of the Premises, whether under this Lease or any other prior agreement, except if caused by Lessee or Lessee's agents, employees or contractors, (b) are caused by the Port or the agents, employees or contractors of the Port; or (c) which Lessee can demonstrate was caused by a third party which is not a contractor, agent, invitee or employee of Lessee and which was not exacerbated by the actions of Lessee.

### **7.11 Environmental Inspection**

The Port reserves the right, at any time and from time to time, after notice to Lessee, to inspect the Premises for environmental compliance with the terms of this Lease and Environmental Laws.

## **7.12 Environmental Response and Notice to the Port**

Lessee shall promptly notify the Port upon becoming aware of: (a) a violation or alleged violation of any Environmental Laws related to the Premises or to Lessee's occupation or use of the Premises; (b) any Hazardous Substance Release on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and, (c) any notice or communication from a governmental agency or any other person directed to Lessee relating to any Hazardous Substance, Hazardous Substance Release, or any violation or alleged violation of any Environmental Laws which relate to the Premises or to Lessee's occupation or use of the Premises. In the event of an environmental incident of any kind occurring in connection with Lessee's operations, Lessee shall be responsible for all necessary response and shall promptly notify the Port of the incident and the response. If notice must be given on the weekend or after 5:00 p.m. on any day, Lessee shall notify the Port by calling the Port's emergency telephone number. That number is currently (503) 460-4000.

## **8. INDEMNITY, INSURANCE**

### **8.1 General Indemnity; Reimbursement for Damage**

To the extent permitted by Oregon law, Lessee agrees to defend (using legal counsel reasonably acceptable to the Port) indemnify, and hold harmless the Port from and against, and reimburse the Port for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, Environmental Costs and/or penalties (collectively, "Costs") which may be imposed upon, claimed against or incurred or suffered by the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, unless exclusively resulting from the Port's negligence or willful misconduct: (a) any act, omission or negligence of Lessee; (b) any use, occupation, management or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; (c) any condition created in or about the Premises by any party after the Effective Date, including any accident, injury or damage resulting from such condition; and (d) any breach, violation or nonperformance of any of Lessee's obligations under this Lease. For purposes of this Section, (a) through (d), Lessee shall be deemed to include Lessee and Lessee's officers, directors, employees, agents, invitees and contractors. This indemnification shall require Lessee to reimburse the Port for any diminution in value of the Premises or other adjacent or nearby Port property, caused by a Hazardous Substance Release on the Premises, including damages for loss of or restriction on use of rentable or usable property or of any amenity of the Premises or any other Port property, including damages arising from any adverse impact on the leasing of property in or near the Premises, including other Port property. For the purposes of this Section, Lessee shall include Lessee's partners, members, directors, officers, employees, employees, contractors, agents and invitees.

### **8.2 Insurance Requirements**

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements.

### **8.2.1 Certificates; Notice of Cancellation**

On or before the Effective Date and thereafter during the Lease Term and any Extension Term, Lessee shall provide the Port with current certificates of insurance, including an additional insured endorsement, executed by a duly authorized representative of each insurer, evidencing the existence of all insurance policies required under this Section 8. The Port shall receive at least thirty (30) days written notice prior to cancellation, non-renewal, or material change in any policy. Insurance must be maintained without any lapse in coverage during the Lease Term. The Port shall also be given certified copies of Lessee's policies of insurance, upon request. Failure of the Port to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Port to identify any deficiency or noncompliance with coverage requirements shall not be construed as a waiver of Lessee's obligation to maintain the insurance required by this Lease.

### **8.2.2 Additional Insured; Separation of Insureds**

The Port shall be named as an additional insured in each general liability policy, other than employer's liability, and as an additional insured and loss payee in each property insurance policy. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices ("ISO") or a successor organization.

### **8.2.3 Primary Coverage**

The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Port.

### **8.2.4 Company Ratings**

All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent. The Port may, upon thirty (30) days' written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A-" rating.

## **8.3 Required Insurance**

At all times during this Lease, Lessee shall provide and maintain the following types of coverage:

### **8.3.1 General Liability Insurance**

Lessee shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Property or occasioned by reason of the operations of Lessee in an amount of not less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) per occurrence.

### **8.3.2 Property Insurance**

Lessee shall maintain, in full force and effect during the Lease Term, "All Risk" property insurance (including the perils of flood and earthquake/earth movement) or equivalent, covering all buildings, boilers and machinery, fixtures, equipment, and all other improvements and betterments located on the Property. Coverage shall be in an amount equal to one hundred percent

(100%) of the replacement value. Such insurance shall include the insurer's waiver of subrogation in accordance with Section 8.4.

### **8.3.3 Automobile Liability Insurance**

In the event that automobiles are used in connection with Lessee's business or operations at the Property, Lessee shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to property, including loss of use thereof, and occurring in any way related to the use, loading or unloading of any of Lessee's automobiles (including owned, hired and non-owned vehicles) on and around the Property. Coverage shall be in an amount of not less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) each accident.

### **8.3.4 Workers' Compensation Insurance**

Lessee shall maintain in force Workers' Compensation insurance for all of Lessee's employees in accordance with all requirements of Oregon law. Lessee shall also maintain employers liability coverage in an amount not less than FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00) per accident and FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00) per employee for disease. In lieu of such insurance, Lessee may maintain a self-insurance program meeting the requirements of the State of Oregon and a policy of excess workers' compensation and employer's liability insurance.

### **8.3.5 Builder's Risk Insurance**

During any construction activity, Lessee shall obtain and maintain for the benefit of the parties to this Lease, as their interests may appear, All-Risk Builder's Risk insurance equal to one hundred percent (100%) of the value of the project. Coverage shall also include: (a) form work in place; (b) form lumber on site; (c) temporary structures; (d) equipment; and (e) supplies related to the work while at the site. In the event Lessee fails to maintain such insurance, the Port may, at its option, arrange therefore, and any premium incurred shall be reimbursed by Lessee to the Port upon demand.

### **8.3.6 Lessee's Risks**

Lessee shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation, personal property, business interruption, and/or automobile physical damage and/or theft. In no event shall the Port be liable for: any (i) business interruption or other consequential loss sustained by Lessee, (ii) damage to, or loss of, personal property, or (iii) damage to, or loss of, an automobile, whether or not such loss is insured, even if such loss is caused by the negligence of the Port.

## **8.4 Waiver of Subrogation**

Lessee waives any right of action that it and/or its insurance carrier(s) might have against the Port (including the Port's commissioners, employees and agents) for any loss, cost, damage, or expense (collectively "Loss") covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Lease. Lessee also waives any right of action it and/or its insurance carrier(s) might have against the Port (including the Port's commissioners, employees and agents) for any Loss to the extent such Loss is a property loss covered under any applicable liability policy or policies required by this Lease. If any of Lessee's applicable insurance policies does not

allow the insured to waive the insurer's rights of recovery prior to a Loss, Lessee shall cause such policies to be endorsed to allow the waivers of subrogation required by this Section.

### **8.5 Periodic Review**

The Port shall have the right to periodically review, including at the beginning of each Extension Term, the types, limits and terms of insurance coverage for consistency with then current types, limits and terms of insurance coverage for similar operations. If the Port determines that certain types of insurance are not available in the marketplace for similar operations, Lessee shall not be required to carry such insurance until such insurance becomes available for similar operations. In the event the Port determines that such types, limits, and/or terms should be changed to be consistent with then current types, limits and terms of insurance coverage available in the marketplace for similar operations, the Port will give Lessee a minimum of thirty (30) days' notice of such determination and Lessee shall modify its coverage to comply with the new insurance requirements of the Port. Lessee shall also provide the Port with proof of such compliance by giving the Port an updated certificate of insurance within fifteen (15) days. Lessee shall have the right to periodically request the Port to conduct a review of the then current types, limits and terms of insurance coverage for similar operations if Lessee believes the current types, limits and terms of insurance coverage for similar operations have changed. The Port shall reasonably consider such Lessee's request to determine if it comports with similar operations and make changes accordingly.

### **8.6 Survival of Indemnities**

The indemnity set forth in Section 8.1 shall survive the expiration or earlier termination of the Lease and be fully enforceable thereafter.

## **9. DAMAGE OR DESTRUCTION**

### **9.1 General**

In the event that any Improvements are partially or completely destroyed, the Port shall be under no obligation to repair and reconstruct the Improvements, and the Port may terminate this Lease.

### **9.2 Port Reconstruction**

If the Port elects to restore the Improvements, the Port's obligations shall be limited to the repair or reconstruction of the Improvements to substantially the same condition as when delivered to Lessee and shall further be limited to the extent of the insurance proceeds available to the Port for such restoration. Lessee shall be responsible for reconstruction of all damage to the interior of the Premises. Lessee shall be responsible for redecoration and for replacement of Lessee's own Improvements, furniture, equipment, and supplies; such redecoration and refurbishing or re-equipping by Lessee shall be of equivalent quality to that originally installed. No damages, compensation or claim shall be payable to Lessee by the Port for business interruption arising from any repair or restoration of the Premises or of the Building. The Port shall not be required to do any such repair or restoration work except during business hours of Business Days (as defined in Section 13.4) but will proceed to restore the Improvements with reasonable diligence.

## **10. TERMINATION**

### **10.1 Duties upon Termination**

Upon the expiration or earlier termination of the Lease for any reason, Lessee shall surrender the Premises and all Improvements in good and clean condition. All Lessee's Improvements on the Premises, shall, at the Port's option, become Port property and shall not be removed unless the Port directs Lessee to remove such Lessee's Improvements, in which case Lessee must promptly remove the Lessee's Improvements and then repair any damage to the Premises caused by Lessee, its agents, invitees or contractors. All repairs for which Lessee is responsible shall be completed prior to termination and surrender.

### **10.2 Lessee's Personal Property**

#### **10.2.1 Removal Requirement**

Furniture, decorations, detached floor covering, curtains, blinds, furnishings and removable trade fixtures shall remain the property of Lessee if placed on the Premises by Lessee at Lessee's expense, and shall remain the property of Lessee upon termination of this Lease if Lessee is not in Default (as defined in Section 11.1) at the time of termination of the Lease, and if they are removed from the Premises no later than fourteen (14) calendar days after termination. At or before the termination of this Lease, Lessee, at Lessee's expense, shall remove its trade fixtures, signs, and personal property in a manner and at times that do not interrupt operation of the Airport facilities. Lessee shall repair all damage done to the Premises or other Port-owned property resulting from the removal of such trade fixtures, signs, and personal property and shall restore the Premises and other Port-owned property to the state of good repair that existed prior to the installation of Lessee's trade fixtures, signs, and personal property, less normal wear and tear. Title to any items of Lessee's trade fixtures and other personal property which remain on the Premises beyond the time allowed in this Section may, at the option of the Port, be automatically taken by the Port, and the Port shall have the option, in its sole discretion, of: (a) retaining any or all of such trade fixtures and other personal property without any requirement to account to Lessee therefore; or (b) removing and disposing of any or all of such trade fixtures and other personal property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand. Any items being stored by Lessee must be removed by Lessee immediately upon termination. Any such items remaining on the Premises upon expiration or earlier termination of this Lease shall be stored by the Port at the sole expense of Lessee.

#### **10.2.2 Time for Removal**

The time for removal of any property which Lessee is required to remove from the Premises upon termination shall be as follows: (a) within thirty (30) calendar days after notice from the Port requiring such removal where the property to be removed is an improvement which Lessee is not required to remove except after election or notice by the Port; or (b) if this Lease is terminated unexpectedly due to a casualty loss, condemnation, an uncured Event of Default or for any other reason prior to the expiration date of the Lease, then all removal must occur within thirty (30) calendar days of the actual termination date.

### **10.3 Holding Over**

If Lessee shall hold over after the expiration or earlier termination of this Lease, and the Port and Lessee have not otherwise agreed, in writing, to the terms and provisions of such holding over, Lessee shall be deemed by the Port to be either a month-to-month holdover tenant or a tenant at

sufferance and Lessee shall remain bound by all terms, covenants, and agreements hereof. If Lessee is deemed to be a holdover tenant, Lessee and the Port agree that: (a) the tenancy shall be from month-to-month and may be terminated at any time by thirty (30) calendar days prior written notice from either party to the other. In the event that the Port deems Lessee a tenant at sufferance, all of the provisions of the previous sentence shall apply, except that the Port will notify Lessee, in writing, that Lessee is a tenant at sufferance. Thereafter, the Port may take immediate action to evict Lessee without notice and may otherwise exercise any other rights and remedies available to it at law or in equity for breach of this Lease.

## **11. DEFAULT**

### **11.1 Event of Default**

The occurrence of any of the following shall constitute an "Event of Default" (also referred to herein as "Default").

#### **11.1.1 Default in Covenants**

Failure of Lessee to comply with any term, covenant or condition of this Lease within fifteen (15) calendar days after written notice by the Port describing the nature of the Default shall constitute an Event of Default. If the Default is of such a nature that it cannot be completely remedied within the fifteen (15) calendar day period, this provision shall be complied with if Lessee begins correction of the Default within the fifteen (15) calendar day period and thereafter proceeds in good faith and with reasonable diligence to effect the cure as soon as practical, so long as done to the satisfaction of the Port. Notwithstanding the foregoing, the Port need not give notice for a similar type of Default more than two (2) times during the term of the Lease, and a failure to perform such type of obligation after the second (2<sup>nd</sup>) notice constitutes an Event of Default for which no further notice or opportunity to cure need be given. Furthermore, if any Event of Default threatens to cause serious harm to the Port property or other tenants or persons, then the Port shall not be required to serve any notice before proceeding to request immediate injunctive relief.

#### **11.1.2 Abandonment**

Failure of Lessee for fifteen (15) calendar days or more to use and occupy the Premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease. No notice that an Event of Default has occurred shall be required from the Port.

### **11.2 Remedies on Default**

Upon the occurrence of an uncured Event of Default or an Event of Default for which there is no cure period, the Port at its option may terminate the Lease or terminate Lessee's right to possession of the Premises and at any time may exercise any other remedies available under law or equity for such Event of Default. Any notice to terminate may be given before or within the grace period for Default and may be included in a notice of failure of compliance.

### **11.3 Re-Entry**

Upon the occurrence of an uncured Event of Default or an Event of Default for which there is no cure period, the Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or

damages therefore, and may repossess the Premises and remove any person or property therefrom, to the end that the Port may have, hold and enjoy the Premises.

#### **11.4 Termination**

Even though Lessee has breached this Lease, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and remedies under this Lease. Acts of maintenance or preservation or efforts to lease the Premises or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by the Port to Lessee. Any notice to terminate may be given before or within the cure period for Default and may be included in a notice of failure of compliance. No such termination shall prejudice the Port's right to claims for damages for such breach or any other rights and remedies of the Port. The Port may terminate this Lease at any time upon the occurrence of an Event of Default.

#### **11.5 Curing Lessee's Defaults**

If Lessee shall Default in the performance of any of Lessee's obligations under this Lease, the Port, without waiving such Default, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency, and in any other cases only if such Default continues after the expiration of fifteen (15) calendar days from the date the Port gives Lessee notice of the Default. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port upon demand, as any amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee. Any sums to be so reimbursed shall bear interest at Delinquency Rate.

#### **11.6 Default by Port**

In the event of any default by the Port, Lessee's exclusive remedy shall be an action for damages. Prior to being entitled to maintain any such action, Lessee shall give the Port written notice specifying such default with particularity, and the Port shall have fifteen (15) calendar days within which to cure any such default, or if such default cannot reasonably be cured within fifteen calendar (15) days, the Port shall then have fifteen (15) calendar days to commence cure and shall diligently prosecute cure to completion. Unless and until the Port fails to so cure such default after such notice, Lessee shall not have any remedy or cause of action by reason thereof.

### **12. ASSIGNMENT, SUBLEASE, MORTGAGE AND TRANSFER PROHIBITED**

This Lease is personal to Lessee. Therefore no part of the Premises, nor any interest in this Lease, may be assigned, pledged, transferred, mortgaged, or subleased by Lessee.

### **13. GENERAL PROVISIONS**

#### **13.1 Airport Security**

Lessee recognizes its obligations to comply with federal airport security regulations applicable to the Airport. The Port shall notify Lessee of any such federal airport security regulations which are or may become applicable to Lessee's use or occupancy of the Premises. As of the Effective Date, there are no applicable security regulations that apply to the use or occupancy of the Premises.

### **13.2 Attorney Fees**

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. If the Port or Lessee are required to seek legal assistance to enforce any term of this Lease, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Lease requires either party to defend the other, it is agreed that such defense shall be by legal counsel acceptable to the party to whom such defense is owed.

### **13.3 Broker**

Neither party has been represented by a broker in this transaction. No obligation to pay commission shall arise from the execution of this Lease and each party shall hold the other party harmless from any commission claims arising out of this transaction.

### **13.4 Calculation of Time**

"Legal Holiday" shall mean any holiday observed by the Federal Government. "Business Day" shall mean Monday through Friday and shall exclude Saturday, Sunday and Legal Holidays. Unless referred to as Business Days, all periods of time referred to herein shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or Legal Holiday.

### **13.5 Capacity to Execute**

The Port and Lessee each warrant and represent to one another that this Lease constitutes a legal, valid and binding obligation of that party. The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the entity for whom they purport to be acting.

### **13.6 Counterparts**

This Lease may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

### **13.7 Defined Terms**

Capitalized terms shall have the meaning given them in the text herein.

### **13.8 Entire Agreement**

This Lease represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Premises. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as expressly set forth in this Lease. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Lease. All oral agreements, if any, are void and expressly waived by Lessee. This

Lease has been thoroughly negotiated between the parties; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.

### **13.9 Exhibits Incorporated by Reference**

All Exhibits attached hereto are incorporated by reference in this Lease for all purposes.

### **13.10 Governing Law**

This Lease shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Jurisdiction shall be with Washington County Courts or the Federal Court located in Portland, Oregon.

### **13.11 Headings, Table of Contents and Definitions**

The section headings, table of contents and table of definitions contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Lease.

### **13.12 Interpretation of Lease; Status of Parties**

This Lease is the result of arms length negotiations between the Port and Lessee and shall not be construed against either party. Nothing contained in this Lease, including the method of computation of rentals or construction of Improvements on the Premises, shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto.

### **13.13 Lease Subject to Agreements with United States**

This Lease shall be subject to the provisions of any existing or future agreement between the Port and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

### **13.14 Lease Subject to Avigation Priority**

Lessee's right to use the Premises and the Improvements for the purposes as set forth in this Lease shall be secondary to and subordinate to the operation of the Airport. Lessee acknowledges that because of the close location of the Premises to the Airport, noise, vibration, fumes, debris, and other interference with the Premises' use will be caused by Airport operations. Lessee hereby waives any and all rights or remedies against the Port arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of the Airport. The Port specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises together with the right to cause in said airspace such noise, vibration, fumes, debris, and other interferences as may be inherent in the present and future operation of aircraft. If continued flight operations so require, height restrictions on buildings and other improvements may be imposed on the Premises.

### **13.15 Lease Subject to Bonds and Ordinances**

This Lease shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances affecting the Premises. Lessee agrees that the Port may hereafter adopt bond ordinances which impose liens or encumbrances on said Premises and the Port's interest in the leasehold, and Lessee shall, upon request of the Port, execute and deliver agreements of

subordination consistent herewith. Furthermore, in order to comply with the requirements of existing Port bond ordinances, Lessee hereby makes an irrevocable commitment not to claim depreciation, cost recovery, or an investment credit with respect to any of the leased Premises, space or to any improvements constructed by the Port using Port funds or Port bond funds or constructed by Lessee or someone else but paid for using Port funds or Port bond proceeds.

### **13.16 Limitation on Port Liability**

The Port shall have no liability to Lessee for loss, damage or injury suffered by Lessee on account of theft or any act or omission of a third party including other tenants. The Port shall only be liable for its own misconduct or negligence and only to the extent of actual damages. Although this Lease gives the Port certain rights of inspection, such rights shall impose no obligation on the Port to make any inspections nor impose liability on the Port if the Port fails to make such inspections.

