

AGENDA
City of Oregon City, Oregon
WEDNESDAY, MAY 5, 2010

REGULAR MEETING OF THE CITY COMMISSION
7:00 P.M.

City Commission:

Alice Norris, Mayor
Doug Neeley, Commission President
James Nicita
Rocky Smith, Jr.
Daphne Wuest

Meeting held at:

City Hall
Commission Chambers
625 Center Street
Oregon City, OR 97045
503-657-0891

6:15 p.m. EXECUTIVE SESSION OF THE CITY COMMISSION

a. Pursuant to ORS 192.660(2)(e): To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

7:00 p.m. REGULAR MEETING

1. Convene Regular Meeting of May 5, 2010, and Roll Call
2. Flag Salute
3. Ceremonies, Proclamations, Presentations
 - a. Proclamation for Law Enforcement Week - May 9th - 15th, 2010
 - b. Proclamation as May, 2010 as National Preservation Month
 - c. The Ruth Powers Annual Historic Preservation Award
4. Citizen Comments

This section of the agenda allows citizens up to 3 minutes to present information or raise issues relevant to the city, regarding items not on the agenda. As a general practice, the City Commission will not engage in discussion with those making comments. Prior to speaking, citizens should fill out a form (available in the foyer) and hand it to the Mayor or City Recorder. Begin speaking by stating your name and residing city.
5. Adoption of the Agenda
6. Public Hearings
 - a. Continuance of 6-month Review of Development Code Amendments, L 08-01
Staff: Tony Konkol, Community Development Director
7. General Business
 - a. Sales Contract for Purchase of Eastham School for Permanent Home of the Oregon City Public Library
Staff: Maureen Cole, Library Director
 - b. Second Reading, Ordinance No. 10-1004, Authorizing the Vacation of a Westerly Portion of Main Street Located South of Agnes Avenue - City File No. SV10-0001
Staff: Nancy Kraushaar, City Engineer and Public Works Director

7. General Business

- c. Clackamas River Dredging Project - Schedule and Funding for Bidding and Construction Phase
Staff: Nancy Kraushaar, City Engineer and Public Works Director
- d. Update on SIZ- Strategic Investment Zones
Staff: Dan Drentlaw, Economic Development Manager
- e. Pavement Maintenance Utility Program Annual Report
Staff: Nancy Kraushaar, City Engineer and Public Works Director

8. Consent Agenda

This section allows the City Commission to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may only be discussed if it is pulled from the consent agenda.

- a. Minutes of the April 13, 2010 Joint Work Session with the Planning Commission
Staff: Nancy Ide, City Recorder
- b. Minutes of the April 13, 2010 Work Session
Staff: Nancy Ide, City Recorder
- c. Minutes of the April 21, 2010 Regular Meeting
Staff: Nancy Ide, City Recorder

9. Communications

- a. City Manager
 - 1. Report on Payment of Fees for Snack Shack Design Permit
 - 2. Update on Sportcraft Boat Ramp Replacement Project
- b. Mayor
 - 1. Mayoral Appointment of Scott Failmezger to the Transportation Advisory Committee for the Term May 5, 2010 to December 31, 2012.
- c. Commissioners

10. Adjournment

ORDER OF THE VOTE NO. 2
Neeley, Wuest, Smith, Nicita, Norris

Citizen Comments: The following guidelines are given for citizens presenting information or raising issues relevant to the City but **not listed on the agenda** under the Citizen Comments section of the agenda.

- Complete a Comment Card **prior to the meeting** and submit it to the City Recorder.
- When the Mayor calls your name, proceed to the speaker table and speak into the microphone.
- Each speaker is given 3 minutes to speak. To assist in tracking your speaking time, refer to the device on the speaker table. The green light turns on when speaking begins; the yellow light appears when 30 seconds remain; the red light appears when speaking time is complete.
- As a general practice, the City Commission does not engage in discussion with those making comments.

If you wish to speak on an item **on the agenda**, complete the Comment Card, submit it to the City Recorder, and the Mayor will call your name when the item is addressed on the agenda.

All speakers should begin speaking by stating their name and the city in which they reside.

10. Adjournment

Agenda Posted April 30, 2010 at City Hall, Pioneer Community Center, Library, [City Web site](#).

Video Streaming & Broadcasts: The meeting is streamed live on Internet on the Oregon City's Web site at www.orcity.org and available on demand following the meeting. The meeting can be viewed live on [Willamette Falls Television](#) on Channels 23 and 28 for Oregon City and Gladstone residents; Channel 18 for Redland residents; and Channel 30 for West Linn residents. The meetings are also rebroadcast on WFTV. Please contact WFTV at 503-650-0275 for a programming schedule.

City Hall is wheelchair accessible with entry ramps and handicapped parking located on the east side of the building. Hearing devices may be requested from the City Recorder prior to the Commission meeting. Disabled individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.

PROCLAMATION

Whereas, on October 1, 1962, the 87th Congress of the United States of America, by joint resolution, declared May 15th as Law Enforcement Officers Memorial Day, and the week of May 15th as Law Enforcement Week, such resolution signed by our 35th President, John F. Kennedy; and

Whereas, in 2009, the Officers of the Oregon City Police Department responded to over 22,000 calls for public safety services from the citizens of Oregon City; and

Whereas, the City of Oregon City is proud to honor its Police Officers, who on a daily basis place their own safety and well-being in jeopardy, protecting our community; and

Whereas, in America, a law enforcement officer is killed every 53 hours, making it the deadliest profession in our country; and

Whereas, the City of Oregon City joins the rest of the nation in commemorating the memories of the more than 18,662 deceased officers, including 162 from Oregon, who have given their lives in the performance of their duties of protecting our citizens; and

Whereas, in remembrance of Officer George J. Hanlon, of the Oregon City Police Department, who made the ultimate sacrifice on April 23, 1906, while fulfilling his duty to protect our City.

Now, Therefore, I, ALICE NORRIS, Mayor of the City of Oregon City,
Hereby proclaim the week of

MAY 09 - 15, 2010

as

LAW ENFORCEMENT WEEK

and also hereby proclaim

MAY 15, 2010

as

LAW ENFORCEMENT MEMORIAL DAY.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Oregon City to be affixed this 5th day of May 2010.

Alice Norris, Mayor

PROCLAMATION

HISTORIC PRESERVATION MONTH MAY, 2010

Whereas, historic preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

Whereas, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

Whereas, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

Whereas, "Old is the New Green" is the theme for National Preservation Month 2010, cosponsored by Oregon City and the National Trust for Historic Preservation; and

Now, Therefore, I, Alice Norris, Mayor of the City of Oregon City, do proclaim

May, 2010

as National Preservation Month, and call upon the people of Oregon City to join their fellow citizens across the United States in recognizing and participating in this special observance.

ALICE NORRIS, Mayor

HOW YOU CAN PROMOTE HISTORIC PRESERVATION IN OREGON CITY

1. Show your kids where you went to school or got married.
2. Shop in a historic commercial district. Be sure to look up so you can admire the detail of the buildings' upper floors.
3. Visit a place where history was made or a museum dedicated to history.
4. Eat at a restaurant in a historic building. If you like the atmosphere, tell the owner or host.
5. Attend a live performance or movie at a historic theater.
6. Walk around a historic residential neighborhood.
7. Stay in a historic hotel or at a historic B&B.
8. Attend services in a historic church or synagogue.
9. Take a tour of historic houses in your community.
10. Buy a historic house and rehabilitate it.
11. Reuse an old building in downtown for your business or organization.
12. Let your City Commission know that old buildings are important to your community. Encourage them to keep municipal offices in your downtown.
13. Convince your school board to keep using your historic schools.
14. Encourage an ethic of stewardship and high quality rehabilitation work in your community.
15. Volunteer with organizations where preservation makes a difference: the planning commission, development review board, library board, downtown organization, or Historic Review Board.

COMMENT FORM



*****PLEASE PRINT CLEARLY*****

- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND ADDRESS
- Limit Comments to **3 MINUTES**.
- Give to the City Recorder in Chambers **prior** to the meeting.

Date of Meeting 5-5-10

Item Number From Agenda 4 Citizen Comments

NAME: Serena R Stahly
ADDRESS: Street: 432 Chorman st
City, State, Zip: Oregon City OR 97115
PHONE NUMBER: 503 744-0779
SIGNATURE: Serena Stahly

COMMENT FORM



*****PLEASE PRINT CLEARLY*****

- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND ADDRESS
- Limit Comments to **3 MINUTES**.
- Give to the City Recorder in Chambers **prior** to the meeting.

Date of Meeting 5/5/10

Item Number From Agenda 6A

NAME: MARJORIE Hughes
ADDRESS: Street: 12821 Marysville Ln
City, State, Zip: Oregon City, OR
PHONE NUMBER: 503-312-1111
SIGNATURE: Marjorie E Hughes

COMMENT FORM



*****PLEASE PRINT CLEARLY*****

- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND ADDRESS
- Limit Comments to **3 MINUTES**.
- Give to the City Recorder in Chambers **prior** to the meeting.

Date of Meeting

5/5/18

Item Number From Agenda

6-A

NATIVE ISSUES

NAME:

PAUL EDGAR

ADDRESS:

Street:

City, State, Zip:

PHONE NUMBER:

SIGNATURE:

COMMENT FORM



*****PLEASE PRINT CLEARLY*****

- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND ADDRESS
- Limit Comments to **3 MINUTES**.
- Give to the City Recorder in Chambers **prior** to the meeting.

Date of Meeting

05 MAY 10

Item Number From Agenda

7a

NAME:

WILLIAM GIFFORD

ADDRESS:

Street:

1324 BEAVER LANE

City, State, Zip:

OREGON CITY OR 97045

PHONE NUMBER:

503-723-3456

SIGNATURE:

William Gifford

COMMENT FORM



PLEASE PRINT CLEARLY

- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND ADDRESS
- Limit Comments to **3 MINUTES**.
- Give to the City Recorder in Chambers **prior** to the meeting.

Date of Meeting 05 APRIL 10

Item Number From Agenda 7e

NAME: WILLIAM GIFFORD

ADDRESS: Street: 1324 BEAVER LN

City, State, Zip: OC OR 97045

PHONE NUMBER: 503.723.3456

SIGNATURE: William Gifford

COMMENT FORM



PLEASE PRINT CLEARLY

- SPEAK INTO THE MICROPHONE AND STATE YOUR NAME AND ADDRESS
- Limit Comments to **3 MINUTES**.
- Give to the City Recorder in Chambers **prior** to the meeting.

Date of Meeting 5-5-10

Item Number From Agenda 7d

NAME: Renate ~~Mengelberg~~ Mengelberg

ADDRESS: Street: Clackamas County

City, State, Zip: Economic Development Mng'r.

PHONE NUMBER: _____

SIGNATURE: _____



Agenda Item No. 6a
Meeting Date: 05 May 2010

COMMISSION REPORT: CITY OF OREGON CITY

TO:	Honorable Mayor and City Commission
FROM:	Tony Konkol, Community Development Director
PRESENTER:	Tony Konkol, Community Development Director
SUBJECT:	Continuance of 6-month Review of Development Code Amendments, L 08-01
Agenda Heading: Public Hearing	
Approved by: David Frasher, City Manager	

RECOMMENDED ACTION (Motion):

Staff recommends that the City Commission take testimony from any party requesting to comment on Planning File L 08-01 and continue the Public Hearing to June 2nd, 2010.

BACKGROUND:

Please see attached Staff memorandum.

BUDGET IMPACT:

FY(s):

Funding Source:

ATTACHMENTS:



TO: Honorable Mayor and City Commissioners:

FROM: Pete Walter, AICP, Associate Planner

DATE: April 28th, 2010

RE: L 08-01: Code Amendments 6-month update process – Outstanding Issues

The Planning Commission and City Commission held a joint worksession on April 13th, 2010 to review the 6-month code revisions. In addition to the proposed code amendments, the City Commission discussed the Newell Creek Canyon Urban Reserves, Conservation Easements, and the status of an Archeological Sensitivity Map.

This memorandum responds to additional questions raised at the worksession regarding revisions to the Tree Protection code (OCMC 17.41), tree planting / landscaping requirements for new residential development (OCMC 17.20), communication with Native American tribes regarding development in potentially sensitive archeological sites, and a clarification on the definition of membrane structures.

Staff will present this information to the Commission at the May 5th, 2010 public hearing, and based on the direction the Commission provides, Staff will prepare draft code language to be presented for consideration at the June 2nd, 2010 public hearing.

Tree Protection – OCMC 17.41

The word “Dead” has been proposed to be removed from the phrase, “Dead, diseased, dying and hazardous” trees, since inclusion of “dead” could inadvertently provide a loophole for a prospective applicant for development to kill or cut a healthy tree on their property prior to development application and not have to mitigate for it, since it would then be considered dead.

As proposed and approved by Planning Commission, the tree protection code in OCMC 17.41 only applies to private property that is undergoing land use development review. This issue was discussed extensively during the drafting of Chapter 17.41 at both the Planning Commission and City Commission level.

There are currently no provisions within chapter 17.41 that would prohibit tree cutting prior to submittal of a development application to the City. Nor are there provisions that would require mitigation for cutting of trees prior to development application, except as prohibited elsewhere in the code, such as in the Geological Hazard and Natural Resource Overlay District.

The implementation of additional restrictions on tree-cutting on private lots through a permit system was discussed during the 2009 review process for L 08-01, but the City Commission did not reach consensus to direct staff to prepare such revisions due to the policy, resource and staffing implications of such a comprehensive tree regulation code. Subsequently, staff has not prepared further revisions to Chapter 17.41 other than those formally recommended by the Planning Commission.

Residential Design Standards – OCMC 17.20 – On-Lot Tree Planting Requirements

Chapter 17.20 currently requires one new street tree to be planted in the planter strip if a street tree is either missing or has not been required as a condition of development approval. At the direction of the City Manager, staff has reviewed two other zoning codes for landscaping requirements on private lots for new residential development, the City of Portland and the City of Grants Pass. Either code approach, if implemented, would represent a new direction for the City of Oregon City regarding regulation of trees and landscaping on private property, and both would require additional resources to administer and enforce, such as additional fees to review landscaping plans and perform site visits to confirm compliance with the standards. The two codes staff has reviewed are as follows:

City of Portland (Attachment 1): The City of Portland's approach requires a combination of tree preservation and tree planting, or contribution to a tree fund, and minimum shrub/groundcover plantings. Homebuilders must submit a tree preservation and planting plan as part of a building permit application and are required to submit proof of installation 1 year following occupancy. No restrictive covenants or easements are required, however it must be remembered that in Portland, tree removal requires a permit from the city's bureau of development services, which is reviewed by the city forester. This is not the case, currently, in Oregon City.

City of Grants Pass (Attachment 2): Grants Pass requires the front and exterior yards of new residential lots to be landscaped with a combination of trees, shrubs and landscaping for seasonal color, the quantities for which are prescribed based on the zoning and size of the yards. There are minimum plant establishment requirements after 3 years, and specific allowances for the amount of parking permitted within the front yard landscaped area. Approval of installed landscaping is required prior to issuance of a certificate of occupancy; otherwise the builder or homeowner must post a surety of 110% of the cost of installation and materials in order to gain occupancy.

Next Steps: Staff has provided excerpts of both codes (Attachments 1 and 2). If the City Commission directs, Staff will provide the City Commission draft revisions to OCMC 17.20 to implement this policy for consideration at the June 2, 2010 public hearing.

Scoping of Archeology Map / SHPO / Application Requirements for Contact with Native American Tribes

The Planning Commission supported requiring a letter from SHPO indicating the recommended level of archeological monitoring for a proposed development as an additional application item prior to a determination of completeness by the planning division. Additionally, the Planning Commission supports efforts to prepare an archeological resource sensitivity map. At the last worksession, the City Commission requested that staff provide further background information regarding archeological resource mapping and communication with Native American Tribes.

Oregon has nine federally recognized tribes (in the northwest of Oregon, there two: The Confederated Tribes of Siletz, and the Confederated Tribes of Grand Ronde) each with specific cultural resource and heritage representatives (Attachment 3). The Oregon State Legislative Commission on Indian Services (CIS) serves as the Government-to-Government liaison for tribal and state agency communication. CIS primarily serves the state agencies, and have protocols and procedures for communication and appropriate representation by the tribes and their Cultural and Natural Resource Representatives. The State Historic Preservation Office's Susan White, RPA, Asst. State Archeologist, has provided further direction to Staff regarding these issues (Attachment 4). Ms. White stated:

"Understandably, SHPO archaeologists cannot create archaeological sensitivity maps for every local government agencies, however, we can aid in the agency's proposals and review of consultant's scope of work. In developing an archaeological sensitivity model the basic components would include extensive background literature research, knowledge of the environmental factors, geography & topography of a particular area and their presence/absence and degree leading towards a low/moderate/or high probability of archaeological resources for an area."

"It should be noted that such a sensitivity map would also need to include areas of cultural importance to Oregon Tribes. The consultant should contact and consult with the appropriate Native American Tribes in that area to obtain information regarding their concerns. Traditional avenues of inquiry, SHPO records and other literature and historic maps, do not include this valuable information, as it is confidential to the Tribes and such a request to learn of areas of Tribal concerns should be made to the Tribes directly."

"I would highly recommend contacting the Legislative Commission on Indian Services (CIS) to obtain the current list of appropriate Tribes for your area of concern. CIS is the legislative liaison between state agencies and Tribal governments and Karen Quigley, CIS Executive Director, will guide you through the process of the appropriate protocol and who to contact with the Tribe."

"I would also recommend contacting Clark County in Washington with regards to their archaeological sensitivity map. Their planning department may be helpful in providing both information and guidance in developing such a map."

"With regards to state laws; ORS 358.905-.955 protects archaeological sites and objects and ORS 97.740-.760 deals with Native American human remains and associated objects. Violation of ORS 97.740, specifically disturbance of Native American human remains or associated objects, is considered a Class C Felony and fines up to \$10,000 can be issued. Violation of ORS 358.905 is a Class B Misdemeanor. If it is discovered that someone has violated these statutes, SHPO has the prerogative to contact the State Police and stop all construction or land-disturbing activities."

SHPO recommends that the initial protocol be prepared well in advance of development applications to establish good relationships with the appropriate tribal Cultural Resource Representative. Subsequent communications regarding specific development sites and applications would then be more informal (e.g. via a quick email between the applicant or planning staff and the tribal Cultural Resource Representative).

Next Steps: Staff is continuing to work on these issues. Should the City Commission direct, staff will work to prepare:

- 1) A scope of work / RFP for preparation of an archeological sensitivity map; and
- 2) A protocol for direct communication with the appropriate and designated tribal Cultural Resource Representative as recommended by the Legislative Commission on Indian Services. This protocol could

include code revisions requiring either notification to the Siletz or Grand Ronde Cultural Resource Representative at the time of pre-application and/or land use application.

Membrane Structures

The Planning Commission clarified on February 22nd that the definition for membrane structures was to include both “fabric or metal”. Staff subsequently amended the definition to read as follows:

17.04. 743

Membrane or Fabric Covered Storage Area - An area covered by a tarp or tensioned **metal or fabric** membrane that is either attached to a rigid framework, natural feature or some other structure that is used for storage. It is not intended to include the weather proofing of a vehicle, boat or other individual item by a tarp or other type of covering as long the covering is attached directly to and covers only the particular item.

The implication of this specific revision is that metal pole barn type structures less than 200 square feet in size would also be prohibited pursuant to the proposed language in 17.54.010(4) as follows:

4. Membrane or Fabric Covered Storage Area. All membrane and fabric structures:
 - a. Shall be located behind the front building line of the primary structure.
 - b. Shall not be visible from the abutting Right-of-Way when viewed at pedestrian level.
 - c. Exceptions to these standards may be made by the Community Development Director for temporary storage of materials as long as the membrane or fabric covered storage area is removed within 10 days, is not erected for more than 20 days in one calendar year and is not seen as a nuisance to the city.
 - d. This section shall be effective on January 1, 2011. This section shall apply to all membrane or fabric covered storage areas in place before, on, or after the effective date of this section.
 - e. This prohibition does not apply to membrane covered areas displayed for garden or other active outdoor uses.

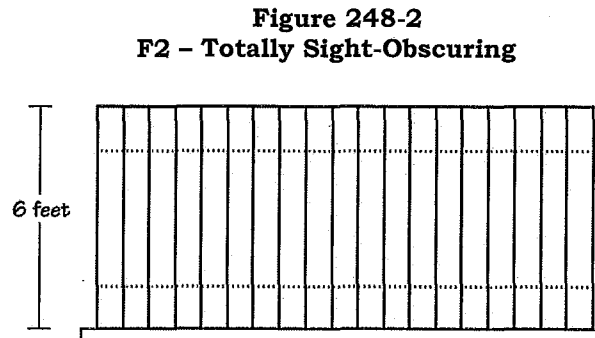
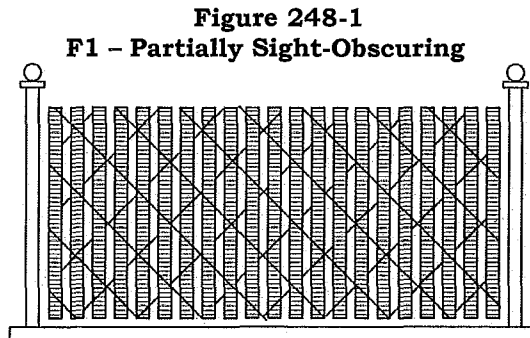
In conclusion, Staff is requesting direction concerning the issues raised in this memorandum, and any additional questions or concerns the City Commission would like Staff to address. Staff requests that the City Commission continue the public hearing to the June 2nd, 2010 meeting.

Attachments:

1. Portland landscaping and tree code (Excerpt)
2. Grants Pass landscaping code (Excerpt)
3. Legislative Commission on Indian Services – Tribal Cultural Resource Contacts
4. Email from Susan White, Assistant State Archeologist, Oregon SHPO, 4/20/2010

Portland, Trees.

2. Required materials. Fences must be 6 feet high and 100 percent sight-obscuring. Fences may be made of wood, metal, bricks, masonry or other permanent materials. See Figure 248-2.



H. T1, trees.

1. Intent. The T1 standard is a tree requirement for new residential development. It encourages the retention of trees, minimizes the impact of tree loss during development, and ensures a sustained tree canopy in Portland.
2. Tree requirement. This requirement may be met using any of the three options below. The applicant may choose to meet one or more of these options. Adjustments to this Subsection are prohibited. The options are:
 - a. Tree preservation. At least 2 inches of existing tree diameter per 1,000 square feet of site area must be preserved. On lots that are 3,000 square feet or smaller, at least 3 inches of existing tree diameter must be preserved per lot. This standard may be met using trees on the lot and within 5 feet of the edges of the lot. Trees within public and private rights-of-way may not be used to meet this standard. When this option is used, a tree preservation plan is required.
 - b. Tree planting. At least 2 inches of tree diameter per 1,000 square feet of site area must be planted. On lots that are 3,000 square feet or smaller, at least 3 inches of tree diameter must be planted per lot.
 - c. Tree Fund. This option may be used where site characteristics or construction preferences do not support the preservation or planting options.
 - (1) Fund use and administration. The Tree Fund fee is collected by the Bureau of Development Services and is administered by the Urban Forestry Division of the Bureau of Parks and Recreation. The funds collected will be used to plant trees on public or private property in the same watershed as the site.
 - (2) Calculation of required fund contributions. Applicants must contribute the cost to purchase and plant trees, as set out in (3), below. The cost to purchase and plant trees will be adjusted annually as determined by the Urban Forester based on current market prices per inch for materials, labor, and maintenance.

Portland - Trees, cont.

Title 33, Planning and Zoning
1/16/09

Chapter 33.248
Landscaping and Screening

(3) Required fund contribution. The applicant must contribute the following to the Tree Fund before a building permit will be issued:

- For lots with 3,000 square feet or more of area, the cost to purchase and plant at least 2 inches of tree diameter per 1,000 square feet of site area; or
- For lots with less than 3,000 square feet of area, the cost to purchase and plant at least 3 inches of tree diameter per lot.

I. P1, parking lot interior landscaping.

1. Intent. The P1 standard is a landscape treatment which uses a combination of trees, shrubs, and ground cover to provide shade, stormwater management, aesthetic benefits, and screening to soften the impacts of large expanses of pavement and vehicle movement. It is applied to landscaped areas within parking lots and associated vehicle areas.
2. Required materials.
 - a. Trees. The P1 standard requires one large tree per 4 parking spaces, one medium tree per 3 parking spaces, or one small tree per 2 parking spaces. At least 20 percent of trees must be evergreen. Trees of different sizes may be combined to meet the standard.
 - b. Shrubs. The P1 standard requires 1.5 shrubs per space. For spaces where the front two feet of parking spaces have been landscaped instead of paved, the P1 standard requires one shrub per space. Shrubs may be evergreen or deciduous.
 - c. Ground cover plants. The P1 standard requires that the remainder of the area must be planted in ground cover plants. The plants must be spaced to cover the area within 3 years. Mulch does not count as ground cover.

33.248.030 Plant Materials

A. Ground cover.

1. Ground cover required. All of the landscaped area that is not planted with trees and shrubs must be planted in ground cover plants, which may include grasses. Mulch (as a ground cover) must be confined to areas underneath plants and is not a substitute for ground cover plants.
2. Size and spacing. Ground cover plants other than grasses must be at least the four-inch pot size. Area planted in ground cover plants other than grass seed or sod must be planted in triangular spacing (see Figure 248-3) at distances appropriate for the plant species. Ground cover plants must be planted at a density that will cover the entire area within three years.

To use a ground cover plant not listed in the *Portland Tree and Landscaping Manual*, the applicant must provide the Bureau of Development Services with an objective source of information about the plant's requirements for spacing. Applicants are encouraged to provide information about the plant's watering needs, sun or shade preference, and climate zone hardiness. This information can come from published sources, Internet sources, or nursery information, for example, cut sheets.

Portland - Landscaping

C. Attached housing. Attached housing allows for more efficient use of land and for energy-conserving housing.

1. R20 through R5 zones.

- a. Lot dimensions. Each attached house must be on a lot that complies with the lot dimension standards for new lots in the base zone stated in Chapter 33.610, Lots in RF through R5 Zones.

b. Building setbacks.

- (1) Interior (noncorner) lots. On interior lots the side building setback on the side containing the common wall is reduced to zero. The reduced setback applies to all buildings on the lot and extends along the full length of the lot line that contains the common or abutting wall. The side building setback on the side opposite the common wall must be double the side setback standard of the base zone.

- (2) Corner lots. On corner lots either the rear setback or nonstreet side setback may be reduced to zero. However, the remaining nonstreet setback must comply with the requirements for a standard rear setback. See Figure 110-8.

- c. Number of units. Two attached houses may have a common wall. Structures made up of three or more attached houses are prohibited unless approved as a Planned Development.

- * [d. Landscape standards. The following landscape standards must be met on lots in the R10 through R5 zones that do not meet the minimum lot width standard of 33.610.200.D.1, and were created by a land division submitted after July 1, 2002. Modification of these standards is allowed through Planned Development Review. See Chapter 33.638, Planned Development. Adjustments are prohibited.

- (1) All street-facing facades must have landscaping along the foundation. There must be at least one three-gallon shrub for every 3 lineal feet of foundation; and

- (2) Sixty percent of the area between the front lot line and the front building line must be landscaped. At a minimum, the required landscaped area must be planted with ground cover. Up to one-third of the required landscaped area may be for recreational use, or for use by pedestrians. Examples include walkways, play areas, or patios.

2. R2.5 zone.

- a. Density and lot size. The density and minimum lot dimension standards are stated in Chapter 33.611, Lots in the R2.5 Zone, apply.

- b. Number of units. Up to eight attached houses may have common walls. Structures made up of nine or more attached houses are prohibited.

c. Building setbacks.

- (1) Perimeter building setbacks. The front, side, and rear building setbacks around the perimeter of an attached housing project are those of the base zone.
- (2) Interior building setbacks. The side building setback on the side containing the common wall is reduced to zero. The reduced setback extends along the full length of the lot line that contains the common or abutting wall.
- (3) Corner lots. On corner lots either the rear setback or nonstreet side setback may be reduced to zero. However, the remaining nonstreet setback must comply with the requirements for a standard rear setback. See Figure 110-8.

d. Landscape standards. The following landscape standards must be met on lots in the R2.5 zone that do not meet the minimum lot width standard of 33.611.200.C.1, and were created by a land division submitted after July 1, 2002. Modification of these standards is allowed through Planned Development Review. See Chapter 33.638, Planned Development. Adjustments are prohibited:

- (1) All street-facing facades must have landscaping along the foundation. There must be at least one three-gallon shrub for every 3 lineal feet of foundation; and
- (2) Sixty percent of the area between the front lot line and the front building line must be landscaped. At a minimum, the required landscaped area must be planted with ground cover. Up to one-third of the required landscaped area may be for recreational use, or for use by pedestrians. Examples include walkways, play areas, or patios.

D. Duplex in R2.5 zone. Duplexes are allowed in the R2.5 zone if the following are met:

1. Density. A maximum density of 1 unit per 2,500 square feet of site area is allowed. Density for this standard is calculated before public right-of-way dedications are made;
2. Development standards. Duplexes must comply with the height, building setback, building coverage, and required outdoor area requirements of the base zone, overlay zone, or plan district; and
3. Front facade. Fire escapes, or exterior stairs that provide access to an upper level are not allowed on the front facade of the building.

E. Duplexes and attached houses on corners. This provision allows new duplexes and attached houses in locations where their appearance and impact will be compatible with the surrounding houses. Duplexes and attached houses on corner lots can be designed so each unit is oriented towards a different street. This gives the structure the overall appearance of a house when viewed from either street.

1. Qualifying situations. This provision applies to corner lots in the R20 through R2.5 zones.

Grants Pass

- (6) In addition, screening or design consideration shall be given for refuse areas, service corridors and light and glare, as provided in Section 23.036, Type F.

¹23.030 Landscape and Buffering Development Standards

All required landscaped yards and buffer strips shall meet the standards of the appropriate Landscape and Buffer Type and the general provisions of this Section.

* 23.031 Type A: Residential Front and Exterior Yards

- ⁶(1) The following landscape standards shall apply to residential uses in residential zones:
- (2) Required front and exterior yards shall be landscaped, and building setbacks shall be maintained, according to the Type A Concept Sketch and Schedule 23-1. Minimum landscape requirements per 1000 square feet of a required front or exterior yard, or any portion thereof, shall be the following:
- ⁶(a) One tree at least six feet in height, and one inch in caliper measured three feet from the base. Select from street tree list, Section 23.076, and plant within 10' of right-of-way limit as per Type A Concept Sketch.
- (b) Four one gallon shrubs or accent plants.
- ⁶(c) Remaining area treated with attractive living ground-cover, as defined in Article 30. Coverage with shrubs or living ground-cover shall be at least 50% upon installation and 90% after 3 years.
- (d) If a sidewalk is required, no plant materials shall be installed between the curb and the sidewalk except in accordance with an approved landscape plan.
- (3) No vehicle parking shall be permitted within a required landscaped yard, except the following:
- (a) For single family and duplex dwellings, two vehicle spaces per dwelling unit, provided that a ten foot width of continuous landscaped area is maintained between the street right-of-way and the vehicle parking area.

