

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
SEPTEMBER 15, 2009**

CALL TO ORDER

Mayor Ferguson called the 2062nd meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Greg Chaimov, and Councilors Deborah Barnes, Joe Loomis, and Susan Stone

Staff present: City Manager Mike Swanson, City Attorney Tim Ramis, Community Services Director JoAnn Herrigel, Assistant Planner Li Alligood, Associate Planner Ryan Marquardt, Planning Director Katie Mangle, Senior Planner Susan Shanks, Resource/ Economic Development Specialist Alex Campbell, and Civil Engineer Brad Albert

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Council Discussion of 3-Creek Area

Mayor Ferguson stated the City Council had already ruled on its position on the County's road proposal. The nature of this discussion had to do with the work crews in the 3-Creeks Natural Area.

Councilor Barnes said the City Council had made a decision on the County's request to remove old growth trees to construct a road and then learned the County was going to allow PGE to take out more trees. Her other concern was that a County department had decided to extricate volunteers who had been working at the site for 10 years. The 3-Creeks area runs directly into the City's Kellogg-for-Coho project. She wanted to make sure the County understood Milwaukie did not want a road through that area, did not want discussions going on with other entities on actions that would impact Milwaukie, and did not appreciate having volunteers being told to cease and desist. She asked why Clackamas County would take this stance. She requested that a letter be written expressing the City's position that the Harmony Road project not go through as proposed with a copy to Metro, that the Tsunami Crew be allowed back into that area, and that no more discussions take place without the City's knowledge with utilities that impact that area.

Mayor Ferguson commented on the letter from Mr. Zinzer to Mr. Runyard. A stakeholder meeting would be scheduled, and Mayor Ferguson's goal was to get the Tsunami Crew back into the 3-Creeks area. He discussed volunteer guidelines.

Councilor Loomis suggested Mr. Zinzer be asked to explain the letter.

Dan Zinzer, Clackamas County Business and Community Services Director, explained this property had been transferred from the development agency to the County. He was surprised to find there were no plans, waivers of liability, or a record of who had worked in the area. The situation subsequently came to the attention of the Risk Management Division. This was not a permanent stoppage but rather a request that the Tsunami Crew talk with the County about the master plan and liability coverage.

James Thompson, Portland, Tsunami volunteer and Friends of Trees. He voiced support for Councilor Barnes's comments and was ready and willing to work with the City of Milwaukie to accomplish restoration of big fish to Kellogg Creek. Hopefully, this was only a bureaucratic mix-up, and he would be willing to sign the necessary forms.

Dick Shook, Friends of Kellogg and Mt. Scott Watershed, North Clackamas Parks District Advisory Board, and Tsunami Crew. He stated he was not speaking as a member of the District Advisory Board. He lived downstream from the 3-Creeks Area, so what happened up there impacted others. The work was important, and they only wanted to take care of the shrubs and trees they planted. The planting season was short, so he hoped the problems could be solved quickly and without animosity. He hoped they would not have to spend a lot of time on administrative duties, and one member had been tracking the group's time for Water Environment Services (WES). He was certainly willing to sign any necessary forms. As far as he knew there were no master plans for County Commissioners' approval although there have been a number of proposals.

Susan Shawn spoke as a member of Urban Green, an environmental group that put a tree canopy protection ordinance on the table for Clackamas County. She was deeply concerned about the habitat left at 3-Creeks. She commented on Mr. Zinzer's saying a master plan was necessary and the many Clackamas Community College Campus meetings she attended. The PGE easement had never been mentioned at any of the meetings, and she was not aware that was happening. She knew Chair Peterson was committed to transparency in government, but this did not indicate transparency in the County and particularly the Parks District. She recommended the Council look into why the easement had never been shown on a map or come up in discussions. It would impact the canopy and as a result the fish and wildlife.

Chris Runyard, Tsunami Crew, thought the dust up would be over eventually and that the volunteers would be able to continue their work. The watershed and work done by the City on its Kellogg for Coho project were very important. What happens at 3-Creeks comes down to Milwaukie. The Tsunami Crew started in 2001 on a Friends of Trees project that was contracted by WES and Bob Storr. At no point did he liaison with the Parks District. This was a group of volunteer restorationists lead by professionals following the original plan. Most of the work was in the riparian area, and he hoped to get back into the area quickly to remove the weeds and garbage. The Crew was doing good basic volunteer work with 12,570 hours logged in last 8 years. Once the squabbling was over he hoped for full protection for the 3-Creeks, the big oak habit, and the wetlands.

Eric Shawn, North Clackamas Urban Watersheds Council, saw this particular event as a case study for assessing how effectively the County was in implementing the Board sustainability resolution. It committed the County to following the natural step principles when implementing policy. Principle 3 was avoiding environmental degradation.

Pat Russell, Clackamas, North Clackamas Citizens Association which was the County's recognized community planning organization (CPO) for the area west of I-205 and south of Harmony to the Oatfield Ridge. He supported Councilor Barnes's advocacy, but did want to raise the issue of an agency's saying it owned a certain piece of land. He had never seen any deeds that indicated a transfer. He asked the County Commissioners to consider a unified vision for the entire campus. Things had gotten off to a good start, but there was no longer a process. What he felt people were witnessing resulted from the lack of a unified effort or agreed upon plan. He suggested a stewardship effort to solve some of these problems and address management of public areas. He had identified 22 issues the most important of which had to do with the fish.

If the Kellogg for Coho initiative did take off there will be fish in this watershed. He spoke on behalf of the CPO, and the members were aware of the issues.

Mr. Shook thanked the City Council for putting in the 4-way stop at 21st Avenue and Harrison Street in front of the Library.

Mayor Ferguson discussed the letter prepared by the City to the County Commissioners stating the importance of its involvement in the planning process for that area. In the upcoming meetings with the stakeholders he hoped to have a letter reiterating Milwaukie's beliefs in what had been outlined previously and that the City wanted an active role in planning for this area.

Councilor Barnes agreed and noted since there appeared to be no master plan perhaps Milwaukie could have a representative in those master plan discussions. She felt decisions had occurred that were now off the table.

Councilor Chaimov concurred.

Councilor Stone agreed. She felt the City needed to reiterate its message supporting the 3-Creeks area and the work going on there to keep the riparian environments intact. How do we help get the Crew back in there as soon as possible to get the fall work done?

Mayor Ferguson asked if the October 15 meeting could be scheduled sooner to discuss at least some of the issues.

Mr. Zinzer did not know how the October 15 meeting came about, but he would like to meet with Mr. Runyard tomorrow to discuss the forms that needed to be signed. He did not expect a lengthy work plan from the Crew.

Mr. Runyard and **Mr. Zinzer** would meet and report back to Mayor Ferguson. The group briefly discussed the draft master plan and opposition to the road.

B. Constitution Week Proclamation

Mayor Ferguson read a proclamation naming the week of September 17 – 23 as *Constitution Week*.

CONSENT AGENDA

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the consent agenda as presented:

- A. **Resolution No. 56-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Award of Contract for On-Call Construction Inspection Services in the Amount of \$60,000 per Year for Two Budget Years**
- B. **OLCC Application for Ohana Hawaiian Café, 10608 SE Main Street, change of Ownership**

Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

A. Annexation File No. A-09-01
Applicant Paul Norr, Attorney at Law
Owner: Anson Baker, Trustee
Address: 5885 SE Harmony Road
Legal Description: 1S2E31D01600

Mayor Ferguson called the public hearing on the annexation petition to order at 7:39 p.m. The request was considered by the Planning Commission at its August 25, 2009 public hearing, and the Planning Commission recommended approval of the application. This was a de novo hearing, and all persons wishing to speak on the proposal were recognized.

City Attorney Ramis reviewed the purpose and procedure of the hearing.

Mayor Ferguson reviewed the conduct of the hearing.

City Attorney Ramis asked if any member of the City Council had visited the site. **Councilor Chaimov** had visited the site but did not wish to put anything on the record at this point.

City Attorney Ramis asked if any member of the City Council wished to announce any ex-parte contacts or any actual or potential conflicts of interest. There were none. No members of the audience made any challenges to any Council member's impartiality or ability to participate in this decision. There were no objections to the Council's jurisdiction to consider the matter.

Staff introduction: **Ms. Alligood** indicated on a map the location of the site which was in the far southeast corner of the City surrounded by the City of Milwaukie on three sides. It was in a Metro Title 4 employment area. The County zoning was light industrial, and the City designation was BI, business industrial. The parcel was approximately .5 acres and contained one vacant single-family residence surrounded by industrial uses. The proposal was to annex the property, amend the City's land use and zoning maps to reflect the annexation, apply the Comprehensive Plan land use designation of industrial, apply the zoning designation of business industrial, and withdraw from Clackamas County service providers. Annexation was required because the applicant proposes to renovate the existing building and relocate an office there. The renovation and expansion would increase City water and sewer services making annexation a requirement. Staff found that the annexation complied with all relevant State, Metro, County, City, and agency regulations. It was found appropriate to apply BI zoning as it had been applied to 5 other properties in the area. The BI zone allowed light industrial uses as well as related office uses. The traffic study submitted by the applicant indicated no traffic increases by this action. Staff recommended approval of the application and findings. She noted this action would complete public area improvements from International Way to the edge of the City along Harmony Road as properties redeveloped.

Correspondence: None.

Applicant's testimony: **Paul Norr** and **Mitch Gilbert**, project architect, discussed the annexation and expressed appreciation to the City's professional staff. The goal was to redevelop the property, so the applicant needed City services particularly sanitary sewer and water. The automatic designation was to M-Industrial, and this change zone his property the same as adjacent properties. He suggested this was not an appropriate site for heavier manufacturing, and this use would blend in with surrounding uses. The

traffic analysis was accepted during City review and would be looked at in more detail during design review.

Testimony in support of the application: None.

Testimony in opposition of the application: None.

Neutral testimony: None.

Questions from City Council: **Councilor Stone** noted the proposal was to relocate Transportation Resources Group and asked where it was currently located.

Mr. Norr replied it was currently in the City of Milwaukie, and the intent of the relocation was to increase the number of employees. This company was a transportation broker for heavy freight, so it was rare for people to come to the site. Most of the communication was done electronically. The company would share a driveway with the property to the east. The only deliveries to the site would likely be office supplies and things of that nature.

Staff recommendation: **Ms. Alligood** recommended approval of the application and findings. The business was currently located in a suite on Mallard Way in the BI zone.

Council questions of staff: None.

Closure of the public hearing: **It was moved by Councilor Chaimov and seconded by Councilor Stone to close the public testimony portion of the hearing. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting 'aye.'**[5:0].

Mayor Ferguson closed the public hearing at 7:57 p.m.

Council discussion: None.

Council decision: **It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance approving the application and findings in support of annexing a tract of land identified as 5885 SE Harmony Road into the City limits of the City of Milwaukie and withdrawing the tract from the territory of Clackamas River Water, Clackamas County Service District for Enhanced Law Enforcement, and Clackamas County Service District No. 5 for street lights (File #A-09-01). Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]**

Mr. Swanson read the ordinance two times by title only.

Ms. DuVal polled the Council: **Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]**

ORDINANCE NO. 2006:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS 5885 SE HARMONY ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM THE TERRITORY OF CLACKAMAS RIVER WATER, CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT, AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-09-01)

City Attorney Ramis read the Land Use Board of Appeals (LUBA) information.

B. Expedited Annexation Petition, File No. A-09-02**Applicant: David Mealey****Address: 5111 SE Lake Road****Legal Description: 2S 2E 06BA 00100**

City Attorney Ramis described the expedited annexation process and went through the declarations.

Councilors Barnes and **Chaimov** had visited the site, but there was nothing of note to put on the record. No ex parte contacts or actual or potential conflicts of interest were announced.

There were no challenges to the any Council member's impartiality or ability to participate in the discussion. There were no objections to the Council's jurisdiction to consider the matter.

Mr. Marquardt provided the staff report and pointed out the subject property on the map. The site contained a main dwelling, a detached accessory dwelling, garage, barn, and windmill. The surrounding land use was primarily single-family residential to the south and business industrial (BI) uses to the north across Hwy 224. Zoning for the site was County R-10. The proposal was for an expedited annexation which procedurally was not a hearing before the Planning Commission but rather a City Council decision. The zoning would be based on the current County zoning, and City land use and zoning maps would be amended to add this property and apply low density residential zone R-10. The proposal would also withdraw from Clackamas County Service providers. This was a voluntary request by the contract property owner of the site, and no further development was indicated. Any zone change or major changes on the site would require a land use application. The primary reason for the application had to do with the City's home occupation standards that allowed a chiropractic office as an outright use. Mr. Marquardt discussed types of home occupations, applicable standards, and compliance. In this case urban services were not the primary reason for the application. This site was connected to Clackamas County Service District #1 (CCSD1) which had a line in Lake Road. Milwaukie did not have a line extending that far south in Lake Road and was not able to serve this site. There was an intergovernmental agreement with Clackamas River Water (CRW) that would continue service to the site from a Lake Road line. He reviewed the annexation regulations. The annexation proposal complied with State, Metro, County, and City regulations. Notification was made to interested parties 20 days prior to this meeting. No comments were received from necessary parties protesting the annexation. Two comments were received from interested persons. One was from Pat Russell and was included in the staff report. It championed the notion of the City and County being proactive as development occurred in that area. The second letter was from the owner of the adjacent property, Ms. Bohlman, who expressed concerns with the home occupation. Staff would respond to Ms. Bohlman, but the home occupation did not affect this annexation. The Lake Road Neighborhood Association did not comment on the application; however, Mr. Mealey did attend an Association meeting and got positive feedback on his proposal. Staff recommended approval of the application with findings, and he reviewed the options before City Council.

Councilor Stone noted Ms. Bohlman was concerned about increased traffic and asked what kind of analysis had been done and what was anticipated.

Mr. Marquardt replied an analysis had not been done because the use was allowed outright in residential zones.

Mr. Albert added a traffic analysis was not required since there was no zone change.

Mr. Mealey noted initial attempts in thinking about rezoning were cumbersome. The business would be open about 3-½ days a week and generate about 20 trips per day.

Mayor Ferguson noted the neighbor claimed the fence was higher than allowed and asked Mr. Mealey if there would be a problem in complying with City standards.

Mr. Mealey responded the fence was less than 6 feet high. Traffic would be diverted in front of his house to the side of the property. He wanted to be sensitive to Ms. Bohlman's concerns but did not believe there would be any problems. He indicated the fence on the aerial photograph.

It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings with the amendments and adoption of the ordinance annexing a tract of land identified as 5111 SE Lake Road into the City limits of the City of Milwaukie and withdrawing the tract from the territory of Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights (File #A09-02). Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]

Mr. Swanson read the ordinance two times by title only

Ms. DuVal polled the City Council: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye."

ORDINANCE NO. 2007:

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING A TRACT OF LAND IDENTIFIED AS 5111 SE LAKE ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING FROM THE TERRITORY OF ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-09-02)

C. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3

Mr. Swanson reviewed the history of the proposed amendment.

It was moved by Councilor Chaimov and seconded by Councilor Stone to continue the public hearing to the October 20, 2009 regular City Council meeting. Motion passed unanimously with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]

OTHER BUSINESS

A. NE Sewer Extension Project Loan Agreement

Mr. Campbell provided the staff report in which the City Council was requested to approve a resolution authorizing the City Manager to sign an updated Clean Water State Revolving Fund (CWSRF) Loan Agreement. This had to do with the extension of sewer service into the area known as Dual Interest Area A also known as the NE Sewer Extension Project. The City Council approved the loan agreement in December 2008 and a contract for engineering services with Century West in February 2009. A portion of American Reinvestment and Recovery Act (ARRA or stimulus) was allocated through the Environmental Protection Agency (EPA) to support CWSRF loans. In Oregon, DEQ elected to use these ARRA funds to forgive 50% of the loans issued this year and eliminate interest on the loans themselves. DEQ encouraged Milwaukie to apply for this somewhat different loan program. Half of the loan, \$2 million, will be forgiven when the

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APPROVED MINUTES

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project was completed, and the remainder would be paid back over the next 20 years at 0% interest. Staff anticipated offering any customer wishing to connect within 2 years of the project a 10-year payment plan at no interest.

It was moved by Councilor Barnes and seconded by Councilor Chaimov to adopt the resolution authorizing the City Manager to sign an updated Clean Water State Revolving Fund Loan Agreement for the NE Sewer Extension project. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 57-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE STATE OF OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT NO. R06655 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT.

B. Right-of-way Annexation in the NE Sewer Extension Project Area

Ms. Shanks provided an update on the project and the proposed action that would initiate the annexation petition on behalf of the City. She discussed the construction schedule in that area and noted the right-of-way annexation would not change the service in the area. Property annexation would occur as residents connected to the sewer line. Chief Jordan indicated calls for police services would be referred to the Sheriff unless there was an emergency until properties were annexed. Right-of-way annexation would result in islanding some properties in this area, and she briefly noted the 25% perimeter rule. Language was included in the proposed resolution and subsequent ordinance that the City could not annex properties as a result of the right-of-way annexation. That message would be conveyed to the neighborhood. She commented that some time in the future staff would talk with City Council about properties in that area which were already receiving sewer services from Milwaukie and when they might be annexed. Those properties, however, were kept off the table for now. The action before City Council at this meeting was the first in the 2-step right-of-way annexation process as there were no property owners.

Councilor Chaimov suggested deferring annexation of those properties already receiving City services until such time as there were happy customers in Dual Interest Area A.

Ms. Shanks said staff was looking at seeking voluntary annexation and hoping to create positive forward motion.

Councilor Stone commented on the intent of annexing the right-of-way only to allow more expeditious annexation in the future. She cautioned that government ought not to seem heavy handed and forcing people to do things they did not wish to do. She felt the draft letter sounded overbearing.

Ms. Shanks appreciated the comments and noted 20 – 25 of the 300 properties were currently being served by the City. Annexation would not occur until such time as sewer service was needed or wanted.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution initiating annexation of portions of rights-of-way in the NE Sewer Extension Project area. Motion passed unanimously with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 58-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INITIATING ANNEXATION OF PORTIONS OF RIGHTS-OF-WAY IN THE NE SEWER EXTENSION PROJECT AREA WHICH IS BOUNDED ON THE NORTH BY SE WESTFORK AVENUE, ON THE EAST BY SE LINWOOD AVENUE, ON THE SOUTH BY SE KING ROAD, ON THE WEST BY THE CURRENT CITY BOUNDARY, AND ON THE NORTHWEST BY SE 55TH AVENUE AND AS DEPICTED IN THE ATTACHED EXHIBIT

C. Council Reports

Councilor Barnes would attend the wastewater meeting Thursday and would take any City Council comments forward.

Mayor Ferguson noted the opening of the Ohana Hawaiian Café and Spring Coffee House Deli. He attended the opening of the Green Line. He announced upcoming meetings including the community garden planning group, the joint Planning Commission and Riverfront Board meeting, and the monthly light rail meeting where the Lake Road station would be discussed.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Stone to adjourn the meeting. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]

Mayor Ferguson adjourned the regular session at 8:47 p.m.



Pat DuVal, Recorder

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL SEPTEMBER 15, 2009

MILWAUKIE CITY HALL
10722 SE Main Street

2062nd MEETING

REGULAR SESSION – 7:00 p.m.

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| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| A. Council Discussion of 3-Creeks Area | |
| 3. CONSENT AGENDA <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i> | 1 |
| A. Contract Award for Construction Inspection Services – Resolution | 2 |
| B. OLCC Application for Ohana Hawaiian Café, 10608 SE Main Street, Change of Ownership | 6 |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |

Stauffer, Scott

From: Milwaukie OCR
Sent: Friday, October 09, 2009 8:11 AM
To: 'Pat Russell'; Milwaukie OCR
Cc: Mangle, Katie; _City Council
Subject: RE: Sept 15, 2009 Item 2A CC Discussion, 3 Creeks Area

Good morning, Pat – Although staff had prepared a draft letter, the City Council did not direct that it be finalized and mailed.

From: Pat Russell [<mailto:flanagan112@hotmail.com>]
Sent: Thursday, October 08, 2009 4:54 PM
To: Milwaukie OCR
Cc: Mangle, Katie
Subject: Sept 15, 2009 Item 2A CC Discussion, 3 Creeks Area

Dear City Clerk, City of Milwaukie

I was my understanding that the city council was going to convey a letter of concern to the Board of County Commissioners over the proposed extension of Sunnybrook Blvd. west of SE 82nd Avenue in the Three Creeks Area (Harmony Unified Vision) (Metro's Regional Transportation Plan Update process0.

This occurred on September 15, 2009, City Council Discussion, Agenda Item 2A, Regular Meeting Agenda.

Could you advise me whether the city council prepared and transmitted a letter as they discussed?

Thank you.

Pat Russell , President-Secretary
NORTH CLACKAMAS CITIZENS ASSOCIATION (NCCA)
A county-recognized Community Planning Organization (CPO)
16358 SE Hearthwood Drive
Clackamas, OR 97015
(503) 656-9681
Email: flanagan112@hotmail.com

Hotmail: Trusted email with Microsoft's powerful SPAM protection. [Sign up now.](#)

- 5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)* **9**
 - A. **Annexation File No. A-09-01 – Ordinance** **10**
Applicant Paul Norr, Attorney at Law
Owner: Anson Baker, Trustee
Address: 5885 SE Harmony Road
Legal Description: 1S2E31D01600
NDA: None
Staff: Li Aligood, Assistant Planner
 - B. **Expedited Annexation File No. A-09-02 – Ordinance** **70**
Applicant: David Mealey
Address: 5111 SE Lake Road
Legal Description: 2S2E06BA00100
NDA: Lake Road
Staff: Ryan Marquardt, Associate Planner
 - C. **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 & 19.321.3 – Ordinance**
Staff: Mike Swanson, City Manager
- 6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **121**
 - A. **NE Sewer Extension Project Loan Agreement – Resolution** **122**
Staff: Alex Campbell, Community Development
 - B. **Right-of-Way Annexation in NE Sewer Extension Project Area – Resolution** **161**
Staff: Susan Shanks, Senior Planner
 - C. **Council Reports**

7. INFORMATION

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660.
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

3.

CONSENT AGENDA



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development/Public Works Director

From: Gary Parkin, Engineering Director
Brenda Schleining, Associate Engineer

Subject: Contract Award for Construction Inspection Services

Date: August 28, 2009 for the September 15, 2009 Regular Session

Action Requested

Authorize the City Manager to execute a contract and issue a purchase order with AKS Engineering & Forestry in an amount not to exceed \$60,000 per year for two years of construction inspection services to augment the City Engineering staff for paving and construction project inspection.

History of Prior Actions and Discussions

June 2008: The City contracted with CMTS Inspection Services for paving construction inspection through June of 2009. The contract was exclusively devoted to paving associated with the Street Surface Maintenance Program (SSMP).

Background

There are many inspections, documentation, records, tests, and quality assurance activities that must be done during the construction of public work projects. Some of the tests such as asphalt density, rock compaction, manhole vacuum pressure, waterline pressure, and drainage can take several hours or more to perform. Documenting construction conflicts, materials, and progress is time-consuming as it may take several

hours to install one storm pipe in a trench or compact a trench line properly. It is important to verify that these construction activities are done correctly to avoid failures in the future. Poor trench compaction has been the cause of many pavement failures throughout the City. Some of the failures were caused by trenches that were constructed over 10 years ago.

Last year the City contracted for inspection services for pavement construction related to the SSMP. This year the Engineering Department would like to extend the contract to include additional Capital Improvement Projects in the Water, Wastewater and Stormwater Utilities as needed. The additional inspection services will be funded through current project budgets.

Hiring a construction inspector to assist the staff engineers with the time-consuming aspects of construction management has a cost and time saving benefit. Having an experienced inspector available enables the engineers to use their time efficiently as project managers and designers on multiple projects.

It is anticipated that the total need for construction inspection services will not exceed \$60,000 per year. Of this amount, \$40,000 would be used for the SSMP and \$20,000 will be used for other CIP projects which include two sewer projects, three water projects, and two stormwater projects. The inspector can be used in variety of support roles in any of these projects. Duties would include performing compaction testing, density testing, sewer and water line tap inspection, catch basin installs, recording time and materials, water line testing, and similar tasks. Typically, the engineering staff conducts all of these tests and observations. The contract inspector can fill in as needed to assist the project engineer.

The Engineering Department consulted with the Operations Department on previous awards to consultants, for multi-year contracts, and modeled this award after multi-year awards contracts let by Operations in 2008.

The City recently advertised a Request for Proposals (RFP) for construction inspection services and received seven proposals. The RFP's were evaluated by a team of five staff members who ranked them based on qualifications, experience, schedule, and hourly rate. AKS Engineering & Forestry was selected based on their ability to provide the services, experience, and value to the City. The following table ranks the RFP's in the order of selection:

<u>Consultant</u>	<u>Ranking</u>
AKS Engineering & Forestry	1
HDJ Design Group	2
CMTS	3
Cooper Zietz Engineers, Inc.	4
Hatch Mott MacDonald	5
ACS Testing, Inc.	6
NW Engineers	7

Concurrence

The Operations Department supports this action and participated in the selection process.

Fiscal Impact

The impact to the CIP budget and the SSMP budget is a maximum of \$60,000 per year – with \$20,000 and \$40,000 maximum for each fund respectively. Funds for this proposed contract would come from the SSMP budget (\$40,000) and specific CIP project budgets.

Work Load Impacts

This proposal improves the working capacity within the Engineering Department improving the work load.

Alternatives

- 1) Do not award project (defer indefinitely)
- 2) Re-bid project without amendments
- 3) Direct Staff to modify project and re-bid

Attachment

1. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR ON-CALL CONSTRUCTION INSPECTION SERVICES IN THE AMOUNT OF \$60,000 PER YEAR FOR TWO BUDGET YEARS.

WHEREAS, the Engineering Departments work efficiency will be improved with additional skilled construction inspectors; and

WHEREAS, the current adopted budget accommodates the inspector charges; and

WHEREAS, the City recently advertised for proposals for construction inspection services; and

WHEREAS, a formal request for proposals process following Chapter 30 of the City's Public Contracting Rules was conducted, and

WHEREAS, AKS Engineering & Forestry is the most qualified responsive responsible proposal;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for construction inspection services with AKS Engineering & Forestry in the amount of \$60,000 per year, for a maximum of two budget years.

Introduced and adopted by the City Council on _____ .

This resolution is effective on _____ .

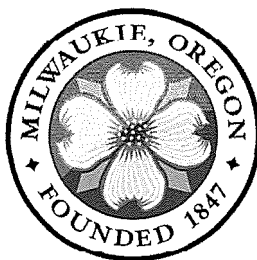
Mayor


ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor Ferguson and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Bob Jordan, Chief of Police 
Date: September 2, 2009
Subject: **O.L.C.C. Application – Ohana Hawaiian Cafe – 10608 SE Main Street**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Ohana Hawaiian Cafe -- 10608 S.E. Main Street.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.

**OREGON LIQUOR CONTROL COMMISSION
BUSINESS INFORMATION**



Please Print or Type Ohana Hawaiian Cafe
 Applicant Name: Sandie Ho LL Phone: 503-757-4737
 Trade Name (dba): Ohana Hawaiian Cafe
 Business Location Address: 10608 SE Main St.
 City: Milwaukie ZIP Code: 97222

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday 11am to 9pm
 Monday 11am to 9pm
 Tuesday 11am to 9pm
 Wednesday 11am to 9pm
 Thursday 11am to 9pm
 Friday 11am to 9pm
 Saturday 11am to 9pm

Outdoor Area Hours:

Sunday 11am to 9pm
 Monday 11am to 9pm
 Tuesday 11am to 9pm
 Wednesday 11am to 9pm
 Thursday 11am to 9pm
 Friday 11am to 9pm
 Saturday 11am to 9pm

The outdoor area is used for:

Food service Hours: 11am to 9pm
 Alcohol service Hours: 11am to 9pm
 Enclosed, how _____

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

 (Investigator's Initials)

Seasonal Variations: Yes No If yes, explain: Nov. - March (Sundays til 8pm)

ENTERTAINMENT

Check all that apply:

- Live Music
- Recorded Music
- DJ Music
- Dancing
- Nude Entertainers
- Karaoke
- Coin-operated Games
- Video Lottery Machines
- Social Gaming
- Pool Tables
- Other: _____

DAYS & HOURS OF LIVE OR DJ MUSIC

*seasonal
 Sunday 5p to 8pm
 Monday _____ to _____
 Tuesday _____ to _____
 Wednesday _____ to _____
 Thursday _____ to _____
 Friday 6 to 9pm
 Saturday 6p to 9pm
Varies

SEATING COUNT

Restaurant: 54 Outdoor: 16
 Lounge: 8 Other (explain): _____
 Banquet: _____ Total Seating: 78

OLCC USE ONLY
 Investigator Verified Seating: ___(M)___(N)
 Investigator Initials: _____
 Date: _____

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

Applicant Signature: [Signature] Date: 8/15/09

1-800-452-OLCC (6522)
 www.olcc.state.or.us

(rev. 04/03)

To Whom It May Concern:

Thank you for considering our business to obtain a liquor license.

We have been made aware that there are some reservations on issuing Ohana Hawaiian Café a liquor license based on a whole gamut of issues stemming from the previous occupant of 10608 SE Main Street.

Based on conversations with our neighbors here, we are making conscious decisions to be a good, considerate neighborhood family restaurant and neighbor.

First off, who are we?

We are a husband and wife run business, with two young children. Our mission is to provide a product where families can enjoy a good, healthy, homemade meal at an affordable price. In fact Ohana means family in Hawaiian. Our very limited selection of alcoholic beverages are only going to be an accompaniment to a great meal. We are not going to be a bar, nightclub or a pub. We are a family restaurant.

How are we different from Latitude Bar & Grill?

We will depend on our great homemade food made from family recipes for our profits, not alcohol. Or loud music. We are not a night club. We will close at 9pm.

We will set an alcoholic beverage limit each customer is allowed to order utilizing the tools learned from the OLCC and alcohol server education classes.

We will not allow anyone to become intoxicated.

We are open to any other ideas from you to prevent any issues that can stem from alcohol in our neighborhood.

Again, it is our goal to be a responsible, friendly and considerate neighbor in Downtown Milwaukie. As you will discover, we will become a neighbor and a business that the community will come to love and embrace, just like our other restaurant in NE Portland. We understand the value of having the neighborhood support, accept and even love us as a business, and as a family.

Thank you for taking the time to review this. Hope to see you at our restaurant. Don't forget our Grand Opening is September 12, 2009!

Sincerely,
Matthew and Sandie Ho

5.
PUBLIC HEARING



5.A.

To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director
Katie Mangle, Planning Director

From: Li Alligood, Assistant Planner

Subject: File: A-09-01
Applicant: Paul Norr, Attorney at Law
Owner: Anson Baker, Trustee
Address: 5885 SE Harmony Rd
Legal Description (Map & Taxlot): 1S2E31D01600
NDA: None

Date: August 28, 2009, for September 15, 2009, Public Hearing

Action Requested

Approve application A-09-01 and associated Findings in Support of Approval (Attachment 1). Approval of this application would result in annexation of the site into the City as a Business Industrial use.

History of Prior Actions and Discussions

None.

Background

Proposal

The applicant seeks to annex the subject site into the City to expand use of City services and develop the Site with an office use. City approval of this application would result in the following:

- Annexation of 5885 SE Harmony Road (the Site) into the City.
- Amendments to the City's Land Use Map and Zoning Map to reflect the annexation and to apply a Comprehensive Plan land use designation of Industrial and a zoning designation of Business Industrial (BI) to the Site.
- Withdrawal of the Site from the following urban service providers and districts:
 - Clackamas River Water
 - Clackamas County Service District for Enhanced Law Enforcement
 - Clackamas County Service District No. 5 For Street Lights

The applicant's intent is to renovate and expand the existing structure on the site for use as an office for a business that provides freight and shipping services to manufacturers and other large-scale shippers. The applicant plans to relocate a business, Transportation Resources Group (TRG), from another location in Milwaukie. Approval of the application would allow for this use as well as the other uses allowed outright in the zone.

See Attachment 2 for a series of maps that graphically show the Site's location and existing zoning and land use designations. See Attachment 3 for the applicant's application materials.

Annexation Petition

Since all property owners and a majority of the electors residing at the Site signed the annexation petition, the petition is initiated by Consent of All Owners of Land. At the request of the applicant, the City is processing the petition as a non-expedited annexation, meaning it requires a recommendation by Planning Commission and a decision by City Council. The applicant requested this non-expedited process because it allows the City to consider a request for a different zoning designation.¹ The City's automatic zoning designation for this Site is Manufacturing (M); the applicant is requesting a Business Industrial (BI) zoning designation.

The petition meets the requirements for initiation set forth in Oregon Revised Statutes Section 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Section 19.1502.2. The City has processed the annexation petition and provided public notice in accordance with MMC Subsection 19.1011.4 Major Quasi-Judicial Review and Metro Code Section 3.09.030 Notice Requirements.

Site and Vicinity

¹ Per Table 1 of Milwaukie Municipal Code Chapter 19.1500 Boundary Changes, the City automatically assigns a City zoning and land use designation based on a property's existing zoning designation in the County.

The Site is contiguous to the existing city limits and is within Milwaukie's urban growth management area (UGMA). It is composed of one .53-acre property on Harmony Rd. The Site is developed with a single-family residence, which is currently vacant. The existing uses are residential, and the total assessed value of the land and existing improvements is \$101,145. The Site is bounded to the north, west, and east by properties within the City of Milwaukie and to the south by Harmony Rd. Access to the Site is currently obtained through Harmony Rd.

The surrounding area consists of office and industrial uses to the north, west, and east, and County Industrial uses to the south. The Industrial Way Business Park is located to the west and the north of the Site; Milwaukie Mini Storage is being constructed immediately to the east.

The Site is close to two 3-legged intersections: the Harmony Rd, Lake Rd, and International Way intersection; and the Harmony Rd, Linwood Ave, and Railroad Ave intersection. The Site currently takes access from Harmony Rd; the applicant proposes to close the current access and take access from the Industrial Way Business Park driveway located directly to the east of the Site.

This application is the fifth site on Harmony Rd to apply for annexation since 2004. The City annexed the property immediately to the west and north of the Site in 2004, and the properties at 6011 & 5900 SE Harmony Rd and 6019 SE Harmony Rd in 2008. Prior to annexation, three of the properties had a County zoning designation of Light Industrial (I2) and requested and received a Business Industrial (BI) zoning designation upon annexation. The City's only other industrial zoning designation is Manufacturing (M), but in all three applications, the City Council found that the BI zone was a more appropriate designation for those properties given the adjacent BI zoning. The fourth property (6019 SE Harmony Rd) was annexed through the expedited annexation process and received a zoning designation of Residential zone R-5 upon annexation.

Utilities, Service Providers, and Service Districts

The owners of the four properties annexed in 2004 and 2008 sought annexation to expand use of City sewer service and fully develop their properties. The subject property is currently served by City water and sewer, but is required to annex to the City to expand its level of service.

The City is authorized by ORS 222.120 (5) to withdraw the Site from non-City service providers and districts upon annexation of the Site to the City. This allows for more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation. If annexed, the Site would be withdrawn from the Clackamas River Water district, which currently

collects fees for service to the Site on behalf of the City. See Attachment 4 for a list of utility providers, service providers, and service districts for the Site.

Analysis of Key Issues

- a) Does the annexation comply with all applicable State, Metro, County, City, and agency regulations?

Staff analysis has concluded that the annexation application, including the associated map amendments, is consistent with all applicable statutes, code provisions, intergovernmental agreements, and land use and annexation policies. See Exhibit A of Attachment 1 for a more detailed analysis and findings related to compliance.

The Oregon Department of Transportation (ODOT), TriMet, and Metro are the agencies affected by this application. TriMet has no comments on the proposed annexation; ODOT has determined that the proposed designations would have no significant impacts on area ODOT facilities. Moreover, there would be no conflict between the Site's existing Metro Title 4 Employment Area designation and the proposed Business Industrial zoning designation, since the City's Business Industrial zone is already in compliance with Title 4.

- b) Should the City apply a Business Industrial zoning designation and an Industrial land use designation to the Site upon annexation?

Given the Site's existing County zoning and location, staff supports the applicant's request to designate the Site as Business Industrial (BI). The City's Manufacturing M zone, the default designation, primarily encourages manufacturing uses; offices are allowed when accessory to manufacturing uses. Like the County's I2 zone, the BI zone allows light industry as well as business and professional offices that support industrial uses and can locate on smaller parcels. Both land uses are designated Industrial in the City's Comprehensive Plan.

An Industrial land use designation and BI zoning designation would match the land use and zoning designations of the City properties to the west, east, and north of the Site. A BI designation would allow for land use consistency and ease of zoning administration in the area.

The site takes access from Harmony Rd; the required traffic study was reviewed by the City's Traffic Engineer at DKS Engineering. The review concluded that the proposed development would not increase trip potential for the site and would not impact the surrounding transportation system, which means it would not produce additional traffic or reduce safety on Harmony Rd.

Concurrence

The Planning Commission reviewed the application at a public hearing on August 25, 2009, and voted to recommend that Council approve the application.

The application was forwarded to the following City departments for review and comment: Community Development, Engineering, Fire and Building. It was also forwarded to Clackamas County, TriMet, Metro, ODOT, and the following three neighborhood associations: Linwood NDA, Lake Road NDA, and North Clackamas Citizen Association. No objections to or concerns about the annexation have been received. These comments are attached (Attachment 5).

Alex Campbell, City of Milwaukie Resource and Economic Development Specialist, concurs that the proposed annexation is in the best interest of the City and that BI is the most appropriate zoning for the site.

Prior to the September 15, 2009, public hearing before City Council, all necessary parties, affected City departments, and residents and property owners within 400 feet of the Site will be notified of the annexation proceedings as required by City, Metro, and State regulations.

Fiscal Impact

The annexation is expected to have a positive fiscal effect through collection of property taxes and other revenues. The value of the property, for tax revenue purposes, will depend upon how the site is developed in the future and trends in industrial property values. Potential negative effects include the costs of providing governmental services to the site; this potential negative effect is somewhat mitigated by the fact that the City already provides water and sewer services to the site. While it is not possible to quantify the net fiscal effect at this time, staff believes that the annexation will provide long-term fiscal benefits.

Work Load Impacts

Workload impacts will be minimal and will likely include, but are not limited to, the following: additional utility billing, provision of general governmental services, and the setting up and maintenance of property records.

Alternatives

The application is subject to Milwaukie Comprehensive Plan Chapter 2 for plan amendments, Oregon Revised Statutes Chapter 222 City Boundary Changes, Metro

Code Chapter 3.09 Local Government Boundary Changes, and the following provisions of the MMC Title 19 Zoning Ordinance:

- MMC 19.900 Amendments
- MMC 19.1011.4 Major Quasi Judicial Review
- MMC 19.1500 Boundary Changes

The application is also subject to major quasi-judicial review, which requires the City Council to conduct a public hearing and either deny or approve the application based on compliance with all applicable code provisions and regulations listed above.

The City Council has the following three decision-making options:

1. Approve the application and adopt the ordinance and findings in support of approval.
2. Approve the application and adopt a modified ordinance and findings in support of approval. (Any modifications need to be read into the record.)
3. Deny the application and adopt findings in support of denial.

The final decision on this application must be made by the City Council on or before October 2, 2009, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

Attachments

1. Draft Ordinance for Council Approval
 - Exhibit A: Recommended Findings in Support of Approval
 - Exhibit B: Legal Descriptions and Map of Annexation Properties
2. Site information provided by staff
 - A. City and County Existing Zoning Designations Map
 - B. Existing Land Use Designations Map
 - C. Aerial Photo of Surrounding Area
3. Applicant's Narrative and Supporting Documentation dated June 10, 2009
4. Utility Providers, Service Providers, and Service Districts
5. Comments Received

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS 5885 SE HARMONY ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM THE TERRITORY OF CLACKAMAS RIVER WATER, CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT, AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-09-01).

WHEREAS, the tract of land is contiguous to the City and can be served by City services; and

WHEREAS, the City received written consent from a majority of electors and all owners of land in the territory proposed to be annexed as required by ORS 222.170; and

WHEREAS, the tract of land lies within the territory of Clackamas River Water; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District for Enhanced Law Enforcement; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District No. 5 For Street Lights; and

WHEREAS, the City Planning Commission and City Council held public hearings in accordance with ORS 222.120, Metro Code Section 3.09.050, and Milwaukie Municipal Code Sections 19.1502.1 and 19.1011.4; and

WHEREAS, the City mailed and posted notice of the public hearings in accordance with ORS 222.120, Metro Code Section 3.09.030, and Milwaukie Municipal Code Section 19.1011.4; and

WHEREAS, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the tract of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A; and

WHEREAS, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the tract of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A; and

WHEREAS, the City Planning Commission and City Council considered a Comprehensive Plan land use designation change from County General Industrial (GI) to City Industrial (I) and a Municipal Code zone change from County Light Industrial (I2) to City Business Industrial (BI) for the tract of land as a part of the proceeding as provided for in Milwaukie Municipal Code Section 19.1502.1; and

WHEREAS, the City Council dispenses with submitting the question of the proposed annexation to the electors of the City for their approval or rejection as provided for in ORS 222.170; and

WHEREAS, the annexation and withdrawals are not contested by any necessary party;

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

Section 1. Findings. Findings of fact in support of the proposed amendment are attached as Exhibit A.