### **13.17 Mediation**

All disputes arising out of or related to this Lease shall be subject to mediation as a condition precedent to arbitration or the institution of legal proceedings. The parties shall endeavor to resolve any disputes initially by mediation. The mediator shall be an individual mutually acceptable to the parties. A request for mediation shall be filed in writing with the other party. The parties shall share the mediator's fee and any filing fees, equally. The mediation shall be held in Portland, Oregon at a location mutually acceptable to the parties. The mediation hearing shall occur within thirty (30) days of the request for mediation. Notwithstanding the foregoing, the parties shall not be required to submit to mediation any claims in equity, such as claims for injunctive relief.

### **13.18 Modification**

This Lease may not be modified or amended except by a written instrument duly executed by the parties.

### **13.19 No Exclusive Rights**

Nothing contained in this Lease shall be deemed to grant Lessee any exclusive right or privilege or the exclusive right of conduct of any activity on the Airport except that, subject to the terms and provisions of this Lease, Lessee shall have the right to possess and use the Premises.

### **13.20 No Implied Warranty**

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. Lessee shall be solely responsible for such matters and the Port shall have no liability therefore.

### **13.21 No Intended Third-Party Benefit**

Nothing in this Lease gives or shall be construed to create a benefit to any party who is not a signatory party to this Lease.

### **13.22 No Light or Air Easement**

The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee.

### **13.23 No Limit on Port's Powers**

Nothing in this Lease shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers, including its powers of eminent domain.

### **13.24 Nondiscrimination Assurance**

Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Airport for a purpose for which a Department of Transportation ("DOT") program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended. Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (c) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended. Lessee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates Lessee or its transferee for the period during which federal assistance is extended to the airport program, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates Lessee or any transferee for the longer of the following periods: (i) the period during which the property is used by the Port or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the Port or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. In addition, Lessee agrees that, whether or not this Lease is conducted with, or benefits from, federal assistance, it shall in all matters pertaining to the performance of this Lease conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, sex, age, color, creed, sexual preference, marital status, national origin, or the presence of any sensory, mental or physical handicap. Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from all qualified individuals. It is the policy of the DOT that disadvantaged business enterprises, as defined in the Airport and Airway Improvement Act, as amended, and as implemented by the federal regulations, shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR 23.5. Consequently, this Lease is subject to 49 CFR 23, as applicable. Lessee will, at the timely request of the Port, provide any information needed in preparation of necessary reports, forms, documents and other data relative to equal employment. Lessee hereby assures that it will include the above clauses in any

sub-leases approved by the Port and cause sub-lessees to similarly include clauses in further subleases.

### 13.25 Notices

All notices required under this Lease shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent as follows:

to the Port at:

The Port of Portland  
7000 N.E. Airport Way, 3<sup>rd</sup> Floor  
Portland, OR 97218  
Attention: General Manager, Aviation Business & Properties

with a copy to:

The Port of Portland  
7000 N.E. Airport Way, 3<sup>rd</sup> Floor  
Portland, OR 97218  
Attention: Legal Department

to Lessee at:

The City of Hillsboro  
City Manager's Office  
105 E Main Street  
Hillsboro, Oregon 97123  
Attention: Ms. Ellen Conley

with a copy to:

Beery Elsner & Hammond, LLP  
Suite 380  
1750 SW Harbor Way  
Portland, Oregon 97201  
Attention: Paul C. Elsner, Esq.

The date of service of such notice by mail is agreed to be three (3) days after the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery. Notice may also be given by facsimile. The burden of proof concerning receipt of the facsimile will be on the sender who may satisfy the burden by presenting a receipt of the transmission showing the date the transmission successfully occurred, the facsimile number that the transmission was sent to, the name of the party to whom the facsimile was sent, and a description of the document sent.

### 13.26 No Waiver

Waiver by the Port of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future or of any other provision of this Lease.

### **13.27 Port Consent or Action**

In the event this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be in the reasonable discretion of the Port. If Lessee requires the Port's consent or approval pursuant to any provision of this Lease, such consent or approval shall not be unreasonably withheld.

### **13.28 Provisions Applicable to Others**

All provisions of this Lease governing Lessee's use of the Premises and Lessee's activities and conduct on, about or from the Premises shall apply to Lessee's officers, agents, employees, invitees, and contractors.

### **13.29 Recitals**

The Recitals above are true and are incorporated into and are a part of this Lease.

### **13.30 Severability**

If any provision contained herein is held to be invalid or unenforceable, the remaining provisions, or the application of such provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision contained herein shall be valid and enforceable to the fullest extent permitted by law.

### **13.31 Successors; Parties**

The rights, liabilities and remedies provided for in this Lease shall extend to the heirs, legal representatives and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words Port and Lessee and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

### **13.32 Survival**

Any covenant or condition (including, but not limited to, indemnification provisions), set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by their terms are to survive the termination of this Lease, shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

### **13.33 Time of the Essence**

Time is of the essence in the performance of and adherence to each and every covenant and condition contained herein.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first written above.

**THE CITY OF HILLSBORO**

**THE PORT OF PORTLAND**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

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

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

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT:

By: \_\_\_\_\_  
Counsel for Port of Portland

APPROVED BY COMMISSION ON:

\_\_\_\_\_

## **EXHIBIT B**

### **NOTICE TO TENANTS**

Dear Tenant:

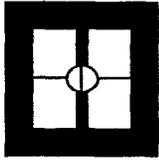
As you are aware, your agreement with the Port of Portland requires you to pay all property taxes assessed against the property you occupy. The Port of Portland and Washington County take this obligation seriously, and will strictly enforce it. If taxes are not paid promptly when due, the Port may pursue remedies for default, including termination of your agreement. Washington County may also pursue a collection action for unpaid taxes.

Property tax statements are sent by Washington County each November. If you wish to have your property tax statements sent to a different address, please contact the Washington County Assessment and Taxation Department at:

Washington County  
Assessment & Taxation Department  
155 N. First Avenue, Suite 230, MS 9  
Hillsboro, OR 97124-3072

CITY OF HILLSBORO

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**MEMORANDUM**

DATE: September 29, 2008  
TO: Mayor and City Council  
FROM: Hillsboro Police Department  
Amber Ames, City Recorder  
SUBJECT: Request for liquor license endorsement

---

Please consider staff recommendations for the following liquor license application:

1. Best Panda Buffet, 1050 SW Baseline Rd #C1 – Change of Ownership – Full on-premises sales
2. Dotty's, 1300 SW Oak #G – Change in Privilege – Full on-premises sales

The Police Department has reviewed the applications and recommends Council endorsement. If you have any questions, please do not hesitate to call the Hillsboro Police Department (503-681-6174) or Amber Ames (503-681-6117).

Attachments:  
OLCC Liquor License Applications

REQUEST FOR CITY COUNCIL ENDORSEMENT  
Liquor License Application  
City of Hillsboro, Oregon

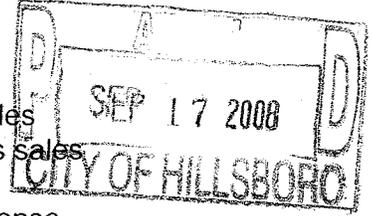
No. 1812-08

Indicate type of application:

- \$100.00 Original Application
- \$ 75.00 Change of Ownership
- \$ 75.00 Change of location
- \$ 75.00 Change in privilege
- \$ 35.00 Renewal or Temporary
- \$ 25.00 Off-premises sales

License type:

- Full on-premises sales
- Limited on-premises sales
- Off-premises sales
- Temporary sales license



BUSINESS NAME: FJQ LLC

DBA NAME: Best Panda Buffet

Business Address: 1050 SW Baseline Ct Hillsboro OR 97123

Applicant: Jeff C. Fine  
(Full Name)

Home Address: \_\_\_\_\_  
Street Home Phone  
\_\_\_\_\_ 5038461617  
City State Zip Business Phone

Driver's License No.: \_\_\_\_\_ State: \_\_\_\_\_

Co-Applicant: Quilian Pang  
(Full Name)

If more than one co-applicant, provide complete information on each (attach page(s) as necessary).

Home Address: \_\_\_\_\_  
Street Home Phone  
\_\_\_\_\_ 5038461617  
City State Zip Business Phone

Driver's License No.: \_\_\_\_\_ State: OR

Note: If applicant is a corporation, list name and address of home offices: \_\_\_\_\_

FJQ LLC is an LLC, not a corp? But the mailing address for the LLC is the biz address, or the home address for the agent.

I hereby attest that the information provided above is true and accurate to the best of my knowledge. It is understood that the City may request additional or supplemental information during the course of processing this application.

Date: 9/5/08  
Signature(s) of Applicant(s) or Agent(s)

City Business License No.: 1661 ? Receipt No. \_\_\_\_\_

Note: This page is to be filled out for new applications, change of ownership, change of location, change of class of license and temporary licenses

Describe in detail the nature of the establishment you propose to operate. (For example, is your facility going to be a tavern, a family dining establishment, a neighborhood grocery store, part of a community shopping center, a special purpose retail outlet like a wine shop, etc.) If additional space is necessary, please use the back of this form, or attach additional page(s).

Restaurant choose artist / menu

Days and hours of operation: Every day, 11-9, always 11:00-11:00

Ratio of projected food sales to alcohol sales:

Service Capacity (i.e. maximum number of customers that can be accommodated at any give time):

Previous business names and addresses where you have ever been licensed (Use reverse side of this application for additional space if necessary.)

N/A

Has the applicant ever been issued a liquor license? Yes  No

If yes, describe below the nature and location of the outlet(s), the type of license, and the dates during which the license was held.

Has the applicant ever been cited or had a compliance plan in effect for a liquor license? Yes  No

If yes, describe below the nature of the license sought, the location of the proposed outlet, the date of the citation, and reasons for the citation.

Is any building remodeling planned? If so, generally describe: remodel, add

a bar-by-re area, or make lobby area more comfortable, not sure yet.

Polic Department: Approved  Denied  Signature: [Signature] 16572 9/25/08

Comments:

Req 90 day



# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

PLEASE PRINT OR TYPE

Application is being made for:

### LICENSE TYPES

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

### ACTIONS

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other \_\_\_\_\_

P22082  
L106524

Applying as:

- Limited Partnership
- Corporation
- Limited Liability Company
- Individuals

FOR CITY AND COUNTY USE ONLY

The city council or county commission:

(name of city or county)

recommends that this license be:

Granted  Denied

By: \_\_\_\_\_ (signature) \_\_\_\_\_ (date)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

OLCC USE ONLY

Application Rec'd by: Ellis

Date: 9-3-08

90-day authority:  Yes  No

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

① FJQ LLC ③ \_\_\_\_\_

② \_\_\_\_\_ ④ \_\_\_\_\_

2. Trade Name (dba): Best Panda Buffet

3. Business Location: 1050 SW Baseline #C1 Hillsboro OR 97123  
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: \_\_\_\_\_  
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-846-1617  
(phone) (fax)

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

7. If yes to whom: Kuang's Buffet, Inc Type of License: unknown F-COM

8. Former Business Name: Best Panda Buffet

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

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

11. Contact person for this application: JEFF FINE  
(name) (phone number(s))

(address) (fax number) (e-mail address)

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

Applicant(s) Signature(s) and Date:

① [Signature] Date 7/15/08 ③ \_\_\_\_\_ Date \_\_\_\_\_

② \_\_\_\_\_ Date \_\_\_\_\_ ④ \_\_\_\_\_ Date \_\_\_\_\_

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

City of Hillsboro

(rev. 12/07)

906  
9509

REQUEST FOR CITY COUNCIL ENDORSEMENT

No. 03-08

Liquor License Application

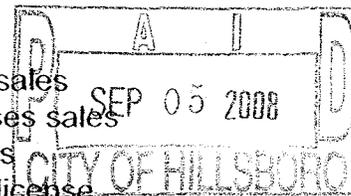
City of Hillsboro, Oregon

Indicate type of application:

- \$100.00 Original Application
- \$ 75.00 Change of Ownership
- \$ 75.00 Change of location
- \$ 75.00 Change in privilege
- \$ 35.00 Renewal or Temporary
- \$ 25.00 Off-premises sales

License type:

- Full on-premises sales
- Limited on-premises sales
- Off-premises sales
- Temporary sales license



BUSINESS NAME: Oregon Restaurant Services, Inc

DBA NAME: Dotty's

Business Address: 1300 SW Oak #G Hillsboro OR 97123

Applicant: Daniel Fischer  
(Full Name)

Home Address: \_\_\_\_\_  
 Street \_\_\_\_\_ Home Phone \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Business Phone 702-265-5812

Driver's License No.: \_\_\_\_\_ State: \_\_\_\_\_

Co-Applicant: \_\_\_\_\_  
(Full Name)

If more than one co-applicant, provide complete information on each (attach page(s) as necessary).

Home Address: \_\_\_\_\_  
 Street \_\_\_\_\_ Home Phone \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Business Phone \_\_\_\_\_

Driver's License No.: \_\_\_\_\_ State: \_\_\_\_\_

Note: If applicant is a corporation, list name and address of home offices: \_\_\_\_\_  
Oregon Restaurant Services, Inc  
PO Box 4726 Portland OR 97208

I hereby attest that the information provided above is true and accurate to the best of my knowledge. It is understood that the City may request additional or supplemental information during the course of processing this application.

Date: 9/5/08  
 \_\_\_\_\_  
 Signature(s) of Applicant(s) or Agent(s)

City Business License No.: \_\_\_\_\_ Receipt No. \_\_\_\_\_

Note: This page is to be filled out for new applications, change of ownership, change of location, change of class of license and temporary licenses.

Describe in detail the nature of the establishment you propose to operate. (For example, is your facility going to be a tavern, a family dining establishment, a neighborhood grocery store, part of a community shopping center, a special purpose retail outlet like a wine shop, etc.) If additional space is necessary, please use the back of this form, or attach additional page(s).

deli, Video lottery

Days and hours of operation: M-S 7:00-2:30am Sun 7:00am-12:00am

Ratio of projected food sales to alcohol sales: 60/40

Service Capacity (i.e. maximum number of customers that can be accommodated at any given time): 35-40

Previous business names and addresses where you have ever been licensed. (Use reverse side of this application for additional space if necessary.)

n/a

Has the applicant ever been issued a liquor license? Yes  No

If yes, describe below the nature and location of the outlet(s), the type of license, and the dates during which the license was held.

F-Com in Portland

Multiple locations in Hillsboro Limited

Has the applicant ever been cited or had a compliance plan in effect for a liquor facility? Yes  No

If yes, describe below the nature of the license sought, the location of the proposed outlet, the date of the citation, and reasons for the citation.

Is any building remodeling planned? If so, generally describe. No

Police Department: Approved  Denied

Signature

dlh 2 16512 9/25/08

Comments:

OREGON LIQUOR CONTROL COMMISSION  
**LIQUOR LICENSE APPLICATION**

Take these attached forms to the governing body in which your business is located for Endorsement.

PLEASE PRINT OR TYPE

Application is being made for:

**LICENSE TYPES**

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

**ACTIONS**

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other \_\_\_\_\_

P43824  
 L108681

The city council or county commission:

(name of city or county)

recommends that this license be:

Granted  Denied

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

(signature)

(date)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**OLCC USE ONLY**

Application Rec'd by: Hudson

Date: 9/2/08

90-day authority:  Yes  No

Applying as:

- Individuals
- Limited Partnership
- Corporation
- Limited Liability Company

1. Applicant(s): [See SECTION 1 of the Guide]

① Oregon Restaurant Services, Inc ③ \_\_\_\_\_  
 ② \_\_\_\_\_ ④ \_\_\_\_\_

2. Trade Name (dba): Dotty's

3. Business Location: 1300 SW Oak # G Hillsboro 97123  
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: P.O. Box 4726 Portland OR 97208  
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-228-5058 503-228-5295  
(phone) (fax)

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

7. If yes to whom: ORSI Type of License: Limited

8. Former Business Name: \_\_\_\_\_

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

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

11. Contact person for this application: Kelley Sheldon Jan Fischer  
(name) (phone number(s))  
 \_\_\_\_\_  
(address) (fax number) (e-mail address)

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

Applicant(s) Signature(s) and Date:

① [Signature] Date 09/02/08 ③ \_\_\_\_\_ Date \_\_\_\_\_  
 ② \_\_\_\_\_ Date \_\_\_\_\_ ④ \_\_\_\_\_ Date \_\_\_\_\_

## Common Types of OLCC Licenses:

### **Full On-Premises Sales (F):**

This type of license allows the sale and service of distilled spirits, malt beverages, and wine for consumption on the licensed premises. The OLCC issues Full On-Premises Sales (F) licenses to caterers (F-CAT), commercial establishments (F-COM), private clubs (F-CLU), public passenger carriers (F-PC), and other public locations (F-PL).

- ⚡ Previously hard liquor dispenser license (DA, DB, DC)

### **Limited On-Premises Sales (L):**

This license allows the sale of malt beverages, wine and cider for consumption on the licensed premises, and the sale of kegs of malt beverages for off premises consumption.

- ⚡ Previously RMB (Tavern) license

### **Off Premises Sales (O):**

This license allows the sale of malt beverages, wine, and cider in factory sealed containers for consumption off the licensed premises and allows sample tastings of malt beverages, wine, and cider.

- ⚡ Previously called a package store license

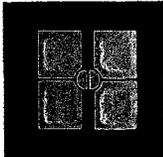
### **Wholesale Malt Beverage and Wine (WMBW):**

This license allows storage, import, export, and wholesale sale of wine (21% alcohol or less) to wholesale and retail licensees, allows wine tastings, and the sale of wine and malt beverages for customers to drink at the business and "to go" in sealed containers.

### **Brewery Public House (BP):**

This license allows the manufacture, storage, sale, and exportation of malt beverages. Retail sales may be for on or off premises consumption. Also allows sales of wine and cider containing no more than 21% alcohol.

CITY OF HILLSBORO



**PROCLAMATION**

**WHEREAS**, October 5<sup>th</sup> through October 11<sup>th</sup> marks National Fire Prevention week; and

**WHEREAS**, fire departments across the country will focus on raising citizen awareness on the dangers of fire and the resulting need for working smoke alarms and fire escape planning; and

**WHEREAS**, the citizens of the City of Hillsboro are vulnerable to injury and death from residential fires if they do not have working smoke alarms in their home; and

**WHEREAS**, the City of Hillsboro recognizes the value of family fire safety planning and has devoted significant City staff time and resources to increase awareness, education and training among its citizens and businesses; and

**WHEREAS**, the purpose of National Fire Preparedness Week is to help raise awareness and promote action by Americans and communities to create fire safety plans; and

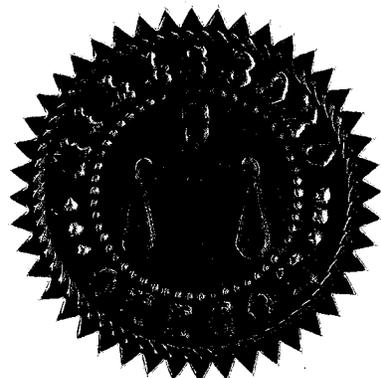
**WHEREAS**, fire safety events are scheduled throughout the month to encourage our citizens to be prepared for the threat of fire in our community; and

**WHEREAS**, citizens of the City of Hillsboro will join with the nations' citizens in embracing this valuable opportunity to learn of ways we can prepare and prevent fire in their home.

**NOW, THEREFORE**, I, Tom Hughes, Mayor of the City of Hillsboro, do hereby proclaim October of 2008, as

**FIRE PREVENTION MONTH**

and encourage all City of Hillsboro residents to test their smoke alarms, create a fire escape plan with their entire family, and practice that escape plan at least twice a year.