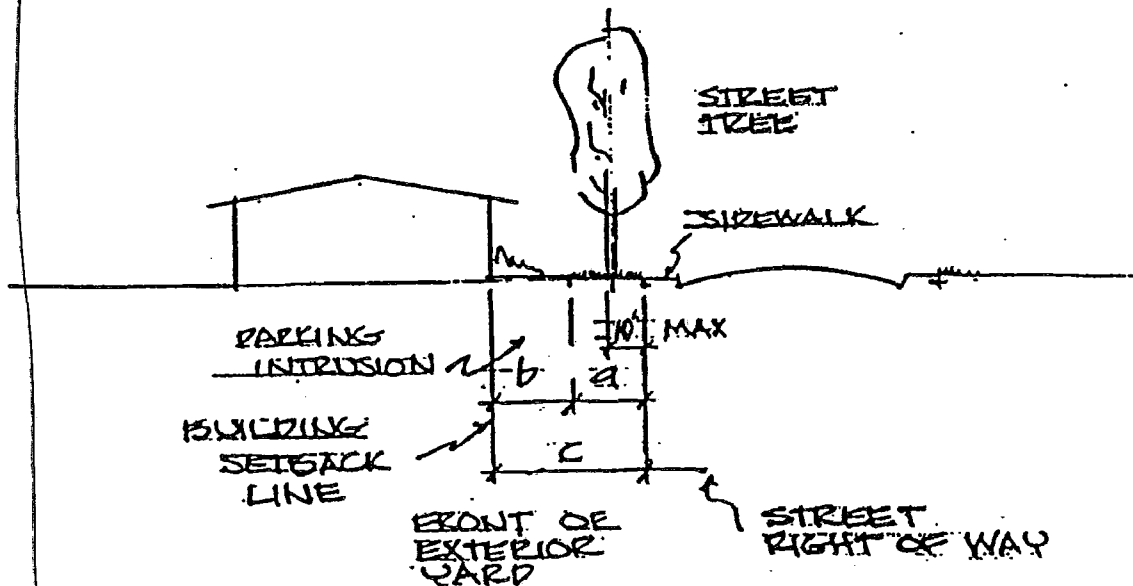
- ↓ *
- (b) For all uses in R-3 and R-4 zones, up to a five foot depth of continuous parking intrusion, but only when all the following conditions are met:
- 1) Landscaping equal in area to the parking intrusion is provided elsewhere between the front building line and the street right-of-way.
 - 2) Parking is screened as provided in Section 23.035, Type E.
 - 3) The required front or exterior yard is not also serving as a required buffer strip, as provided in Section 23.034, Type D.
- (4) Approved plant materials installed in the area between the curb and the sidewalk may be used in meeting the landscaping requirements for front and exterior yards.

Grants Pass - cont.

*

Residential Yard, Setback and Parking Intrusion - Schedule 23-1				
Type A Concept Sketch Distance				
Zone	(a) Parking Setback	(b) Parking Intrusion	(c) Required Yard Front/Exterior	
UR	10'	up to 2 vehicles/d.u.	20'	10'
R-1	10'	up to 2 vehicles/d.u.	20'	10'
R-2	10'	up to 2 vehicles/d.u.	20'	10'
R-3	10'	up to 5 ft.	20'	10'
R-4	10'	up to 5 ft.	10'	10'

* = see 23.031(2) (a)
d.u. = dwelling unit.
ft. = linear feet.

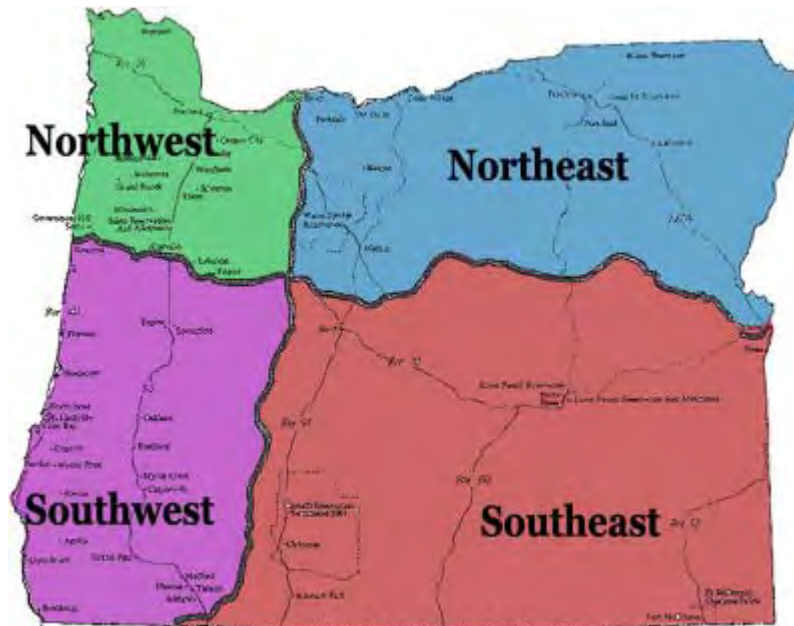


Type A: Concept Sketch
See Schedule 23-1 for (a), (b) and (c) distances

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Commission on Indian Services

Oregon Directory of American Indian Resources



| [Northwest](#) | [Southwest](#) | [Northeast](#) | [Southeast](#) |

This Directory is designed for quick reference to a comprehensive listing of Indian resources. To maximize ease of locating resources in Oregon, the state has been divided into geographic quadrants, as shown on this map. Corresponding sections for each region follow on the next several pages. Each begins with an alphabetical listing of Tribes, resources, Indian education programs and publications found in each region. A comprehensive topic and subject index is located in the back of the Directory. The symbols, NW, SW, NE and SE are used under subject headings throughout the index. These refer to the region in which the service is located.

[Current Status of State-Tribal Relations](#)
[Oregon State Government](#)
[Indian Commissions & Indian Affairs Contacts](#)
[Federal Government](#)
[Indian Organizations](#)
[Publication](#)



LEGISLATIVE COMMISSION ON INDIAN SERVICES

167 State Capitol
Salem, Oregon 97310-1347
(503) 986-1067 • Fax (503) 986-1071

Executive Director: Karen.m.quigley@state.or.us
Commission Assistant: Cassandra.ferder@state.or.us

Tribal Cultural Resource Contacts

*The Legislative Commission on Indian Services is Liaison and monitor for all Clusters.

BURNS PAIUTE TRIBE

Theresa Peck

Culture & Heritage
100 Pasigo Street
Burns, OR 97720
(541) 573-2088
Fax 541/573-2323
E-mail: theresa.peck@burnspaiute-nsn.gov

CONFEDERATED TRIBES OF THE COOS, LOWER UMPQUA & SIUSLAW INDIANS

Arrow Coyote

Archaeologist-Cultural Resource Protection
Coordinator/ Cultural Res. Cluster Contact
1245 Fulton Avenue
Coos Bay, Oregon 97420
(541) 888-7513 / Cell: (541) 297-5543
Fax: (541) 888-2853
Email: acoyote@ctclusi.org

Alternate Contact: Howard Crombie,
Director of Natural Resources (541) 888-7511

COQUILLE INDIAN TRIBE

Nicole Norris

Archaeologist
3050 Tremont Street
North Bend, OR 97459
(541) 756-0904
Fax: (541) 756-0847
Email: nicolenorris@coquilletribe.org

CONFEDERATED TRIBES OF GRAND RONDE

Eirik Thorsgard

Cultural Resources
9615 Grand Ronde Road
Grand Ronde, OR 97347
(503) 879-2249
Fax: (503) 879-1352
Email: eirik.thorsgard@grandronde.org

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS

Steve Rondeau

Cultural Resources Director
2371 Stephens Street, Suite 100
Roseburg, OR 97470
(541) 677-5575 ext. 5577
Fax: (541) 677-5574
Email: srondeau@cwccreek.com

Jessie Plueard

Archaeologist
2371 Stephens Street, Suite 100
Roseburg, OR 97470
(541) 677-5575 ext. 5577
Fax: (541) 677-5574
Email: jplueard@cowcreek.com

THE KLAMATH TRIBES

Perry Chocktoot

Culture & Heritage Director
P.O. Box 436
Chiloquin, OR 97624
(541) 783-2219
Fax: (541) 783-2029
Email: Perry.Chocktoot@klamathtribes.com

CONFEDERATED TRIBES OF SILETZ INDIANS**Robert Kentta**

Cultural Resources Director
P.O. Box 549
Siletz, OR 97380
(800) 922-1399 ext 1244
Fax: (541) 444-2307
Email: rkentta@ctsi.nsn.us

**CONFEDERATED TRIBES OF THE UMATILLA
INDIAN RESERVATION****Teara Farrow Ferman**

Cultural Resources Protection Program
Manager, Dept. of Natural Resources
46411 Timíne Way
Pendleton, OR 97801
(541) 276-3447
Fax: (541) 276-3447
Email: TearaFarrow@ctuir.com

**CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON****Sally Bird**

Cultural Resources
P.O. Box 460
Warm Springs, OR 97761
(541) 553-3555
Fax: (541) 553-3584
Email: sbird@wstribes.org

Pete Walter

From: Susan White [susan.white@state.or.us]
Sent: Tuesday, April 20, 2010 10:32 AM
To: Pete Walter
Subject: Fwd: Re: Archeological Sensitivity map for OC

Mr. Walter,

Sorry, it seems that the 2 attachments were too big to send, so I'm just sending the email. You can access our web page for a summary and links to state laws. And if you can send me your mailing address I can send you the articles about archaeology and local governments.

Again, sorry for the delay, Susan

Susan Lynn White, RPA
Asst. State Archaeologist
Oregon SHPO
725 Summer St NE, Suite C
Salem, Oregon 97301
503-986-0675 office
503-986-0793 fax
Susan.White@state.or.us

Visit our web page at
<http://www.oregonheritage.org/OPRD/HCD/ARCH/index.shtml>

>>> Susan White 4/19/2010 6:11 PM >>>
Mr. Walter;

Thank you for your patience with my chattering earlier regarding archaeological laws and probability models. I have attached both the powerpoint presentation given to the City Planning Commission as well as a scan of the NPS publication about public archaeology for your perusal. I hope this information helps.

I also understand that you would like to have a few bullets of what we discussed via phone regarding SHPO's role with archaeology and local governments, so here are a few bullets:

* Understandably, SHPO archaeologists cannot create archaeological sensitivity maps for every local government agencies, however, we can aid in the agency's proposals and review of consultant's scope of work. In developing an archaeological sensitivity model the basic components would include extensive background literature research, knowledge of the environmental factors, geography & topography of a particular area and their presence/absence and degree leading towards a low/moderate/or high probability of archaeological resources for an area.

* It should be noted that such a sensitivity map would also need to include areas of cultural importance to Oregon Tribes. The consultant should contact and consult with the appropriate Native American Tribes in that area to obtain information regarding their concerns. Traditional avenues of inquiry, SHPO records and other literature and historic maps, do not

include this valuable information, as it is confidential to the Tribes and such a request to learn of areas of Tribal concerns should be made to the Tribes directly.

* I would highly recommend contacting the Legislative Commission on Indian Services (CIS) to obtain the current list of appropriate Tribes for your area of concern. CIS is the legislative liaison between state agencies and Tribal governments and Karen Quigley, CIS Executive Director, will guide you through the process of the appropriate protocol and who to contact with the Tribe.

* I would also recommend contacting Clark County in Washington with regards to their archaeological sensitivity map. Their planning department may be helpful in providing both information and guidance in developing such a map.

* With regards to state laws; ORS 358.905-.955 protects archaeological sites and objects and ORS 97.740-.760 deals with Native American human remains and associated objects. Violation of ORS 97.740, specifically disturbance of Native American human remains or associated objects, is considered a Class C Felony and fines up to \$10,000 can be issued. Violation of ORS 358.905 is a Class B Misdemeanor. If it is discovered that someone has violated these statutes, SHPO has the prerogative to contact the State Police and stop all construction or land-disturbing activities.

I think that should do it. Please feel free to contact me with any other questions or concerns. Hope this helps, Susan Lynn

Susan Lynn White, RPA
Asst. State Archaeologist
Oregon SHPO
725 Summer St NE, Suite C
Salem, Oregon 97301
503-986-0675 office
503-986-0793 fax
Susan.White@state.or.us

Visit our web page at
<http://www.oregonheritage.org/OPRD/HCD/ARCH/index.shtml>

>>> Pete Walter <pwalter@ci.oregon-city.or.us> 4/19/2010 9:43 AM >>>
Hi Susan,

Following up on Christina's email regarding the archeological map, our City Commission requested that Staff also consider notifying affected native American tribes regarding development applications.

Can you comment on any state requirements regarding notification of tribes by local government for land use actions?

Please respond by Tuesday, April 27th, so that I can prepare a staff report for the City Commission.

Sincerely,

Pete Walter, AICP
Associate Planner
City of Oregon City
(503) 496-1568

From: Christina Robertson-Gardiner
Sent: Thursday, March 18, 2010 11:34 AM
To: 'Susan White'
Cc: Pete Walter; Tony Konkol
Subject: Cost of producing an Archeological Sensitivity map for OC

Hi Susan,

At last night City Commission meeting, one of our City Commissioners wanted to know approximately how much it would cost to hire a consultant to put together an Archeological Sensitivity map for Oregon City. (akin to the one we were pursuing this winter).

Knowing that this is an approximate number and mostly should be given in a range, how many hours of consultant work do you think it would take to create the map? The city may pursue a CLG grant in the next funding cycle and would use the CLG/federal rate of \$87.82/hour maximum. Do you know the going rate for archeological consultants? Is it very different from the federal rate?

The city is currently still pursuing the proposal that requires all land use actions that encompass ground disturbance to contact SHPO prior to completeness of the land use application.

I am about to head off on my maternity leave and want to make sure this information gets back to our Commissioner. Can you please reply all to your response? Let me know if you have any questions. I am in the office part time this week and am checking my email (even though my out of office assistant is on).

Thanks for all your help this winter,

Christina

<< OLE Object: Picture (Device Independent Bitmap) >> [cid:image001.jpg@01C9C4EE.69823010]
Christina Robertson-Gardiner, AICP
City of Oregon City
Associate Planner
221 Molalla Ave, Suite 200
PO Box 3040
Oregon City Or 97045
503.496.1564 City phone
503.722.3880
crobertson@orc.org<mailto:ebeverly@ci.oregon-city.or.us>

Need an answer? Did you know that our website can help you 24-hours a day, 7-days a week? Online, you have access to permit forms, applications, handouts, inspection results, codebooks, info on permits applied for since 2002, inspection information, application checklists, and much more. You can request inspections online, and if you are a contractor, you can even apply for permits online.

Zoning and other Tax Lot

Information<http://maps.orcity.org/imf/ext/viewPropertyReport/viewPropertyReport_Search.jsp>

- Quickly and easily view, print, and save maps and reports of your property.

Property Zoning

Report<http://maps.orcity.org/imf/ext/viewPropertyReport/viewPropertyReport_Search.jsp>

Online Mapping is available at

OCWebMaps<http://maps.orcity.org/imf/sites/OCWebMaps/jsp/launch.jsp?popup_blocked=true>

* Please consider the environment before printing PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State Retention Schedule and may be made available to the public.



Agenda Item No. 7a
Meeting Date: 05 May 2010

COMMISSION REPORT: CITY OF OREGON CITY

TO:	Honorable Mayor and City Commission
FROM:	Maureen Cole, Library Director
PRESENTER:	Maureen Cole, Library Director
SUBJECT:	Sales Contract for Purchase of Eastham School for Permanent Home of the Oregon City Public Library.
Agenda Heading: General Business	
Approved by: David Frasher, City Manager	

RECOMMENDED ACTION (Motion):

Staff recommends that the City of Oregon City enter into a sales agreement to purchase Eastham School as the new, permanent home of the Oregon City Public Library.

BACKGROUND:

The City has been discussing the possible acquisition of Eastham School from the School District. The purpose of this purchase would be to convert Eastham to the permanent home of the Oregon City Public Library. The school is approximately 48,650 square feet located on a parcel of land that is a little less than 3 acres. The site provides many options and opportunities for library service delivery. The parties are discussing a purchase price of \$4m dollars to be paid at 4.5% interest rate over approximately 19 years. This arrangement allows the City to use existing resources to provide a revenue stream of \$300,000 per year to the School District for this purchase. This would preclude the City from having to ask Oregon City citizens for additional funding for this acquisition. The City would complete an initial remodel and move into a portion of the upstairs spaces to provide an improved and expanded library service to Oregon City. This remodel will provide approximately 4,000 square feet above what exists today at the current hilltop location. Over time and with much citizen input we will develop a plan for additional remodeling and development of space. Please go to the City's website for additional information on the acquisition and plans.

BUDGET IMPACT:

FY(s): \$300k/year
Funding Source:

ATTACHMENTS:

Real Property Sale Agreement

REAL PROPERTY SALE AGREEMENT

DATE: May ____, 2010

PARTIES: Oregon City School District (“the District”)
1417 12th Street
Oregon City, Oregon 97045

City of Oregon City (“the City”)
625 Center Street
Oregon City, Oregon 97045

RECITALS:

The District owns Eastham School, an improved parcel of 2.98 acres, more or less, commonly identified as 1404 7th Street situated in the City of Oregon City, County of Clackamas, State of Oregon (the “**Property**”). The District uses the Property for a community center. The City desires to purchase the Property from the District on the terms and conditions set forth herein. Upon acquiring the Property, the City intends to continue its use as a community center and library.

AGREEMENTS:

1. *Sale and Purchase of the Property.* The District agrees to sell and the City agrees to purchase the Property. The Purchase Price for the Property is Four million and No/100 Dollars (US\$4,000,000.00), to be paid as follows:

1.1. Three hundred thousand and No/100 Dollars (US\$300,000.00) in cash at Closing.

1.2. The balance of the purchase price, Three million seven hundred thousand and No/100 Dollars (US\$3,700,000.00) shall bear simple interest at the rate of four and one-half percent (4.50%) per annum and shall be payable in annual payments of not less than Three hundred thousand and No/100 Dollars (US\$300,000.00), including interest. The first installment of principal and interest shall be due and payable on the first anniversary of the Closing Date with successive payments due and payable on the same day of each year thereafter until the entire unpaid balance, including principal and accrued interest, is paid in full. The parties recognize that the final annual payment may be less than a full \$300,000.00 installment payment. Commencing on the tenth anniversary of the Closing Date, the City may, from time to time, prepay, without penalty, all or any portion of the unpaid purchase price, provided that no prepayments shall be credited as future regular payments, nor excuse the City from making the regular installment payments, nor reduce the amount of the regular

installment payments. The obligations under this paragraph shall be evidenced in writing by a nonrecourse promissory note, according to the terms thereof, a copy of which is attached hereto as Addendum A (the “**Nonrecourse Note**”).

1.3. In order to secure the payment of the Purchase Price to the District by the City, the City will grant the District a security interest in all of the Property in the form of the Trust Deed attached hereto as Addendum B (the “**Trust Deed**”). The Trust Deed shall prohibit the City from engaging in any work on the Property that may diminish the value of the Property without having reserves to pay for the Work.

2. *Conditions of Closing.*

2.1. *Preliminary Title Report.* Upon the making of this Agreement, the District will request from First American Title a Preliminary Title Report showing the condition of the title to the Property, together with copies of all exceptions listed therein (the “**Title Report**”), as well as a Schedule of leases and other agreements with third-parties concerning the Property. The City will have 14 days from receipt of the Title Report and Schedule to review the Title Report and Schedule and to notify The District, in writing, of the City’s disapproval of (a) any exceptions shown in the Title Report and (b) any agreements listed on the Schedule. Those Title Report exceptions and Schedule items not objected to by the City are referred to below as the “**Permitted Exceptions**.” If the City notifies the District of disapproval of any exceptions, the District shall have 14 days after receiving the disapproval notice to either remove the exceptions or provide the City with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If the District does not remove the exceptions or provide the City with such assurances, the City may terminate this Agreement by written notice to the District given within 7 days after expiration of said 14-day period.

2.2. *Inspections.* The City and its Agents may enter the Property, as reasonably necessary, to make surveys, tests, studies and inspections in connection with the Property and the transaction contemplated hereby. The City’s obligation to close this transaction is contingent upon its approval, in its sole discretion, of any such inspections and reports within sixty (60) days after mutual execution of this Agreement (the “**Due Diligence Period**”). The City shall indemnify the District from any and all liability, cost and expense for loss of or damage to any person or property arising out of the exercise of the right to enter the Property granted hereunder or arising from an act or omission of the City or its employees, agents, contractors or subcontractors, unless such liability, cost and expense is caused by the District. If the City approves, in its sole discretion, the results of its inspection and review of the Property, the City shall notify the District of the satisfaction or waiver of this contingency on or before the expiration of the Due Diligence Period. If the City shall fail to give any notice to the District before the expiration of the Due Diligence Period, then this contingency shall be deemed not satisfied or waived and this Agreement shall terminate without further action of the parties.

2.2.1. The City shall obtain, review and approve of its own soils, engineering and/or feasibility studies, environmental site assessment, any other studies that it causes to be performed in connection with its purchase of the Property. The District shall permit the City and its agents, at the City's sole expense and risk, to enter the Property, at reasonable times after reasonable prior notice to the District, to conduct inspections, tests, and surveys concerning, without limitation, the structural condition of the improvements; all mechanical, electrical and plumbing systems; hazardous materials, including a Level 1, 2 or 3 Environmental Site Assessment; pest infestation; soils conditions and wetlands; Americans with Disabilities Act compliance; and, other matters affecting the suitability of the Property for the City's intended use and/or otherwise reasonably related to the purchase of the Property. The City will instruct its inspectors to minimize the disruption of any present use. The City shall indemnify, hold harmless, and defend the Property and the District from all liens, costs, and expenses arising from or relating to its, and its agents, entry on and inspection of the Property. The obligation to indemnify, hold harmless, and defend Seller shall survive closing or any termination of this Agreement.

2.2.2. The City shall review applicable zoning, rules, survey results, easements and regulations concerning the Property, including the building, safety and public health department of any other city, county, state or federal authority which it deems pertinent to its intended use, reconstruction and/or occupancy of the Property.

2.2.3. The City shall review and approve the District's Documents. Within 14 days of the making of this Agreement, and at any time thereafter as documents are identified or become available, the District shall deliver to the City the following documents relating to the ownership, operation, and maintenance of the Property, to the extent now in existence and to the extent such items are within the District's possession or control (collectively, the "**District's Documents**"): all tenant leases (the "**Leases**") and communications with tenants regarding extensions, renewals and options; utility bills and maintenance and service records from preceding 12 months; warranties in effect; equipment leases; service contracts and any other agreements that apply to the Property; hazardous material inspection reports and all Environmental Site Assessment reports; building plans and specifications; survey of the Property; engineering reports and/or consultant reports applicable to the Property; certificates of occupancy and/or permits; notices and communications of any kind from any governmental or regulatory authority relating to the Property; and, any other documents relating to the Property which the City may reasonably request.

2.3. *Land Use Approvals.*

2.3.1. The City's obligation to close this transaction is contingent upon the City obtaining, at its sole cost and expense, all necessary governmental approvals for developing and/or using the Property for the City's intended use, including but not limited to all necessary zone change and comprehensive plan amendment approvals, satisfactory to the City in its sole discretion (the "**Approvals**"). The City's obligation to close this transaction is contingent on

the City obtaining the Approvals, on terms and conditions satisfactory to the City in its sole discretion, no later than October 31, 2010 (the “**Land Use Approval Period**”); provided, however, if on October 31, 2010, the City has not obtained the Approvals, or if the Approvals have been obtained but the applicable appeal period has not expired or an appeal has been taken, then the City may extend the Land Use Approval Period by written notice to the District on or before October 31, 2010. In the event of such extension, the Land Use Approval Period shall be extended until the date that is ten (10) business days after the date that the Approvals are obtained and all appeal periods have expired and any appeals have been resolved to the City’s satisfaction without the opportunity of further appeals.

2.3.2. The District hereby authorizes the City enter into discussions and negotiations regarding the future use of the Property with all governmental authorities having jurisdiction and further authorizes the City to apply for and seek a rezoning, change in comprehensive plan designation or other approval which may be required incident to the City’s intended use; provided, however, all such activities shall be at the City’s sole cost and expense and the land use action sought by the City will not compromise or interfere with the District’s present use of the Property. The District agrees to reasonably cooperate with the City in all respects in connection with the City seeking the Approvals, including but not limited to execution of any applications for approval.

2.3.3. If the City obtains the Approvals, including the expiration of all appeal periods with no appeals being taken, or if an appeal is taken, satisfactory resolution of such appeal, the City shall notify the District of the satisfaction or waiver of this contingency on or before the expiration of the Land Use Approval Period. If the City shall fail to give any notice to the District before the expiration of the Land Use Approval Period, or if the City notifies the District at any time on or before the expiration of the Land Use Approval Period that this contingency has not been satisfied, then this contingency shall be deemed not satisfied or waived and this Agreement shall terminate without further action of the parties.

2.4 *Deed Restriction.* The parties acknowledge that the Property is subject to a deed restriction that provides the Property will revert to Clackamas County if the Property shall cease to be used for public school or park purposes, as such deed restriction is set forth in that certain deed recorded at Volume 175, Page 37, Clackamas County deed records (the “**Deed Restriction**”). The City’s obligation to close this transaction is contingent upon Clackamas County terminating its reversionary interest in the Property so that the City may obtain insurable title from the District free of the Deed Restriction. The City and the District agree to cooperate in seeking termination of the reversionary interest held by the County on or before the expiration of the Due Diligence Period. If this condition is not satisfied or waived before the expiration of the Due Diligence Period, then this contingency shall be deemed not satisfied or waived and this Agreement shall terminate without further action of the parties.

3. *The District’s covenants prior to Closing.* From the Effective Date of this Agreement to the Possession Date, the District shall (i) maintain the Property in good repair and in broom

clean condition; (ii) continue to operate the Property in the manner previously operated by the District; (iii) not enter into any contracts or purchase orders relating to the Property, other than in the ordinary course of operating the Property; (iv) not enter into any new leases or terminate, amend, modify, renew or extend any of the existing Leases without the consent of the City, except the District shall terminate the lease of the existing charter school which occupies the north end of the building prior to Closing and may renew the lease of Cascade Academics for the 2010/2011 school year as provided in Section 7 below; and (v) perform all acts necessary to insure that the representations, warranties, and covenants of the District shall be true, complete and accurate in all respects on and as of the date of close of escrow to the same force and effect as if made at close of escrow. The covenants under this section shall not obligate the District to perform, or have performed, any maintenance or other work to the improvements on the Property other than ordinary maintenance, or such emergency or temporary repair as the District may determine in its sole discretion.

4. *Risk of loss.* Risk of loss or damage to the Property shall be the District's until the Possession Date, and the City's beginning with the Possession Date. The District shall maintain adequate insurance coverage on the Property through and including the Closing Date. If prior to close of escrow: (a) all or any material part of the improvements on the Property are destroyed or damaged by fire or other casualty; or (b) all or a material part of the Property is taken by eminent domain, either party may, by written notice to the other, cancel this Agreement prior to close of escrow, in which event this Agreement shall be terminated.

5. *Closing.*

5.1. *Escrow.* The transaction will be closed through the Clackamas Branch of First American Title. The District and the City shall each pay one-half of the escrow fees.

5.2. *Closing Date.* Closing shall take place on the later of (a) October 31, 2010, or (b) if the City has extended the Land Use Approval Period as provided in Section 2.3 above, the date that is seven (7) business days after the extended Land Use Approval Period (the "**Closing Date**").

5.3. *Closing Documents.* At Closing the District shall execute and deliver to the City a statutory warranty deed conveying the Property to the City free and clear of all liens and encumbrances except the Permitted Exceptions and an assignment of the Leases. At Closing the City shall execute and deliver to the District the Nonrecourse Note and the Trust Deed.

5.4. *Title Insurance.* At Closing the District will instruct First American Title to issue the City, at the District's expense, an ALTA policy of title insurance in the amount of the Purchase Price, standard form, insuring the City as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions, if any.

5.5. *Possession.* The City shall be entitled to possession of the Property at 12:01

o'clock a.m. on the calendar day following the Closing Date (the "**Possession Date**"). The District shall deliver all of the District's Documents to the City no later than the Possession Date.

5.6. *Prorates.* Real property taxes, if any, rents, utilities, and other usual items shall be prorated as of the Closing Date.

5.7. *Condition of the Property at Transfer.* The Property will be transferred free of rubbish, debris and personal property. All crops, shrubs, plants, trees, and all other landscaping or naturally growing vegetation on the Property are part of the Property and shall be left on the Property by the District.

5.8. *IRS Certification.* The District is not a "foreign person" as that term is defined in IRC §1445 and on the Closing Date The District will execute and deliver to the City a certification of nonforeign status on a form required by the IRS

5.9. *No Agent.* Neither party has employed any broker, agent or finder in connection with the transaction contemplated by this Agreement, or taken action that would give rise to a valid claim against any party for a brokerage commission, finder's fee, or other like payment.

6. *Representations, Warranties and Covenants.*

6.1. *Hold Harmless.* The District will indemnify and hold the City harmless from any cost, expense or liability associated with, arising from, or attributable to the possession or occupancy of the Property prior to the transfer of possession. On the Transfer Date, the District will surrender possession of the Property to the City and the Property shall be vacant and free of any occupancy or claims of tenants or any other person claiming by or through the District or otherwise, except for leases and other agreements accepted by the City.

6.2. *Representations.* The District represents and warrants to the City as of the date of this Agreement and as of the Closing Date as follows: The District knows of no material defects with respect to the Property; the District has received no notice of any liens to be assessed against the Property; the District has received no notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Property; the District has not been notified by any governmental agency that the Property may be the subject of a proceeding in eminent domain; there are no defaults by any party to the Leases which are uncured; none of the Leases have a term that extends beyond the end of the District's school year in June 2011; none of the Leases give the tenant a right to renew or extend or any right of first refusal or option to purchase; and except as disclosed in the District's Documents or otherwise in writing to the City prior to Closing, the District has no knowledge of any spills, releases, discharges, disposal, storage or manufacture of Hazardous Substances on the Property or from the Property onto any adjacent properties, or of

the presence of any underground storage tanks or other underground receptacles on or under the Property. The term "Hazardous Substances" shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, or a hazardous, toxic or radioactive substance, (or designated by any other similar term), by any applicable federal, state or local statute, regulation or ordinance.

6.3. *Representations and Conditions of Property.* Upon Closing, the City accepts the Property in its present condition based upon its inspection thereof, "as is," including latent defects, without any representations or warranties, express or implied, except as set forth in Section 6.2 above or otherwise stated in writing signed by the District. The City agrees that it has ascertained from sources other than the District the applicable zoning, building, and other regulatory ordinances and laws and that it accepts the Property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the Property, and the District has made no representations with respect thereto.