Section 2. The tract of land, described in Exhibit B and depicted on the attached map, is hereby annexed to the City of Milwaukie.

Section 3. The tract of land annexed by this ordinance and described in Section 2 is hereby withdrawn from Clackamas River Water, Clackamas County Service District for Enhanced Law Enforcement, and Clackamas County Service District No. 5 For Street Lights.

Section 4. The tract of land annexed by this ordinance and described in Section 2 is hereby assigned a Comprehensive Plan land use designation of Industrial (I) and a Municipal Code zoning designation of Business Industrial (BI).

Section 5. The City shall immediately file a certified copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and 222.177. The annexation and withdrawals shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.1

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

¹ Since this ordinance was enacted after March 31, the effective date of the withdrawal of the tract of land from Clackamas River Water, a domestic water supply district, shall be July 1, 2010 pursuant to ORS Section 222.465.

ATTACHMENT 1

Exhibit A

Recommended Findings in Support of Approval Case File# A-09-01

1. Through this annexation the City is withdrawing 5885 SE Harmony Rd (Map 1S2E31D; TLID 1600), a 0.53-acre site, from the following districts and service providers:
 - a. Clackamas River Water
 - b. Clackamas County Service District for Enhanced Law Enforcement
 - c. Clackamas County Service District No. 5 for Streetlights
2. Upon annexation of the aforementioned property, the City will amend its Land Use Map (Comprehensive Plan Map 7) and Zoning Map to apply an Industrial land use designation and a Business Industrial (BI) zoning designation to the annexed properties. A BI zoning designation will allow for land use consistency and ease of zoning administration in the area.
3. Upon annexation of the aforementioned property, the City will not amend its land use and zoning maps to annex any portion of Harmony Rd.
4. The application of a BI zoning designation to the aforementioned property will not significantly impact state highway facilities (as determined by ODOT) and will not conflict with Metro's Title 4 Employment designation (as confirmed by Metro).
5. The annexation application has been processed and public notice has been provided in accordance with Milwaukie Municipal Code (MMC) Chapter 19.1500 Boundary Changes, MMC Chapter 19.900 Amendments, MMC Section 19.1011.4 Major Quasi-Judicial Review, Metro Code Chapter 3.09 Local Government Boundary Changes, and Oregon Revised Statutes Chapter 222 City Boundary Changes.
6. The Land Use Map and Zoning Map amendments have been processed and public notice has been provided in accordance with Milwaukie Comprehensive Plan Chapter 2, MMC Chapter 19.900 Amendments, and MMC 19.1011.4 Major Quasi-Judicial Review.
7. The Planning Commission conducted a public hearing on August 25, 2009, and passed a motion recommending that the City Council approve the annexation.
8. The City Council finds that the annexation is in the City and public's best interests as follows:

- The annexation is consistent with the City's Urban Growth Management Area (UGMA) agreement with the County and the annexation policies and objectives contained in the City's Comprehensive Plan. The intergovernmental agreement with the County and the City's annexation policies aim to provide for the timely and orderly extension of urban services to the areas identified in the City's UGMA. The annexation property is within the City's UGMA and immediately adjacent to the city limits. The property owner desires to develop the property with an office use and requests a zoning designation that will allow that use. The City currently provides water and sewer service to the site and can continue to adequately serve the annexation property without impacting existing development or restricting future development. The annexation facilitates the efficient use of land and utilities by taking advantage of existing investments in utilities and streets. The City Council finds that the annexation and subsequent extension of urban service is both timely and orderly.
 - The annexation will not adversely affect the health, safety, and welfare of the community.
9. The annexation is consistent with the following applicable State, Metro, County, and City policies, agreements, provisions, and regulations:

Milwaukie Municipal Code

Chapter 19.1500 Boundary Changes
Chapter 19.900 Amendments

Milwaukie Comprehensive Plan

Chapter 2 Plan Review and Amendment Process
Chapter 4 Land Use
Chapter 5 Transportation, Public Facilities, and Energy Conservation
Chapter 6 City Growth and Governmental Relationships

Metro Code

Chapter 3.09 Local Government Boundary Changes
Chapter 3.07 Urban Growth Management Functional Plan

**Urban Growth Management Area (UGMA) Agreement
Oregon Revised Statutes 2007**

Chapter 195 Local Government Planning Coordination

The annexation is consistent with the following applicable State, Metro, County, and City policies, agreements, provisions, and regulations as detailed below:

Milwaukie Municipal Code

Milwaukie Municipal Code (MMC) Section 19.1502.3 states that the City Council shall approve or deny an annexation proposal based on findings and conclusions addressing the following criteria:

- A. The subject site must be located within the city urban growth boundary.

The site meets this requirement.

- B. The subject site must be contiguous to the existing city limits.

The site meets this requirement.

- C. The requirements of the Oregon Revised Statutes for initiation of the annexation process must be met.

The application was initiated in accordance with applicable statutes. The petition was initiated by Consent of All Owners of Land since all property owners and a majority of the electors residing at the subject site signed the annexation petition.

- D. The proposal must be consistent with Milwaukie comprehensive plan policies.

The proposal is consistent with the Comprehensive Plan as detailed in Milwaukie Comprehensive Plan section of this document.

- E. The proposal must comply with the criteria of Metro Code Sections 3.09.050(d).

The proposal is consistent with the Metro Code as detailed in Metro Code section of this document.

MMC Section 19.903 states that proposals for zoning map amendments must provide evidence that all requirements of this title relative to the proposed use or uses are satisfied, in addition to addressing the following:

- A. Applicable requirements of Section 19.1003.

The annexation application and associated map amendment requests were made on forms prescribed by the City and were accompanied by appropriate maps and supporting documentation.

- B. Reasons for requesting the zoning map amendment.

The zoning map amendment request is made in conjunction with an annexation petition pursuant to MMC Section 19.1502.1.A, which states that annexation petitions shall include a request for comprehensive plan and zoning designations.

- C. Description of existing site conditions, including but not limited to topography, public facilities and service, natural hazards, natural areas or open space, historic sites, transportation, current uses of the subject site and current zoning of the subject site.

The site is contiguous to the existing city limits and is within the City's urban growth management area (UGMA). It is composed of one property on Harmony Rd. The property is 0.53 acres in size. The site is developed with a single-family residence, which is currently vacant. The site is bounded to the north by properties within the City of Milwaukie and to the south by Harmony Rd. Access to the Site is currently obtained through Harmony Rd.

The City currently provides water and sewer service to the site and would continue to do so after annexation.

The site's existing zoning designation in the County is Light Industrial (I2) and its land use designation is Industrial. The proposed zoning and land use designations upon annexation to the City are Business Industrial (BI) and Industrial, respectively. The site also has a regional Title 4 Employment Area designation. There is no proposal to change that designation at this time.

- D. Description of the intended use or uses.

The intended use is an office for a company that handles freight and shipping arrangements for manufacturers and other large-scale shippers.

- E. Identification on a detailed site plan of public facilities both existing and proposed; existing and proposed structures and site development details, including display of setback and other zoning standards compliance information; and an indication of mitigation or other measures proposed for purposes of health, safety or welfare within the community.

The applicant seeks to expand the existing structure on the site. A preliminary site plan was provided with the development proposal application. The applicant's site plan demonstrates that the annexation properties can be developed in accordance with BI zone development standards. Mitigation of development impacts will likely include construction of storm water treatment and management facilities at the time of development.

- F. The approval criteria of Section 19.905, which include the following:

1. The proposed amendment must conform to applicable comprehensive plan goals, policies and objectives and be consistent with the provisions of city ordinances, Metro urban growth management functional plan and applicable regional policies.

The proposal is consistent with the Milwaukie Comprehensive Plan, Metro Code, and UGMA agreement as detailed in later sections of this document. The proposal does not conflict with Metro's Title 4 Employment provisions.

2. The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The planning commission and city council shall use its discretion to weigh these factors in determining the intent of the proposed zone.

The potential future development that would ensue as a result of annexation and the application of a BI zone designation will be consistent with the predominant land use pattern in the area. There are no known potential adverse effects associated with either the annexation or a BI zone designation that could not be addressed through the land use or building permit review process at the time of development.

3. The proposed amendment will meet or can be determined to reasonably meet applicable regional, state or federal regulations.

No known federal regulations apply to this annexation. The proposed annexation and BI zoning designation will meet or can be determined to reasonably meet applicable State, Metro, and County regulations. ODOT has determined that neither action will significantly impact state highway facilities. Metro has confirmed that neither action will conflict with Metro's Title 4 Employment provisions. The City has determined that the annexation is consistent with its UGMA agreement with the County.

4. The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

The City currently provides water and wastewater service to the annexation property. The existing public facilities can accommodate the anticipated development of the site without restricting future development in the area.

5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A

transportation impact study may be required subject to the provisions of Chapter 19.1400.

The annexation property is currently zoned for industrial uses in the County. The City has two industrial zones that could be applied to the properties, Business Industrial and Manufacturing. Staff believes that a Manufacturing zoning designation is not appropriate for the annexation properties due to the absence of any properties zoned Manufacturing in this area. The M zone allows manufacturing uses that generally require several acres of land; offices are allowed when accessory to manufacturing uses. Like the County's I2 zone, the BI zone allows light industry as well as business and professional offices that support industrial uses and can locate on smaller parcels. Both land uses are designated Industrial in the City's Comprehensive Plan.

The applicant's development proposal application triggered a transportation impact study. Street improvements consistent with MMC Chapter 19.1400 will likely be required as a condition of land use approval to mitigate for the proposed development's impacts and to protect the functional classification, capacity, and level of service of Harmony Rd.

Milwaukie Comprehensive Plan

Chapter 2 Plan Review and Amendment Process states that all amendments to the Comprehensive Plan, including map amendments associated with annexations, shall be evaluated based on the following criteria:

A. Conformance with the Comprehensive Plan, its goals, policies, and spirit.

The proposal is consistent with the Milwaukie Comprehensive Plan as detailed throughout this section. Specifically, it is consistent with the following applicable Comprehensive Plan elements:

- *Economic Base and Industrial/Commercial Land Use Element of Chapter 4*
- *Public Facilities and Services Element of Chapter 5*
- *City Growth Element of Chapter 6*

B. Public need for the change.

The annexation property is in the City's UGMA and immediately adjacent to the city limits. Creation of the City's UGMA and development of the UGMA agreement with the County provides for the eventual annexation of UGMA properties into the City for the express purpose of: (1) extending urban services to these properties in an orderly and timely manner, and (2) delivering services to these properties through a single service provider

where possible. In keeping with the UGMA agreement, annexation of this property will allow the City to become a single service provider for the site. New zoning and land use map designations are necessary for all annexations pursuant to MMC Section 19.1502.1.A, which states that annexation petitions shall include a request for comprehensive plan and zoning designations. The annexation property cannot retain its County designations upon annexation to the City.

- C. Public need is best satisfied by this particular change.

The Comprehensive Plan supports the adequate supply of industrial land and the provision of urban services to industrial lands.

A BI zoning designation is consistent with the existing zoning and land use pattern in the area and will better protect the functional classification, capacity, and level of service of Harmony Rd than a Manufacturing zoning designation.

- D. The change will not adversely affect the health, safety, and welfare of the community.

The proposal will not adversely affect the health, safety, or welfare of the community.

- E. The change is in conformance with applicable Statewide Planning Goals.

- Goal 1 requires local governments to establish a land use planning process as a basis for all decisions and actions to ensure a factual basis for such decisions.

The proposal is consistent with all applicable State, Metro, County, and City policies, agreements, provisions, and regulations as detailed in this document.

- Goal 11 requires development of public facility plans that ensure the orderly and timely provision of public services.

The proposal is consistent with the City's UGMA agreement with the County and the North Clackamas County Public Facilities Plan, which provides a framework for ensuring cost-effective service provision in urbanizing areas.

- F. The change is consistent with Metro Growth Management Functional Plan and applicable regional policies.

The proposal is consistent with the Metro Growth Management Functional Plan and applicable regional policies as detailed in the Metro Code section of this document.

Chapter 4's Economic Base and Industrial/Commercial Land Use Element states that the City should support and encourage the development of a broad industrial base in the City. Planning objectives include the following:

- Objective #1 – Economic Development: The City will encourage an increase in the overall economic development activity within the City.

The applicant proposes to annex a 0.53-acre site into the City and to develop the site with an office use consistent with the City's Business Industrial zone. The business will be moving to the site from its current location at 12300 SE Mallard Way Suite 270, further north in Milwaukie's BI zone. The new site would allow the organization to expand beyond its current size.

- Objective #4 – Industrial Land Use: To encourage new industries to locate within the three major industrial areas of the City, in order to take maximum advantage of existing access and public facilities serving industry. Properties adjacent to industrial areas will be evaluated against the following criteria when an industrial designation is proposed:

- (a) Those having an historical commitment to industrial use.

The annexation property is presently developed with a single-family residential structure but is zoned for industrial uses in the County. The property is adjacent to the City's Business Industrial zone to the west, north, and east, which is committed to industrial use.

- (b) Access to a regional transportation network, which should include one or more of the following: freeway, major or minor arterial access, or rail service.

The annexation property is in close proximity to Highway 224 and has direct access to Harmony Rd, an arterial road.

- (c) Significant traffic increase shall not result on streets of collector or less status serving low-density residential areas.

Traffic generated by future development on the annexation properties will be distributed to arterial and collector streets including Lake Rd, Harmony Rd, Highway 224, and Linwood Ave.

- (d) Areas with sites large enough to accommodate expansion of individual establishments or serve several establishments within one district.

The annexation property is 0.53 acres in size. This site will allow the organization to expand beyond its current size.

- (e) Compliance with all applicable Plan policies.

The proposal complies with all applicable Comprehensive Plan policies as detailed throughout this section.

The Public Facilities and Services Element of Chapter 5 states that the City should plan, develop, and maintain a timely, orderly, and efficient arrangement of public facilities and services to serve urban development.

As detailed elsewhere in this document, the City can continue to adequately provide urban services to the annexation property without impacting existing development or restricting future development in the area.

The City Growth Element of Chapter 6 of states that the City should establish a consistent framework for providing municipal services to the urbanized, unincorporated area surrounding the City. Planning objectives include the following:

- Objective #1 – Unified System of Governance: To encourage and participate in efforts to define a unified system of government for the northwest urban area of Clackamas County.

As defined in the Milwaukie Comprehensive Plan, a unified system of government is one in which a single entity provides most urban services. Annexation will result in the City becoming the primary urban service provider for the annexation property.

- Objective #2 – Urban Service Area: To establish an area within which the City will participate in planning, coordinating and providing services.

The annexation property is within the City's recognized urban service area as outlined in the City's UGMA agreement with the County.

- Objective # 3 – Annexation: To ensure that City Annexation policies conform to urban service and growth management policies.

As detailed elsewhere in this document, the annexation is consistent with the City's regulations governing annexations pursuant to MMC Chapter 19.1500 Boundary Changes and the City's UGMA agreement with the County.

- Objective # 5 – Economic Balance in Land Use and Service Demand: To maintain an economically advantageous balance of residential, commercial, and industrial land base and land use.

The annexation property is zoned for industrial uses in the County and has a regional Title 4 Employment designation. The City sees no reason to radically alter the property's existing County and regional designations.

- Objective #6 – Cost of Services: To ensure that the cost of urban services provision is paid equitably by all who receive them.

Annexation will ensure that the annexation property pays for the City services it is proposing to use.

- Objective #7 – Extension of Services: To enable the City to maintain and extend adequate service levels as city growth occurs.

As detailed elsewhere in this document, the annexation property desires additional City services to develop, and the City can adequately provide urban services to the annexation property without impacting existing development or restricting future development in the area.

Metro Code

The Oregon State Legislature directed Metro to establish boundary change approval criteria to be used by all cities and properties within the regional Urban Growth Boundary (UGB). The City and the proposed annexation properties are within the UGB. To approve a boundary change, the City shall apply the criteria and consider the factors set forth in subsections (d) and (e) of Metro Code Section 3.09.045, which are as follows:

To approve a boundary change, the City shall:

1. Find that the change is consistent with expressly applicable provisions in:
 - A. Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - B. Any applicable annexation plan adopted pursuant to ORS 195.205;
 - C. Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;
 - D. Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - E. Any applicable comprehensive plan.

There are no adopted agreements in place pursuant to ORS 195.065. The Clackamas County Comprehensive Plan was reviewed for applicable policies and provisions related to annexations. Of the few relevant policies and provisions found, all were duplicative of the provisions contained in the UGMA agreement and the policies contained in the Milwaukie Comprehensive Plan, against which this annexation has already been reviewed. As detailed

elsewhere in this document, the annexation is consistent with all other existing applicable planning agreements and plans.

2. Consider whether the boundary change would:
 - A. Promote the timely, orderly and economic provision of public facilities and services;
 - B. Affect the quality and quantity of urban services; and
 - C. Eliminate or avoid unnecessary duplication of facilities or services.

As detailed elsewhere in this document, annexation would promote the timely and orderly provision of public facilities and services to the annexation property. All public facilities and services needed for future development of the annexation property are presently in place, and use of such facilities would not affect service to existing development or restrict future development in the area.

Title 4 of Metro Code Chapter 3.07 Urban Growth Management Functional Plan calls for a strong economic climate. To improve the region's economic climate, Title 4 seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs), Industrial, and Employment Areas.

The annexation property has a Title 4 Employment Area designation. Metro has confirmed that there is no conflict between the property's existing Title 4 designation and a Business Industrial zoning designation because the City's Business Industrial zone is already in compliance with the employment lands section of Title 4.

Urban Growth Management Area (UGMA) Agreement

The City and Clackamas County have an UGMA agreement that provides for the coordination of effective and efficient service delivery in areas of mutual interest that are adjacent to the City. Section C.6 of the Agreement provides the following: Arterial roads shall be considered for transfer on a case-by-case basis. Terms of transfer for arterial roads shall be negotiated and agreed to by both jurisdictions.

The annexation property is located within the UGMA. The UGMA agreement supports the extension of urban services to the property and the establishment of the City as the primary urban service provider.

The annexation property has a frontage on Harmony Rd, which is an arterial road under County jurisdiction. Annexing a portion of it would fragment the County's jurisdiction and complicate capital project planning and maintenance tasks, resulting in administrative and maintenance inefficiencies. The City is not interested in or required to annex this portion of Harmony Rd at this time.

Oregon Revised Statutes 2007

ORS Chapter 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation, streets, roads, and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements.

No urban service agreements have been adopted pursuant to this statute in this area of the County as of yet.

APN: 00097102

Statutory Warranty Deed
- continued

File No.: 7072-1296894 (DJH)
Date: 10/30/2008

EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Clackamas, State of Oregon, described as follows:

12E31D 01600

Beginning at the Southeast corner of the J.D. Garrett Donation Land Claim in Township 2 South, Range 2 East of the Willamette Meridian in the County of Clackamas and State of Oregon; thence South 89°50' West along the South line of said claim 837.50 feet; thence North 226.10 feet to the center line of Foster Road and the true point of beginning; thence South 64°53' West along the center line of Foster Road 23.57 feet; thence North 259.91 feet; thence East 126.34 feet South 199.60 feet to the center line of Foster Road; thence South 64°24' West along the center line of Foster Road 116.43 feet to the true point of beginning.

Excepting therefrom that portion lying within the boundaries of SE Harmony Road, including but not limited to the portion thereof conveyed to the State of Oregon, by and through its State Highway Commission by Deed Recorded March 28, 1967 in Book 687, Page 584, Clackamas County Deed Records.

Note: This legal description was created prior to January 1, 2008.



Exhibit "A" to Annexation Petition

MAP

1

2E

31DD

NO. 1 / NO. 2

201
3.17Ac.
12201

C=140
A=25°24'
T=283.65'
560.0'

STANLEY

NO. 313

S.S. FIELDS RD. NO. 1438

1230

13 Ac.
1 Ac.

1504
5831

1505
5841

1900
2.79 Ac.

2000
0.91 Ac.

100
4.70Ac.
12363
12589

-2

39

18

55

12

55

1301

80

116

119

119

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1503
5821

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SEE MAP
12E31D
SUPPL I

I-2

1800
0.17 Ac.

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6127

5999
6151

6115

6127

6151

6175

6200

6224

6248

6272

6296

6320

6344

6368

6392

6416

6440

6464

SEE MAP 2 2E 06AA

S.E. COR
JOHN D GARRETT
DLC. 38

12-51

12-169
I-3

MILLWUKIE

FOSTER - MILWAUKIE RD.

LAKE

ROAD

ROAD

ROAD

ROAD

ROAD

ROAD

ROAD

ROAD

ROAD

SEE MAP 2 2E 06AA

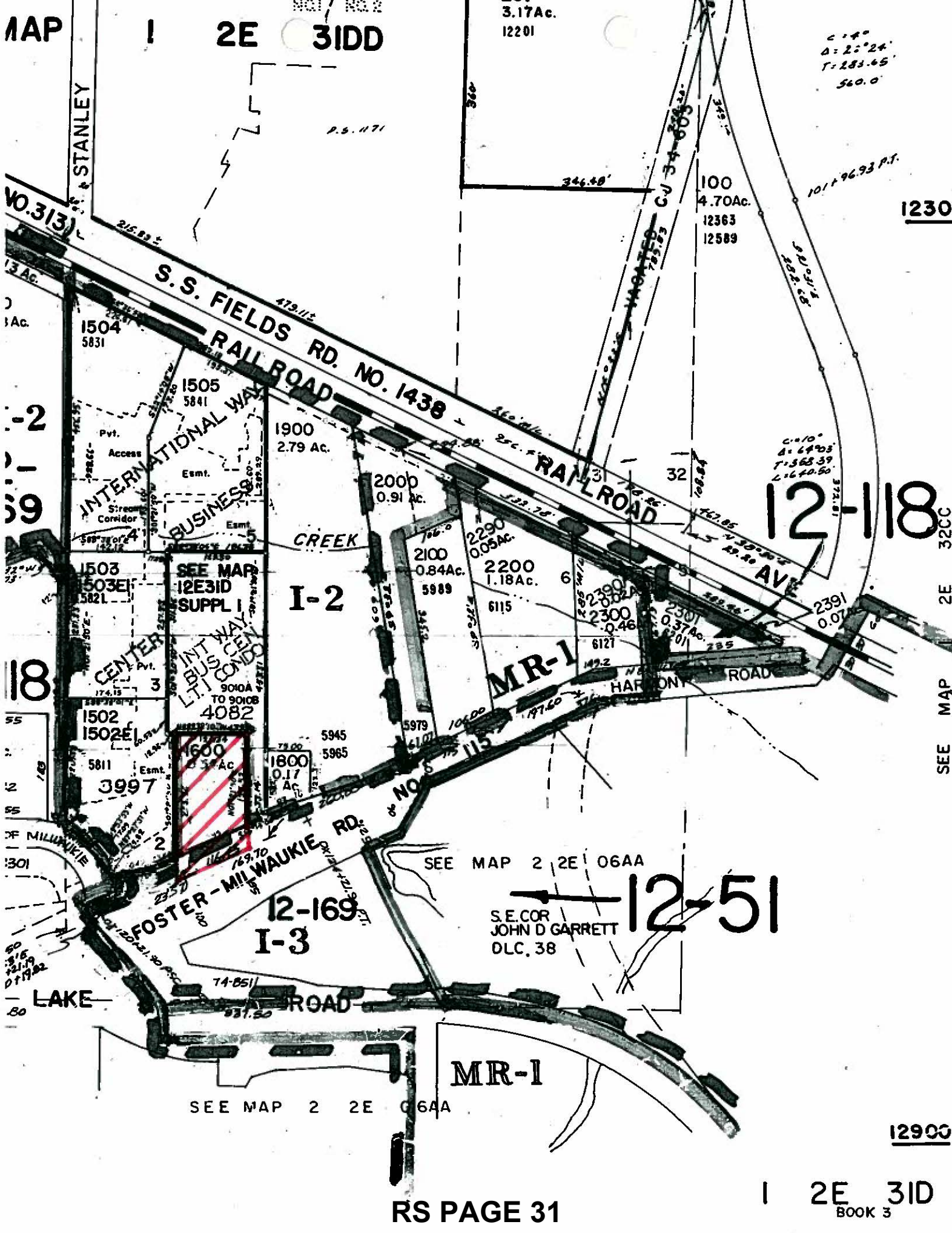
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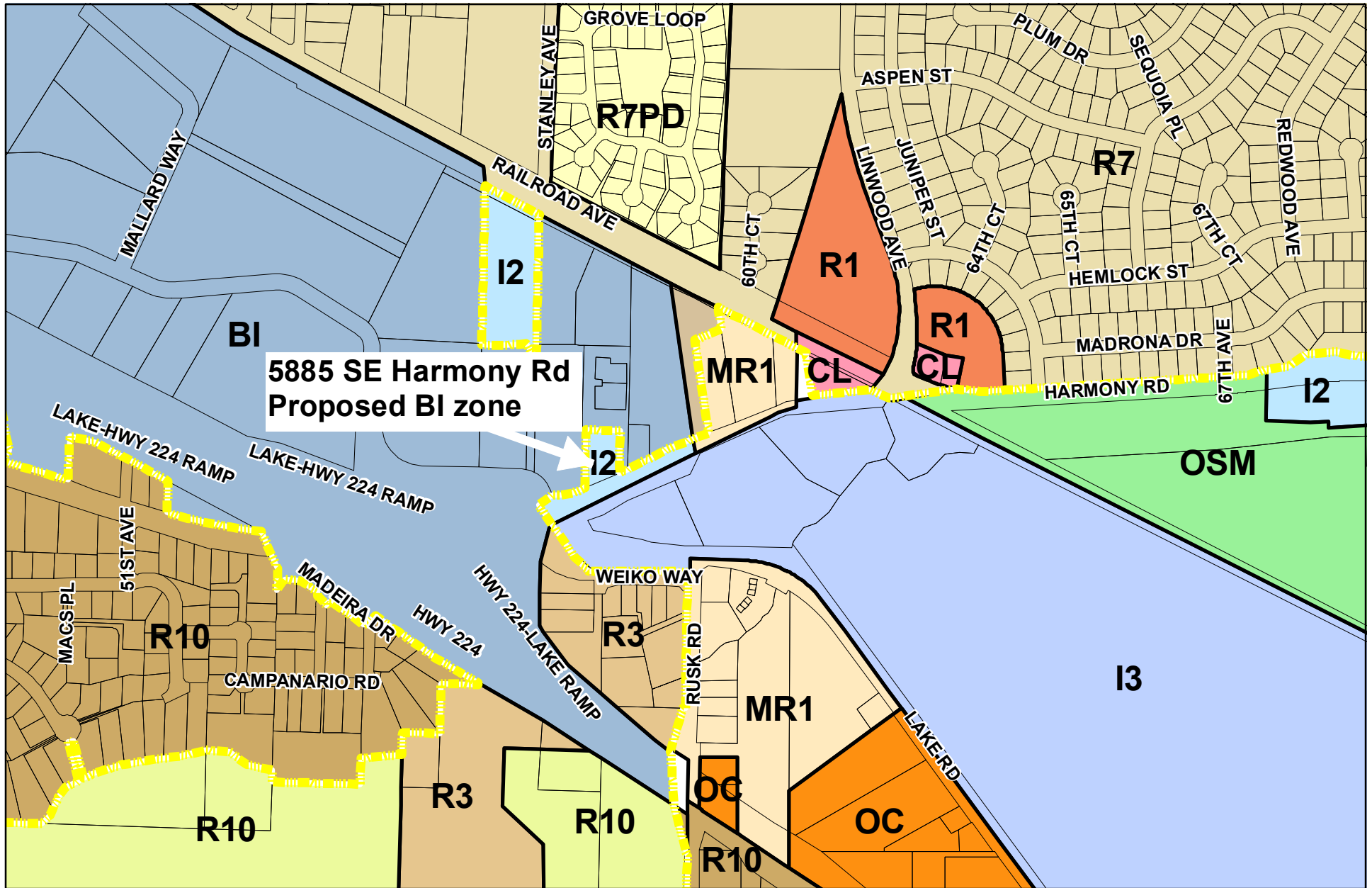
12900

1 2E 31D
BOOK 3

RS PAGE 31

SEE MAP 2E 32CC

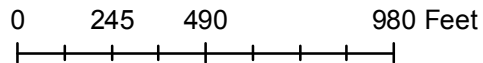




5885 SE Harmony--Zoning



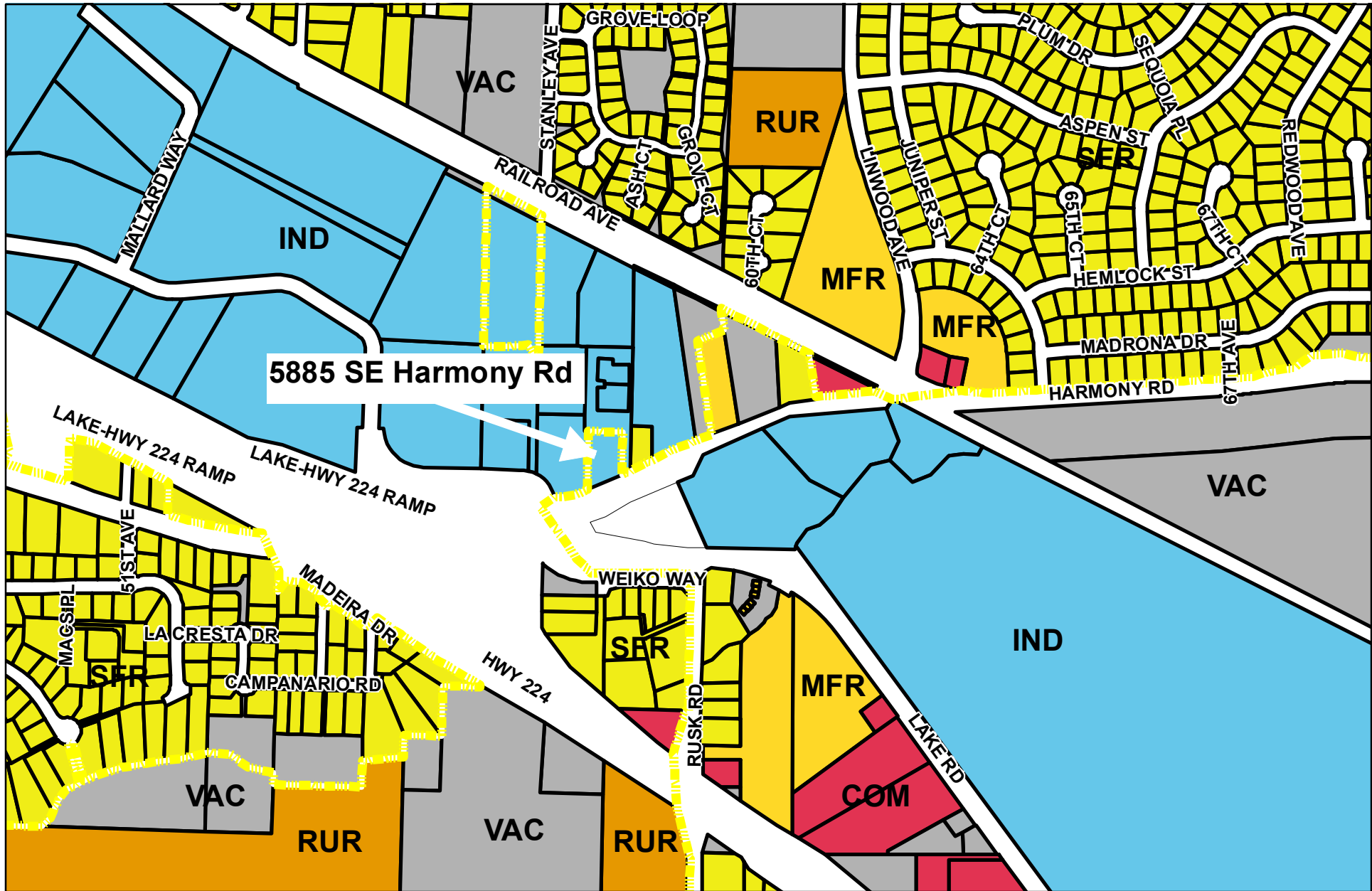
1 inch equals 500 feet



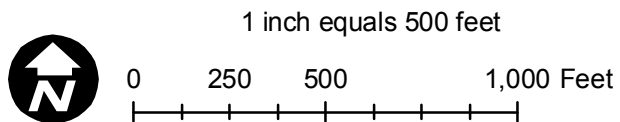
Author: City of Milwaukie Planning Department, April 2008
 Source: City of Milwaukie GIS, Clackamas County GIS, Metro Data Resource Center
 All data depicted is approximate.
 Not suitable for building or engineering purposes.



MILWAUKIE
Dogwood City of the West

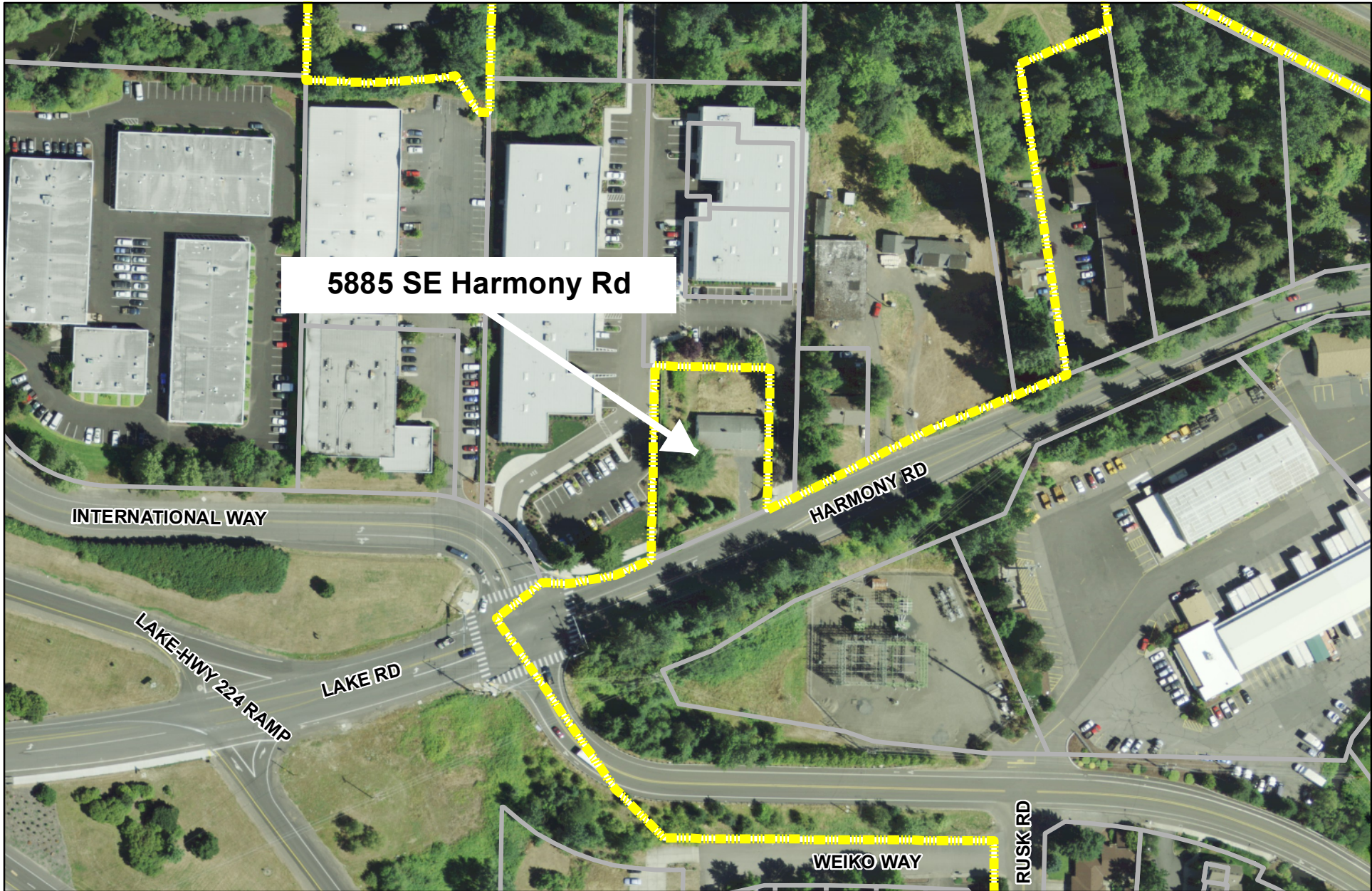


5885 SE Harmony--Land Use



Author: City of Milwaukie Planning Department, August 2009
 Source: City of Milwaukie GIS, Clackamas County GIS, Metro Data Resource Center
 All data depicted is approximate.
 Not suitable for building or engineering purposes.

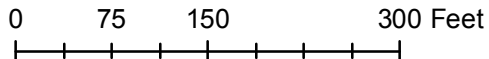




Site Map



1 inch equals 150 feet



Author: City of Milwaukie Planning Department, July 2009
Source: City of Milwaukie GIS, Clackamas County GIS, Metro Data Resource Center
All data depicted is approximate.
Not suitable for building or engineering purposes.



MILWAUKIE
Dogwood City of the West



PLANNING DEPARTMENT
6101 SE JOHNSON CREEK BLVD.
MILWAUKIE, OREGON 97206

PHONE: (503) 786-7630
FAX: (503) 774-8236

Application for Land Use Action

ANNEXATION

- Admin. I Minor QJ Leg.
 Admin. II Major QJ NA

Type: Nonexpedited Expedited

RESPONSIBLE PARTIES:

(Please print or type)

APPLICANT(S): Paul Norr, Attorney at Law

Phone: 503-228-3862

Address: 5550 SW Macadam Avenue, #330, Portland, OR

Zip: 97239

PROPERTY OWNER(S): Anson Baker, Trustee

Phone: 503-353-0016

Address: 12300 SE Mallard Way #270, Milwaukie, OR

Zip: 97222

SITE INFORMATION:

Address: 5885 SE Harmony Road

Map & Tax Lot(s): 12E 31D 01600

Comprehensive Plan Designation:

Zoning: County I2

Size of property: 23,000 SQ. FT.

PROPOSAL (describe briefly):

Annexation to the City of Milwaukie and Zone Change to City "BI"

(Business-Industrial) from current County "I2".

PLEASE NOTE: The Land Use Committee (LUC) of your Neighborhood District Association (NDA) will receive a review copy of this application. They may contact you and/or you may wish to contact them:

NDA:

LUC Chair:

Phone:

ATTEST: I am the property owner or I have attached the owner's authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by:

Paul Norr
Paul Norr, Attorney

Date:

6/10/09

THIS SECTION FOR OFFICE USE ONLY:

File #:

A-09-01

Fee: \$

100 -

Rcd. by:

SPS

Date stamp:

Notes:

RECEIVED

JUN 11 2009

CITY OF MILWAUKIE
PLANNING DEPARTMENT

PAUL NORR
ATTORNEY AND COUNSELOR AT LAW

OF COUNSEL TO REEVES, KAHN & HENNESSY

5550 S.W. MACADAM AVENUE, SUITE 330
PORTLAND, OREGON 97239
PHONE: 503-228-3862
FAX: 503-225-1028
E-MAIL: PAULNORR@IPNS.COM
WEB: WWW.PAULNORRLAW.COM

HAND DELIVERED

July 9, 2009

Li Alligood,
Assistant Planner
Community Development
City of Milwaukie
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

RE: Re-Submitted Application for Annexation and Zone Change
for 5885 SE Harmony Road

Dear Li:

This letter and the enclosed materials are in response to
your letter dated July 1, 2009. Enclosed are:

- A. The revised application packet with 2 large Assessor's maps;
- B. 24 copies of the revised application packet (except for the 2 large Assessor's maps);
- C. The original of my letter dated June 10, 2009; and
- D. The original "Code Narrative" submitted June 10, 2009. To avoid confusion, please note that the revised narrative is titled "Revised Code Narrative", and each page of the revised narrative is dated "07/07/09" in the footer.

Li Alligood
July 7, 2009
page 2

(RE: 5885 SE Harmony Road)

The following is in response to the numbered "Completeness" items of your July 1st letter:

1. The 24 copies are enclosed.
2. The following was added to the narrative on page 6 under MCC 19.903.1.C.:

Water service is provided to the site by Clackamas River Water, 16770 SE 82nd Drive, Clackamas, OR 97015, phone 503-722-9220. Sanitary sewer service is provided by the City of Milwaukie, 6101 SE Johnson Creek Blvd., Milwaukie, OR 97206, phone 503-786-7600.