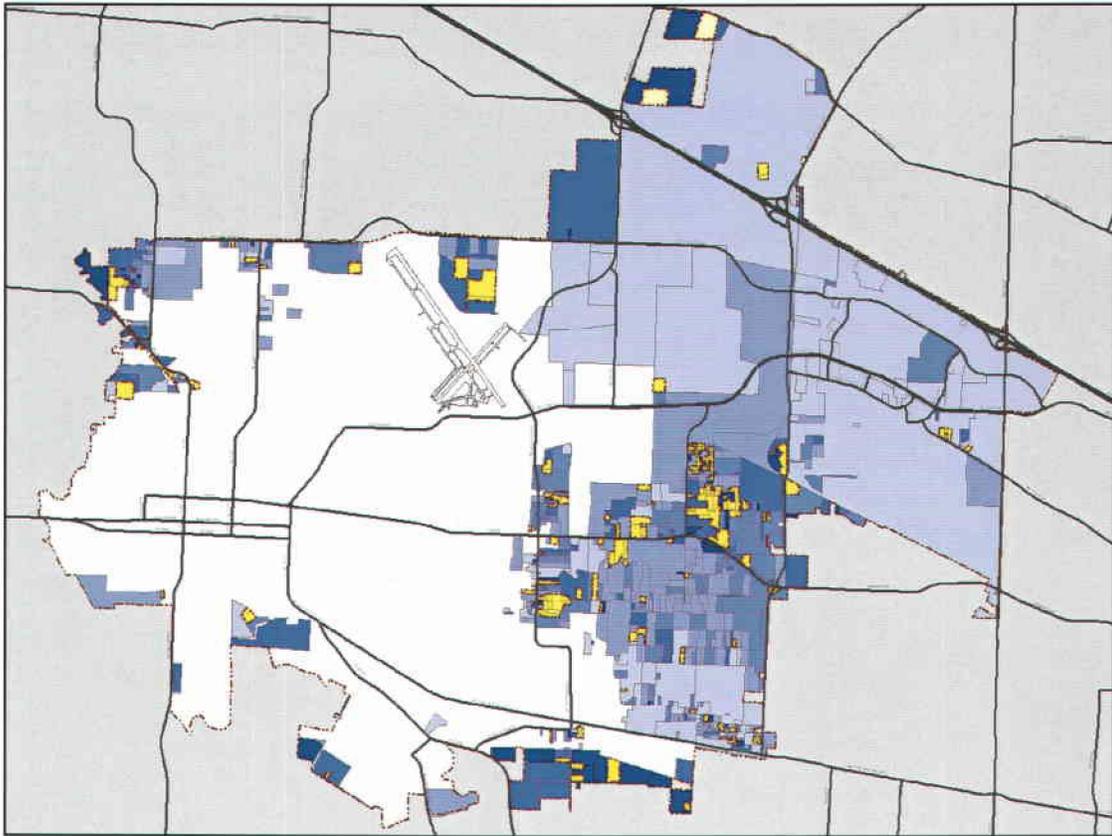


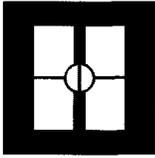
*Tom Hughes*  
\_\_\_\_\_  
Tom Hughes, Mayor  
October 7, 2008



**Island Annexation Policy**  
City Council Work Session  
7 October 2008

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October 1, 2008

**To: Mayor Tom Hughes and Hillsboro City Council Members  
Sarah Jo Chaplen, Hillsboro City Manager**

**From: Patrick A. Ribellia, Planning Director  
Alwin Turiel, Long Range Planning Supervisor**

**Re: Hillsboro Annexation of "County Islands"**

---

#### **Question Presented**

Should Hillsboro proceed now with City-initiated annexation of all County Islands within the City, consistent with existing City policy and intergovernmental agreements, and as authorized under ORS 222.750?

#### **Background**

The City of Hillsboro has maintained a passive annexation policy over the past 25 years, moving to consider annexation only upon request from land owners. Under this approach, the City has completed about 600 annexations encompassing nearly 7,600 acres since 1984, averaging a little more than 300 acres per year (see attached map). This policy has had the unintended consequence of creating multiple enclaves of non-City tax parcels – or *County Islands* – within Hillsboro's city limits.

Today, there are 79 such islands, consisting of 194 individual tax lots totaling 288 acres, with an assessed value of \$29.1 million. The location and size of these islands are shown in the attachments to this memo.

The future of the County Islands is governed by the City of Hillsboro-Washington County *Urban Planning Area Agreement* (UPAA), which establishes the City as the long-term service provider and ultimate source of local governance. Under this agreement, islands must be annexed before converting to urban uses or receiving urban (City) services. While those who reside within the islands receive and pay for direct services from Washington County and other local providers, they also benefit from "free" City of Hillsboro services – including road maintenance, parks, libraries, street lighting, emergency response, etc.

## Annexation Statutes

Hillsboro's City Charter has no annexation provisions. However, the Hillsboro Comprehensive Plan calls for ...*"an orderly and efficient transition of land from rural to urban use through identification of areas designed to accommodate the full range of urban uses ..."* and establishes a program for *"the eventual annexation of all urban unincorporated properties into the cities."*

Oregon state law authorizes cities to annex islands without consent of property owners or residents in the affected area, or by Hillsboro voters, *provided the entire island is annexed*. Under Oregon Revised Statutes (ORS 222.750), cities may authorize island annexations by resolution or ordinance, subject to referendum. Referred to as *"Island Annexation"* – or *"consent not required from affected territory"*, this is the most common and least costly method used by cities to initiate island annexations.

The Oregon Legislature has long recognized that islands formed as cities grow can create service inefficiencies and confusion for island inhabitants and service providers. Other Oregon cities, including Salem and Prineville, have completed similar island annexations in recent years.

The Island Annexation method is unique, enabling a city to annex islands by non-emergency ordinance, as long as contiguous parcels in an island are annexed in their entirety and the effective date of annexation for residential properties is delayed a minimum of three years to afford tax relief to homeowners. Other methods of annexation are possible, but are considerably more costly and time consuming (see attached Alternative Annexation Methods and Legal Analysis).

Cities may also choose to annex only selected islands. However, for Hillsboro this would merely reduce (rather than eliminate) service inefficiencies and inequities.

## Effects of Annexation

### Service Delivery

The proposed island annexation would simplify and clarify service delivery, from the viewpoints of residents, property owners and service providers. An analysis of service delivery issues points to several specific opportunities for improvement:

- The Hillsboro Fire Department responds to service calls in these areas an average of 30 times per year, at an un-reimbursed cost of \$1,700 per response. Also, County Island addresses do not align with the City address system, which can result in delayed response to emergencies.
- Police service is particularly challenging. In some cases, the Hillsboro Police Department may not even be aware of calls made within their service area. Other times, Sheriff's deputies are called in from far away, and speed through city streets to reach islands. Some calls go to both the City and County, increasing service duplication.
- In some cases (e.g., Orenco Station), the City may own the street medians, but not the streets fronting the islands. This means Hillsboro Public Works cannot instigate, fund or manage traffic calming efforts without County authorization – a source of frustration for property owners.

- County nuisance ordinances are not always consistent with City ordinances. For example, Washington County allows up to four abandoned vehicles on a property indefinitely, while the City prohibits them outright. County rules for open burning are more lax, stirring complaints from nearby City residents. And Washington County Fire District #2, the designated service provider for most incorporated islands, lacks funding and resources to enforce fire codes.
- Often, residential parcels in island areas lack public water and sewer service – even though such infrastructure is nearby.

Financial

Areas recommended for additional financial analysis are outlined below in “Next Steps”. The following outlines some baseline impacts assuming all islands are annexed in their entirety.

- Based on the total assessed value of all island tax parcels, the City of Hillsboro would receive new tax revenue in the range of \$138,992 per year<sup>1</sup>.
- Total tax collections would grow \$50,000, from \$438,391 at present to \$489,267.
- If all islands are annexed, current Washington County service providers could eventually anticipate losing annual revenue in the range shown below:
  - Enhanced Sheriff Patrol - \$30,146
  - Urban Road Maintenance - \$6,780
  - Fire District #2 - \$43,817
  - TVF&R - \$5,052
  - THPRD - \$1,162
- On average, island residents would see a slight increase in taxes. For example, the owner of a \$250,000 home in a typical unincorporated island currently pays about \$3,738 per year in taxes. That figure would increase on average to \$4,173 (an additional \$36.25 per month) when their property is incorporated into Hillsboro. For some island residents, a portion of this increase will be offset by reduced fees since they currently pay a premium (generally 50% above City rates) to access Hillsboro Parks and Recreation programs and services.

**Next Steps**

Annexation Authorization

The following provides a summary and preliminary schedule for next steps to proceed with Hillsboro’s island annexation program:

- City Council authorizes staff to develop annexation and zone change ordinances (October)
- Staff refines ordinances; secures Planning Commission review; completes required public notice (October-November)

---

<sup>1</sup> Notes: Using the 2008 tax rate. Actual revenue from residential parcels will be delayed by statute, for at least three years or until the parcel is sold. Values will increase over time since the islands are not fully urbanized and some properties are undeveloped.

- City Council considers and takes action on proposed ordinances (November-December)
- Ordinances enacted, with regular updates to Council (January-ongoing)

Outreach and Communications

In conjunction with the proposed island annexation, program staff recommends conducting a series of outreach and communications tasks as follows:

- Coordinate with Washington County officials and other affected service providers to discuss the planned annexations and work out transition of services (i.e., Washington County, Fire District #2, TVF&R, TVWD and THPRD).
- Conduct targeted outreach with property owners and residents in affected areas.
- Produce informational materials for distribution to potentially affected parties, in island areas and city-wide.

Additional Analysis

While a preliminary analysis of financial and service impacts is provided here, some additional research will be required to provide a comprehensive impact analysis. Staff recommends conducting the following analyses:

- Define and develop legal descriptions for island property boundaries.
- Identify service use and likely timing of transfer of service responsibilities and associated fiscal impacts.
- Develop annexation/service IGAs with special districts (as needed).
- Determine timing/effective annexation dates for island properties, accounting for statutory residential delay and effects on anticipated service delivery costs.

**Attachments**

1. Hillsboro Island Annexation Q&A (Draft)
2. Map - Hillsboro Annexation History (1984 to 2008)
3. Hillsboro Policy Basis for Island Annexation
4. Sample Property Tax Comparison
5. Service Analysis Documentation
6. City Attorney's Memorandum - "County Islands & Other Annexation Methods"
7. ORS 222.750
8. Alternative Annexation Methods
9. Island Annexation Ordinance (Draft)
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# Hillsboro Annexation of “County Islands”

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1. Hillsboro Island Annexation Q&A (Draft)

# Hillsboro Island Annexation

## Q&A

### **What are County Islands and how were they formed?**

County islands are unincorporated enclaves located within Hillsboro's city limits. The islands were formed as surrounding parcels voluntarily annexed into the City over the past 25 years.

### **How many islands are there in Hillsboro – and where are they located?**

There are 79 islands totaling 288 acres distributed among 194 taxlots. The islands are scattered around the city, with concentrations in south and southeast Hillsboro.

### **Are these islands eligible for annexation to Hillsboro?**

All islands are eligible for annexation. Since 1984, the City of Hillsboro has considered annexation upon formal request by property owners.

### **Why does Hillsboro want to annex the islands?**

County islands pose service and administrative challenges. They are served by Washington County or other service providers that must cross into Hillsboro to deliver services. This can result in overlap, duplication and confusion – particularly for emergency response situations. Island residents also use City services they do not pay for. Incorporating the islands will resolve these and other service delivery problems and inequities, thus ensuring all of Hillsboro receives full services.

### **Do existing City of Hillsboro and Washington County policies support the island annexations?**

The future of the County Islands is governed by the City of Hillsboro-Washington County Urban Planning Area Agreement (UPAA), which establishes the City as the long-term service provider and ultimate source of local governance. Under this agreement, islands must be annexed before converting to urban uses or receiving urban (City) services.

### **What are the potential benefits of annexation for area property owners?**

Annexed properties will benefit from efficient delivery of services, including faster response times in emergency situations. Island residents will also gain access to a wider range of programs and services and will benefit from direct participation in City decisions, including the ability to vote.

### **What are the potential drawbacks of annexation for area property owners?**

Property owners will eventually experience a slight increase in property taxes, in line with the expanded range of services they will receive. For example, the owners of a \$250,000 home in a typical island can expect to see their property tax bills eventually increase by about \$36.25 per month.

### **What services will change?**

Currently, island residents are located in various districts for fire protection, parks, water and sewer service. Street lighting, road maintenance and law enforcement are provided by Washington County. When annexed, residents will receive most urban services from the City of Hillsboro.

- MORE -

**Will property owners be required to pay any annexation filing fees?**

No.

**Will Island property owners be required to hookup to City utilities?**

No – not unless there is a health hazard. Hookup is mandatory only where there is a failing septic tank or well water has become unsafe to drink.

**How do the City and other service providers benefit from island annexations?**

Washington County and other regional service providers will save money by eliminating overlapping service areas and duplicative services. Hillsboro will benefit from elimination of subsidized services for island property owners. Hillsboro residents will enjoy having all contiguous neighborhoods subject to the same codes and ordinances.

**What are other Oregon cities doing about their islands?**

Other Oregon cities, including Salem and Prineville, have completed similar island annexations in recent years.

**Do Oregon state statutes dictate how cities annex islands?**

Yes. ORS 222.750 outlines the procedures for Island Annexation, which Oregon cities may enact by resolution or ordinance, subject to referendum.

**Do Hillsboro residents have to vote to approve the island annexations?**

No. The Hillsboro City Charter does not require a vote on annexation actions, although annexations are subject to referendum.

**How long will it take for Hillsboro to annex its County Islands?**

Hillsboro's island annexation program could be finished in 2009 by adopting a single annexation ordinance. Final annexation of residential properties would not become effective before 2012.

**Are residential and other properties affected differently by island annexations?**

Yes. Under Oregon law, the effective date for annexation of residential properties is delayed a minimum of three years after an annexation ordinance is adopted. There is no delay for non-residential properties.

- MORE -

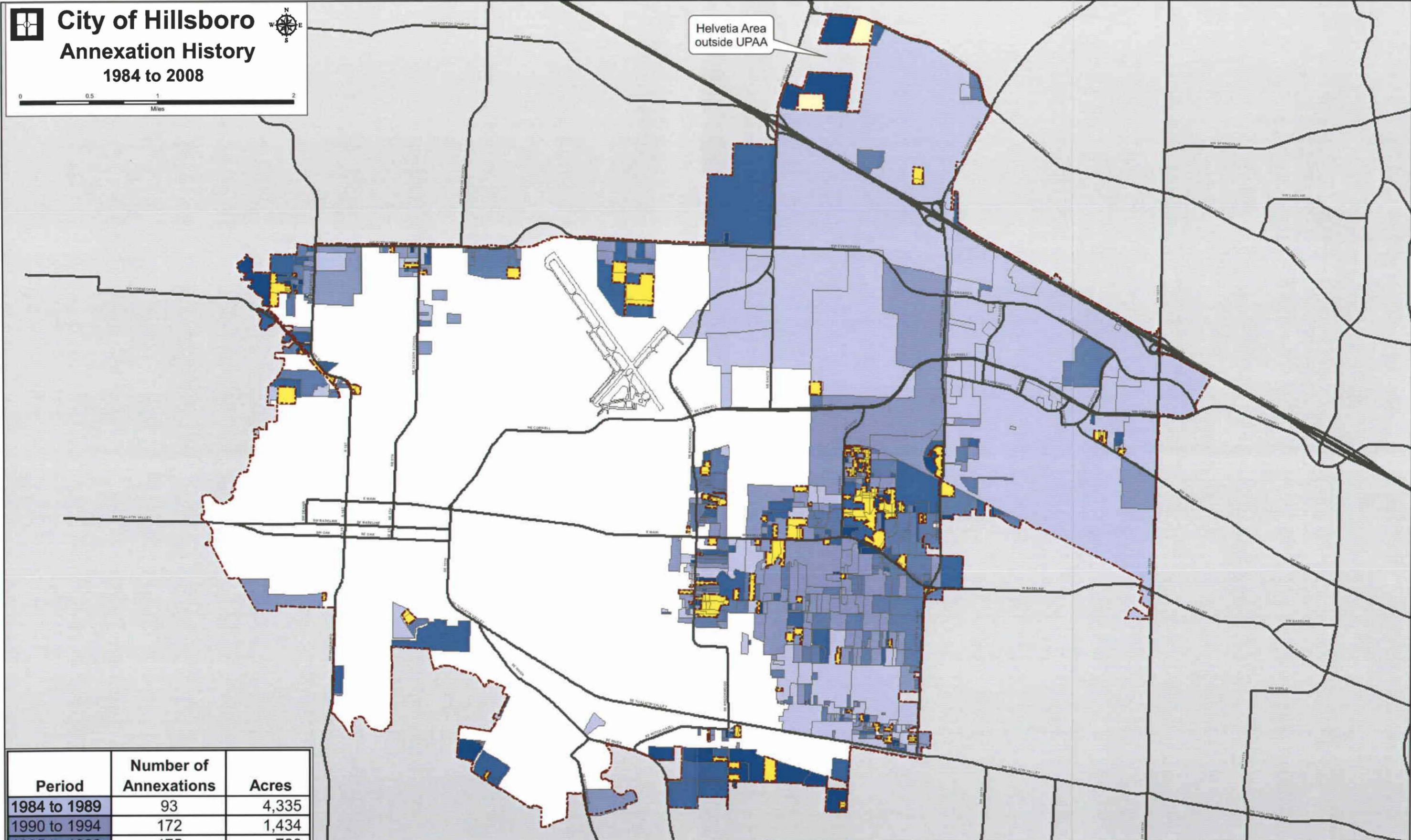
2. **Map - Hillsboro Annexation History**  
**(1984 to 2008)**



# City of Hillsboro Annexation History 1984 to 2008



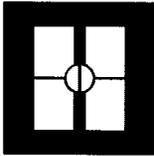
Helvetia Area  
outside UPAA



Period	Number of Annexations	Acres
1984 to 1989	93	4,335
1990 to 1994	172	1,434
1995 to 1999	175	720
2000 to 2004	112	798
2005 to 2008	56	306
<b>Total</b>	<b>608</b>	<b>7,593</b>

UPAA County Islands	No. of Taxlots	Acres	Land Value	Building Value	Total Value	M-50 Assessed Value
<b>Total</b>	<b>194</b>	<b>288</b>	<b>\$ 64,714,150</b>	<b>\$ 19,643,950</b>	<b>\$ 84,397,330</b>	<b>\$ 29,160,010</b>

### 3. Hillsboro Policy Basis for Island Annexation



October 2008

## HILLSBORO POLICY BASIS FOR ISLAND ANNEXATION

### STATUTORY POLICY BASIS

Annexation of unincorporated areas by cities and special districts is one of the earliest statutorily authorized growth management tools. (See. ORS Chapters 198, 199 and 222.) From the beginning, annexation has been used to achieve efficient provision of municipal services and “sound urban development.” The Oregon legislative preference regarding annexation is best expressed in ORS 199.410:

*“(1)(a) A fragmented approach has developed to public services provided by local government. Fragmentation results in duplications in services and resistance to cooperation, and is a barrier to planning implementation. Such an approach [fragmented delivery of public services] has limited the orderly development and growth of Oregon’s urban areas to the detriment of the citizens of this state.”*

### CITY ANNEXATION POLICY APPLICABLE TO COUNTY ISLANDS

#### 1) City Comprehensive Plan Annexation Policies

City annexation policy direction applicable to the County islands is provided by the City Comprehensive Plan. HCP, Section 2. Urbanization states the City goal of providing “for an orderly and efficient transition of land from rural to urban use through identification and establishment of areas designed to accommodate the full range of urban uses within the Hillsboro Planning Area.”