6.4. *No Reliance.* In making and executing this Agreement, the City has not relied upon nor been induced by any statements or representations of the District, other than those expressly set forth in this Agreement, in respect of the physical condition of the Property, including the environmental conditions present on the Property, or of any other matter affecting or relating to the physical condition of the Property. The City has, on the contrary, relied solely on such representations, if any, as are expressly set forth herein and on such investigations, examinations, and inspections as it has chosen to make or has made.

7. *Transfer of Tenancy; New Lease.* The District has leased office space and four classrooms in the building on the Property to Cascade Academics (the "Tenant"). The District may renew the lease of this space to the Tenant for the 2010-2011 school year for a monthly gross rent of \$3,400. At Closing, this lease shall be assigned to the City. The District also occupies space in the building on the Property for its Community Education programs and preschool (the "District Programs"). At closing, the District and the City shall enter into a new lease to allow the District to continue to occupy this space for the District Programs rent-free. The specific terms of the lease shall be agreed upon on or before the expiration of the Due Diligence Period.

8. *Default; Remedies.*

8.1. A default shall occur if a party fails to perform an obligation contained in this Agreement within 14 days after notice from the other party specifying the nature of the default or, if the default cannot be cured within 14 days, failure within such time to commence and pursue curative action with reasonable diligence.

8.2. In the event of a default prior to Closing, a party may terminate this Agreement upon five (5) days notice to the other party, and if the Agreement is so terminated the parties agree that each has assumed the risk of the other's nonperformance and default and therefore

waives the recovery of direct or consequential damages. Notwithstanding the foregoing, in lieu of making an earnest money deposit, the City agrees that if all conditions to closing are satisfied and/or waived in accordance with this Agreement and this transaction fails to close on account of a default by the City under this Agreement, the District is entitled to \$10,000 liquidated damages in lieu of any other remedies available to the District for such default.

8.3. In the event this transaction fails to close on account of a default by the District under this Agreement, the City shall also have the remedy of specific performance of this Agreement, which remedy is exempt from the arbitration provision of this Agreement.

8.4. In the event of a default after Closing, each party reserves all rights and remedies available at law or in equity; provided, however, in the event of default by the City in the payment of the Nonrecourse Note, and notwithstanding anything contained herein to the contrary, the District's sole remedy shall be recourse to the Property. Without limiting the foregoing, the District agrees that (i) the City shall be liable under the Nonrecourse Note and for the other obligations of the City under Trust Deed securing the Nonrecourse Note to the full extent (but only to the extent) of the Property, (ii) in the event of default by the City under the Nonrecourse Note or the Trust Deed securing the Nonrecourse Note, any judicial or other proceedings brought by the District against the City shall be limited to the enforcement and foreclosure of the Trust Deed securing the payment of the Nonrecourse Note and the other obligations of the City under the Trust Deed, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of the City other than the Property, and (iii) in the event of a foreclosure of the Trust Deed securing the payment of the Nonrecourse Note and/or the other obligations of Borrower under the Trust Deed, no judgment for any deficiency upon the indebtedness owing under the Nonrecourse Note shall be sought or obtained by the District against the City. The terms of this Section 8 shall be incorporated into the Nonrecourse Note and Trust Deed.

9. *General Provisions.*

9.1. *Time.* Time is of the essence of this Agreement.

9.2. *Survival.* All representations and warranties contained in this Agreement will survive Closing and the conveyance of the Property.

9.3. *Assignment.* This Agreement cannot be assigned without the prior written consent of the other party.

9.4. *Binding Effect.* This Agreement is binding on and will inure to the benefit of the City, the District, and their respective heirs, legal representatives and successors.

9.5. *Attorney Fees.* In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees

incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

9.6. *Interpretation of this Document.* Each of the parties and its counsel has reviewed, revised and negotiated or had the opportunity to negotiate the terms, conditions and language of this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.

9.7. *Arbitration.* Claims between the parties shall be submitted to arbitration in Oregon City pursuant to ORS 36.60 *et seq.*

9.8. *Notice.* Any notice or other communication required or permitted to be given under this Agreement shall be in writing and either personally delivered, delivered by regular courier service offering over-night service and obtaining a signed receipt (such as FedEx or UPS), or be mailed by certified mail, return receipt requested, postage prepaid. A notice or other communication shall be addressed to the parties as follows:

To the District: Oregon City School District
Attn: Superintendent
1417 12th Street
Oregon City, Oregon 97045

with a copy to: Boutin & Associates
Attorneys at Law
5005 Meadows Road, Suite 405
Lake Oswego, Oregon 97035

To the City: City of Oregon City
Attn: City Manager
625 Center Street
Oregon City, Oregon 97045

with a copy to: Garvey Schubert Barer
Attorneys at Law
Attn: William K. Kabeiseman
121 SW Morrison Street, 11th Floor
Portland, Oregon 97204

Any notice or other communication delivered by certified mail shall be deemed to be given on the third day after the date of deposit with the United States Postal Service. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party.

9.9. *Entire Agreement.* This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

9.10. *Statutory Notice.*

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. 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, CHAPTER 424, OREGON LAWS 2007. 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 VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES 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, CHAPTER 424, OREGON LAWS 2007.

In witness whereof, the parties have made this Agreement the day and year first set forth above, intending to be bound hereby.

THE DISTRICT:

OREGON CITY SCHOOL DISTRICT

THE CITY:

CITY OF OREGON CITY

By Roger Rada, Superintendent

By David Frasher, City Manager

Date

Date



**OREGON
CITY**

THE EASTHAM SCHOOL :

The Sales Agreement
Next Steps





OREGON CITY

The Sales Agreement: what we receive

Lot and existing building at 1404 7th Street

The building has **48,650** square feet; was built in 1950. The building has been well maintained and portions have been improved.

The lot is **2.9** acres.



OREGON CITY

The Sales Agreement: what we give

Sale price: \$4 million

Interest rate: 4.5%

Due at closing: \$300,000 plus $\frac{1}{2}$ of escrow fees

Annual installment: not less than \$300,000

Length of loan: 19 years; after 10 years, City may prepay



**OREGON
CITY**

The Sales Agreement,
important aspects:

Due diligence Period, Section 2.2, pg. 2: this is the time after entering the agreement which we inspect the property to ensure we know what we are purchasing and that we approve of what is found.

“The City’s obligation to close this transaction is contingent upon its approval, in its sole discretion, of any such inspections and reports within sixty (60) days after mutual execution of this Agreement (the “Due Diligence Period”). “



**OREGON
CITY**

The Sales Agreement,
important aspects:

Rezoning, Section 2.3, Page 3: currently zoned _____; must rezone to _____ in order to use this parcel as a library.

“City’s obligation to close this transaction is contingent upon the City obtaining, at it sole cost and expense, all necessary governmental approvals for developing and/or using the Property for the City’s intended use, including but not limited to all necessary zone change and comprehensive plan amendment approvals, satisfactory to the City in its sole discretion”



OREGON CITY

The Sales Agreement,
important aspects:

The Deed Restriction, Section 2.4, Page 4: If property ceases to be used for public school or park, property reverts to the County.

“The City’s obligation to close this transaction is contingent upon Clackamas County terminating its reversionary interest in the Property so that the City may obtain insurable title from the District free of the Deed Restriction... If this condition is not satisfied or waived before the expiration of the Due Diligence Period, then this contingency shall be deemed not satisfied or waived and this Agreement shall terminate...”



OREGON CITY

The Sales Agreement,
important aspects:

Tenants, Section 7, Page 7: there are currently two paying tenants, plus a School District preschool, plus offices of the Community Education Programs of the School District. One major tenant will move out; other tenant, preschool and offices to remain in building through 2010–2011 school year. If closing occurs prior to end of school year, City will collect rent on tenant and provide ongoing space to District preschool and programs for free.



OREGON CITY

The Sales Agreement,
important aspects:

Closing date, Section 5.2, Page 5, and extension of closing, Section 2.3.1, Pages 3–4: Closing is scheduled for October 31, 2010 or 7 days after extension requested by City for Land Use Approvals.

‘Closing shall take place on the later of (a) October 31, 2010, or (b) if the City has extended the Land Use Approval Period as provided in Section 2.3 above, the date that is seven (7) business days after the extended Land Use Approval Period (the “**Closing Date**”).’



OREGON CITY

The Sales Agreement: Next steps and timeline

May 10, 2010: the School District votes

If they approve the agreement, this starts the following events:

1. The District requests title report. **When City receives title report, it has 14 days** to disapprove of any exceptions
2. The District has **14 days** to deliver all documents to the City, including leases, service records, building plans, etc.
3. This starts the **60 day** due diligence phase. If the City does not notify the District on or before 60 days, the agreement shall terminate
4. This starts our work on rezoning the property, hopefully to be concluded by **October 31, 2010**, although City has the ability to extend this date.



OREGON CITY

PROS AND CONS OF EASTHAM PURCHASE: REMINDERS

Pros:

This purchase would provide the city with a permanent library home

The site is well located; this is a site that was previously identified as a good location for a future library.

The site is very large and therefore could accommodate a lot of parking, open space, a very large building, perhaps with a different orientation.

The opportunity allows the City to purchase something that it could acquire without a bond.

The City could do Phase 1 remodeling without fundraising or bond measure

While we plan future development, tax dollars go to ownership, rather than lease

Other spaces in Eastham can be used for community uses; some spaces could potentially house city departments or relieve City space pressures

Cons:

The City would inherit a large 1950 building which was not designed as a library. Thus it will require maintenance that a new building would not need

Will need to be remodeled and renovated; redevelopment of this property could be very expensive

Building renovation will have to be done in phases

The 2nd phase of development will require financing, potentially a bond.



OREGON CITY

Possible phased development of Eastham

PHASE 1: Remodel over 17,000 sq ft in gym area for public/circulation space; use other areas as staff/admin/volunteer, programs, and public meeting. Cost \$1.5–\$2 million

PHASE 2: in next 5–10 yrs, conduct public process to meet OLA space standards as well development of remainder of lot; improve traffic flow, add parking. Plan bond measure, approximately \$10 million

[illegible]

SCALE: NONE



U.S. Architect, Inc. © 2010

SHEET:

TFa

REAL PROPERTY SALE AGREEMENT

DATE: May ____, 2010

PARTIES: Oregon City School District ("the District")
1417 12th Street
Oregon City, Oregon 97045

City of Oregon City ("the City")
625 Center Street
Oregon City, Oregon 97045

RECITALS:

The District owns Eastham School, an improved parcel of 2.98 acres, more or less, commonly identified as 1404 7th Street situated in the City of Oregon City, County of Clackamas, State of Oregon (the "**Property**"). The District uses the Property for a community center, an alternative education program, and it leases a portion of the Property to a charter school. The City desires to purchase the Property from the District on the terms and conditions set forth herein. Upon acquiring the Property, the City intends to continue its use as a community center and library.

AGREEMENTS:

1. *Sale and Purchase of the Property.* The District agrees to sell and the City agrees to purchase the Property. The Purchase Price for the Property is Four million and No/100 Dollars (US\$4,000,000.00), to be paid as follows:

1.1. Three hundred thousand and No/100 Dollars (US\$300,000.00) in cash at Closing.

1.2. The balance of the purchase price, Three million seven hundred thousand and No/100 Dollars (US\$3,700,000.00) shall bear simple interest at the rate of four and one-half percent (4.50%) per annum and shall be payable in annual payments of not less than Three hundred thousand and No/100 Dollars (US\$300,000.00), including interest. The first installment of principal and interest shall be due and payable on the first anniversary of the Closing Date with successive payments due and payable on the same day of each year thereafter until the entire unpaid balance, including principal and accrued interest, is paid in full. The parties recognize that the final annual payment may be less than a full \$300,000.00 installment payment. Commencing on the tenth anniversary of the Closing Date, the City may, from time to time, prepay, without penalty, all or any portion of the unpaid purchase

price, provided that no prepayments shall be credited as future regular payments, nor excuse the City from making the regular installment payments, nor reduce the amount of the regular installment payments. The obligations under this paragraph shall be evidenced in writing by a nonrecourse promissory note, according to the terms thereof, a copy of which is attached hereto as Addendum A (the "**Nonrecourse Note**").

1.3. In order to secure the payment of the Purchase Price to the District by the City, the City will grant the District a security interest in all of the Property in the form of the Trust Deed attached hereto as Addendum B (the "**Trust Deed**"). The Trust Deed shall prohibit the City from engaging in any work on the Property that may diminish the value of the Property without having reserves to pay for the Work.

2. *Conditions of Closing.*

2.1. *Preliminary Title Report.* Upon the making of this Agreement, the District will request from First American Title a Preliminary Title Report showing the condition of the title to the Property, together with copies of all exceptions listed therein (the "**Title Report**"), as well as a Schedule of leases and other agreements with third-parties concerning the Property. The City will have 14 days from receipt of the Title Report and Schedule to review the Title Report and Schedule and to notify The District, in writing, of the City's disapproval of (a) any exceptions shown in the Title Report and (b) any agreements listed on the Schedule. Those Title Report exceptions and Schedule items not objected to by the City are referred to below as the "**Permitted Exceptions**." If the City notifies the District of disapproval of any exceptions, the District shall have 14 days after receiving the disapproval notice to either remove the exceptions or provide the City with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If the District does not remove the exceptions or provide the City with such assurances, the City may terminate this Agreement by written notice to the District given within 7 days after expiration of said 14-day period.

2.2. *Inspections.* The City and its Agents may enter the Property, as reasonably necessary, to make surveys, tests, studies and inspections in connection with the Property and the transaction contemplated hereby. The City's obligation to close this transaction is contingent upon its approval, in its sole discretion, of any such inspections and reports within sixty (60) days after mutual execution of this Agreement (the "**Due Diligence Period**"). The City shall indemnify the District from any and all liability, cost and expense for loss of or damage to any person or property arising out of the exercise of the right to enter the Property granted hereunder or arising from an act or omission of the City or its employees, agents, contractors or subcontractors, unless such liability, cost and expense is caused by the District. If the City approves, in its sole discretion, the results of its inspection and review of the Property, the City shall notify the District of the satisfaction or waiver of this contingency on or before the expiration of the Due Diligence Period. If the City shall fail to give any notice to the District before the expiration of the Due Diligence Period, then this contingency shall be

deemed not satisfied or waived and this Agreement shall terminate without further action of the parties.

2.2.1. The City shall obtain, review and approve of its own soils, engineering and/or feasibility studies, environmental site assessment, any other studies that it causes to be performed in connection with its purchase of the Property. The District shall permit the City and its agents, at the City's sole expense and risk, to enter the Property, at reasonable times after reasonable prior notice to the District, to conduct inspections, tests, and surveys concerning, without limitation, the structural condition of the improvements; all mechanical, electrical and plumbing systems; hazardous materials, including a Level 1, 2 or 3 Environmental Site Assessment; pest infestation; soils conditions and wetlands; Americans with Disabilities Act compliance; and, other matters affecting the suitability of the Property for the City's intended use and/or otherwise reasonably related to the purchase of the Property. The City will instruct its inspectors to minimize the disruption of any present use. The City shall indemnify, hold harmless, and defend the Property and the District from all liens, costs, and expenses arising from or relating to its, and its agents, entry on and inspection of the Property. The obligation to indemnify, hold harmless, and defend Seller shall survive closing or any termination of this Agreement.

2.2.2. The City shall review applicable zoning, rules, survey results, easements and regulations concerning the Property, including the building, safety and public health department of any other city, county, state or federal authority which it deems pertinent to its intended use, reconstruction and/or occupancy of the Property.

2.2.3. The City shall review and approve the District's Documents. Within 14 days of the making of this Agreement, and at any time thereafter as documents are identified or become available, the District shall deliver to the City the following documents relating to the ownership, operation, and maintenance of the Property, to the extent now in existence and to the extent such items are within the District's possession or control (collectively, the "**District's Documents**"): all tenant leases (the "**Leases**") and communications with tenants regarding extensions, renewals and options; utility bills and maintenance and service records from preceding 12 months; warranties in effect; equipment leases; service contracts and any other agreements that apply to the Property; hazardous material inspection reports and all Environmental Site Assessment reports; building plans and specifications; survey of the Property; engineering reports and/or consultant reports applicable to the Property; certificates of occupancy and/or permits; notices and communications of any kind from any governmental or regulatory authority relating to the Property; and, any other documents relating to the Property which the City may reasonably request.

2.3. *Land Use Approvals.*

2.3.1. The City's obligation to close this transaction is contingent upon the City

obtaining, at its sole cost and expense, all necessary governmental approvals for developing and/or using the Property for the City's intended use, including but not limited to all necessary zone change and comprehensive plan amendment approvals, satisfactory to the City in its sole discretion (the "**Approvals**"). The City's obligation to close this transaction is contingent on the City obtaining the Approvals, on terms and conditions satisfactory to the City in its sole discretion, no later than October 31, 2010 (the "**Land Use Approval Period**"); provided, however, if on October 31, 2010, the City has not obtained the Approvals, or if the Approvals have been obtained but the applicable appeal period has not expired or an appeal has been taken, then the City may extend the Land Use Approval Period by written notice to the District on or before October 31, 2010. In the event of such extension, the Land Use Approval Period shall be extended until the date that is ten (10) business days after the date that the Approvals are obtained and all appeal periods have expired and any appeals have been resolved to the City's satisfaction without the opportunity of further appeals.

2.3.2. The District hereby authorizes the City to enter into discussions and negotiations regarding the future use of the Property with all governmental authorities having jurisdiction and further authorizes the City to apply for and seek a rezoning, change in comprehensive plan designation or other approval which may be required incident to the City's intended use; provided, however, all such activities shall be at the City's sole cost and expense and the land use action sought by the City will not compromise or interfere with the District's present use of the Property. The District agrees to reasonably cooperate with the City in all respects in connection with the City seeking the Approvals, including but not limited to execution of any applications for approval.

2.3.3. If the City obtains the Approvals, including the expiration of all appeal periods with no appeals being taken, or if an appeal is taken, satisfactory resolution of such appeal, the City shall notify the District of the satisfaction or waiver of this contingency on or before the expiration of the Land Use Approval Period. If the City shall fail to give any notice to the District before the expiration of the Land Use Approval Period, or if the City notifies the District at any time on or before the expiration of the Land Use Approval Period that this contingency has not been satisfied, then this contingency shall be deemed not satisfied or waived and this Agreement shall terminate without further action of the parties.

2.4 *Deed Restriction.* The parties acknowledge that the Property is subject to a deed restriction that provides the Property will revert to Clackamas County if the Property shall cease to be used for public school or park purposes, as such deed restriction is set forth in that certain deed recorded at Volume 175, Page 37, Clackamas County deed records (the "**Deed Restriction**"). The City's obligation to close this transaction is contingent upon Clackamas County terminating or modifying its reversionary interest in the Property so that the City may obtain insurable title from the District free-of-acceptable to the ~~Deed Restriction~~ City. The City and the District agree to cooperate in seeking termination or modification of the reversionary interest held by the County on or before the expiration of the Due Diligence

Period. If this condition is not satisfied or waived before the expiration of the Due Diligence Period, then this contingency shall be deemed not satisfied or waived and this Agreement shall terminate without further action of the parties.

3. *The District's covenants prior to Closing.* From the Effective Date of this Agreement to the Possession Date, the District shall (i) maintain the Property in good repair and in broom clean condition; (ii) continue to operate the Property in the manner previously operated by the District; (iii) not enter into any contracts or purchase orders relating to the Property, other than in the ordinary course of operating the Property; (iv) not enter into any new leases or terminate, amend, modify, renew or extend any of the existing Leases without the consent of the City, except the District shall terminate the lease of the existing charter school which occupies the north end of the building prior to Closing and may renew the lease of Cascade Academics for the 2010/2011 school year as provided in Section 7 below; and (v) perform all acts necessary to insure that the representations, warranties, and covenants of the District shall be true, complete and accurate in all respects on and as of the date of close of escrow to the same force and effect as if made at close of escrow. The covenants under this section shall not obligate the District to perform, or have performed, any maintenance or other work to the improvements on the Property other than ordinary maintenance, or such emergency or temporary repair as the District may determine in its sole discretion.

4. *Risk of loss.* Risk of loss or damage to the Property shall be the District's until the Possession Date, and the City's beginning with the Possession Date. The District shall maintain adequate insurance coverage on the Property through and including the Closing Date. If prior to close of escrow: (a) all or any material part of the improvements on the Property are destroyed or damaged by fire or other casualty; or (b) all or a material part of the Property is taken by eminent domain, either party may, by written notice to the other, cancel this Agreement prior to close of escrow, in which event this Agreement shall be terminated.

5. *Closing.*

5.1. *Escrow.* The transaction will be closed through the Clackamas Branch of First American Title. The District and the City shall each pay one-half of the escrow fees.

5.2. *Closing Date.* Closing shall take place on the later of (a) October 31, 2010, or (b) if the City has extended the Land Use Approval Period as provided in Section 2.3 above, the date that is seven (7) business days after the extended Land Use Approval Period (the "Closing Date").

5.3. *Closing Documents.* At Closing the District shall execute and deliver to the City a statutory warranty deed conveying the Property to the City free and clear of all liens and encumbrances except the Permitted Exceptions and an assignment of the Leases. At Closing the City shall execute and deliver to the District the Nonrecourse Note and the Trust Deed.

5.4. *Title Insurance.* At Closing the District will instruct First American Title to issue the City, at the District's expense, an ALTA policy of title insurance in the amount of the Purchase Price, standard form, insuring the City as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions, if any.

5.5. *Possession.* The City shall be entitled to possession of the Property at 12:01 o'clock a.m. on the calendar day following the Closing Date (the "**Possession Date**"). The District shall deliver all of the District's Documents to the City no later than the Possession Date.

5.6. *Prorates.* Real property taxes, if any, rents, utilities, and other usual items shall be prorated as of the Closing Date.

5.7. *Condition of the Property at Transfer.* The Property will be transferred free of rubbish, debris and personal property. All crops, shrubs, plants, trees, and all other landscaping or naturally growing vegetation on the Property are part of the Property and shall be left on the Property by the District.

5.8. *IRS Certification.* The District is not a "foreign person" as that term is defined in IRC §1445 and on the Closing Date The District will execute and deliver to the City a certification of nonforeign status on a form required by the IRS

5.9. *No Agent.* Neither party has employed any broker, agent or finder in connection with the transaction contemplated by this Agreement, or taken action that would give rise to a valid claim against any party for a brokerage commission, finder's fee, or other like payment.

6. *Representations, Warranties and Covenants.*

6.1. *Hold Harmless.* The District will indemnify and hold the City harmless from any cost, expense or liability associated with, arising from, or attributable to the possession or occupancy of the Property prior to the transfer of possession. On the Transfer Date, the District will surrender possession of the Property to the City and the Property shall be vacant and free of any occupancy or claims of tenants or any other person claiming by or through the District or otherwise, except for leases and other agreements accepted by the City.

6.2. *Representations.* The District represents and warrants to the City as of the date of this Agreement and as of the Closing Date as follows: The District knows of no material defects with respect to the Property; the District has received no notice of any liens to be assessed against the Property; the District has received no notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation

with respect to the Property; the District has not been notified by any governmental agency that the Property may be the subject of a proceeding in eminent domain; there are no defaults by any party to the Leases which are uncured; none of the Leases have a term that extends beyond the end of the District's school year in June 2011; none of the Leases give the tenant a right to renew or extend or any right of first refusal or option to purchase; and except as disclosed in the District's Documents or otherwise in writing to the City prior to Closing, the District has no knowledge of any spills, releases, discharges, disposal, storage or manufacture of Hazardous Substances on the Property or from the Property onto any adjacent properties, or of the presence of any underground storage tanks or other underground receptacles on or under the Property. The term "Hazardous Substances" shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, or a hazardous, toxic or radioactive substance, (or designated by any other similar term), by any applicable federal, state or local statute, regulation or ordinance.

6.3. *Representations and Conditions of Property.* Upon Closing, the City accepts the Property in its present condition based upon its inspection thereof, "as is," including latent defects, without any representations or warranties, express or implied, except as set forth in Section 6.2 above or otherwise stated in writing signed by the District. The City agrees that it has ascertained from sources other than the District the applicable zoning, building, and other regulatory ordinances and laws and that it accepts the Property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the Property, and the District has made no representations with respect thereto.

6.4. *No Reliance.* In making and executing this Agreement, the City has not relied upon nor been induced by any statements or representations of the District, other than those expressly set forth in this Agreement, in respect of the physical condition of the Property, including the environmental conditions present on the Property, or of any other matter affecting or relating to the physical condition of the Property. The City has, on the contrary, relied solely on such representations, if any, as are expressly set forth herein and on such investigations, examinations, and inspections as it has chosen to make or has made.

7. *Transfer of Tenancy; New Lease.* The District has leased office space and four classrooms in the building on the Property to Cascade Academics (the "Tenant"). The District may renew the lease of this space to the Tenant for the 2010-2011 school year for a monthly gross rent of \$3,400. At Closing, this lease shall be assigned to the City. The District also occupies space in the building on the Property for its Community Education programs and preschool (the "District Programs"). At closing, the District and the City shall enter into a new lease to allow the District to continue to occupy this space for the District Programs rent-free. The specific terms of the lease shall be agreed upon on or before the expiration of the Due Diligence Period.

8. *Default; Remedies.*

8.1. A default shall occur if a party fails to perform an obligation contained in this Agreement within 14 days after notice from the other party specifying the nature of the default or, if the default cannot be cured within 14 days, failure within such time to commence and pursue curative action with reasonable diligence.

8.2. In the event of a default prior to Closing, a party may terminate this Agreement upon five (5) days notice to the other party, and if the Agreement is so terminated the parties agree that each has assumed the risk of the other's nonperformance and default and therefore waives the recovery of direct or consequential damages. Notwithstanding the foregoing, in lieu of making an earnest money deposit, the City agrees that if all conditions to closing are satisfied and/or waived in accordance with this Agreement and this transaction fails to close on account of a default by the City under this Agreement, the District is entitled to \$10,000 liquidated damages in lieu of any other remedies available to the District for such default.

8.3. In the event this transaction fails to close on account of a default by the District under this Agreement, the City shall also have the remedy of specific performance of this Agreement, which remedy is exempt from the arbitration provision of this Agreement.

8.4. In the event of a default after Closing, each party reserves all rights and remedies available at law or in equity; provided, however, in the event of default by the City in the payment of the Nonrecourse Note, and notwithstanding anything contained herein to the contrary, the District's sole remedy shall be recourse to the Property. Without limiting the foregoing, the District agrees that (i) the City shall be liable under the Nonrecourse Note and for the other obligations of the City under Trust Deed securing the Nonrecourse Note to the full extent (but only to the extent) of the Property, (ii) in the event of default by the City under the Nonrecourse Note or the Trust Deed securing the Nonrecourse Note, any judicial or other proceedings brought by the District against the City shall be limited to the enforcement and foreclosure of the Trust Deed securing the payment of the Nonrecourse Note and the other obligations of the City under the Trust Deed, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of the City other than the Property, and (iii) in the event of a foreclosure of the Trust Deed securing the payment of the Nonrecourse Note and/or the other obligations of Borrower under the Trust Deed, no judgment for any deficiency upon the indebtedness owing under the Nonrecourse Note shall be sought or obtained by the District against the City. The terms of this Section 8 shall be incorporated into the Nonrecourse Note and Trust Deed.

9. *General Provisions.*

9.1. *Time.* Time is of the essence of this Agreement.

9.2. *Survival.* All representations and warranties contained in this Agreement will

survive Closing and the conveyance of the Property.

9.3. *Assignment.* This Agreement cannot be assigned without the prior written consent of the other party.

9.4. *Binding Effect.* This Agreement is binding on and will inure to the benefit of the City, the District, and their respective heirs, legal representatives and successors.

9.5. *Attorney Fees.* In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

9.6. *Interpretation of this Document.* Each of the parties and its counsel has reviewed, revised and negotiated or had the opportunity to negotiate the terms, conditions and language of this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.

9.7. *Arbitration.* Claims between the parties shall be submitted to arbitration in Oregon City pursuant to ORS 36.60 *et seq.*

9.8. *Notice.* Any notice or other communication required or permitted to be given under this Agreement shall be in writing and either personally delivered, delivered by regular courier service offering over-night service and obtaining a signed receipt (such as FedEx or UPS), or be mailed by certified mail, return receipt requested, postage prepaid. A notice or other communication shall be addressed to the parties as follows:

To the District: Oregon City School District
 Attn: Superintendent
 1417 12th Street
 Oregon City, Oregon 97045

with a copy to: Boutin & Associates
 Attorneys at Law
 5005 Meadows Road, Suite 405
 Lake Oswego, Oregon 97035

To the City: City of Oregon City
 Attn: City Manager
 625 Center Street
 Oregon City, Oregon 97045

with a copy to: Garvey Schubert Barer
Attorneys at Law
Attn: William K. Kabeiseman
121 SW Morrison Street, 11th Floor
Portland, Oregon 97204

Any notice or other communication delivered by certified mail shall be deemed to be given on the third day after the date of deposit with the United States Postal Service. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party.

9.9. *Entire Agreement.* This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

9.10. *Statutory Notice.*

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. 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, CHAPTER 424, OREGON LAWS 2007. 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 VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES 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, CHAPTER 424, OREGON LAWS 2007.

In witness whereof, the parties have made this Agreement the day and year first set forth above, intending to be bound hereby.

THE DISTRICT:

OREGON CITY SCHOOL DISTRICT

THE CITY:

CITY OF OREGON CITY

By Roger Rada, Superintendent

By David Frasher, City Manager

Date

Date



Agenda Item No. 7b
Meeting Date: 05 May 2010

COMMISSION REPORT: CITY OF OREGON CITY

TO:	Honorable Mayor and City Commission
FROM:	Nancy Kraushaar, City Engineer and Public Works Director
PRESENTER:	Nancy Kraushaar, City Engineer and Public Works Director
SUBJECT:	Second Reading, Ordinance No. 10-1004, Authorizing the Vacation of a Westerly Portion of Main Street Located South of Agnes Avenue - City File No. SV10-0001
Agenda Heading: General Business	
Approved by: David Frasher, City Manager	

RECOMMENDED ACTION (Motion):

Move to approve second reading and adoption of Ordinance No. 10-1004, for the vacation of a westerly portion Main Street, and authorizing the Mayor and the City Recorder to execute it.

BACKGROUND:

Slayden Construction Group Inc. has submitted a vacate request (SV10-0001) for the vacate of the westerly portion of Main Street Right-of-Way (ROW) as described per the exhibits of proposed Ordinance No. 10-1004.

City Commission approved Resolution No. 10-04 on March 3, 2010 authorizing the initiation of this vacate. This ROW portion requested to be vacated is considered unneeded for the final build-out of Main Street ROW in the described area. This final build-out alignment/design matches that of the current "Cove" development including the roundabout. If vacated, this area then can be added to the adjoining property (16421 & 16381 Main Street, also known as Tax Lot 2900 / 2900AI of Tax Map 2-2E-29) and would enhance the development potential of this property. This vacate has been duly advertised.