- 3.A. & 3.B.** The following was added as Section V, Service Providers, on pages 8-9:

The property is served by the following service and franchise providers:

Water: Clackamas River Water, 16770 SE 82nd Drive, Clackamas, OR 97015,

Sewer: City of Milwaukie, 6101 SE Johnson Creek Blvd., Milwaukie, OR 97206

Public Safety: Clackamas County Sheriff, 2223 Kaen Road, Oregon City, OR 97045

Cable: Comcast, 9605 SW Nimbus Ave., Beaverton, OR 97008

Natural Gas: NW Natural, 220 SW Second Avenue, Portland, OR 97209

Electricity: PGE, 121 SW Salmon Street, Portland, OR 97204

Telecommunications: Qwest, 1801 California Street #5100, Denver, CO 80202

Garbage: Waste Management: 32650 SR-20 Suite E-105, Oak Harbor, WA 98277

Li Alligood
July 7, 2009
page 3

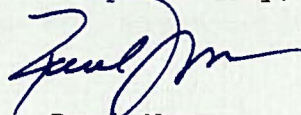
(RE: 5885 SE Harmony Road)

- 3.C. Two certified copies of the full-size County Assessor's Quarter Section Map are enclosed.
- 3.D. One reduced 8½" x 11" copy of the full-size County Assessor's Quarter Section Map is enclosed.
- 4. Following is the revised paragraph under METRO Functional Plan, Title 4, on page 4:

The site is not located within a designated Regionally Significant Industrial Area or a Regionally Protected Industrial Area, however the site is located within a designated Employment Area subject to METRO Functional Plan Title 4, Section 3.07.430. The requested annexation and zone change will allow re-development of the site to accommodate an industrial-related transportation business that will employ 8 people at a site that previously had no employment. The annexation complies with Section A, B, C, D, and E of Section 3.07.430 because the annexation and requested BI zoning would not allow the type of commercial retail development prohibited by Section 3.07.430.

Please let me know if you require any additional materials. Please confirm for me that Planning Commission hearing date is August 25, 2009.

Respectfully,



Paul Norr

PN/2
c: Anson Baker, Trustee

Owner's Statement of Authorization for Land Use Application

I am the owner of the property known as 5885 SE Harmony Road, Milwaukie, Oregon, also known as Map & Tax Lot 12E 31D 01600. I authorize my attorney, Paul Norr, to sign and submit an Application for Land Use Action for annexation of my property to the City of Milwaukie and for a zone change from County I2 to City BI zoning.

Thank you.

A handwritten signature in black ink, appearing to read "Anson R. Baker", written over a horizontal line.

Anson R. Baker, Trustee of the

Baker Living Trust, dated December 10, 2007

**Revised Code Narrative
for Non-Expedited Annexation
to the City of Milwaukie**

(Property: 5885 SE Harmony Road)

This narrative accompanies the application for the single-lot annexation of 5885 SE Harmony Road (Map 12E 31D 01600) from unincorporated Clackamas County to the City of Milwaukie. The property has one owner (Anson Baker, Trustee) and no registered voters. The property is approximately 23,300 square feet in size.

Simultaneously with the annexation to the City of Milwaukie, the applicant requests a zone change from the County I2 industrial designation to the City BI industrial designation. Both designations allow offices, manufacturing, and warehouse distribution uses. The "Table 1" automatically assigned City designation of "M" industrial does not allow the applicant's office use similar to the County I2 zoning. All surrounding property located in the City of Milwaukie is zoned BI.

In Section V below is list of urban service providers and franchise service providers requested in the City's letter dated July 1, 2009.

I. City Annexation Approval Criteria

A. MMC 19.1502.3.A.

The site is within the City of Milwaukie urban growth management area (UGMA).

B. MMC 19.1502.3.B.

The site is contiguous to the current City of Milwaukie boundary on the West, North, and East. Adjacent to the South is Harmony Road and the Clackamas County boundary line. Within the past year the Milwaukie City Council has approved annexation of the property immediately to the East of the applicant's 5885 SE Harmony Road site (5900, 6011, and 6019 SE Harmony Road).

C. MMC 19.1502.3.C.

The requirements of the Oregon Revised Statutes (ORS 222.125) for initiation of the annexation process are met with this application because the sole owner of the property (Anson Baker, Trustee) has consented in writing and there are no registered voters residing in the territory to be annexed.

D. MMC 19.1502.3.D.

The proposal is consistent with the applicable Milwaukie Comprehensive Plan Chapter 6 policies because it will allow the delivery of existing City services to the site, which will in turn allow re-development of the site. The site cannot re-develop without annexation because Clackamas County cannot provide sewer service to the site. The City of Milwaukie is the only available service provider.

Approval of this application would continue the orderly annexation of property located within the City's UGMA. The City has the ability to provide required City services. The sole property owner is requesting annexation.

E. MMC 19.1502.3.E.

This application and the accompanying materials meet the submission requirements of Metro 3.09.040. The approval criteria of Metro 3.09.050, which incorporates 3.09.045 (d) and (e), are satisfied because this annexation would promote the timely, orderly, and economic provision of public facilities and services consistent with the location of the site within the City's UGMA.

As demonstrated by the application materials, urban services currently being provided by non-City service providers can continue, and the City can provide the remaining needed urban services, particularly sanitary sewer service not otherwise available to the site.

Simultaneously with the annexation to the City of Milwaukie, the applicant requests a zone change from the County I2 industrial designation to the City BI industrial designation, Since the current County and proposed City zones are both industrial designations, the annexation will not impact the inventory of industrial land but will allow development consistent with City zoning sooner.

II. METRO Annexation Requirements

A. METRO 3.09.040

Informational requirements of 3.09.040 are met with the application and accompanying materials.

B. METRO 3.09.050(d)

As discussed above, the approval criteria of Metro 3.09.050, which incorporates 3.09.045 (d) and (e), are satisfied because this annexation would promote the timely, orderly, and economic provision of public facilities and services consistent with the location of the site within the City's UGMA.

As demonstrated by the application materials, urban services currently being provided by non-City service providers can continue, and the City can provide the remaining needed urban services, particularly sanitary sewer service not otherwise available to the site.

Simultaneously with the annexation to the City of Milwaukie, the applicant requests a zone change from the County I2 industrial designation to the City BI industrial designation, Since the current County and proposed City zones are both industrial designations, the annexation will not impact the inventory of industrial land but will allow development consistent with City zoning sooner.

C. METRO Functional Plan

The annexation application complies with the METRO Urban Growth Management Functional Plan as follows:

1. Title 1 - The proposed 23,300 square foot annexation has no measurable impact on either housing or employment in the METRO area. To the extent it can be meaningful, the

annexation will provide City sewer service that will in turn allow re-development for a business use that will employ 8 people.

2. Title 2 - The proposed small annexation will not impact vehicle trips and parking in the METRO area. To the extent it is meaningful, annexation and application of the City's BI zoning will allow site re-development consistent with the surrounding properties, thereby efficiently increasing the number of compatible businesses within an existing transportation network.
3. Title 3 - There are no water quality issues relating to this site. To the extent it is meaningful, annexation will allow sewer service to be provided to the site, allowing re-development consistent with METRO's clean water goals.
4. Title 4 - The site is not located within a designated Regionally Significant Industrial Area or a Regionally Protected Industrial Area, however the site is located within a designated Employment Area subject to METRO Functional Plan Title 4, Section 3.07.430. The requested annexation and zone change will allow re-development of the site to accommodate an industrial-related transportation business that will employ 8 people at a site that previously had no employment. The annexation complies with Section A, B, C, D, and E of Section 3.07.430 because the annexation and requested BI zoning would not allow the type of commercial retail development prohibited by Section 3.07.430.
5. Title 5 - Title 5 does not apply as the site is within the METRO Urban Growth Boundary.
6. Title 6 - Title 6 does not apply as the site is not within the City of Milwaukie designated downtown Town Center, nor within any other designated Central City, Regional Center, Town Center or Station Community.
7. Title 7 - This Title applies to adoption of the City of Milwaukie's housing strategies, not to this single lot annexation. To the extent this Housing goal might apply, there is currently no housing on the site, and the site is too small to provide any meaningful affordable housing.

8. Title 8 - Since the City of Milwaukie's land use regulations and Comprehensive Plan are in compliance with the METRO Functional Plan, and this annexation application complies with the City's land use ordinances and Comprehensive Plan, the application complies with METRO's Functional Plan.
9. Title 9 - Title 9 addresses METRO's own monitoring and reporting requirements, and does not apply to this single lot annexation.
10. Title 10 - The Title 10 definitions of terms are not approval criteria for this application.
11. Title 11 - Title 11 does not apply since the site is already within the METRO Urban growth Boundary.
12. Title 12 - Title 12 seeks to protect existing residential neighborhoods. This site is within a business-industrial neighborhood, and thus Title 12 does not apply. To the extent it might be deemed to apply, annexation will allow continued law enforcement, clean air enforcement, and noise pollution enforcement. Clean water will be enhanced with the provision of City sewer service.
13. Title 13 - Title 13 does not apply because there are no natural water features, wetlands, or environmentally sensitive areas on or adjacent to this site. To the extent it is meaningful, annexation will allow the site to be efficiently connected with existing City sewer service to increase water quality.

III. Requirements for Zoning Map Amendments (MCC 19.903.1)

A. MCC 19.903.1.A.

The materials required by MCC 19.1003 are included with the application.

B. MCC 19.903.1.B.

The zone change is requested to allow the property to conform with all of the surrounding City BI zoned property. This zone will allow the applicant to remodeling an existing, vacant, run down, approximately 2,500 square foot house into office's for

a company that handles freight and shipping arrangements for manufacturers and other large-scale shippers. The applicant is expected to employ 8 people at this site.

C. MCC 19.903.1.C.

The 23,300 square foot site is flat and rectangular. There are no natural water features or wetlands, natural hazards, natural areas or open spaces, or historical sites, either on the property or affected by potential future re-development. The transportation system and other public services will not be affected by potential future re-development of this small site.

The site, currently zoned County I2, contains a vacant, run down house in need of repair.

Water service is provided to the site by Clackamas River Water, 16770 SE 82nd Drive, Clackamas, OR 97015, phone 503-722-9220. Sanitary sewer service is provided by the City of Milwaukie, 6101 SE Johnson Creek Blvd., Milwaukie, OR 97206, phone 503-786-7600.

D. MCC 19.903.1.D.

The intended use is a business office use consistent with the City BI zone. The applicant's business handles freight and shipping arrangements for manufacturers and other large-scale shippers.

E. MCC 19.903.1.E.

A detailed site plan meeting the requirements of MCC 19.903.1.E. is enclosed with the application materials. This is a relatively flat, rectangular site. No grading is planned.

F. MCC 19.903.1.F.

The approval criteria of MCC 19.905 are discussed below.

IV. Approval Criteria for all Amendments (MCC 19.905.1)

A. MCC 19.905.1.A.

The proposed zoning amendment from County I2 to City BI is consistent with the City's comprehensive plan goals, policies and

objectives, is consistent with City ordinances, the Metro urban growth management functional plan, and applicable regional policies because it allows the orderly, timely, and efficient use of the site more so than would be the automatic application of City M industrial zoning.

Both the City and County designations allow offices, manufacturing, and warehouse distribution uses. The City's "Table 1" automatically-assigned City designation of "M" industrial does not allow the applicant's office use similar to the County I2 zoning. All surrounding property located in the City of Milwaukie is already zoned BI. The proposed office use, an allowed use in the City's BI zoning, promotes compact development and the efficient use of land. Any other City zoning designation would be an illegal "spot zoning".

B. MCC 19.905.1.B.

The anticipated development involves remodeling an existing, vacant, run down, approximately 2,500 square foot house into office's for a company that handles freight and shipping arrangements for manufacturers and other large-scale shippers. The applicant is expected to employ 8 people at this site. There will be no shipments to or from this site, except for traditional office products for use on-site. Customers typically do not visit the site. It is anticipated that 8 parking spaces with be provided on-site.

The site is surrounded by similar industrial and industrial-related office uses, with all surrounding properties now zoned with the same BI Business-Industrial zone. The proposed use is an allowed BI Business-Industrial use, meeting the intent of the BI zone by being consistent with the character of the area and the predominant land use pattern and density of the area. Any other zone for this site would allow uses inconsistent with the surrounding BI zoned properties.

The surrounding area is dominated by similar BI uses on properties recently developed or soon to be developed. Major redevelopment of the area is unlikely any time soon. If such major redevelopment were to occur in the future, having all of the property zoned the same BI zone would facilitate a coordinated and more efficient re-development project.

C. MCC 19.905.1.C.

The proposed zoning amendment from County I2 to City BI is a relatively minor change on an approximately 23,300 square foot site that sits in the middle of other City zoned BI property. This change from a County industrial zone that allows certain business offices to a City business-industrial zone is not the type of change that would be affected by regional, state, or federal regulations.

D. MCC 19.905.1.D.

As shown with the application materials, existing or planned public facilities and services are adequate to accommodate the small re-development of this site without significantly restricting other development in the affected service areas. The facilities and services needed for the proposed use are virtually the same as required for prior uses. Site re-development will improve the appearance of the property but will not significantly increase service demands. The only potential demand impact would be increased vehicle traffic to and from the site. Included in the application materials is a May 21, 2009, Memorandum from DKS Associates confirming the City's acceptance of the applicant's traffic analysis.

E. MCC 19.905.1.E.

Included in the application materials is a May 21, 2009, Memorandum from DKS Associates confirming the City's acceptance of the applicant's traffic analysis. The minimal impact of the proposed re-development and other potential BI uses on this 23,300 square foot site would be consistent with the functional classification, capacity, and level of service of the transportation system.

V. Service Providers:

The property is served by the following service and franchise providers:

Water: Clackamas River Water, 16770 SE 82nd Drive, Clackamas, OR 97015,

Sewer: City of Milwaukie, 6101 SE Johnson Creek Blvd., Milwaukie, OR 97206

Public Safety: Clackamas County Sheriff, 2223 Kaen Road, Oregon
City, OR 97045

Cable: Comcast, 9605 SW Nimbus Avenue, Beaverton, OR
97008

Natural Gas: NW Natural, 220 SW Second Avenue, Portland, OR
97209

Electricity: PGE, 121 SW Salmon Street, Portland, OR 97204

Telecommunications: Qwest, 1801 California Street #5100, Denver,
CO 80202

Garbage: Waste Management: 32650 SR-20 Suite E-105, Oak
Harbor, WA 98277

VI. Summary

Based on the application, the accompanying materials, and the above narrative, the application for annexation to the City of Milwaukie and the zone change from County I2 to City BI should be approved.

///

///

///

3
41




After recording return to:
Baker Living Trust
14230 SE 120th Place
Clackamas, OR 97015

Until a change is requested all tax statements shall be sent to the following address:
Baker Living Trust
14230 SE 120th Place
Clackamas, OR 97015

File No.: 7072-1296894 (DJH)
Date: October 30, 2008

THIS SPACE RESERVED FOR RECORDER'S USE

Clackamas County Official Records **2008-075027**
Sherry Hall, County Clerk



\$41.00

01259931200800750270030034 11/03/2008 03:16:15 PM

D-D Cnt=1 Stn=4 KANNA
\$15.00 \$10.00 \$16.00

First American Title Insurance Company of Oregon
No. 1296894-55

STATUTORY WARRANTY DEED

Charlie Violich, Grantor, conveys and warrants to **Anson R. Baker, Trustee of the Baker Living Trust, dated December 10, 2007**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

Subject to:

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$280,000.00**. (Here comply with requirements of ORS 93.030)

APN: 00097102

Statutory Warranty Deed
- continued

File No.: 7072-1296894 (DJH)
Date: 10/30/2008

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195-336 AND SECTIONS 5 TO 11, OF CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195-336 AND SECTIONS 5 TO 11, OF CHAPTER 424, OREGON LAWS 2007.

Dated this 30th day of October, 2008.

Charlie Violich
Charlie Violich

STATE OF Oregon)
)ss.
County of Clackamas)

This instrument was acknowledged before me on this 30th day of October, 2008
by **Charlie Violich**.

Diane J Hammons



Notary Public for Oregon
My commission expires: 10/8/10

APN: 00097102

Statutory Warranty Deed
- continued

File No.: 7072-1296894 (DJH)
Date: 10/30/2008

EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Clackamas, State of Oregon, described as follows:

Beginning at the Southeast corner of the J.D. Garrett Donation Land Claim in Township 2 South, Range 2 East of the Willamette Meridian in the County of Clackamas and State of Oregon; thence South 89°50' West along the South line of said claim 837.50 feet; thence North 226.10 feet to the center line of Foster Road and the true point of beginning; thence South 64°53' West along the center line of Foster Road 23.57 feet; thence North 259.91 feet; thence East 126.34 feet South 199.60 feet to the center line of Foster Road; thence South 64°24' West along the center line of Foster Road 116.43 feet to the true point of beginning.

Excepting therefrom that portion lying within the boundaries of SE Harmony Road, including but not limited to the portion thereof conveyed to the State of Oregon, by and through its State Highway Commission by Deed Recorded March 28, 1967 in Book 687, Page 584, Clackamas County Deed Records.

Note: This legal description was created prior to January 1, 2008.

File 38767

WARRANTY DEED
(Individual)

Know All Men by These Presents, That I, J. Earl Stewart,
do hereby certify, as grantor, for the consideration of
the sum of One Thousand and No/100 (\$1,000.00) DOLLARS
to the State of Oregon paid, have bargained and sold and by these presents do bargain, sell and convey
unto the STATE OF OREGON, by and through its STATE HIGHWAY COMMISSION, the following described
premises, to wit:

A parcel of land lying in the John D. Garrett D.L.C. #61, Township 2 South, Range 2 East, W.M., Clackamas County, Oregon, and being a portion of that property described in that deed to F. H. and LaDessa G. Hooker, recorded in Book 456, Page 621 of Clackamas County Record of Deeds; the said parcel being that portion of said property included in a strip of land 60 feet in width, lying on the Northwesterly side of the center line of the connection between Lake Road and Harmony Road, which center line is described as follows:

Beginning at Engineer's center line Station "OX" 98+41.59, said Station being 230.57 feet North and 137.68 feet East of the Northwest corner of the Elisha Kellogg D.L.C. #54, Township 2 South, Range 2 East, W.M.; thence South 72° 44' 25" East, 433.98 feet; thence on a spiral curve left (the long chord of which bears South 74° 49' 25" East) 500 feet; thence on a 2291.83 foot radius curve left (the long chord of which bears North 86° 40' 50" East) 1146.33 feet; thence on a spiral curve left (the long chord of which bears North 68° 11' 05" East) 500 feet; thence North 66° 06' 05" East, 278.10 feet to Engineer's center line Station "OX" 127+00.

(Bearing used herein are based upon the Oregon Co-ordinate System, North Zone.)

The parcel of land to which this description applies contains 0.04 acre, more or less.

4416

36/22



BOOK 687 PAGE 584

TO HAVE AND TO HOLD the said premises with their appurtenances, in fee simple, unto the said State of Oregon, by and through its State Highway Commission, its successors and assigns forever.

And I the said grantor do hereby covenant to and with the said State of Oregon, by and through its State Highway Commission, its successors and assigns, that I the owner in fee simple of said premises; that they are free from all encumbrances

and that I will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, I have hereunto set hand and seal this 22nd day of January 1957 Done in presence of:

Wil J. Flumer (SEAL)

441677

Warranty Deed (Individual)

FROM

STATE OF OREGON, ss. County of *Washington*

TO

DEED

687 PAGE 584

Notary Public for Oregon

My commission expires 10/1/57

STATE OF OREGON, ss. County of *Washington* On this 22nd day of January 1957, personally came before me, a Notary Public in and for said county and state, the within named *Wil J. Flumer*, his wife, *...* to me personally known to be the identical person described in, and who executed the within instrument, and who each personally acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein named.

Witness my hand and official seal the day and year last above written. *W. Churchill* Notary Public for Oregon My commission expires 10/1/57

**PETITION OF OWNERS OF 100 % OF LAND
AND PETITION OF A MAJORITY OF REGISTERED VOTERS**

PETITION FOR ANNEXATION TO THE CITY OF MILWAUKIE , OREGON

TO: The Council of the City of Milwaukie, Oregon:

We, the undersigned property owners of and/or registered voters in the area described below, hereby petition for, and give our consent to, annexation of the area to the City of Milwaukie.

The property to be annexed is described as follows: SEE ATTACHED DESCRIPTION

(Insert Legal Description here OR attach it as Exhibit "A")

PETITIONER: Anson R. Baker, Trustee

PROPERTY ADDRESS: 5885 SE Harmony Road

PETITION SIGNERS

**for Single Lot Annexation of 5885 SE Harmony Road
to the City of Milwaukie, Oregon**

OWNER: Petitioner is the sole owner of the subject property.

VOTERS: There are no registered voters in the petition area.

PETITIONER'S ADDRESS: Anson R. Baker
c/o TRG
12300 SE Mallard Way, Suite 270
Milwaukie, OR 97222

PROPERTY DESCRIPTION: Assessor's Map 12E31D 01600

PETITIONER'S SIGNATURE:



Anson R. Baker, Trustee of the
Baker Living Trust, dated December 10, 2007

2/24/09
Date

APN: 00097102

Statutory Warranty Deed
- continued

File No.: 7072-1296894 (DJH)
Date: 10/30/2008

EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Clackamas, State of Oregon, described as follows:

12E31D 01600

Beginning at the Southeast corner of the J.D. Garrett Donation Land Claim in Township 2 South, Range 2 East of the Willamette Meridian in the County of Clackamas and State of Oregon; thence South 89°50' West along the South line of said claim 837.50 feet; thence North 226.10 feet to the center line of Foster Road and the true point of beginning; thence South 64°53' West along the center line of Foster Road 23.57 feet; thence North 259.91 feet; thence East 126.34 feet South 199.60 feet to the center line of Foster Road; thence South 64°24' West along the center line of Foster Road 116.43 feet to the true point of beginning.

Excepting therefrom that portion lying within the boundaries of SE Harmony Road, including but not limited to the portion thereof conveyed to the State of Oregon, by and through its State Highway Commission by Deed Recorded March 28, 1967 in Book 687, Page 584, Clackamas County Deed Records.

Note: This legal description was created prior to January 1, 2008.



Exhibit "A" to Annexation Petition

CERTIFICATION OF LEGAL DESCRIPTION AND MAP

I hereby certify that the description of the property included within the attached petition (located on Assessor's Map 12E31D 01600) has been checked by me and it is a true and exact description of the property under consideration, and the description corresponds to the attached map indicating the property under consideration.

NAME Mary Neigel
TITLE Cartographer II
DEPARTMENT Assessment & Tax
COUNTY OF Clackamas
DATE 02.24.09

(AN)



MAP

1

2E

31DD

201
3.17Ac.
12201

C=40°
A=25°24'
T=283.65'
560.0'

STANLEY

P.S. 1171

NO. 313)

13 Ac.

1 Ac.

-2

1

59

18

55

55

301

301

301

301

301

301

301

301

301

301

301

301

301

1504
5831

1505
5841

1900
2.79 Ac.

1503
1503E1
5821

1502
1502E1
5811

3997

1600
0.57 Ac.

1800
0.17 Ac.

5945
5965

5979
6107

12-169
I-3

LAKE ROAD

12-51

MR-I

SEE MAP 2 2E 06AA

SEE MAP 2 2E 06AA

12900

I 2E 31D

BOOK 3

S. S. FIELDS RD. NO. 1438

INTERNATIONAL WAY
BUSINESS

SEE MAP 12E31D
SUPPL I

INT. WAY
BUS. CEN.
L.T. CONDO

FOSTER - MILWAUKIE RD.

I-2

MR-1

MR-I

RS PAGE 60

346.48'

100
4.70Ac.
12363
12589

1230

101.96.93 P.T.

12-118

32CC

2E

SEE MAP

SEE MAP 2 2E 06AA

S.E. COR
JOHN D GARRETT
DLC. 38

12-51

SEE MAP 2 2E 06AA

12900

I 2E 31D
BOOK 3

13 Ac.

1 Ac.

-2

1

59

18

55

55

301

301

301

301

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301

301

301

301

1504
5831

1505
5841

1900
2.79 Ac.

1503
1503E1
5821

1502
1502E1
5811

3997

1600
0.57 Ac.

1800
0.17 Ac.

5945
5965

5979
6107

12-169
I-3

LAKE ROAD

12-51

MR-I

SEE MAP 2 2E 06AA

SEE MAP 2 2E 06AA

12900

I 2E 31D

BOOK 3

S. S. FIELDS RD. NO. 1438

INTERNATIONAL WAY
BUSINESS

SEE MAP 12E31D
SUPPL I

INT. WAY
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L.T. CONDO

FOSTER - MILWAUKIE RD.

I-2

MR-1

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RS PAGE 60

346.48'

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32CC

2E

SEE MAP

SEE MAP 2 2E 06AA

S.E. COR
JOHN D GARRETT
DLC. 38

12-51

SEE MAP 2 2E 06AA

12900

I 2E 31D
BOOK 3

CERTIFICATION OF PROPERTY OWNERSHIP OF

100% OF LAND AREA

(City 100% Ownership Method)

I hereby certify that the attached petition for a proposed boundary change involving the territory described in the petition contains the names of the owners* of 100% of the land area within the annexation area described in the petition, as shown on the last available complete assessment roll.

NAME Mary Neigel
TITLE Cartographer II
DEPARTMENT Assessment & Tax
COUNTY OF Clackamas
DATE 02.24.09

* "Owner" means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

MA



CERTIFICATION OF REGISTERED VOTERS

I hereby certify that the attached petition for annexation of territory described herein to the City of Milwaukie contains the names of at least a majority of the electors registered in the territory to be annexed. NOTE: There are no registered voters.

NAME FLOYD THOMAS

TITLE DEPUTY CLERK

DEPARTMENT ELECTIONS

COUNTY OF CLACKAMAS

DATE 2-24-09

Floyd Thomas



CLACKAMAS COUNTY ELECTIONS
176112 80th CT, SUITE 100
OREGON CITY, OR 97145

NOTICE LIST

(This form is NOT the petition)

ALL OWNERS OF PROPERTY AND/OR REGISTERED VOTERS INCLUDED IN BOUNDARY CHANGE PROPOSAL AREA.

ONLY ONE OWNER, NO REGISTERED VOTERS

NAME OF OWNER/VOTER	ADDRESS	PROPERTY DESIGNATION (Indicate tax lot, section number, Township and Range)
(1) ANSON R. BAKER, TRUSTEE		12 E 31 D 01600
	% TRG	
(2) 12300 S.E. MALLARD WAY, SUITE 270		
	MILWAUKIE, OR 97222	
(3)		
(4)		
(5)		
(6)		
(7)		

Tax Code: 012-169

Taxable Value:	\$22,909,771
COM COLL CLACK	0.5463
ESD CLACKAMAS	0.3611
SCH NORTH CLACK	4.5995
Total Education	5.5069
COUNTY CLACKAMAS R	2.8469
COUNTY LAW ENHANCED	0.6672
COUNTY PUBLIC SFTY LOC OPT 2006	0.2480
COUNTY SOIL CONS	0.0492
FD 1 CLACK CO	2.3085
PARK N CLACKAMAS	0.5085
PORT OF PTLD	0.0689
SRV 2 METRO - OREGON ZOO	0.0946
UR COUNTY SP	0.0736
URBAN RENEWAL COUNTY	0.6656
VECTOR CONTROL	0.0065
VECTOR CONTROL LOC OPT 2005	0.0250
Total General Government	7.5625
COM COLL CLACK BOND	0.1960
FD 1 CLACK CO BOND	0.0648
SCH NORTH CLACK BOND	0.9401
SCH NORTH CLACK BOND 2006	0.9796
SRV 2 METRO BOND	0.1529
SRV 2 METRO BOND 2006	0.1457
TRANS TRIMET BOND	0.0786
WTR2 CLK RVR BOND	0.0000
Total Excluded from Limitations	2.5577
Total Rate	15.6271

Tax Code: 012-170

Taxable Value:	\$467,564
COM COLL CLACK	0.5463
ESD CLACKAMAS	0.3611
SCH NORTH CLACK	4.5995
Total Education	5.5069
CITY DAMASCUS	3.3000
COUNTY CLACKAMAS C	2.4042
COUNTY PUBLIC SFTY LOC OPT 2006	0.2480
COUNTY SOIL CONS	0.0492
FD 1 CLACK CO	2.3085
PARK N CLACKAMAS	0.5085
PORT OF PTLD	0.0689
ROAD DIST 18 DAM	0.0000
SRV 2 METRO - OREGON ZOO	0.0946
UR COUNTY SP	0.0736
URBAN RENEWAL COUNTY	0.4833
VECTOR CONTROL	0.0065
VECTOR CONTROL LOC OPT 2005	0.0250
WTR CTL 4 CLACK RIVER	0.0000
Total General Government	9.5703
COM COLL CLACK BOND	0.1960
FD 1 CLACK CO BOND	0.0648
SCH NORTH CLACK BOND	0.9401
SCH NORTH CLACK BOND 2006	0.9796
SRV 2 METRO BOND	0.1529
SRV 2 METRO BOND 2006	0.1457
TRANS TRIMET BOND	0.0786
Total Excluded from Limitations	2.5577
Total Rate	17.6349

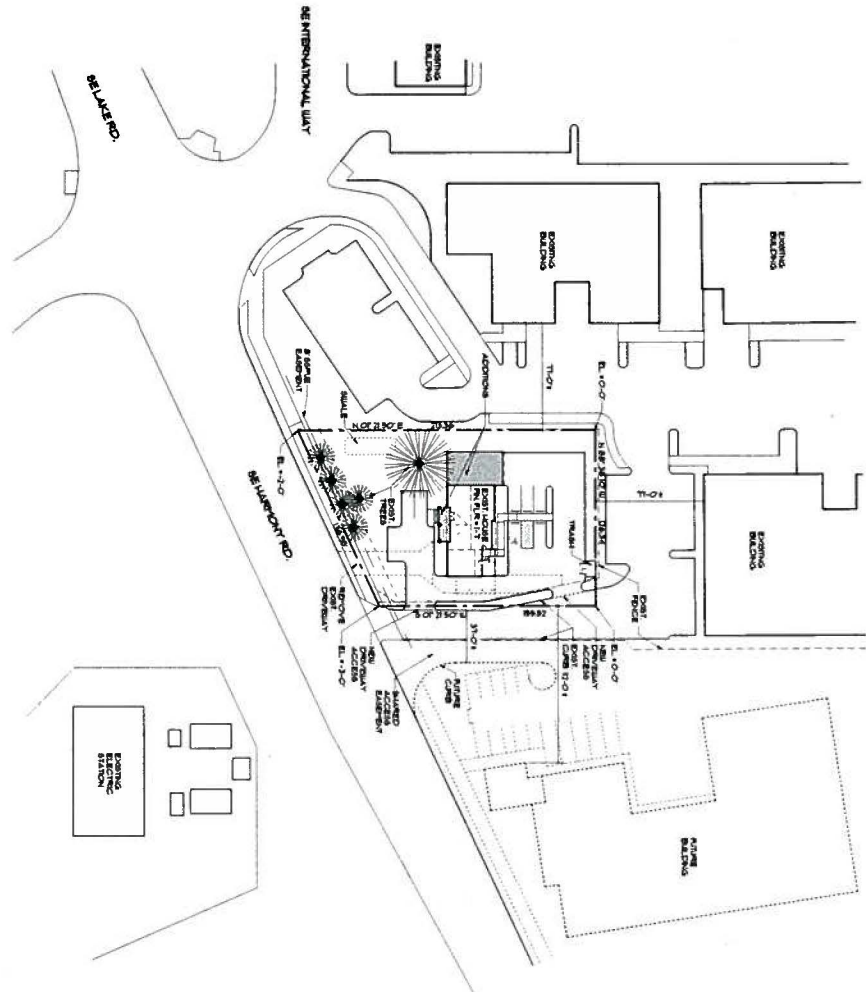


● - SITE : 5885 S.E. HARMONY ROAD

SITE PLAN
T-107



CORNER TO CORNER AREA
 230'00" x 100'00" = 23,000 SQ. FT.
 TOTAL LOT AREA
 230'00" x 100'00" = 23,000 SQ. FT.
 EXISTING BUILDING FOOTPRINT
 100'00" x 100'00" = 10,000 SQ. FT.
 PROPOSED BUILDING FOOTPRINT
 100'00" x 100'00" = 10,000 SQ. FT.
 TOTAL BUILDING AREA
 20,000 SQ. FT.
 TOTAL SITE AREA
 23,000 SQ. FT.



S

JOB NO. 088
 DATE 4/10/09
 REV.

PROPOSED OFFICE REMODEL FOR
TRG LOGISTICS
 5885 SE HARMONY RD.
 MILWAUKEE, OREGON



MITCH G. GILBERT · ARCHITECT ·
 2284 W. 112TH AVE. SUITE 207
 BEAVERTON, OREGON 97005-2709
 (503) 221-4494

**PRELIMINARY
 NOT FOR
 CONSTRUCTION**

ATTACHMENT 4

Utility Providers, Service Providers, and Service Districts Casefile# A-09-01

The site at 5885 SE Harmony Rd is currently served by the following utility and service providers and service districts:

Wastewater: The Site is currently in the Clackamas County Service District #1; however, the City currently serves the Site via its 8-inch wastewater main in Harmony Rd along the Site's frontage. This line can adequately continue to serve the Site.

Water: The Site is currently in the Clackamas River Water district; however, the City currently serves the Site via its 12-inch water line in Harmony Rd along the Site's frontage. This line can adequately continue to serve the Site.

Storm: The Site is not currently connected to a public storm water system. On-site treatment and management of storm water will be required when the property redevelops. Access to a public storm water system will not be necessary in the future.

Fire: The site is currently serviced by Clackamas County Fire District No. 1. It will continue to be served by this district upon annexation since the entire City is within Clackamas County Fire District No. 1.

Police: The site is currently served by the Clackamas County Sheriff's Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. Upon annexation, the site would be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement. The City has its own police department, and this department can adequately serve the Site.

Street Lights: The site is within Clackamas County Service District # 5 for Street Lights. Upon annexation, the site would be withdrawn from this district. The City does not levy a separate tax or assess individual properties for street lighting.

Other Services: Planning, Building, Engineering, Public Works, Code Enforcement, and other municipal services are available through the City and will be available to the Site upon annexation. The Site will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, and Vector Control.

ATTACHMENT 5

Summary of Public Comments Case File #A-09-01

The following is a summary of verbal and written comments received by the City in response to the proposed annexation of 5885 SE Harmony Rd and subsequent application of the Business Industrial zone (Land Use File A-09-01). A staff response, if any, follows each individual comment and is italicized.

- **Alex Campbell, Resource and Economic Development Specialist:** I would definitely concur that adding this area to the City makes sense and is in the best interest of the City. This is another step towards regularizing the City boundary and providing consolidated municipal services within our urban growth management area. I also concur that BI is the most appropriate zoning for the site, notwithstanding that our zoning equivalency table suggests M zoning. First, as you note, the adjacent City zoning is BI. Second, the existing mix of uses and building stock in the area clearly better matches BI, which is more flexible. Finally, the narrower range of uses allowed under M zoning, while appropriate for the larger lots and freight-intensive are of the North Industrial and Johnson Creek Blvd. areas, is not appropriate for the Harmony Road/International Way area.
- **Tom Larsen, Building Official:** No comment at this time.
- **Heather Boll, Planner, TriMet:** I don't have any comments for this annexation.
- **Miranda Bateschell, Planner, Metro:** No comments.
- **Gail Curtis, Senior Transportation Planner, Oregon Department of Transportation:** ODOT has no objections to the annexation of this site from Clackamas County to the City of Milwaukie. Area ODOT facilities will not be affected.
- **Pat Russell, President-Secretary, North Clackamas Citizens Association (NCCA):** The NCCA is concerned about impacts on Minthorn Creek and Mt. Scott Creek, which are located near this site. The creeks are water quality impacted under the Clean Water Act and any improvements cannot further degradate the riparian habitat and water quality. For that reason restrained impervious surfaces and shared driveways offer the best solutions to improve the creeks.

Access along Lake Road has also been a problem and requires controlled access for any increased use of existing driveways and it appears, where possible, that driveways are being shared, along with restricted turning movements. Should Lake Road be widened further in the future, it's quite likely that controlled access to individual lots and businesses will be even more important, especially if the Milwaukie Expressway becomes more like a freeway corridor than its present day parkway improvements with intersecting local streets.

We encourage the protection and planting of native evergreen and deciduous trees, especially large canopied trees like Douglas Firs that can intercept precipitation and reduce flash runoff conditions and contribution to groundwater recharge. Mt. Scott Creek and Minthorn need more cool water flows during the summer and early fall.

We encourage the city to fully disclose the transportation studies in the area over the last twenty years as they have been quite diverse including widening Lake Road to five lanes or more, realigning Lake Road, building a light rail corridor or bus rapid transit corridor, and now the Harmony Road corridor from 82nd Avenue (SR 213) to the Milwaukie Expressway.

Our Association would not object to the conversion of the existing dwelling into an office use with some improved parking/maneuvering, as long as the existing structure is retained for the most part. If there are significant architectural and structural improvements, we would be interested in reviewing the proposed improvements (design review). The mini-storage project next door and the construction of the additional apartments to the west were a disappointment and did not embellish the neighborhood character.

Staff Response: Site access will be determined according to traffic study results. The Site is located several hundred feet from the nearest Water Quality Resource Area.

- **Dick Shook, Member, NCCA:** I agree that this needs to be approached with consideration for the stream riparian corridors, and protecting and planting to cool these water ways.
- **Dolly Macken-Hambright, ad hoc Land Use Committee member, Linwood NDA:** Since the parcel contains one house, to be converted into office space, presumably to accommodate solely office workers directing a transportation company, will have only eight workers and eight parking spaces and will not typically have any customer visitation, we do not see any objection to this request to annex. We do hope that the property will be kept in better visual condition that is has been in the past by granting this action.



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director
Katie Mangle, Planning Director

From: Ryan Marquardt, Associate Planner

Subject: Expedited Annexation Petition for 5111 SE Lake Road
(File A-09-02)
Applicant: David Mealey
Address: 5111 SE Lake Road
Legal Description (Map & Taxlot): 2S 2E 06 BA 00100
NDA: Lake Road

Date: September 8, 2009 for September 15, 2009 Regular Session

Action Requested

Approve application A-09-02, an expedited annexation petition, and adopt the attached ordinance and associated findings in support of approval (Attachment 1). Approval of this application would result in annexation of 5111 SE Lake Road into the City into the City as a Residential use.

History of Prior Actions and Discussions

None.

Background

The applicant seeks annexation to the City of Milwaukie to more easily allow a home occupation at the site. Annexation proposals are subject to City, Metro, and State laws

and regulations. The annexation application has been prepared in accordance with these laws and regulations and meets all applicable approval criteria.

The City is processing this application as an “expedited annexation.” Expedited annexations are authorized by Metro Code Section 3.09.045 and Milwaukie Municipal Code Section 19.1504 and apply when all land owners consent to the annexation and are willing to accept the City’s automatic zoning and land use designations for the annexed property.

Site

The site at 5111 SE Lake Road (“site”), outlined in red in Figure 1, is contiguous to the existing city limits on its north and west sides, and is within Milwaukie’s urban growth management area (UGMA). It is zoned R-10 in Clackamas County. It is bordered by Lake Rd on the south, Lena Ave on the east, and right-of-way for Highway 224 and its on ramp on the north and west. The site contains a main dwelling, a detached accessory dwelling, garage, and barn. The site has a driveway on Lake Rd and also takes access from Lena Ave, which is an unimproved right-of-way that terminates at Highway 224.

The surrounding area consists of a single-family residential neighborhood on the south side of Lake Rd and Highway 224. The business-industrial area on International Way is on the north side of Highway 224 across from the site.



Figure 1: 5111 SE Lake Road and vicinity.

Proposal

The applicant seeks to annex the subject site into the City. Approval of this application would result in the following actions:

- Annexation of 5111 SE Lake Road into the City (Tax Map 2S2E06BA Tax Lots 00100).
- Application of a Low Density Residential (LD) Comprehensive Plan land use designation and a Residential zone R-10 zoning designation to the site.
- Amendments to the City's Land Use Map and Zoning Map to reflect the City's new boundary and the site's new land use and zoning designations.
- Withdrawal of the site from the following urban service providers and districts:
 - Clackamas River Water
 - Clackamas County Service District for Enhanced Law Enforcement
 - Clackamas County Service District No. 5 for Street Lights

The applicant, David Mealey, seeks expedited annexation of the site into the City. The applicant has indicated to staff that he plans to make the dwelling on the site his primary residence and to offer chiropractic services at the site as a home occupation. Though this type of home occupation is allowed outright in the City, the applicant indicates that it would require a conditional use permit in the County. The fact that the applicant can have a home occupation in Milwaukie without further land use review appears to be the primary reason the applicant wishes to annex into the City. Though staff has discussed several land use and zone change options with the applicant, staff is not aware of the applicant's long term plans for the site.

There are multiple aspects of the site that do not conform to the standards in Milwaukie's zoning ordinance. The City would allow these non-conformities to remain and be maintained, per Milwaukie Municipal Code (MMC) 19.800. The City would need to approve any changes to the non-conforming aspects of the site through the procedures in this chapter.

Annexation Petition

The annexation petition is initiated by method of Consent of All Owners of Land. This requires that all property owners¹ and a majority of the electors residing at the site sign the annexation petition. The petition meets the requirements for initiation set forth in Oregon Revised Statutes (ORS) Section 222.125, Metro Code Section 3.09.040, and MMC Section 19.1502.2. Compliance with the requirements of these codes is described in Attachment 1, Exhibit A.

¹ In this case, the applicant is a contract purchaser of the land, and does not yet own the site. The certification of property ownership by the County allows a person who is listed as the purchaser in a recorded land contract to be considered the owner for purposes of an annexation petition.

The petition is being processed as an expedited annexation at the request of the applicant. Under the expedited process a City land use and zoning designation is automatically applied to the site.² The City's automatic land use and zoning designation for this Site is Low Density Residential and Residential zone R-10, respectively. Expedited annexations do not require a public hearing, but Council must adopt an ordinance to implement the proposed annexation.