A series of HCP, Section 2 policy and implementation provisions support ultimate City jurisdiction over the City’s identified planning area (*Area of Interest*), which includes most of the County islands.<sup>1</sup> These HCP provisions are designed to foster orderly

<sup>1</sup>

#### **(III) Policies**

*(A) Urbanization within the planning area shall be consistent with the goals and policies of this Plan. Development shall occur according to the availability of urban services and within the context of the Urban Planning Area Agreement. . . .*

*(F) In the Area of Interest, the City will continue its current annexation policy, under which property owners interested in annexation are welcome to contact the City for whatever information and assistance they need to initiate and complete the annexation process.*

development, effective delivery of services, efficient government and to manage the City's growing urban areas as a unified whole.<sup>2</sup>

## 2) City-County Urban Planning Area Agreements (UPAA)

An important HCP implementation tool, the City's 2006 UPAA with Washington County anticipates Hillsboro governance of unincorporated islands within the "Active Planning Area." The UPAA's stated purpose is to "ensure the timely, orderly, and efficient extension of public facilities and urban services" by establishing a program for:

- (A) ***"The eventual annexation of all urban unincorporated properties into the cities; and***
- (B) ***The transfer of County responsibilities, programs, equipment and personnel to the cities for urban municipal services, including law enforcement; road maintenance, engineering and construction; land use and transportation planning; land development; and building."***

The UPAA generally requires annexation to the City prior to initiating urban development. In addition, the UPAA requires that any development approved by the County "facilitate redevelopment to an urban level of development upon annexation to

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(G) *Upon annexation within the Area of Interest, the City will initiate Comprehensive Plan Land Use and Transportation Map changes on recently annexed properties, to City land use designations and functional street classifications corresponding as closely as possible to those designations and classifications already adopted by Washington County for those properties.*

(H) ***The City will negotiate with the service districts currently providing urban services to properties in the Area of Interest, and will address service provision issues on an individual basis upon receipt of petitions for annexation. The City will work toward formal long-term service agreements with each affected service district, and shall consider the Area of Interest in all public facility plans.***

### **(IV) Implementation Measures**

(A)(5) *Infill of vacant, bypassed lands, between areas of development, at an urban level, shall be encouraged. Appropriate measures shall be taken to insure that new development in infill areas is compatible with existing developed areas. **The City will support a proposed annexation of infill areas** and allow subsequent development to occur under the clear and objective standards in its implementing ordinances, including the Zoning and Subdivision ordinances.*

(G) ***All land in the Hillsboro Planning Area is assumed to be available for annexation and/or development, consistent with the Comprehensive Plan, zoning, subdivision regulations, and the Urban Planning Area Agreement.***

<sup>2</sup> In 2004 and 2005, unincorporated land within areas known as the Evergreen and Helvetia Industrial Areas were added to the Metro UGB. City land use plans were adopted for these areas with property owners' support, obtained in large part because of a City policy commitment to apply a passive annexation policy to these areas. Moreover, both areas are situated outside the areas covered by the UPAA. Therefore, any newly created County islands in these two areas necessarily should be exempted from City annexation under any method that does not require owner consent.

the City.” Together, the HCP and implementing UPAA acknowledge the City as the long term urban service provider and source of ultimate governance for the County islands.

### **THE WASHINGTON COUNTY URBANIZATION FORUM – 2008**

Recognition of ultimate City governance of the County islands appears imminent. Current *Washington County Urbanization Forum* discussions are pointing toward a developing consensus among Washington County and the cities in the County on the following emerging urbanization policies:

- Development of fully-urban, complete communities and neighborhoods can best be accomplished by “full-service” cities.
- Future urban growth and development will be directed to Washington County’s cities.
- There is a need for a consistent Urbanization Policy for unincorporated urban areas and new urban growth areas.
- The cities should demonstrate their policy commitment to govern all urban areas identified as their responsibility by applicable Intergovernmental Agreements.

Implementation of these emerging policies could call for proactive City annexation of County islands and parts of the Aloha area covered by the UPAA and SB 122 Agreements.

#### 4. Sample Property Tax Comparison

**PROPERTY TAX COMPARISON – SAMPLE**

<b>What's the Difference?</b>			
Largest Number of Unincorporated Tax Lots*			
Unincorporated County		City of Hillsboro	
Tax Code 001.28*		Tax Code 001.17	
NW Reg ESD	\$0.15	NW Reg ESD	\$0.15
PCC	\$0.51	PCC	\$0.51
School Dist. #1J	\$8.06	School Dist. #1J	\$8.06
Port of Portland	\$0.07	Port of Portland	\$0.07
Metro	\$0.43	Metro	\$0.43
Tri-Met	\$0.09	Tri-Met	\$0.09
Washington Co	\$3.03	Washington Co	\$3.03
WashCo RFPD #2	\$1.69	<b>City of Hillsboro</b>	<b>\$4.77</b>
Urban Road Maintenance	\$0.25		
Enhanced Sheriff Patrol	\$1.09		
<b>TOTAL TAX RATE PER \$1000 AV</b>	<b>\$15.36</b>	<b>TOTAL TAX RATE PER \$1000 AV</b>	<b>\$17.10</b>
<b>RMV Limited tax rate PER \$1000 AV</b>	<b>\$ 14.95</b>	<b>RMV Limited tax rate PER \$1000 AV</b>	<b>\$ 16.69</b>
<b>Where the \$ Goes:</b>		<b>Where the \$ Goes:</b>	

\* Island Tax Code area with largest number of taxlots (62 taxlots & 38 acres)

*For Example:* A home with an appraised value of \$250,000 would pay \$3,738 per year in property taxes in the unincorporated county. That same home would pay \$4,173 per year in property taxes when it became part of the city; or, \$36.25 more per month.

**PROPERTY TAX COMPARISON -- SAMPLE**

<b>What's the Difference?</b>			
<b>Largest Combined Acreage*</b>			
<b>Unincorporated County</b>		<b>City of Hillsboro</b>	
<b>Tax Code 007.16*</b>		<b>Tax Code 007.01</b>	
NW Reg ESD	\$0.15	NW Reg ESD	\$0.15
PCC	\$0.51	PCC	\$0.51
School Dist. #1J	\$8.06	School Dist. #1J	\$8.06
Hillsboro E.S. Bond	\$0.08	Hillsboro E.S. Bond	\$0.08
Port of Portland	\$0.07	Port of Portland	\$0.07
Metro	\$0.43	Metro	\$0.43
Tri-Met	\$0.09	Tri-Met	\$0.09
Washington Co	\$3.03	Washington Co	\$3.03
WashCo RFPD #2	\$1.69	<b>City of Hillsboro</b>	\$4.77
Urban Road Maintenance	\$0.25		
Enhanced Sheriff Patrol	\$1.09		
<b>TOTAL TAX RATE PER \$1000 AV</b>	<b>\$15.45</b>	<b>TOTAL TAX RATE PER \$1000 AV</b>	<b>\$17.18</b>
<b>RMV Limited tax rate PER \$1000 AV</b>	<b>\$ 15.04</b>	<b>RMV Limited tax rate PER \$1000 AV</b>	<b>\$ 16.77</b>
<b>Where the \$ Goes:</b>		<b>Where the \$ Goes:</b>	

\* Island Tax Code area with largest combined acreage (78 acres & 36 taxlots)

*For Example:* A home with an appraised value of \$250,000 would pay \$3,760 per year in property taxes in the unincorporated county. That same home would pay \$4,193 per year in property taxes when it became part of the city; or, \$36.04 more per month.

City of Hillsboro  
County Islands  
September 29, 2008

Island ID#	Number of Taxlots	Land Value	Building Value	Value	M50 Assessed Value	Acres	Tax Code	Current Tax Payment	Potential Tax Payment	Difference in Tax Payment	Enhanced Sheriff Patrol	Urban Road Maintenance	Fire District	City of Hillsboro
1	1	\$ 279,740	\$ 32,310	\$ 312,050	\$ 94,370	0.7	001.15	\$ 1,411.11	\$ 1,600.52	\$ 189.40	\$ 103.05	\$ 23.18	\$ 159.66	\$ 449.81
2	1	\$ 292,330	\$ 97,130	\$ 389,460	\$ 161,210	1.0	029.20	\$ 2,450.76	\$ 2,730.78	\$ 280.02	\$ 176.04	\$ 39.59	\$ 272.75	\$ 768.41
3	1	\$ 244,330	\$ 176,980	\$ 421,310	\$ 171,020	1.0	029.17	\$ 2,630.22	\$ 2,896.96	\$ 266.74	\$ 186.75	\$ 42.00	\$ 289.35	\$ 815.17
4	1	\$ 676,750	\$ 118,320	\$ 795,070	\$ 202,740	2.3	029.20	\$ 3,082.11	\$ 3,434.27	\$ 352.16	\$ 221.39	\$ 49.79	\$ 343.02	\$ 966.36
5	1	\$ 163,300	\$ 94,200	\$ 257,500	\$ 138,370	0.6	029.20	\$ 2,103.54	\$ 2,343.89	\$ 240.35	\$ 151.10	\$ 33.98	\$ 234.11	\$ 659.54
6	3	\$ 498,100	\$ 428,990	\$ 927,090	\$ 459,800	1.6	029.26	\$ 7,071.40	\$ 7,788.69	\$ 717.29	\$ 502.10	\$ 112.93	\$ 859.46	\$ 2,191.64
7	1	\$ 188,290	\$ 70,370	\$ 260,780	\$ 77,210	4.8	007.16	\$ 1,160.92	\$ 1,295.04	\$ 134.11	\$ 84.31	\$ 18.96	\$ 130.63	\$ 368.02
8	1	\$ 159,600	\$ 178,480	\$ 343,340	\$ 232,340	5.0	001.21	\$ 3,474.18	\$ 3,877.75	\$ 403.57	\$ 253.72	\$ 57.06	\$ 393.10	\$ 1,107.45
9	1	\$ 190,960	\$ 166,360	\$ 357,320	\$ 217,860	1.2	051.50	\$ 3,382.06	\$ 3,409.42	\$ 27.36	\$ 237.90	\$ 53.51	\$ 407.22	\$ 1,038.43
10	2	\$ 1,202,280	\$ 107,130	\$ 1,309,410	\$ 201,670	2.6	007.15	\$ 3,032.29	\$ 3,382.59	\$ 350.30	\$ 220.22	\$ 49.53	\$ 341.21	\$ 961.26
11	1	\$ 13,200	\$ -	\$ 13,200	\$ 10,100	0.2	001.28	\$ 151.03	\$ 168.57	\$ 17.54	\$ 11.03	\$ 2.48	\$ 18.88	\$ 48.14
12	1	\$ 161,460	\$ 139,610	\$ 301,070	\$ 186,190	1.0	001.11	\$ 2,784.10	\$ 3,107.51	\$ 323.41	\$ 203.32	\$ 45.73	\$ 315.01	\$ 887.47
13	1	\$ 241,810	\$ 121,700	\$ 363,510	\$ 181,020	1.1	007.32	\$ 2,721.80	\$ 3,036.23	\$ 314.43	\$ 197.67	\$ 44.46	\$ 306.27	\$ 862.83
14	1	\$ 1,574,170	\$ 158,630	\$ 1,732,800	\$ 244,890	3.6	001.13	\$ 3,705.26	\$ 4,087.21	\$ 381.95	\$ 267.42	\$ 60.14	\$ 457.75	\$ 1,167.27
15	2	\$ 288,120	\$ 134,080	\$ 425,820	\$ 173,660	5.6	029.20	\$ 2,640.03	\$ 2,941.68	\$ 301.65	\$ 189.64	\$ 42.65	\$ 293.82	\$ 827.75
16	2	\$ 1,187,520	\$ 631,240	\$ 1,818,760	\$ 532,770	4.8	029.20	\$ 8,099.33	\$ 9,024.75	\$ 925.42	\$ 581.78	\$ 130.85	\$ 901.39	\$ 2,539.45
17	2	\$ 762,100	\$ 74,520	\$ 836,620	\$ 228,560	-	001.28	\$ 3,417.66	\$ 4,087.21	\$ 669.56	\$ 249.59	\$ 56.13	\$ 386.70	\$ 1,089.43
18*	2	\$ 873,270	\$ 492,170	\$ 1,365,440	\$ 563,920	6.1	07.01/7.16	\$ 9,458.57	\$ 9,458.57	\$ -	\$ -	\$ -	\$ -	\$ 2,687.92
19	1	\$ 240,000	\$ 124,590	\$ 364,590	\$ 109,820	1.8	007.16	\$ 1,651.24	\$ 1,842.00	\$ 190.76	\$ 119.92	\$ 26.97	\$ 185.80	\$ 523.46
20	1	\$ 153,660	\$ 118,170	\$ 271,830	\$ 105,290	0.3	007.16	\$ 1,583.13	\$ 1,766.02	\$ 182.89	\$ 114.98	\$ 25.86	\$ 178.14	\$ 501.86
21	1	\$ 145,730	\$ 84,540	\$ 230,270	\$ 119,530	0.2	007.16	\$ 1,797.24	\$ 2,004.86	\$ 207.62	\$ 130.53	\$ 29.36	\$ 202.23	\$ 569.74
22	1	\$ 305,820	\$ 122,880	\$ 428,700	\$ 173,460	1.0	007.16	\$ 2,608.13	\$ 2,909.43	\$ 301.30	\$ 189.42	\$ 42.60	\$ 293.48	\$ 826.78
23	1	\$ 168,750	\$ 58,520	\$ 227,270	\$ 75,500	0.7	007.17	\$ 1,102.81	\$ 1,233.95	\$ 131.14	\$ 82.45	\$ 18.54	\$ 127.74	\$ 359.87
24	1	\$ 662,410	\$ 253,430	\$ 915,840	\$ 438,470	2.0	007.32	\$ 6,592.79	\$ 7,354.41	\$ 761.62	\$ 478.81	\$ 107.69	\$ 741.85	\$ 2,089.97
25	1	\$ 257,060	\$ 189,750	\$ 446,810	\$ 236,270	0.9	007.32	\$ 3,552.53	\$ 3,962.93	\$ 410.40	\$ 258.01	\$ 58.03	\$ 399.75	\$ 1,126.18
26	2	\$ 3,970,040	\$ 46,220	\$ 4,016,260	\$ 889,460	24.7	007.16	\$ 13,373.83	\$ 14,918.82	\$ 1,544.99	\$ 971.29	\$ 218.45	\$ 1,504.88	\$ 4,239.61
27	4	\$ 4,896,360	\$ 237,340	\$ 5,133,700	\$ 686,030	11.9	007.32	\$ 10,315.08	\$ 11,506.71	\$ 1,191.63	\$ 749.14	\$ 168.72	\$ 1,160.69	\$ 3,269.96
28	1	\$ 125,750	\$ 33,520	\$ 159,270	\$ 45,480	0.5	007.33	\$ 664.31	\$ 762.83	\$ 98.52	\$ 49.66	\$ 11.17	\$ 76.95	\$ 216.78
29	2	\$ 419,400	\$ 221,350	\$ 640,750	\$ 328,770	2.3	007.16	\$ 4,943.35	\$ 5,514.43	\$ 271.07	\$ 359.02	\$ 80.74	\$ 556.25	\$ 1,567.08
30	1	\$ 278,800	\$ 102,930	\$ 389,050	\$ 176,270	10.3	007.16	\$ 1,650.38	\$ 2,956.56	\$ 306.18	\$ 192.49	\$ 43.29	\$ 298.23	\$ 840.19
31	1	\$ 215,570	\$ -	\$ 215,570	\$ 58,000	2.0	007.16	\$ 872.08	\$ 972.83	\$ 100.75	\$ 63.34	\$ 14.24	\$ 98.13	\$ 276.46
32	2	\$ 812,040	\$ 240,370	\$ 1,052,410	\$ 359,060	2.5	007.16	\$ 5,398.79	\$ 6,022.48	\$ 656.69	\$ 392.09	\$ 88.19	\$ 607.49	\$ 1,711.46
33	1	\$ 761,200	\$ 155,310	\$ 916,510	\$ 188,800	1.9	029.20	\$ 2,870.19	\$ 3,198.14	\$ 327.95	\$ 206.17	\$ 46.37	\$ 319.43	\$ 899.92
34	12	\$ 3,343,400	\$ 1,194,200	\$ 4,537,600	\$ 1,670,620	18.6	007.16	\$ 25,119.28	\$ 28,021.14	\$ 2,901.87	\$ 1,824.32	\$ 410.30	\$ 2,826.52	\$ 7,963.01
35	3	\$ 1,414,380	\$ 816,660	\$ 2,238,960	\$ 837,540	13.0	007.32	\$ 12,593.17	\$ 14,047.97	\$ 1,454.81	\$ 914.59	\$ 205.70	\$ 1,417.03	\$ 3,992.13
36	1	\$ 206,350	\$ 69,480	\$ 275,830	\$ 136,590	0.5	029.27	\$ 2,061.28	\$ 2,313.74	\$ 252.46	\$ 149.16	\$ 33.54	\$ 231.10	\$ 651.05
37	2	\$ 630,660	\$ 183,990	\$ 814,650	\$ 323,510	1.3	029.26	\$ 4,975.45	\$ 5,480.03	\$ 504.58	\$ 353.27	\$ 79.45	\$ 637.06	\$ 1,542.01
38	1	\$ 133,130	\$ 156,320	\$ 289,450	\$ 180,490	0.4	007.15	\$ 2,713.83	\$ 3,027.34	\$ 313.51	\$ 197.10	\$ 44.33	\$ 305.37	\$ 860.31
39	2	\$ 874,170	\$ 74,690	\$ 952,130	\$ 257,670	5.7	001.28	\$ 3,852.94	\$ 4,300.51	\$ 447.57	\$ 281.38	\$ 63.28	\$ 435.95	\$ 1,228.18
40	3	\$ 1,930,520	\$ 431,150	\$ 2,361,670	\$ 592,140	3.6	051.50	\$ 9,192.38	\$ 9,266.75	\$ 74.37	\$ 646.62	\$ 145.43	\$ 1,106.83	\$ 2,822.44
41	2	\$ 204,120	\$ 121,570	\$ 325,690	\$ 94,950	0.8	007.27	\$ 1,259.90	\$ 1,592.59	\$ 332.69	\$ -	\$ -	\$ 160.65	\$ 452.58
42	1	\$ 169,810	\$ 134,600	\$ 304,410	\$ 162,920	0.9	029.20	\$ 2,476.76	\$ 2,759.75	\$ 282.99	\$ 177.91	\$ 40.01	\$ 275.64	\$ 776.56
43	1	\$ 226,110	\$ 119,950	\$ 346,060	\$ 176,770	0.5	029.26	\$ 2,718.65	\$ 2,994.36	\$ 275.71	\$ 193.03	\$ 43.41	\$ 330.42	\$ 842.57
44	1	\$ 225,410	\$ 81,010	\$ 306,420	\$ 141,570	0.8	007.32	\$ 2,128.63	\$ 2,374.54	\$ 245.91	\$ 154.59	\$ 34.77	\$ 239.52	\$ 674.79
45	1	\$ 156,830	\$ 92,000	\$ 248,830	\$ 121,770	0.3	007.16	\$ 1,830.92	\$ 2,042.44	\$ 211.51	\$ 132.97	\$ 29.91	\$ 206.02	\$ 580.42
46	2	\$ 2,519,460	\$ -	\$ 2,519,460	\$ -	9.6	007.16	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
47	1	\$ 283,570	\$ 184,660	\$ 468,230	\$ 208,970	1.0	001.28	\$ 3,124.73	\$ 3,487.71	\$ 362.98	\$ 228.20	\$ 51.32	\$ 353.56	\$ 996.06
48	1	\$ 219,380	\$ 121,270	\$ 340,650	\$ 149,160	1.0	007.32	\$ 2,242.75	\$ 2,501.85	\$ 259.09	\$ 162.88	\$ 36.63	\$ 252.36	\$ 710.97
49	2	\$ 423,080	\$ 233,770	\$ 656,850	\$ 286,960	1.8	007.32	\$ 4,314.70	\$ 4,813.15	\$ 498.45	\$ 313.36	\$ 70.48	\$ 485.51	\$ 1,367.79
50	3	\$ 918,380	\$ 405,480	\$ 1,323,860	\$ 439,320	3.6	007.16	\$ 6,605.57	\$ 7,368.67	\$ 763.10	\$ 479.74	\$ 107.90	\$ 743.29	\$ 2,094.02
51	2	\$ 479,740	\$ 290,040	\$ 769,780	\$ 380,820	1.8	001.28	\$ 5,694.40	\$ 6,355.89	\$ 661.48	\$ 415.86	\$ 93.53	\$ 644.31	\$ 1,815.18
52	1	\$ 1,375,060	\$ 155,370	\$ 1,530,430	\$ 1,038,680	5.7	001.37	\$ 17,020.95	\$ 18,825.14	\$ 1,804.19	\$ 1,134.24	\$ 255.10	\$ 1,757.34	\$ 4,950.87
53	1	\$ 69,260	\$ 56,860	\$ 126,120	\$ 53,640	0.4	007.17	\$ 783.50	\$ 876.68	\$ 93.17	\$ 58.57	\$ 13.17	\$ 90.75	\$ 255.68
54	1	\$ 366,630	\$ 152,590	\$ 519,220	\$ 214,410	0.9	001.28	\$ 3,206.07	\$ 3,578.50	\$ 372.43	\$ 234.14	\$ 52.66	\$ 362.76	\$ 1,021.99
55	1	\$ 458,750	\$ 108,350	\$ 567,100	\$ 135,470	1.0	007.16	\$ 2,036.91	\$ 2,272.22	\$ 235.31	\$ 147.93	\$ 33.27	\$ 229.20	\$ 645.72
56	1	\$ 293,360	\$ 114,050	\$ 407,410	\$ 153,970	2.0	029.04	\$ 2,134.75	\$ 2,608.14	\$ 473.40	\$ -	\$ -	\$ 260.50	\$ 733.90
57	1	\$ 503,300	\$ 90,850	\$ 594,150	\$ 171,440	0.9	001.28	\$ 2,563.54	\$ 2,861.33	\$ 297.79	\$ 187.21	\$ 42.10	\$ 290.06	\$ 817.17