Map No. 2-2E-29 Tax Lot 2900 / 2900AI 16421 & 16381 Main Street
(SV10-0001 / Res 10-04)

The City Commission approved the first reading of the ordinance 5-0 on April 21, 2010.

BUDGET IMPACT:

FY(s): N/A
Funding Source: N/A

ATTACHMENTS:

1) Ordinance No. 10-1004 (with Exhibits A & B)

AFTER RECORDING RETURN TO:

City Recorder, Nancy Ide
P.O. Box 3040
Oregon City, Oregon 97045-0304

Tax Map: 2-2E-29

Tax Lot: 2900 / 2900AI

City Engineering File: SV10-0001

Street: Main Street

ORDINANCE NO. 10-1004

AN ORDINANCE VACATING A SECTION OF MAIN STREET, CLACKAMAS COUNTY, CITY OF OREGON CITY, OREGON.

WHEREAS, it appears to the City Commission of Oregon City, Oregon that on March 3, 2010, Resolution No. 10-04, was duly adopted initiating action on its own motion pursuant to ORS 271.080 to ORS 271.230, for vacation of a section of Main Street, Clackamas County, City of Oregon City; and

WHEREAS, the City Recorder caused notice to be given by posting by law, and that the matter of said vacation together with a hearing of any objections or claims to be heard and considered concerning said vacation would be heard and considered at 7:00 p.m. on Wednesday, April 21, 2010, in the meeting room of the City Commission in City Hall, 625 Center Street, Oregon City, Oregon; and

WHEREAS, said hearing having been held, and the Commission finds that the proposed vacation meets the criteria for vacation (that there is no present or future public need, that the vacation is in the best interest, that there would be no impacts to the adjacent property owners), and it appearing that the public interest will not be prejudiced by the said vacation;

The proposed vacation is a westerly portion of Main Street, described as follows:

Described by attachment Exhibit A (Legal Description) and Exhibit B (Map); and

WHEREAS, this vacation would enhance the development potential of the neighboring property known as 16381 & 16421 Main Street (also known as Tax Lot 2900 / 2900AI of Tax Map 2-2E-29); and

WHEREAS, this vacated area is not needed for the final alignment and build-out of said Main Street; and

WHEREAS, the City Engineer has determined that this proposed vacation will not have a negative effect on any neighboring properties.

NOW, THEREFORE, Oregon City ordains as follows: for the reasons described above, the section of Main Street described above is hereby vacated.

Read first time at a regular meeting of the City Commission held on the 21st day of April 2010, and the City Commission finally enacted the foregoing ordinance this 5th day of May 2010.

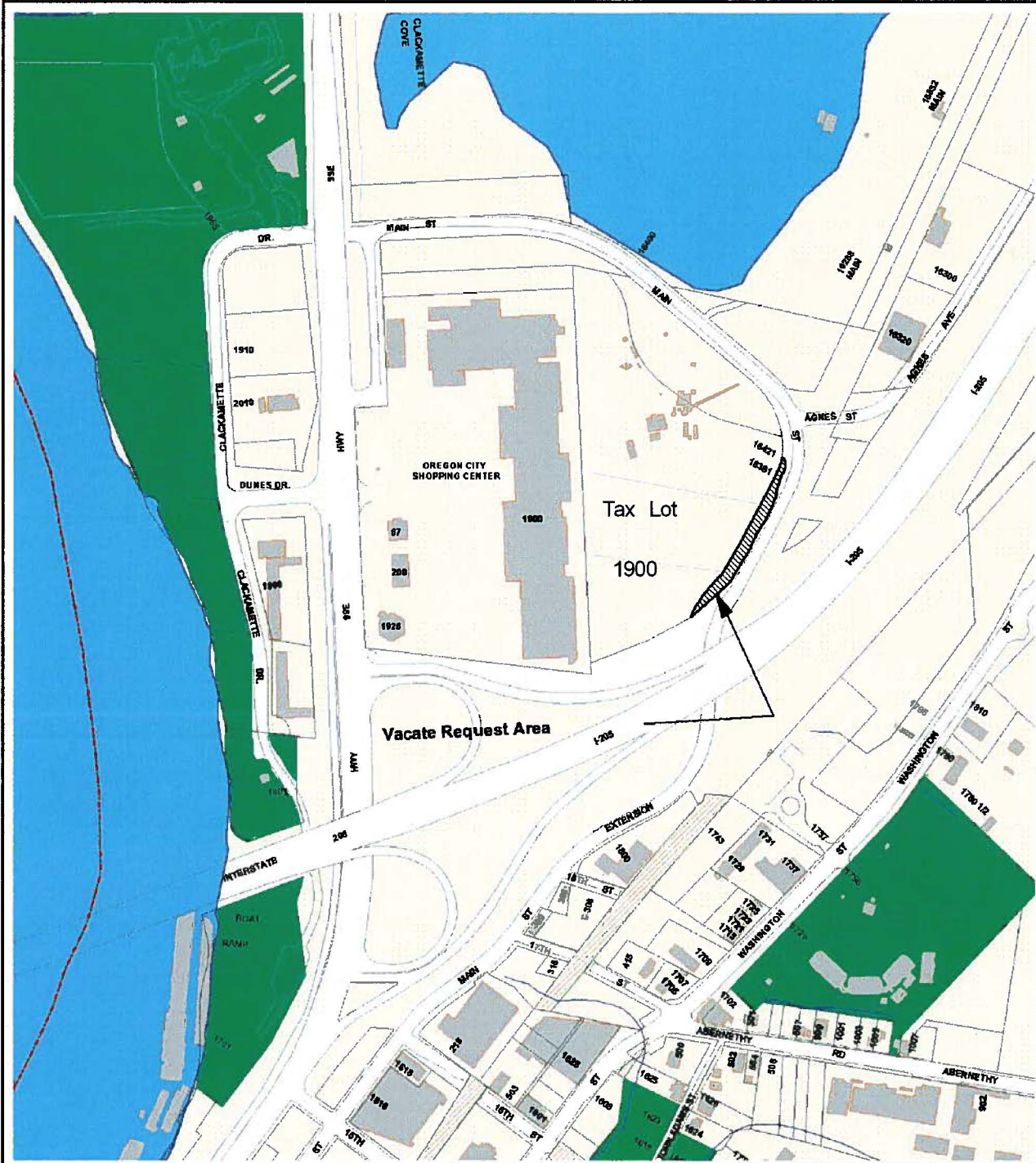
ALICE NORRIS, Mayor

ATTESTED to this 5th day of May 2010

NANCY IDE
City Recorder

Approved as to legal sufficiency:

City Attorney



<Main Street Vacate>

City of Oregon City
P.O. Box 3040
625 Center St
Oregon City
OR 97045
(503) 657-0891
www.orcity.org

This map is not suitable for survey, engineering, legal, or navigation purposes. Errors and omissions may exist.

Exhibit "A"

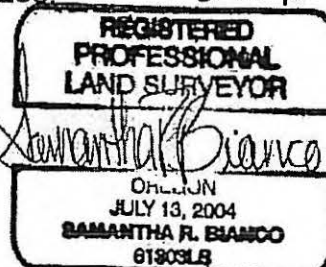
LEGAL DESCRIPTION
MAIN STREET RIGHT OF WAY VACATION
February 16, 2010
Page 1 OF 2

A TRACT OF LAND LOCATED IN THE HIRAM STRAIGHT DLC NO. 42, SITUATED IN SECTION 29, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF LOT 2, "CLACKAMETTE COVE", PLAT NO. 4289, CLACKAMAS COUNTY PLAT RECORDS, FROM WHICH THE INITIAL POINT OF SAID "CLACKAMETTE COVE" BEARS NORTH 26° 23' 29" EAST, 2430.50 FEET; THENCE ALONG THE EASTERLY LINE OF SAID LOT 2 AND THE WESTERLY RIGHT OF WAY LINE OF THE ABANDONED PORTLAND TRACTION COMPANY RAILROAD, SAID WESTERLY RIGHT OF WAY LINE (BEING 70.00 FEET FROM THE CENTERLINE THEREOF, WHEN MEASURED PERPENDICULAR THERETO) AND 2794.79 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 07° 55' 14" AN ARC DISTANCE OF 386.35 FEET (THE CHORD OF WHICH BEARS SOUTH 28° 35' 21" WEST, 386.04 FEET) TO A POINT OF NON-TANGENCY; THENCE LEAVING SAID RIGHT OF WAY LINE SOUTH 12° 30' 12" WEST, 30.08 FEET; THENCE SOUTH 34° 09' 49" WEST, 44.28 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE ABANDONED PORTLAND TRACTION COMPANY RAILROAD, BEING A POINT OF NON-TANGENTIAL CURVATURE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE (BEING 60.00 FEET FROM THE CENTERLINE THEREOF, WHEN MEASURED PERPENDICULAR THERETO) AND 378.31 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 15° 12' 37" AN ARC DISTANCE OF 100.43 FEET (THE CHORD OF WHICH BEARS SOUTH 26° 25' 33" WEST, 100.14 FEET) TO A POINT OF NON-TANGENCY; THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE, NORTH 40° 33' 12" EAST, 135.75 FEET; THENCE NORTH 29° 07' 33" EAST, 143.38 FEET TO A POINT OF CURVATURE; THENCE ALONG A 230.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 16° 19' 09" AN ARC DISTANCE OF 65.51 FEET (THE CHORD OF WHICH BEARS NORTH 37° 17' 08" EAST, 65.29 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ALONG A 330.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 24° 20' 59" AN ARC DISTANCE OF 140.24 FEET (THE CHORD OF WHICH BEARS NORTH 26° 55' 04" EAST, 139.19 FEET); THENCE NORTH 19° 04' 59" EAST, 32.29 FEET TO A POINT OF CURVATURE; THENCE ALONG A 78.48 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 42° 25' 03" AN ARC DISTANCE OF 62.21 FEET (THE CHORD OF WHICH BEARS NORTH 09° 58' 24" WEST, 60.60 FEET) TO THE POINT OF BEGINNING.

CONTAINS 17,701 SQUARE FEET OR 0.41 ACRES, MORE OR LESS

2-16-10



Renews 12-31-11



Agenda Item No. 7c
Meeting Date: 05 May 2010

COMMISSION REPORT: CITY OF OREGON CITY

TO:	Honorable Mayor and City Commission
FROM:	Nancy Kraushaar, City Engineer and Public Works Director
PRESENTER:	Nancy Kraushaar, City Engineer and Public Works Director
SUBJECT:	Clackamas River Dredging Project - Schedule and Funding for Bidding and Construction Phase
Agenda Heading: General Business	
Approved by: David Frasher, City Manager	

RECOMMENDED ACTION (Motion):

Staff recommends that City Commission move to postpone the Clackamas River dredging project public bid and contract award until total project funding is identified and the schedule is reviewed to address stakeholders interests.

BACKGROUND:

In 2004 and before, Oregon City and Clackamas County have recognized the need and benefits to dredge the Clackamas River at the mouth of Clackamette Cove and shared the common goals to preserve:

- 1) County Sheriff access for public safety;
- 2) Healthy water quality for fish habitat;
- 3) Recreational fishing opportunities access to the Cove.

Sediments in the Clackamas River have significantly collected at the mouth of Clackamette Cove since the 1996 and 1997 floods. Depositions have formed an island that limits access to the Cove during the dry season with less than 12 inches of water for boats to navigate.

The dredging project would restore the County Sheriff River Patrol's ability to access the Clackamas River from their dock and storage facility in the Cove. The dredging project would offer additional flushing exchange of water between the Cove and the River, reducing the potential for stagnant conditions that could impact fish habitat quality. The dredging project would also assure continued access to recreational fishing opportunities offered by the Cove. Fish species reported to exist, be reared, or be caught in the Cove include: juvenile and adult salmonids, smallmouth bass, crappie, bluegill, catfish, yellow perch, northern pike minnow, whitefish, sucker, carp, trout, and chub.

After public meetings were held several years ago, the City and County decided to pursue a dredging permit to achieve the benefits described above. The County agreed to fund the permit acquisition process. After the permit was issued, the City agreed to fund the construction plans, bid, and contract document preparation. It was the City's understanding that funding for the permit implementation (dredging) would be shared equally by the City and County. This understanding was not memorialized with an intergovernmental agreement. City records show that such an agreement would be prepared after the construction costs were well defined by complete construction plans.

The dredging project is now ready to go to bid and timing is critical for this year's in-water work windows (July 15-August 31 for the Clackamas River and July 1-October 31 for the Willamette River). The recent

engineer's cost estimate for the dredging project is in the range of \$250,000 to \$300,000. The City's preliminarily approved FY 2010-11 budget includes \$125,000 for the dredging project.

The dredging permit that was issued for the project allows the work to be completed before January 11, 2015 after which a permit extension will be required.

The City has recently learned that the County is not planning to fund the construction phase of the dredging project. We have been informed that the Sheriff River Patrol may be moving their Clackamette Cove operations and therefore would no longer have an interest in access between the Cove and River. With this information, the project is not fully funded and stakeholder interest may have changed.

Postponing the dredging project will provide the City the opportunity to identify alternate funding sources, affirm stakeholder interest in the project goals, and re-evaluate project schedule. The project likely would be postponed at least until the 2011 in-water work windows.

BUDGET IMPACT:

FY(s): To be determined

Funding Source: To be determined

ATTACHMENTS:

DEPARTMENT OF THE ARMY PERMIT

Permittee: City of Oregon City

Permit No: NWP-2001-325

Issuing Office: U.S. Army Corps of Engineers, Portland District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The revised, one time maintenance dredging project will remove approximately 9,000 cubic yards (CY) of cobble, gravel, and coarse sands from the access channel (773 feet long by 75 feet wide by 5 feet deep) between the Clackamas River and Clackamette Cove to provide year-round access into the cove. A temporary berm (approximately 500 CY), incorporating filter cloth and rock, will be located downstream of the dredge work area to isolate the work area from incoming and outgoing tidal flows. The berm will connect the southern riverbank to the existing gravel bar and will allow access for the dredging equipment. Dredging equipment will consist of a trackhoe and dump trucks to transport the dredged material. Site access will utilize existing paved and unpaved roads and trails of Clackamette Park. The 9,000 CY of the dredged material will be placed on the eastern bank of the Willamette River (river mile 25.0), immediately upstream of the Clackamas River, to enhance aquatic habitat and functions by keeping the sediments in the river system. The dredged material will be placed between the ordinary low and high water marks at two zones, totaling 825 feet in length, 60 feet in width, and 10 feet in depth (approximately 1.14 acres). Dredged material will be placed under dry conditions, with a sediment curtain placed at the ordinary low water level. The dredge material will not be heavily compacted to allow establishment of installed native woody vegetation and maintain its availability for stream processes. The dredging activities in the Clackamas River will be conducted during the July 15 to August 31 in water work window, and dredged material placement in the Willamette River will be conducted during the July 1 to October 31 in water work window.

The City of Oregon City may develop access through property where the abandoned water intake tower owned by the City of Gladstone is located. A staging area is available, as well as a shallow ramp down to the shoreline; limited preparation work would be required. The first step would be constructing the access road and berm to the gravel bar. This would include import of suitable rock to form a stable bed. The material would be imported and placed on the bottom of the river. After suitable amount of material is placed, an isolation membrane would be placed on the upstream side of the berm; then, additional rock material would be placed to anchor the membrane. This material will serve as a limited flow filter to control water quality in the work zone, and eliminate sediment from entering the Clackamas River and the Willamette River. The berm will allow a large boom track hoe and track dump truck to access the gravel bar. The hoe will excavate the channel and the material will be loaded into the tracked dump truck and transported to the disposal site.

Purpose: The project purpose is to provide year-round access into the cove for watercraft. The Clackamas County River Patrol houses their watercraft within the cove and must maintain year round access to the Clackamas and Willamette Rivers to perform their enforcement and safety duties. During the summer recreational summer season, low water levels do not allow the patrol's watercraft to maintain

NWP-2001-325

safe river access from the cove. Currently, the patrol's watercraft must exit the cove at high speed around a blind corner in order to access the river. The dredging project will deepen the access channel from the cove so boats can exit/enter the cove in a safe manner during all water levels. The gravel bar at the mouth of the cove has been aggrading with gravels and cobbles during annual spring flows and it is constricting navigational access.

Project Location: Southern bank of the Clackamas River (river mile 0.3 to 0.4) at the mouth of Clackamette Cove and the eastern bank of the Willamette River (river mile 25.0) at its confluence with the Clackamas River, in Oregon City, Clackamas County, Oregon (Sections 29 and 30, Township 2 South, Range 2 East).

Drawings: Six (6) drawings labeled Corps ID NWP-2001-325 (Enclosure 1)

General Conditions:

1. The time limit for completing the work authorized ends on January 11, 2015. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached (Enclosure 2).
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

- A. The following special condition is a part of all Department of the Army permits that provide authorization under Section 10 of the Rivers and Harbors Act, regardless whether the permit provides such authorization under Section 10 alone, or in combination with authorization under other laws:

- a) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- B. You shall notify the Regulatory Branch with the start date when the activities authorized in waters of the U.S. are scheduled to begin. Notification shall be sent by email to cenwp.notify@usace.army.mil or mailed to the following address:

U.S. Army Corps of Engineers
CENWP-OD-GC
Permit Compliance, Clackamas County
P.O. Box 2946
Portland, Oregon 97208-2946

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

- C. The National Marine Fisheries Service (NMFS) issued biological opinion (BO) # 2008/07738 for your project. All terms and conditions and conservation recommendations of the BO are terms and conditions of this authorization. You shall fully implement all terms and conditions from the NMFS BO (Enclosure 3).
- D. You shall submit a signed certification regarding the completed work and any required mitigation. A "Compliance Certification" is provided (Enclosure 4).
- E. The Permittee shall place the dredged sediments in dry conditions along the east bank of the Willamette River, with sediment control measures in place to protect water quality and ESA-listed species. The Permittee shall take photographs before, during, and after dredging, placement of dredge spoils, and installation of vegetation and then submit the photographs with the Compliance Certificate in special condition D above.
- F. The Permittee shall visually inspect vehicles, heavy machinery, and equipment for fluid leaks and clean excess debris before conducting in-water work to protect water quality and ESA-listed species.
- G. The Permittee shall install and maintain sediment and erosion control measures at all work areas, staging areas, access areas, and haul roads to protect water quality and ESA-listed species.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
- (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may

in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Nancy J.T. Kraushaar
(PERMITEE SIGNATURE)

02/10/2010
(DATE)

Nancy J.T. Kraushaar
(PRINTED NAME)

City Engineer/Public
(TITLE)
Works Director

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE COMMANDER, STEVEN R. MILES, P.E., COLONEL, CORPS OF ENGINEERS,
DISTRICT COMMANDER

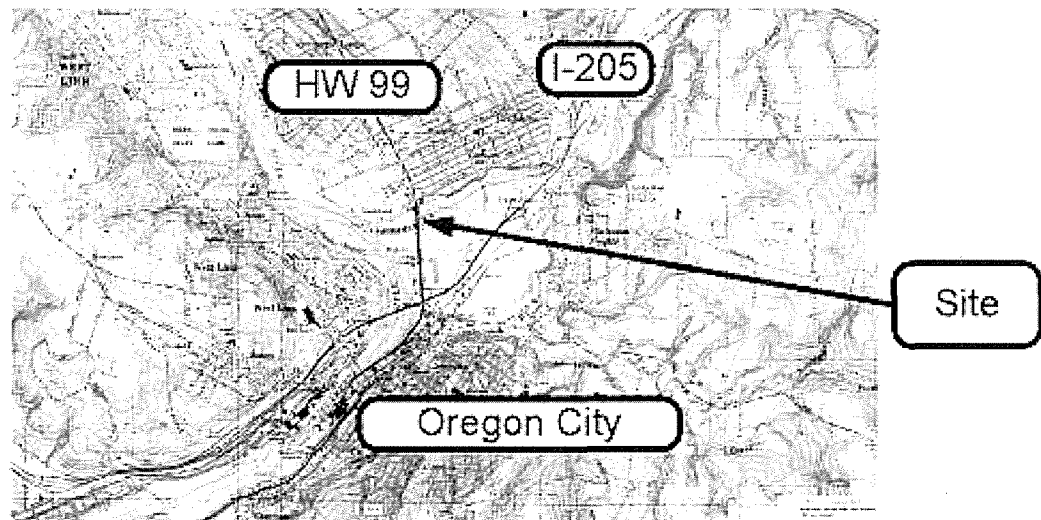
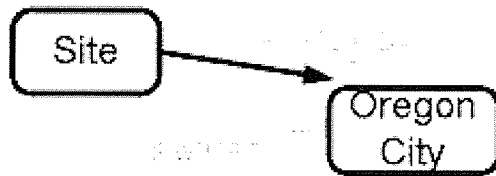
Erik S. Petersen
Chief, Regulatory Branch

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)



Clackamas River Mile 0.35
 Lat: 45.3734
 Lon: -122.6000
 Datum: NAD83

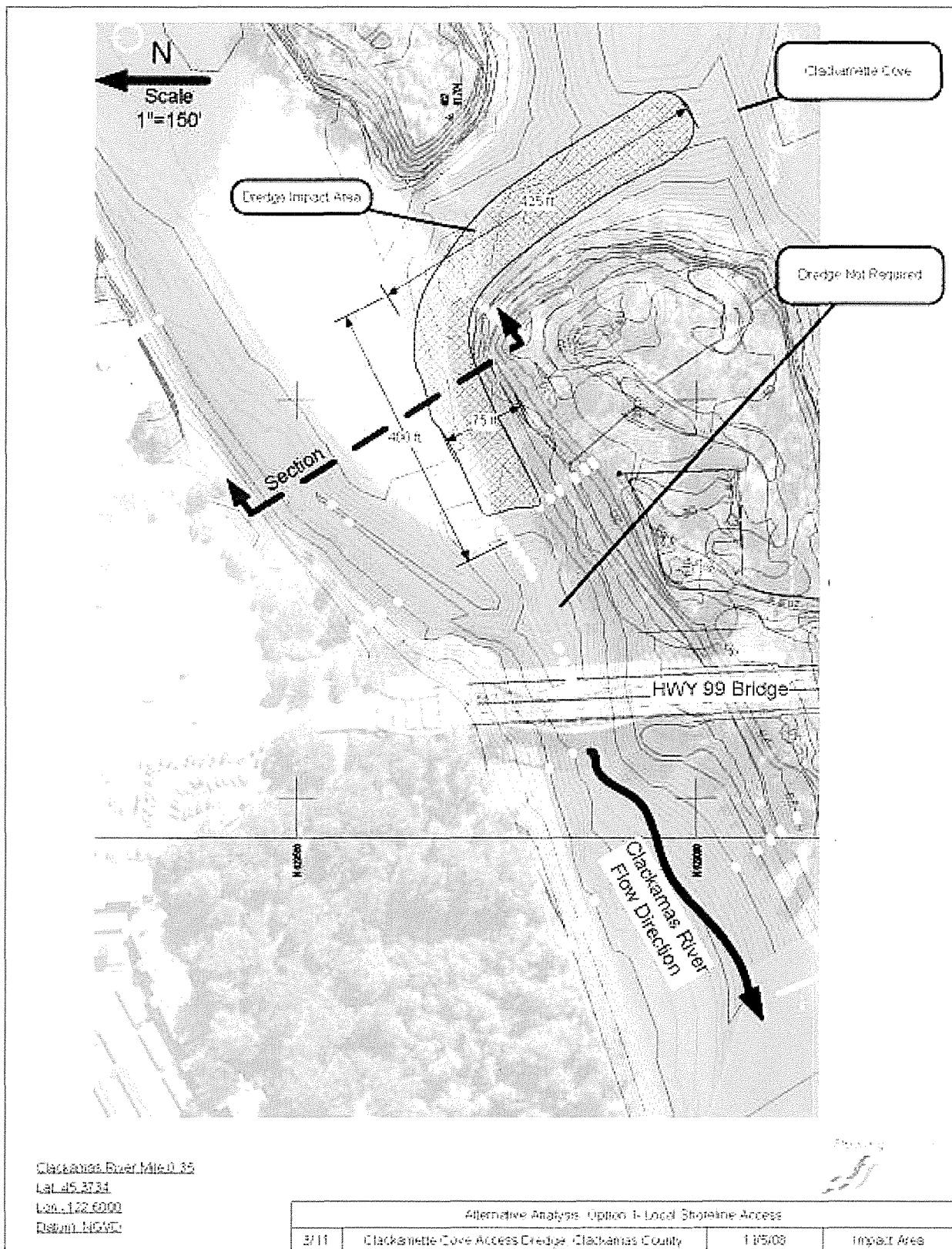


Locator Map and Vicinity Map			
W11	Clackamette Cove Access Dredge Clackamas County	10508	Vicinity

NWP-2001-325

Fig. 1

Encl. 1



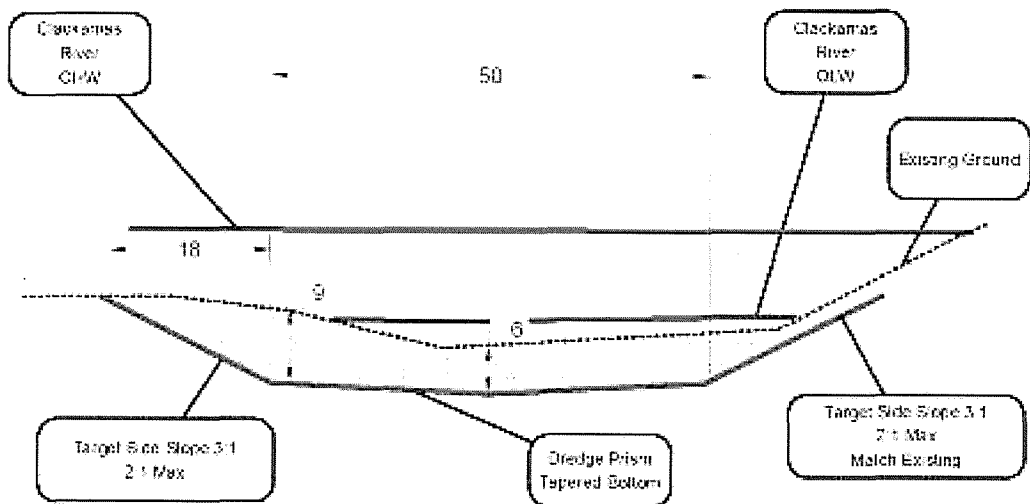
NWP-2001-325

Fig. 2

Encl. 1

Clockamas River, Mile 0.25
 LAL JB 2124
 LOCATION 8000
 DRAWN: NCMC

Alternative Analysis Option 1 Dredge Prism			
511	Clockamas River Access Dredge Clockamas County	1/15/03	D-Prism



————— Proposed Ground Surface
 - - - - - Existing Ground Surface

NOTE: DREDGE PRISM SHOWS
 TYPICAL CUT SLOPES AND
 DIMENSIONAL INFORMATION
 ALL DISTANCES IN FEET
 SCALE 1"=200'

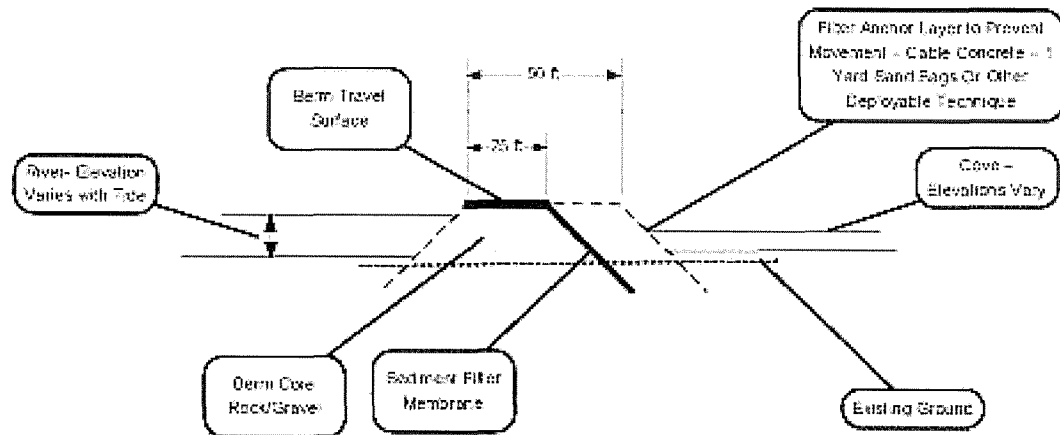
NWP-2001-325

Fig. 3

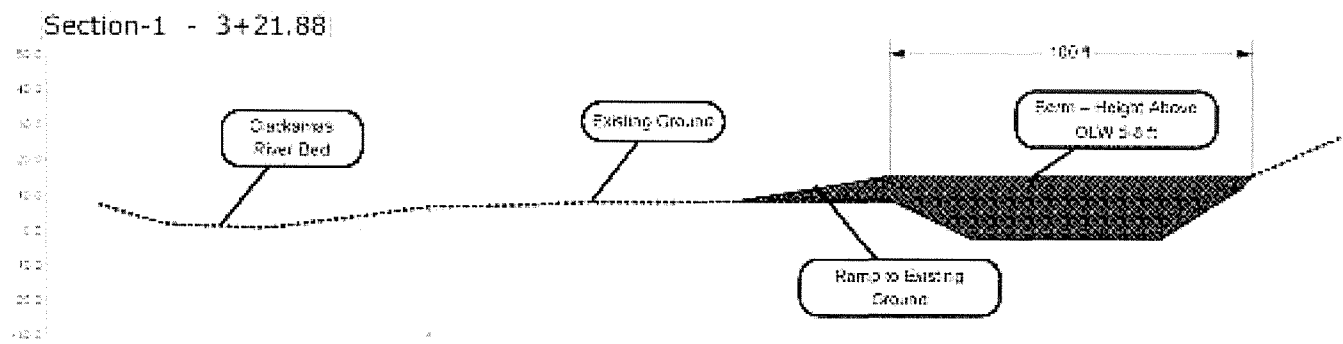
Encl. 1

CHICKASAW RIVER MILE 0.35
 LAL 25 2724
 LINT 122.0300
 DRUID MOUNT

Alternative Analysis Option - Indian Burial Access Berm			
711	Chickasaw River Access Bridge - Chickasaw County	11/5/08	C-Berm