A public hearing is not required for an expedited annexation. However, all necessary parties, and residents and property owners within 400 feet of the site will be notified of the September 15, 2009 annexation proceedings as required by City, Metro, and State regulations.

Utilities, Service Providers, and Service Districts

The City is authorized by ORS Section 222.120 (5) to withdraw the site from non-City service providers and districts upon annexation of the site to the City. This allows for more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.

Wastewater: The site is connected to sewer through Clackamas County Service District #1 (CCSD#1). The closest city-provided sanitary sewer hook-up is approximately 650 feet away from the site in the Lake Rd right of way. Properties in the City are required to be connected to a public sewer system, and not necessarily the City of Milwaukie's sewer system. Since this property is connected to a CCSD #1 line and the City does not have sewer service available to the site, the site will remain connected to CCSD#1 sewer service after annexation.

Water: The site is connected to a Clackamas River Water (CRW) supply line in the Lake Rd right of way. A 12-inch City water line is available in the Lake Rd right of way to serve the site. The City's Comprehensive Plan policies require that, upon annexation, a property connect to City services if they are available. The applicant has agreed to comply with this policy by connecting to the City water line upon annexation (see attachment 4).

Storm: The site is not currently connected to a public storm water system. The City does not have storm water service available for the site. No change from the existing conditions is required upon annexation. Future development activity on the site would require that stormwater be managed on-site.

² Per Table 1 of Milwaukie Municipal Code Chapter 19.1500 Boundary Changes, the City automatically assigns a City land use and zoning designation based on a property's existing zoning designation in the County.

Fire: Clackamas County Fire District No. 1 currently serves the site. It will continue to be served by this district upon annexation since the entire City is within Clackamas County Fire District No. 1.

Police: The site is currently served by the Clackamas County Sheriff's Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City's police department can adequately serve the site. The site should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.

Street Lights: The site is within Clackamas County Service District # 5 for Street Lights. The site should be withdrawn from this district upon annexation to the City. The City does not levy a separate tax or assess individual properties for street lighting.

Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the site upon annexation. The site will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, and the Vector Control District.

Concurrence

The Engineering and Public Works Departments have reviewed the annexation request and concur with the actions recommended by the Planning Department.

Fiscal Impact

The annexation is expected to have a minimal fiscal effect. The City would gain property tax revenues from the annexation of this property. The property's total assessed value is \$483,846.

Work Load Impact

Workload impacts will be minimal and will likely include, but are not limited to, the following: utility billing, provision of general governmental services, and the setting up and maintenance of property records.

Alternatives

The application is subject to Milwaukie Comprehensive Plan Chapter 6 City Growth and Governmental Relationships, Oregon Revised Statutes Chapter 222 City Boundary Changes, Metro Code Chapter 3.09 Local Government Boundary Changes, and MMC Chapter 19.1500 Boundary Changes.

The City Council has two alternative decision-making options:

1. Continue the application to a later date.
2. Deny the application and adopt findings in support of denial.

Attachments

1. Ordinance
 Exhibit A: Findings in Support of Approval
 Exhibit B: Legal Description and Map of Annexation Tract
2. Applicant's Narrative and Supporting Documentation dated July 8, 2009
3. Written Testimony from Pat Russell, received August 28, 2009
4. Applicant's Performance Agreement to voluntarily hook up to City water service upon annexation of the site

ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING A TRACT OF LAND IDENTIFIED AS 5111 SE LAKE ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM THE TERRITORY OF CLACKAMAS RIVER WATER, CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT, AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS. **(FILE #A-09-02)**.

WHEREAS, the tract of land is contiguous to the City and can be served by city services; and

WHEREAS, the City received written consent from a majority of electors and all owners of land in the territory proposed to be annexed as required by ORS 222.125; and

WHEREAS, the City mailed notice of the public meetings in accordance with Metro Code Section 3.09.045 (b) and Milwaukie Municipal Code Section 19.1504.1; and

WHEREAS, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the tract of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A; and

WHEREAS, the tract of land lies within the territory of Clackamas River Water; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District for Enhanced Law Enforcement; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District No. 5 For Street Lights; and

WHEREAS, the annexation and withdrawals are not contested by any necessary party; and

WHEREAS, the City conducted a public meeting and mailed notice of the public meeting as required by law; and

WHEREAS, subsection E of Section 1504.1 of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan designation in accord with Table 1 in that section;

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

Section 1. The Findings and Reasons for Decision attached as Exhibit A are hereby adopted.

Section 2. The tract of land described and depicted in Exhibit B is hereby annexed to the City of Milwaukie.

Section 3. The tract of land annexed by this ordinance and described in Section 2 is hereby withdrawn from Clackamas River Water,¹ Clackamas County Service District for Enhanced Law Enforcement, and Clackamas County Service District No. 5 For Street Lights.

Section 4. The tract of land annexed by this ordinance and described in Section 2 is hereby assigned a Comprehensive Plan land use designation of Low Density Residential and a Municipal Code zoning designation of Residential zone R-10.

Section 5. The City shall immediately file a copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and 222.177. The annexation and withdrawals shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

¹ Pursuant to ORS Section 222.465, since this ordinance, which is resulting in the withdrawal of the tract of land from a domestic water supply district, was enacted after March 31, 2009 the effective date of the withdrawal from Clackamas River Water shall be July 1, 2010.

Exhibit A

FINDINGS IN SUPPORT OF APPROVAL

Based on the expedited annexation staff report for 5111 SE Lake Road (the site), the City Council finds:

1. The site consists of one tax lot comprising 0.73 acres (Tax Map 2S2E06BA Tax Lot 00100). It is contiguous to the existing city limits and is within Milwaukie's urban growth management area (UGMA).

The site contains a main dwelling, a detached accessory dwelling, garage, and barn. The site has a driveway on Lake Rd and also takes access from Lena Ave, which is an unimproved right-of-way that terminates at Highway 224. The surrounding area consists of a single-family residential neighborhood on the south side of Lake Rd and Highway 224. The business-industrial area on International Way is on the north side of Highway 224 across from the site.

2. The applicant seeks annexation of the site to the City. The annexation is being processed as an expedited annexation at the request of the applicant. The expedited process does not provide for a public hearing on the proposal. Under the expedited process a City land use and zoning designation is automatically applied to the Site based on the Site's zoning designation in the County.
3. The Site's existing zoning designation in the County is Urban Low Density Residential (R-10). The automatic Milwaukie Municipal Code zoning and Milwaukie Comprehensive Plan land use designations upon annexation to the City are Residential zone R-10 and Low Density Residential, respectively.
4. The annexation was initiated by Consent of All Owners of Land. The petition meets the requirements for initiation set forth in Oregon Revised Statutes (ORS) Section 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Section 19.1502.2.
5. The annexation petition has been processed and public notice has been provided in accordance with ORS Section 222.125, Metro Code Section 3.09.030 Notice Requirements, and MMC Section 19.1504 Expedited Process.
6. The applicable City approval criteria for expedited annexations are contained in MMC 19.1502.3. They are as follows:
 - A. The subject site must be located within the City's urban growth management area (UGMA);

The Site is with the City's UGMA. The Council finds that this criterion is met.

- B. The subject site must be contiguous to the existing city limits;
The Site is contiguous to the existing city limits. The Council finds that this criterion is met.
- C. The requirements of Oregon Revised Statutes for initiation of the annexation process must be met;
The annexation petition meets the Oregon Revised Statutes requirements for initiation. The Council finds that this criterion is met.
- D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies;
 The Public Facilities and Services Element of Chapter 5 states that the City should plan, develop, and maintain a timely, orderly, and efficient arrangement of public facilities and services to serve urban development.
The City can adequately provide urban services to the annexation property without impacting existing development or restricting future development in the area. The site will continue to be served by CCSD#1 because the City does not currently provide sewer service to the site.
Chapter 6 of the Comprehensive Plan contains the City's annexation policies. Applicable annexation policies include:
- Objective #1 – Unified System of Governance: To encourage and participate in efforts to define a unified system of government for the northwest urban area of Clackamas County.
As defined in the Milwaukie Comprehensive Plan, a unified system of government is one in which a single entity provides most urban services. Annexation will result in the City becoming the primary urban service provider, with the exception of sewer service, for the site. CCSD#1 provides sewer service to the site, and the City's nearest sewer pipe is more than 300 feet from the property. CRW currently provides water service to the site and the City is able to provide water service. The applicant has agreed to connect to the City's water service.
 - Objective #2 – Urban Service Area: To establish an area within which the City will participate in planning, coordinating and providing services.
The site is within the City's recognized urban service area as outlined in the City's UGMA agreement with the County.
 - Objective # 3 – Annexation: To ensure that City Annexation policies conform to urban service and growth management policies.

The annexation is consistent with the City's regulations governing annexations pursuant to MMC Chapter 19.1500 Boundary Changes and the City's UGMA agreement with the County.

- Objective #6 – Cost of Services: To ensure that the cost of urban services provision is paid equitably by all who receive them.

Annexation will ensure that the annexation property pays for the City services it is proposing to use.

- Objective #7 – Extension of Services: To enable the City to maintain and extend adequate service levels as city growth occurs.

The City can adequately provide urban services, including police and water, to the annexation property without impacting existing development or restricting future development in the area.

The Council finds that the annexation proposal is consistent with the City's Comprehensive Plan.

- E. The proposal must comply with the criteria of Metro code Sections 3.09.050 (d) and, if applicable, (e).

The Council finds that the annexation proposal is consistent with applicable Metro Code sections for expedited annexations as detailed in Finding No. 7 below.

7. Prior to approving an expedited annexation, the City must apply the provisions contained in Section 3.09.045(d) of the Metro Code, which are as follows:

- (1) Find that the change is consistent with expressly applicable provisions in:

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;

There are no applicable urban service agreements adopted pursuant to ORS 195 in the area of the annexation. The Council finds that this criterion is met.

- (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

There are no applicable annexation plans adopted pursuant to ORS 195 in the area of the annexation. The Council finds that this criterion is met.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;

There are no applicable cooperative planning agreements adopted pursuant to ORS 195 in the area of the annexation. The Council finds that this criterion is met.

- (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;

A public facilities plan was developed by Clackamas County and subsequently adopted by the City through the City-County UGMA Agreement pursuant to the statewide planning goal on public facilities. The Council finds that extension of City services to the Site upon annexation is consistent with this public facilities plan.

- (E) Any applicable comprehensive plan policies.

The Clackamas County Comprehensive Plan is the only applicable comprehensive plan, and this plan contains no specific language relating to City annexations. It does, however, contain the City-County UGMA Agreement, which identifies this area as being within the mutually agreed upon UGMA boundary. The UGMA Agreement requires the City to notify the County of annexations, which the City has done. The UGMA Agreement also calls for City assumption of jurisdiction of local streets adjacent to the Site. However, the one street adjacent to the Site, i.e. SE Lake Road, is not covered by this provision because it is not a local street. The Council finds that the annexation proposal is consistent with the County's Comprehensive Plan.

- (2) Consider whether the boundary change would:

- (A) Promote the timely, orderly and economic provision of public facilities and services;
(B) Affect the quality and quantity of urban services; and
(C) Eliminate or avoid unnecessary duplication of facilities and services.

Urban services are available to the site. The quantity and quality of urban services is adequate to support the development on the property. Annexation will simplify the government structure in the area and will eliminate some layers of government by withdrawing the site from three districts as a result of annexation to the City. The Council finds that the annexation proposal is consistent with these considerations.

8. The City is authorized by ORS Section 222.120 (5) to withdraw the Site from non-City service providers and districts upon annexation of the Site to the City. This allows for more unified and efficient delivery of urban services to newly

annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.

9. The Site was connected to Clackamas County Service District #1's (CCSD #1) sewer line in Lake Road in 1975. The City of Milwaukie does not have a sewer line in the immediate vicinity of the site available to provide service to the property. The existing CCSD #1 line can adequately serve site.
10. The Site is currently in the Clackamas River Water (CRW) district and served by a CRW line in Lake Road. However, the City currently serves the site via its 12-inch water line in Lake Rd along the Site's frontage. This line can adequately continue to serve the Site. In compliance with the City's Comprehensive Plan policies, the Site should be withdrawn from the Clackamas River Water District upon annexation to the City. The applicant has agreed to voluntarily hook the site up to City water service upon annexation to the City.
11. The Site is not currently connected to a public storm water system.
12. Clackamas County Fire District No. 1 currently serves the Site. It will continue to be served by this district upon annexation since the entire City is within Clackamas County Fire District No. 1.
13. The site is currently served by the Clackamas County Sheriff's Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the Site. The Site should be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.
14. The site is within Clackamas County Service District # 5 for Street Lights. The Site will be withdrawn from this district upon annexation. The City does not levy a separate tax or assess individual properties for street lighting.
15. Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the Site upon annexation. The Site will continue to receive services and remain within the boundaries of certain regional and county service providers, such as Tri-Met, North Clackamas School District, Vector Control District, etc.

Chicago Title Insurance Co.

45-465141

NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.

EA

3f

Leo J & Marian M Beckman
13306 W. Blue Bonnet Drive
Sun City West, AZ 85375

Buyer's Name and Address
David Mealey & Sheryl Riley
5115 SE 38th Ave
Portland, OR 97202

Buyer's Name and Address
Leo J & Marian M Beckman
13306 W. blue Bonnet Drive
Sun City West, AZ 85375

After recording, return to (Name, Address, Zip)
Leo J & Marian M Beckman
13306 W. blue Bonnet Drive
Sun City West, AZ 85375

Until requested otherwise, send all tax statements to (Name, Address, Zip)
David Mealey & Sheryl Riley
5115 SE 38th Ave
Portland OR 97202

STATE OF OREGON,
County of _____ } ss.

I certify that the within instrument was received for recording on _____

Clackamas County Official Records 2009-018004
Sherry Hall, County Clerk



\$41.00

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D-CON Cnt=1 Stn=2 JANSKEL
\$18.00 \$18.00 \$10.00

By LO, Deputy.

REAL ESTATE CONTRACT

THIS CONTRACT, Dated March 17, 2009, between Leo J. Beckman & Marian M. Beckman Co-Trustees under the Leo J. & Marian M. Beckman Revocable Living Trust dated Sept. 9, 2003, hereinafter called the seller, and David Mealey and Sheryl Riley

WITNESSETH, that in consideration of the mutual covenants and agreements herein contained, the seller agrees to sell unto the buyer and the buyer agrees to purchase from the seller all of the following described lands and premises situated in Clackamas County, State of Oregon, to-wit:

Lot 9 and 10, MINTONE HOMES, EXCEPTING THEREFROM that portion taken in condemnation suit No.6 6665 by Decree filed September 17, 1968

2 2 E 0 6 B A 0 0 1 0 0

CO

for the sum of Five Hundred Twenty-five Thousand and no/100--- Dollars (\$525,000.00), hereinafter called the purchase price, on account of which One Hundred Thousand and no/100--- Dollars (\$100,000.00) is paid on the execution hereof (the receipt of which is hereby acknowledged by the seller); the buyer agrees to pay the remainder of the purchase price (to-wit: \$425,000.00) to the order of the seller in monthly payments of not less than Two Thousand Six Hundred Dollars (\$2,600.00) each, with the whole unpaid balance being due no later than March 31, 2014.

payable on the 15th day of each month hereafter beginning with the month and year May 2009 and continuing until the purchase price is fully paid.

The true and actual consideration for this conveyance is \$525,000.00. (Here comply with ORS 93.030.)

Buyer will furnish seller with written proof of payment of real property taxes. No interest of buyer shall be assigned, subcontracted or otherwise transferred, voluntarily or involuntarily, without the written consent of seller. Buyer accepts (cont'd on back)

All of the purchase price may be paid at any time; all of the deferred payments shall bear interest at the rate of 6 percent per annum from 4-15-09 until paid; interest to be paid monthly and in addition to to be included in the minimum monthly payments above required. Taxes on the premises for the current tax year shall be prorated between the parties hereto as of * the closing date.

The buyer warrants to and covenants with the seller that the real property described in this contract is

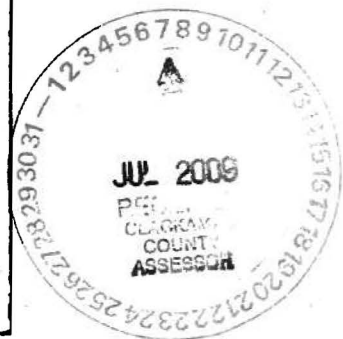
(A) primarily for buyer's personal, family or household purposes.

(B) for an organization or (even if buyer is a natural person) is for business or commercial purposes.

The buyer shall be entitled to possession of the lands on 30 days after closing date and may retain such possession so long as buyer is not in default under the terms of this contract. The buyer agrees that at all times buyer will keep the premises and the buildings, now or hereafter erected thereon, in good condition and repair and will not suffer or permit any waste or strip thereof; that buyer will keep the premises free from construction and all other liens and save the seller harmless therefrom and reimburse seller for all costs and attorney fees incurred by seller in defending against any such liens; that buyer will pay all taxes hereafter levied against the property, as well as all water rents, public charges and municipal liens which hereafter lawfully may be imposed upon the premises, all promptly before the same or any part thereof become past due; that at buyer's expense, buyer will insure and keep insured all buildings now or hereafter erected on the premises against loss or damage by fire (with extended coverage) in an amount not less than \$425,000.00 in a company or companies satisfactory to the seller, specifically naming the seller as an additional insured, with loss payable first to the seller and then to the buyer as their respective interests may appear and all policies of insurance to be delivered to the seller as soon as insured. If the buyer shall fail to pay any such liens, costs, water rents, taxes or charges, the seller may go and any payment so made shall be added to and become a part of the debt secured by this contract and shall bear interest at the rate aforesaid, without waiver, however, of any right arising to the seller for buyer's breach of contract.

(OVER)

IMPORTANT NOTICE: Before signing out, whichever warranty (A) or (B) is not applicable. If warranty (A) is applicable and if the seller is a creditor, as such word is defined in the Truth-in-Lending Act and Regulation Z, the seller MUST comply with the Act and Regulation by making required disclosures.





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LEO J. AND MARIAN M. BECKMAN, Co-Grantors

LEO AND MARIAN M. BECKMAN, Co-Grantees

After Recording Return to:
LEO J. AND MARIAN M. BECKMAN
5111 SE Lake Rd.
Milwaukie, OR 97222

Clackamas County Official Records 2003-125178
Sherry Hall, County Clerk



\$31.00

08/17/2003 02:27:05 PM

D-D Cnt=1 Str=2 BEV L
\$10.00 \$11.00 \$10.00

Until a change is requested,
all tax statements shall be
sent to the following address:
Same

WARRANTY DEED - STATUTORY FORM

LEO J. AND MARIAN M. BECKMAN, Co-Grantors, convey and warrant to LEO J. AND MARIAN M. BECKMAN, Co-Trustees, or the successor(s) in trust, under THE LEO J. AND MARIAN M. BECKMAN REVOCABLE LIVING TRUST, dated September 6, 2003 and any amendments thereto wherein LEO J. AND MARIAN M. BECKMAN are also Trustees and Beneficiaries, Co-Grantees, the following described real property free of encumbrances except as specifically set forth herein situated in Clackamas, Oregon:

22E 06BA 00100

Lots 9 and 10, MINTONE HOMES, in the County of Clackamas and State of Oregon, EXCEPTING THEREFROM that portion taken in Condemnation Suite No. 66665 by Decree filed September 17, 1968.

The true and actual consideration for this conveyance is \$1.00.

WD

The liability and obligations of the Grantor to Grantee and Grantee's heirs and assigns under the warranties and covenants contained herein or provided by law shall be limited to the extent of coverage that would be available to Grantor under a standard policy of title insurance. The limitations contained herein expressly do not relieve Grantor of any liability or obligations under this instrument, but merely define the scope, nature, and amount of such liability or obligations.

The property is free from encumbrances except those of record.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY

38487
8-5566

Right of Way
File No.

RW-30148

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CLACKAMAS

3 _____)
4 STATE OF OREGON, by and through its State Highway)
Commission, composed of Glenn L. Jackson, David B.)
5 Simpson and Fred W. Hill,)
6 Plaintiff,)
7 vs.)
8 ALFRED FOGLIO and MARY FOGLIO, husband and wife;)
GLEN McCARTY, Trustee; WILLAMETTE SAVINGS AND LOAN)
9 ASSOCIATION OF MILWAUKIE, OREGON, a corporation;)
FIRST STATE BANK OF OREGON, an Oregon banking)
10 corporation, MERLE HENSLEY and ETHEL HENSLEY,)
11 Defendants.)
12 _____)

Case No. 66665
JUDGMENT ORDER

13
14 The above entitled cause came on regularly for trial on Tuesday,
15 June 4, 1968, before the Honorable Winston L. Bradshaw, Judge of the above
16 entitled court; plaintiff appearing by and through Ted E. Barbera of its
17 attorneys; and the defendants Alfred Foglio and Mary Foglio, husband and
18 wife; Glen McCarty, Trustee; Willamette Savings and Loan Association of
19 Milwaukie, Oregon, a corporation; and First State Bank of Oregon, an Oregon
20 banking corporation, appearing by and through Glen McCarty, their attorney;
21 and

22 It appearing to the Court that an order of default has heretofore
23 been entered against the defendants Merle Hensley and Ethel Hensley; and

24 It appearing to the Court and the Court now finds that the real
25 property described in paragraphs IV and V, together with the rights of access
26 described in paragraph VI of the plaintiff's complaint on file herein are
27 necessary for public use; and

28 It appearing to the Court and the Court now finds that the plaintiff,
29 prior to the commencement of this action and pursuant to its resolution,
30 attempted to acquire said real property and interests therein, together with
31 said rights of access, by agreement and purchase, but was unable to do so; and

32 It appearing that the only issue to be tried in this proceeding is
33 the just compensation to be awarded to the defendants for the appropriation of
34 the real property and interests therein, together with the rights of access,
35 as prayed for in the complaint on file herein; and

1 A jury having been called, examined, duly empaneled and sworn; the
2 parties having made their opening statements; a view of the proposed acquisi-
3 tion having been held in the manner provided by law; the parties having adduced
4 evidence in support of their contentions; arguments of the respective parties
5 having been made to the jury, the jury having been regularly instructed in the
6 law and having retired for deliberations did, on the 5th day of June, 1968, re-
7 turn its verdict, which verdict, omitting the title of the court and cause, is
8 in the words and figures as follows:

9 "We, the jury, being first duly empaneled and sworn to try
10 the above entitled cause, find that the just compensation to be
11 awarded to the defendants is in the sum of \$21,000.00.
12 "DATED this 5 day of June, 1968.

13 /s/ Michael K. Inman
14 Foreman"

15 and which said verdict was regularly filed by the clerk of said court; and

16 It appearing to the Court, from the records and files herein, that
17 on October 9, 1967, plaintiff, pursuant to ORS 366.392 and ORS 366.393,
18 deposited into court the sum of \$9,000.00 for the use of the defendants pend-
19 ing adjudication of the within action; and

20 It appearing to the Court and the Court now finds, based on stipula-
21 tion of the parties, that plaintiff took physical possession of the property
22 being acquired herein on September 23, 1967; and

23 It appearing to the Court and, based on a stipulation of the parties,
24 the Court now finds that the defendants are entitled to interest at six percent
25 per annum on the sum of \$21,000.00 from September 23, 1967, to and including
26 October 9, 1967, and interest at six percent per annum from October 9, 1967,
27 until paid upon the amount by which said verdict exceeds the amount of said
28 deposit into court, to wit: the sum of \$12,000.00; and

29 It appearing to the Court and the Court now finds that the amount
30 of the verdict of the jury exceeded plaintiff's tender to defendants prior
31 to the filing of the complaint herein, and that defendants are, therefore,
32 entitled to a reasonable sum as their attorneys' fees herein; the Court now
33 finds that the sum of \$3,500.00 is a reasonable sum to be allowed defend-
34 ants for attorneys' fees; now, therefore,

35 IT IS HEREBY ORDERED by this Court as follows:

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I.

That upon payment to the Clerk of this court of the balance of the amount of the verdict over and above the \$9,000.00 heretofore deposited, to wit: the sum of \$12,000.00, together with interest as aforesaid, the real property hereinafter described, together with all rights and easements therein, shall be and become appropriated to the State of Oregon, by and through its State Highway Commission, in fee simple, free and clear of all liens and encumbrances. Said real property so appropriated is described as follows:

Parcel No. 1

A parcel of land lying in Lots 9 and 10, Mintone Homes, Clackamas County, Oregon; the said parcel being that portion of said Lots 9 and 10 included in a strip of land variable in width, lying on the Southwesterly side of the center line of the Clackamas Highway as said highway has been relocated, which center line is described as follows:

Beginning at Engineer's center line Station 162+88.16, said Station being 711.42 feet North and 1244.97 feet West of the Southeast corner of MINTHORN ADDITION to the City of Portland; thence on a spiral curve left (the long chord of which bears South 27° 29' 30" East) 600 feet; thence on a 1637.02 foot radius curve left (the long chord of which bears South 39° 31' 30" East) 287.62 feet; thence on a spiral curve left (the long chord of which bears South 51° 33' 30" East) 600 feet; thence South 55° 03' 30" East, 1801.16 feet; thence on an 11,459.16 foot radius curve left (the long chord of which bears South 57° 28' 30" East) 966.67 feet; thence South 59° 53' 30" East, 696.99 feet; thence on an 11,459.16 foot radius curve right (the long chord of which bears South 57° 29' 10" East) 962.22 feet; thence South 55° 04' 50" East, 797.18 feet to Engineer's Station 230+00.

The widths in feet of the strip of land above referred to are as follows:

Station	to	Station	Width on Southwesterly Side of Center Line
211+25		211+50	210 taper to 185
211+50		212+40.60	185 taper to 155
212+40.60		215+00	155

(Bearings used herein are based upon the Oregon Co-ordinate System, North Zone.)

The parcel of land to which this description applies contains 0.08 acre, more or less.

Parcel No. 2

A parcel of land lying in Lots 9 and 10, Mintone Homes, Clackamas County, Oregon; the said parcel being that portion of said Lots 9 and 10 included in a strip of land variable in width, lying on the Northerly side of the center line of the connection between Lake Road and Harmony Road, which center line is described as follows:

Beginning at Engineer's center line Station "OX" 98+41.59, said Station being 230.57 feet North and 137.68 feet East of the Northwest corner of the Elisha Kellogg D.L.C. #54, Township 2

1 South, Range 2 East, W.M., thence South 72° 44' 25" East, 433.98
 2 feet; thence on a spiral curve left (the long chord of which bears
 3 South 74° 49' 25" East) 500 feet; thence on a 2291.83 foot radius
 4 curve left (the long chord of which bears North 86° 40' 50" East)
 1146.33 feet; thence on a spiral curve left (the long chord of
 which bears North 68° 11' 05" East) 500 feet; thence North 66° 06'
 05" East, 278.10 feet to Engineer's center line Station "OX" 127+00.

5 The widths in feet of the strip of land above referred to are
 6 as follows:

7	<u>Station</u>	<u>Station</u>	<u>Width on Northerly Side of Center Line</u>
8	"OX"101+10	"OX" 102+75.57	60 taper to 50
9	"OX" 102+75.57	"OX" 105+00	50

10 (Bearings used herein are based upon the Oregon Co-ordinate
 11 System, North Zone.)

12 The parcel of land to which this description applies contains
 13 0.1 acre, more or less.

14 II.

15 That there shall be no rights of access of any nature between the
 16 real property described in paragraph I hereof and all of the real property of
 17 the defendants remaining after the appropriation of said property, which said
 18 remaining real property of the defendants is situated in Clackamas County,
 19 Oregon, and, including the real property described in paragraph I hereof, is
 20 described as follows:

21 "Lots 9 and 10, Mintone Homes, Clackamas County, Oregon."

22 Provided, however, that there shall be no restriction of access to Lake Road
 23 easterly of Highway Engineer's center line Station "OX" 103+50.

24 III.

25 That the defendants shall recover of and from the plaintiff the sum
 26 of \$ 3500.00 as and for attorney fees, together with their costs and dis-
 27 bursements incurred herein taxed in the amount of \$ _____.

28 DATED this 17th day of June, 1968.

29
 30 s/ Winston L. Bradshaw
 31 Circuit Judge



PLANNING DEPARTMENT
6101 SE JOHNSON CREEK BLVD.
MILWAUKIE, OREGON 97206

PHONE: (503) 786-7630
FAX: (503) 774-8236

Application for Land Use Action

ANNEXATION

- Admin. I Minor QJ Leg.
 Admin. II Major QJ

Type: Nonexpedited Expedited

RESPONSIBLE PARTIES:

(Please print or type)

APPLICANT(S): DAVID MEALEY Phone: 503-659-5900

Address: 5111 SE LAKE RD, Milwaukie OR Zip: 97222

PROPERTY OWNER(S): DAVID MEALEY Phone: 503-659-5900

Address: 5111 SE LAKE RD, Milwaukie OR 97222 Zip: 97222

SITE INFORMATION:

770 LOT 100

Address: 5111 SE LAKE RD. Map & Tax Lot(s): T 2 S, R 2 E, SECTION 06 BA

Comprehensive Plan Designation: Zoning: R-10 Size of property:

PROPOSAL (describe briefly):

Expedited annexation to city of Milwaukie

PLEASE NOTE: The Land Use Committee (LUC) of your Neighborhood District Association (NDA) will receive a review copy of this application. They may contact you and/or you may wish to contact them:

NDA: LUC Chair: Phone:

ATTEST: I am the property owner or I have attached the owner's authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: David Mealey Date: 7/8/09

THIS SECTION FOR OFFICE USE ONLY:

File #: A-09-02 Fee: \$ 100 Rcd. by: JK

Date stamp:

Notes:

RECEIVED

JUL 08 2009

CITY OF MILWAUKIE
PLANNING DEPARTMENT

SEE REVERSE SIDE FOR APPLICATION CHECKLIST

Ass. 12

**CERTIFICATION OF PROPERTY OWNERSHIP OF
100% OF LAND AREA
(City 100% Ownership Method)**

I hereby certify that the attached petition for a proposed boundary change involving the territory described in the petition contains the names of the owners* of 100% of the land area within the annexation area described in the petition, as shown on the last available complete assessment roll.

NAME DAVID BEATTY *Paul BBA*
TITLE CARTOGRAPHER 2
DEPARTMENT ASSESSMENT & TAX
COUNTY OF CLATSOP
DATE 7-7-2009

* "Owner" means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.



surv. A

CERTIFICATION OF LEGAL DESCRIPTION AND MAP

I hereby certify that the description of the property included within the attached petition (located on Assessor's Map 22E06BA) has been checked by me and it is a true and exact description of the property under consideration, and the description corresponds to the attached map indicating the property under consideration.

David Beatty

NAME DAVID BEATTY
TITLE ASSessor
DEPARTMENT ASSESSMENT & TAX
COUNTY OF CLATSOP
DATE 7-7-2009



NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.

Chicago Title Insurance Co.

31
 Leo J & Marian M Beckman
 13306 W. Blue Bonnet Drive
 Sun City West, AZ 85375

Seller's Name and Address
 David Mealey & Sheryl Riley
 5115 SE 38th Ave
 Portland, OR 97202

Buyer's Name and Address
 Leo J & Marian M Beckman
 13306 W. Blue Bonnet Drive
 Sun City West, AZ 85375

Until requested otherwise, send all tax statements to (Name, Address, Zip):
 David Mealey & Sheryl Riley
 5115 SE 38th Ave
 Portland OR 97202

STATE OF OREGON,
County of _____ } ss.

I certify that the within instrument was received for recording on _____

Clackamas County Official Records 2009-018004
Sherry Hall, County Clerk



\$41.00

03/20/2009 01:38:53 PM

D-COM Cnt=1 Str=2 JANSKE
\$15.00 \$16.00 \$10.00

By LO, Deputy.

REAL ESTATE CONTRACT

THIS CONTRACT, Dated March 17, 2009, between Leo J. Beckman & Marian M. Beckman Co-Trustees under the Leo J. & Marian M. Beckman Revocable Living Trust dated Sept. 9, 2003, hereinafter called the seller, and David Mealey and Sheryl Riley

hereinafter called the buyer, WITNESSETH: that in consideration of the mutual covenants and agreements herein contained, the seller agrees to sell unto the buyer and the buyer agrees to purchase from the seller all of the following described lands and premises situated in Clackamas County, State of Oregon, to-wit:

Lot 9 and 10, MINTONE HOMES, EXCEPTING THEREFROM that portion taken in condemnation suit No. 6665 by Decree filed September 17, 1968

22E06BA 00100

CO

for the sum of Five Hundred Twenty-five Thousand and no/100--- Dollars (\$525,000.00), hereinafter called the purchase price, on account of which One Hundred Thousand and no/100--- Dollars (\$100,000.00) is paid on the execution hereof (the receipt of which is hereby acknowledged by the seller); the buyer agrees to pay the remainder of the purchase price (to-wit: \$425,000.00) to the order of the seller in monthly payments of not less than Two Thousand Six Hundred Dollars (\$2,600.00) each, with the whole unpaid balance being due no later than March 31, 2014.

payable on the 15th day of each month hereafter beginning with the month and year May 2009 and continuing until the purchase price is fully paid.

The true and actual consideration for this conveyance is \$525,000.00. (Here comply with ORS 93.030.)

Buyer will furnish seller with written proof of payment of real property taxes. No interest of buyer shall be assigned, subcontracted or otherwise transferred, voluntarily or involuntarily, without the written consent of seller. Buyer accepts (cont'd on back)

All of the purchase price may be paid at any time; all of the deferred payments shall bear interest at the rate of 6 percent per annum from 4-15-09 until paid; interest to be paid monthly and in addition to to be included in the minimum monthly payments above required. Taxes on the premises for the current tax year shall be prorated between the parties hereto as of the closing date.

The buyer warrants to and covenants with the seller that the real property described in this contract is

- (A) primarily for buyer's personal, family or household purposes,
- (B) for an organization or (even if buyer is a natural person) is for business or commercial purposes.

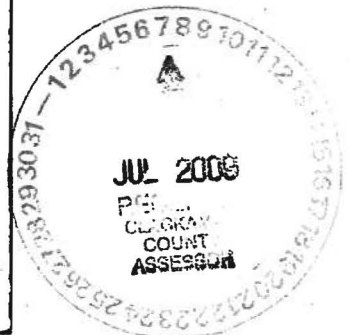
The buyer shall be entitled to possession of the lands on 30 days after closing date and may retain such possession so long as buyer is not in default under the terms of this contract. The buyer agrees that at all times buyer will keep the premises and the buildings, now or hereafter erected thereon, in good condition and repair and will not suffer or permit any waste or strip thereof; that buyer will keep the premises free from construction and all other liens and save the seller harmless therefrom and reimburse seller for all costs and attorney fees incurred by seller in defending against any such liens; that buyer will pay all taxes hereafter levied against the property, as well as all water rents, public charges and municipal liens which hereafter lawfully may be imposed upon the premises, all promptly before the same or any part thereof become past due; that at buyer's expense, buyer will insure and keep insured all buildings now or hereafter erected on the premises against loss or damage by fire (with extended coverage) in an amount not less than \$425,000.00 in a company or companies satisfactory to the seller, specifically naming the seller as an additional insured, with loss payable first to the seller and then to the buyer as their respective interests may appear and all policies of insurance to be delivered to the seller as soon as insured. If the buyer shall fail to pay any such liens, costs, water rents, taxes or charges, the seller may do so and any payment so made shall be added to and become a part of the debt secured by this contract and shall bear interest at the rate aforesaid, without waiver, however, of any right arising to the seller for buyer's breach of contract.

(OVER)

* IMPORTANT NOTICE: Delete, by lining out, whichever warranty (A) or (B) is not applicable. If warranty (A) is applicable and if the seller is a creditor, an such word is defined in the Truth-in-Lending Act and Regulation Z, the seller MUST comply with the Act and Regulation by making required disclosures.

2009-018004

RS PAGE 93





29

LEO J. AND MARIAN M. BECKMAN, Co-Grantors

LEO AND MARIAN M. BECKMAN, Co-Grantees

After Recording Return to:
LEO J. AND MARIAN M. BECKMAN
5111 SE Lake Rd.
Milwaukie, OR 97222

Clackamas County Official Records
Sherry Hall, County Clerk 2003-125178

Barcode with number 00366244200301291780020034
\$31.00
08/17/2003 02:27:05 PM
D-D Cnt=1 Str=2 REV L
\$10.00 \$11.00 \$10.00

Until a change is requested,
all tax statements shall be
sent to the following address:
Same

WARRANTY DEED - STATUTORY FORM

LEO J. AND MARIAN M. BECKMAN, Co-Grantors, convey and warrant to LEO J. AND MARIAN M. BECKMAN, Co-Trustees, or the successor(s) in trust, under THE LEO J. AND MARIAN M. BECKMAN REVOCABLE LIVING TRUST, dated September 9, 2003 and any amendments thereto wherein LEO J. AND MARIAN M. BECKMAN are also Trustors and Beneficiaries, Co-Grantees, the following described real property free of encumbrances except as specifically set forth herein situated in Clackamas, Oregon:

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The true and actual consideration for this conveyance is \$1.00. *WD*

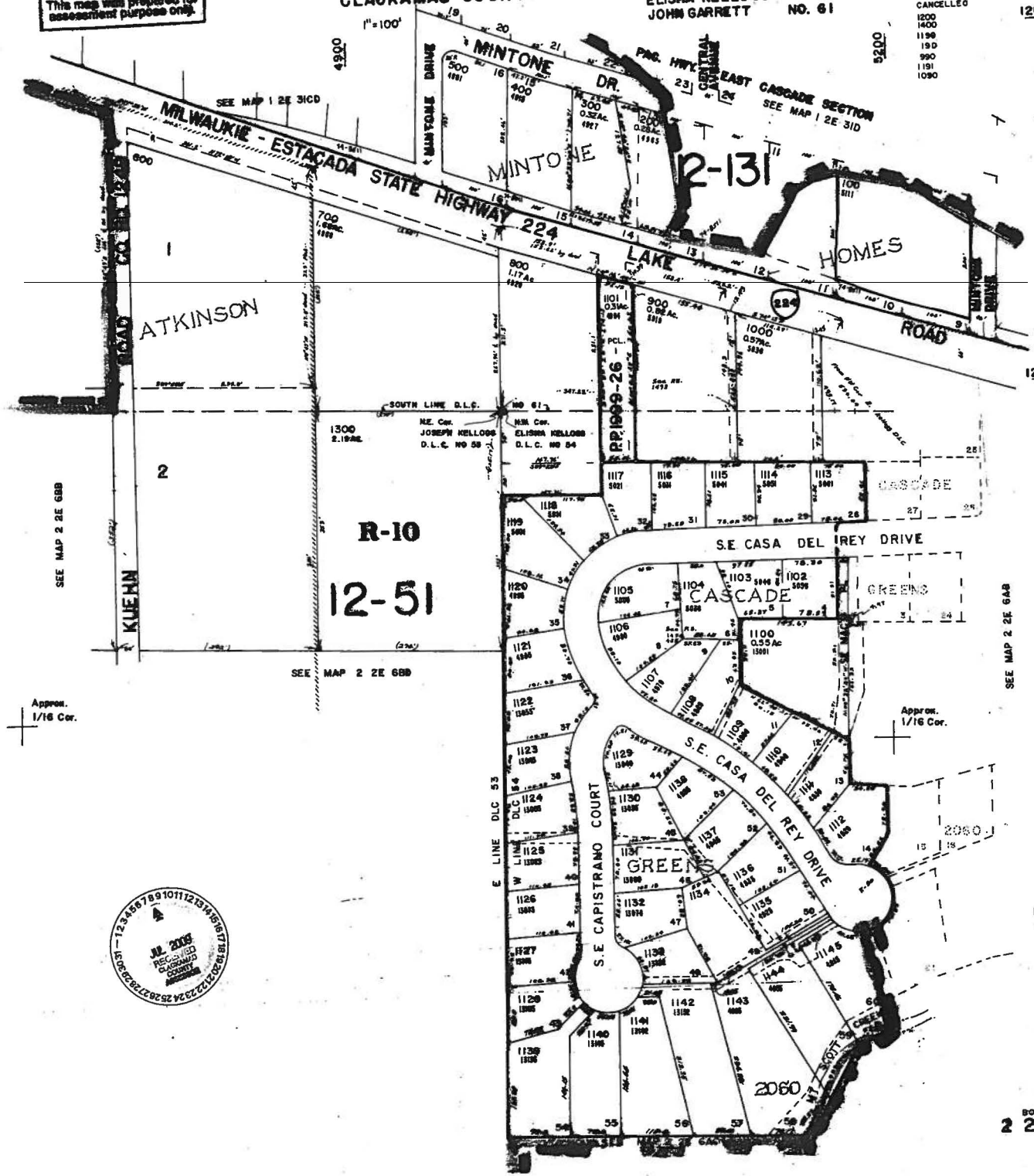
The liability and obligations of the Grantor to Grantee and Grantee's heirs and assigns under the warranties and covenants contained herein or provided by law shall be limited to the extent of coverage that would be available to Grantor under a standard policy of title insurance. The limitations contained herein expressly do not relieve Grantor of any liability or obligations under this instrument, but merely define the scope, nature, and amount of such liability or obligations.