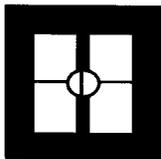
City of Hillsboro  
County Islands  
September 29, 2008

58	3	\$ 472,140	\$ 148,680	\$ 620,820	\$ 231,390	1.3	029.26	\$ 3,558.69	\$ 3,919.58	\$ 360.90	\$ 252.68	\$ 56.83	\$ 432.51	\$ 1,102.92
59	1	\$ 135,000	\$ 93,470	\$ 228,470	\$ 98,800	0.2	007.17	\$ 1,443.14	\$ 1,614.76	\$ 171.62	\$ 107.89	\$ 24.27	\$ 167.16	\$ 470.93
60	5	\$ 3,213,430	\$ 365,150	\$ 3,578,580	\$ 517,440	8.4	001.28	\$ 7,737.28	\$ 8,636.07	\$ 898.79	\$ 565.04	\$ 127.08	\$ 875.46	\$ 2,466.38
61	1	\$ 339,680	\$ 164,820	\$ 504,500	\$ 215,900	2.5	029.04	\$ 2,993.39	\$ 3,657.19	\$ 663.81	\$ -	\$ -	\$ 365.28	\$ 1,029.09
62	17	\$ 2,824,950	\$ 1,588,400	\$ 4,413,350	\$ 2,326,460	5.2	001.28	\$ 34,787.56	\$ 38,828.32	\$ 4,041.06	\$ 2,540.49	\$ 571.39	\$ 3,936.14	\$ 11,089.07
63	20	\$ 2,655,660	\$ 1,107,250	\$ 3,762,910	\$ 1,843,030	3.7	001.28	\$ 27,558.83	\$ 30,760.17	\$ 3,201.34	\$ 2,012.59	\$ 452.65	\$ 3,118.22	\$ 8,784.80
64	2	\$ 69,300	\$ -	\$ 69,300	\$ 4,500	1.3	029.30	\$ 69.21	\$ 76.23	\$ 7.02	\$ 4.91	\$ 1.11	\$ 8.41	\$ 21.45
65	10	\$ 2,517,070	\$ 881,050	\$ 3,398,120	\$ 1,344,330	11.1	001.28	\$ 20,101.77	\$ 22,436.87	\$ 2,335.10	\$ 1,468.01	\$ 330.17	\$ 2,274.47	\$ 6,407.75
66	15	\$ 5,604,440	\$ 1,556,600	\$ 7,161,040	\$ 2,398,860	27.0	001.28	\$ 35,870.15	\$ 40,036.97	\$ 4,166.82	\$ 2,619.56	\$ 589.16	\$ 4,058.63	\$ 11,434.17
67	4	\$ 660,320	\$ 314,940	\$ 975,260	\$ 465,840	7.5	001.28	\$ 6,965.71	\$ 7,774.87	\$ 809.16	\$ 508.70	\$ 114.41	\$ 788.15	\$ 2,220.43
68	1	\$ 200,720	\$ 107,020	\$ 317,460	\$ 137,600	9.4	029.04	\$ 1,907.78	\$ 2,330.85	\$ 423.07	\$ -	\$ -	\$ 232.81	\$ 655.87
69	2	\$ 862,000	\$ 77,890	\$ 939,890	\$ 277,730	2.4	029.20	\$ 4,222.13	\$ 4,704.55	\$ 482.42	\$ 303.28	\$ 68.21	\$ 469.89	\$ 1,323.80
70	6	\$ 1,415,590	\$ 767,530	\$ 2,183,120	\$ 900,010	12.5	007.17	\$ 13,146.18	\$ 14,709.49	\$ 1,563.31	\$ 982.81	\$ 221.04	\$ 1,522.73	\$ 4,289.90
71	2	\$ 709,850	\$ 104,640	\$ 814,490	\$ 309,210	1.6	029.26	\$ 4,755.53	\$ 5,237.80	\$ 482.27	\$ 337.66	\$ 75.94	\$ 577.98	\$ 1,473.85
72	1	\$ 182,600	\$ 156,480	\$ 339,080	\$ 152,190	1.0	029.20	\$ 2,313.64	\$ 2,577.99	\$ 264.35	\$ 166.19	\$ 37.38	\$ 257.49	\$ 725.41
73	1	\$ 311,080	\$ -	\$ 311,080	\$ 26,850	2.5	029.04	\$ 372.27	\$ 454.82	\$ 82.55	\$ -	\$ -	\$ 45.42	\$ 127.98
74	2	\$ 446,500	\$ 321,670	\$ 768,170	\$ 360,080	1.6	029.05	\$ 4,837.85	\$ 6,099.50	\$ 1,261.65	\$ -	\$ -	\$ 609.22	\$ 1,716.32
75	1	\$ 440,600	\$ 87,970	\$ 528,570	\$ 141,060	0.9	029.27	\$ 2,144.44	\$ 2,389.46	\$ 245.02	\$ 154.04	\$ 34.64	\$ 238.66	\$ 672.36
76	1	\$ 274,860	\$ 88,750	\$ 363,610	\$ 135,650	1.3	007.16	\$ 2,039.62	\$ 2,275.24	\$ 235.62	\$ 148.13	\$ 33.31	\$ 229.51	\$ 646.58
77	2	\$ 395,740	\$ 430,210	\$ 825,950	\$ 434,510	0.7	007.16	\$ 6,533.24	\$ 7,287.99	\$ 754.74	\$ 474.48	\$ 106.72	\$ 735.15	\$ 2,071.09
78	3	\$ 890,860	\$ 473,030	\$ 1,363,890	\$ 593,300	4.0	007.16	\$ 8,920.80	\$ 9,951.36	\$ 1,030.56	\$ 647.88	\$ 145.71	\$ 1,003.80	\$ 2,828.96
79	1	\$ 256,980	\$ 208,350	\$ 465,330	\$ 247,980	0.5	001.28	\$ 3,708.04	\$ 4,138.78	\$ 430.74	\$ 270.79	\$ 60.90	\$ 419.56	\$ 1,182.00
<b>Total</b>	<b>194</b>	<b>\$ 64,714,150</b>	<b>\$ 19,643,950</b>	<b>\$ 84,397,330</b>	<b>\$ 29,160,010</b>	<b>266</b>		<b>\$ 438,391</b>	<b>\$ 489,267</b>	<b>\$ 49,610</b>	<b>\$30,146.55</b>	<b>\$ 6,780.40</b>	<b>\$48,869.77</b>	<b>\$ 136,992.18</b>

## 5. Service Analysis Documentation

## CITY OF HILLSBORO

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**To:** Mayor Tom Hughes and Hillsboro City Council  
**From:** Chief Lila Ashenbrenner  
**Date:** 9/16/2008  
**Re:** County Island Annexation

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Thank you for the opportunity to express my support for the annexation of the unincorporated county islands that are within our city. My goal as the Chief of Police for the City of Hillsboro is to provide the very best public safety service to our community. The recent conversations surrounding county island annexation provides an opportunity to remedy an ongoing disconnect between law enforcement services as well as enhance overall public safety.

Eliminating the unincorporated areas will eliminate jurisdictional confusion, the potential for liability, inequity of variations in ordinances and philosophy of code enforcement. For our patrol officers, it will eliminate the potential for misapplication of ordinances at the officer level. Currently if a County Deputy is dispatched into our city on an emergency call they often times come from another district, creating additional dangers and driving at higher rates of speed through our city to respond in a timely manner. Hillsboro officers may not even be aware of the call that is within our boundaries. One example of this was a shooting that occurred on a small county island in the area of TV Highway near Cornelius Pass Road. The shooting occurred during a traffic stop and Hillsboro Police supervisors were not aware of the actions due to the jurisdictional differences. This poses tremendous threat to our officers, our community and potentially County Deputies who could benefit from our assistance.

Annexing the islands within the city is more efficient. When we have neighbors that are in a dispute it is more efficient to have only one police agency deal with the issues. Residents run the risk of a duplication of services as well as mixed messages due to the differences in city and county ordinances and philosophies. You may have heard of a recent neighborhood dispute between a city and county resident that to date has generated 38 calls for service to the Hillsboro Police Department and 15 calls for service to the Washington County Sheriff's Office. In this case we have disparity in the neighborhood dispute where the complainant lives in the city and the offending neighbor lives in the County. The City code is more restrictive than county codes. The city's citizen must live with the restrictions not imposed on his neighbor. This leaves them feeling as they are being treated unfairly. At times these issues can negatively impact property values.

Consistency in service is a key equation for quality of life issues. The Hillsboro Police Department is committed to providing quality service and enhanced livability to all its residents. The annexation of the county islands is a significant step in making our city whole and furthering our public safety mission.

## ANNEXATION OF UNINCORPORATED AREAS WITHIN THE CITY LIMITS

### LAW ENFORCEMENT ISSUES

The process of annexation is a partnership. The Police Department is planning so that if residents in Hillsboro's Unincorporated Areas (HUA's) are annexed, it will be prepared to provide the same level of services that are consistent, fair, and equal to all residents. This will allow us to assist these neighborhoods maintain continuity and local control in their neighborhoods and to ensure government efficiency.

Eliminating the unincorporated areas will eliminate jurisdictional confusion, the potential for liability and inequity of variations in ordinances and philosophy of code enforcement. For patrol officers, it will eliminate the potential for misapplication of ordinances at the officer level.

If WCCCA does dispatch a County Deputy into our city on an emergency call they have to come from another district, creating additional dangers and driving at higher rates of speed through our city to respond in a timely manner. Hillsboro officers may not even be aware of the call that is within our boundaries. (Scruggs shooting)

If we respond to a call at an HUA and the officer is not aware that it is county jurisdiction we have the potential of improperly applied ordinances and liability.

Of the calls in these neighborhoods that involve individuals who live in the city and the HUA law enforcement provides duplicated services at these times, delivering different messages and solutions.

Annexing the islands within the city is more efficient. When we have neighbors that are in a dispute it is more efficient to have only one police agency deal with the issues. (Recent neighbor dispute –one county/one city residence – 38 calls to HB and 15 to County)

We have disparity in neighborhood disputes where the complainant lives in the city and the offending neighbor lives in the County. The City code is more restrictive than county codes. The city's citizen must live with the restrictions not imposed on his neighbor. This leaves them feeling as they are being treated unfairly. At times these issues can negatively impact property values.

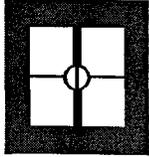
Many times both police agencies must meet to develop strategies in order to provide services. This type of service is not fiscally responsible and often there is no common ground for solutions since County and City codes are quite different.

During priority calls WCCCA dispatches the closest unit, in most cases HPD is the first unit. Many times dispatch is confused about jurisdiction, this also causes response delays.

Consistency in service is a key equation for quality of life issues.

Police presence is a deterrent to crime. Patrolling neighborhoods demonstrates a higher level of presence and has been shown to be a significant factor in reducing crime.

- *I have talked with Sheriff Gordon and he agrees it makes sense for Hillsboro to annex these properties*
- *County codes are more lax than City.*
  - *County allows 4 disabled abandoned vehicles on a property (forever).  
The city allows none*
- *County allows livestock. One person has 14 peacocks that are not confined. We work with the owner to clean up after them in the church parking lot...*
- *Orenco neighborhood issue – often major feuds are between HUA and city property*
- *County has a different requirement for dealing with the condition of the property than the city*
- *The County has longer compliance dates than the City of Hillsboro*
- *County Code Enforcement is not a consolidated unit- they are in different departments depending on the issue. Difficult for us to coordinate*
- *City deals with nuisance properties, county generally does not*



Memorandum

**To:** Alwin Turiel  
**cc:**  
**From:** Peter Martins  
**Date:** September 22, 2008  
**Re:** Extraterritorial Water Extensions  
County Island Annexation

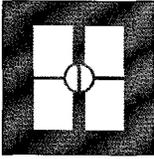
The Water Department provides extraterritorial water services to properties that comply with the Washington County's zoning requirements; are approved by Washington County for service, and are also approved by the Hillsboro Utilities Commission and Hillsboro City Council. The extraterritorial process occurs for all properties outside of the UGB and is not utilized for county islands within the Hillsboro city limits. A copy of our current extraterritorial water service procedures is attached for your review.

Properties approved for extraterritorial service are charged a higher systems development, connection, and service installation fees (currently \$8,689 for a residential service) while those inside the City limits are charged a lower fee (\$7,129 for a residential service). "Islands" inside the City limits are currently required to annex into the City prior to providing water service. Once annexation is complete, the property will be serviced at the in-town lower system development, connection, and service installation rate (\$7,129). The owner of the "island" does not have the opportunity to remain an "island" and get water service from the City. Therefore, the owner is not eligible to go through the extraterritorial water service process.

From a water system standpoint, the annexation and resulting water service supply to existing "island" does not impact the existing water system in a positive or negative manner. Therefore, the Water Department is neutral on the county island annexation subject.

## CITY OF HILLSBORO

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September 29, 2008

TO: Mayor Tom Hughes and City Council Members  
Sarah Jo Chaplen, City Manager

FROM: Gary Seidel, Fire Chief  
John Rinier, Fire Marshal

RE: County Island Issues

From the fire department's point of view, the "county islands" issue can be grouped into three main areas; Emergency Response, Code Enforcement, and lost revenue.

Emergency Response: As major part of our daily function, it is essential that we respond as quickly as possible to emergencies. In order to achieve this, it is imperative that we are able to find addresses without any complications. Because many of the "county islands" addresses are not aligned with our city addressing convention, confusion can and has occurred. The confusion may begin with the initial call for help where the individual is confused to their location because of conflicting address ranges, like 4-digit numbers versus 5-digit numbers. Even the simple directional locators, like NW or NE can cause confusion. Sometimes there is confusion between our dispatch and our responding units over the same issue.

Code Enforcement: Another part of our operation requires us to enforce the Oregon Fire Code. Although this is easily accomplished inside the city under the Municipal Code, it is not the same for the "county islands". Because we are not the true authority having jurisdiction, we can not enforce our city adopted Fire Code. These areas would fall under Washington County District #2 authority which lacks funding and resources to manage a code enforcement program.

Open burning complaints, another area of code enforcement, causes issues when we respond. Because of our lack of authority and favorable rules for burning within the county, our response to the complaints often are not resolved and neighboring city properties are continually affected by individuals who know about the conflict

Lost Revenue: Over the past several years we have responded to calls for service in the "county islands" areas without compensation. Our data shows that we averaged 30 responses per year at a cost to the city of approximately \$51,000. This is based on an average operational cost of \$1700 per response.

6. **City Attorney's Memorandum**

MEMORANDUM

TO: Honorable Mayor and Hillsboro City Council

FROM: Pamela J. Beery, City Attorney's Office

SUBJECT: Annexation of Islands: Legal Framework

DATE: September 25, 2008

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SUMMARY OF ANALYSIS

The Council is considering whether to establish a policy addressing annexation of all islands within the City's corporate limits. An earlier memorandum from the Planning Department summarized the options for annexation of islands. This memorandum further discusses the legal issues associated with the available options, excluding the "Urban Service Agreement Annexation" option pursuant to ORS 195.205. That option requires development of an annexation plan and an updated urban service agreement with Washington County and affected service providers, and is not designed to implement the potential policy direction at issue here.

Annexation of islands triggers financial and political issues that extend well beyond the legal framework. Moreover, the Council's selection of an approach based on legal requirements and limitations in and of itself can set a political discussion in motion, as discussed more fully below.

The City currently has in place an Urban Planning Area Agreement with Washington County governing coordination of planning in identified areas, and development permitting prior to annexation. Not surprisingly, the islands in the City are identified as being within the City's active planning area. In those areas, the City and County have agreed that conversion to urban uses in the islands will not occur prior to annexation, and that the County will not approve a development proposal in the area that would "require urban services or would not facilitate redevelopment to an urban level of development upon annexation to the City." The City also has an ORS Chapter 195 agreement with Washington County and affected service providers (commonly known as "SB 122" agreements based on the law that enacted the requirement). All annexations must comply with these agreements in terms of service delivery. These issues are addressed more fully in the planning staff annexation issue paper accompanying this memorandum.

The City's annexation policy has historically been to await a request from the property owner prior to considering annexation. This policy has resulted in over 600 annexations comprising 7,500 acres of land to the City between 1984 and 2008. Nevertheless, many "islands" that are

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legally County territory now exist within the City limits, producing an irregular boundary from a service delivery standpoint. At last count, staff had identified 80 such islands comprised of over 200 tax lots.

The statutes do not require a uniform application of any of the available options to all county islands. The Council is free to select a policy that addresses some islands now and others at a later date, or divides them based on common service delivery issues that should be addressed, location, or other factors. The Council may also wish to consider first conducting an outreach campaign designed to elicit requests for annexation from willing property owners, and subsequently determining a course of action as to the remaining islands after the consent areas are annexed.

## **LEGAL FRAMEWORK**

### **A. Statutory Context**

The City Charter has no annexation provisions. Any method used by the City to annex some or all of the County islands is, thus, subject to Oregon statutory requirements and procedures pertinent to the selected method. Annexations are also subject to the procedural and substantive requirements of Metro; those are not analyzed here as they do not specifically impact the determination of whether the island annexation method should be selected, but rather address the delivery of urban services to the proposed annexation territory.

The two mechanisms for annexing islands pursuant to state statute may be distinguished based on whether property owner or elector consent (or vote) is required. The two mechanisms are:

1. Island Annexation under ORS 222.750 (consent not required); and
2. a. Annexation based on written consent under ORS 222.125 (100% of landowners plus 50% or more electors in the territory consent), ORS 222.170(2) (double majority consent) or ORS 222.170(1) (triple majority consent); or  
b. Annexation with election under ORS 222.120(4) (election in the affected territory).

Following is a more detailed overview of the legal requirements and issues associated with each of these statutory provisions.