ACCESS/ISOLATION BERM SECTION



ACCESS/ISOLATION BERM PROFILE

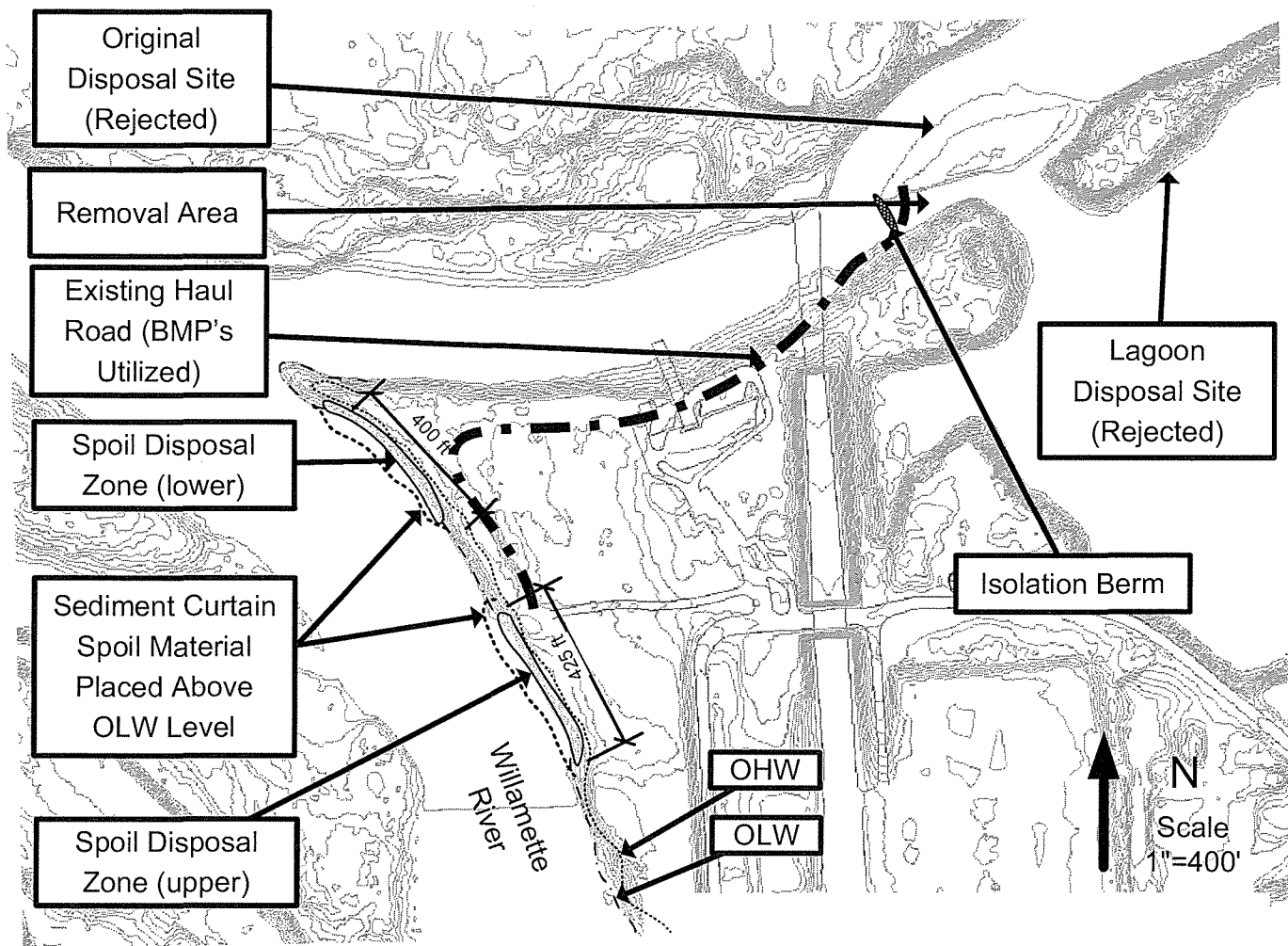
----- Existing Ground Surface

NOTE: ISOLATION BERM PROVIDES ACCESS AND IS HYDRAULIC BARRIER

NWP-2001-325

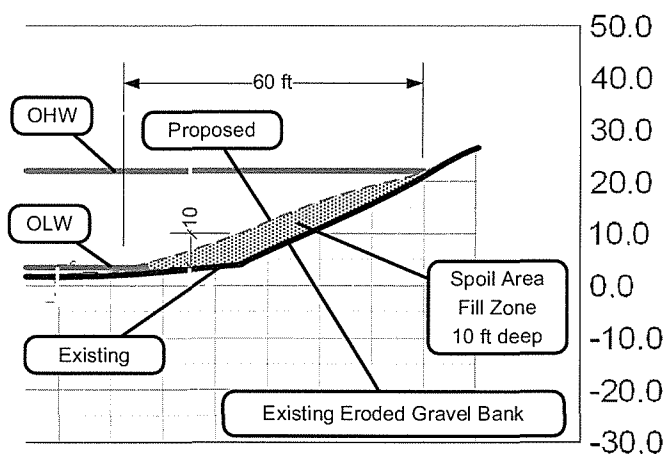
Fig. 4

Encl. 1



Volume Summary:

- Spoil Capacity 9000 cy
- 825 ft of shoreline
- Placed below OHW & above OLW
- Fill Based on modified triangle
- Material will be placed in dry



NWP-2001-325 Fig. 5 Encl. 1

Flowing solutions

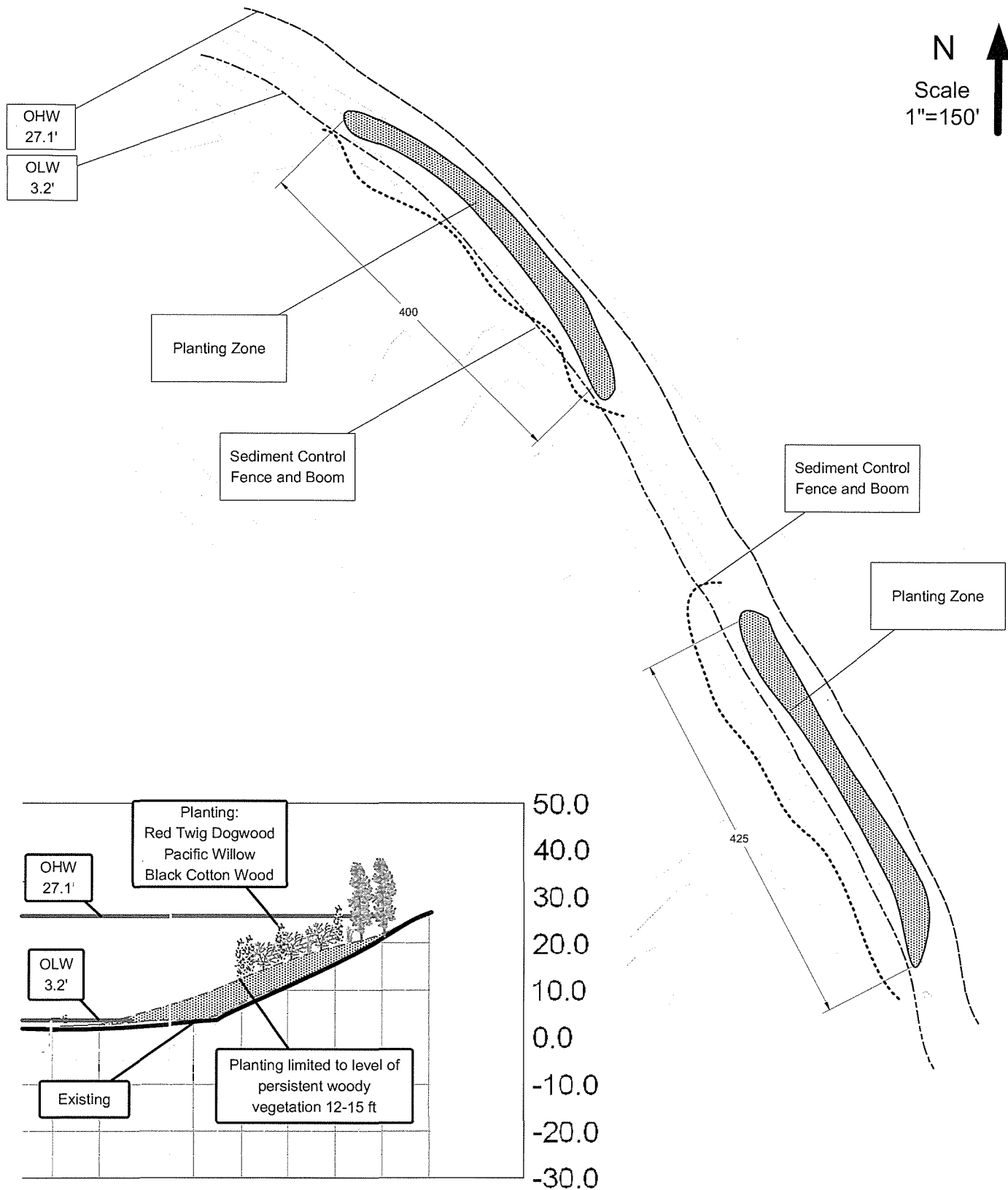
Clackamas River Mile 0.35

Lat: 45.3734

Lon: -122.6000

Datum: NGVD

Dredge Spoil Location – Willamette River Location			
12/12	Clackamette Cove Access Dredge, Clackamas County	3/6/09	Spoil Location



NWP-2001-325 Fig. 6 Encl. 1.

Clackamas River Mile 0.35
 Lat: 45.3734
 Lon: -122.6000
 Datum: NGVD



Dredge Spoil Location Planting Plan-- Willamette River Location			
12/12	Clackamette Cove Access Dredge, Clackamas County	4/20/09	PLANTING PLAN



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

Northwest Region Portland Office

2020 SW 4th Avenue, Suite 400

Portland, OR 97201-4987

(503) 229-5263

Fax: (503) 229-6945

TTY: (503) 229-5471

May 27, 2009

Mr. James A. Holm
U.S. Army Corps of Engineers
ATTN: CENWP-OP-GP
PO Box 2946
Portland, OR 97208-2946

Dear Mr. Holm:

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) Permit application #2001-00325-1[Department of State Lands (DSL) permit #41641-RF]. The applicant, the City of Oregon City, proposes to conduct dredging activities to allow year round access by the Clackamas County River Patrol and recreational uses, and to promote flushing for water quality improvement. The project is located at the mouth of Clackamette Cove and the Clackamas River, at approximately River Mile 0.35, just upstream from the confluence with the Willamette River, in Oregon City, Clackamas County, Oregon (Section 29, T2S/R2E).

Project Description: In order to create a channel for low water access of Sheriff's patrol vessels to and from Clackamette Cove, approximately 9,000 cubic yards (cy) of material will be removed from an in-water area measuring approximately 773 feet long, by 75 feet wide, and to a depth of 5 feet. Approximately 500 cy of clean, large and smaller rock will be placed in-water from the shoreline working out into the river to build an access/isolation berm across the mouth of the Cove. Filter fabric will be incorporated into the structure to effectively isolate disturbed sediment from distributing into the rivers downstream of the Cove. A track hoe and tracked dump truck will be used to excavate the channel from the berm. Removed material will be deposited in two beach areas above ordinary low water along erosive sections of the north bank of the Willamette River near the project area. These areas will be planted with native woody vegetation to promote bank stabilization, though some material is expected to re-enter the river system and move downstream to supply in-stream habitat building material. Lastly the access/isolation berm will be removed from the river moving shoreward and material will be placed off-site.

Sediment characterization has been conducted in accordance with the *Interim Final Sediment Evaluation Framework* (SEF), 2006 [USACE, US Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), US Environmental Protection Agency (EPA), DEQ, Washington Department of Natural Resources (WDNR), Washington Department of Ecology (Ecology), and Idaho Department of Environmental Quality (IDEQ)]. The SEF multi-agency Project Review Group (PRG) determined the material proposed for dredging to contain less than 20% fine materials which would sequester contaminants, such that no further chemical analysis was required.

The Clackamas River is classified as water quality limited under the Federal Clean Water Act. An Environmental Protection Agency (EPA) approved Total Maximum Daily Load (TMDL) has been developed for the parameters of: Temperature, Bacteria, and Mercury.

NWP-2001-325

Encl. 2

The stream remains on the 303(d) list of impaired waterbodies for the parameters of Dissolved Oxygen and Flow Modification, and with potential concern for the parameter of Alkalinity.

The Willamette River is classified as water quality limited under the Clean Water Act; has EPA approved TMDLs for the parameters of: Bacteria; Dioxin; Mercury; and Temperature; is on Section 303(d) List for the parameters of: Dissolved Oxygen, Iron, DDT, DDE (DDT metabolite), PCB, Arsenic, Aldrin, Dieldrin, Polynuclear Aromatic Hydrocarbons (PAHs), Fecal Coliform, Manganese, Pentachlorophenol, and Biological Criteria; and other parameters listed for potential concern include: Hexavalent Chromium, Lead, Copper, Nickel, Zinc, Parathion, Malathion, Fluoranthene, Chrysene, DDD, Benzo(A)pyrene, and Benzo(A)anthracene.

The above listed parameters impair the following beneficial uses in the Clackamas and Willamette Rivers: salmon and steelhead spawning; salmonid rearing; anadromous fish passage; resident fish and aquatic life; drinking water; fishing; and water contact recreation.

Based on information provided by the applicant, DEQ does not anticipate any long-term violations of State Water Quality Standards, including *Oregon Administrative Rule (OAR) 340-41-004, Antidegradation Policy for Surface Waters*, provided the applicant strictly adheres to the conditions which follow.

- 1) **Duration of Certification:** This 401 Water Quality Certification (WQC) expires upon closure of the in-water timing window (see Condition 2) of the fifth year after issuance of the USACE permit. A new 401 WQC must be obtained prior to any substantial modification of the USACE 404 permit.
- 2) **Fish protection/ODFW timing:** All in-water work shall occur within the Oregon Department of Fish and Wildlife's (ODFW) preferred time window, as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources, June 2008, or most current version. Exceptions to the work timing window must be reviewed and approved in writing by ODFW and National Marine Fisheries Service (NMFS).
- 3) **Aquatic life movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Unobstructed fish passage must be provided at all times during dredging and disposal activities, unless specifically exempted in writing by NMFS and ODFW.
- 4) **Turbidity:** All dredging, placement of sediments, and other work below ordinary high water (OHW) must be conducted so as to minimize siltation and turbidity in the project areas. Any activity that causes turbidity to exceed 10% above natural stream turbidities is prohibited except as specifically provided below.

- a. **Monitoring:** Turbidity shall be monitored during daylight hours when dredging, dewatering, in-water placement, or other activity below OHW is occurring. Monitoring points shall be:
- Representative Background - an undisturbed site within the flowing channel approximately 100 feet upcurrent from the access/isolation berm or beach placement areas; and
 - Compliance Point - within the flowing channel approximately 200 feet downcurrent from the area of the access/isolation berm or beach placement areas and within any visible plume.

A turbidimeter is required taking measurements at approximately mid-depth below the surface of the water and above the channel bottom at the compliance and background distances. Monitoring intervals shall be every four hours during dredging, material placement, or other work below OHW.

- b. **Compliance:** Results from the compliance points should be compared to the background levels taken during each monitoring interval. Exceedances are allowed as follows:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 ST MONITORING INTERVAL	ACTION REQUIRED AT 2 ND MONITORING INTERVAL
No difference from background	Continue to monitor every 4 hours	Continue to monitor every 4 hours
Up to 29 NTU above background	Modify BMPs & continue to monitor every 4 hours	Stop work after 8 hours at 0-29 NTU above background
30 to 49 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 2 hours at 30-49 NTU above background
50 NTU or more above background	Stop work	Stop work

If an exceedance over the background level occurs, the applicant must modify the activity by applying techniques listed in Condition 4.c. below and continue to monitor every two hours. **If an exceedance over the background level continues after the second monitoring interval, the activity must stop until the turbidity levels return to background.** If, however, turbidity levels return to background at second monitoring level due to implementation of BMPs or natural attenuation, work may continue with appropriate monitoring as above.

If an exceedance occurs of 30 NTU or more over background for two hours or reaches 50 NTU or more over background, the activity must stop immediately for the remainder of the 24 hour period.

- c. **BMPs to Minimize In-stream Turbidity:**
- Employ techniques to minimize sediment disturbance and distribution through the water column.
 - Machinery will not drive into the flowing channel;
 - Use only clean, washed rock for placement in-water;
 - No end dumping of material placed in-water;

NWP-2001-325

Encl. 2

4. Excavated material will be placed so that it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled; and,
 5. Use of containment measures such as silt curtains, geotextile fabric, and silt fence will be implemented and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.
 - ii. Sequence or phase work activities:
 1. To minimize the extent and duration of in-water disturbances; and,
 2. To coincide with tidal cycles to minimize distribution of suspended sediment.
 - iii. Employ an experienced equipment operator;
 - iv. Implement bucket control techniques, such as:
 1. Do not overfill the bucket.
 2. Move the bucket as slowly as possible on the bottom.
 3. Pause before hoisting the bucket off of the bottom to allow any overage to settle near the bottom.
 4. Hoist load very slowly.
 5. When dewatering, pause bucket at water surface to minimize distance of discharge.
 6. "Slam" the bucket after material is dumped on a truck or barge to dislodge any additional material that is potentially clinging to the bucket.
 7. Ensure that all material has dumped from the bucket before returning for another bite.
 8. Do not dump partial or full buckets of material back into the wetted stream.
 - d. **Reporting:** Copies of daily logs for turbidity monitoring shall be available to DEQ, USACE, NMFS, USFWS, ODFW, and DSL upon request.
 - i. The log must include: background NTUs or observation, compliance point NTUs, comparison of the points in NTUs, and location, date, time, and tidal stage for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions.
 - ii. Copies of daily logs must be submitted with any new application for future dredging activities at this or any nearby site and with any request for modification of the certified project.
- 5) **Erosion Control:** The following erosion control measures (and others as appropriate, the applicant is referred to DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005 <http://www.deq.state.or.us/wq/stormwater/escmanual.htm>) or comparable measures as specified in an NPDES 1200-C permit (if required) must be implemented:
- a. Filter bags, sediment traps or catch basins, vegetative strips, berms, Jersey barriers, fiber blankets, bonded fiber matrices, geotextiles, mulches, wattles, sediment fences, or other measures used in combination must be deployed to prevent movement of soil from uplands into waterways or wetlands;
 - b. An adequate supply of materials needed to control erosion must be maintained at the project construction site;

- c. To prevent stockpile erosion, compost berms, impervious materials or other equally effective methods must be deployed during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;
 - d. Erosion control measures must be inspected and maintained daily, or more frequently as necessary, to ensure their continued effectiveness and must remain in place until all exposed soil is stabilized;
 - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, mobilize work crews immediately to make repairs, install replacements, or install additional controls as necessary.
 - ii. Remove sediment from erosion and sediment controls once it has reached 1/3 of the exposed height of the control.
 - e. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas must use removable pads or mats to prevent soil compaction.
 - f. Avoided wetlands and planted areas must be flagged or fenced off to protect from disturbance and/or erosion.
 - g. Dredged or other excavated material must be placed on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands;
 - h. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state and impair water quality. Placement of clean aggregate at all construction entrances, and other BMPs such as truck or wheel washes if needed, must be used when earth moving equipment will be leaving the site and traveling on paved surfaces; and,
 - i. Projects which disturb one acre or more require an NPDES 1200C Storm Water Discharge Permit. Contact the appropriate DEQ regional office for more information (Contact information can be found at: <http://www.deq.state.or.us/wq/>).
- 6) **Spill Prevention:** Vehicles, equipment and work materials must be fueled, operated, maintained, and stored in areas that minimize disturbance to habitat and prevent adverse effects from potential discharges. In addition, the following specific requirements apply:
- a. Vehicle staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance can be made if all practicable prevention measures are employed and this distance is not possible because of any of the following site conditions:
 - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
 - ii. Natural resource features would be degraded as a result of this setback; or,
 - iii. Equal or greater spill containment and effect avoidance if staging area is less than 150 feet of any waters of the state;
 - b. If staging areas are within 150 feet of any waters of the state as allowed by subsection (a) of this condition, full containment of potential contaminants must be provided to prevent soil and water contamination, as appropriate;

NWP-2001-325

Encl. 2

- c. All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in the vehicle staging area must be repaired before the vehicle resumes operation;
- d. Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible external oil, grease, mud, and other visible contaminants are removed if the equipment will be used below bankfull elevations;
- e. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be diapered to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state; and,
- f. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary.

7) **Spill & Incident Reporting:**

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge shall be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311). Containment and cleanup must begin immediately and be completed as soon as possible.
 - b. If the project operations cause a water quality problem which results in distressed or dying fish, the operator shall immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS and USFWS as appropriate.
- 8) DEQ reserves the option to modify, amend or revoke this WQC, as necessary, in the event new information indicates that the project activities are having a significant adverse impact on state water quality or beneficial uses.
- 9) A copy of this WQC letter shall be kept on site and readily available for reference by the applicant and their contractors, USACE, DEQ, NMFS, and other appropriate state and local government inspectors.
- 10) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application and subsequent materials.
- 11) DEQ is to have site access upon reasonable request.
- 12) If you are dissatisfied with the conditions contained in this certification, you may request a hearing before the Environmental Quality Commission. Such request must be made in writing to the Director of DEQ within 20 days of the mailing of this certification.

James Holm
Page 7

The DEQ hereby certifies that this project complies with the Clean Water Act and state water quality standards, if the above conditions are made a part of the Federal permit. The applicant shall notify the DEQ of any change in the ownership, scope, or construction methods of the project subsequent to certification. If you have any questions, please contact Alexandra Cyril at 503.229.6030.

Sincerely,



Sally Puente
Water Quality Manager
Northwest Region

T:AC.certholm.01-325-1

cc: Applicant
Mike McCabe, DSL (Salem)
Mike Bradbury, Laborers International Union
Jim Turner, NMFS (Portland)
Todd Alsbury, ODFW (Clackamas)

NWP-2001-325

Encl. 2



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to NMFS No:
2008/07738

October 30, 2009

Erik S. Petersen
U.S. Army Corps of Engineers
Regulatory Branch, CENWP-CO-GP
P.O. Box 2946
Portland, Oregon 97208-2946

Re: Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Oregon City Clackamette Cove Dredging Project, Clackamas River (HUC 170900110607), Oregon City, Clackamas County, Oregon (Corps No.: NWP-2001-325)

Dear Mr. Petersen:

The enclosed document contains a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the potential effects of the proposed authorization of dredging and disposal in the Clackamas River at Oregon City, Clackamas County, Oregon, under section 404 of the Clean Water Act by the U.S. Army Corps of Engineers (COE). In this Opinion, NMFS concludes that the proposed action is not likely to jeopardize the continued existence of Lower Columbia River (LCR) Chinook salmon (*Oncorhynchus tshawytscha*), LCR steelhead (*O. mykiss*), LCR coho salmon (*O. kisutch*), and Upper Willamette River (UWR) Chinook salmon (*O. tshawytscha*) or result in the destruction or adverse modification of designated critical habitat.

As required by section 7 of the ESA, NMFS is providing an incidental take statement with the Opinion. The incidental take statement describes reasonable and prudent measures NMFS considers necessary or appropriate to minimize the impact of incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the COE and applicant must comply with to carry out the reasonable and prudent measures. Incidental take from actions that meet these terms and conditions will be exempt from the ESA's prohibition against the take of listed species.

This document also includes the results of our analysis of the action's likely effects on essential fish habitat (EFH) pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes two conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH. These conservation recommendations are a subset of the ESA take statement's terms and conditions. Section 305(b)(4)(B) of the MSA requires Federal agencies to provide a detailed written response to NMFS within 30 days after receiving these recommendations.

NWP-2001-325

Encl. 3



If the response is inconsistent with the EFH conservation recommendations, the COE must explain why the recommendations will not be followed, including the justification for any disagreements over the effects of the action and the recommendations. In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. Therefore, we request that in your statutory reply to the EFH portion of this consultation, you clearly identify the number of conservation recommendations accepted.

If you have questions regarding this consultation, please contact Jim Turner at 503-231-6894.

Sincerely,



Barry A. Thom
Acting Regional Administrator

cc: Todd Alsbury - ODFW
Alex Cyril - DEQ
Mike McCabe - DSL
Yvonne Vallette - EPA
Joe Zisa - USFWS

Endangered Species Act Section 7 Consultation Biological Opinion

and

Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation

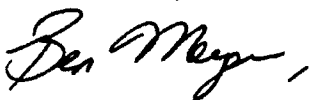
Oregon City Clackamette Cove Dredging Project
Clackamas River (HUC 170900110607)
Oregon City, Clackamas County, Oregon
(Corps No.: NWP-2001-325)

Lead Action Agency: U.S. Army Corps of Engineers

Consultation
Conducted By: National Marine Fisheries Service
Northwest Region

Date Issued: October 30, 2009

Issued by:


Barry A. Thom
Acting Regional Administrator

NMFS No.: 2008/07738

NWP-2001-325

Encl. 3

TABLE OF CONTENTS

INTRODUCTION	1
Background and Consultation History.....	1
Description of the Proposed Action.....	1
Action Area.....	3
ENDANGERED SPECIES ACT.....	5
Biological Opinion.....	5
Status of the Species and Critical Habitat.....	5
Environmental Baseline for the Action Area.....	9
Effects of the Action	10
Cumulative Effects.....	13
Conclusion	13
Conservation Recommendations	14
Reinitiation of Consultation.....	14
Incidental Take Statement.....	15
Amount or Extent of Take	15
Reasonable and Prudent Measures.....	16
Terms and Conditions	16
MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT	18
EFH Conservation Recommendations.....	19
Statutory Response Requirement.....	19
Supplemental Consultation	19
DATA QUALITY ACT DOCUMENTATION AND PRE-DISSEMINATION REVIEW	19
LITERATURE CITED	21

INTRODUCTION

This document contains a biological opinion (Opinion) and incidental take statement prepared in accordance with section 7(b) of the Endangered Species Act (ESA) of 1973, as amended (16 USC 1531, *et seq.*), and implementing regulations at 50 CFR 402. With respect to designated critical habitat, the following analysis relied only on the statutory provisions of the ESA, and not on the regulatory definition of "destruction or adverse modification" at 50 CFR 402.02.

The National Marine Fisheries Service (NMFS) also completed an essential fish habitat (EFH) consultation, prepared in accordance with section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 USC 1801, *et seq.*) and implementing regulations at 50 CFR 600.

The docket for this consultation is on file at the Oregon State Habitat Office in Portland, Oregon.

Background and Consultation History

On December 2, 2008, NMFS received a biological assessment (BA) and a request from the U.S. Army Corps of Engineers (COE) for formal consultation under section 7 of the Endangered Species Act (ESA) on the potential effects of the proposed authorization of Oregon City to dredge Clackamette Cove in the Clackamas River, Clackamas River subbasin, in Oregon City, Clackamas County, Oregon. During initial review of the BA, NMFS concluded that additional information was needed to complete consultation. On February 24, 2009, NMFS received an updated BA. This Opinion is based on the information presented in the BA, site visits, and/or discussions with the applicant.

Description of the Proposed Action

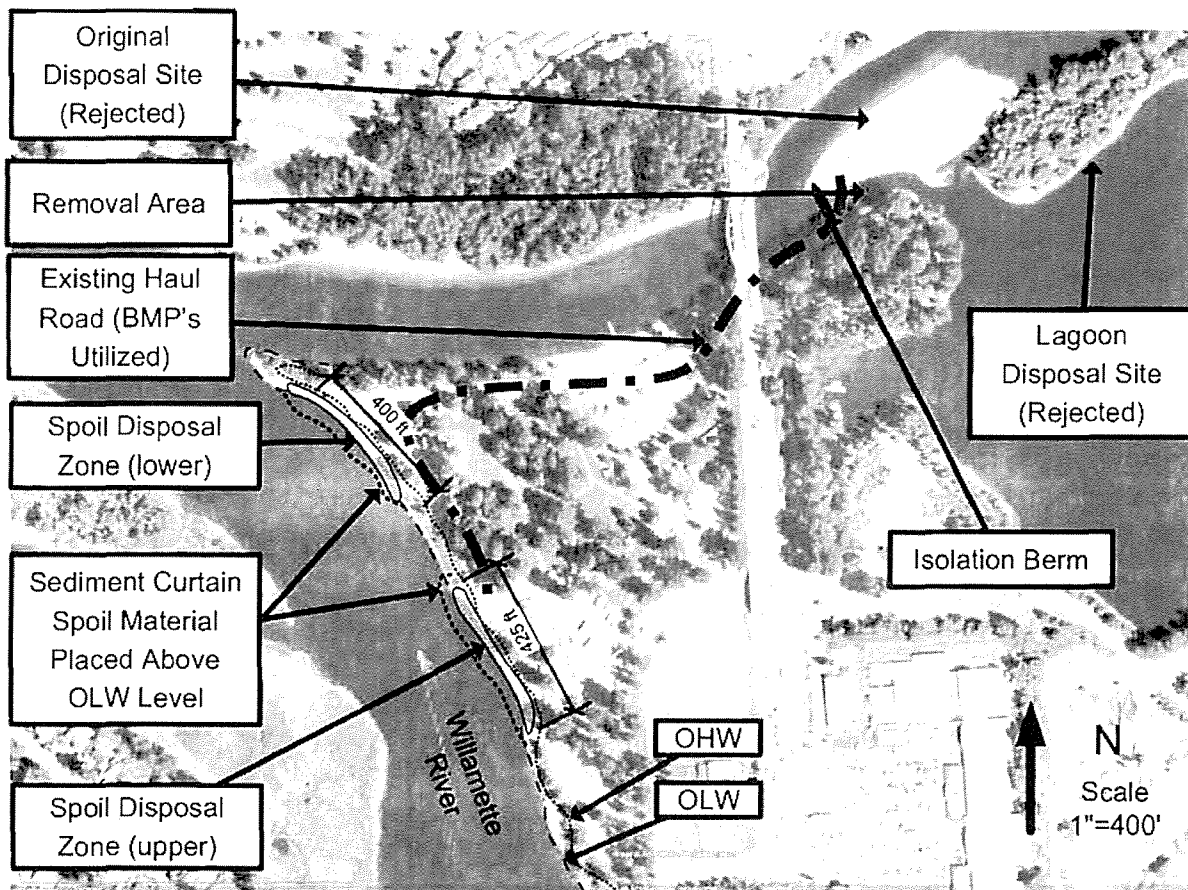
The following elements for the project are proposed (Figure 1):

Isolation Berm – The permit applicant will place approximately 500 cubic yards of large rock to form a temporary isolation berm. The berm will be placed between the cove and the river and will incorporate filter cloth, remaining permeable to minimize turbidity and sedimentation in the Clackamas River. The berm will allow flood tides to overtop and ebb tides to move through the structure. The berm will be completely removed at the completion of work.

Access Road – The proposed means of access includes using existing paved and unpaved roads and trails. There will be minimal vegetation disturbance and the site will be restored to pre-work conditions.