The property is free from encumbrances except those of record.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY

This map was prepared for assessment purposes only.

4300



SEE MAP 2 ZE 6BB

Approx. 1/16 Cor.

SEE MAP 2 ZE 6BB

Approx. 1/16 Cor.

SEE MAP 2 ZE 6AB

12600

13100



F.M.D
BOOK 18
2 21 68

CERTIFICATION OF REGISTERED VOTERS
(District Double Majority Method)

I hereby certify that the attached petition for annexation of territory described herein to the CITY OF M. L. WANKIE District contains the names of at least a majority of the electors registered in the territory to be annexed.

* NO REGISTERED
VOTERS ~~BT~~

NAME FLOYD THOMAS

TITLE DEPUTY CLERK

DEPARTMENT ELECTIONS

COUNTY OF CLACKAMAS

DATE 7-7-09

Floyd Thomas



CLACKAMAS COUNTY ELECTIONS
1710 RED SOILS CT, SUITE 100
OREGON CITY, OR 97045

NOTICE LIST

(This form is NOT the petition)

ALL OWNERS OF PROPERTY AND/OR REGISTERED VOTERS INCLUDED IN BOUNDARY CHANGE PROPOSAL AREA.

NAME OF OWNER/VOTER	ADDRESS	PROPERTY DESIGNATION (Indicate tax lot, section number, Township and Range)
(1)	DAVID MEALEY	5111 SE LAKEVIEW MILWAUKEE, OR 97222
(2)		TOWNSHIP - 2, RANGE 2 EAST SECTION 06 BA, TAX LOT - 00100
(3)		
(4)		
(5)		
(6)		

LIST OF ATTACHMENTS

EXHIBIT A- Site Plan

ATTACHMENT A- City Limits and Urban Growth Management Area

ATTACHMENT B- County Zoning Map



Clackamas Map(CMap)
from Clackamas County Information Services

121 Library Court
Oregon City, OR 97045
[e-mail](#)

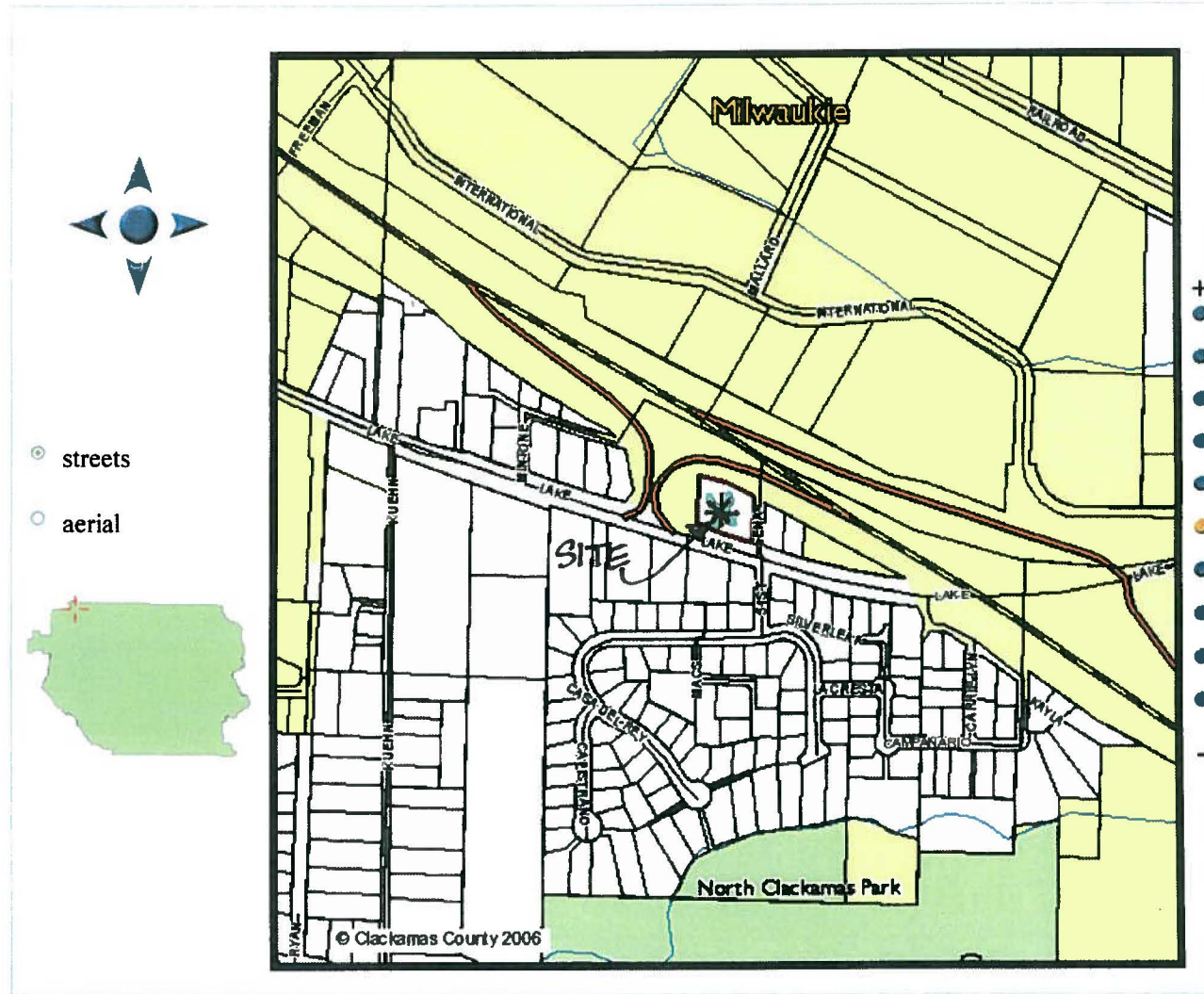
Address
5111 SE LAKE RD
MILWAUKIE, OR. 97222

Jurisdiction Information
City UNINCORPORATED
Urban
Growth IN
Boundary

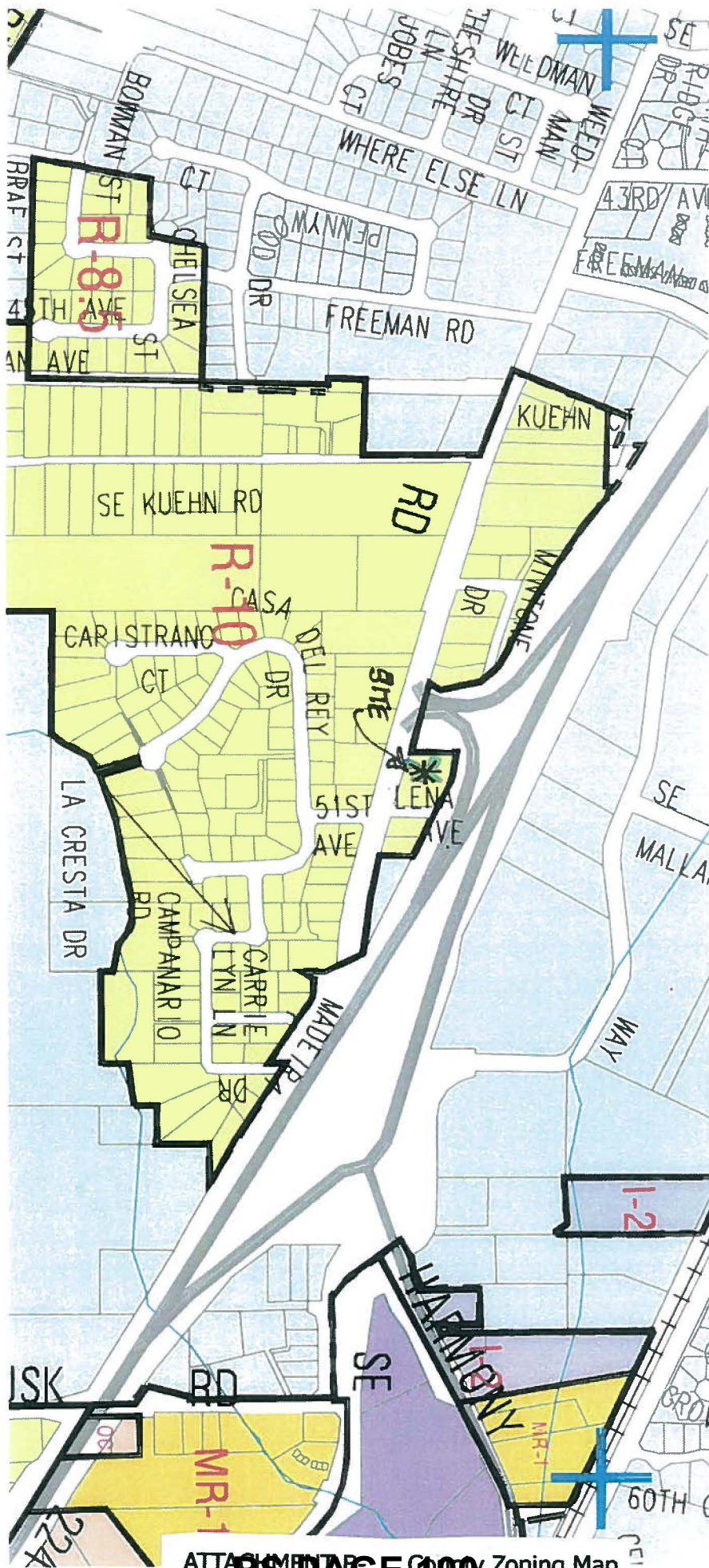
Building Characteristics
Sq Ft 3570
Bedrooms 3
Baths 2
Built 1951
Zoning

Last Sale
11-19-2001 360000.00

Tax Information
Map Number (TLNO) 22E06BA00100
Parcel Number 00437708
View tax map [view tax map](#)



New Map Search



BEDSAUL/VINCENT CONSULTING LLC

416 LAUREL AVE #3

TILLAMOOK, OR 97141

OFFICE: (503) 842.5391

brucevincent @embarqmail.com

DATE: July 7th, 2009

REQUEST: Expedited Annexation from Clackamas County R-10 to City of Milwaukie R-10

APPLICANT: Dave Mealey, 11266 SE 21st Ave. Milwaukie, OR 97222

CONTRACT PURCHASER: Dave Mealey, 11266 SE 21st Ave. Milwaukie, OR 97222

REPRESENTATIVE FOR APPLICANT & OWNERS: Bruce Vincent, Bedsaul/Vincent Consulting, LLC

LEGAL DESCRIPTION: Tax Lot 100, Map 2S2E-6BA

SIZE: 32,180 square feet, (0.74Acre)

CURRENT COUNTY ZONING: R-10 (Residential-10,000 square feet)

PROPOSED CITY ZONING: R-10 (Residential-10,000 square feet)

LOCATION: 5111 SE Lake Road

I. APPLICABLE REGULATIONS:

- A. Metro Code Section 3.09.040, 045 & 050, (Annexation Petitions), City of Milwaukie Chapter 19.1502, (Annexations), 1502.3, (Annexation Approval Criteria), 1504, (Expedited Process)

II. AFFECTED JURISDICTIONS

1. City of Milwaukie
2. Clackamas County
3. Clackamas River District
4. Clackamas County Service District #1
5. Clackamas RFPD #1

GENERAL INFORMATION

1. The subject ownership is within the City of Milwaukie Urban Growth Management Area and is currently zoned County R-10. (See Attachment "A")
2. SE Lake Road abuts the southerly boundary of the subject ownership, the ROW of the

Hwy 224, (Milwaukie Expressway), forms the northern boundary, and the Lake Road off-ramp forms the western boundary. Lena Ave. abuts the easterly border of the subject site. A large block of County-zoned R-10 land is located along the south side of Lake Road and directly east and west of the subject site. (See Attachment "B")

3. Water and sanitary sewer lines within SE Lake Road can serve the subject ownerships.

B. Applicable Review Criteria

The applicable criteria for an Expedited Annexation Petition are set forth in Metro's Title III and the City's Comprehensive Plan and/or Zoning Code. The following responses to the applicable policies and/or code criteria will substantiate that the request complies with all relevant sections of Metro's Title III and the City's Comprehensive Plan and Zoning Code.

City of Milwaukie Chapter 19.1502, (Annexations), 1502.3, (Annexation Approval Criteria),1504, (Expedited Process)

Chapter 19.1502 (Annexations)

Chapter 19.1502(C)

APPLICANT COMMENT:

According to 19.1502(C), an annexation petition shall include a completed petition, a site plan and thirteen copies of an application narrative addressing the following:

1. The minimum petition requirements of Metro Code Section 3.09.040
2. City of Milwaukie annexation approval criteria 19.1502.3
3. Annexation approval criteria of Metro Code Section 3.09.040

The following paragraphs will provide evidence to demonstrate compliance with the above-mentioned standards.

Minimum petition requirements of Metro Code Section 3.09.040

APPLICANT COMMENT:

According to 3.09.0409(a)(1), a petition for a boundary change, (in this case, an expedited annexation), must include the jurisdiction of the reviewing entity to act on the petition. In this case, the attached forms clearly identified the City of Milwaukie as the entity to act on the petition, therefore this criterion is met. Metro Code Section 3.09.0409(a)(2)-(4) requires a map and legal description of the area effected by the annexation petition and the names, addresses and consent of all persons owning property within the annexation area. Documents attached to this application demonstrates compliance with these criterion. According to 3.09.0409(b) a fee may be charged for a annexation request and a fee check for the annexation has been included in this annexation application filing. Based on the above-stated facts, the annexation request complies with the minimum petition requirements of Metro Code Section 3.09.040.

City of Milwaukie annexation approval criteria 19.1502.3

19.1502.3(A) *The subject site must be located with the city urban growth boundary*

APPLICANT COMMENT:

According to City staff, the subject site is located within the Urban Growth Management Area, which effectively acts as the City's urban growth boundary. Therefore, the proposal complies with this criterion based on its location with the Urban Growth Management Area

19.1502.3(B) *The subject site must be contiguous to the existing city limits*

APPLICANT COMMENT:

As shown on Attachment "A", the subject site is contiguous with the southern ROW and Lake Road off ramp of Hwy 224, which is the southerly city limit at this location. Therefore, the proposal complies with this criterion based on its location contiguous to the existing city limits.

19.1502.3(C) *The requirements of the Oregon Revised Statutes for initiation of the annexation process must be met.*

APPLICANT COMMENT:

ORS 222 et. seq. (Annexation of Contiguous Territory), sets forth the type of annexation process applicable to this request. ORS.222.111-183 sets out the specific statutes for this annexation process. The applicant has reviewed those State statutes, and found that the applicable and relevant standards in Metro's Chapter 3.09, et. seq. and City of Milwaukie Boundary Change standards 19.1500 et. seq. implement the above-stated State statutes. Based on those facts, the applicant fulfills the requirements of ORS 222.111-183 by providing evidence to demonstrate compliance with Metro's Chapter 3.09 and City of Milwaukie Boundary Change standards 19.1500. Therefore, based on the above-stated facts, the proposal complies with 19.1502.3(C).

19.1502.3(D) *The proposal must be consistent with Milwaukie comprehensive plan policies*

APPLICANT COMMENT:

The applicant has reviewed the City of Milwaukie Comprehensive Plan and found the following goals, plan elements and objectives to be directly applicable to the subject expedited annexation:

Goal 6-City Growth and Governmental Relationships:

Objective 2-Urban Services Area

Objective 3-Annexation

Objective 5-Economic balance in land use and service demand

In the following paragraphs, the applicant will substantiate that the requested expedited annexation complies with the relevant and applicable goals, plan elements and objectives of the Comprehensive Plan.

Objective 2-Urban Services Area

Policy 3. The City will coordinate closely with service districts providing services within the area to ensure continuing delivery of effective and efficient urban

services. The City will not seek to extend City services into the urban service planning areas of other cities, except at the invitation and agreement of the other city. Similarly, no other city is to provide service within the City's urban service planning area, except at the invitation and agreement of the City.

APPLICANT COMMENT:

According to the City, the subject site is currently located within an Urban Growth Management area where Clackamas County service districts currently provide water, sewer and fire services. (i.e., Clackamas River District, Clackamas County Service District #1, Clackamas RFPD #1) The applicant acknowledges that those service districts will continue to provide those services until such time as the City decides to extend those public services to the subject site.

Policy 4. The City will support the operation of existing service districts until such time as an area is annexed unless other contractual arrangements are made. Service districts operating within the Milwaukie urban service planning area are:

- a. Clackamas County Rural Fire District #1***
- b. Clackamas River Water District***
- c. Clackamas County Service District #1***
- d. Clackamas County Urban Renewal District***
- e. Clackamas County Service District for Enhanced Law Enforcement***
- f. Clackamas County Service District No. 5 for Streetlights***

APPLICANT COMMENT:

Clackamas County service districts currently provide water, sewer and fire services. (i.e., Clackamas River District, Clackamas County Service District #1, Clackamas RFPD #1) The applicant acknowledges that those service districts will continue to provide those services until such time as the City decides to extend those public services to the subject site.

Objective 3-Annexation

Policy 1. Areas within the City's urban service planning area shall remain unincorporated until annexed to the City. The City shall plan for eventual annexation of all areas within the City's urban service planning area.

APPLICANT COMMENT:

Under Policy 1, the City acknowledges that it must plan for the future, when the subject site and other similarly situated sites within its urban services planning area will be annexed to the City. The time for annexation of the subject site is now before the City, and thus it falls in line with the Policy #1 objective for an efficient annexation into the southern limit of the City.

Policy 2. The City will only support annexation requests from properties within the City's urban service planning area.

APPLICANT COMMENT:

The applicant assumes that the subject is located within the urban services planning area, because it is located within the Urban Growth Management area, which by definition must be an area where urban services are planned for. Since that is the case, then the City should support this annexation.

Policy 3. The City will deliver services in this area when:

- ***The City is able to provide an adequate supply of needed services***
- ***A majority of residents and property owners within an area to be served desire City services***

APPLICANT COMMENT:

The applicant does not know at this time if the City is ready to deliver urban services. However, urban services are currently provided to the subject site and other nearby sites along Lake Road. (i.e Clackamas River District, Clackamas County Service District #1, Clackamas RFPD #1 already provide urban services) The applicant assumes that those service providers will continue to provide urban services until such time as the City is ready to extend its service lines along Lake Road.

Policy 4. The City will require annexation in order to receive or utilize a City service.

APPLICANT COMMENT:

This is an expedited annexation request that will bring the subject within the City limits. Therefore the site will be line to receive City services when those services are available.

Policy 5. All areas encircled (islanded) by City Limit lines will be annexed.

APPLICANT COMMENT:

The subject site is situated on the northern end of a “peninsula” of County R-10 zoned land this is surrounded on three sides by City zoned land. Therefore, although the site is not entirely encircled by the City limits, it is surrounded in such a way as to make it an ideal candidate for annexation.

Objective 5-Economic balance in land use and service demand

Policy 2. The City will accept annexations that result in efficient extension of City services, promote a logical city boundary, diminish any service subsidies to unincorporated areas, and promote the City's fiscal health.

APPLICANT COMMENT:

As stated previously, urban services are currently provided to the subject site and other nearby sites along Lake Road. (i.e Clackamas River District, Clackamas County Service District #1, Clackamas RFPD #1 already provide urban services) The applicant assumes that those service providers will continue to provide urban services until such time as the City is ready to extend its service lines along Lake Road. The site's location along Lake Road will make the extension of City services eastward and towards the site efficient, because the main trunk lines that serve the general area are located within Lake Road.

19.1502.3(E) *The proposal must comply with the criteria of Metro Code Sections 3.09.050(d) and if applicable, (e).*

APPLICANT COMMENT:

According to information contained in the City's Expedited Annexation Application packet, on January 17, 2008 Metro revised Metro Code Sections 3.09.050(d). The revised code language contained in 3.09.050(d) requires that the "reviewing entity", (in this case, the City of Milwaukie), shall apply the criteria of 3.09.045(d)&(e) when reviewing expedited annexation request. Information contained in the City's Expedited Annexation Application packet states that "*it is the City, not the applicant, that must demonstrate that the applicable criteria, (of 3.09.045(d)&(e)) are met.*" Therefore, based on the above-stated facts, the applicant will not address the applicable criteria of 3.09.045(d)&(e).

City of Milwaukie annexation approval criteria 19.1504 (Expedited process)

19.1504.1(A) *A petition for any type of minor boundary change may be processed through an expedited process as provided by Metro Code Chapter 3.09*

APPLICANT COMMENT:

As stated above, the City is required to provide findings to address Metro Code Section 3.09.045(d)&(e). which is the only relevant and applicable expedited annexation criteria contained in Metro Code Chapter 3.09. Therefore, based on the above-stated facts, the applicant will not address the applicable criteria of 3.09.045(d)&(e).

19.1504.1(A)(1) *Initiation of an expedited boundary change petition must follow the requirements of Metro Code Section 3.09.045(a).*

APPLICANT COMMENT:

Metro Code Section 3.09.045(a) states that the governing body of a city or Metro must produce a petition that containing the written consents of 100% of property owners and at least 50% of the electors within the affected territory. The applicant had included a City of Milwaukie petition that meets this criterion and is in substantial conformance with Metro Code Section 3.09.045(a).

19.1504.1(A)(2) *A prerequisite to the filing of an expedited boundary change petition is a pre-application conference.....*

APPLICANT COMMENT:

According to City of Milwaukie Planning staff, on March 19th, 2009, the applicant Dave Mealey, had a pre-application to discuss an annexation into the City. Therefore, this criterion is met because the applicant did in fact attend a pre-application on this annexation matter.

19.1504.1(A)(3) *An expedited boundary change petition shall include the materials required by subsection 19.1502.2C for annexations.....*

APPLICANT COMMENT:

This application filing includes an annexation petition, and copies of the minimum petition requirements as set forth in Metro Code Section 3.09.040. On pages 2-5 of this application narrative, the applicant has provided evidence to address the expedited annexation criteria as set forth in subsection 19.1502.3 and Metro Code Section 3.09.050(d). The filing also includes a vicinity map, legal description and other maps necessary to show compliance with subsection 19.1502.3 and Metro Code Section 3.09.040. Therefore, based on the above-stated facts, the proposal complies with this criterion.

19.1504.1(A)(5) *Approval criteria for annexations are found in subsection 19.1502.3.....*

APPLICANT COMMENT:

As stated above, the applicant has already provided evidence to address the approval criteria for annexations as set forth in subsection 19.1502.3. Therefore, based on the above-stated facts, the proposal complies with this criterion.

V. SUMMARY & CONCLUSION:

In summary, the arguments in favor of an expedited annexation into the City's UGB for the subject ownerships are as follows:

1. The subject site is directly adjacent to the existing city limits and is in an area surrounded on three sides by the City and City zoning. The applicant requests the City R-10 zoning which is a direct transfer from the current County R-10 zoning.
2. The applicant has shown that the request conforms to all applicable City of Milwaukie Comprehensive Plan Policies and Goals for an Expedited Annexation. There is no facet of this proposal that is in direct conflict with the applicable Comprehensive Plan Policies and Goals as discussed within the body of this narrative.
3. The applicant has shown that the request conforms to all applicable Metro Code Section for an Expedited Annexation.
4. The current public facilities and infrastructure could support these uses, because those urban services directly abut the subject ownerships, and/or can be extended to service the subject site.

This application is submitted in accordance with requirements established in the City of Milwaukie Zoning Code for an Expedited Annexation. Evidence within the body of this application addresses all applicable section of the code. Evidence within the body of this application substantiates that there are adequate services available. Therefore, the request for an Expedited Annexation into the City of Milwaukie's city limits should be approved.

38487
8-5566

Right of Way
File No.

RW-30148

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CLACKAMAS

3 _____)
4 STATE OF OREGON, by and through its State Highway)
Commission, composed of Glenn L. Jackson, David B.)
5 Simpson and Fred W. Hill,)
6 Plaintiff,)
7 vs.)
8 ALFRED FOGLIO and MARY FOGLIO, husband and wife;)
GLEN McCARTY, Trustee; WILLAMETTE SAVINGS AND LOAN)
9 ASSOCIATION OF MILWAUKIE, OREGON, a corporation;)
FIRST STATE BANK OF OREGON, an Oregon banking)
10 corporation, MERLE HENSLEY and ETHEL HENSLEY,)
11 Defendants.)
12 _____)

Case No. 66665
JUDGMENT ORDER

13
14 The above entitled cause came on regularly for trial on Tuesday,
15 June 4, 1968, before the Honorable Winston L. Bradshaw, Judge of the above
16 entitled court; plaintiff appearing by and through Ted E. Barbera of its
17 attorneys; and the defendants Alfred Foglio and Mary Foglio, husband and
18 wife; Glen McCarty, Trustee; Willamette Savings and Loan Association of
19 Milwaukie, Oregon, a corporation; and First State Bank of Oregon, an Oregon
20 banking corporation, appearing by and through Glen McCarty, their attorney;
21 and

22 It appearing to the Court that an order of default has heretofore
23 been entered against the defendants Merle Hensley and Ethel Hensley; and

24 It appearing to the Court and the Court now finds that the real
25 property described in paragraphs IV and V, together with the rights of access
26 described in paragraph VI of the plaintiff's complaint on file herein are
27 necessary for public use; and

28 It appearing to the Court and the Court now finds that the plaintiff,
29 prior to the commencement of this action and pursuant to its resolution,
30 attempted to acquire said real property and interests therein, together with
31 said rights of access, by agreement and purchase, but was unable to do so; and

32 It appearing that the only issue to be tried in this proceeding is
33 the just compensation to be awarded to the defendants for the appropriation of
34 the real property and interests therein, together with the rights of access,
35 as prayed for in the complaint on file herein; and

1 A jury having been called, examined, duly empaneled and sworn; the
2 parties having made their opening statements; a view of the proposed acqui-
3 sition having been held in the manner provided by law; the parties having adduced
4 evidence in support of their contentions; arguments of the respective parties
5 having been made to the jury, the jury having been regularly instructed in the
6 law and having retired for deliberations did, on the 5th day of June, 1968, re-
7 turn its verdict, which verdict, omitting the title of the court and cause, is
8 in the words and figures as follows:

9 "We, the jury, being first duly empaneled and sworn to try
10 the above entitled cause, find that the just compensation to be
awarded to the defendants is in the sum of \$21,000.00.
11 "DATED this 5 day of June, 1968.

12 /s/ Michael K. Inman
Foreman"

13 and which said verdict was regularly filed by the clerk of said court; and

14 It appearing to the Court, from the records and files herein, that
15 on October 9, 1967, plaintiff, pursuant to ORS 366.392 and ORS 366.393,
16 deposited into court the sum of \$9,000.00 for the use of the defendants pend-
17 ing adjudication of the within action; and

18 It appearing to the Court and the Court now finds, based on stipula-
19 tion of the parties, that plaintiff took physical possession of the property
20 being acquired herein on September 23, 1967; and

21 It appearing to the Court and, based on a stipulation of the parties,
22 the Court now finds that the defendants are entitled to interest at six percent
23 per annum on the sum of \$21,000.00 from September 23, 1967, to and including
24 October 9, 1967, and interest at six percent per annum from October 9, 1967,
25 until paid upon the amount by which said verdict exceeds the amount of said
26 deposit into court, to wit: the sum of \$12,000.00; and

27 It appearing to the Court and the Court now finds that the amount
28 of the verdict of the jury exceeded plaintiff's tender to defendants prior
29 to the filing of the complaint herein, and that defendants are, therefore,
30 entitled to a reasonable sum as their attorneys' fees herein; the Court now
31 finds that the sum of \$3,500.00 is a reasonable sum to be allowed defend-
32 ants for attorneys' fees; now, therefore,

33 IT IS HEREBY ORDERED by this Court as follows:
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I.

That upon payment to the Clerk of this court of the balance of the amount of the verdict over and above the \$9,000.00 heretofore deposited, to wit: the sum of \$12,000.00, together with interest as aforesaid, the real property hereinafter described, together with all rights and easements therein, shall be and become appropriated to the State of Oregon, by and through its State Highway Commission, in fee simple, free and clear of all liens and encumbrances. Said real property so appropriated is described as follows:

Parcel No. 1

A parcel of land lying in Lots 9 and 10, Mintone Homes, Clackamas County, Oregon; the said parcel being that portion of said Lots 9 and 10 included in a strip of land variable in width, lying on the Southwesterly side of the center line of the Clackamas Highway as said highway has been relocated, which center line is described as follows:

Beginning at Engineer's center line Station 162+88.16, said Station being 711.42 feet North and 1244.97 feet West of the Southeast corner of MINTHORN ADDITION to the City of Portland; thence on a spiral curve left (the long chord of which bears South 27° 29' 30" East) 600 feet; thence on a 1637.02 foot radius curve left (the long chord of which bears South 39° 31' 30" East) 287.62 feet; thence on a spiral curve left (the long chord of which bears South 51° 33' 30" East) 600 feet; thence South 55° 03' 30" East, 1801.16 feet; thence on an 11,459.16 foot radius curve left (the long chord of which bears South 57° 28' 30" East) 966.67 feet; thence South 59° 53' 30" East, 696.99 feet; thence on an 11,459.16 foot radius curve right (the long chord of which bears South 57° 29' 10" East) 962.22 feet; thence South 55° 04' 50" East, 797.18 feet to Engineer's Station 230+00.

The widths in feet of the strip of land above referred to are as follows:

<u>Station</u>	<u>to</u>	<u>Station</u>	<u>Width on Southwesterly Side of Center Line</u>
211+25		211+50	210 taper to 185
211+50		212+40.60	185 taper to 155
212+40.60		215+00	155

(Bearings used herein are based upon the Oregon Co-ordinate System, North Zone.)

The parcel of land to which this description applies contains 0.08 acre, more or less.

Parcel No. 2

A parcel of land lying in Lots 9 and 10, Mintone Homes, Clackamas County, Oregon; the said parcel being that portion of said Lots 9 and 10 included in a strip of land variable in width, lying on the Northerly side of the center line of the connection between Lake Road and Harmony Road, which center line is described as follows:

Beginning at Engineer's center line Station "OX" 98+41.59, said Station being 230.57 feet North and 137.68 feet East of the Northwest corner of the Elisha Kellogg D.L.C. #54, Township 2

1 South, Range 2 East, W.M., thence South 72° 44' 25" East, 433.98
 2 feet; thence on a spiral curve left (the long chord of which bears
 3 South 74° 49' 25" East) 500 feet; thence on a 2291.83 foot radius
 4 curve left (the long chord of which bears North 86° 40' 50" East)
 1146.33 feet; thence on a spiral curve left (the long chord of
 which bears North 68° 11' 05" East) 500 feet; thence North 66° 06'
 05" East, 278.10 feet to Engineer's center line Station "OX" 127+00.

5 The widths in feet of the strip of land above referred to are
 6 as follows:

7	<u>Station</u>	<u>Station</u>	<u>Width on Northerly Side of Center Line</u>
8	"OX"101+10	"OX" 102+75.57	60 taper to 50
9	"OX" 102+75.57	"OX" 105+00	50

10 (Bearings used herein are based upon the Oregon Co-ordinate
 System, North Zone.)

11 The parcel of land to which this description applies contains
 12 0.1 acre, more or less.

13 II.

14 That there shall be no rights of access of any nature between the
 15 real property described in paragraph I hereof and all of the real property of
 16 the defendants remaining after the appropriation of said property, which said
 17 remaining real property of the defendants is situated in Clackamas County,
 18 Oregon, and, including the real property described in paragraph I hereof, is
 19 described as follows:

20 "Lots 9 and 10, Mintone Homes, Clackamas County, Oregon."

21 Provided, however, that there shall be no restriction of access to Lake Road
 22 easterly of Highway Engineer's center line Station "OX" 103+50.

23 III.

24 That the defendants shall recover of and from the plaintiff the sum
 25 of \$ 3500.00 as and for attorney fees, together with their costs and dis-
 26 bursements incurred herein taxed in the amount of \$ _____.

27 DATED this 17th day of June, 1968.

30 s/ Winston L. Bradshaw
 31 Circuit Judge

DATE: July 29th, 2009
REQUEST: Expedited Annexation from Clackamas County R-10 to City of Milwaukie R-10
APPLICANT: Dave Mealey, 11266 SE 21st Ave. Milwaukie, OR 97222
CONTRACT PURCHASER: Dave Mealey, 11266 SE 21st Ave. Milwaukie, OR 97222
LEGAL DESCRIPTION: Tax Lot 100, Map 2S2E-6BA
SIZE: 32,180 square feet, (0.74Acre)
CURRENT COUNTY ZONING: R-10 (Residential-10,000 square feet)
PROPOSED CITY ZONING: R-10 (Residential-10,000 square feet)
LOCATION: 5111 SE Lake Road
LEGAL DESCRIPTION: 524 Mintone Homes PT BLKS 9 & 10
TAX CODE: 012-051

I. EFFECTED SERVICE DISTRICT PROVIDERS

1. Clackamas River District: 16770 SE 82nd Dr., Clackamas, OR 97015
2. Clackamas County Service District #1: 906 Main St., Oregon City, OR 97045
3. Clackamas County Soil & Water Conservation District: 421 High St, Clackamas OR 97015
4. Clackamas RFPD #1: 6600 Lake Rd, Milwaukie, OR 97222
5. Clackamas Community College: 19600 Mollalla Ave, O.C. OR 97045
6. North Clackamas School District #12: 4444 SE Lake Rd, Milwaukie, OR 97222
7. North Clackamas Parks District: 9101 SE Sunnybrook Dr, Clackamas, OR 97015
8. Clackamas ESD: 13455 SE 97th Ave, Clackamas OR 97015
9. Port of Portland: 10801 N Lombard, Portland OR 97203
10. Metro Service District 2: 600 NE Grand Ave, Portland OR 97124

Current Urban Service Provider Franchises:

1. Garbage: Waste Mangagment: 7227 NE 55th Ave, Portland, OR 97124
2. Cable: Comcast: 9605 SW Nimbus Ave, Beaverton, OR 97008
3. Natural Gas: NW Natural Gas, PO Box 6017, Portland, OR 97228-6017
4. Electric: PGE, PO Box 4404, Portland, OR 97206-4404
5. Telecommunications: Qwest, PO Box 91155, Seattle WA 98111-9255

ATTACHMENT 3

North Clackamas Citizens Association

A COMMUNITY PLANNING ORGANIZATION

16358 SE Hearthwood Drive, Clackamas, Or 97015

Phone: (503) 656-9681 or 503-317-6456;

Email: flanagan112@hotmail.com

President-Secretary, Pat Russell
Vice-President, Cyndi Lewis-Wolfram
Treasurer, Tom Carothers

August 28, 2009
TRANSMITTED VIA EMAIL

Ryan Marquardt
Planning Division, Community Development Department
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

RE: Annexation/zoning File #A-09-02 Mealey
North side Lake Road, east side of the Milwaukie Expressway South Ramps

Dear Ryan,

Thank you for notifying our Association concerning the annexation of 5111 SE Lake Road to the city and rezoning to city R-10 (Residential zone R-10) affecting an approximate acre. Although the site is not within our CPO planning boundaries, we do have an informal agreement with the Oak Lodge Community Council leadership that we would mutually take interest in the unincorporated area north of roughly Kellogg Creek for a number of reasons including the Milwaukie Expressway corridor, sensitive fish and wildlife habitat, school attendance areas, relationships to North Clackamas Park, among other considerations. However, we do not know if the OLCC has been notified by the city of this request and encourage the city to make contact. That said, we do have a number of observations.

The Site As An Island

The site is somewhat isolated from nearby homes by the Milwaukie Expressway and ramp system and Lake Road—quite wide in this area. The site gets the truck traffic, traffic signalization and higher speeds in the neighborhood. The Expressway acts as a logical boundary for the residential neighborhood, but the northerly extremities of the neighborhood are affected by the interchange design and traffic speeds of Lake Road.

Page 1 of 6

NCCA to City of Milwaukie, August 28, 2009

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RS PAGE 114

Although the site is adjacent to the city limits, it would be the ONLY residence in the immediate neighborhood being in the city. The rest of the neighborhood is unincorporated county area from about Ryan Avenue (west) to the North Clackamas Park boundary. There are well over a 100 residences in this area, split between well-established subdivision parcels and larger parcels divided over the years. Many of the larger, non-subdivision parcels are re-dividable and will be under pressure of urban infill as discussed below.

Site Land Use Suitability

As the site is isolated and exposed, it is understandable that a single residence on an acreage lot may not be the most desirable land use over the long term. However, the way the Expressway slices through this area of the city, the site and residential homes sit above the Expressway and the introduction of industrial, light commercial or even office would not serve the immediate residential area. It would be an intrusion and put pressure on the long term sustainability/livability of the established residential area. The interchange with its (truck traffic and traffic volumes) and the traffic signalization probably does not contribute to a residential ambiance in this area, and especially adjacent the site. However, the city and county must plan and direct urban infill in a way that furthers the values and residential character of the immediate area over the long term. Certainly, the applicant could argue density increases or a change to non-residential uses in the future, but the city should be careful how it plans for this immediate area because of the precedence that might be set for the remaining properties capable of re-division. It makes sense to leave a comparable R-10 zoning in place until a long term plan of the area is complete.

The SR 224 Corridor Planning

During a county rezoning hearing in the fall of 2007 from residential to office/light commercial at the southeast corner of Rusk Road and the Expressway, the Board of County Commissioners recognized that there has been no regional corridor planning along the Expressway to the extent to determine the appropriate long term land use commitments. The city of Milwaukie also felt the zone change was a spot zoning as the entire area south of the expressway was committed to residential zoning, church/school or park use, even though on the north side of the expressway commercial and light industrial zoning patterns were dominant. So the Milwaukie Expressway is becoming the logical separation/"buffer" between established residential areas and non-residential development. This same argument generally holds true for the subject annexation/zoning request.

The Expressway, as a zoning boundary, is a key consideration, but also creates other problems, such as livability for residential uses—the interchange at Lake Road being even more problematic. The better solution would be to have no interchange activity SOUTH of the Expressway and move all that traffic/access function northerly, away from existing homes and potential residential infill. Unfortunately, relocation of the south leg of the interchange would be an engineering challenge and costly.

However, in the Metro Regional Transportation Plan (RPT), the city's Transportation System Plan (TSP) and the County's TSP, a study of the Milwaukie Expressway corridor is identified as a priority. It becomes even more critical with the commitment of an initial phase of the Sunrise Corridor System by the Legislature this year. The Expressway provides local access to city and county streets/collectors at signalized surface intersections whose LOS and V/C ratios are near failing or failing capacity standards. So the challenge is to decide whether the expressway should remain a glorified arterial with its many signalized intersections or become a true limited access expressway, by directing access to the community via a few select interchanges, such as at Lake Road. This issue becomes more problematic as the Expressway approaches the I-205 and SE 82nd Avenue/Drive interchanges about 1-1/2 miles east of the Lake Road interchange. The bottom line is that the Lake Road interchange will likely serve more traffic in the future—especially truck traffic now using Rusk Road, Webster Road, Pheasant Court and Freeman. The Lake Road neighborhood needs protection from non-residential encroachments (land use and traffic—especially truck functions).

Annexing one lot today won't tip the scales, but the city, county, METRO and ODOT must face this problem and budget planning for it. SR224 has been also identified as a future high capacity transit corridor and Metro's latest planning goals point regional growth inward along its transportation corridors and centers. The City Council for the City of Milwaukie has also encouraged the abandonment of the Harmony Road Corridor EIS process in favor of local solutions. Part of that solution is to direct the increase of "out of area" travel (vs. neighborhood traffic) in the Harmony travel-shed and direct it to the Expressway. This is focusing more discussion on the function of the Expressway. Reality is now setting in with the abandonment of the federal EIS (Environmental Impact Statement) and the state legislature's commitment of \$100,000,000 (100 million dollars) toward an initial phase of the Sunrise Corridor System. Local matches and hoped-for additional future funds is expanding the discussion to, perhaps, as much as \$200 million. That's enough to almost extent the Expressway to SE 122nd and the Clackamas Highway with modest improvements to the I-205/Sunrise/Expressway interchange area. So, planning for urban infill and protecting neighborhoods along the Expressway corridor while trying to service the industrial/employment needs of the area can't wait. The city is encouraged to press Metro, the county and ODOT to initiate that planning "now," within the next few years by prioritizing transportation budgets over growth-inducing road projects on the fringes of the urban growth boundaries. This Lake Road interchange area planning can also be justified in view of the off-set intersection traffic problems associated with the north leg of the interchange (Lake, Harmony, International Way, WB off and on ramps to the Expressway). It's a mess that's been put off for years because local surface street intersections along the expressway have been improved for more capacity (short-term, temporary, band-aid solution).

Urban Infill Along the High Capacity Transit Corridors

As noted above, the region is presently engaged in its Urban-Rural Reserves, the "Greatest Place" (Metro), updates to the regional and state transportation plans and the

nagging decision whether to expand the Urban Growth Boundary (UGB) or get more serious about its vaulted Region 2040 concept of compact growth. At this point—and being helped along by the depressing economy and infrastructure financing—the regional politics seems to be favoring urban infill along our transportation corridors and centers (the city’s downtown is designated as a Town Center and the area along I-205/SE 82nd and 92nd Avenues from about the Milwaukie Expressway north to the Johnson Creek Blvd. corridor as a Regional Center). The Expressway, 82nd Corridor and the McLoughlin Corridor are viewed as potential urban infill opportunities. Metro has asked each local jurisdiction to share its “aspirations” in regard to potential growth over and above the Region 2040 projections. The Expressway has been noted frequently as a growth corridor potential through more focused urban infill. That commitment puts pressure on increasing densities in established neighborhoods.