## B. Annexation Options

- (1) Island Annexation (ORS 222.750)
- (2) The fundamental legal requirement applicable to all annexations is that territory proposed for annexation must be contiguous to the city or separated only by a public right of way or a stream, bay, lake or other body of water. ORS 222.111(1). In the island annexation context, this principle has resulted in some interesting political and legal battles in recent years, because by definition island annexations do not require consent from the affected property owner(s).

Unincorporated territory surrounded by the city may be annexed under ORS 222.750. The authority to annex under ORS 222.750 also extends to territory bounded by city boundaries and a body of water such as a stream, bay or lake. However, in a recent decision from the Oregon Supreme Court, the island annexation statute has been interpreted to require annexation of the *entire* island, because to allow annexation of a portion of an island does not comply with the contiguity requirement. *Costco Wholesale, et al v. City of Beaverton*, 343 Or. 18, 161 P.3d 926 (June, 2007). This interpretation can make annexation of islands challenging when multiple lots and owners are within a single island, as Beaverton experienced in the *Costco* case.

- (3) Legislative amendments to the island annexation statute

Legislative changes to the island annexation statute in 2007 also create special new limitations on annexation of islands, including:

- Limitation of the use of roadways as the factor creating contiguity to 25% of the perimeter of the territory;
- Requiring delay of a minimum of three years in the effective date of annexation of residential lands (except upon transfer of ownership of the property);
- Requiring that such annexations be by non-emergency ordinance, subject to referendum;
- Requiring a vote of *both* the city residents and the territory to be annexed if the city charter requires voter approval of annexation.<sup>1</sup>

- (4) Annexation Consent and Election Requirements – excluding the island approach

As an alternative to the island annexation approach, state law provides a series of options to demonstrate support in the territory to be annexed and in the city before annexation can proceed.

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<sup>1</sup> It is interesting to note - but not directly relevant for our purposes - that special provisions have also been enacted prohibiting annexation of properties owned by Tektronix (1987) and Nike (2005) as islands without written consent from the property owner.

Put simply, the law requires a combination of signed petitions or consents to annexation; otherwise a vote is required. If the requisite number of consents to annexation is obtained under ORS 222.125 or 222.170, a city is not required to submit the issue of annexation to voters in the territory to be annexed, or to city voters unless required to do so by the city charter.<sup>2</sup> ORS 222.120. These annexation methods are summarized in Appendix A.

ORS 222.120(2) requires a public hearing when the city council does not call an election. If all owners and at least one-half of the electors in the territory proposed for annexation consent in writing to annexation prior to the public hearing, the city council may declare the territory annexed following the hearing. ORS 222.125. It is worth noting that a hearing may also be required to fulfill due process considerations for individual applications, to address withdrawal from special districts as discussed below, and to satisfy ORS 197.763 hearing requirements for decisions on land use applications. In any case, conducting a hearing constitutes sound public policy.

If all affected property owners do not consent to annexation, there are still two other mechanisms that allow the city to dispense with an election in the affected territory. Consents may consist of either a majority of the electors coupled with the owners of more than half the affected land area (ORS 222.170(2) – the “double majority” consent) or consent from one-half of the owners who own at least one-half of the area to be annexed and which area comprises at least one-half of the assessed value of the territory to be annexed (ORS 222.170(1) – the “triple majority” consent). Though the “triple majority” consent approach to annexation had been held unconstitutional in 1987, it has been revived by the Oregon Court of Appeals in a recent decision out of the City of Madras. *Morsman v. City of Madras*, 203 Or. App. 546, 126 P3d 6, *review denied*, 340 Or. 483 (2006). The earlier decision was *Mid-County Future Alternatives v. Portland Metro. Area LGBC*, 82 Or. App. 193, 199-201, 728 P.2d 63 (1986), *modified* 83 Or. App. 552, 733 P.2d 451 (1987), *review dismissed*, 304 Or. 89 (1987).

Annexation elections may be held at general or special elections in compliance with election law requirements as provided by ORS 222.130 through 222.160.

Where the results of an election in the territory favor annexation and the city council has not submitted the issue to city voters (but provided notice and a hearing), then a resolution or ordinance setting the final boundaries including a legal description must be included in the city's proclamation of annexation. ORS 222.150. Where both a city vote and a territory vote are required, they can occur at the same time or at different times within one year.

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<sup>2</sup> For example, Banks, North Plains and Sherwood have charter requirements for a vote of city residents on annexations. As such, they cannot take advantage of consent annexations.

### **C. Delayed annexation and taxation**

In both the island annexation context, and under other annexation options, a city can delay the effective date of an annexation for up to 10 years. ORS 222.180. An annexation proposal may provide for a special rate of taxation for up to ten years. ORS 222.111(3). The proposed special rate must be at a specified ratio of the highest rate of taxation for other property in the city (e.g. three-quarters or one-half of the highest rate of taxation) and may not exceed the highest rate of taxation for other property in the City. The rate may increase from year to year and is effective no earlier than the first fiscal year following the effective date of annexation. The assessed value of the annexed property may be included in revenues for the current fiscal year by a supplemental budget or incorporated into the tax revenues for the following fiscal year. The county assessor must provide the assessed value of the property within 20 days upon official request. Verification of proposed revenue by the Department of Revenue must be coordinated with the county assessor's office after annexation. ORS 222.030.

The same rules concerning taxation and effective date apply to island annexations. The city could complete an island annexation but delay its effective date to allow property owners an ability to develop the property or obtain lease provisions that reflect new tax rates when they take effect. However, as noted above, the effective date of island annexations of residential land are now *required* to be delayed a minimum of three and a maximum of ten years, unless the property is sold, in which case the annexation becomes effective immediately upon transfer of ownership. ORS 222.750(5).

### **D. Potential legal and political challenges**

Because annexation of islands can be controversial, such annexations could encounter resistance from at least some property owners (due to property tax consequences, differences in regulations, and related factors). In addition to challenging the process used to annex particular properties, the constitutionality of such annexations may be challenged. A reviewing court would apply "rational basis scrutiny" to such challenges, which is a low threshold deferential to the Council's determination and which examines whether there are legitimate ends served by the annexation action. *Morsman v. City of Madras*, 203 Or. App. 546 (2006).

Reducing jurisdictional confusion and administrative and service inefficiencies created by "islands" of unincorporated territory surrounded by a city have been recognized as legitimate legislative ends pursued by the Oregon Legislature in its enactment of the island annexation law

in 1963. The statute thus survived a direct constitutional challenge in the case of *Kane v. City of Beaverton*, 202 Or. App. 431, 523-24 (2005).

As noted above, however, the recent Supreme Court decision in the *Costco v. Beaverton* case demonstrates that there is room for interpretation in the island annexation statutes. The 2007 Oregon Legislature narrowed the application of the law (in new legislation favoring property owners), but created ambiguities that are as yet unresolved. For example, the three to ten year delay in the effective date for island annexation of residential property is unclear in its application and is being debated in the urbanization forum steering committee meetings. The measurement of the 25% right of way limitation could create ambiguities depending on the configuration of the island in question. The 2007 law changes have not themselves been tested in court.

Finally, even if we have consent of “any owner of real property” within the island, we are required to enact an ordinance or resolution “subject to referendum” if we use the island annexation approach. If the political climate is such that the island annexation approach is disapproved of by city residents, even those not directly affected, we could face a referendum and election. Not only is an election costly and the outcome uncertain, but it has the potential to galvanize interested parties and could do potentially long term damage to the city’s image and public support for a variety of programs and initiatives. In order to mount a referendum, an elector of the city would need to file a prospective petition with the City Recorder within 30 days of the effective date of the annexation decision (ORS 250.255 to 250.355), and then would need to gather the signatures of at least 10 percent of the qualified voters of the City (Oregon Constitution, Article IV, § 1(5)) in order to trigger an election.

#### **E. Impact on Service Districts**

The islands in Hillsboro are served by a myriad of service districts. These are identified in a spreadsheet developed by city staff. When as in this case the proposed territory for annexation includes less than the entire area of a particular service district, the proposal may provide that the part of the service district inside the territory to be annexed is withdrawn from the district. Unless the service district is a water supply, a water control or a sanitary district, the effective date of withdrawal is the effective date of annexation. ORS 222.111(4). The dates for formal withdrawal of domestic water supply districts, water control districts, or sanitary districts after annexation are determined under ORS 222.465.<sup>3</sup>

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<sup>3</sup> In broad summary, the effective date will be July 1 of either the current or subsequent year, depending on the date of the annexation and withdrawal. This is intended to allow the affected district to adjust its budget and service delivery plans on a fiscal year basis.

ORS 222.520 provides the process to follow when annexing less than an entire district as defined by ORS 222.510. Those districts include rural fire districts, water districts and sanitary districts or authorities. The process requires that the City Council conduct a public hearing and make a determination as to whether the proposed withdrawal is "for the best interest of the city." Evaluation of the proposed withdrawal in conjunction with provisions in the applicable urban service agreement should also be undertaken in each case. The hearing on this issue is generally combined with the hearing on the annexation itself.

### CONCLUSION AND RECOMMENDATIONS

The Council may lawfully use the island annexation statute to annex some or all of the existing county islands in the City. If sufficient consents can be obtained, use of the other statutory options can be pursued without an election in the affected territory. Conducting an election in the affected territory will be problematic due to the scattered location and multiple property ownerships that do not conform to a particular precinct. It might be possible to group some of the islands but the vote will still need to be tabulated based on electors in each island. Where no electors reside within an island, property owner consent alone can be used (100% of owners, or the triple majority formula of half the owners, who own half the land having at least half the assessed value of the area).

Council may wish to consider an outreach program designed both to inform the public of our plans and to determine whether consents can be obtained in the affected areas. This could reduce the number of areas requiring use of the island annexation method.

The islands in question should be analyzed in terms of how and whether they can meet the new statutory limitation affecting island annexations (less than 25% surrounded by right of way). The financial impact of the 3 to 10 year delay in the effective date for residential properties should also be assessed.

Following on Appendix A is an abbreviated summary of the consent and election requirements for the various annexation options.

Sincerely,



Pamela J. Beery

PJB:imp

Appendix A  
Statutory annexation methods

Oregon statutes provide a range of consent or election-based annexation methods. They are summarized below.

**Annexation with Election in Affected Area only (ORS 222.120(4)):**

- Area election and approval from a majority of voters in the territory required for annexation.
- Public hearing prior to election required.
- No vote of city electors required.
- Subject to referendum.

**Landowner Consent Annexation (ORS 222.125):**

- Written consent from all property owners and majority of electors in the territory required.
- No prior public hearing required.
- No election required.
- Subject to referendum.

**Double Majority Annexation (ORS 222.170(2)):**

- Written consent from majority of electors who also own a majority of the territory required.
- No election required.
- Subject to referendum.

**Triple Majority Annexation (ORS 222.170(1))**

- Written consent from majority of landowners who also own a majority of the properties representing a majority of the assessed value within the territory required.
- No election required.
- Subject to referendum

.....  
By contrast, the island annexation statute allows annexation without either consent *or* an election in the circumstances provided by statute:

**Island Annexation (ORS 222.750):**

- No consent required.
- Election, if required by City charter, must include both city electors and electors in the island
- Subject to referendum.

## Oregon Revised Statutes Chapter 222

### ANNEXATION OF CONTIGUOUS TERRITORY

**222.110** [Repealed by 1957 c.613 §1 (222.111 enacted in lieu of 222.110)]

**222.111 Authority and procedure for annexation.** (1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

(6) The proposal for annexation may be voted upon by the electors of the city and of the territory simultaneously or at different times not more than 12 months apart.

(7) Two or more proposals for annexation of territory may be voted upon simultaneously; however, in the city each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot. [1957 c.613 §2 (enacted in lieu of 222.110); 1959 c.415 §1; 1967 c.624 §13; 1985 c.702 §7]

**222.115 Annexation contracts; recording; effect.** A contract between a city and a landowner relating to extraterritorial provision of service and consent to eventual annexation of property of the landowner shall be recorded and, when recorded, shall be binding on all successors with an interest in that property. [1991 c.637 §4]

**222.750 Annexation of unincorporated territory surrounded by city.** (1) As used in this section:

(a) "Creek" means a natural course of water that is smaller than, and often tributary to, a river, but is not shallow or intermittent.

(b) "River" means a large, continuous and natural stream of water that is fed along its course by converging tributaries and empties into an ocean, lake or other body of water.

(2) When territory not within a city is surrounded by the corporate boundaries of the city, or by the corporate boundaries of the city and the ocean shore, a river, a creek, a bay, a lake or Interstate Highway 5, the city may annex the territory pursuant to this section after holding at least one public hearing on the subject for which notice has been mailed to each record owner of real property in the territory proposed to be annexed.

(3) This section does not apply when the territory not within a city:

(a) Is surrounded entirely by water; or

(b) Is surrounded as provided in subsection (2) of this section, but a portion of the corporate boundaries of the city that consists only of a public right of way, other than Interstate Highway 5, constitutes more than 25 percent of the perimeter of the territory. [e.g., "cherry stem annexation"]

(4) Unless otherwise required by its charter, annexation by a city under this section must be by ordinance or resolution subject to referendum, with or without the consent of any owner of real property within the territory or resident in the territory.

(5) For property that is zoned for, and in, residential use when annexation is initiated by the city under this section, the city shall specify an effective date for the annexation that is at least three years and not more than 10 years after the date the city proclaims the

annexation approved. The city recorder or other officer performing the duties of the city recorder shall:

(a) Cause notice of the delayed annexation to be recorded by the county clerk of the county in which any part of the territory subject to delayed annexation is located within 60 days after the city proclaims the annexation approved; and

(b) Notify the county clerk of each county in which any part of the territory subject to delayed annexation is located not sooner than 120 days and not later than 90 days before the annexation takes effect.

(6) Notwithstanding subsection (5) of this section, property that is subject to delayed annexation becomes part of the city immediately upon transfer of ownership.

(7) This section does not limit provisions of a city charter, ordinance or resolution that are more restrictive than the provisions of this section for creating or annexing territory that is surrounded as described in subsection (2) of this section.

(8) If a city charter, ordinance or resolution requires the city to conduct an election in the city, the city shall allow electors, if any, in the territory proposed to be annexed to vote in the election on the question of annexation. If the governing body of the city finds that a majority of the votes cast in the city and the territory combined favor annexation, the governing body, by ordinance or resolution, shall proclaim the annexation approved. The proclamation shall contain a legal description of each territory annexed. [Amended by 1963 c.444 §1; 1985 c.702 §16; 2007 c.654 §1; 2007 c.706 §1]

**Note:** Section 2, chapter 654, Oregon Laws 2007, provides:

**Sec. 2.** (1) The amendments to ORS 222.750 by section 1 of this 2007 Act apply to an ordinance or resolution adopted on or after the effective date of this 2007 Act [June 27, 2007] that declares an annexation approved.

(2) ORS 222.750 (7) applies to a provision of a charter, ordinance or resolution enacted before, on or after the effective date of this 2007 Act. [2007 c.654 §2]

**Note:** Section 2, chapter 706, Oregon Laws 2007, provides:

**Sec. 2.** The amendments to ORS 222.750 by section 1 of this 2007 Act apply to an annexation under ORS 222.750 that takes effect on or after the effective date of this 2007 Act [January 1, 2008]. [2007 c.706 §2]

*(Temporary provisions relating to annexation of certain industrial lands)*

*Note: Sections 3 and 10, chapter 737, Oregon Laws 1987, provide:*

**Sec. 3.** (1) Notwithstanding any other provision of law, when property:

- (a) Is property on which no electors reside;
- (b) Is zoned for industrial uses;
- (c) Has sewer and water lines paid for and installed by the property owner; and
- (d) Has an assessed valuation, including improvements, of more than \$7 million

that property can only be annexed by or to a city after the city receives a petition requesting annexation from the owner of the property.

(2) Property described in subsection (1) of this section shall not be included with other territory as part of an annexation, or annexed under ORS 222.750, unless the owner of the property consents to the annexation in the form of a petition for annexation.

(3) This section applies to property that, on September 27, 1987, was within the jurisdiction of a local government boundary commission. [1987 c.737 §3; 1997 c.516 §14]

**Sec. 10.** Section 3, chapter 737, Oregon Laws 1987, is repealed on June 30, 2035. [1987 c.737 §10; 1989 c.226 §1; 1997 c.226 §1; 2005 c.844 §8]

*Note: Sections 7, 8 and 11, chapter 539, Oregon Laws 2005, provide:*

**Sec. 7.** Section 8 of this 2005 Act is added to and made a part of ORS 222.111 to 222.180. [2005 c.539 §7]

**Sec. 8.** (1) A lot, parcel or tract may not be included in territory proposed to be annexed unless the owner of the lot, parcel or tract gives written consent to the annexation, if the lot, parcel or tract:

- (a) Is zoned for industrial use or designated for industrial use zoning in an acknowledged comprehensive plan;
- (b) Is land on which no electors reside, unless one or more electors living on-site are employed or engaged to provide security services for the industrial user of the land;
- (c) Has an assessed value of more than \$2 million, including improvements; and
- (d) Is in unincorporated Jackson County, either:

(A) Within the urban unincorporated community of White City, west of Oregon Route 62; or

(B) Within the urban growth boundary of the City of Medford, west of Oregon Route 99.

(2) After annexation of a lot, parcel or tract described in subsection (1) of this section, the development rights that apply to the lot, parcel or tract under the industrial zoning classification applicable to the lot, parcel or tract when it is annexed are retained and run with the lot, parcel or tract.

(3) As used in this section, "urban unincorporated community" means an unincorporated community that:

(a) Includes at least 150 permanent residential dwelling units;

(b) Contains a mixture of land uses, including three or more public, commercial or industrial land uses;

(c) Includes areas served by a community sewer system; and

(d) Includes areas served by a community water system. [2005 c.539 §8]

**Sec. 11.** Sections 2, 4, 6, 8 and 10 of this 2005 Act are repealed June 30, 2016. [2005 c.539 §11]

**Note:** Sections 5, 6, 7, 9 (2) and 11, chapter 844, Oregon Laws 2005, provide:

**Sec. 5.** (1) Notwithstanding any provision of ORS 195.205 to 195.225, 199.410 to 199.534, 222.111 to 222.180, 222.750 and 222.840 to 222.915, property described in subsection (2) or (3) of this section may not be annexed by or to a city unless the city receives consent to the annexation from the owner of the property in the form of a petition for annexation.

(2) Property for which annexation is limited by subsection (1) of this section is property:

(a) That is composed of one or more lots, parcels or tracts that:

(A) Are owned by the same individual or entity, including an affiliate or subsidiary of the entity;

(B) Are contiguous or are separated from each other only by a public right of way, a stream, a bay, a lake or another body of water; and

(C) Together comprise at least 150 acres;

(b) On which no electors reside;

(c) That was zoned for industrial, employment or transit-oriented employment uses on December 31, 2004;

(d) That has private, on-premises security services; and

(e) That has an assessed valuation, including improvements, of more than \$12 million.

(3) Subsection (1) of this section applies to a lot, parcel or tract that is owned by the same individual or entity, including an affiliate or a subsidiary of the entity, that owns the property described in subsection (2)(a) of this section if the lot, parcel or tract:

(a) Is within two miles of the property described in subsection (2)(a) of this section; and

(b) Contains 10 or more acres that are contiguous or separated from each other only by a public right of way, a stream, a bay, a lake or another body of water.