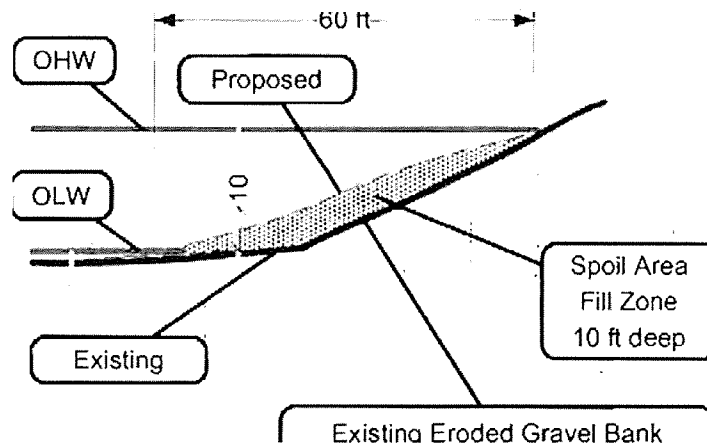
Dredging – The permit applicant will remove approximately 9,000 cubic yards of sand, gravel, and cobble along a channel approximately 400 feet long by 75 feet wide and 3 feet deep, using a trackhoe and large dump trucks that will transport the material to a deposition area (Figure 1).

Figure 1. Clackamette Cove site layout showing project elements.



Deposition Area for Dredge Material – The dredged material will be placed along the east shoreline of the Willamette River (Figures 1 and 2). A total of approximately 9,000 cubic yards of material will be placed in two locations along the Willamette River, with approximately 4,500 cubic yards placed per location. The dimensions of the areas are: 400 feet long by 60 feet wide, and 425 feet long by 60 feet wide, for a total of 825 feet of shoreline affected. All material will be placed below the ordinary high water but in the “dry.” The bankline where the material will be placed is composed of sand and assorted gravels. No vegetation will be displaced. As stated in the BA, the placed material will consist of native Clackamas River bed load material, which is typically sand, gravel, and cobbles with some fine sediment.

Figure 2. Placement profile along the Willamette River for dredged material from Clackamette Cove.



Haul Road – The haul road from the dredging area to the deposition area will be an existing access road to the shoreline of the Willamette River. No vegetation will be removed for the use of the haul road. Erosion control along the haul road will include sediment fences and hay bales. The route will be cleaned periodically during hauling and upon completion of hauling activity.

Grading of Material – Once the material is deposited by the trucks, it will be spread out over the deposition site.

To minimize adverse effects, the proposed action will also include:

1. Cleaning and checking all heavy equipment for fluid leaks and setting back staging areas from the river and riparian area.
2. Semi-isolating work activity, machines, and heavy equipment from the actively flowing stream.
3. Conducting in-water work during July 15 - August 31, when listed fish are less likely to be present.

The NMFS relied on the foregoing description of the proposed action, including all stated minimization measures, to complete this consultation. To ensure that this consultation remain valid, NMFS requests that the action agency or applicant keep NMFS informed of any changes to the proposed action

Action Area

The action area is located at river mile 1 on the Clackamas River within the 170900110607 sixth-field hydrologic unit code (HUC) watershed. The action area consists of the section of the Clackamas River beginning at the upper end of the project site and extending 100 feet downstream, and the Willamette River beginning at the upstream end of the disposal site and

extending downstream to the mouth of the Clackamas River. The LCR Chinook salmon, LCR steelhead, LCR coho salmon and UWR Chinook salmon use the action area and were listed as threatened under the ESA by NMFS on June 28, 2005 (70 FR 37204). Critical habitat for LCR and UWR Chinook salmon and LCR steelhead was designated on September 2, 2005 (70 FR 52630) and became effective January 2, 2006. Critical habitat for coho salmon has not been proposed.

Critical habitat for LCR Chinook salmon, LCR steelhead, and UWR Chinook salmon within the action area includes the primary constituent elements (PCEs) of critical habitat for freshwater migration and freshwater rearing described below in Table 1. The action area is also designated as EFH for Chinook and coho salmon and is in an area where environmental effects of the proposed action may adversely affect EFH for those species (PFMC 2005).

Table 1. PCEs of critical habitats designated for Pacific salmon and steelhead species considered in the Opinion and corresponding species life history events.

Primary Constituent Elements		Species Life History Event
Site Type	Site Attribute	
Freshwater spawning	Substrate Water quality Water quantity	Adult spawning Embryo incubation Alevin development
Freshwater rearing	Floodplain connectivity Forage Natural cover Water quality Water quantity	Fry emergence Fry/parr growth and development
Freshwater migration	Free of artificial obstructions Natural cover Water quality Water quantity	Adult sexual maturation Adult upstream migration, holding Kelt (steelhead) seaward migration Fry/parr seaward migration

ENDANGERED SPECIES ACT

Section 7(a)(2) of the ESA requires Federal agencies to consult with NMFS to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species, or adversely modify or destroy their designated critical habitat. The Opinion that follows records the results of the interagency consultation for this proposed action. An incidental take statement (ITS) is provided after the Opinion that specifies the impact of any taking of threatened or endangered species that will be incidental to the proposed action, reasonable and prudent measures that NMFS considers necessary and appropriate to minimize such impact, and nondiscretionary terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency, applicant (if any), or both, to carry out the reasonable and prudent measures.

Biological Opinion

To complete the jeopardy analysis presented in this Opinion, NMFS reviewed the status of each listed species of Pacific salmon and steelhead¹ considered in this consultation, the environmental baseline in the action area, the effects of the action, and cumulative effects (50 CFR 402.14(g)). From this analysis, NMFS determined whether effects of the action were likely, in view of existing risks, to appreciably reduce the likelihood of both the survival and recovery of the affected listed species.

For the critical habitat adverse modification analysis, NMFS considered the status of the entire designated area of the critical habitat considered in this consultation, the environmental baseline in the action area, the likely effects of the action on the function and conservation role of the affected critical habitat, and cumulative effects. NMFS used this assessment to determine whether, with implementation of the proposed action, critical habitat would remain functional, or retain the current ability for the primary constituent elements (PCEs) to become functionally established, to serve the intended conservation role for the species (Hogarth 2005).

Status of the Species and Critical Habitat

Status of the Species.

UWR spring-run Chinook salmon. The UWR spring-run Chinook salmon includes seven populations of native spring-run populations above Willamette Falls and in the Clackamas River. All the populations are in a single stratum since they share a similar life history pattern (spring run) and a single ecozone (Myers *et al.* 2006).

Numbers of spring Chinook salmon in the Willamette River basin are extremely depressed (McElhany *et al.*, 2006). The current abundance of wild fish is less than 10,000 fish, and only two populations (McKenzie and Clackamas) have significant natural production. The Clackamas River population of UWR Chinook salmon occurs in the action area and is “viable” (McElhany *et al.*, 2006).

¹ An “evolutionarily significant unit” (ESU) of Pacific salmon (Waples 1991) and a “distinct population segment” (DPS) of steelhead (71 FR 834; January 5, 2006) are both “species” as defined in section 3 of the ESA.

The major factors limiting recovery of UWR Chinook salmon identified by NMFS include lost/degraded floodplain connectivity and lowland stream habitat, degraded water quality, high water temperature, reduced streamflow, and reduced access to spawning/rearing habitat (NMFS 2006).

LCR Chinook salmon. Historical records of Chinook salmon abundance are sparse, but cannery records suggest a peak run of 4.6 million fish in 1883. Although fall-run Chinook salmon are still present throughout much of their historical range, they face the challenges of large-scale hatchery production, relatively high harvest rates, and extensive habitat degradation.

Abundances largely declined from 1998 to 2000, and trend indicators for most populations are negative, especially if hatchery fish are assumed to have a reproductive success equivalent to that of natural-origin fish (Good *et al.*, 2005). However, 2001 and 2002 abundance estimates increased for most LCR Chinook populations.

The BRT gave ratings of “moderately high” risk for all four VSP variables for this species (Good *et al.*, 2005). The Willamette/Lower Columbia River Technical Review Team (WLCTRT) estimated that 8-10 historical populations have been extirpated, most of them spring-run populations, due to dams that block access to higher-elevation habitat (Good *et al.* 2005). Near loss of that important life history type remained an important BRT concern (Good *et al.*, 2005). Although some natural production currently occurs in 20 or so populations, only one exceeds 1000 spawners. High hatchery production continues to pose genetic and ecological risks to natural populations and to mask their performance. Most LCR Chinook salmon populations have not seen as pronounced increases in recent years as occurred in many other geographic areas (Good *et al.*, 2005). The Clackamas River population of LCR Chinook salmon occurs within the action area and is not considered “viable” (McElhany *et al.*, 2007).

The NMFS identified reduced access to spawning/rearing habitat in tributaries, hatchery impacts, loss of habitat diversity and channel stability in tributaries, excessive sediment in spawning gravels, elevated water temperature in tributaries, and harvest impacts as the major factors limiting recovery of this species (NMFS 2007).

LCR steelhead. Two distinct races of steelhead, summer and winter runs, historically and currently are found in the Lower Columbia River. The life histories of summer and winter steelhead overlap as both rear in freshwater for 1-4 years prior to smolting, select similar habitat for freshwater rearing, and spend 1-4 years in the ocean. Differences include adult freshwater entry and timing, the degree of sexual maturity upon entry, spawning time, and the frequency of repeat spawning. On average, there is a 2-month difference in peak spawning time between winter and summer steelhead, with spawning in distinct areas within the same watershed (Myers *et al.*, 2006).

The BRT (Good *et al.*, 2005) found “moderate” risks in all the VSP categories, with mean risk matrix scores ranging from moderately low for spatial structure to moderately high for both abundance and growth rate/productivity. Most populations are at relatively low abundance, and those with adequate data for modeling probably have a relatively high extinction probability. Some populations, particularly summer runs, showed increases in 1999-2001 (Good *et al.*, 2005).

The Clackamas River population occurs within the action area and has an overall viability risk of “low.” The Clackamas River population is the only population considered “viable” (McElhany *et al.*, 2007).

The NMFS identified degraded floodplain and stream channel structure and function, reduced access to spawning and rearing habitat, altered stream flow in tributaries, excessive sediment and elevated water temperatures in tributaries, and hatchery impacts as the major factors limiting recovery of this species (NMFS 2007).

LCR coho salmon. The BRT (Good *et al.*, 2005) had major concerns for this species in all VSP risk categories (risk estimates ranged from “high” risk for spatial structure/connectivity and growth rate/productivity to “very high” for diversity). The most serious overall concern was the scarcity of naturally-produced spawners, with attendant risks associated with small population, loss of diversity, and fragmentation and isolation of the remaining naturally-produced fish. In the only two populations with significant natural production (Sandy and Clackamas), short and long-term trends are negative and productivity (as gauged by pre-harvest recruits) is down sharply from recent (1980s) levels. Adult returns in 2000 and 2001 were up noticeably in some areas, and evidence for limited natural production has been found in some areas outside the Sandy and Clackamas Rivers (Good *et al.*, 2005). The Clackamas River population occurs within the action area and has an overall viability risk of “low.” The Clackamas River population is the only population considered “viable” (McElhany *et al.*, 2007).

The major factors limiting recovery of LCR coho salmon include degraded floodplain connectivity and channel structure and complexity, loss of riparian areas and large wood recruitment, degraded stream substrate, loss of stream flow, reduced water quality, and impaired passage (NMFS 2006) (McElhany *et al.*, 2007) .

Status of Critical Habitat. In the Willamette and Lower Columbia Rivers and their tributaries, major factors affecting PCEs are altered channel morphology and stability, lost/degraded floodplain connectivity, loss of habitat diversity, excessive sediment, degraded water quality, increased stream temperatures, reduced stream flows, and reduced access to spawning and rearing areas (NMFS 2006).

The Clackamas River subbasin covers 602,000 acres. Most of the land is publicly owned (71%) with tribal acreage at 3% of the basin. Forest lands comprise the majority of land use (87%) with agriculture at 8%. Resource concerns include streambank erosion and water quality. There are 978 stream miles in the basin with anadromous fish occupying 86. The river flows 83 miles from its headwaters to its confluence with the Willamette River at RM 24.8 (NRCS 2006).

Temperature and *E. coli* bacteria are the major water quality concerns (NRCS 2006). Three waterbodies in the Clackamas River basin are on the Clean Water Act section 303(d) list of the Oregon Department of Environmental Quality for temperature and habitat modification — the Clackamas River from its mouth to River Mill dam, Eagle Creek from its mouth to the wilderness boundary, and Fish Creek (Clackamas River Basin Council 2004).

Three mainstem dams on the Clackamas River block sediment and large wood transport into the lower river. Pool frequency, refugia and off-channel habitat are limited in the lower reaches. Agriculture and urban development in the lower portion of the river have resulted in confined channels, loss of riparian areas, and loss of flood plain connectivity. Riparian function is rated “good” in the upper watershed and “impaired” in the mainstem and lower portions (Myers *et al.*, 2006).

At the time that each habitat area was designated as critical habitat, that area contained one or more PCEs within the acceptable range of values required to support the biological processes for which the species use that habitat. Table 2 lists PCEs for spawning, rearing, and migration by miles of habitat for designated species identified by NMFS Critical Habitat Assessment Review Team (CHART) (NOAA Fisheries 2005) within the 70900110607 5th field HUC:

Table 2. Miles of habitat by species within the 1709001106075th field HUC.

Species	Spawning Habitat	Rearing Habitat	Migration Habitat
UWR Chinook salmon	23	13	0
LCR Chinook salmon	35	3	0
LCR steelhead	90	5	2

The CHART has highlighted those features of critical habitat that are particularly important for conservation. The CHART ratings and comments for the 5th field HUC containing the action area include:

1. High value for UWR Chinook salmon based on a “high” score; PCEs support a TRT core population and the only population downstream of Willamette Falls; ODFW considers Clackamas as essential habitat for spring Chinook; PCEs are likely to be the lowest quality in subbasin but have high-value connectivity reaches upstream.
2. High value for LCR Chinook salmon based on a “moderate-high” score; PCEs support a TRT fall-run and core population; this is the primary production area for this population.
3. High value for LCR steelhead based on a “moderate-high” score; extensive PCEs support spawning/rearing as well as rearing/migration for upstream areas; PCEs support a TRT core winter-run population as well as fish from identified priority areas upstream.

Climate change is likely to have negative implications for the conservation value of designated critical habitats in the Pacific Northwest (Climate Impacts Group 2004), Scheuerell *et al.* 2005, Zabel *et al.* 2006), Independent Scientific Advisory Board (ISAB) 2007)). Average annual Northwest air temperatures have increased by approximately 1°C since 1900, or about 50% more than the global average warming over the same period (ISAB 2007). The latest climate models project a warming of 0.1 to 0.6°C per decade over the next century. According to the ISAB, these effects may have the following physical impacts within the next 40 or so years:

- Warmer air temperatures will result in a shift to more winter/spring rain and runoff, rather than snow that is stored until the spring/summer melt season.

- With a shift to more rain and less snow, the snowpacks will diminish in those areas that typically accumulate and store water until the spring freshet.
- With a smaller snowpack, these watersheds will see their runoff diminished and exhausted earlier in the season, resulting in lower streamflows in the June through September period.
- River flows in general and peak river flows are likely to increase during the winter due to more precipitation falling as rain rather than snow.
- Water temperatures will continue to rise, especially during the summer months when lower streamflow and warmer air temperatures will contribute to the warming regional waters.

These changes will not be spatially homogeneous across the entire Columbia River basin. Areas with elevations high enough to maintain temperatures well below freezing for most of the winter and early spring would be less affected. Low-lying areas that historically have received scant precipitation contribute little to total streamflow and are likely to be more affected. The ISAB also identified the likely effects of projected climate changes on Columbia basin salmon. These long-term effects may include, but are not limited to, depletion of cold water habitat, variation in quality and quantity of tributary rearing habitat, alterations to migration patterns, accelerated embryo development, premature emergence of fry, and increased competition among species

To mitigate for the effects of climate change on listed salmonids, the ISAB (2007) recommends planning now for future climate conditions by implementing protective tributary, mainstem, and estuarine habitat measures, as well as protective hydropower mitigation measures. In particular, the ISAB (2007) suggests increased summer flow augmentation from cool/cold storage reservoirs to reduce water temperatures or to create cool water refugia in mainstem reservoirs and the estuary; the protection and restoration of riparian buffers, wetlands, and floodplains; removal of stream barriers; implementation of fish ladders; and assurance of high summer and autumn flows.

Environmental Baseline for the Action Area

Within the action area, the Clackamas River is highly altered from its natural state, affected by the surrounding urban development. The stream predominantly forms primary and secondary channels in gravel substrate and has been moderately simplified and constrained by bank stabilization and/or other surrounding development. Instream habitat is characterized by highly simplified habitat with few structural elements such as large wood or boulders evident. Water quality is fair, affected by high levels of turbidity, seasonally warm water temperature, and moderate levels of chemical pollutants. Water flows are controlled from upstream. The streambanks, which are composed of dredge spoils from the abandoned gravel pit that is now Clackamette Cove, are eroding. The riparian area is disturbed and unvegetated. Floodplain and riparian connectivity is very limited.

The bankline along the Willamette River where dredged material will be placed is not vegetated and composed primarily of gravels, sand, cobble and silts (much the same as the material that will be placed there).

Effects of the Action

The effects of the proposed action will include:

Isolating the Work Site. A berm will be used to partially isolate the work area. This berm, composed of large rock, will extend across the mouth of the cove and is designed to maintain free flow and open passage within the Clackamas River through the life of the project. The work area will remain inundated by the river and turbidity will be contained within the cove by the use of silt barrier fabric.

Dredged Material Placement. The sand, gravel, cobble and silt that are to be placed should not affect habitat at the disposal site. The disposal area is non-vegetated and composed of the same sort of material that will be placed. Placement of the material below ordinary high water is designed to allow for the material to remain with the Willamette River system and replenish downstream sand and gravel bars as the dredged material is transported downstream by high flow events.

Turbidity. Turbidity will slightly increase over background levels during the 6-week construction period and be most evident during the placement and removal of the isolation berm. Changes in turbidity are due to resuspending fine sediments contained within the 0.75 acre of disturbed streambed. Full erosion control measures have been proposed for the upland portion of the project, minimizing the potential for discharge of fine sediments. Partial isolation of the in-water work area will substantially limit the duration and extent of any turbidity during the installation and removal isolation structure and materials.

Based on best professional judgment, increased turbidity will be evident up to 100 feet downstream of the project and extend to the middle of the Clackamas River channel. The level of turbidity will not likely exceed turbidity maximums typically occurring during winter and spring runoff. The increase in turbidity during the in-water work period of July 15 - August 31 will be out of phase with typical turbidity highs, episodic, and less persistent. This increase in turbidity will reduce water clarity and moderately reduce primary production. Turbidity will dissipate, returning to background levels downstream of the project site after construction is completed. The suspended sediments will be deposited on the stream bed, accumulating with other fine sediment deposits.

There should be a slight increase in turbidity resulting from a small amount of return water flow from the placement of the dredged material along the Willamette bankline. The increase will be similar to that described above, but should be limited to the nearshore area due to higher flows within the Willamette.

Chemical Pollution. Heavy equipment will be operated from the shore and/or adjacent gravel bars. Staging areas are setback and removed from all waterways. All equipment will be maintained to minimize the discharge of oil and grease. Pollution control measures will be in place to contain any unlikely chemical spills. As with any construction project involving heavy machinery, there is the potential for fuel spills. The proposed prevention measures outlined in

the biological assessment (pages 22-24) should minimize the potential for impacts if a spill does occur.

Channel Modification. The proposed action will increase channel depth, width, and connectivity between the Clackamas River and the cove. This will increase tidal exchange and flow between the cove and the river. However, the proposed channel modification will not significantly alter hydrodynamics or affect gravel bar deposits or formation of off-channel habitat, since Clackamette River flows will not be altered and subsequent gravel deposition at the entrance to the cove not modified.

Riverbed Modification. The proposed action will reduce riverbed complexity as the work will include dredging and removing substrate from the Clackamas River. There will be some changes to the stream hydraulics. The instream riffle habitat will be simplified to a glide habitat, which is the most common habitat type in the action area. This will somewhat decrease habitat diversity in the action area.

Effects on ESA-Listed Species

Juvenile fish species considered in this document will be not present in large numbers in the action area during the in water work period of July 15 - August 31. The action area is used by LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon for migrating and rearing.

Isolating the Work Site. Isolating the work site will displace and potentially harm juvenile LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon. The berm will isolate some juvenile ESA-listed fish within the cove during the in-water work period. While most of the out migrating juvenile salmon and steelhead will have moved downstream at the time work will be performed, some fish may have moved into the cove for refuge or feeding. Those fish will become temporarily delayed in their downstream migration (potentially up to 6 weeks, the duration of construction). The delay can benefit fish in that they will have an increased opportunity for feeding and growth within the cove. Yet, the isolation may also put these fish at increased risk of predation, as non-native warm water fish within the cove become active. The benthic and shoreline gravels and shallow water habitat within the cove will provide some refuge from predation. Delayed migration will alter the time the juveniles smolt and enter the ocean, which may reduce survival.

Dredged Material Placement. Since the placement of dredged material along the Willamette bankline will be done outside the wetted perimeter, there should be no direct effect to fish. Turbidity increases as the site becomes inundated with high water events should not increase the turbidity above background levels (since it will occur when the river is at high levels due to storm events resulting in high turbidity). Turbidity from runoff water during placement of the materials is described below. Material that is transported downstream should benefit habitat downstream by increasing material delivery to downstream sand bars and beaches.

Turbidity. The increase of turbidity from the proposed action will affect LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon. The anticipated

turbidity levels within the Clackamas River are not likely to physically harm juvenile fish considered in this document and present in the action area. These juvenile fish will move in and out of the turbidity plume showing moderate deviation from typical behavior with a slight increased risk of predation. The turbidity will persist for the 6-week work period and will partially impair the quality or availability of rearing habitat, reducing primary and macro invertebrate production. This may decrease juvenile feeding capabilities in the short term within the action area. The small amount of turbidity increases in the Willamette River from return water flow are not expected to reduce these factors.

Chemical Pollution. With the low potential for discharging chemical pollutants from heavy equipment or shore based staging areas, the effects to LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon will be minimal.

Channel Modification. The changes to the channel will have minimal effects on LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon. The increased flow and access to cover during summer months will allow for increased fish use during low flow periods. The potential number of ESA-listed fish that would use the cove will be low. With open access to the cove, fish that do use the area can gain some feeding opportunities yet will be subject to increased exposure to predation from non-native warm water species living in the cove.

Riverbed Modification. The changes to the bed habitat structure will affect LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon. The short-term (weeks) alteration of the bed and removal of substrate will initially limit use by juvenile ESA-listed fish. In the long term (months to years), reworking of the gravels will open up intra-gravel spaces and diversify the bed form, reestablishing use by juveniles.

Effects on Critical Habitat

Freshwater spawning sites

Water quantity - The proposed action will maintain flows within the action area and access to feeding and refuge habitat.

Water quality - The proposed action will maintain water quality and spawning habitat within the action area by not altering water temperature, and/or chemical pollutants. There will be a short term increase in turbidity within the Clackamas River during construction and within the Willamette River during the first high flow event.

Substrate - The proposed action will moderately displace substrate and simplify the streambed within the action area. It will maintain the gravel supply to the Willamette River.

Freshwater rearing sites

Water quantity - The proposed action will maintain flows within the action area and access to feeding and refuge habitat.

Floodplain connectivity – The proposed action will maintain functioning floodplains and high water refuge and feeding habitat.

Water quality – The proposed action will maintain water quality within the action area by not altering water temperature, and/or chemical pollutants. There will be a short term increase in

turbidity within the Clackamas River during construction and within the Willamette River during the first high flow event. *Forage* – The proposed action will maintain leaf litter and terrestrial food source from the riparian vegetation and maintain feeding potential by providing a downstream food source.

Natural cover – The proposed action will maintain cover by maintaining the streambank and bed. The maintenance of riparian vegetation will maintain cover along the stream edge.

Freshwater migration corridors

Free passage – The proposed action will not block the channel or otherwise impair free passage.

Water quantity – The proposed action will maintain water flows, velocity, and water depth that will sustain fish migration.

Water quality – The proposed action will maintain water quality and spawning habitat within the action area by not altering water temperature, and/or chemical pollutants. There will be a short term increase in turbidity within the Clackamas River during construction and within the Willamette River during the first high flow event.

Natural cover – The proposed action will maintain cover by maintaining the streambank and bed. The maintenance of riparian vegetation will maintain cover along the stream edge.

Cumulative Effects

Between 1990 and 2000, the population of Clackamas County in the action area increased by 21%.² Thus, NMFS assumes that future private and state actions will continue within the action area, increasing as population density rises. As the human population in the action area continues to grow, demand for agricultural, commercial, or residential development is also likely to grow. The effects of new development caused by that demand are likely to further reduce the conservation value of the habitat within the action area. However, NMFS is not aware of any specific future non-Federal activities within the action area that would cause greater effects to a listed species or a designated critical habitat than presently occurs.

Conclusion

After reviewing the best available scientific and commercial information regarding the status and biological requirements of LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon, their designated critical habitats, the environmental baseline, and the effects of the action, and cumulative effects, NMFS concludes that carrying out channel modification in the Clackamas River watershed, as proposed by the COE, is not likely to jeopardize the continued existence of the subject species, and is not likely to result in the destruction or adverse modification of their designated critical habitats. These conclusions are based on the following considerations.

The NMFS identified the primary factors limiting recovery of LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon as: (1) Loss of habitat diversity, excessive sediment, and harvest impacts for LCR Chinook salmon; (2) altered channel morphology for LCR steelhead; (3) loss of riparian area and large wood recruitment and degraded stream substrate for LCR coho salmon; and (4) lost/degraded floodplain connectivity

² U.S. Census Bureau, State and County Quickfacts, Clackamas County. Available at <http://quickfacts.census.gov/qfd/>

and lowland stream habitat, degraded water quality, high water temperature, reduced streamflow, and reduced access to spawning/rearing habitat for UWR Chinook salmon (NMFS 2006). For the indicated populations, the risk of extinction is low for Chinook salmon and moderate for steelhead. The Clackamas River watershed critical habitat conservation value is rated as: (1) High for LCR Chinook salmon; (2) high for LCR steelhead; and, (3) high for UWR Chinook salmon.

NMFS is not aware of any specific future non-Federal activities within the action area that would cause greater effects to a listed species or a designated critical habitat than presently occurs.

A very small proportion of the total number of LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon individuals will be affected by the adverse effects of the action. This is because the distribution of those effects is limited to only a few hundred feet of stream in an area that is already in relatively poor condition, during a time when the fewest number of fish are likely to be present, and the duration of those effects will extend to a few months. Nonetheless, those few fish will be exposed to additional stress caused primarily by displacement and temporary habitat and substrate degradation, and some of those fish will be physically injured or killed. The number of fish affected will be too few to produce any observable effect at the population scale and, because the proposed action will not have any effect at the population scale, the proposed action is not likely to appreciably reduce the survival and recovery of any species. Similarly, although the adverse effects of these projects on critical habitat PCEs will vary, each of those adverse effects, including degraded substrate, will be brief and limited to the site scale so that critical habitat PCEs that now function with a high value for LCR Chinook salmon, high value for LCR steelhead and a high value for UWR Chinook salmon conservation value will retain their current ability to become functionally established as necessary to serve the intended conservation role for the species.

Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of the threatened and endangered species. The NMFS has no conservation recommendations.

Reinitiation of Consultation

Reinitiation of formal consultation is required and shall be requested by the Federal agency or by NMFS where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) If the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or designated critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that has an effect to the listed species or designated critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat is designated that may be affected by the identified action (50 CFR 402.16).

To reinitiate consultation, contact the Oregon State Habitat Office of NMFS, and refer to the NMFS Number assigned to this consultation (2008/07738).

Incidental Take Statement

Section 9 of the ESA and Federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by NMFS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by Fish and Wildlife Service as an intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the ESA, provided that such taking is in compliance with the terms and conditions of this incidental take statement.

Amount or Extent of Take

Actions necessary to complete the proposed Oregon City Clackamette Cove Dredging will take place within the active stream channel when juvenile individuals of LCR Chinook salmon, LCR steelhead, LCR coho salmon, and UWR Chinook salmon are likely to be present. The habitat that will be affected is poor quality and not limited at the site-specific or watershed scale.

Incidental take caused by the adverse effects of the proposed action will result from work area isolation and increased predation risk due to short term turbidity increases.

This take will occur within Clackamas River in an area beginning at upper end of the project site and extending 100 feet downstream from the project site and within the Willamette River beginning at the upper end of the disposal site and continuing downstream to the mouth of the Clackamas River. Incidental take within that area that meets the terms and conditions of this incidental take statement will be exempt from the taking prohibition.

The NMFS anticipates that some individual juveniles of the listed species considered in the consultation will be injured, or killed due to work necessary to partially isolate the in-water construction area. Because of the expected low number of juveniles present in the action area during the proposed construction time frame the number of juveniles that may be killed is not quantifiable. Mortality of adult fish is not expected to occur as part of the proposed isolation of in-water work areas, since the cove will remain open during construction and adults should avoid the area. Thus, NMFS does not anticipate that any adult fish will be taken.

Take caused by the habitat-related effects of this action cannot be accurately quantified as a number of fish because the relationship between habitat conditions and the distribution and

abundance of those individuals in the action area is imprecise. In such circumstances, NMFS uses the causal link established between the activity and a change in habitat conditions affecting the listed species to describe the extent of take as a numerical level of habitat disturbance.

Here, the best available indicators for the extent of take are the extent (100 feet downstream from the site in the Clackamas River, and from the upstream limits of dredge material placement along the shoreline of the Willamette River downstream to the mouth of the Clackamas) and duration of turbidity (6 weeks) created by work on the riverbed and bank habitat that will be modified by the action as this will be proportional to the overall amount of habitat disturbance. In the accompanying Opinion, NMFS determined that this level of incidental take is not likely to result in jeopardy to the listed species.

Reasonable and Prudent Measures

The following measures are necessary and appropriate to minimize the impact of incidental take of listed species from the proposed action:

The COE shall:

1. Minimize incidental take by applying permit conditions or action specifications that avoid or minimize adverse effects to riparian and aquatic habitats during construction.
2. Ensure completion of a monitoring and reporting program to confirm that the take exemption for the proposed action is not exceeded, and that the terms and conditions in this incidental take statement are effective in minimizing incidental take.

Terms and Conditions

The measures described below are non-discretionary, and must be undertaken by the COE or, if an applicant is involved, must become binding conditions of any permit or grant issued to the applicant, for the exemption in section 7(o)(2) to apply. The COE has a continuing duty to regulate the activity covered by this incidental take statement. If the COE (1) fails to assume and implement the terms and conditions or (2) fails to require an applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, the COE or applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement.

1. To implement reasonable and prudent measure #1 (construction), the COE shall ensure that:
 - a. Site Preparation. Native materials, including large wood, native vegetation, weed-free topsoil, and native channel materials (gravel, cobble, and boulders), disturbed during site preparation are conserved on site for site restoration or replaced with a functional equivalent during site restoration, returned to those

areas, and placed in a natural configuration that may be expected to function naturally.

- b. Timing of In-water Work. Work below the bankfull elevation shall be completed during the in-water work period of July 15 to August 31, unless otherwise approved in writing by NMFS.
- c. Work Area Isolation. The isolation of work areas from the active river flow, where applicable, shall be accomplished using temporary structures that result in the least area and depth of disturbance to the river bed and bank.