The Lake Road neighborhood is no exception. In fact, the unincorporated residential area generally east of Ryan Avenue (sorry no pun intended, Ryan) has many large lots just waiting for speculative infill, unless you are the home owner who likes it the way it is today. The area around SE Kuehn Road and large lots along Lake Road will be a magnet on marketing researchers’ maps. The neighborhood is a highly desirable area in the region—close to freeways, close to trees and fish and wildlife habitat, good schools and parks, nice urban services, low taxes and less regulation and not impacted by heavy outside traffic (not yet). With larger, well-built homes on larger lots (10,000 or greater), properties don’t turn over often in the marketplace. That’s why the following oversized tax lots (listed by address) will be up for grabs to the highest bidders and the city and county will be forced into a reaction planning mode (rather than proactive planning to ready for the demand):

Residential Urban Infill Potential of the Lake Road Neighborhood

(east of Freeman to the North Clackamas Park, between the Milwaukie Expressway and Kellogg Creek)

Lots and homes around Kuehn Road (and would include about 13 lots on the west not noted here):

- 4900 (the large produce farm)
- 13092
- 13114
- 13192
- 13208
- 13220 (and five more tax lots to the south)

Lots and homes south side of Lake Road (and including the annexation site and lot to its east):

- 5111
- 5129
- 4920
- 4964
- 5010
- 5030

5060
5021

5031
5041
5051
5061
5071
12925
12945

Lots and homes on the north side of Lake Road, west of the Interchange:

4965
4927
4915
4901
4905
4901
4921
4817
4809
4803
4711

(and additional lots to Freeman, including the church parcel)

In planning circles, especially around the county, its not unreasonable to see these infill areas rezoned to R8.5 or even R-7—whatever the political traffic will bear, regardless of the feelings and investments of the neighborhood. An example of county planning politics is the R-8.5 urban subdivision (approximately 40 lots) along Ryan Road, south of Lake Road, taking access from Freeman Road, and includes Bowman Street, Chelsea Street and 45 Avenue. Although not calculated based upon acreage, its not unreasonable to expect another 100 to 200 homes in this reference infill area, including a percentage of efficiency unit conversions (such as granny flats, efficiency rentals over the garage, etc.), by rezoning the lots in a range of R-7 to R-8.5. With some lots having view potential, even higher densities for planned unit developments and low rise condos is not out of the question. Is this what the neighborhood wants? The City?

In conclusion, now is the time to plan this area and create a special specific plan for the future residential use of the area. This would be best done with the city and county taking a shared lead agency status. This would mean amending both the city's and the county's Comprehensive Plan to create special overlays (such as Chapter 10, Community Plans and Design Plans). But it must be done in context of the High Capacity Corridor Planning of Metro for the Expressway and the need for a somewhat final solution of whether the Expressway is an expressway or an arterial street with a lot of traffic signals stopping impatient commuters.

Thank you for taking the time to consider this testimony.

Sincerely,

Pat Russell
President-Secretary
NORTH CLACKAMAS CITIZENS ASSOCIATION (NCCA)
A county-recognized Community Planning Organization (CPO)

Cc:
Board of County Commissioners
Oak Lodge Community Council (CPO)
Linwood Neighborhood (Kelland, Hambright)
Hector Campbell Neighborhood (Weaver, Loudon, Aschenbrenner)
Lake Road Neighborhood (Patten, Pai)
Dick and Sally Shook
Friends of North Clackamas Parks
NCCA Board
Mike McCalister, County Planning Manager
Ron Weinman, DTD

PERFORMANCE AGREEMENT

This agreement is between the City of Milwaukie, an Oregon municipal corporation (City) and David Mealey, the property owner of 5111 SE Lake Road (Applicant).

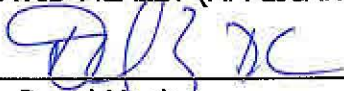
Recitals

- A. Applicant submitted a land use application for annexation to the City of Milwaukie (A-09-02).
- B. The property located at 5111 SE Lake Road is currently being served water from the Clackamas River Water Service District.
- C. The City of Milwaukie has a water mainline in Lake Road and is able to serve the property at 5111 SE Lake Road.
- D. The Applicant will voluntarily switch the water service at 5111 SE Lake Road from the Clackamas River Water Service District (CRW) to the City of Milwaukie Water District.

Terms of Agreement

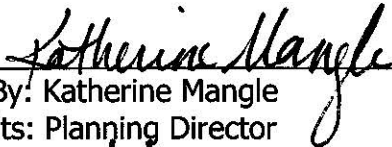
- 1. Applicant shall conform with the following, unless modified by agreement of both parties:
 - Remove the water service at 5111 SE Lake Road from Clackamas River Water Service District and install a new water service to the City of Milwaukie.
 - Pay all applicable City water service connection charges that may add up to \$3,700.
 - Perform all necessary actions to disconnect from CRW.
 - Fill out and complete all necessary water service connection applications.
- 2. If the Applicant has not complied with Terms of Agreement to the satisfaction of the City within 30 days from the City Council's adoption of the annexation ordinance, the City may enforce this agreement.

DAVID MEALEY (APPLICANT)



By: David Mealey
Its: Property Owner
Date: 9/4/09

CITY OF MILWAUKIE



By: Katherine Mangle
Its: Planning Director
Date: 9/4/09



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director

From: Katie Mangle, Planning Director

Subject: Addendum to Staff Report for
Expedited Annexation Petition for 5111 SE Lake Road (File A-09-02)
Applicant: David Mealey
Address: 5111 SE Lake Road

Date: September 11, 2009 for September 15, 2009 Regular Session

Action Requested

Approve application A-09-02, an expedited annexation petition, and adopt the *revised* ordinance and associated findings in support of approval (Attachment 1).

Background

The subject site is connected to a Clackamas River Water (CRW) supply line in the Lake Rd right-of-way. A 12-inch City water line is available in the Lake Rd right-of-way to serve the site. The City's Comprehensive Plan policies require that properties connect to City services upon annexation when those services are available. Since service provision is so closely related to governance, these policies support a move toward a more unified system of governance in the City's urban growth management area. However, the City's intergovernmental agreement with CRW states that CRW will continue to provide water service to properties that annex to the City until such time as other agreements are negotiated.¹ Honoring the City's existing agreement with CRW is in keeping with City policy that supports the operation of existing service provider districts within City boundaries until such time as it is timely, orderly, and economically

¹ Amended and Restated Water Supply Agreement signed June 16, 2008.

sound to transfer those service functions to the City. The City plans to revisit the terms of this agreement in the future. However, in the interim, the City does not seek to remove the subject site from the CRW district or require connection to the City's water line upon annexation.

Staff is requesting that Council adopt a revised Ordinance and findings in support of approval. These documents have been revised to clarify that approval of this application would *not* result in the withdrawal of the site from the CRW district or disconnection of the site from the existing CRW water line. Over the long term, the City will negotiate with CRW to become the water service provider for all sites that annex to the City.

This annexation is different from recent annexations the City has processed and from recent service provision discussions the City has had with property owners in the NE Sewer Extension Project area. In this case, annexation is being requested by the applicant because the applicant desires to operate under the City's, not the County's, land use regulations. Annexation is *not* being requested by the applicant due to a lack of services available to serve the site, and annexation is *not* being required by the City because no extraterritorial extension of services is being requested or triggered.

In the recent past, the need for sewer service has been the most common reason why the City has required annexation. In this case, the City does not have a sewer line available to serve the site and the site is not being redeveloped in such a manner that would trigger the costly extension of the City's existing sewer system. This annexation is also different in that two water service providers are available to serve the property, namely Clackamas River Water (CRW) and the City. As stated above, CRW and the City have an agreement that states that CRW will continue to serve existing customers even after they are annexed to the City until such time as other agreements are negotiated.

Attachments

1. Revised Ordinance dated September 11, 2009
Exhibit A: Revised Findings in Support of Approval dated September 11, 2009
Exhibit B: Map and Legal Description of Annexation Tract

ATTACHMENT 1

Revised September 11, 2009

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING A TRACT OF LAND IDENTIFIED AS 5111 SE LAKE ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS. **(FILE #A-09-02).**

WHEREAS, the tract of land is contiguous to the City and can be served by city services; and

WHEREAS, the City received written consent from a majority of electors and all owners of land in the territory proposed to be annexed as required by ORS 222.125; and

WHEREAS, the City mailed notice of the public meetings in accordance with Metro Code Section 3.09.045 (b) and Milwaukie Municipal Code Section 19.1504.1; and

WHEREAS, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the tract of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District for Enhanced Law Enforcement; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District No. 5 For Street Lights; and

WHEREAS, the annexation and withdrawals are not contested by any necessary party; and

WHEREAS, the City conducted a public meeting and mailed notice of the public meeting as required by law; and

WHEREAS, subsection E of Section 1504.1 of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan designation in accord with Table 1 in that section;

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

Section 1. The Findings and Reasons for Decision attached as Exhibit A are hereby adopted.

Section 2. The tract of land described and depicted in Exhibit B is hereby annexed to the City of Milwaukie.

Section 3. The tract of land annexed by this ordinance and described in Section 2 is hereby withdrawn from Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 For Street Lights.

Section 4. The tract of land annexed by this ordinance and described in Section 2 is hereby assigned a Comprehensive Plan land use designation of Low Density Residential and a Municipal Code zoning designation of Residential zone R-10.

Section 5. The City shall immediately file a copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and 222.177. The annexation and withdrawals shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 1
Exhibit A

FINDINGS IN SUPPORT OF APPROVAL
Revised September 11, 2009

Based on the expedited annexation staff report for 5111 SE Lake Road (the site), the City Council finds:

1. The site consists of one tax lot comprising 0.73 acres (Tax Map 2S2E06BA Tax Lot 00100). It is contiguous to the existing city limits and is within Milwaukie's urban growth management area (UGMA).

The site contains a main dwelling, a detached accessory dwelling, garage, and barn. The site has a driveway on Lake Rd and also takes access from Lena Ave, which is an unimproved right-of-way that terminates at Highway 224. The surrounding area consists of a single-family residential neighborhood on the south side of Lake Rd and Highway 224. The business-industrial area on International Way is on the north side of Highway 224 across from the site.

2. The applicant seeks annexation of the site to the City. The annexation is being processed as an expedited annexation at the request of the applicant. The expedited process does not provide for a public hearing on the proposal. Under the expedited process a City land use and zoning designation is automatically applied to the Site based on the Site's zoning designation in the County.
3. The Site's existing zoning designation in the County is Urban Low Density Residential (R-10). The automatic Milwaukie Municipal Code zoning and Milwaukie Comprehensive Plan land use designations upon annexation to the City are Residential zone R-10 and Low Density Residential, respectively.
4. The annexation was initiated by Consent of All Owners of Land. The petition meets the requirements for initiation set forth in Oregon Revised Statutes (ORS) Section 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Section 19.1502.2.
5. The annexation petition has been processed and public notice has been provided in accordance with ORS Section 222.125, Metro Code Section 3.09.030 Notice Requirements, and MMC Section 19.1504 Expedited Process.
6. The applicable City approval criteria for expedited annexations are contained in MMC 19.1502.3. They are as follows:
 - A. The subject site must be located within the City's urban growth management area (UGMA);

The Site is within the City's UGMA. The Council finds that this criterion is met.

- B. The subject site must be contiguous to the existing city limits;

The Site is contiguous to the existing city limits. The Council finds that this criterion is met.

- C. The requirements of Oregon Revised Statutes for initiation of the annexation process must be met;

The annexation petition meets the Oregon Revised Statutes requirements for initiation. The Council finds that this criterion is met.

- D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies;

The Public Facilities and Services Element of Chapter 5 states that the City should plan, develop, and maintain a timely, orderly, and efficient arrangement of public facilities and services to serve urban development.

The City can adequately provide urban services to the annexation property without impacting existing development or restricting future development in the area. The site will continue to be served by CCSD#1 because the City does not currently provide sewer service to the site. The site will continue to be served by Clackamas River Water (CRW), in accordance with the City's intergovernmental agreement with CRW for water supply, until such time as the City renegotiates this agreement.

Chapter 6 of the Comprehensive Plan contains the City's annexation policies. Applicable annexation policies include:

- Objective #1 – Unified System of Governance: To encourage and participate in efforts to define a unified system of government for the northwest urban area of Clackamas County.

As defined in the Milwaukie Comprehensive Plan, a unified system of government is one in which a single entity provides most urban services. Annexation will result in the City becoming the urban service provider for most services to this site, with the exception of sewer and water service. CCSD#1 currently provides and will continue to provide sewer service to the site since the City's nearest sewer pipe is more than 300 feet from the site. CRW currently provides water service to the site. Though the City could provide water service, CRW will continue to serve the site in accordance with a 2008 intergovernmental agreement. Since the City's long-term plan is to provide water service to this site, the City will coordinate with CRW and seek to effect the transfer of water service to the City in a timely and orderly manner.

- Objective #2 – Urban Service Area: To establish an area within which the City will participate in planning, coordinating and providing services.

The site is within the City's recognized urban service area as outlined in the City's UGMA agreement with the County.

- Objective # 3 – Annexation: To ensure that City Annexation policies conform to urban service and growth management policies.

The annexation is consistent with the City's regulations governing annexations pursuant to MMC Chapter 19.1500 Boundary Changes and the City's UGMA agreement with the County.

- Objective #6 – Cost of Services: To ensure that the cost of urban services provision is paid equitably by all who receive them.

Annexation will ensure that the annexation property pays for the City services it is proposing to use.

- Objective #7 – Extension of Services: To enable the City to maintain and extend adequate service levels as city growth occurs.

The City can adequately provide urban services, including law and code enforcement, to the annexation property without impacting existing development or restricting future development in the area.

The Council finds that the annexation proposal is consistent with the City's Comprehensive Plan.

- E. The proposal must comply with the criteria of Metro code Sections 3.09.050 (d) and, if applicable, (e).

The Council finds that the annexation proposal is consistent with applicable Metro Code sections for expedited annexations as detailed in Finding No. 7 below.

7. Prior to approving an expedited annexation, the City must apply the provisions contained in Section 3.09.045(d) of the Metro Code, which are as follows:

- (1) Find that the change is consistent with expressly applicable provisions in:

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;

There are no applicable urban service agreements adopted pursuant to ORS 195 in the area of the annexation. The Council finds that this criterion is met.

- (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

There are no applicable annexation plans adopted pursuant to ORS 195 in the area of the annexation. The Council finds that this criterion is met.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;

There are no applicable cooperative planning agreements adopted pursuant to ORS 195 in the area of the annexation. The Council finds that this criterion is met.

- (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;

A public facilities plan was developed by Clackamas County and subsequently adopted by the City through the City-County UGMA Agreement pursuant to the statewide planning goal on public facilities. The Council finds that extension of City services to the Site upon annexation is consistent with this public facilities plan.

- (E) Any applicable comprehensive plan policies.

The Clackamas County Comprehensive Plan is the only applicable comprehensive plan, and this plan contains no specific language relating to City annexations. It does, however, contain the City-County UGMA Agreement, which identifies this area as being within the mutually agreed upon UGMA boundary. The UGMA Agreement requires the City to notify the County of annexations, which the City has done. The UGMA Agreement also calls for City assumption of jurisdiction of local streets adjacent to the Site. However, the one street adjacent to the Site, i.e. SE Lake Road, is not covered by this provision because it is not a local street. The Council finds that the annexation proposal is consistent with the County's Comprehensive Plan.

- (2) Consider whether the boundary change would:

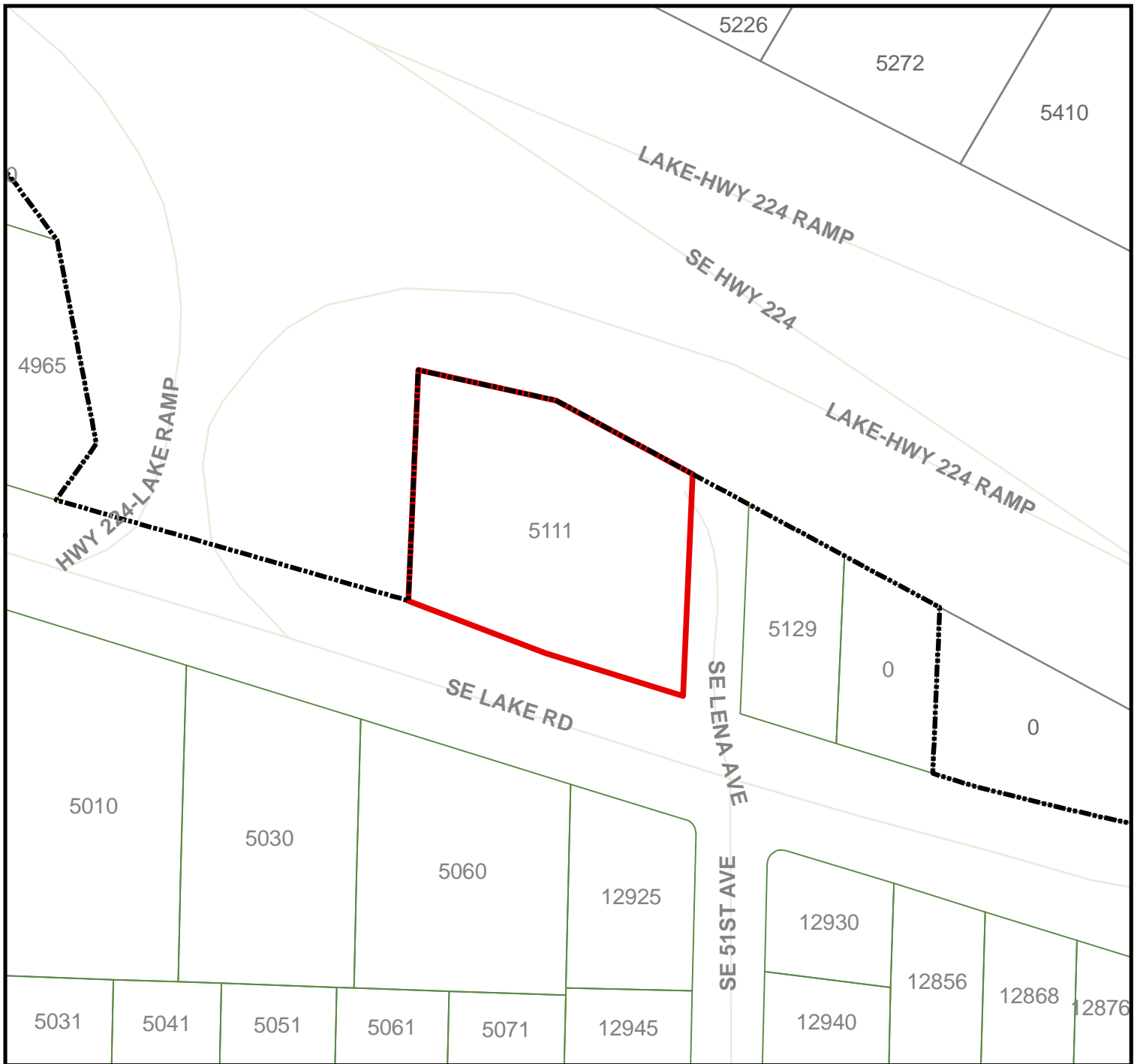
- (A) Promote the timely, orderly and economic provision of public facilities and services;
(B) Affect the quality and quantity of urban services; and
(C) Eliminate or avoid unnecessary duplication of facilities and services.

Urban services are available to the site. The quantity and quality of urban services is adequate to support the development on the property. Annexation will simplify the government structure in the area and will eliminate some layers of government by withdrawing the site from two districts as a result of annexation to the City. The

Council finds that the annexation proposal is consistent with these considerations.





8. The City is authorized by ORS Section 222.120 (5) to withdraw the Site from non-City service providers and districts upon annexation of the Site to the City. This allows for more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.
9. The Site was connected to Clackamas County Service District #1's (CCSD #1) sewer line in Lake Road in 1975. The City of Milwaukie does not have a sewer line in the immediate vicinity of the site available to provide service to the property. The existing CCSD #1 line can adequately continue to serve the Site.
10. The Site is currently in the Clackamas River Water (CRW) district and served by a CRW line in Lake Road. The City has a 12-inch water line in Lake Rd along the Site's frontage. Though the City could serve the Site through this line, CRW will continue to serve the site in compliance with the City's 2008 intergovernmental agreement with CRW. The existing CRW line can adequately continue to serve the Site.
11. The Site is not currently connected to a public storm water system.
12. Clackamas County Fire District No. 1 currently serves the Site. It will continue to be served by this district upon annexation since the entire City is within Clackamas County Fire District No. 1.
13. The site is currently served by the Clackamas County Sheriff's Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the Site. The Site should be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.
14. The site is within Clackamas County Service District # 5 for Street Lights. The Site will be withdrawn from this district upon annexation. The City does not levy a separate tax or assess individual properties for street lighting.
15. Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the Site upon annexation. The Site will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, Vector Control District, etc.

ATTACHMENT 1
EXHIBIT B



5111 SE Lake Road (Tax Map 2S2E06BA 00100) Annexation File A-09-02

Legend

-  Annexation Site
-  City of Milwaukie Boundary
-  City of Milwaukie Tax Lots
-  Unincorporated Clackamas County Tax Lots



0 30 60 120 180 240 Feet

1 inch equals 100 feet

NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.

Chicago Title Insurance Co.

EA

3f

Leo J & Marian M Beckman
13306 W. Blue Bonnet Drive
Sun City West, AZ 85375

David Mealey & Sheryl Riley
5115 SE 38th Ave
Portland, OR 97202

After recording, return to (Name, Address, Zip)
Leo J & Marian M Beckman
13306 W. blue Bonnet Drive
Sun City West, AZ 85375

Until requested otherwise, send all tax statements to (Name, Address, Zip)
David Mealey & Sheryl Riley
5115 SE 38th Ave
Portland OR 97202

STATE OF OREGON,
County of _____ } ss.

I certify that the within instrument was received for recording on _____

Clackamas County Official Records 2009-018004
Sherry Hall, County Clerk



\$41.00

01280808200800180040030039 03/20/2009 01:36:53 PM

D-CON Cnt=1 Stn=2 JANSKEL
\$15.00 \$15.00 \$10.00

By LO, Deputy.

REAL ESTATE CONTRACT

THIS CONTRACT, Dated March 17, 2009, between Leo J. Beckman & Marian M. Beckman Co-Trustees under the Leo J. & Marian M. Beckman Revocable Living Trust dated Sept. 9, 2003, hereinafter called the seller, and David Mealey and Sheryl Riley

WITNESSETH, that in consideration of the mutual covenants and agreements herein contained, the seller agrees to sell unto the buyer and the buyer agrees to purchase from the seller all of the following described lands and premises situated in Clackamas County, State of Oregon, to-wit:

Lot 9 and 10, MINTONE HOMES, EXCEPTING THEREFROM that portion taken in condemnation suit No.6 6665 by Decree filed September 17, 1968

2 2 E 0 6 B A 0 0 1 0 0

CO

for the sum of Five Hundred Twenty-five Thousand and no/100--- Dollars (\$525,000.00), hereinafter called the purchase price, on account of which One Hundred Thousand and no/100--- Dollars (\$100,000.00) is paid on the execution hereof (the receipt of which is hereby acknowledged by the seller); the buyer agrees to pay the remainder of the purchase price (to-wit: \$425,000.00) to the order of the seller in monthly payments of not less than Two Thousand Six Hundred Dollars (\$2,600.00) each, with the whole unpaid balance being due no later than March 31, 2014.

payable on the 15th day of each month hereafter beginning with the month and year May 2009 and continuing until the purchase price is fully paid.

The true and actual consideration for this conveyance is \$525,000.00. (Here comply with ORS 93.030.)

Buyer will furnish seller with written proof of payment of real property taxes. No interest of buyer shall be assigned, subcontracted or otherwise transferred, voluntarily or involuntarily, without the written consent of seller. Buyer accepts (cont'd on back)

All of the purchase price may be paid at any time; all of the deferred payments shall bear interest at the rate of 6 percent per annum from 4-15-09 until paid; interest to be paid monthly and in addition to to be included in the minimum monthly payments above required. Taxes on the premises for the current tax year shall be prorated between the parties hereto as of * the closing date.

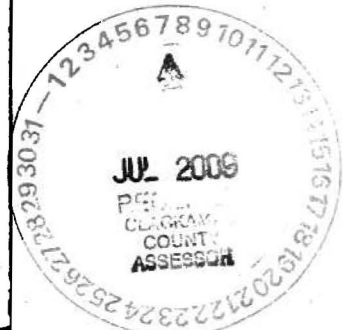
The buyer warrants to and covenants with the seller that the real property described in this contract is

- (A) primarily for buyer's personal, family or household purposes.
- (B) for an organization or (even if buyer is a natural person) is for business or commercial purposes.

The buyer shall be entitled to possession of the lands on 30 days after closing date and may retain such possession so long as buyer is not in default under the terms of this contract. The buyer agrees that at all times buyer will keep the premises and the buildings, now or hereafter erected thereon, in good condition and repair and will not suffer or permit any waste or strip thereof; that buyer will keep the premises free from construction and all other liens and save the seller harmless therefrom and reimburse seller for all costs and attorney fees incurred by seller in defending against any such liens; that buyer will pay all taxes hereafter levied against the property, as well as all water rents, public charges and municipal liens which hereafter lawfully may be imposed upon the premises, all promptly before the same or any part thereof become past due; that at buyer's expense, buyer will insure and keep insured all buildings now or hereafter erected on the premises against loss or damage by fire (with extended coverage) in an amount not less than \$425,000.00 in a company or companies satisfactory to the seller, specifically naming the seller as an additional insured, with loss payable first to the seller and then to the buyer as their respective interests may appear and all policies of insurance to be delivered to the seller as soon as insured. If the buyer shall fail to pay any such liens, costs, water rents, taxes or charges, the seller may go and any payment so made shall be added to and become a part of the debt secured by this contract and shall bear interest at the rate aforesaid, without waiver, however, of any right arising to the seller for buyer's breach of contract.

(OVER)

IMPORTANT NOTICE: Before signing out, whichever warranty (A) or (B) is not applicable. If warranty (A) is applicable and if the seller is a creditor, as such word is defined in the Truth-in-Lending Act and Regulation Z, the seller MUST comply with the Act and Regulation by making required disclosures.





24

LEO J. AND MARIAN M. BECKMAN, Co-Grantors

LEO AND MARIAN M. BECKMAN, Co-Grantees

After Recording Return to:
LEO J. AND MARIAN M. BECKMAN
5111 SE Lake Rd.
Milwaukie, OR 97222

Clackamas County Official Records 2003-125178
Sherry Hall, County Clerk



\$31.00

08/17/2003 02:27:05 PM

D-D Cnt=1 Str=2 BEV L
\$10.00 \$11.00 \$10.00

Until a change is requested,
all tax statements shall be
sent to the following address:
Same

WARRANTY DEED - STATUTORY FORM

LEO J. AND MARIAN M. BECKMAN, Co-Grantors, convey and warrant to LEO J. AND MARIAN M. BECKMAN, Co-Trustees, or the successor(s) in trust, under THE LEO J. AND MARIAN M. BECKMAN REVOCABLE LIVING TRUST, dated September 6, 2003 and any amendments thereto wherein LEO J. AND MARIAN M. BECKMAN are also Trustees and Beneficiaries, Co-Grantees, the following described real property free of encumbrances except as specifically set forth herein situated in Clackamas, Oregon:

2 2 E 06 BA 00100

Lots 9 and 10, MINTONE HOMES, in the County of Clackamas and State of Oregon, EXCEPTING THEREFROM that portion taken in Condemnation Suite No. 66665 by Decree filed September 17, 1968.

The true and actual consideration for this conveyance is \$1.00.

WD

The liability and obligations of the Grantor to Grantee and Grantee's heirs and assigns under the warranties and covenants contained herein or provided by law shall be limited to the extent of coverage that would be available to Grantor under a standard policy of title insurance. The limitations contained herein expressly do not relieve Grantor of any liability or obligations under this instrument, but merely define the scope, nature, and amount of such liability or obligations.

The property is free from encumbrances except those of record.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY

38487
8-5566

Right of Way
File No.

RW-30148

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CLACKAMAS

3 _____)
4 STATE OF OREGON, by and through its State Highway)
Commission, composed of Glenn L. Jackson, David B.)
5 Simpson and Fred W. Hill,)
6 Plaintiff,)
7 vs.)
8 ALFRED FOGLIO and MARY FOGLIO, husband and wife;)
GLEN McCARTY, Trustee; WILLAMETTE SAVINGS AND LOAN)
9 ASSOCIATION OF MILWAUKIE, OREGON, a corporation;)
FIRST STATE BANK OF OREGON, an Oregon banking)
10 corporation, MERLE HENSLEY and ETHEL HENSLEY,)
11 Defendants.)
12 _____)

Case No. 66665
JUDGMENT ORDER

13
14 The above entitled cause came on regularly for trial on Tuesday,
15 June 4, 1968, before the Honorable Winston L. Bradshaw, Judge of the above
16 entitled court; plaintiff appearing by and through Ted E. Barbera of its
17 attorneys; and the defendants Alfred Foglio and Mary Foglio, husband and
18 wife; Glen McCarty, Trustee; Willamette Savings and Loan Association of
19 Milwaukie, Oregon, a corporation; and First State Bank of Oregon, an Oregon
20 banking corporation, appearing by and through Glen McCarty, their attorney;
21 and

22 It appearing to the Court that an order of default has heretofore
23 been entered against the defendants Merle Hensley and Ethel Hensley; and

24 It appearing to the Court and the Court now finds that the real
25 property described in paragraphs IV and V, together with the rights of access
26 described in paragraph VI of the plaintiff's complaint on file herein are
27 necessary for public use; and

28 It appearing to the Court and the Court now finds that the plaintiff,
29 prior to the commencement of this action and pursuant to its resolution,
30 attempted to acquire said real property and interests therein, together with
31 said rights of access, by agreement and purchase, but was unable to do so; and

32 It appearing that the only issue to be tried in this proceeding is
33 the just compensation to be awarded to the defendants for the appropriation of
34 the real property and interests therein, together with the rights of access,
35 as prayed for in the complaint on file herein; and

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1 A jury having been called, examined, duly empaneled and sworn; the
2 parties having made their opening statements; a view of the proposed acquisi-
3 tion having been held in the manner provided by law; the parties having adduced
4 evidence in support of their contentions; arguments of the respective parties
5 having been made to the jury, the jury having been regularly instructed in the
6 law and having retired for deliberations did, on the 5th day of June, 1968, re-
7 turn its verdict, which verdict, omitting the title of the court and cause, is
8 in the words and figures as follows:

9 "We, the jury, being first duly empaneled and sworn to try
10 the above entitled cause, find that the just compensation to be
11 awarded to the defendants is in the sum of \$21,000.00.
12 "DATED this 5 day of June, 1968.

13 /s/ Michael K. Inman
14 Foreman"

15 and which said verdict was regularly filed by the clerk of said court; and

16 It appearing to the Court, from the records and files herein, that
17 on October 9, 1967, plaintiff, pursuant to ORS 366.392 and ORS 366.393,
18 deposited into court the sum of \$9,000.00 for the use of the defendants pend-
19 ing adjudication of the within action; and

20 It appearing to the Court and the Court now finds, based on stipula-
21 tion of the parties, that plaintiff took physical possession of the property
22 being acquired herein on September 23, 1967; and

23 It appearing to the Court and, based on a stipulation of the parties,
24 the Court now finds that the defendants are entitled to interest at six percent
25 per annum on the sum of \$21,000.00 from September 23, 1967, to and including
26 October 9, 1967, and interest at six percent per annum from October 9, 1967,
27 until paid upon the amount by which said verdict exceeds the amount of said
28 deposit into court, to wit: the sum of \$12,000.00; and

29 It appearing to the Court and the Court now finds that the amount
30 of the verdict of the jury exceeded plaintiff's tender to defendants prior
31 to the filing of the complaint herein, and that defendants are, therefore,
32 entitled to a reasonable sum as their attorneys' fees herein; the Court now
33 finds that the sum of \$3,500.00 is a reasonable sum to be allowed defend-
34 ants for attorneys' fees; now, therefore,

35 IT IS HEREBY ORDERED by this Court as follows:

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I.

That upon payment to the Clerk of this court of the balance of the amount of the verdict over and above the \$9,000.00 heretofore deposited, to wit: the sum of \$12,000.00, together with interest as aforesaid, the real property hereinafter described, together with all rights and easements therein, shall be and become appropriated to the State of Oregon, by and through its State Highway Commission, in fee simple, free and clear of all liens and encumbrances. Said real property so appropriated is described as follows:

Parcel No. 1

A parcel of land lying in Lots 9 and 10, Mintone Homes, Clackamas County, Oregon; the said parcel being that portion of said Lots 9 and 10 included in a strip of land variable in width, lying on the Southwesterly side of the center line of the Clackamas Highway as said highway has been relocated, which center line is described as follows:

Beginning at Engineer's center line Station 162+88.16, said Station being 711.42 feet North and 1244.97 feet West of the Southeast corner of MINTHORN ADDITION to the City of Portland; thence on a spiral curve left (the long chord of which bears South 27° 29' 30" East) 600 feet; thence on a 1637.02 foot radius curve left (the long chord of which bears South 39° 31' 30" East) 287.62 feet; thence on a spiral curve left (the long chord of which bears South 51° 33' 30" East) 600 feet; thence South 55° 03' 30" East, 1801.16 feet; thence on an 11,459.16 foot radius curve left (the long chord of which bears South 57° 28' 30" East) 966.67 feet; thence South 59° 53' 30" East, 696.99 feet; thence on an 11,459.16 foot radius curve right (the long chord of which bears South 57° 29' 10" East) 962.22 feet; thence South 55° 04' 50" East, 797.18 feet to Engineer's Station 230+00.

The widths in feet of the strip of land above referred to are as follows:

<u>Station</u>	<u>to</u>	<u>Station</u>	<u>Width on Southwesterly Side of Center Line</u>
211+25		211+50	210 taper to 185
211+50		212+40.60	185 taper to 155
212+40.60		215+00	155

(Bearings used herein are based upon the Oregon Co-ordinate System, North Zone.)

The parcel of land to which this description applies contains 0.08 acre, more or less.

Parcel No. 2

A parcel of land lying in Lots 9 and 10, Mintone Homes, Clackamas County, Oregon; the said parcel being that portion of said Lots 9 and 10 included in a strip of land variable in width, lying on the Northerly side of the center line of the connection between Lake Road and Harmony Road, which center line is described as follows:

Beginning at Engineer's center line Station "OX" 98+41.59, said Station being 230.57 feet North and 137.68 feet East of the Northwest corner of the Elisha Kellogg D.L.C. #54, Township 2

1 South, Range 2 East, W.M., thence South 72° 44' 25" East, 433.98
 2 feet; thence on a spiral curve left (the long chord of which bears
 3 South 74° 49' 25" East) 500 feet; thence on a 2291.83 foot radius
 4 curve left (the long chord of which bears North 86° 40' 50" East)
 1146.33 feet; thence on a spiral curve left (the long chord of
 which bears North 68° 11' 05" East) 500 feet; thence North 66° 06'
 05" East, 278.10 feet to Engineer's center line Station "OX" 127+00.

5 The widths in feet of the strip of land above referred to are
 6 as follows:

7	<u>Station</u>	<u>Station</u>	<u>Width on Northerly Side of Center Line</u>
8	"OX"101+10	"OX" 102+75.57	60 taper to 50
9	"OX" 102+75.57	"OX" 105+00	50

10 (Bearings used herein are based upon the Oregon Co-ordinate
 11 System, North Zone.)

12 The parcel of land to which this description applies contains
 13 0.1 acre, more or less.

14 II.

15 That there shall be no rights of access of any nature between the
 16 real property described in paragraph I hereof and all of the real property of
 17 the defendants remaining after the appropriation of said property, which said
 18 remaining real property of the defendants is situated in Clackamas County,
 19 Oregon, and, including the real property described in paragraph I hereof, is
 20 described as follows:

21 "Lots 9 and 10, Mintone Homes, Clackamas County, Oregon."

22 Provided, however, that there shall be no restriction of access to Lake Road
 23 easterly of Highway Engineer's center line Station "OX" 103+50.

24 III.

25 That the defendants shall recover of and from the plaintiff the sum
 26 of \$ 3500.00 as and for attorney fees, together with their costs and dis-
 27 bursements incurred herein taxed in the amount of \$ _____.

28 DATED this 17th day of June, 1968.

29
 30 s/ Winston L. Bradshaw
 31 Circuit Judge

6.

OTHER BUSINESS



To: Mayor and City Council

**Through: Mike Swanson, City Manager, and
Kenneth Asher, Community Development & Public Works Director**

From: Alex Campbell, Community Development

Subject: NE Sewer Extension Project Loan Agreement

Date: August 28, 2009 for the September 15, 2009 Regular Session

Action Requested

Approve the attached resolution, authorizing the City Manager to sign an updated Clean Water State Revolving Fund Loan Agreement for the NE Sewer Extension (NESE) project.

History of Prior Actions and Discussions

August 2009: Staff updated Council on project progress in preparation of up-coming actions.

February 3, 2009: Council approved a resolution authorizing the City Manager to enter into a contract with Century West Engineering for the engineering services needed to provide a sewer system to the Dual Interest Area "A".

December 2008: Council approved a loan agreement for the Clean Water State Revolving Fund (CWSRF) loan to fund the extension of wastewater sewer to the Dual Interest Area "A" (Resolution No. 94-2008).

October 2008: Council approved moving forward with the extension of wastewater sewer to the Dual Interest Area including; entering into an Intergovernmental Agreement

(IGA) with Clackamas County for use of Century West Engineering services through a contract between Century West Engineering and Clackamas County; making application for a DEQ loan needed to accomplish the sewer extension; and moving forward with the public information needed for the project (Resolution 81-2008).

September 2008: Work session discussing the sewer extension project. Council requested additional information prior to acting.

May 2008: Work session to discuss the sewer extension project in light of City, County, State and intergovernmental requirements and policies. The lack of support of citizens in the area to annexation, but in support of receiving sewer service, most recently expressed at the March 20, 2008 open house, was noted. Staff presented information on relevant City and County policies, state law regarding annexation, and raised questions regarding service delivery and governance. Also in May 2008, the Clackamas County Board of Commissioners approves entering into a contract with Century West Engineering for the engineering services needed to advance the wastewater sewer extension for the County's portion of the wastewater sewer extension to the North Clackamas Revitalization Area (NCRA). Included in the contract is the City's portion of the preliminary engineering needed to qualify the City for the Clean Water State Revolving Fund (CWSRF) loan.

March 2008: Work session to discuss the need for, and timing of wastewater service to the unincorporated area adjacent to the northeastern border of the City. Working with Clackamas County, the City was beginning a public outreach effort to inform residents about the Dual Interest Area and determine public interest regarding connection to the City's public wastewater sewer system.

November 2002: Council directed the City Manager to sign a CDBG grant application to subsidize connection costs for low-income residents in the Dual Interest Area. This proposal assumed a City project to extend service to the unsewered unincorporated area.

July 1990: Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. In the northern Dual Interest Area (DIA), or DIA, the agreement states:

Background

In order to extend wastewater sewer service to the area adjacent to the Northeast portion of the City known as Dual Interest Area "A," staff has applied for a low interest loan from the State Department of Environmental Quality (DEQ). The City has applied

for funds from the Clean Water State Revolving Fund (CWSRF), which is administered by DEQ and is capitalized (i.e., funded) by the EPA. The purpose of the fund is to support projects that protect water quality. Because the NESE project extends sanitary sewers in the area adjoining Johnson Creek, and because the existing septic systems threaten water quality in the creek, and ground water more generally, the City's application scored highly and was ranked at the top of DEQ's priority list to fund.

A portion of American Reinvestment and Recovery Act (ARRA or "stimulus") has been allocated through EPA to support CWSRF loans. In Oregon, DEQ has elected to use these ARRA funds to provide loan forgiveness on 50% of loans issued this year, and to eliminate interest on the loans themselves. Half the loan (\$2 million) will be forgiven upon completion of the project, with the remainder paid back over twenty years at zero interest, but with an annual fee equal to 0.5% of the outstanding principal. CWSRF loans with ARRA loan forgiveness have been capped at \$4 million.

The total current cost estimate for the project is \$4.75 million. The NESE project will be funded primarily by the CWSRF loan. Roughly \$460,000 of the project will be funded by previous SDC collections. SDC funds will pay for a pump station that is required by the project, but that increases capacity of the City's wastewater collection system. CWSRF monies cannot pay for easement acquisitions, expected to cost between \$100,000 and \$200,000. Easement acquisitions and other costs beyond those funded by the CWSRF loan and SDC contribution would be financed by a ten year internal loan from the Sewer Capital and Reserve Fund.

Once the project is complete and the City begins to pay back DEQ for the project, properties within the reimbursement district will pay back their share of all project elements (except for the pump station). See Attachment 2 for a breakdown of the various funding sources and how they relate to the reimbursement district.

Staff will return to Council to with a specific reimbursement district calculation once the project is bid. The preliminary method was described in the August 18 staff report.