(4) A city may not obtain approval of an owner for annexation under this section by requiring or requesting that the owner waive remonstrance or agree to annexation in order to receive utility service or other city services located in the city right of way at the same price the city charges an owner of similar property that is within the city. [2005 c.844 §5]

**Sec. 6.** An area of land within the urban growth boundary of the metropolitan service district established in the Portland metropolitan area may not be annexed under ORS 222.750 if:

(1) The area of land is larger than seven acres and is zoned for industrial use;

(2) The land is owned by an Oregon-based business entity that has been in continuous operation, either directly or through a predecessor, for at least 60 years; and

(3) The business entity employs more than 500 individuals on the land. [2005 c.844 §6]

**Sec. 7.** An area of land within the urban growth boundary of the metropolitan service district established in the Portland metropolitan area may not be annexed under ORS 222.750 if:

(1) The area of land is larger than 14 acres and is zoned for industrial use;

(2) The land is owned by an Oregon-based business entity that has been in continuous operation on a portion of the land for at least 40 years; and

(3) The business entity employs more than 300 individuals on the land. [2005 c.844 §7]

**Sec. 9.** (2) Sections 5, 6 and 7 of this 2005 Act apply to an annexation of territory approved on or after March 1, 2005, and to an annexation of territory proposed on or after the effective date of this 2005 Act. [2005 c.844 §9(2)]

**Sec. 11.** (1) Sections 5, 6 and 7 of this 2005 Act are repealed on June 30, 2035.

(2) Notwithstanding subsection (1) of this section, unless this section is amended, sections 5 and 6 of this 2005 Act are repealed five years after June 30, 2035. [2005 c.844 §11]

## 8. Alternative Annexation Methods

## Alternative Annexation Methods

### Island Annexation (ORS 222.750)

- No consent required
- Election, if required by City charter, must include both city electors and electors in the island
- Subject to referendum

### Annexation with Election in Affected Area only (ORD 222.120(4))

- Area election and approval from a majority of voters in the territory required for annexation
- Public hearing prior to election required
- No vote of city electors required
- Subject to referendum

### Landowner Consent Annexation (ORS 222.125)

- Written consent from all property owners and majority of electors in the territory required
- No prior public hearing required
- No election required
- Subject to referendum

### Double Majority Annexation (ORS 222.170(2))

- Written consent from majority of electors who also own a majority of the territory required
- No election required
- Subject to referendum

### Triple Majority Annexation (ORS 222.170(1))

- Written consent from majority of landowners who also own a majority of the properties representing a majority of the assessed value within the territory required
- No election required
- Subject to referendum

9. Island Annexation Ordinance (Draft)

**ORDINANCE NO. \_\_\_\_\_**  
**CITY OF HILLSBORO**

**AN ORDINANCE ANNEXING TERRITORY INTO THE CITY OF HILLSBORO,  
OREGON AND WITHDRAWING THE TERRITORY FROM THE [INSERT  
APPLICABLE SPECIAL AND SERVICE DISTRICTS]**

WHEREAS, under ORS 222.750, as amended by 2007 Oregon Laws Chapter 654, the City of Hillsboro initiated annexation of territory surrounded by the corporate boundaries of the City (File No. \_\_\_\_\_); and

WHEREAS, the proposed annexation territory is all zoned and used as residential real property and consists of \_\_\_ tax lots totaling \_\_\_ acres of land all surrounded by and adjacent to existing City boundaries; and

WHEREAS, the specific tax lots to be annexed include:

[insert affected tax lot numbers]; and

WHEREAS, the City provided notice that the City Council would consider the annexation petitions, consistent with the applicable notice requirements of (1) applicable provisions of Metro Code Chapter 3.09, (2) applicable provisions of the 2006 Washington County-Hillsboro Urban Planning Area Agreement, and (3) applicable provisions of ORS 222.111 and 222.120, and ORS 222.750; and

WHEREAS, the City Council considered the proposed annexation and held a public hearing at its regularly scheduled City Council meeting on \_\_\_\_\_ (date); and

WHEREAS, the Council finds that the proposed annexation is consistent with the City's Urban Growth Management Agreement and does not require the consent of owners of the affected real properties.

Now, therefore, based on the foregoing,

**THE CITY OF HILLSBORO ORDAINS AS FOLLOWS:**

Section 1. The City Council declares the territory described in Exhibit B, and depicted in Exhibit A is annexed to Hillsboro effective \_\_\_\_\_.<sup>1</sup> If the ownership of any lot annexed is transferred prior to that date, the lot will be deemed annexed to the City immediately, pursuant to ORS 222.750(6).<sup>2</sup>

<sup>1</sup> Effective date must be at least three years and not more than 10 years from the date of this Ordinance for property zoned for and in use as residential (ORS 222.750(5)).

<sup>2</sup> This sentence would not be needed for non-residential annexations.

City of Hillsboro

Ordinance No. \_\_\_\_\_

Annexing Territory – Case Number \_\_\_\_\_

Section 2. The City Council adopts the Annexation Staff Report to the City Council dated \_\_\_\_\_, as its findings in support of this Ordinance.<sup>3</sup>

Section 3. The annexed territory is withdrawn from the [insert affected special and service districts] effective \_\_\_\_\_. If the ownership of any lot annexed is transferred prior to that date, the lot will be deemed immediately withdrawn from these Districts.<sup>4</sup>

Section 4. The City Recorder is directed to:

1. Provide the notice and file a copy of this Ordinance to annexation consistent with ORS 222.180 and ORS 222.750;
2. Mail a copy of this ordinance to Metro including the required fee consistent with Metro Code Chapter 3.09.030(e); and
3. Mail a copy of this Ordinance to Washington County and any other necessary parties consistent with Metro Code Chapter 3.09.030(e).<sup>5</sup>

Section 7. The Council declares that this ordinance takes effect 30 days from its adoption by the Council and that all territory is annexed to the City effective three years from this adoption date as provided by ORS 222.750(5).<sup>6</sup> If the ownership of any lot annexed is transferred prior to that date, the lot will be deemed immediately annexed to the City as provided by ORS 222.750(6).<sup>7</sup>

PASSED AND APPROVED THIS \_\_\_ day of \_\_\_\_\_, 2008.

CITY OF HILLSBORO

ATTEST:

\_\_\_\_\_  
Mayor Tom Hughes

\_\_\_\_\_  
Amber Ames, City Recorder

<sup>3</sup> As with any land use decision, additional findings may need to be developed to respond to public hearing testimony.

<sup>4</sup> The last sentence would not be needed for a non-residential island annexation.

<sup>5</sup> This Metro Code section is included within the Notice Requirements heading. Although not specifically listed in the expedited annexation process, this notice should be sent to Metro following completion of all annexation decisions to assure accuracy in mapping.

<sup>6</sup> This phrase can be modified to state a sooner effective date if the affected property is not zoned for and in use as residential land.

<sup>7</sup> The last sentence would not be needed for a non-residential island annexation.

City of Hillsboro

Ordinance No. \_\_\_\_\_

Annexing Territory – Case Number \_\_\_\_\_

**10. Hillsboro Island Annexation  
Work Program & Schedule**

Hillsboro "County Islands" Annexation Strategy Work Program/Schedule

**DRAFT**

		Aug-08	Sep-08					Oct-08				Nov-08				Dec-08				
		Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12	Wk 13	Wk 14	Wk 15	Wk 16	Wk 17	Wk 18	Wk 19
		8/25-8/29	9/1-9/5	9/8-9/12	9/15-9/19	9/22-9/26	9/29-10/3	10/6-10/10	10/13-10/17	10/20-10/24	10/27-10/31	11/3-11/7	11/10-11/14	11/17-11/21	11/24-11/28	12/1-12/5	12/8-12/12	12/15-12/19	12/22-12/26	12/29-12/31
Step 1	<b>ISLAND ANNEXATION "ISSUE PAPER"</b>		◆																	
	● Detailed Annotation - Specific Annexation Issues : 1) Public Safety; 2) Code enforcement; 3) Public health; 4) Public services financial issues; 5) Property tax consequences; 6) Governance; 7) Others																			
	● Completed "Issue Paper" (including proposed Annexation Incentives)			◆	→															
	● City Council Work Session: 1) Issue Paper Briefing; 2) Annexation "Go/No go" ; 3) Policy Direction ● City Attorney Memorandum : "Legal Requirements & Policy Issues - Hillsboro Island Annexations"				◆	→			◆											
Step 2	<b>ISLAND ANNEXATION PUBLIC COMMUNICATIONS &amp; OUTREACH</b>																			
	● Annexation Media & Public Information Materials:							◆	→	→	→	→	→	→	→	→	→	→	→	→
	● City Planning Commission Briefings (2)							◆				◆								
	● Island Property Owner Outreach									◆	→	→	→	→	→	→	→	→	→	→
Step 3	<b>PREPARATION, PUBLIC REVIEW &amp; ADOPTION PROCESSES CITY ISLAND ANNEXATIONS &amp; ZONE CHANGE ORDINANCES</b>																			
	● Annexation & Zone Change Ordinances Research, Preparation:																			
	◆ Staff Project Research (Completed)	◆	→																	
	◆ Legal descriptions of 78 Islands property boundaries; County & State Revenues Pre-certifications	◆	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→	→
	◆ Staff Preparation of Annexation and Zone Change Ordinance(s) & Reports								◆	→										
	● Planning Commission Review & Action on Island Zone Change Ordinance(s)																			
	◆ Complete & File Zone Change Ordinance(s) Staff Reports with PC												◆							
	◆ Mailing, Newspapers Publication of PC Meeting Notices on Zone Change Ordinance(s)												◆							
	◆ Planning Commission Initiation, Hearing(s) & Action on Zone Change Ordinance(s)													◆						
	● City Council Review & Action on Annexation & Zone Change Ordinances:																			
◆ City Council Work Sessions on Draft Annexation & Recommended Zone Change Ordinances																				
◆ Mailing, Newspaper Publication & Site Postings of Council Hearing(s) on Ordinances																				
◆ Staff Reports to City Council on Annexation & Zone Change Ordinance Completed & Filed																				
◆ City Council Public Hearings on Annexation & Zone Changes Ordinances																				
◆ Possible City Council Final Action on Annexation & Zone Change Ordinances																				



**County Island Annexation:**  
***Bringing Hillsboro Together***

# Question Presented

*Should Hillsboro proceed now with City-initiated annexation of all County Islands within the City, consistent with existing City policy and intergovernmental agreements, and as authorized under ORS 222.750?*

# What are Islands? How Were They Created?



**NW 264<sup>th</sup>, North of Airport Rd.**



**Ozark Lane, east of SW Brookwood**

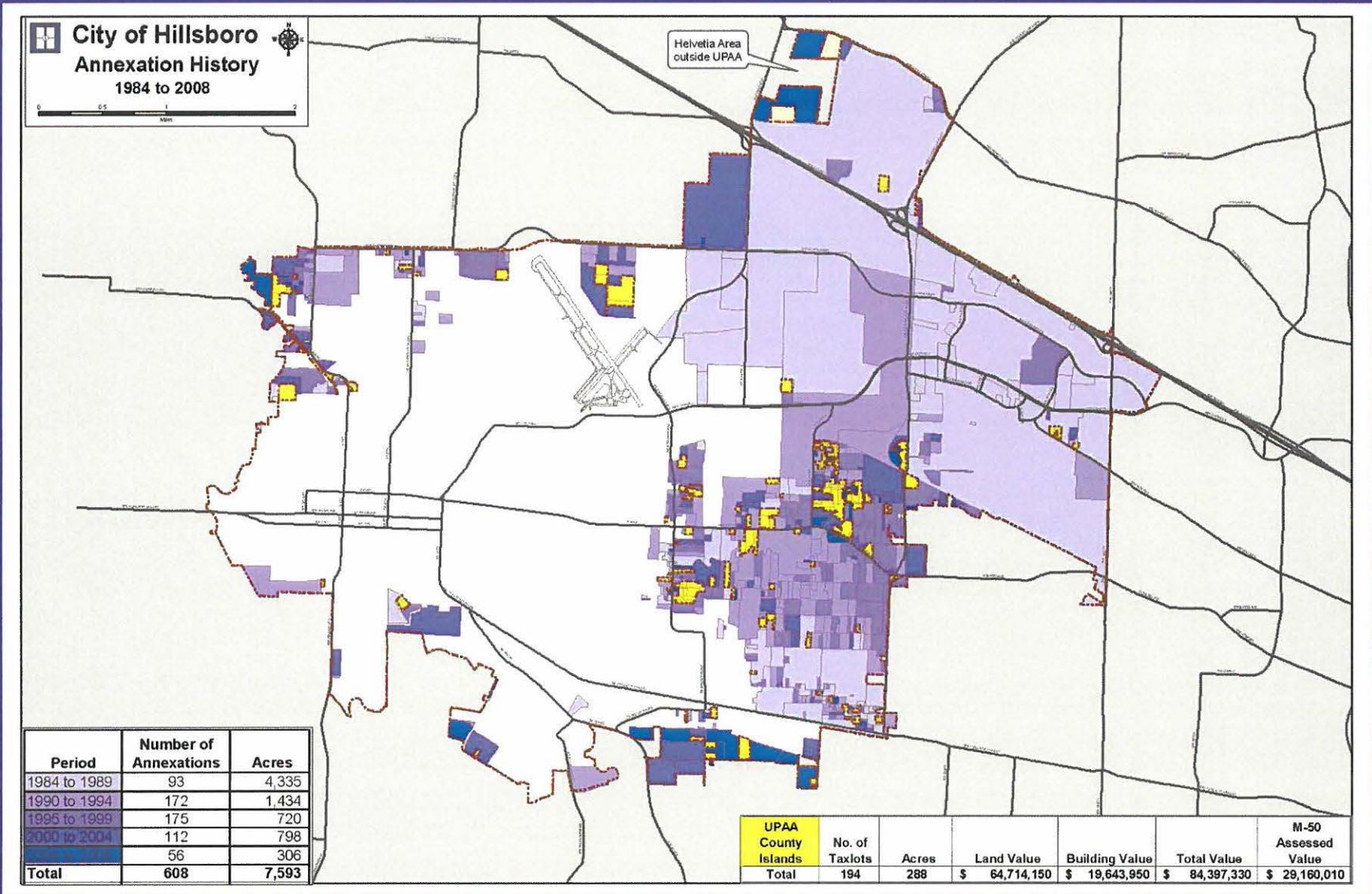


**Baseline Rd., near SE 54th**



**Alder Street, east of NW 231<sup>st</sup> (Orencia)**

# Islands – Where Are They Located?



# County Islands – *Facts & Figures*

<b>County Islands</b>	<b>Taxlots</b>	<b>Acres</b>	<b>Land Value</b>	<b>Building Value</b>	<b>Total Value</b>	<b>M-50 Assessed Value</b>
<b>79</b>	<b>194</b>	<b>288</b>	<b>\$64,714,150</b>	<b>\$19,643,950</b>	<b>\$84,643,950</b>	<b>\$29,160,010</b>

\* Source: Washington County Assessor, 2007

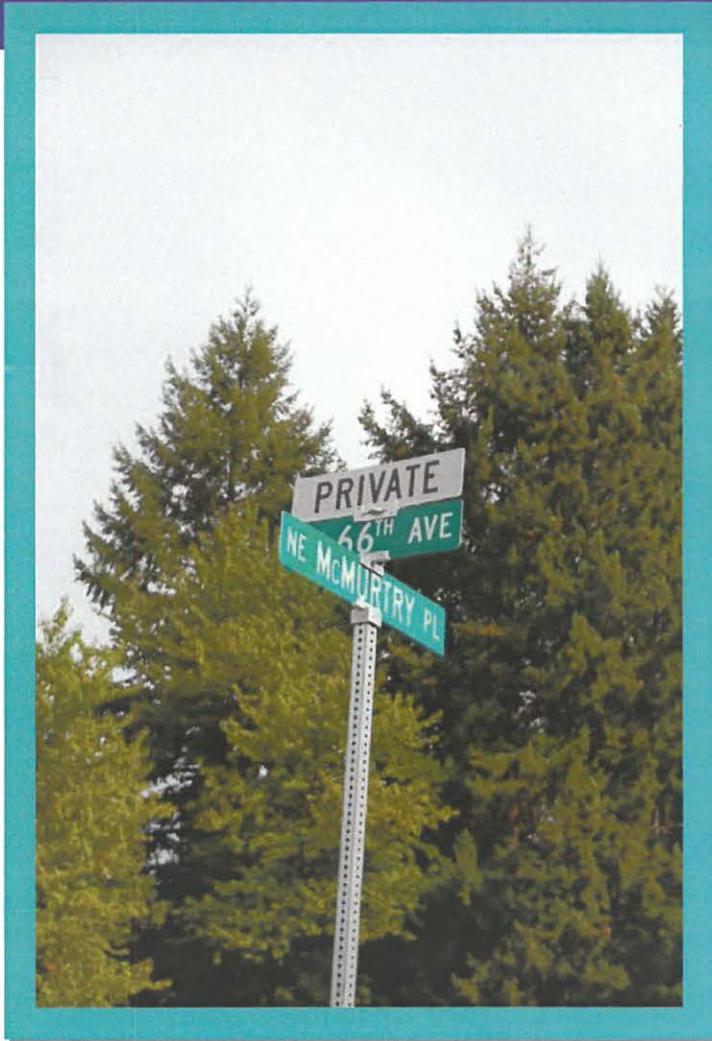
# Islands Are Scattered Around the City



# County Islands – *Telltale Signs*



# County Islands – *Telltale Signs*



# Issues: *Emergency Services*



- Patchwork service areas delay dispatch instructions to responding units
- Emergency responders come from greater distances to reach islands
- Hillsboro Police not always notified of island-based calls

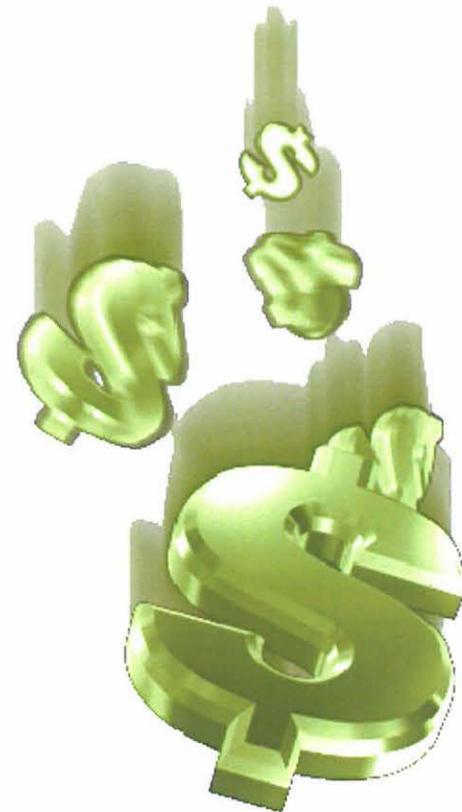
# Issues: *Other Services*

- Island parcels often lack public amenities.
- County/City nuisance ordinances inconsistent (abandoned vehicles, open burning, etc.)
- Hillsboro sidewalks and bike paths disconnected.