- 2. To implement reasonable and prudent measure #2 (monitoring and reporting), the COE shall ensure that:

- a. Salvage Notice. The following notice is provided in writing to each party that will supervise completion of the action:

NOTICE: If a sick, injured or dead specimen of a threatened or endangered species is found in the action area, the finder must notify NMFS through the contact person identified in the transmittal letter for this Opinion, or through the NMFS Office of Law Enforcement at 1-800-853-1964, and follow any instructions. If the proposed action may worsen the fish's condition before NMFS can be contacted, the finder should attempt to move the fish to a suitable location near the capture site while keeping the fish in the water and reducing its stress as much as possible. Do not disturb the fish after it has been moved. If the fish is dead, or dies while being captured or moved, report the following information: (1) NMFS consultation number; (2) the date, time, and location of discovery; (3) a brief description of circumstances and any information that may show the cause of death; and (4) photographs of the fish and where it was found. NMFS also suggests that the finder coordinate with local biologists to recover any tags or other relevant research information. If the specimen is not needed by local biologists for tag recovery or by NMFS for analysis, the specimen should be returned to the water in which it was found, or otherwise discarded.

- b. The applicant monitors dredging, disposal, and site restoration, including the following elements:
 - i. Effectiveness of erosion and pollution controls: These controls shall be checked weekly, or more frequently during and after precipitation, and repaired or maintained as needed to ensure maximum effectiveness.
 - ii. Visual monitoring of turbidity: A visual sample shall be taken every 2 hours during daylight hours 100 feet downstream of the dredging area, and in the Willamette River at the mouth of the Clackamas, until dredging is completed. If a visual turbidity plume is observed, dredging or placement shall cease until the plume dissipates.
 - iii. Monitoring of restored areas for 5 years in a manner that will determine whether the following objectives are attained: Bare ground is minimized

and active soil erosion is not evident, vegetation is healthy with good plant litter covering the soil, trees and shrubs planted along the streambank are continuous, and banks are stable and well-vegetated.

- c. Initial Monitoring and Site Restoration Reporting. A monitoring and site restoration report is submitted to NMFS within 120 days of completion of work describing the permittee's success applying conservation measures during dredging, disposal and restoration. The monitoring report shall include the following information:
 - i. Action identification and contact information.
 - ii. Starting and ending dates for work completed with the in-water work period specified.
 - iii. Description with labeled photographs of site conditions before, during and after action completion.
 - iv. Summary of erosion and pollution control inspections and maintenance actions completed.
 - v. Results of turbidity monitoring.
- d. Long-Term Site Restoration Report. A report describing whether the objectives described above for the 5-year site restoration monitoring effort is submitted to NMFS within 60 days of the completion of site restoration monitoring.
- e. Monitoring reports are submitted to :

National Marine Fisheries Service
Oregon State Habitat Office
Attn: 2008/07738
1201 NE Lloyd Blvd., Suite 1100
Portland, Oregon 97232

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

The consultation requirement of section 305(b) of the MSA directs Federal agencies to consult with NMFS on all actions, or proposed actions that may adversely affect EFH. Adverse effects include the direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside EFH, and may include site-specific or EFH-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) also requires NMFS to recommend measures that may be taken by the action agency to conserve EFH.

The Pacific Fishery Management Council (PFMC) designated EFH for groundfish (PFMC, 2005), coastal pelagic species (PFMC, 1998), and Chinook salmon, coho salmon, and Puget Sound pink salmon (PFMC, 1999). The proposed action and action area for this consultation are described in the Introduction to this document. The action area includes areas designated as EFH for various life-history stages of Chinook and coho salmon.

Based on information provided in the BA and the analysis of effects presented in the ESA portion of this document, NMFS concludes that proposed action will have the following adverse effects on EFH designated for Pacific Coast salmon: Simplification of streambed habitat, and a short-lived increase in suspended sediment and turbidity.

EFH Conservation Recommendations

The following two conservation measures are necessary to avoid, mitigate, or offset the impact of the proposed action on EFH. These conservation recommendations are a subset of the ESA terms and conditions, including term and condition 1 and term and condition 2 in the attached incidental take statement.

Statutory Response Requirement

Federal agencies are required to provide a detailed written response to NMFS' EFH conservation recommendations within 30 days of receipt of these recommendations [50 CFR 600.920(j) (1)]. The response must include a description of measures proposed to avoid, mitigate, or offset the adverse effects of the activity on EFH. If the response is inconsistent with the EFH conservation recommendations, the response must explain the reasons for not following the recommendations. The reasons must include the scientific justification for any disagreements over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. Therefore, we ask that in your statutory reply to the EFH portion of this consultation, you clearly identify the number of conservation recommendations accepted.

Supplemental Consultation

The must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations [50 CFR 600.920(k)].

DATA QUALITY ACT DOCUMENTATION AND PRE-DISSEMINATION REVIEW

Section 515 of the Treasury and General Government Appropriations Act of 2001 (Public Law 106-554) (Data Quality Act) specifies three components contributing to the quality of a document. They are utility, integrity, and objectivity. This section of the Opinion addresses these Data Quality Act (DQA) components, documents compliance with the DQA, and certifies that this Opinion has undergone pre-dissemination review.

Utility: Utility principally refers to ensuring that the information contained in this consultation is helpful, serviceable, and beneficial to the intended users.

This ESA consultation concludes that the proposed channel modification will not jeopardize the affected listed species. Therefore, the COE can authorize this action in accordance with its authority under section 404 of the Clean Water Act. The intended users are the COE and their permittees or applicants, if any.

Individual copies were provided to the above-listed entities. This consultation will be posted on the NMFS Northwest Region website (<http://www.nwr.noaa.gov>). The format and naming adheres to conventional standards for style.

Integrity: This consultation was completed on a computer system managed by NMFS in accordance with relevant information technology security policies and standards set out in Appendix III, 'Security of Automated Information Resources,' Office of Management and Budget Circular A-130; the Computer Security Act; and the Government Information Security Reform Act.

Objectivity:

Information Product Category: Natural Resource Plan.

Standards: This consultation and supporting documents are clear, concise, complete, and unbiased; and were developed using commonly accepted scientific research methods. They adhere to published standards including the NMFS ESA Consultation Handbook, ESA regulations, 50 CFR 402.01, *et seq.*, and the MSA implementing regulations regarding EFH, 50 CFR 600.920(j).

Best Available Information: This consultation and supporting documents use the best available information, as referenced in the Literature Cited section. The analyses in this Opinion/EFH consultation contain more background on information sources and quality.

Referencing: All supporting materials, information, data and analyses are properly referenced, consistent with standard scientific referencing style.

Review Process: This consultation was drafted by NMFS staff with training in ESA and MSA implementation, and reviewed in accordance with Northwest Region ESA quality control and assurance processes.

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COMPLIANCE CERTIFICATION

U.S. Army Corps of Engineers
Regulatory Branch
CENWP-OD-GC
333 SW First Avenue, P.O. Box 2946
Portland, Oregon 97208-2946

1. Permittee Name: City of Oregon City
2. Corps Permit No: NWP-2001-325
3. Corps Contact: James A. Holm
4. Type of Activity: Maintenance Dredging and In-water Disposal – Standard Permit

Please sign and return form to the address above:

I hereby certify that the work authorized the above referenced permit has been completed in accordance with the terms and conditions of said permit and that required mitigation is completed in accordance with the permit conditions, except as described below.

Signature of Permittee

Date



Agenda Item No. 7d
Meeting Date: 05 May 2010

COMMISSION REPORT: CITY OF OREGON CITY

TO:	Honorable Mayor and City Commission
FROM:	Dan Drentlaw, Economic Development Manager
PRESENTER:	Dan Drentlaw, Economic Development Manager
SUBJECT:	Update on SIZ- Strategic Investment Zones
Agenda Heading: General Business	
Approved by: David Frasher, City Manager	

RECOMMENDED ACTION (Motion):

Consider signing an IGA with Clackamas County establishing a Strategic Investment Zone (SIZ).

BACKGROUND:

This topic has first presented at the work session of February, 2010. A SIZ provides a mechanism to allow a 15 year property tax abatment for large traded sector businesses. Clackamas County has been working with the Cites to develop this program. A more detailed staff report is attached.

BUDGET IMPACT:

FY(s):

Funding Source:

ATTACHMENTS:

Draft Strategic Investment Zone Staff Presentation Worksheet for Oregon City

Presentation Date: May 5, 2010

Length: 30 minutes

Presentation Title: Strategic Investment Zone Update and Preliminary IGA approval

Department: **City of Oregon City** and Clackamas County Business and Economic Development

Presenter: Dan Drentlaw and Renate Mengelberg

POLICY QUESTIONS

1. Does the City Council continue to support participating in the Clackamas County Strategic Investment Zone program?
2. Would the City Council like to propose changes to the attached intergovernmental agreements
3. Which Community Service Fee/ Income Tax Revenue Share distribution option does the City Council prefer?

ISSUE & BACKGROUND

The Clackamas County Business and Economic Development Department and city economic development representatives have developed enabling documents that address the details of a proposed Urban and Rural Strategic Investment Zones (SIZ) program pursuant to ORS 285C.623 through 285C.639. The program is proposed for unincorporated Clackamas County and the cities of Lake Oswego, Milwaukie, Oregon City, Happy Valley, Sandy, Estacada, Canby and Molalla.

SIZs are a business recruitment tool designed to attract large capital intensive traded sector businesses. An SIZ is a “pre-established” zone that standardizes the discretionary Strategic Investment Program (SIP) process in place today, providing for consistent criteria and a streamlined approval process. This provides greater certainty to new or existing companies. Highlights of the program include:

- 15 year property tax abatements on facilities and equipment to any “traded-sector” business. Examples include production, manufacturing, high tech, and energy generation, among others.
- Applies to large capital investments of over \$100 million in urban portions of the zone and over \$25 million in rural portions of the zone.
- Requires a community service fee paid by the company equal to 25% of the tax savings per year. The community service fee is capped at an annual maximum of \$2 million in the urban portions of the zone and \$500,000 in rural portions of the zone.
- Provides for distribution of 50% of the personal income tax revenue attributable to a participating SIZ business to local taxing authorities.
- Partners in the proposed urban zone include Lake Oswego, Milwaukie, and unincorporated Clackamas County. Oregon City and Happy Valley contain areas in both the urban and rural portions of the SIZ.

Since the last meeting with the City Commission on April 9, 2010, County staff has held meetings on the SIZ program and invited all affected taxing districts to attend. See meeting summary attached. Attendees at the Urban SIZ meeting included two representatives from Fire District #1, City representatives from Lake Oswego and Happy Valley, County Commissioner Jim Bernard and Development Agency staff. The fire district had concerns about revenue impacts to their district and preferred that community service fees be divided on a pro rata basis to all impacted taxing districts. Attendees at the Rural SIZ meeting included representatives from the Molalla and Sandy school districts and John Atkins from the city of Molalla. The school districts had concerns about revenue impacts to their district and preferred that community service fees be divided on a pro rata bases to all impacted taxing districts.

Participating cities and the County will ultimately need to sign the intergovernmental Agreement (IGA) and approve the standardized agreement between the County, City and Business that formalizes the specifics of the program. The attached drafts incorporate input received to date from city staff and councils.

County staff is requesting additional input from participating cities on:

- Proposed requirements of businesses
- The cities' preferences on three proposed options for the distribution of the Community Service Fee and income tax revenue share
- Any other suggestions participating cities would like to incorporate

Next Steps in the Process

- County staff will revise the IGA and standardized agreement based on input from participating cities received by June 1st.
- Clackamas County will hold a public hearing on the SIZ program and proposed IGA on June 10th at 10 AM at the Board hearing room in the Public Services Building on 2051 Kaen Road in Oregon City. Council and city representatives are encouraged to attend.
- Cities will sign final versions of the attached IGA after the June 10th public hearing, once any changes are incorporated.
- The County will develop an SIZ application and submit it to the Oregon Business Development Department for formal approval of the urban and rural SIZ.
- The SIZ will be formally launched and the cities and County can begin marketing efforts.

QUESTION(S) PRESENTED FOR CONSIDERATION

1. Should the city of Oregon City continue to partner with Clackamas County to form an urban/rural Strategic Investment Zone?
2. Does the city propose any modifications to the draft county/ city IGA and the agreement between the County, City, and Business attached? Specifically:
 - Is the city comfortable with the proposed requirements of businesses outlined in the County / City IGA in Exhibit B on page 10-11?
 - Which option best fits the city's preferences for allocation of the community service fee and income tax revenue share outlined in the County / City IGA in Exhibit C on page 12-13?
 - Are the sanctions for non performance of businesses (similar to claw back provisions) in the standardized agreement between the county, city and business on page 10 6-J adequate to address city council preferences?

OPTIONS AVAILABLE

- A. Tentatively approve IGA and standardized agreement attached as presented and provide direction on how the city would like the community service fee and income tax revenue share distribution to be handled by June 1st. Plan formal approval of final IGA and agreement in late June. Provide direction to staff on whether the IGA should be adopted at a public hearing or on the consent agenda.
- B. Propose revisions to the IGA and standardized agreement based on council discussion by June 1st. Areas for further discussion could include changes to the County – City IGA Exhibit A, requirements of companies, Exhibit B, Community Service Fees, and Business, County City IGA page items 6-J on page 10 among others.
- C. Do not approve the IGA and standardized agreement and discontinue efforts to form a Strategic Investment Zone.

RECOMMENDATIONS

Staff respectfully recommends that the city:

- Pursue SIZ option A above and direct staff to continue to support this effort.
- Approve draft SIZ IGA and standardized agreement attached in principle including flexibility to make minor changes based on input from other cities and testimony at the county public hearing.
- Prepare to sign a final SIZ IGA after the June 10th public hearing.

**CLACKAMAS COUNTY STRATEGIC INVESTMENT ZONE #1
INTERGOVERNMENTAL AGREEMENT**

BETWEEN

CLACKAMAS COUNTY, OREGON

AND

**THE CITIES OF LAKE OSWEGO, MILWAUKIE, OREGON CITY, HAPPY VALLEY,
SANDY, ESTACADA, CANBY, AND MOLALLA**

This Clackamas County Strategic Investment Zone #1 Intergovernmental Agreement ("Agreement") is by and between Clackamas County, Oregon (the "County") and the Cities of Lake Oswego, Milwaukie, Oregon City, Happy Valley, Sandy, Estacada, Molalla, and Canby (the "Cities").

RECITALS

A. The County and the Cities compete with local, national and foreign jurisdictions to attract investment by capital-intensive industries. Industries requiring capital-intensive investments are desirable to the County and the Cities because such industries invest heavily in developing the skill levels of their employees, pay their employees well, and contribute in other important ways to the economic development of the region.

B. Under Oregon's tax structure, capital-intensive businesses are subject to disproportionately high property taxes when compared to more typical production facilities. This tax burden is a factor in such industries' consideration of location and expansion in Oregon.

C. The Oregon Legislative Assembly chose to establish an economic development instrument known as Strategic Investment Zones ("SIZ") to encourage additional investment and employment within the State by businesses qualified under ORS 285C.505(3) (hereinafter "Business Firm") that make capital-intensive property investments.

D Oregon law at ORS 285C.623 through 285C.639 and rules established by the Oregon Business Development Department and the Oregon Department of Revenue control the establishment and operation of strategic investment zones. The characteristics and benefits of the Clackamas County SIZ include:

(1) SIZ Tax Abatement. Under the process set out in ORS 307.123 (hereinafter "Tax Abatement") Business Firms with a project in the Clackamas County SIZ pay full property taxes on the first \$100 million invested in the urban portion of the SIZ and \$25 million in the rural portion of the SIZ (hereinafter the "Project") (see Exhibit A attached).

Taxes on the value of property in excess of that amount are abated, however, the urban area \$100 million cap and the rural area \$25 million cap increases by three percent (3%) each year. SIZ Tax Abatement is limited in duration and will not exceed 15 years.

(2) Qualification. To qualify for the program, businesses must meet the basic eligibility standards established by the state of Oregon in addition to the Clackamas County SIZ requirements outlined in Exhibit B. The benefits and requirements of a particular SIZ are established at the time the SIZ is created and will not vary thereafter. As a result, contract negotiation and local jurisdiction discretionary review are removed from the project approval process. The standardization inherent in an SIZ lends consistency and predictability to the program. Such consistency and predictability increases the accuracy with which Business Firms can assess the benefits of an SIZ, which, in turn, increases the desirability of investing within an SIZ.

(3) Community Services Fee (CSF). Business Firms receiving SIZ Tax Abatement must pay an annual fee, known as the Community Service Fee, equal to the lesser of twenty-five percent (25%) of abated taxes or \$2 million in the Urban SIZ and \$500,000 in the Rural SIZ. This fee is shared according to the Community Service Fee provisions outlined in Exhibit C attached.

(4) Income Tax Payment. Oregon will distribute fifty percent (50%) of the personal income tax revenue attributable to the Clackamas County SIZ to the required local taxing authorities according to the agreed upon distribution of Community Service Fee payments outlined in Exhibit C.

(5) Regional Employment Incentive. Business Firms receiving SIZ Tax Abatement must enter into a First-Source Hiring Agreement, which promotes gainful work for persons already residing in the proximate city or county of the approved project as outlined in Exhibit D attached.

(6) Reduced Administrative Costs. The SIZ is designed to reduce local jurisdiction administrative costs through standardization of the requirements and procedures for obtaining SIZ Tax Abatement.

E. At various meetings with city councils during May and June 2010, the Cities approved co-sponsorship and operation of the Clackamas County SIZ and the execution of this Agreement.

F. On June 10, 2010, the County approved co-sponsorship and operation of the Clackamas County SIZ #1 and the execution of this Agreement.

G. The parties desire to execute this Agreement in order to co-sponsor the establishment of Clackamas County SIZ by the Oregon Business Development Commission and to provide for its joint-operation by the parties.

WHEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and with intent to be legally bound, the County and the Cities hereby agree as follows:

AGREEMENT

1. DECLARATION OF PURPOSE

A. This Agreement addresses and is pursuant to the provisions of ORS Chapter 285C, especially ORS 285C.600 through ORS 285C.639 and OAR 123 at Division 23, especially OAR 123-023-1000 through 123-23-4100, which describe the process for creating and operating an SIZ. The County and the Cities recognize that once established, the SIZ does not expire and may not be terminated.

2. AREA AND BOUNDARIES OF CLACKAMAS COUNTY SIZ.

The Clackamas County SIZ is located wholly within the County. The Clackamas County SIZ is contiguous and is exclusive of land inside of any other SIZ. The boundaries of the Clackamas County SIZ are set forth in the map in Exhibit A.

3. OBJECTIVES OF THE CLACKAMAS COUNTY SIZ.

The objectives of the Clackamas County SIZ include:

- To attract large capital intensive traded sector business to Clackamas County and the co-sponsoring Cities.
- To increase business investment, employment, and economic output in cities and unincorporated Clackamas County.
- To provide a clear and streamlined process for businesses interested in the program.
- To use Community Service Fees to mitigate impacts on infrastructure, services, and other fiscal demands of these large companies.

4. OBLIGATIONS

A. Joint Operation. The County and City are the co-Sponsors of the Clackamas County SIZ and shall jointly operate the zone. To the extent that additional administrative oversight, implementation, procedures, and/or standardized forms and other clear and straightforward materials must be developed pursuant to OAR 123-023-3100(3) (a) through (d) and OAR 123-023-3300(2), Clackamas County shall assume the primary role in providing these services. The Cities shall have full and complete opportunities to participate in the process and approve procedures and documents. Pursuant to OAR 123-023-3200(8) County and the Cities shall provide the documentation of the Clackamas County SIZ program to the Oregon Business Development Department including copies of additional policies, rules, procedural guidelines, administrative plans, methods of verification and a sample standardized agreement. The County and City

shall request designation of the Clackamas County SIZ as soon as practicable after completion of the public hearing required in ORS 285C.623(4).

B. Community Service Fee. Each Business Firm that is to benefit from SIZ Tax Abatement shall pay a Community Services Fee ("CSF") for community services support that relates to the direct impact of the eligible project on public services as set forth in this section.

1. Amount. For each year in which a Business Firm benefits from SIZ Tax Abatement, the Business Firm shall pay to the County a CSF, as provided in ORS 285C.609 (4) (b) (B), in an amount equal to twenty-five percent (25%) of the property taxes that would, but for the tax abatement, be due on the exempt property in each assessment year, but not exceeding \$500,000 in rural portions of the SIZ and \$2 million in urban portions of the SIZ per eligible project in any year.

2. Due Date. On or about Nov. 15, the County shall provide each Business Firm that receives Tax Abatement in the Clackamas County SIZ with a statement describing CSF calculations and the amount due. Each Business Firm receiving such statement shall pay the amount due within 30 days thereafter. The CSF payment shall be made to Clackamas County and sent to:

Strategic Investment Zone Coordinator
Clackamas County Business and Economic Development
150 Beavercreek Road
Oregon City, OR 97045

3. Adjustments. If the assessed value of the Business Firm is adjusted after November 15 of any tax year in such a manner that property taxes due from the Business Firm are reduced, and the reduction reduces the CSF for that year, the County shall pay the amount of the reduction to the Business Firm, together with interest at the rate established by law for tax refunds and delinquencies (ORS 311.505(2)) from the date of payment of the CSF. If the County does not pay the amount by November 10 of the following year, the Business Firm may withhold the unpaid amount, plus interest as provided in this section, from subsequent CSF payments due from the Business Firm. If the remaining CSF payments due from the Business Firm are less than the amount owed by the County to the Business Firm under this section, the County shall pay the amount due to the Business Firm not later than December 15 of the year following the year in which the reduction occurs. An appeal of the assessed value does not defer the CSF payment obligation set forth above. Any adjustments based on the outcome of the appeal shall be in accord with this paragraph.

4. Late Payment of CSF. Failure to make payment in full of any fee by the due date shall result in interest being charged on the past due balance at the rate established by law for delinquencies (ORS 311.505(2)) and the additional payment of such penalty or penalties as the Clackamas County Standardized

Agreement set out in Section 4-C may set out.

5. Nonpayment of CSF. If the Business Firm fails to pay the CSF by the end of the tax year in which it is due, the tax exemption shall be revoked and the property shall be fully taxable for the following tax year for which the fee remains unpaid.

C. Clackamas County SIZ Standardized Agreement. A Business Firm seeking SIZ Tax Abatement under ORS 307.123 in the Clackamas County SIZ shall execute the Clackamas County SIZ Standardized Agreement (“Standardized Agreement”) attached as Exhibit E.

D. Clackamas County SIZ Standardized First-Source Hiring Agreement and First Source Contracting Agreement. In order to encourage hiring of persons living in Clackamas County, and businesses located in Clackamas County, a Business Firm seeking SIZ Tax Abatement under ORS 307.123 in the Clackamas County SIZ shall execute the Clackamas County SIZ Standardized First-Source Hiring Agreement and First Source Contracting Agreement attached as Exhibit D.

E. Distribution of Payments. The distribution of all payments by a Business Firm and by the state to the County, the City, and other local taxing authorities shall be determined as outlined in Exhibit C.

F. Urban Renewal. In the event the Project is located in whole or in part within the boundaries of an urban renewal district, the applicable urban renewal agency shall consult and confer with the affected taxing districts in the manner provided in ORS 457.085(5) and 457.437. In its review of the effect of the Project on the urban renewal plan and in its dialogue with the affected taxing districts the urban renewal agency shall note its options under ORS 457.455 and the effect of the Project, if any, on maximum indebtedness and the possible application of ORS 457.470 and its provisions as to the concurrence of the tax districts.

5. MISCELLANEOUS TERMS

A. Governing Law. This Agreement shall be governed by the law of the State of Oregon. Any actions or suits commenced in connection with this Agreement shall be in Circuit Court of Clackamas County or Federal District Court for Oregon.

B. Complete Agreement. This Agreement and its attached exhibits are the complete and exclusive statement of the Agreement between the parties relevant to the purpose described above and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Agreement. No modifications of the Agreement will be binding on any party except as a written addendum signed by authorized agents of each party. All rights and remedies of each party shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of either party according to law.

C. Counterparts. This Agreement may be signed in counterparts. When every party has signed a counterpart all parties shall be bound by this Agreement.

CLACKAMAS COUNTY

Lynn Peterson
Chair

Date: _____

Mary Raethke
Recording Secretary

Reviewed for legal sufficiency
and form:

Counsel

CITY OF LAKE OSWEGO

Jack D. Hoffman
Mayor

Date: _____

Recorder

Reviewed for legal sufficiency
and form:

Counsel

CITY OF MILWAUKIE

Jeremy Ferguson
Mayor

Date: _____

Recorder

Reviewed for legal sufficiency
and form:

Counsel

CITY OF OREGON CITY

Alice Norris
Mayor

Date: _____

Recorder

Reviewed for legal sufficiency
and form:

Counsel

CITY OF HAPPY VALLEY

Rob Wheeler
Mayor

Date: _____

Recorder

Reviewed for legal sufficiency
and form:

Counsel

CITY OF ESTACADA

Becky Arnold
Mayor

Date: _____

Recorder

Reviewed for legal sufficiency
and form:

Counsel

CITY OF SANDY

Linda Malone
Mayor

Date: _____

Recorder

Reviewed for legal sufficiency
and form:

Counsel

CITY OF CANBY

Melody Thompson
Mayor

Date: _____

Recorder

Reviewed for legal sufficiency
and form:

Counsel

CITY OF MOLALLA

Mike Clarke
Mayor

Date: _____

INSERT NAME
Recorder

Reviewed for legal sufficiency
and form:

Counsel

EXHIBIT A – Map of Proposed Strategic Investment Zone

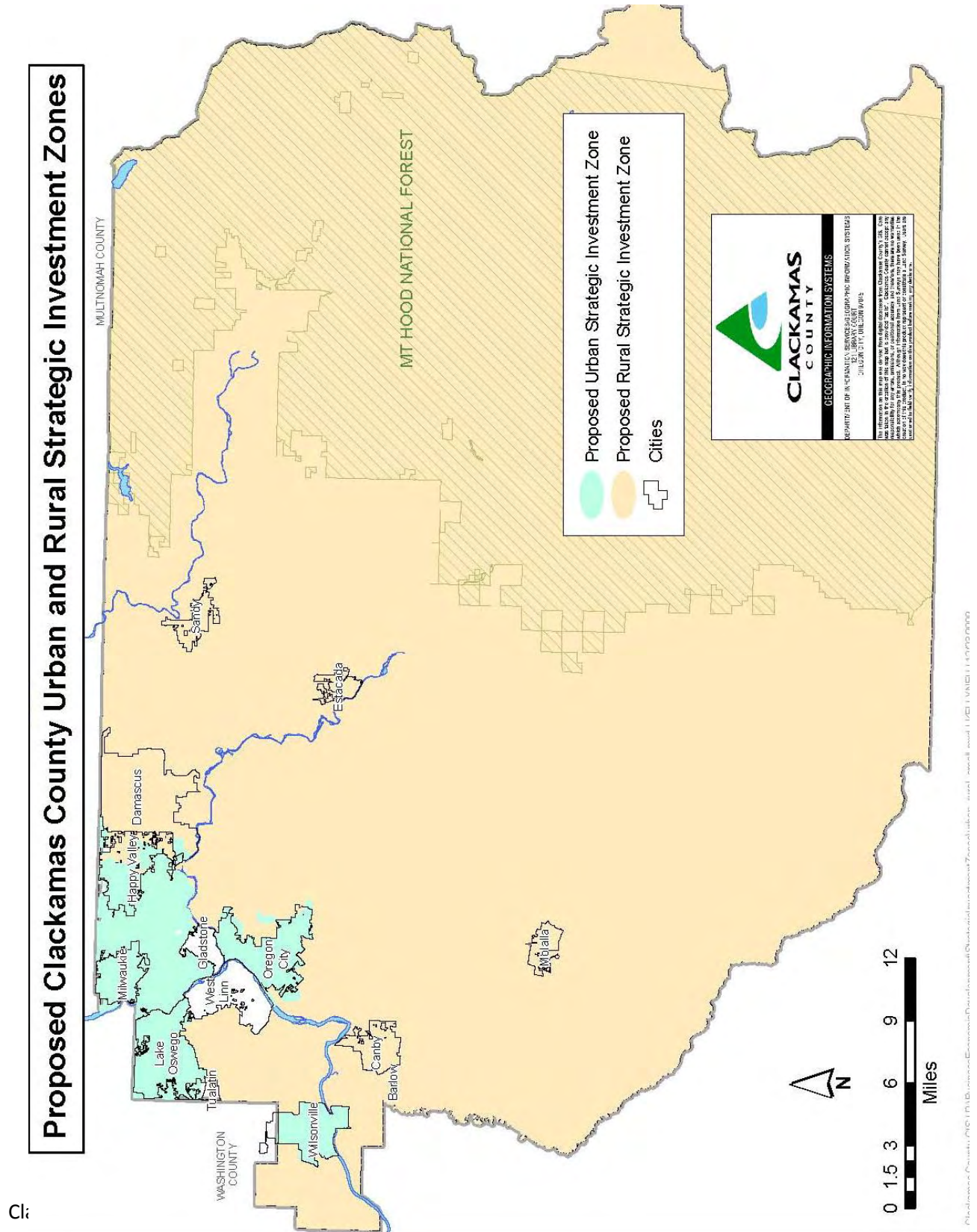


EXHIBIT B – Requirements of Companies

Eligible Companies must meet the following local requirements in addition to any Oregon requirements of the SIZ program.

- Companies must meet all local zoning, permitting, building, and environmental requirements and pay all associated fees.
- Companies must sign a first source hiring agreement that cements their commitment to make a good faith effort to hire Clackamas County and City residents before considering applicants from outside the County. A copy of the proposed first source hiring agreement will be part of the Intergovernmental Agreement signed by the Company, County and affected City before SIZ Tax Abatements are granted.
- Companies must sign a first source contracting agreement committing them to consider qualified local or county contractors first for SIZ related investments including construction, ongoing operations and professional services. Where possible, the company will consider using local suppliers and service providers before firms outside Clackamas County. A copy of the proposed first source contracting agreement will be part of the Intergovernmental Agreement signed by the Company, County and affected City before SIZ Tax Abatements are granted.
- Companies must execute, and at all times remain in good standing, under the Standardized Agreement set out as Exhibit E. Companies who fail to meet their obligations under the law and the provisions of this Agreement shall be subject to penalties and sanctions as set out in the Standardized Agreement at Section 6-J.
- Companies must work in partnership with County workforce training providers and education institutions early in the process and throughout the 15 year abatement period to ensure that county residents have the opportunity to receive education and training to be eligible for jobs created by the SIZ investment. Partnership opportunities could include working with school districts, Clackamas Community College, Marylhurst University, or the Oregon Institute of Technology to tailor degree or certification programs, assisting with curriculum development, developing internships, providing instruction assistance, mentoring opportunities, consideration of financial or equipment donations for training purposes, and maintaining any current company policies regarding initial employment, promotion of education and tuition reimbursement.