Staff anticipates offering any customer who wishes to hook-up within two years of the project a ten-year payment plan at no interest. Reimbursement fees for those customers who elect to hook-up later will grow at 2.5% per year (simple interest). See Attachment 3 for an anticipated loan repayment schedule.

Concurrence

The City Attorney and Finance Director have both reviewed the loan agreement and concurred. The Finance Director concurred with the approach to internal borrowing.

Fiscal Impact

The City is committing an annual payment of approximately \$100,000 annually for 20 years, beginning in 2010 or 2011, depending upon the date of completion of the project. Staff anticipates that these payments will be covered in whole, or in large part, by reimbursement payments from customers. However, the utility is accepting a significant financial obligation. The City will establish a loan reserve account of \$12,500 as provided for in Article 5 (C) of the loan agreement.

Work Load Impacts

Execution of the actions described here are within existing work plans.

Alternatives

The City could elect to pursue regular CWSRF financing, at traditional CWSRF rates, for project “gap” costs in future years, rather than borrowing internally. However, some source other than CWSRF funds will be required to finance easement purchases.

Attachments

1. Resolution (Loan Agreement as an Exhibit)
2. Finance picture
3. Spreadsheet showing anticipated project cost payback

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AUTHORIZING THE STATE OF OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY CLEAN WATER STATE REVOLVING FUND LOAN AGREEMENT NO. R06655 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT.

WHEREAS, the City Council had previously authorized the City Manager to submit a loan application with the State of Oregon Department of Environmental Quality Clean Water State Revolving Loan fund through Resolution 2008-94; and

WHEREAS, the Department of Environmental Quality approved the City of Milwaukie's revised loan application in July 2009; and

WHEREAS, the Department of Environmental Quality has extended a loan in the amount of \$2,000,000 with no interest charges, with semi-annual payments of \$50,000 with an annual fee of 0.5% of the outstanding principal balance, repaid over a period of twenty (20) years; and has provided for forgiveness of an additional \$2,000,000 loan, to be forgiven upon project completion; these combined resources to fund the Wastewater Collection Extension project in the Dual Interest Area "A," also known as the North East Milwaukie Sewer Extension project;

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Milwaukie authorizes loan agreement No. R06655 (Exhibit A) with the Department of Environmental Quality and authorizes the City Manager to sign the loan agreement.

BE IT FURTHER RESOLVED the City Council of the City of Milwaukie authorizes the establishment of a loan reserve account of \$12,500 as provided in Article 5 (C) of the loan agreement.

Introduced and adopted by the City Council on September 15, 2009.

This resolution is effective on September 16, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

**CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT
No. R06655**

BETWEEN

**THE STATE OF OREGON
ACTING BY AND THROUGH ITS
DEPARTMENT OF ENVIRONMENTAL QUALITY**

AND

CITY OF MILWAUKIE

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THIS LOAN AGREEMENT is made and entered into as of the date it is fully executed by both parties (and in the case of the State, approved by the Attorney General's Office, if required) and is by and between the **State of Oregon, acting by and through its Department of Environmental Quality ("DEQ")**, and the **Borrower** (as defined below). Unless the context requires otherwise, capitalized terms not defined below shall have the meanings assigned to them by ARTICLE 9 of this Loan Agreement. The reference number for the Loan made pursuant to this Loan Agreement is Loan No. R06655.

DEQ agrees to make, and Borrower agrees to accept, the Loan on the terms and subject to the conditions set forth below.

ARTICLE 1: THE LOAN - SPECIFIC TERMS

DEQ agrees to make the Loan on the following terms and conditions:

- (A) **BORROWER:** City of Milwaukie.
- (B) **BORROWER'S ADDRESS:** City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, Oregon 97203
Fax 503-774-8236
- (C) **LOAN AMOUNT:** \$4,000,000.
- (D) **TYPE AND PURPOSE OF LOAN.** The Loan is a "Revenue Secured Loan" made by DEQ pursuant to OAR Section 340-054-0065(2) and OAR Section 340-054-0108 for the purpose of financing the Project.
- (E) **PROJECT TITLE:** Wastewater Collection System Expansion.
- (F) **DESCRIPTION OF THE PROJECT:** Design and construction of sanitary sewer collection pipes, as documented in the Borrower's application dated March 23, 2009. This may include design and construction of a pump station.
- (G) **INTEREST RATE:** Zero percent (0.00%) per annum. Calculation of interest is also discussed in ARTICLE 2(E) and in ARTICLE 2(F)(4) of this Agreement.
- (H) **REPAYMENT PERIOD:** Twenty (20) years after the Completion Date.
- (I) **TERMS OF REPAYMENT:** A payment within six months after the Project Completion Date and thereafter semi-annual payments in accordance with Appendix A and ARTICLE 2(F) of this Agreement.
- (J) **PLEDGE:** The Borrower hereby grants to DEQ a security interest in and irrevocably pledges its Net Operating Revenues to pay the amounts due under this Loan Agreement. The Net Operating Revenues so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest

extent permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of Net Operating Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower covenants with DEQ and any assignee of this Agreement that except as otherwise expressly provided herein, the Borrower shall not issue any other obligations which have a pledge or lien on the Net Operating Revenues superior to or on a parity with the pledge herein granted without the written permission of DEQ. This Loan is a parity obligation with all other CWSRF loans between DEQ and the Borrower; provided, however, that this provision shall not affect the priority that prior CWSRF loans are entitled to in relation to any loans between Borrower and any third parties.

(K) ANNUAL FEE: An annual fee of 0.5% of the Outstanding Loan Amount (as determined prior to the posting of the payment due on that date) is due during the Repayment Period commencing with the second payment date hereunder and annually thereafter.

(L) LOAN FORGIVENESS: If the Borrower completes the Project, and provided there is no default of any of the terms hereof, DEQ shall forgive fifty percent (50%) of the Loan (the portion of the loan that is forgiven being referred to as the "ARRA Forgivable Loan") on the date repayment begins. The amount of the Loan forgiveness will be determined when the Final Loan Amount is calculated.

ARTICLE 2: GENERAL LOAN PROVISIONS

(A) AGREEMENT OF DEQ TO LOAN. DEQ agrees to loan the Borrower an amount not to exceed the Loan Amount, subject to the terms and conditions of this Loan Agreement, but solely from funds available to DEQ in the Water Pollution Control Revolving Fund for its Clean Water State Revolving Fund program. This Loan Agreement is given as evidence of a Loan to the Borrower made by DEQ pursuant to ORS Chapters 190, 286A, 287A, and 468, and OAR Chapter 340, all as amended from time to time, consistent with the express provisions hereof.

(B) AVAILABILITY OF FUNDS. DEQ's obligation to make the Loan described in this Agreement is subject to the availability of funds in the Water Pollution Control Revolving Fund for its CWSRF program, and DEQ shall have no liability to the Borrower or any other party if such funds are not available or are not available in amounts sufficient to fund the entire Loan described herein. Funds may not be available ahead of the estimated schedule of disbursements submitted by the Borrower, which is attached as Appendix B. This schedule may be revised from time to time by the parties without the necessity of an amendment by replacing the then current Appendix B with an updated Appendix B which is dated and signed by both parties.

(C) DISBURSEMENT OF LOAN PROCEEDS.

(1) Project Account(s). Loan proceeds (as and when disbursed by DEQ to the Borrower) shall be deposited in a Project account(s). The Borrower shall maintain Project account(s) as segregated account(s). Funds in the Project account(s) shall only be used to pay for Project costs, and all earnings on the Project account(s) shall be credited to the account(s).

(2) Documentation of Expenditures. The Borrower shall provide DEQ with written evidence of materials and labor furnished to and performed upon the

Project and such receipts for the payment of the same, releases, satisfactions and other signed statements and forms as DEQ may reasonably require. DEQ will disburse funds to pay Project costs only after the Borrower has provided documentation satisfactory to DEQ that such Project costs have been incurred and qualify for reimbursement hereunder.

(3) Adjustments and Corrections. DEQ may at any time review and audit requests for disbursement and make adjustments for, among other things, ineligible expenditures, mathematical errors, items not built or bought, unacceptable work and other discrepancies. Nothing in this Agreement requires DEQ to pay any amount for labor or materials unless DEQ is satisfied that the claim therefor is reasonable and that the Borrower actually expended and used such labor or materials in the Project. In addition, DEQ shall not be required to make any disbursement which would cause the total of all disbursements made hereunder (including the requested disbursement) to be greater than the total estimated cost of the work completed at the time of the disbursement, as determined by DEQ.

(4) Contract Retainage Disbursement. DEQ will not disburse Loan proceeds to cover contractor retainage unless the Borrower is disbursing retainage to an escrow account and provides proof of the deposit, or until the Borrower provides proof that it paid retained funds to the contractor.

(D) **AGREEMENT OF BORROWER TO REPAY.** The Borrower agrees to repay all amounts owed on this Loan as described in ARTICLE 1(I) and ARTICLE 2(F) in U.S. Dollars in immediately available funds at the place listed for DEQ in ARTICLE 10(A). In any case, the Borrower agrees to repay all amounts owed on this Loan within the Repayment Period.

(E) **INTEREST.** Interest will accrue at the rate specified in ARTICLE 1(G) from the date that a disbursement hereunder is mailed or delivered to the Borrower or deposited into an account of the Borrower. Interest will accrue using a 365/366 day year and actual days elapsed until the Final Loan Amount is determined and the final repayment schedule is prepared and thereafter on a 360-day year basis and actual days elapsed.

(F) **LOAN REPAYMENT.**

(1) Preliminary Repayment Schedule; Interim Payments. The attached Appendix A is a preliminary repayment schedule based on the estimated date of the first disbursement hereunder and Loan Amount. Until the final repayment schedule is effective, the Borrower shall make the payments set forth in the preliminary repayment schedule.

(2) Final Repayment Schedule. After the Borrower has submitted its final request for Loan proceeds and DEQ has made all required disbursements hereunder, DEQ will determine the Final Loan Amount and prepare a final payment schedule that provides for level semi-annual installment payments of principal and interest (commencing on the next semi-annual payment date), each in an amount sufficient to pay accrued interest to the date of payment and to pay so much of the principal balance as to fully amortize the then Outstanding Loan Amount over the remaining Repayment Period. This final repayment schedule, when signed and dated by the parties, will replace the preliminary payment schedule as Attachment A without the necessity of an amendment to this Agreement.

(3) Crediting of Scheduled Payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received. Scheduled payments will be applied first to fees due, if any, and then to interest, according to the applicable repayment schedule, and then to principal.

(4) Crediting of Unscheduled Payments. All unscheduled payments, including any prepayments and partial payments, will be applied first to fees due, if any, and then to accrued unpaid interest (which will be computed as otherwise provided in this Agreement, except that interest from the last payment date will be calculated using a 365/366 day year and actual days elapsed), and then to principal. In the case of a Loan prepayment that does not prepay all of the principal of the Loan, DEQ will determine, in its sole discretion, how it will apply such Loan prepayment to the Outstanding Loan Amount. After a partial payment, DEQ may, in its sole and absolute discretion, reamortize the Outstanding Loan Amount at the same interest rate for the same number of payments to decrease the Loan payment amount; provided, however, that nothing in this Agreement requires DEQ to accept any partial payment or to reamortize the Outstanding Loan Amount if it accepts a partial payment.

(5) Final Payment. The Outstanding Loan Amount, all accrued and unpaid interest, and all unpaid fees and charges due hereunder are due and payable no later than twenty (20) years after the Completion Date.

(G) PREPAYMENT.

(1) Optional Prepayment. The Borrower may prepay any amount owed on this Loan without penalty on any business day upon 24 hours prior written notice. Any prepayment made hereunder will be applied in accordance with ARTICLE 2(F)(4).

(2) Refinancing of Loan by the Borrower. If the Borrower refinances the portion of the Project financed by this Loan or obtains an additional grant or loan that is intended to finance the portion of the Project financed by this Loan, it will prepay the portion of the Loan being refinanced by the additional grant or loan.

(3) Ineligible Uses of the Project. If the Borrower uses the Project for uses that are other than those described in ARTICLE 1(F) ("ineligible uses"), the Borrower shall, upon demand by DEQ, prepay an amount equal to the Outstanding Loan Amount multiplied by the percentage (as determined by DEQ) of ineligible use of the Project. Such prepayment shall be applied against the most remotely maturing principal installments and shall not postpone the due date of any payment(s) hereunder.

(H) LATE PAYMENT FEE. The Borrower agrees to pay immediately upon DEQ's demand a late fee equal to five percent (5%) of any payment (including any loan fee) that is not received by DEQ on or before the tenth (10th) calendar day after such payment is due hereunder.

(I) TERMINATION OF LOAN AGREEMENT. Upon performance by the Borrower of all of its obligations under this Loan Agreement, including payment in full of the Final Loan Amount, all accrued interest and all fees, charges and other amounts due hereunder, this Loan Agreement will

terminate, and DEQ will release its interest in any collateral given as security under this Loan Agreement.

ARTICLE 3: GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

(A) REPRESENTATIONS AND WARRANTIES OF THE BORROWER. The Borrower represents and warrants to DEQ that:

(1) It is a duly formed and existing public agency (as defined in ORS 468.423(2)) and has full power and authority to enter into this Loan Agreement.

(2) This Agreement has been duly authorized and executed and delivered by an authorized officer of the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms.

(3) All acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Agreement have existed, have happened, and have been performed in due time, form and manner as required by law.

(4) Neither the execution of this Loan Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with any of the terms and conditions of this Loan Agreement will violate any provision of law, or any order of any court or other agency of government, or any agreement or other instrument to which the Borrower is now a party or by which the Borrower or any of its properties or assets is bound. Nor will this Loan Agreement be in conflict with, result in a breach of, or constitute a default under, any such agreement or other instrument, or, except as provided hereunder, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(5) This Loan Agreement does not create any unconstitutional indebtedness. The Loan Amount together with all of the Borrower's other obligations does not, and will not, exceed any limits prescribed by the Constitution, any of the statutes of the State of Oregon, the Borrower's charter, or any other authority.

(6) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(7) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Facility and the Project, other than licenses and permits relating to the Facility or the Project which the Borrower expects to and shall receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Agreement.

(8) The information contained herein which was provided by the Borrower is true and accurate in all respects, and there is no material adverse information relating to the Project or the Loan, known to the Borrower, that has not been disclosed in writing to DEQ.

(9) No litigation exists or has been threatened that would cast doubt on the enforceability of the Borrower's obligations under this Loan Agreement.

(10) The estimated Completion Date of the Project is March 31, 2010.

(11) The estimated total Costs of the Project are \$4,511,617.

(12) The Borrower is in compliance with all laws, ordinances, and governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or the Project.

(13) The Borrower's DUNS number is _____.

(B) CONTINUING REPRESENTATIONS OF THE BORROWER. The representations of the Borrower contained herein shall be true on the closing date for the Loan and at all times during the term of this Agreement.

(C) REPRESENTATIONS AND WARRANTIES OF DEQ. DEQ represents and warrants that the Director has power under ORS Chapter 468 and OAR Chapter 340, Division 54, to enter into the transactions contemplated by this Loan Agreement and to carry out DEQ's obligations thereunder and that the Director is authorized to execute and deliver this Loan Agreement and to make the Loan as contemplated hereby.

ARTICLE 4: CONDITIONS TO LOAN

(A) CONDITIONS TO CLOSING. DEQ's obligations hereunder are subject to the condition that on or prior to August 31, 2009, the Borrower will duly execute and deliver to DEQ the following items, each in form and substance satisfactory to DEQ and its counsel:

(1) this Agreement duly executed and delivered by an authorized officer of the Borrower;

(2) a copy of the ordinance, order or resolution of the governing body of the Borrower authorizing the execution and delivery of this Agreement, certified by an authorized officer of the Borrower;

(3) an opinion of the legal counsel to the Borrower to the effect that:

(a) The Borrower has the power and authority to execute and deliver and perform its obligations under this Loan Agreement;

(b) This Loan Agreement has been duly executed and acknowledged where necessary by the Borrower's authorized representative(s), all required approvals have been obtained, and all other necessary actions have been taken, so that this Loan Agreement is valid, binding, and enforceable against the Borrower in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditors rights generally;

(c) To such counsel's knowledge, this Loan Agreement does not violate any other agreement, statute, court order, or law to which the Borrower is a party or by which it or any of its property or assets is bound; and

(d) The Net Operating Revenues used as security for the Loan will **not** constitute taxes that are limited by Section 11b, Article XI of the Oregon Constitution; and

(4) such other documents, certificates, opinions and information as DEQ or its counsel may reasonably require.

(B) CONDITIONS TO DISBURSEMENTS. Notwithstanding anything in this Agreement to the contrary, DEQ shall have no obligation to make any disbursement to the Borrower under this Agreement unless:

(1) No Event of Default and no event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both has occurred and is continuing;

(2) All of the Borrower's representations and warranties in this Agreement are true and correct on the date of disbursement with the same effect as if made on such date; and

(3) The Borrower submits a disbursement request to DEQ that complies with the requirements of ARTICLE 2(C);

provided, however, DEQ shall be under no obligation to make any disbursement if:

(1) there is insufficient money available in the SRF and CWSRF Program for the Project; or

(2) there has been a change in any applicable state or federal law, statute, rule or regulation so that the Project is no longer eligible for the Loan.

ARTICLE 5: COVENANTS OF BORROWER

(A) GENERAL COVENANTS OF THE BORROWER. Until the Loan is paid in full, the Borrower covenants with DEQ that:

(1) The Borrower shall use the Loan funds only for payment or reimbursement of the Costs of the Project in accordance with this Loan Agreement. The Borrower acknowledges and agrees that the Costs of the Project do NOT include any Lobbying costs

or expenses incurred by Borrower or any person on behalf of Borrower and that Borrower will not request payment or reimbursement for Lobbying costs and expenses.

(2) If the Loan proceeds are insufficient to pay for the Costs of the Project in full, the Borrower shall pay from its own funds and without any right of reimbursement from DEQ all such Costs of the Project in excess of the Loan proceeds.

(3) The Borrower is and will be the owner of the Facility and the Project and shall defend them against the claims and demands of all other persons at any time claiming the same or any interest therein.

(4) The Borrower shall not sell, lease, transfer, or encumber or enter into any management agreement or special use agreement with respect to the Facility or any financial or fixed asset of the utility system that produces the Net Operating Revenues without DEQ's prior written approval, which approval may be withheld for any reason. Upon sale, transfer or encumbrance of the Facility or the Project, in whole or in part, to a private person or entity, this Loan shall be immediately due and payable in full.

(5) Concurrent with the execution and delivery of this Loan Agreement, or as soon thereafter as practicable, the Borrower shall take all steps necessary to cause the Project to be completed in a timely manner in accordance with all applicable DEQ requirements.

(6) The Borrower shall take no action that would adversely affect the eligibility of the Project as a CWSRF project or cause a violation of any Loan covenant in this Agreement.

(7) The Borrower shall undertake the Project, request disbursements under this Loan Agreement, and use the Loan proceeds in full compliance with all applicable laws and regulations of the State of Oregon, including but not limited to ORS Chapter 468 and Oregon Administrative Rules Sections 340-054-0005 to 340-054-0108, as they may be amended from time to time, and all applicable federal authorities and laws and regulations of the United States, including but not limited to Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4, the ARRA, the federal cross-cutters listed at Appendix D (attached hereto and by this reference made a part hereof) and regulations of the U.S. Environmental Protection Agency, all as they may be amended from time to time.

(8) The Borrower shall keep the Facility in good repair and working order at all times and operate the Facility in an efficient and economical manner. The Borrower shall provide the necessary resources for adequate operation, maintenance and replacement of the Project and retain sufficient personnel to operate the Facility.

(B) DEBT SERVICE COVERAGE REQUIREMENT; WASTEWATER RATE COVENANT; REPORTING.

(1) Debt Service Coverage Requirement. The Borrower shall maintain wastewater rates and charge fees in connection with the operation of the Facility that are adequate to generate Net Operating Revenues in each fiscal year sufficient to pay (i) all debt service (excluding debt service on the Loan), (ii) all other financial obligations imposed in connection with prior lien obligations of the Borrower, and (iii) an amount equal to the debt service coverage factor of 135% multiplied by the debt service payments due under this Loan Agreement in that fiscal year; provided, however, the amount required under (i) shall include any amounts required by DEQ to provide coverage satisfactory to DEQ on prior lien obligations or new lien obligations the Borrower may incur that DEQ determines are inadequately secured or otherwise may adversely affect the ability of the Borrower to repay the Loan.

(2) Wastewater Rate Adjustments. The Borrower shall review its wastewater rates and fees at least annually. If, in any fiscal year, the Borrower fails to collect fees sufficient to meet the debt service coverage requirement described in ARTICLE 5(B)(1), the Borrower shall promptly adjust its wastewater rates and fees to assure future compliance with such coverage requirement. The Borrower's adjustment of the wastewater rates and fees does not constitute a cure of any default by the Borrower of the debt service coverage requirement set forth in ARTICLE 5(B)(1). The Borrower's failure to adjust rates shall not, at the discretion of DEQ, constitute a default if the Borrower transfers to the fund that holds the Net Operating Revenues unencumbered resources in an amount equal to the revenue deficiency to the Facility that produces the Net Operating Revenues.

(3) Reporting Requirement. By December 31 of each year the Borrower shall provide DEQ with a report that demonstrates the Borrower's compliance with the requirements of this ARTICLE 5(B). If the audit report described in ARTICLE 5(F) identifies the Net Operating Revenues and contains a calculation demonstrating whether the Borrower satisfied the requirements of this ARTICLE 5(B), that audit will satisfy the requirements of this ARTICLE 5(B)(3).

(C) LOAN RESERVE REQUIREMENT; LOAN RESERVE ACCOUNT.

(1) Loan Reserve Requirement. The Loan reserve requirement equals 25% times one-half of the average annual debt service based on the final repayment schedule. Until the Final Loan Amount is calculated, the Loan Reserve Requirement is \$12,500. The Borrower shall deposit the Loan reserve requirement amount into the Loan Reserve Account no later than the date the first payment is due hereunder.

(2) Loan Reserve Account. The Borrower shall create a segregated Loan Reserve Account that shall be held in trust for the benefit of DEQ. The Borrower hereby grants to DEQ a security interest in and irrevocably pledges the Loan Reserve Account to pay the amounts due under this Loan Agreement. The funds in Loan Reserve Account so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS

287A.310. The Borrower represents and warrants that the pledge of the Loan Reserve Account hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower shall use the funds in the Loan Reserve Account solely to pay amounts due hereunder until the principal, interest, fees, and any other amounts due hereunder have been fully paid.

(3) Additional Deposits. If the balance in the Loan Reserve Account falls below the Loan reserve requirement, the Borrower shall promptly deposit from the first Net Operating Revenues available after payment of the amounts due hereunder (unless the Borrower has previously made such deposit from other money of the Borrower) an amount sufficient to restore the balance up to the Loan reserve requirement.

(D) **INSURANCE**. At its own expense, the Borrower shall, during the term of this Agreement, procure and maintain insurance coverage (including, but not limited to, hazard, flood and general liability insurance) adequate to protect DEQ's interest and in such amounts and against such risks as are usually insurable in connection with similar projects and as is usually carried by entities operating similar facilities. The insurance shall be with an entity which is acceptable to DEQ. The Borrower shall provide evidence of such insurance to DEQ. Self insurance maintained pursuant to a recognized municipal program of self-insurance will satisfy this requirement.

(E) **INDEMNIFICATION**.

(1) *The Borrower shall, to the extent permitted by law and the Oregon Constitution, indemnify, save and hold the State, its officers, agents and employees harmless from and (subject to ORS Chapter 180) defend each of them against any and all claims, suits, actions, losses, damages, liabilities, cost and expenses of any nature whatsoever resulting from, arising out of or relating to the acts or omissions of the Borrower or its officers, employees, subcontractors or agents in regard to this Agreement or the Project.*

(2) *The Borrower shall assume sole liability for the Borrower's breach of the conditions of the ARRA Forgivable Loan (as defined in ARTICLE 1(L)), and shall, upon the Borrower's breach of ARRA Forgivable Loan conditions that causes or requires DEQ to return to the EPA the ARRA money disbursed to the Borrower for the ARRA Forgivable Loan, hold harmless and indemnify DEQ for an amount equal to such ARRA money which DEQ is required to pay the EPA.*

(F) **THE BORROWER'S FINANCIAL RECORDS; FINANCIAL REPORTING REQUIREMENTS; OTHER REPORTING REQUIREMENTS.**

(1) Financial Records. The Borrower shall keep proper and complete books of record and account and maintain all fiscal records related to this Agreement, the Project, and the Facility in accordance with generally accepted accounting principles, generally accepted government accounting standards, the requirements of the Governmental Accounting Standards Board, and state minimum standards for audits of municipal corporations. The Borrower must maintain separate Project accounts in accordance with generally accepted government accounting standards promulgated by the Governmental Accounting Standards Board. The Borrower will permit DEQ and the Oregon Secretary of State and their representatives to inspect its properties, and all work

done, labor performed and materials furnished in and about the Project, and DEQ, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have access to the Borrower's fiscal records and other books, documents, papers, plans and writings that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts and take copies.

(1-a) The Borrower agrees to allow, and to cause its contractors and subcontractors to allow, any appropriate representative of the EPA Office of Inspector General to (1) examine any records of the Borrower or the Borrower's contractors and subcontractors that pertain to, and involve transactions relating to, the Project and this Loan, and (2) interview any officer or employee of the Borrower, the Borrower's contractors or subcontractors, regarding such transactions.

(2) Record Retention Period. The Borrower shall retain and keep accessible files and records relating to the Project for at least three (3) years (or such longer period as may be required by applicable law) after Project completion as determined by DEQ and financial files and records until all amounts due under this Loan Agreement are fully repaid, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

(3) Audit. Federal enabling legislation and applicable regulations require an audit of each CWSRF Loan. The Borrower agrees to provide to DEQ the following which DEQ agrees to accept as adequate to meet this federal audit requirement.

(a) As soon as possible, but in no event later than six (6) months following the Project Completion Date, a full and complete accounting of the Costs of the Project, including but not limited to documentation to support each cost element and a summary of the Costs of the Project and the sources of funding; and

(b) As soon as possible, but in no event later than nine (9) months after the end of each fiscal year, a copy the Borrower's annual audit report.

(4) Single Audit Act Requirements. The CWSRF Program receives capitalization grants through the Catalog of Federal Domestic Assistance (CFDA) No. 66.458: Capitalization Grants for State Revolving Funds and is subject to the regulations of the U.S. Environmental Protection Agency ("EPA"). This Loan is also funded in whole or in part under ARRA. The CWSRF Program and loans funded under ARRA are subject to the U.S. Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" implementing the Single Audit Act of 1996 ("Circular A-133"). As a sub-recipient of ARRA funds, the entire project of the Borrower is subject to Circular A-133

The Borrower shall identify, on the Schedule of Expenditures of Federal Awards ("SEFA") required by OMB Circular A-133, information to specifically identify expenditures made under ARRA (i.e., the federal award number, the CFDA number, inclusion of the prefix "ARRAS-" in identifying the name of the federal program, and the amount of the ARRA money).

(5) Reporting Requirements. The Borrower will report to DEQ the reporting data required by federal and State mandates for delivery of the ARRA program. The Borrower must, no later than 3 days after the end of each calendar quarter, submit a report to DEQ that contains:

- (a) The total amount of ARRA funds received under this Agreement;
- (b) The amount of ARRA funds received that were expended or obligated to projects or activities during the quarter; and
- (c) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity.

The Borrower's failure to comply with the ARRA reporting requirements shall be a part of the Borrower's performance record.

The Borrower agrees to promptly provide, and cause its contractors and subcontractors to promptly provide, all information and documentation requested by DEQ in order to comply with the reporting requirements of the ARRA, EPA or the State of Oregon.

(G) DBE GOOD FAITH EFFORT. Pursuant to the good faith efforts described in Appendix C, the Borrower shall make a good faith effort to promote fair share awards to Minority Business Enterprises ("MBE"), Women's Business Enterprises ("WBE"), and Small Businesses in Rural Areas ("SBRA") on all contracts and subcontracts awarded as part of the Project.

(H) PROJECT ASSURANCES. Nothing in this Loan Agreement prohibits the Borrower from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing Project work.

(I) JOB CREATION AND PRESERVATION. The Borrower will report on the creation or preservation of full-time equivalent jobs ("FTEs") during the term of the Project. No minimum number of FTEs will be required. For purposes of this Agreement, one (1) FTE is equal to 1820 hours worked during a twelve (12) month period. "Hours worked" for an employee means all hours that the employee worked at the Project job site, if the employee is paid for those hours. "Hours worked" does not include vacation time, sick leave or any other paid time where no work at the Project job site is performed.

The Borrower will obtain and provide to DEQ the number of hours worked by employees of each contractor and subcontractor working at the Project job site. The Borrower will report, on a form approved by DEQ, such information as DEQ may reasonably request in order to determine the actual number of FTEs created or preserved during the Project.

(J) ECONOMIC DEVELOPMENT BENEFIT DATA. DEQ may request that the Borrower submit specific requested data on the economic development benefits of the Project, from the date hereof until six (6) years after the Project Completion Date. Upon such request by DEQ, the Borrower shall, at the Borrower's expense, prepare and file the requested data within the time specified in the request. Data shall document specific requested information such as any new direct permanent or retained jobs resulting from the Project and other information to evaluate the success and economic impact of the Project.

(K) WHISTLEBLOWING. The Borrower shall, and shall cause all employers receiving ARRA funds under or through this Agreement to, post notice of the rights and remedies provided to whistleblowers under Section 1553 of ARRA.

(L) DUNS NUMBER. The Borrower must obtain a Data Universal Numbering System (DUNS) number.

(M) CCR. The Borrower must maintain current registration with the Central Contractor Registration ("CCR").

(N) CONTRACT PROVISION REGARDING REPORTING. Any of the Borrower's contracts funded in whole or in part with ARRA funds under or through this Agreement must contain a special contract condition requiring the contractor to comply with the reporting requirements established for ARRA funding.

(O) INELIGIBLE USES OF ARRA FUNDS. The Borrower shall not use any of the ARRA funds for: (1) any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool; or acquiring property or easements necessary to complete the Project.

(P) ARRA REQUIREMENTS. The Borrower acknowledges that the federal government is currently in the process of formulating certain requirements that will become applicable to subrecipients of ARRA money, and the Borrower agrees to comply with all provisions of ARRA as they apply to subrecipients of ARRA money.

**ARTICLE 6: REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS RELATING TO
CONSTRUCTION PROJECTS ONLY**

**(A) THE BORROWER'S REPRESENTATION AND WARRANTY REGARDING COSTS
ALREADY INCURRED.**

(1) The Borrower represents and warrants to DEQ that, as of the date of this Loan Agreement, the Costs of the Project actually incurred by the Borrower for construction, do not exceed \$ -0-.

(2) The Borrower acknowledges that DEQ is relying upon the Borrower's representation regarding the amount of Costs of the Project incurred by the Borrower for construction prior to the date of this Loan Agreement as set forth in ARTICLE 6(A)(1) above to determine what portion of the Loan qualifies as a "refinancing" under the EPA's Clean Water State Revolving Fund regulations, 40 C.F.R. Part 35, that may be disbursed on a reimbursement basis.

(B) CONDITION TO DISBURSEMENTS. DEQ's obligation to make disbursements hereunder is further conditioned on the following:

(1) The Borrower's plans, specifications and related documents for the Project shall be reviewed and approved by DEQ.

(2) The Borrower has submitted documentation satisfactory to DEQ that the disbursement is for work that complies with plans, specifications, change orders and addenda approved by DEQ.

(3) The Borrower has submitted a copy of the awarded contract and bid documents (including a tabulation of all bids received) to DEQ for the portion of the Project costs that will be funded with the disbursement.

(C) GENERAL PROVISIONS. The Borrower covenants with DEQ that:

(1) Construction Manual. Unless stated otherwise in this Agreement, the Borrower shall comply with the requirements set forth in the current version of the Manual. DEQ will provide the Borrower with a copy of the Manual upon request.

(2) Plans and Specifications. The Borrower shall obtain DEQ's review and approval of the Borrower's plans, specifications, and related documents for the Project prior to any disbursement of Loan proceeds hereunder.

(3) Change Orders. The Borrower shall submit all change orders to DEQ. The Borrower shall not use any Loan proceeds to pay for costs of any change order that DEQ has not approved in writing. This ARTICLE 6(C)(3) shall not prevent the Borrower from using funds other than Loan proceeds to pay for a change order before DEQ approves it, but the Borrower bears the risk that DEQ will not approve the change order.

(4) Inspections; Reports. The Borrower shall provide inspection reports during the construction of the Project as required by DEQ to ensure that the Project complies with approved plans and specifications. Qualified inspectors shall conduct these inspections under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. DEQ or its representative(s) may enter property owned or controlled by the Borrower to conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the Loan Agreement, as appropriate.

(5) Asbestos and Other Hazardous Materials. The Borrower shall ensure that only persons trained and qualified for removal of asbestos or other Hazardous Materials will remove any asbestos or Hazardous Materials, respectively, which may be part of this Project.

(6) Operation and Maintenance Manual. The Borrower shall submit to DEQ a draft Facility operation and maintenance manual before the Project is fifty percent (50%) complete. The Borrower shall submit to DEQ a final Facility operation and maintenance manual that meets DEQ's approval before the Project is ninety percent (90%) complete.

(7) Project Performance Certification. The Borrower shall submit to DEQ draft performance standards before the Project is fifty percent (50%) complete. The Borrower shall submit to DEQ final performance standards that meet DEQ's approval before the Project is ninety percent (90%) complete. The Borrower shall submit to DEQ the following done in accordance with the Manual: (i) no later than 10.5 months after the Initiation of Operation (as that term is defined in OAR 340-054-0010(26)), a performance evaluation report based on the approved performance standards; (ii) within one year after the Project's Initiation of Operation, Project performance certification statement; and (iii) within two (2) months of submission of such Project performance certification statement, a corrective action plan for any Project deficiencies noted in said statement.

(8) Alterations After Completion. The Borrower shall not materially alter the design or structural character of the Project after completing the Project without DEQ's written approval.

(9) Project Initiation of Operations.

(a) The Borrower shall notify DEQ of the Initiation of Operation no more than thirty (30) days after the actual Project Completion Date.

(b) If the Project is completed, or is completed except for minor items, and the Project is operable, but DEQ has not received a notice of Initiation of Operation from the Borrower, DEQ may assign an Initiation of Operation date.

(D) PROVISION APPLICABLE TO CONTRACTS AND SUBCONTRACTS AWARDED FOR THE PROJECT

(1) Davis-Bacon Requirements. All contracts and subcontracts awarded is part of the Project shall comply with the wage rate requirements of the Davis-Bacon Act, as amended, 40 U.S.C. §§276a to 276a-5 (1994).

(2) Retainage. The Borrower shall require a five percent (5%) retainage in all of its contracts related to the Project for an amount greater than One Hundred Thousand Dollars (\$100,000).

(3) Construction Contracts. The Project will be under contract or under construction by February 17, 2010, as required by the ARRA and federal regulations under 2 CFR Part 176. The Borrower acknowledges and agrees that failure to comply with this Article 6(D)(3) will result in immediate termination of the Loan, and the outstanding balance of the Loan will be immediately due and payable in full. DEQ will examine this Project in September 2009 and December 2009, in order to determine compliance with this ARTICLE 6(D)(3) and may require the Borrower to execute a written certification of its ability to comply. Further, DEQ may, at any time and from time to time, in its sole discretion, require the Borrower to provide such information as DEQ deems necessary to verify the Project's ability to be under contract or under construction by February 17, 2010.

(4) Buy American. The Borrower agrees that if the Project is funded in whole or in part with ARRA funds, (a) all contractors and subcontractors for the Project and all contracts and subcontracts awarded as part of the Project will be required to comply with the Buy American requirements in Section 1605 of ARRA and 2 CFR Part 176, and (b) Borrower will, and will cause all contractors and subcontractors for the Project, to incorporate in all contracts and subcontracts for the Project a Buy American provision substantially in the form of Appendix E hereof, and (c) it will obtain and maintain certification (or other satisfactory documentation) of compliance with this ARTICLE 6(D)(4) from all contractors and subcontractors.

ARTICLE 7: DISCLAIMERS BY DEQ; LIMITATION OF DEQ'S LIABILITY

(A) **DISCLAIMER OF ANY WARRANTY.** DEQ EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE PROJECT, THE QUALITY OF MATERIALS SUPPLIED TO AND THAT BECOME A PART OF THE PROJECT, THE QUALITY OF THE WORKMANSHIP PERFORMED UPON THE PROJECT, OR THE EXTENT AND STAGE OF COMPLETION OF THE PROJECT. No such warranty or guarantee shall be implied by virtue of any inspection or disbursement made by DEQ. Any inspection done by the DEQ shall be for its sole benefit.

(B) **DISCLAIMER OF LIABILITY OF DEQ.** DEQ EXPRESSLY DISCLAIMS LIABILITY OF ANY KIND OR CHARACTER WHATSOEVER FOR PAYMENT OF LABOR OR MATERIALS OR OTHERWISE IN CONNECTION WITH THE COMPLETION OF THE PROJECT OR CONTRACTS ENTERED INTO BY THE BORROWER WITH THIRD PARTIES FOR THE COMPLETION OF THE PROJECT. All Project costs of labor, materials and construction, including any indirect costs, shall be the responsibility of and shall be paid by the Borrower.

(C) **NONLIABILITY OF STATE.**

(1) The State and its officers, agents and employees shall not be liable to the Borrower or to any other party for any death, injury, damage, or loss that may result to any person or property by or from any cause whatsoever, arising out of any defects in the plans, design drawings and specifications for the Project, any agreements or documents between the Borrower and third parties related to the Project or any activities related to the Project. DEQ shall not be responsible for verifying cost-effectiveness of the Project, doing cost comparisons or reviewing or monitoring compliance by the Borrower or any other party with state procurement laws and regulations.

(2) The Borrower hereby expressly releases and discharges DEQ, its officers, agents and employees from all liabilities, obligations and claims arising out of the Project work or under the Loan, subject only to exceptions previously agreed upon in writing by the parties.

(3) Any findings by DEQ concerning the Project and any inspections or analyses of the Project by DEQ are for determining eligibility for the Loan and disbursement of Loan proceeds only. Such findings do not constitute an endorsement of the feasibility of the Project or its components or an assurance of any kind for any other purpose.

(4) Review and approval of Facilities plans, design drawings and specifications or other documents by or for DEQ does not relieve the Borrower of its responsibility to properly plan, design, build and effectively operate and maintain the Facility as required by law, regulations, permits and good management practices.

ARTICLE 8: DEFAULT AND REMEDIES

(A) **EVENTS OF DEFAULT.** The occurrence of one or more of the following events constitutes an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

(1) The Borrower fails to make any Loan payment within thirty (30) days after the payment is scheduled to be made according to the repayment schedule;

(2) Any representation or warranty made by the Borrower hereunder was untrue in any material respect as of the date it was made;

(3) The Borrower becomes insolvent or admits in writing an inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee or receiver for the Borrower or a substantial part of its property; or in the absence of such application, consent, or acquiescence, a trustee or receiver is appointed for the Borrower or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or moratorium or any dissolution or liquidation proceeding is instituted by or against the Borrower and, if instituted against the Borrower, is consented to or acquiesced in by the Borrower or is not dismissed within twenty (20) days;

(4) As a result of any changes in the United States Constitution or the Oregon Constitution or as a result of any legislative, judicial, or administrative action, any part of this Loan Agreement becomes void, unenforceable or impossible to perform in accordance with the intent and purposes of the parties hereto or is declared unlawful;

(5) The Borrower defaults in the performance or observance of any covenants or agreements contained in any loan documents between itself and any lender or lenders, and the default remains uncured upon the expiration of any cure period provided by said loan documents; or

(6) The Borrower fails to perform its obligations under ARTICLE 6(D)(3) in a timely manner.

(7) The Borrower fails to cure non-compliance in any material respect with any other covenant, condition, or agreement of the Borrower hereunder, other than as set forth in (1) through (6) above within a period of thirty (30) days after DEQ provides notice of the noncompliance.

(B) REMEDIES. If DEQ determines that an Event of Default has occurred, DEQ may, without further notice:

(1) Declare the Outstanding Loan Amount plus any unpaid accrued interest, fees and any other amounts due hereunder immediately due and payable;

(2) Cease making disbursement of Loan proceeds or make some disbursements of Loan proceeds and withhold or refuse to make other disbursements;

(3) Appoint a receiver, at the Borrower's expense, to operate the facility that produces the pledged revenues and collect the Gross Revenues

(4) Set and collect utility rates and charges;

(5) Pay, compromise or settle any liens on the Facility or the Project or pay other sums required to be paid by the Borrower in connection with the Project, at DEQ's discretion, using the Loan proceeds and such additional money as may be required. If DEQ pays any encumbrance, lien, claim, or demand, it shall be subrogated, to the extent of the amount of such payment, to all the rights, powers, privileges, and remedies of the holder of the encumbrance, lien, claim, or demand, as the case may be. Any such subrogation rights shall be additional cumulative security for the amounts due under this Loan Agreement;

(6) Direct the State Treasurer to withhold any amounts otherwise due to the Borrower from the State of Oregon and, to the extent permitted by law, direct that such funds be applied to the amounts due DEQ under this Loan Agreement and be deposited into the SRF;

(7) Pursue any other legal or equitable remedy it may have.