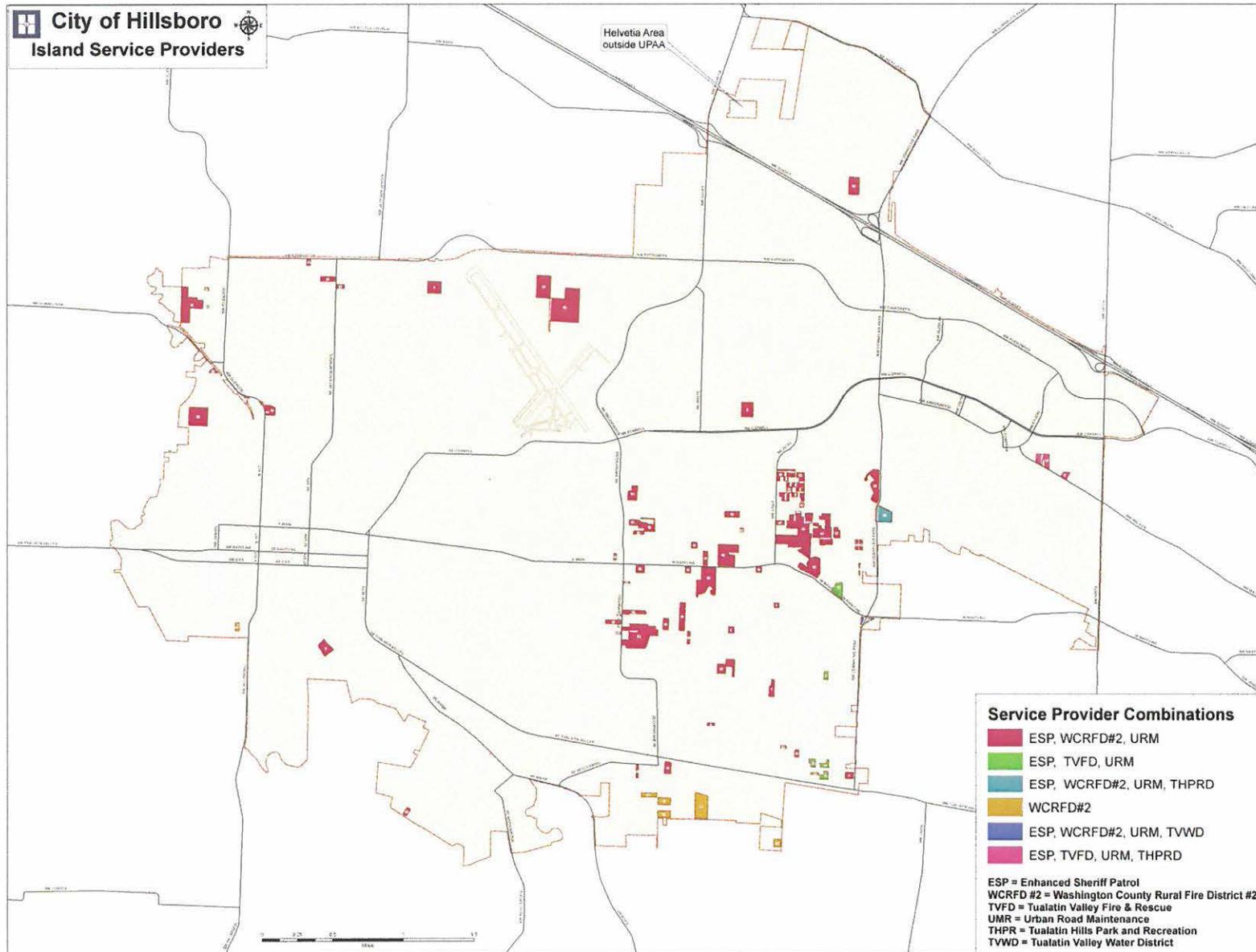


# Issues: *Financial*

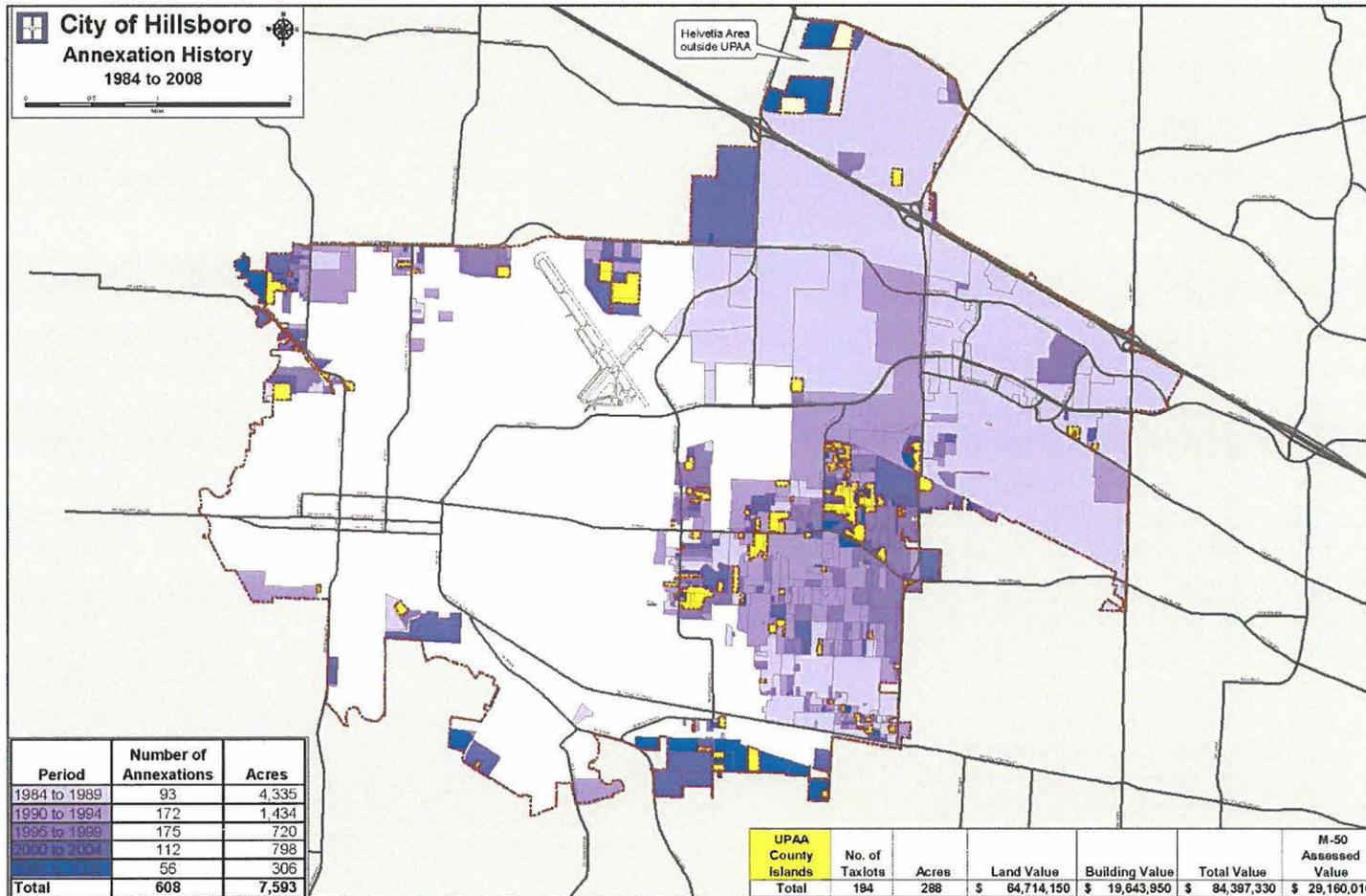
- Hillsboro Fire Department responds to 30 service calls / year at an unreimbursed cost of \$1,700 per call.
- City forgoes \$140,000 / year in property tax revenues.



# Issues: *Service Inefficiencies*



# Existing Policies Point the Way!



# Hillsboro Comprehensive Plan

The Comprehensive Plan calls for...

***“the eventual annexation of all urban unincorporated properties into the cities.”***

# Urban Planning Area Agreements (UPAA) - 2006

*“Ensure the timely, orderly, and efficient extension of public facilities and urban services through “the eventual annexation of all urban unincorporated properties into the cities.”*

*“Negotiate with the service districts currently providing services and address service provision issues for annexation.”*

***“The City will support proposed annexation of infill areas.”***

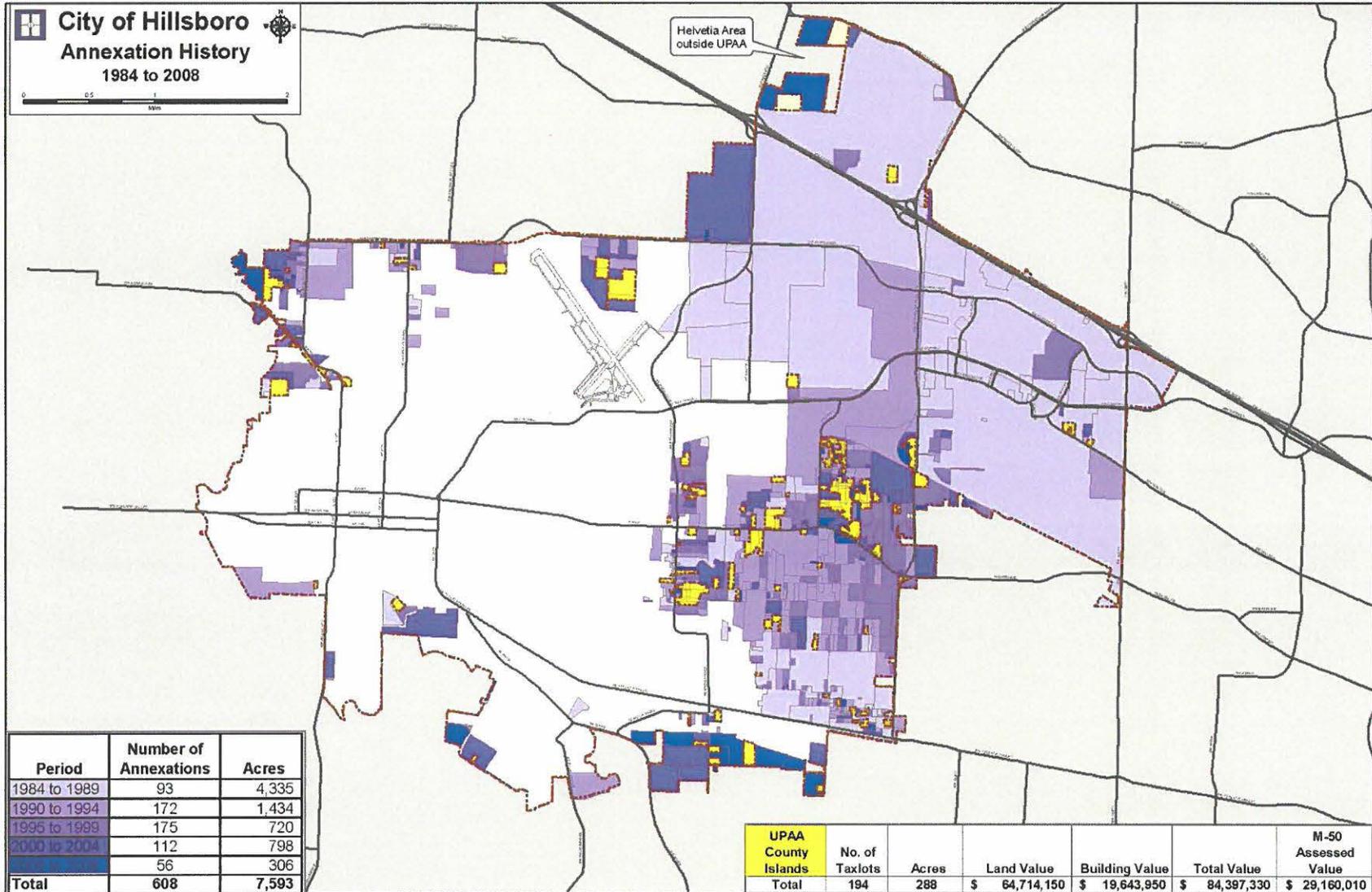
# Washington County Urbanization Forum – 2008

*“Complete communities can best be accomplished by full-service cities.”*

*“Future growth and development will be directed to cities.”*

***“Cities should demonstrate their policy commitment to govern all urban areas identified as their responsibility.”***

# Hillsboro Annexation History: 1984-2008



# Hillsboro Annexation History: 1984 - 2008

<b>Period</b>	<b>Number of Annexations</b>	<b>Acres</b>
<b>1984 to 1989</b>	93	4,335
<b>1990 to 1994</b>	172	1,434
<b>1995 to 1999</b>	175	720
<b>2000 to 2004</b>	112	798
<b>2005 to 2008</b>	56	306
<b>Total</b>	<b>608</b>	<b>7,593</b>

# Island Annexation (ORS 222.750)

- No consent required
- Annexation residential properties delayed three years / or until parcel sold
- Subject to referendum

# Other Cities Use Island Annexation

## **Salem**

Annexed 18 islands, 80 properties, 220 acres.

Property tax revenues increased \$80,000 per year (2005-2008).

## **Prineville**

Annexed 200 parcels, totaling \$21 million in assessed value (2006).

Property tax revenues increased \$70,000 per year.



# Effect on Island Properties

- Property taxes on \$250,000 home in typical island property taxes:
  - \$3,738 per year (\$311.15 per month) pre-annexation
  - \$4,173 per year (additional \$36.25 per month) post-annexation
- Some island residents would pay lower fees: they now pay 50% premium for Hillsboro Parks & Recreation programs.

**PROPERTY TAX COMPARISON -- SAMPLE**

<b>What's the Difference?</b>			
<b>Largest Number of Unincorporated Tax Lots*</b>			
<b>Unincorporated County</b>		<b>City of Hillsboro</b>	
<b>Tax Code 001.28*</b>		<b>Tax Code 001.17</b>	
NW Reg ESD	\$0.15	NW Reg ESD	\$0.15
PCC	\$0.51	PCC	\$0.51
School Dist. #1J	\$8.06	School Dist. #1J	\$8.06
Port of Portland	\$0.07	Port of Portland	\$0.07
Metro	\$0.43	Metro	\$0.43
Tri-Met	\$0.09	Tri-Met	\$0.09
Washington Co	\$3.03	Washington Co	\$3.03
WashCo RFPD #2	\$1.69	<b>City of Hillsboro</b>	<b>\$4.77</b>
Urban Road Maintenance	\$0.25		
Enhanced Sheriff Patrol	\$1.09		
<b>TOTAL TAX RATE</b>	<b>\$15.36</b>	<b>TOTAL TAX RATE</b>	<b>\$17.10</b>
<b>PER \$1000 AV</b>		<b>PER \$1000 AV</b>	
<b>RMV Limited tax rate</b>	<b>\$ 14.95</b>	<b>RMV Limited tax rate</b>	<b>\$ 16.69</b>
<b>PER \$1000 AV</b>		<b>PER \$1000 AV</b>	
<b>Where the \$ Goes:</b>		<b>Where the \$ Goes:</b>	

\* Island Tax Code area with largest number of taxlots (62 taxlots & 38 acres)

*For Example:* A home with an appraised value of \$250,000 would pay \$3,738 per year in property taxes in the unincorporated county. That same home would pay \$4,173 per year in property taxes when it became part of the city; or, \$36.25 more per month.

# Revenue Impact on Service Providers

## Estimated Revenue Loss\* (per year):

Enhanced Sheriff Patrol	\$30,100
Urban Road Maintenance	\$6,800
Fire District #2	\$43,800
TVF&R	\$5,100
THPRD	\$1,200

\* Estimate based on 2007

# Next Steps

- Authorization to Initiate Annexation
- Outreach and Communications
- Additional Analysis
  - Legal descriptions
  - Timing of annexation and transfers / effective dates
  - IGAs with service providers (as needed)

# Draft Schedule: Annexation Process

Oct	Authorize staff to develop annexation / zone change ordinances
Oct – Nov	Refine ordinances Planning Commission review Public notice
Oct – ongoing	Community outreach
Nov – Jan	City Council action on ordinances
Jan – ongoing	Implementation / City Council updates



# Community Outreach

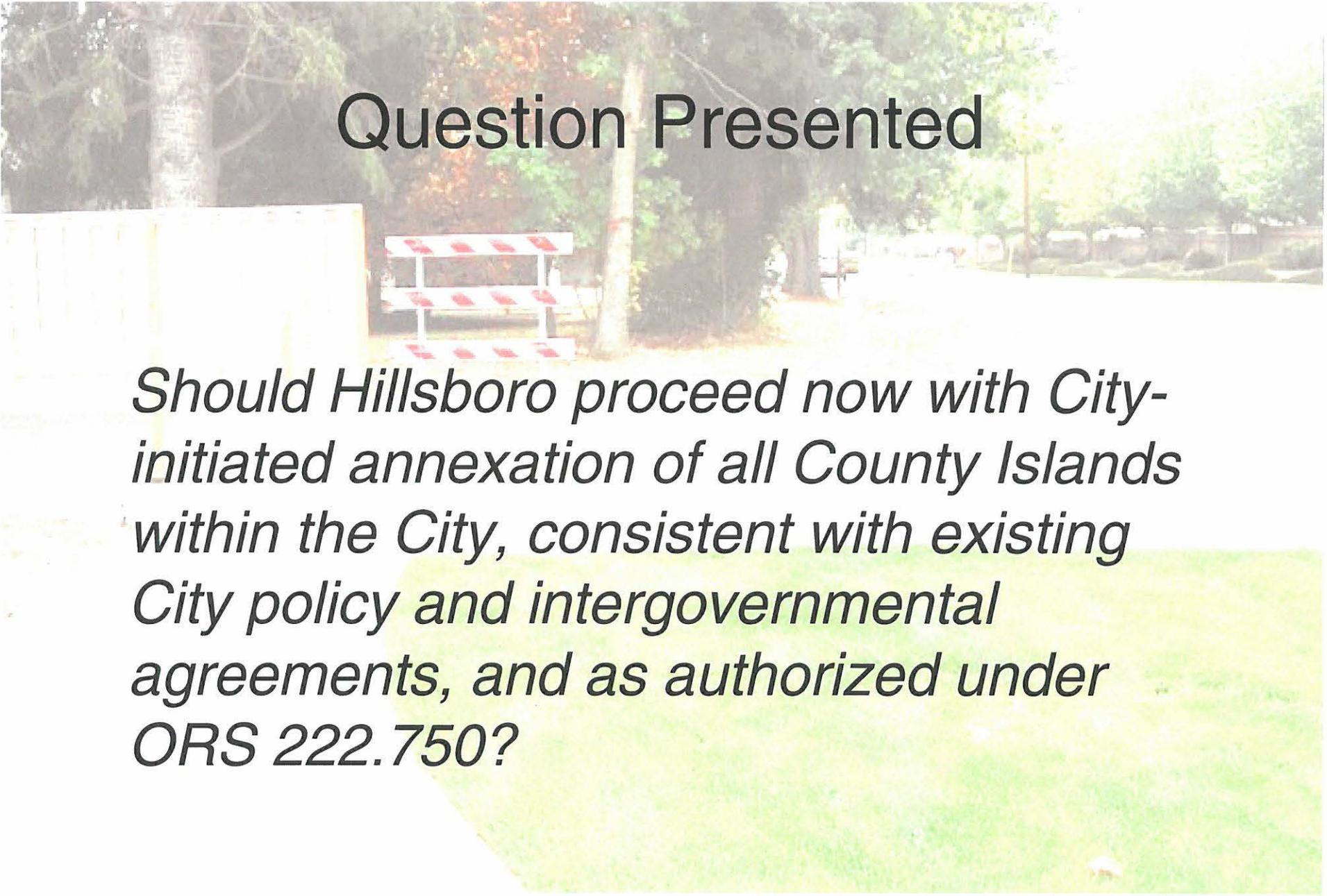
- Property owners and residents
- Service providers
- Hillsboro residents



# Stakeholder Communications

- What's proposed
- Reasons for island annexation
- Benefits (and possible drawbacks)
- Timing
- Transition/service planning





# Question Presented

*Should Hillsboro proceed now with City-initiated annexation of all County Islands within the City, consistent with existing City policy and intergovernmental agreements, and as authorized under ORS 222.750?*



**County Island Annexation:**  
***Bringing Hillsboro Together***

# Alternative Annexation Methods

## **Island Annexation (ORS 222.750)**

- No consent required
- Election, if required by City charter, must include both city electors and electors in the island
- Subject to referendum

## **Annexation with Election in Affected Area only (ORD 222.120(4))**

- Area election and approval from a majority of voters in the territory required for annexation
- Public hearing prior to election required
- No vote of city electors required
- Subject to referendum

## **Landowner Consent Annexation (ORS 222.125)**

- Written consent from all property owners and majority of electors in the territory required
- No prior public hearing required
- No election required
- Subject to referendum

## **Double Majority Annexation (ORS 222.170(2))**

- Written consent from majority of electors who also own a majority of the territory required
- No election required
- Subject to referendum

## **Triple Majority Annexation (ORS 222.170(1))**

- Written consent from majority of landowners who also own a majority of the properties representing a majority of the assessed value within the territory required
- No election required
- Subject to referendum