ARTICLE 9: DEFINITIONS

(A) "ARRA" means American Recovery and Reinvestment Act of 2009, Public Law 111-5, as amended.

(B) "BORROWER" means the public agency (as defined in ORS 468.423(2)) shown as the "Borrower" in Article 1(A) of this Agreement.

(C) "BUY AMERICAN" means the requirement in Section 1605 of ARRA for recipients to use domestic iron, steel and manufactured goods that are produced in the United States in all water infrastructure projects under contract or under construction by February 17, 2010.

(D) "COMPLETION DATE" means the date on which the Project is completed. If the Project is a planning project, the Completion Date is the date on which DEQ accepts the planning project. If the Project is a design project, the Completion Date is the date on which the design

project is ready for the contractor bid process. If the Project is a construction project, the Completion Date is the date on which the construction project is substantially complete and ready for Initiation of Operation.

(E) "**COSTS OF THE PROJECT**" means expenditures approved by DEQ that are necessary to construct the Project in compliance with DEQ's requirements and may include but are not limited to the following items:

- (1) Cost of labor and materials and all costs the Borrower is required to pay under the terms of any contract for the design, acquisition, construction or installation of the Project;
- (2) Engineering fees for the design and construction of the Project.
- (3) The costs of surety bonds and insurance of all kinds that may be required or necessary during the course of completion of the Project;
- (4) The legal, financing and administrative costs of obtaining the Loan and completing the Project; and
- (5) Any other costs approved in writing by DEQ.

(F) "**CWSRF PROGRAM**" or "**CWSRF**" means the Clean Water State Revolving Fund Loan Program, a loan program administered by DEQ under ORS 468.423 to 468.440.

(G) "**DEQ**" means the Oregon Department of Environmental Quality.

(H) "**DIRECTOR**" means the Director of DEQ or the Director's authorized representative.

(I) "**FACILITY**" means all property owned or used by the Borrower to provide wastewater collection, treatment and disposal services, of which the Project is a part.

(J) "**FINAL LOAN AMOUNT**" means the total of all Loan proceeds disbursed to the Borrower under the Loan Agreement, determined on the date on which the Borrower indicates that no further Loan funds will be requested, all eligible expenditures have been reimbursed from the Loan proceeds, or all Loan proceeds have been disbursed hereunder, whichever occurs first.

(K) "**GROSS REVENUES**" means all fees and charges resulting from operation of the Facility and any interest earnings thereon; provided however, Gross Revenues does not include: the proceeds of any grants; the proceeds of any borrowings for capital improvements; the proceeds of any liability insurance; or the proceeds of any casualty insurance which the Borrower intends to and does utilize for repair or replacement of the Facility or a part thereof.

(L) "**HAZARDOUS MATERIALS**" means and includes flammable explosives, radioactive materials, asbestos and substances defined as hazardous materials, hazardous substances or hazardous wastes in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.) and the

Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), and regulations promulgated thereunder.

- (M) "LOAN" means the loan made pursuant to this Loan Agreement.
- (N) "LOAN AGREEMENT" or "AGREEMENT" means this loan agreement and its exhibits, appendices, schedules and attachments (which are by this reference incorporated herein), and any amendments thereto.
- (O) "LOAN AMOUNT" means the maximum amount DEQ agrees to loan the Borrower hereunder.
- (P) "LOAN RESERVE ACCOUNT" means the account described in ARTICLE 5(C)(2).
- (Q) "LOBBYING" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.
- (R) "MANUAL" means CWSRF Manual for Construction Projects.
- (S) "NET OPERATING REVENUES" means the Gross Revenues less the Operating Expenses for the Facility.
- (T) "OPERATING EXPENSES" means all direct and indirect expenses incurred for operation, maintenance and repair of the Facility, including but is not limited to administrative expenses, legal, financial and accounting expenses, insurance premiums, claims (to the extent that monies are not available from insurance proceeds), taxes, engineering expenses relating to operation and maintenance, payments and reserves for pension, retirement, health, hospitalization, and sick leave benefits, and any other similar expenses to be paid to the extent properly and directly attributable to operations of the Facility. Operating expenses include an appropriate amount for reserves for repair and replacement of the Facility based on the expected life of the collection, treatment and disposal facilities.
- (U) "OUTSTANDING LOAN AMOUNT" means, as of any date, the sum of all disbursements to the Borrower hereunder less the sum of all Loan principal payments received by DEQ.
- (V) "PROJECT" means the facilities, activities or documents described in ARTICLE 1(E) and (F).
- (W) "REPAYMENT PERIOD" means the repayment period specified in ARTICLE 1(H) which shall not in any event exceed twenty (20) years after the Completion Date.
- (X) "SRF" means the Water Pollution Control Revolving Fund established under ORS 468.427, also known as the State Revolving Fund.
- (Y) "STATE" means the State of Oregon.

ARTICLE 10: MISCELLANEOUS

(A) NOTICES. All notices, payments, statements, demands, requests or other communications under this Loan Agreement by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered by personal delivery, by certified mail, return receipt requested, or by facsimile transmission, and, if to the Borrower, delivered, addressed or transmitted to the location or number listed in ARTICLE 1(B), and if to DEQ, delivered, addressed or transmitted to:

Clean Water State Revolving Fund Loan Program
Water Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390
Fax (503) 229-6037

or to such other addresses or numbers as the parties may from time to time designate. Any notice or other communication so addressed and mailed shall be deemed to be given five (5) days after mailing. Any notice or other communication delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against DEQ, such facsimile transmission must be confirmed by telephone notice to DEQ's CWSRF Program Coordinator. Any notice or other communication by personal delivery shall be deemed to be given when actually delivered.

(B) WAIVERS AND RESERVATION OF RIGHTS.

(1) DEQ's waiver of any breach by the Borrower of any term, covenant or condition of this Loan Agreement shall not operate as a waiver of any subsequent breach of the same or breach of any other term, covenant, or condition of this Loan Agreement. DEQ may pursue any of its remedies hereunder concurrently or consecutively without being deemed to have waived its right to pursue any other remedy.

(2) Nothing in this Loan Agreement affects DEQ's right to take remedial action, including, but not limited to, administrative enforcement action and action for breach of contract against the Borrower, if the Borrower fails to carry out its obligations under this Loan Agreement.

(C) TIME IS OF THE ESSENCE. The Borrower agrees that time is of the essence under this Loan Agreement.

(D) RELATIONSHIP OF PARTIES. The parties agree and acknowledge that their relationship is that of independent contracting parties, and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Loan Agreement.

(E) NO THIRD PARTY BENEFICIARIES. DEQ and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce the terms of this Loan Agreement. Nothing in this Loan Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public,

whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Loan Agreement. Any inspections, audits, reports or other assurances done or obtained, or approvals or consents given, by DEQ are for its benefit only for the purposes of administering this Loan and the CWSRF Program.

(F) ASSIGNMENT. DEQ shall have the right to transfer the Loan or any part thereof, or assign any or all of its rights under this Loan Agreement, at any time after execution of this Loan Agreement upon written notice to the Borrower. Provisions of this Loan Agreement shall inure to the benefit of DEQ's successors and assigns. This Loan Agreement or any interest therein may be assigned or transferred by the Borrower only with DEQ's prior written approval (which consent may be withheld for any reason), and any assignment or transfer by the Borrower in contravention of this ARTICLE 10(F) shall be null and void.

(G) DEQ NOT REQUIRED TO ACT. Nothing contained in this Loan Agreement requires DEQ to incur any expense or to take any action hereunder in regards to the Project.

(H) FURTHER ASSURANCES. The Borrower and DEQ agree to execute and deliver any written instruments necessary to carry out any agreement, term, condition or assurance in this Loan Agreement whenever a party makes a reasonable request to the other party for such instruments.

(I) VALIDITY AND SEVERABILITY; SURVIVAL. If any part, term, or provision of this Loan Agreement or of any other Loan document shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by either party, the validity of the remaining portions, terms and provisions shall not be affected, and all such remaining portions, terms and provisions shall remain in full force and effect. Any provision of this Agreement which by its nature or terms is intended to survive termination, including but not limited to ARTICLE 5(E), shall survive termination of this Agreement.

(J) NO CONSTRUCTION AGAINST DRAFTER. Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

(K) HEADINGS. All headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Loan Agreement.

(L) ATTORNEYS' FEES AND EXPENSES. In any action or suit to enforce any right or remedy under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, to the extent permitted by law.

(M) LAWS GOVERNING; VENUE; JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between DEQ (and/or any other agency or department of the State of Oregon) and the Borrower that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States

District Court for the District of Oregon. In no event shall this ARTICLE 10(M) be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. BORROWER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

(N) COUNTERPARTS. This Loan Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all together constitute but one and the same instrument.

(O) ENTIRE AGREEMENT; AMENDMENTS. This Loan Agreement constitutes the entire agreement between the Borrower and DEQ on the subject matter hereof, and it shall be binding on the parties thereto when executed by all the parties and when all approvals required to be obtained by DEQ have been obtained. This Loan Agreement, including all related Loan documents and instruments, may not be amended, changed, modified, or altered without the written consent of the parties.

CITY OF MILWAUKIE

By: _____ Date _____
Authorized Officer

Typed Name: _____

Title: _____

STATE OF OREGON ACTING BY AND THROUGH ITS
DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____ Date _____
Neil Mullane, Water Quality Administrator

Approved as to legal sufficiency
By the Attorney General's Office

Lynn T. Nagasako, Senior AAG
E-mail approval 8/25/09
Date _____
LN

APPENDIX A: REPAYMENT SCHEDULE

Due Date	Pmt#	PAYMENT				Principal Balance
		Principal	Interest	Fees	Total	
						2,000,000
9/1/2010	1	50,000	0		50,000	1,950,000
3/1/2011	2	50,000	0	9,750	59,750	1,900,000
9/1/2011	3	50,000	0		50,000	1,850,000
3/1/2012	4	50,000	0	9,250	59,250	1,800,000
9/1/2012	5	50,000	0		50,000	1,750,000
3/1/2013	6	50,000	0	8,750	58,750	1,700,000
9/1/2013	7	50,000	0		50,000	1,650,000
3/1/2014	8	50,000	0	8,250	58,250	1,600,000
9/1/2014	9	50,000	0		50,000	1,550,000
3/1/2015	10	50,000	0	7,750	57,750	1,500,000
9/1/2015	11	50,000	0		50,000	1,450,000
3/1/2016	12	50,000	0	7,250	57,250	1,400,000
9/1/2016	13	50,000	0		50,000	1,350,000
3/1/2017	14	50,000	0	6,750	56,750	1,300,000
9/1/2017	15	50,000	0		50,000	1,250,000
3/1/2018	16	50,000	0	6,250	56,250	1,200,000
9/1/2018	17	50,000	0		50,000	1,150,000
3/1/2019	18	50,000	0	5,750	55,750	1,100,000
9/1/2019	19	50,000	0		50,000	1,050,000
3/1/2020	20	50,000	0	5,250	55,250	1,000,000
9/1/2020	21	50,000	0		50,000	950,000
3/1/2021	22	50,000	0	4,750	54,750	900,000
9/1/2021	23	50,000	0		50,000	850,000
3/1/2022	24	50,000	0	4,250	54,250	800,000
9/1/2022	25	50,000	0		50,000	750,000
3/1/2023	26	50,000	0	3,750	53,750	700,000
9/1/2023	27	50,000	0		50,000	650,000
3/1/2024	28	50,000	0	3,250	53,250	600,000
9/1/2024	29	50,000	0		50,000	550,000
3/1/2025	30	50,000	0	2,750	52,750	500,000
9/1/2025	31	50,000	0		50,000	450,000
3/1/2026	32	50,000	0	2,250	52,250	400,000
9/1/2026	33	50,000	0		50,000	350,000
3/1/2027	34	50,000	0	1,750	51,750	300,000
9/1/2027	35	50,000	0		50,000	250,000
3/1/2028	36	50,000	0	1,250	51,250	200,000
9/1/2028	37	50,000	0		50,000	150,000
3/1/2029	38	50,000	0	750	50,750	100,000
9/1/2029	39	50,000	0		50,000	50,000
3/1/2030	40	50,000	0	250	50,250	0
TOTALS		2,000,000	0	100,000	2,100,000	
REQUIRED LOAN RESERVE:		\$ 12,500				

The above Repayment Schedule reflects principal forgiveness pursuant to Article 1(L)

APPENDIX B: ESTIMATED CWSRF LOAN DISBURSEMENT SCHEDULE

Loan funds are expected to be available based on the following Project schedule:

7/09 - 9/09: \$500,000
10/09 - 12/09: \$750,000
1/10 - 3/10: \$2,750,000

APPENDIX C: DBE GOOD FAITH EFFORT

At a minimum a recipient or prime contractor must make a good faith effort to utilize minority (MBE), women-owned (WBE) and small (SBE) businesses. The six steps are:

- 1) The bidder includes qualified small, minority and women's businesses on solicitation lists;
- 2) The bidder assures that small, minority, women's businesses are solicited whenever they are potential sources;
- 3) The bidder divides total requirements, whenever economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority or women's businesses;
- 4) The bidder establishes delivery schedules whenever the requirements of the work permit, which will encourage participation by small, minority and women's businesses;
- 5) The bidder uses the services and assistance of the Small Business Administration (<http://pro-net.sba.gov>) and the Minority Business Development Agency of the U.S. Department of Commerce (<http://www.mbda.gov>) to identify appropriate small, minority and women businesses; and
- 6) If the bidder awards contracts/procurements, the bidder will require the subcontractors to take all of the affirmative action steps described above. (40 CFR Section 35.3145(d))

Forms for documenting compliance with these requirements may be found at Tab 6 of the Manual for Construction Projects. Please note that these requirements apply to any procurement of construction, supplies, equipment or services.

Additional resources available to recipients and contractors include the following:

EPA Office of Small and Disadvantaged Business Utilization:

Phone: 206 – 553 – 2931

Web Site: www.epa.gov/osdbu

Oregon Office of Minority, Women and Emerging Small Business

350 Winter Street N.E., Room 300

Salem, OR 97301-3878

Phone: 503 – 947 – 7922

Web Site: www.cbs.state.or.us/omwesb

APPENDIX D: APPLICABLE FEDERAL AUTHORITIES AND LAWS ("CROSS-CUTTERS")

ENVIRONMENTAL LEGISLATION:

Archaeological and Historic Preservation Act of 1974, PL 93-291.
Clean Air Act, 42 U.S.C. 7506(c).
Coastal Barrier Resources Act, 16 U.S.C. 3501, et seq.
Coastal Zone Management Act of 1972, PL 92-583, as amended.
Endangered Species Act 16 U.S.C. 1531, et seq.
Executive Order 11593, Protection and Enhancement of the Cultural Environment.
Executive Order 11988, Floodplain Management.
Executive Order 11990, Protection of Wetlands.
Farmland Protection Policy Act, 7 U.S.C. 4201, et seq.
Fish and Wildlife Coordination Act, PL 85-624, as amended.
National Historic Preservation Act of 1966, PL 89-665, as amended.
Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended.
Wild and Scenic Rivers Act, PL 90-542, as amended.
Federal Water Pollution Control Act Amendments of 1972, PL 92-500.

ECONOMIC LEGISLATION:

Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended.
Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including
Executive Order 11738, Administration of the Clean Air Act and the Federal Water
Pollution Control Act with Respect to Federal Contracts, Grants or Loans.

SOCIAL LEGISLATION:

The Age Discrimination Act of 1975, Pub. L. No. 94-135, 89 Stat. 713, 42 U.S.C. §6102 (1994).
Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 252, 42 U.S.C. §2000d (1988).
Section 13 of PL 92-500; Prohibition against Sex Discrimination under the Federal Water Pollution
Control Act.
Rehabilitation Act of 1973, Pub. L. No. 93-1123, 87 Stat. 355, 29 U.S.C. §794 (1988), including
Executive Orders 11914 and 11250).

MISCELLANEOUS AUTHORITY:

Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 92-646.
Executive Order 12549 and 40 CFR Part 32, Debarment and Suspension.
Disclosure of Lobbying Activities, Section 1352, Title 31, U.S. Code.
Drug-Free Workplace Act, Pub. L. 100-690

APPENDIX E: BUY AMERICAN CONTRACT LANGUAGE

The Contractor acknowledges to and for the benefit of the City of Milwaukie (“Purchaser”) and the State of Oregon (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) (or are being made available for a project being funded with monies made available by the federal ARRA) and such law contains provisions commonly known as “Buy American;” that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States (“Buy American Requirements”) including iron, steel, and manufactured goods provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

APPENDIX F: FORM OF CERTIFICATION OF COMPLIANCE WITH SECTION 1605 OF THE ARRA

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the Purchaser's bid solicitation and the provisions of ARRA Section 1605, the Bidder certifies that this bid reflects the Bidder's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
2. Verification of U.S. Production: The Bidder certifies that all components contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the Bidder agrees that it will provide reasonable, sufficient, and timely verification to the Purchaser of the U.S. production of each component so identified.
3. Documentation Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any component or components that are not American-made and are so identified in this bid, the Bidder has included in or attached to this bid one or both of the following, as applicable:
 - a. Identification of and citation to a categorical waiver published by the U.S. Environmental Protection Agency in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components;
 - b. Verifiable documentation sufficient to the Purchaser, as required in the bid solicitation or otherwise, that the Bidder has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the Bidder under the applicable conditions stated in the bid solicitation or otherwise.
4. Information and Detailed Justification Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any such component or components that are not so available, the Bidder has also provided in or attached to this bid information, including but not limited to the verifiable documentation and a full description of the bidder's efforts to secure any such American-made component or components, that the Bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under section 1605 with respect to such component or components. The Bidder further agrees that, if this bid is accepted, it will assist the Purchaser in amending, supplementing, or further supporting such information as required by the Purchaser to request and, as applicable, implement the terms of a waiver with respect to any such components.

NEMSE Project Financial Picture

City Perspective:

Reimbursement District Costs:

ARRA/CWSRF Costs (capped at \$4 million):
Design/Property Appraisal & Negotiation
Construction

Non-CWSRF eligible costs:
Property/easement acquisition (~\$200K)
Paving beyond trench patch (~\$120K)

SDC-Funded:
Pump Station (~\$460K)

Property Owner Perspective:

1. Reimbursement Cost =
Proportional Share of Reimbursement District
MINUS ARRA discount (~45%)
MINUS NCRA subsidies (where applicable)
2. SDC cost (City of Milwaukie or Portland)
3. Decommissioning/private lateral construction

NESE Capital Improvement Fund Projection

Year	Percent Lots Connect	Numb Lots Connect	Interest Rate Charged	Average Payment Per Lot	Reimb. Collected	Loan Payment to DEQ	Internal Loan Payment**	Annual (Shortfall) or Excess	Int. Earned on Fund Balance	Cum. Fund Balance (Pre-Funded @ \$100K)
*1	25%	65	1.000	\$ 8,770	\$ 57,005	\$ 100,000	\$ 48,750	\$ (91,745)	\$ -	\$ 8,255
2	3%	8	1.025	\$ 8,989	\$ 128,919	\$ 100,000	\$ 47,775	\$ (18,856)	\$ 743	\$ (9,858)
3	5%	13	1.050	\$ 9,209	\$ 176,716	\$ 100,000	\$ 46,800	\$ 29,916	\$ 1,337	\$ 21,395
4	3%	8	1.075	\$ 9,428	\$ 132,427	\$ 100,000	\$ 45,825	\$ (13,398)	\$ 1,076	\$ 9,074
5	5%	13	1.100	\$ 9,647	\$ 182,416	\$ 100,000	\$ 44,850	\$ 37,566	\$ 1,830	\$ 48,469
6	3%	8	1.125	\$ 9,866	\$ 135,935	\$ 100,000	\$ 43,875	\$ (7,940)	\$ 1,688	\$ 42,217
7	5%	13	1.150	\$ 10,086	\$ 188,117	\$ 100,000	\$ 42,900	\$ 45,216	\$ 2,607	\$ 90,041
8	3%	8	1.175	\$ 10,305	\$ 139,443	\$ 100,000	\$ 41,925	\$ (2,482)	\$ 2,590	\$ 90,148
9	3%	8	1.200	\$ 10,524	\$ 141,197	\$ 100,000	\$ 40,950	\$ 247	\$ 2,627	\$ 93,022
10	3%	8	1.225	\$ 10,743	\$ 142,951	\$ 100,000	\$ 39,975	\$ 2,976	\$ 1,860	\$ 97,859
11	3%	8	1.250	\$ 10,963	\$ 87,700	\$ 100,000		\$ (12,300)	\$ 1,957	\$ 87,516
12	3%	8	1.275	\$ 11,182	\$ 89,454	\$ 100,000		\$ (10,546)	\$ 1,750	\$ 78,720
13	3%	8	1.300	\$ 11,401	\$ 91,208	\$ 100,000		\$ (8,792)	\$ 1,574	\$ 71,503
14	3%	8	1.325	\$ 11,620	\$ 92,962	\$ 100,000		\$ (7,038)	\$ 1,430	\$ 65,895
15	3%	8	1.350	\$ 11,840	\$ 94,716	\$ 100,000		\$ (5,284)	\$ 1,318	\$ 61,929
16	3%	8	1.375	\$ 12,059	\$ 96,470	\$ 100,000		\$ (3,530)	\$ 1,239	\$ 59,637
17	3%	8	1.400	\$ 12,278	\$ 98,224	\$ 100,000		\$ (1,776)	\$ 1,193	\$ 59,054
18	3%	8	1.425	\$ 12,497	\$ 99,978	\$ 100,000		\$ (22)	\$ 1,181	\$ 60,213
19	2%	5	1.450	\$ 12,717	\$ 63,582	\$ 100,000		\$ (36,418)	\$ 1,204	\$ 25,000
20	1%	3	1.475	\$ 12,936	\$ 38,807	\$ 100,000		\$ (61,193)	\$ 500	\$ (35,693)
21	1%	3	1.500	\$ 13,155	\$ 39,465			\$ 39,465	\$ -	\$ 3,772
22	1%	3	1.525	\$ 13,374	\$ 40,123			\$ 40,123	\$ 75	\$ 43,970
23	1%	3	1.550	\$ 13,594	\$ 40,780			\$ 40,780	\$ 879	\$ 85,630
24	1%	3	1.575	\$ 13,813	\$ 41,438			\$ 41,438	\$ 1,713	\$ 128,781
25	1%	3	1.600	\$ 14,032	\$ 42,096			\$ 42,096	\$ 2,576	\$ 173,452
Total	90%	239			\$ 2,482,129	\$ 2,000,000				

* All lots connecting in year one are assumed to pay off their share of project cost over 10 years at zero interest.

** Assume internal loan of \$390,000 (plus interest at 2.5%) from Sewer Capital and Reserve to cover non-eligible costs & pre-fund fund balance.



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director
Katie Mangle, Planning Director

From: Susan P. Shanks, Senior Planner

Subject: Right-of-Way Annexation in NE Sewer Extension Project Area

Date: September 15, 2009

Action Requested

Initiate annexation of the right-of-way in the NE Sewer Extension Project Area by resolution as described and depicted in Attachment 1.

History of Prior Actions and Discussions

August 2009: Staff briefed Council on the status of the NE Sewer Extension Project and the need to annex the right-of-way in this area.

June 2009: Council approved the award of contract to Right-of-Way Associates Inc. for the easement and appraisal services within in the project area.

February 2009: Staff presented an update during Work Session to refresh Council on the NESE Project status.

February 2009: Council approved a resolution authorizing the City Manager to enter into a contract with Century West Engineering for the engineering services needed to provide a sewer system to the Dual Interest Area "A".

December 2008: Council approved a loan agreement for the Clean Water State Revolving Fund (CWSRF) loan to fund the extension of wastewater sewer to the Dual Interest Area "A" (Resolution No. 94-2008).

October 2008: Council approved moving forward with the extension of wastewater sewer to the Dual Interest Area including; entering into an Intergovernmental Agreement (IGA) with Clackamas County for use of Century West Engineering services through a contract between Century West Engineering and Clackamas County; making application for a DEQ loan needed to accomplish the sewer extension; and moving forward with the public information needed for the project (Resolution 81-2008).

September 2008: Work session discussing the sewer extension project. Council requested additional information prior to acting.

May 2008: Work session to discuss the sewer extension project in light of City, County, State and intergovernmental requirements and policies. Staff presented information on relevant City and County policies, state law regarding annexation, and raised questions regarding service delivery and governance.

March 2008: Work session to discuss the need for, and timing of wastewater service to the unincorporated area adjacent to the northeastern border of the City. Working with Clackamas County, the City was beginning a public outreach effort to inform residents about the Dual Interest Area and determine public interest regarding connection to the City's public wastewater sewer system.

September 2006: Staff briefed Council on State statute and City Comprehensive Plan policy regarding island annexations.

November 2002: Council directed the City Manager to sign a CDBG grant application to subsidize connection costs for low-income residents in the Dual Interest Area. This proposal assumed a City project to extend service to the unsewered unincorporated area.

July 1990: Clackamas County Order No 90-726 established an Urban Growth Management Agreement (UGMA) in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. In the northern Dual Interest Area (DIA), or DIA, the agreement states: *"The City shall assume a lead role in providing urbanizing services."*

Background

Annexation of the right-of-way would make the properties in the sewer extension project area contiguous to the City's boundary. Since contiguity with the City's boundary is required for annexation and since annexation is required with sewer connection,

annexing the streets now would enable the City to process property owners' annexation applications when sewer connections are made.

The first step in this process involves City Council initiating the annexation petition on behalf of the City. The second step involves staff preparing and processing the annexation application. The final step involves City Council declaring the annexation by ordinance, which staff plans to bring to Council in October 2009. See Attachment 2 for a copy of the draft ordinance. Upon initiation of the annexation petition, Planning and Community Services would work together to provide all needed public information and legal notices to affected property owners and residents. See Attachment 3 for a draft letter to property owners and residents describing the proposed action and its effect.

Annexation of the right-of-way in the project area would create an unusual City boundary. It would, however, be filled in over time as incremental private property annexations occurred in this area. A more typical City boundary would be created if the City proceeded with incremental annexation of abutting right-of-way at the time of voluntary private property annexation. However, this approach would prevent properties that are not currently contiguous to the City's boundary from annexing into the City when they either wanted or needed to connect to the new City sewer line. A more uniform City boundary would also be created if the City annexed all rights-of-way and properties in the project area. However, Council has indicated that it does not want to annex private property that does not need or want to connect to the City's new sewer line.

Annexation of the right-of-way in the project area would technically create unincorporated islands.¹ The Oregon Revised Statutes give cities the authority to annex islanded territories. The Milwaukie Comprehensive Plan also contains a policy that states that islanded territories should be annexed to the City. However, in past discussions between the Council and affected property owners, City Council has indicated that it would not involuntarily annex properties within the project area that do not need or desire to connect to the City's new sewer line. This is consistent with the City's policy to only provide services to properties within the City and to require annexation in lieu of extraterritorial provision of services. In keeping with City policy and public statements on this matter, the right-of-way annexation resolution and ordinance affirm that the City would not annex any newly created islanded territories within the foreseeable future, provided they are within the project area and not currently receiving City services.² (See Attachment 2.)

¹ Per state statute, islands are territories not in the City but that are completely surrounded by the corporate boundaries of the City. Islands are not created when a street constitutes more than 25% of the perimeter of any given territory.

² Staff believes the City should seek voluntary annexation—and consider involuntary annexation—of properties that: (1) are currently islanded by the City and (2) are currently receiving City services and will

Annexation of the right-of-way in the project area would not alter the delivery of urban services, including fire and police services, to properties in this area. Changes in service delivery would only occur when individual properties annex into the City.

The City is not currently responsible for maintaining the right-of-way in this area. Annexation would not alter this arrangement. However, the City will become responsible for maintaining the right-of-way in this area when it takes over these responsibilities, i.e. takes jurisdiction, from Clackamas County. Since annexation and jurisdiction are separate yet related issues, staff plans to ask Council to declare the annexation and consider taking jurisdiction of the right-of-way in this area at the same Council meeting in October 2009.

Concurrence

Community Development, Community Services, Engineering, and Planning have been working together on the NE Sewer Extension Project for over a year. Annexation of the right-of-way in this area is but one component of the sewer extension project. The timing and need for right-of-way annexation was carefully considered and vetted among project team members.

Staff consulted with the City Attorney, Clackamas County Tax Assessor, and State of Oregon Department of Revenue on numerous occasions to ensure that the City was acting within its authority and following the correct legal procedures for initiation of this right-of-way annexation, and received no indications of nonconcurrence.

Delivery of services by the Milwaukie Police Department and Clackamas County Fire District No. 1 would not be affected by this right-of-way annexation.

Fiscal Impact

There are no fiscal impacts associated with initiation of this right-of-way annexation.

become islands once the right-of-way in the project area is annexed. Since the City will require annexation prior to extending sewer service to project area property owners, staff believes it would be fair and appropriate to seek and/or compel annexation of those properties within or on the edges of the City that are already receiving City services. Such an action would forestall any perceived inequity and be more consistent with the City's existing approach to extraterritorial extension of services. Staff will bring this item for discussion to City Council at a future date.

Work Load Impacts

There are no significant workload impacts associated with initiation of this right-of-way annexation beyond the time it would require for staff to prepare and process the annexation petition.

Alternatives

The only alternative to the proposed right-of-way annexation is incremental right-of-way annexation over time as individual properties annex into the City. Staff does not recommend this alternative as it would prevent properties that are not currently contiguous to the City's boundary from annexing into the City when they either wanted or needed to connect to the new City sewer line. In other words, incremental right-of-way annexation would result in the majority of properties in this area having to wait until their neighbors were willing to annex into the City.

Attachments

1. Resolution to Initiate Right-of-Way Annexation in the NE Sewer Extension Project Area.
Exhibit A. Location Map
2. Draft Ordinance that Declares the Right-of-Way Annexation.
3. Draft Right-of-Way Notification Letter to Property Owners and Residents.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INITIATING ANNEXATION OF PORTIONS OF RIGHTS-OF-WAY IN THE N.E. SEWER EXTENSION PROJECT AREA WHICH IS BOUNDED ON THE NORTH BY SE WESTFORK AVENUE, ON THE EAST BY SE LINWOOD AVENUE, ON THE SOUTH BY SE KING ROAD, ON THE WEST BY THE CURRENT CITY BOUNDARY, AND ON THE NORTHWEST BY SE 55TH AVENUE AND AS DEPICTED IN THE ATTACHED EXHIBIT.

WHEREAS, the rights-of-way in this area are contiguous to the City's boundary and within the City's urban growth management area; and

WHEREAS, annexation of the rights-of-way in this area is consistent with the City's plans to make sewer service available to properties within the NE Sewer Extension Project area; and

WHEREAS, annexation of the rights-of-way in this area will provide contiguity with the City's boundary thereby facilitating annexation of those properties within the NE Sewer Extension Project area that need or desire to annex in the future; and

WHEREAS, annexation of the rights-of-way in this area creates unincorporated islands; and

WHEREAS, the City has the authority to initiate an annexation petition on its own motion pursuant to Oregon Revised Statute (ORS) 222.111(2);

NOW, THEREFORE, BE IT RESOLVED that the City Council initiates a petition to annex the rights-of-way in the NE Sewer Extension Project area as depicted in Exhibit A on its own motion pursuant to ORS 222.111(2).

BE IT FURTHER RESOLVED that the City does not intend to initiate annexation of islanded properties that are not receiving City services in the foreseeable future.

Introduced and adopted by the City Council on _____ .

This resolution is effective on _____ .

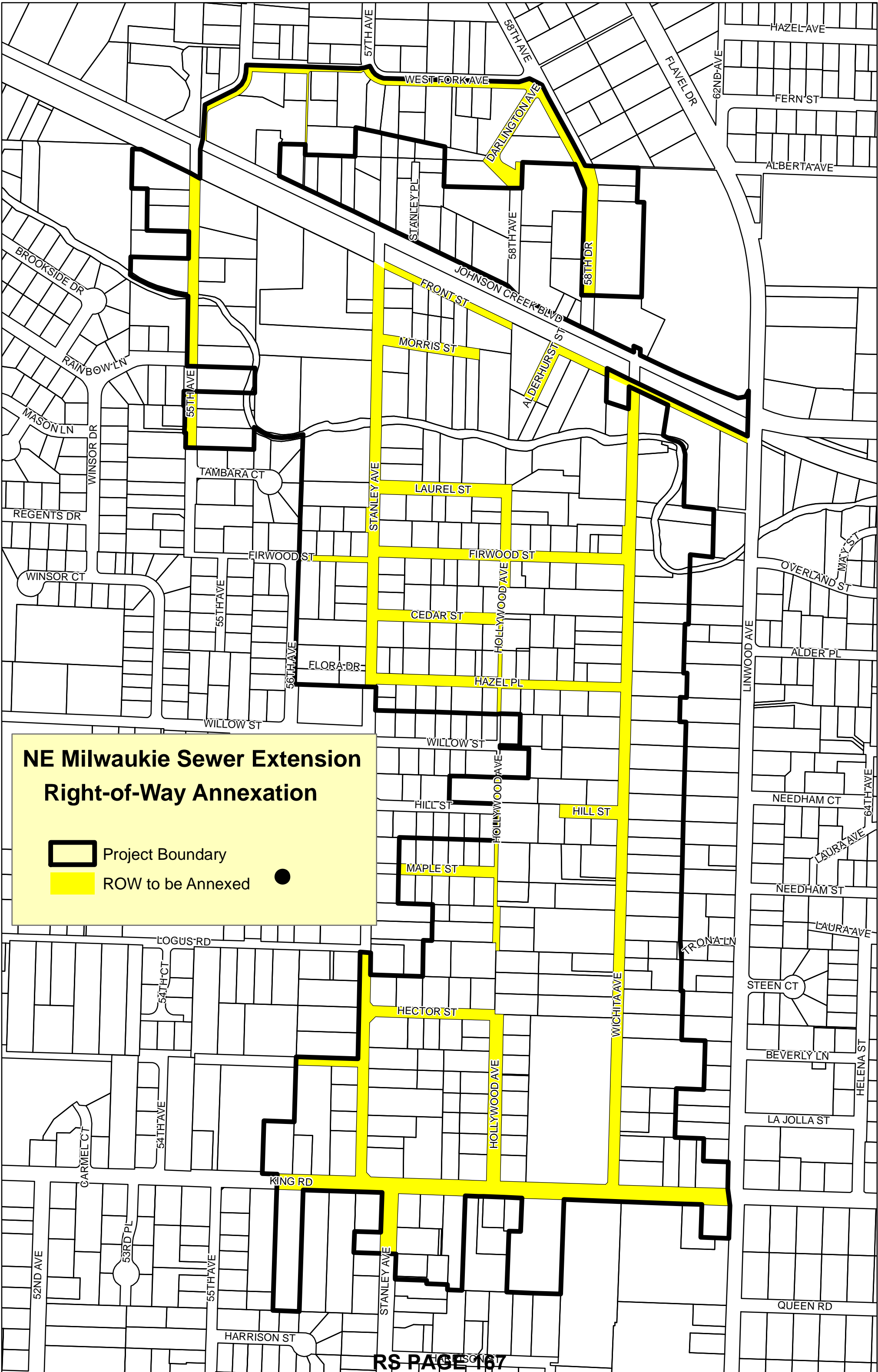
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



ATTACHMENT 2

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING PORTIONS OF RIGHTS-OF-WAY IN THE N.E. SEWER EXTENSION PROJECT AREA WHICH IS BOUNDED ON THE NORTH BY SE WESTFORK AVENUE, ON THE EAST BY SE LINWOOD AVENUE, ON THE SOUTH BY SE KING ROAD, ON THE WEST BY THE CURRENT CITY BOUNDARY, AND ON THE NORTHWEST BY SE 55TH AVENUE AND AS MORE SPECIFICALLY DESCRIBED AND DEPICTED IN THE ATTACHED EXHIBITS. **(FILE #A-09-03).**

WHEREAS, the rights-of-way in this area are contiguous to the City's boundary and within the City's urban growth management area; and

WHEREAS, annexation of the rights-of-way in this area is consistent with the City's plans to make sewer service available to properties within the NE Sewer Extension Project area; and

WHEREAS, annexation of the rights-of-way in this area will provide contiguity with the City's boundary thereby facilitating annexation of those properties within the NE Sewer Extension Project area that need or desire to annex in the future; and

WHEREAS, annexation of the rights-of-way in this area creates unincorporated islands; and

WHEREAS, the City does not intend to initiate annexation of islanded properties that are not receiving City services in the foreseeable future; and

WHEREAS, the rights-of-way in this area are not served by any urban service providers and do not require the removal from any urban service provider districts; and

WHEREAS, the annexation was not contested by any necessary party; and

WHEREAS, the City conducted a public meeting and mailed notice of the public meeting in accordance with Metro Code Section 3.09.045(b) and Milwaukie Municipal Code Section 19.1504.1.C; and

WHEREAS, Table 19.1504.1.E of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan land use designations; and

WHEREAS, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the rights-of-way based on findings and conclusions attached hereto as Exhibit A;

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

Section 1. The Findings and Reasons for Decision attached as Exhibit A are hereby adopted.

Section 2. The rights-of-way described and depicted in Exhibit B are hereby annexed to the City of Milwaukie.

Section 3. The rights-of-way annexed by this ordinance and described in Section 2 are hereby assigned the applicable land use and zoning designations as prescribed by Table 19.1504.1.E of the Milwaukie Municipal Code.

Section 4. The City shall immediately file a copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and 222.177. The annexation shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Document1 (Last revised 09/18/07)

ATTACHMENT 3



NOTICE OF PUBLIC MEETING

TO: Property Owners and Residents
DATE: September 30, 2009
FILE: A-09-03 (Annexation)
MEETING INFO: Tuesday, October 20, 2009, beginning at 7:00 p.m.
Milwaukie City Hall, 10722 SE Main Street

As part of the NE Sewer Extension Project, the **Milwaukie City Council** will consider approving an expedited annexation application (File #A-09-03) that was initiated by the Milwaukie City Council on September 15, 2009 for annexation of the public rights-of-way (i.e. public streets) within the NE Sewer Extension Project area. The project area is roughly bounded on the north by SE Westfork Ave, on the east by SE Linwood Ave, on the south by SE King Rd, and on the west by the City of Milwaukie existing city limits. The exact streets proposed for annexation are shown on the last page of this letter.

The proposed annexation is for streets only and does not include any private property.

Annexation of the streets will make the properties in the sewer extension project area contiguous to the City's boundary. This is a necessary first step in the project's process since contiguity with the City's boundary is required for annexation and annexation is required with sewer connection. Annexation is not being required by the City for any other reason. This means that if you don't need or want to connect to the City's new sewer line, you will not be required to annex. Annexation of the streets now simply enables property owners to more easily annex into the City later when they need/want to connect to City sewer.

Annexation of the streets in the project area will technically create unincorporated islands.¹ Per state statute, islands can be annexed, but **the City will not require annexation of islanded properties not currently receiving City services.**

The City may seek voluntary annexation or initiate involuntary annexation of those properties that (1) currently receive City sewer services AND (2) will become islanded when the streets in the

¹ Per state statute, islands are territories not in the City but that are completely surrounded by the corporate boundaries of the City. Islands are not created when a street constitutes more than 25% of the perimeter of any given territory.

project area are annexed. Islanded properties already receiving City services would be contacted individually if the City were to initiate annexation proceedings in the future.

Expedited Annexation Process

Expedited annexation applications are not land use decisions and do not require a public hearing. They do, however, require approval by City Council at a regularly scheduled public meeting. Pursuant to Metro Code Section 3.09.045(b), an annexation application cannot use the expedited annexation process if a necessary party objects to the proposed annexation in writing prior to the scheduled City Council meeting. A necessary party is any county, city, district, or local unit of government whose boundary includes, or who provides services to, the proposed area to be annexed.

Expedited Annexation Approval Criteria

The criteria which will be used by the City Council in reaching a decision are found in Milwaukie Municipal Code Section 19.1502.3 Boundary Change Approval Criteria; Milwaukie Comprehensive Plan Chapter 6 City Growth and Governmental Relationships; Metro Code Chapter 3.09 Local Government Boundary Changes, and; Oregon Revised Statutes Chapter 222 City Boundary Changes. Copies of these criteria are available upon request.

How to Submit Comments

You are invited to submit written and/or verbal comments on this application prior to or at the October 20 meeting. Written comments submitted in advance of the meeting should be directed to the Milwaukie Planning Department.

If you would like to submit written and/or verbal comments at the meeting, please address Council during the “Audience Participation” portion of the meeting.

Where to Get More Information

If you have any questions, please contact Susan P. Shanks in the Planning Department at 503-786-7653 or shankss@ci.milwaukie.or.us.

The application and all applicable approval criteria and ordinances are available for inspection at the Planning Department at 6101 SE Johnson Creek Blvd. A staff report will be available for public review after 8:00 a.m. on Wednesday, October 13, 2009, at the Planning Department; at the Ledding Library, local information shelf; at <http://www.ci.milwaukie.or.us/council/currentmeetings.html>; and at City Hall, 10722 SE Main. Copies of any materials, including the staff report, are available for purchase at a reasonable cost.

For assistance/service per the Americans with Disabilities Act (ADA), dial TDD (503) 786-7555.