Provide yearly reports to the County and the State of Oregon after January 1 and before April 1 as outlined in OAR 123-023-4000 and 123-023-4100.

EXHIBIT C: Community Service Fee and Income Tax Revenue Share Distribution

Clackamas County will collect Community Service Fees of 25% of abated taxes, income tax payments of 50% of personal income tax paid by employees of the company, and any other future revenue sources associated with the SIZ annually and distribute funds based on the distribution approach below.

Option A: Address Business Impacts and Community Priorities

For the Cities of ?, and ?:

Revenues associated with the SIZ program will be allocated first to mitigate direct impacts of the development on the community that are needed over and above systems development charges collected. Once those needs are addressed, additional revenues will be used to fund high priority projects or programs of the community as determined by the City Council for projects within City limits and by the Board of County Commissioners for projects in unincorporated Clackamas County. The County and City will make decisions regarding SIZ investment priorities jointly and discuss decisions every 2 years to assess and maximize the impacts of SIZ investments for the community.

Option B: Create a Community Enhancement Fund.

For the Cities of ?, and ? and unincorporated Clackamas County

Revenues associated with the SIZ program will be distributed into separate funds established for each community, or unincorporated Clackamas County, that is impacted by Projects. The funds will be managed by Clackamas County as to projects within its jurisdiction, or according to the direction given by Community Enhancement Fund members of impacted cities. Members include one representative each from the City, the County, all affected taxing districts, and any other representative the City and County jointly agree to appoint. The Committee will first seek consensus; in the event consensus is not reached, decisions shall be made on the basis of a vote demonstrating a majority of the members in attendance.

The Committee will meet within two weeks of receiving a complete application, discuss potential business impacts on the community, determine allocation of the funds and document funding allocations in writing, and they will revisit enhancement fund decisions two years after the initial decisions were made to make any needed adjustments. The purpose of the fund is to provide for coordinated community services support relating to the impacts and needs of project within the Clackamas County SIZ.

Option C: Support Local Taxing Districts

For cities of Molalla, ?, and ?...:

Revenues associated with the SIZ program will be allocated on a pro rata share to all affected taxing districts to partially compensate them for lost property tax revenue on SIZ investments over \$25 million in rural areas and \$100 million in urban areas. Taxing districts are encouraged to meet soon after a business application has been submitted and periodically thereafter to discuss the potential of pooling resources to invest in projects of mutual interest that have a bigger impact on the community.

Dispute resolution: In the event the County, the City, and other affected taxing districts do not agree as to the allocation of revenues, the matter shall be submitted to mediation before a mediator is mutually acceptable to all parties. Such mediation shall take place within 60 days of a party's request for mediation in a neutral location mutually acceptable to all parties. Each party shall be responsible for paying its own costs and expenses (including legal fees, if necessary) for the mediation and share equally the expenses of the mediator.

The mediator shall issue his or her decision within 10 days of the mediation. In the event that the mediation is unsuccessful, the Oregon Business Development Commission shall determine the formula for distribution of the fee according to ORS 285C.609(6)(b).

EXHIBIT D – First Source Hiring and Contracting Agreements



CLACKAMAS COUNTY STRATEGIC INVESTMENT ZONE FIRST SOURCE HIRING AGREEMENT

This First Source Agreement for referral of qualified job applicants is entered into between THE OREGON EMPLOYMENT DEPARTMENT, hereinafter referred to as the "CONTACT AGENCY," which coordinates job referrals for and represents the following other publicly funded job training providers for the geographic area covered in the Interagency Agreement under OAR 123-070-12100, hereinafter referred to as "PROVIDERS," and the following Business Firm located in this geographic area, hereinafter referred to as the "EMPLOYER."

The EMPLOYER is or will be receiving benefits from the Clackamas County Strategic Investment Zone program. Under this First Source Agreement, the EMPLOYER will use the CONTACT AGENCY as its first source for external referral of Qualified Applicants for all job openings of the EMPLOYER at the following location(s):

INSERT LOCATION OF SIZ PROJECT HERE

Such that the EMPLOYER agrees to the following:

- To effectively notify the CONTACT AGENCY of all job openings no later than when notification is received by any other job referral source external to the EMPLOYER or any public announcement for the job opening, throughout the term of this agreement;
- That each such notice to the CONTACT AGENCY shall include job qualifications and a deadline for referrals;
- To ensure that the CONTACT AGENCY and the PROVIDERS will have sufficient lead time (minimum lead time is ____ business days) before the job application close date, except in temporary or emergency situations); and sufficient information to make meaningful referrals for jobs that will be filled by the EMPLOYER;
- That all job information may be shared with all PROVIDERS for which referrals are coordinated by the CONTACT AGENCY; and

- That all job openings shall be listed in the public labor exchange system, (iMatchSkills JOB SELECTION SYSTEM) of the Oregon Employment Department, insofar as a local office of that State Agency is a PROVIDER.

The CONTACT AGENCY agrees to the following:

- That to the extent that Qualified Applicants are available among the relevant PROVIDERS, to refer those individuals to the EMPLOYER for job openings; and
- To facilitate and implement the listing of all job openings in the “public labor exchange system,” in cooperation with other PROVIDERS (though, not necessarily to the exclusion of other referral methods.)

The EMPLOYER agrees to:

- Fully consider for employment any Qualified Applicant referred by the CONTACT AGENCY by the referral deadline;
- Notify the CONTACT AGENCY when a Qualified Applicant is hired by the EMPLOYER; and
- Provide after-the-fact information to the CONTACT AGENCY about applicable overall hiring and job vacancies in a prescribed manner or as requested by the CONTACT AGENCY, in accordance with OAR 123-070-1900(1) to (3).
- Comply with all relevant laws regarding employment of Qualified Applicants of this State and the Federal government, including but not limited to not discriminating on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, sexual orientation, physical or mental disability, or any other reason prohibited by law.

The EMPLOYER will make all final decisions on hiring new employees. After the EMPLOYER has hired the employees, the EMPLOYER assumes full responsibility for them as employees.

All persons hired under this Agreement are subject to the EMPLOYER’s regular personnel policies and procedures and have no special or additional rights arising from this Agreement.

If the terms of this Agreement conflict with the provisions of a collective bargaining agreement to which the EMPLOYER is a party, the bargaining agreement shall prevail.

Both the CONTACT AGENCY and EMPLOYER agree to attempt to resolve all areas of misunderstanding, disagreement or dissatisfaction with each other as soon as they arise. If the parties are unable to resolve the issue, either may:

Initiate a meeting between the EMPLOYER and either the CONTACT AGENCY or all of the PROVIDERS; or

Request assistance from the Oregon Business Development Department.

This agreement shall take effect on the date of the last signature by the contracting parties below, and shall be in full force and effect until DECEMBER 31 OF THE FIFTEENTH YEAR OF THE STRATEGIC INVESTMENT ZONE or until the end of the term, period or periods as described in OAR 123-070-1600.

APPROVED

CONTACT AGENCY

Name
Title
Address

EMPLOYER

Name
Title
Address

Phone

Phone

Unemployment Insurance Account #

Signature and Date

Signature and Date



CLACKAMAS COUNTY STRATEGIC INVESTMENT ZONE FIRST SOURCE CONTRACTING AGREEMENT

This First Source Agreement for referral of qualified contractors is entered into between Clackamas County, hereinafter referred to as the "CONTACT AGENCY," which coordinates contractor referrals, hereinafter referred to as "PROVIDERS," and the following Business Firm located in this geographic area, hereinafter referred to as the "EMPLOYER." (INSERT NAME OF SIZ PROJECT HERE).

The EMPLOYER is or will be receiving benefits from the Clackamas County Strategic Investment Zone program. Under this First Source Agreement, the EMPLOYER will use the CONTACT AGENCY as its first source for external referral of qualified contractors for all local construction, operations, training, and suppliers of the EMPLOYER:

Such that the EMPLOYER agrees to the following:

- To effectively notify the CONTACT AGENCY of all contracting opportunities with the company no later than when notification is received by any other referral source external to the EMPLOYER or any public announcement for the contracting opportunity, throughout the term of this agreement;
- That each such notice to the CONTACT AGENCY shall include contractor qualifications and a deadline for referrals;
- To ensure that the CONTACT AGENCY and the PROVIDERS will have sufficient lead time (minimum lead time is ____ business days) before the contractor bid closing date, except in temporary or emergency situations); and information to make meaningful referrals for contracting opportunities that will be filled by the EMPLOYER;
- That all contracting information may be shared with all PROVIDERS for which referrals are coordinated by the CONTACT AGENCY; and

The CONTACT AGENCY agrees to the following:

- That to the extent that Qualified Contractors are available among the relevant PROVIDERS, to refer those firms to the EMPLOYER for contracting opportunities; and

The EMPLOYER agrees to:

- Fully consider for employment any Qualified Contractor referred by the CONTACT AGENCY by the referral deadline;
- Notify the CONTACT AGENCY when a Qualified Contractor is retained by the EMPLOYER; and
- Provide after-the-fact information to the CONTACT AGENCY about applicable overall contracting arrangements annually to include name of contractor, amount of contract, jobs created, and other economic indicators on request.

Comply with all relevant laws regarding contracting for goods and services of this State and the Federal government, including but not limited to not discriminating on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, sexual orientation, physical or mental disability, or any other reason prohibited by law.

The EMPLOYER will make all final decisions on contracting arrangements.

The CONTACT AGENCY, the EMPLOYER and the Contractor agree to attempt to resolve all areas of misunderstanding, disagreement or dissatisfaction with each other as soon as they arise.

This agreement shall take effect on the date of the last signature by the contracting parties below, and shall be in full force and effect until DECEMBER 31 of the last year of the fifteen year exemption period or early closure or relocation of the business.

APPROVED

CONTACT AGENCY

Name
Title
Address

Phone

EMPLOYER

Name
Title
Address

Phone

Signature and Date

Signature and Date

**EXHIBIT E – CLACKAMAS COUNTY STRATEGIC ENTERPRISE ZONE
STANDARDIZED AGREEMENT**

INCLUDED AS A DISTINCT DOCUMENT

Oregon City Strategic Investment Zone Boundaries

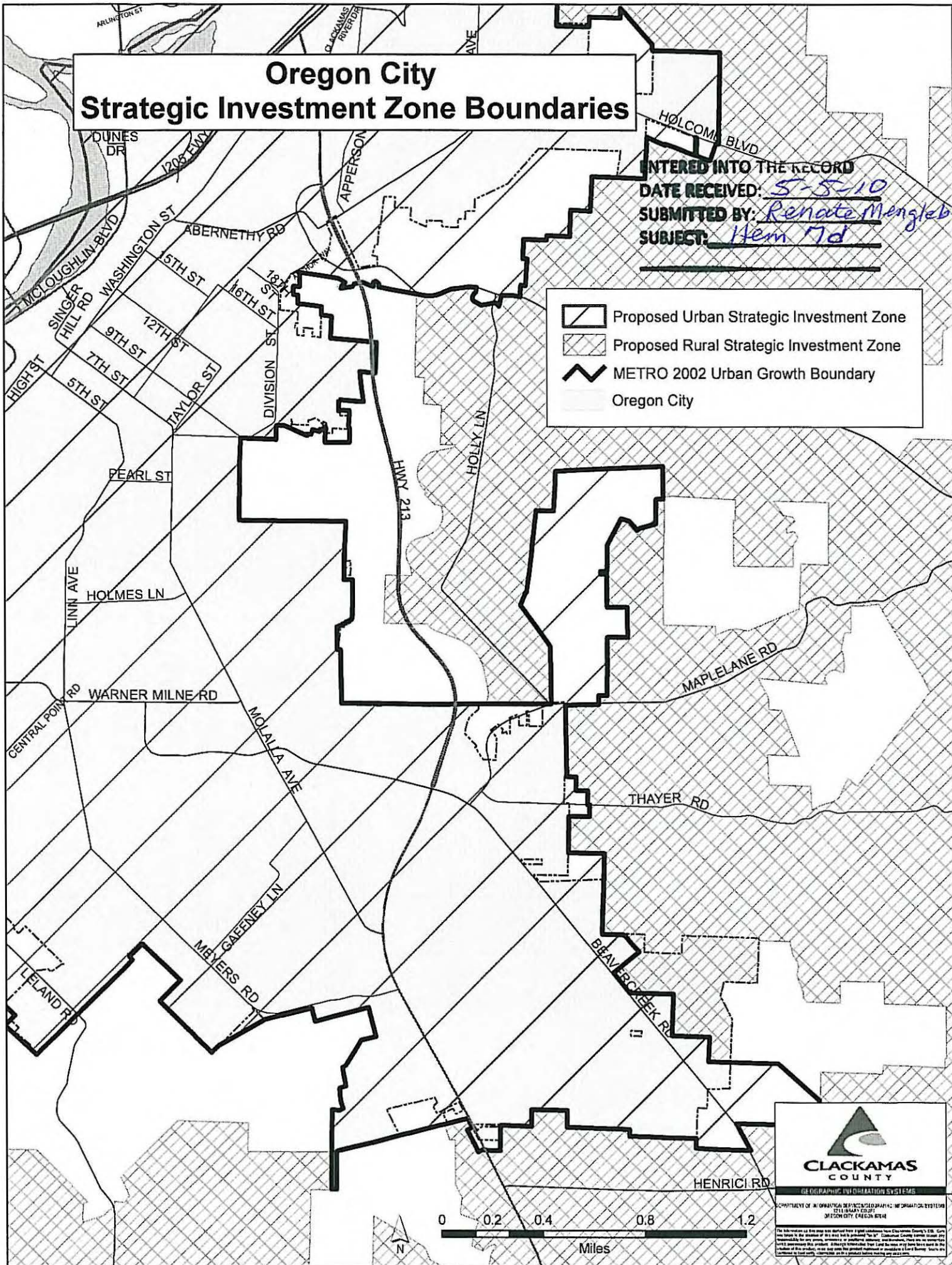
ENTERED INTO THE RECORD

DATE RECEIVED: 5-5-10

SUBMITTED BY: Renate Mengleberg

SUBJECT: Hem Rd

-  Proposed Urban Strategic Investment Zone
-  Proposed Rural Strategic Investment Zone
-  METRO 2002 Urban Growth Boundary
-  Oregon City



CLACKAMAS COUNTY
GEOGRAPHIC INFORMATION SYSTEMS
DEPARTMENT OF INFORMATION SERVICES/CLACKAMAS COUNTY GIS
1211 1/4/2009

The information on this map was derived from a digital database from Clackamas County's GIS. Clackamas County is not responsible for any errors, omissions, or misstatements, and therefore, there is no warranty for the use of this information. Clackamas County is not responsible for any errors, omissions, or misstatements, and therefore, there is no warranty for the use of this information. Clackamas County is not responsible for any errors, omissions, or misstatements, and therefore, there is no warranty for the use of this information.





Agenda Item No. 7e
Meeting Date: 05 May 2010

COMMISSION REPORT: CITY OF OREGON CITY

TO:	Honorable Mayor and City Commission
FROM:	Nancy Kraushaar, City Engineer and Public Works Director
PRESENTER:	John Lewis, Operations Manager
SUBJECT:	Pavement Maintenance Utility Program Annual Report
Agenda Heading: General Business	
Approved by: David Frasher, City Manager	

RECOMMENDED ACTION (Motion):

This report is intended to inform the City Commission and the general public and does not require Commission action.

BACKGROUND:

In accordance with Ordinance No. 08-1007, which established City Code 13.30, Transportation Utility Fees (TUF):

“City staff shall prepare an annual report that presents how revenues were spent.”

Oregon City has 138 miles of surface streets with a reconstruction value of approximately \$1 million per mile. Transportation funding is one of the most challenging issues facing public agencies. Since In the past Oregon City has used State gas taxes, road transfer revenues and since 2008 Pavement Maintenance Utility Fees (PMUF) to provide limited maintenance of the City's street system.

This informative report is to provide the City Commission with an update of work accomplished in 2009 and planned for 2010.

BUDGET IMPACT:

FY(s): N/A

Funding Source: N/A

ATTACHMENTS:

2009 Pavement Maintenance Annual Report



OREGON CITY

2009 Pavement Maintenance Annual Report



Oregon City Public Works
Operations Center
122 S. Center Street
Oregon City, Oregon 97045

April 2010

***Preserving our past – building
our future***



Prepared by:

John Lewis, P.E., Public Works
Operations Manager
Jim Burch, Public Works Street
Supervisor

2009 Pavement Maintenance Utility Fee Annual Report

Purpose for an Annual Report

In accordance with Ordinance No. 08-1007, which established City Code 13.30, Transportation Utility Fees (TUF):

"City staff shall prepare an annual report that presents how revenues were spent."

For consistency and to better align the name of the fee with the purpose, throughout the remainder of this report the TUF will be referred to as a Pavement Maintenance Utility Fee (PMUF).

Background

Oregon City has 138 miles of surface streets with a reconstruction value of approximately \$1 million per mile. Transportation funding is one of the most challenging issues facing public agencies. In the past, Oregon City has used State gas taxes and road transfer revenues to provide limited maintenance of the City's street system. Historically, the City's pavement maintenance liability far exceeded the amount available for use from these revenue sources.

In 2007, the City Commission asked the Public Works Department and a Transportation Funding Study Citizens Committee to identify and establish a sustainable funding source for street maintenance. The Committee concluded that a PMUF is the most equitable and stable source for street funding.



Pavement overlay on South End Road



City crews making street repairs

They recommended an annual revenue goal of \$1.5 million to at least maintain the City's average Pavement Condition Index (PCI)¹. The City Commission decided that this target be gradually phased in over a 5-year period to allow customers time to incrementally budget for the fee. With this phased in fee scenario, first year fees could provide \$600,000 and jump-start the City's pavement maintenance program.

On May 21, 2008, the City Commission approved Ordinance No. 08-1007 establishing the PMUF. The purpose of the fee was to provide cost recovery for maintaining and operating Oregon City's transportation system. The fee was based on actual cost projections from the StreetSaver Pavement Management software (model). Like those in many other Oregon communities, the fee is also based on nationally recognized information developed by the Institute of Traffic Engineers that estimates the average number of vehicle trips generated by a property based on how that property is used.

StreetSaver Pavement Management System

Documentation of pavement history including inspections, maintenance, and cost scenarios are examples of the kinds of information recorded in the City's StreetSaver software (database). Each street is split into one or more segments and tracked as an asset along with the maintenance history of the segment. Oregon City has been collecting inspection history since 1983. In both 2008 and 2009, the maintenance work completed for both years was added to the StreetSaver Pavement Management System. A PMUF map showing 2008 and 2009 major pavement maintenance accomplishments is attached as Exhibit A.

A Billable Unit Rate

In order to meet the annual revenue goal of \$1.5M, the residential monthly unit rate, applied to single family residential land uses, was established at \$1.15 per adjusted average daily trip. The monthly non-residential unit rate, applied to all other land

¹ Pavement Condition Index (PCI), developed by the United States Army Corps of Engineers, is based on a visual survey of the pavement and a numerical value between 0 and 100 to define the condition with 100 representing excellent pavement.

uses, was established at \$0.189 per adjusted average daily trip. For Fiscal Years '09/'10 through '12/'13, the fee will continue to be phased in to help ease the impact of this new fee. The schedule of the phased in fee (with inflation included) follows:

Table 1 – PMUF Rates

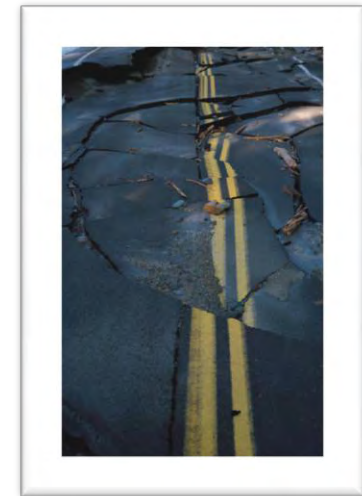
Time Period	Residential Monthly Rate	Residential Rate per Trip	Non-Residential Rate per Trip
July 1, 2008 through June 30, 2009	\$4.50	\$0.470	\$0.077
July 1, 2009 through June 30, 2010	\$6.00	\$0.627	\$0.103
July 1, 2010 through June 30, 2011	\$7.50	\$0.784	\$0.129
July 1, 2011 through June 30, 2012	\$9.00	\$0.940	\$0.154
July 1, 2012 through June 30, 2013	\$11.20	\$1.172	\$0.192

Actual revenues collected for the first year of fee implementation (2009) was \$605,650. Fees collected for the first eight months of the second year of the program are \$697,000 which puts the City on track for a second year revenue projection of \$971,000.

Rates and Rate Types

Adoption of the PMUF established a rate structure providing for a variety of parcel types. The rates for single family residences are a straight-forward unit rate per each parcel. Multi-family housing rates were a similar calculation. The monthly fee for schools is computed based on the number of students which varies based on enrollment.

All other developed parcels have a monthly fee based on the non-residential unit rate and then considering factors of estimated daily trips, and square footages of buildings. There are approximately 575 non-residential customers.



Oregon City's Transportation System

Within the city limits, the transportation system is comprised of multiple jurisdictional responsibilities. The following table provides a history and summary of the mileage obligation of each jurisdiction:

Table 2 – Transportation System Inventory

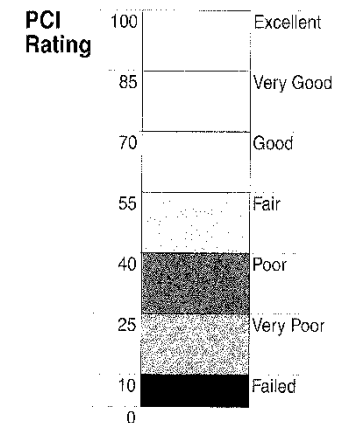
Year	City	County	Private	ODOT	Grand Total
2006 Miles (12/2006)	132.7	10	8	11.4	162.10
2007 Miles (12/2007)	135.03	11.94	9.93	12.48	169.38
2008 Miles (12/2008)	136.16	13.46	9.54	12.57	171.73
2009 Miles (12/2009)	137.91	13.29	10.07	12.45	173.72

Oregon City's Pavement Condition Index

In June 2007, the City completed a pavement condition survey, reviewing the condition of portions of all Oregon City streets. Historically the City has completed this evaluation every three years. Oregon City has been collecting inspection history since 1983. The pavement condition survey is a detailed field assessment of a minimum 10% representative sample of each street segment. This survey information is compiled within the StreetSaver system where a computation is run to establish a City wide Pavement Condition Index (PCI).

In 2007, the overall city-wide average PCI was rated as a 68. In March, 2010, the City completed a new pavement condition survey and the overall citywide pavement condition index is rated as a 61. This reduction in PCI is an indication that the deterioration of Oregon City's pavement system continues to exceed the rate of repair. It also is an indication that the City has a backlog of maintenance needs which have progressed into a condition that will require higher cost repair work.

Pavement Condition Index



2009 PMUF Accomplishments

Preventive Maintenance

Preventive pavement maintenance treatments are surface treatments that are applied early in the life of the roadway to prolong the life of the surface. The objective of preventive maintenance is to add a protective coating on top of the existing surface to keep surface water from seeping through the small cracks into the underlying base rock or native soil. Crack sealing, slurry sealing, and chip sealing are the traditional types of preventive maintenance used in our region.

During the fall of 2009, the slurry seal program included 37 individual street segments which were scattered throughout Oregon City. In total, 4.25 miles of streets were surface treated as part of this program. In-house crews prepared the streets in the spring and early summer months of 2009 by cleaning and sealing all surface cracks prior to the slurry seal application. A slurry seal contractor later applied the slurry sealing materials.

Preventive maintenance project locations and segment details for 2009 are included in table form as Appendix A, and shown in map form as Exhibit B.

In-House Pavement Maintenance and Street Reconstruction

In-house pavement maintenance is work that the Oregon City Public Works Department (OCPW) performs using City equipment. In the summer months, staffing is augmented by seasonal workers. Work can be anything from pothole repair or spot repair of small pavement failures to a larger scale version of pavement failure using the same in-house resources. The in-house street maintenance work is one of many work tasks performed by Street Division staff.

Crack Seal - Injection of hot tar or asphalt into cracks and paving seams.

Slurry Seal - Very thin layer of liquid asphalt and sand used to seal street surfaces. (Cost is typically less than \$2 per square yard).

Chip Seal - A thin layer of hot asphalt is applied to the street surface then small gravel is applied and leveled and compacted into place. (Costs range from \$2.50 to \$3.00 per square yard.)

Overlay - A new layer of asphalt or concrete, which adds structural strength and seals the surface. Often grinding or inlays are needed to match pavement grades or remove severely distressed pavement. (Costs range from \$6 to \$26 per square yard, depending on the overlay thickness and preparation).

Reconstruction - The most expensive street treatment, reconstruction entails extensive street repair work that involves excavating the existing street and rebuilding gravel road base and surface layers. (Costs range from \$35 to \$55 per square yard depending on the pavement section and preparation).

All in-house pavement maintenance projects focused on repairing the base of the road, adding additional strength and repairing failing pavement sections. During the summer of 2009, OCPW used a local vendor for hot mix asphalt to complete a total of 8 larger scale individual projects applying a total of over 867 tons of asphalt. Table 3 includes a summary of the 2009 in-house pavement repairs.

Table 3 – 2009 In-House Work

Street	Beginning	Ending	Material Cost	In-House Labor Cost*	Project Cost	General Treatment Description
Leland Road - North bound travel lane	North of Clairmont Way	South of Warner Milne Road	\$20,064	\$35,840	\$55,904	Spot repair, zipping and paving
15th Street	East of John Adams Street	West of Jackson Street	\$12,597	\$13,440	\$26,037	Spot repair, zipping and paving
Park Drive	Linn Avenue	East of McCarver Avenue	\$6,441	\$17,920	\$24,361	Spot repair, overlay
Main St. Extension	Main Street Extension	Firestone alley	\$3,591	\$8,960	\$12,551	Spot repair, zipping and paving
Pioneer Center Parking Lot	All		\$1,995	\$4,480	\$6,475	Spot repair, zipping and paving
5th Street	Monroe Street	Washington Street	\$3,066	\$8,960	\$12,026	Spot repair, zipping and paving
Mt. View Cemetery	All		\$3,066	\$2,240	\$5,306	Spot repair, zipping and paving
Barker Road	Near South End Road	Near South End Road	\$1,425	\$2,240	\$3,665	Spot repair, zipping and paving

* In-house labor costs are shown for comparative presentation but they are not paid using PMUF funding but instead paid using State gas tax revenues.

Contract Street Reconstruction

Contract street reconstruction is other street reconstruction work that is completed through prevailing wage public improvement contracting. Typically, this work includes asphalt overlays, cold plane pavement removal (milling) combined with an asphalt overlay, structural dig-outs and repairs, or a complete reconstruction of the entire street section. Costs for this kind of work vary widely based on the type of repairs, classification of the street, volume of traffic, anticipated vehicle loading, and complexity of temporary traffic control. Generally these kinds of projects include engineering, project administration, detailed plans, and contract specifications.

In 2009 the City advertised the 2009 Pavement Rehabilitation Project and received five bids. The engineer's estimate for the project was \$536,939 and the low bid came in at \$382,741. The successful low bidder was awarded the project and completed the work with a final project cost including change orders at \$410,227. The work performed is outlined in Table 4. The project plan set cover sheet and the bid tabulation sheet is included as Exhibit E & F.



Table 4 – 2009 Contracted Street Reconstruction

Street	Beginning	Ending	Length (ft)	Width (ft)	Area (sy)	Estimated Treatment Unit Cost (\$/sy)*	Estimated Project Allocation**	General Treatment Description
15 th St	Washington St	East of John Adams	300	40	1,333	\$21.54	\$28,713	2" mill and 3" paveback; curb to curb, coordinate with utilities
15 th St	Jackson St. intersection	100' each way	275	34	1,039	\$54.62	\$56,750	2" mill and 3" paveback; curb to curb
3rd Ave	Ganong	Hedges	240	22	587	\$9.85	\$5,782	2" overlay
Center St	Sunset	S 1st St	1,700	24	4,533	\$12.73	\$57,705	3" overlay
Division St	Hospital reconstruction	Anchor Way	1,000	26	2,889	\$23.50	\$67,892	3" mill, 3" paveback
Hedges St	3 rd St	McLoughlin Blvd	240	24	640	\$15.22	\$9,734	2" overlay
Molalla Ave	Beavercreek Rd	19349 Molalla Ave (Post Office)	3,000	7	2,333	\$22.60	\$52,726	Spot patching, 3" mill, 3" paveback
Warner Parrott Rd	Linn Ave	School crosswalk	675	varies	3,511	\$37.29	\$130,925	2" mill and 3" paveback, curb to curb, loops
Total							\$410,227	

* The Estimated Unit Treatment Cost = the Estimated Project Allocation / Area

** The Estimated Project Allocation is not a detailed bid breakout of each unit quantity and unit price but rather it's an allocation based on an estimate of the percent of the overall project cost minus the cost of underground utilities or sidewalk improvements (non PMUF related work).

Another project completed through a City/developer agreement with the City paying for its portion of the work was:

Street	Beginning	Ending	Length (ft)	Width (ft)	Area (sy)	Treatment Unit Cost (\$/sy)	Project Allocation	General Treatment Description
South End Road	Pinewood	1160 South End	1,900	40	8,444	\$16.21	\$136,897	2" mill and 3" paveback, curb to curb

A PMUF map showing the 2009 Street Repair Projects is attached as Exhibit B.

Future PMUF Work

The City has executed a personal services agreement with Harper Houf Peterson Righellis Inc., an engineering consultant, to develop the plans and specification necessary to solicit bids for the City's 2010 Oregon City Roadway Reconstruction Projects. Engineering consulting services for development of a bid package for the contract overlay work are anticipated to be \$56,000. Table 5 includes a tentative description of the project limits, estimated quantities, a short description of the anticipated work and project cost estimates.

Table 5 - 2010 Street Work

Street	Beginning	Ending	Length (ft)	Width (ft)	Area (sy)	Treatment Unit Cost (\$/sy)	Concept Estimate Project Cost*	General Treatment Description
Leland Road	Warner Milne Road	Clairmont Way	3000	30	10000	\$30	\$300,000	3" overlay; coordinate with utilities
Meyers Road	Clairmont Way	Frontier Parkway	1850	28	5760	\$26	\$150,000	3" overlay
Blue Ridge Drive	Shenandoah Drive	Shenandoah Drive	1400	32	5000	\$17	\$85,000	2" overlay
Warner Parrott Road	100' east of South End Road	650' west of Linn Avenue	3950	20	8777	\$2.90	\$30,450	Chip seal
Linn Avenue	50 feet north of Warner Parrott Road	Holmes Lane	1900	20	4222	\$2.90	\$14,750	Chip seal
Molalla Avenue	Dewey Street	Mountainview Street	1550	20	3444	\$2.90	\$12,000	Chip seal
Total							\$592,200	

*Includes 10% contingency.

In addition to roadway reconstruction projects, the City intends to allocate \$90,000 towards slurry seal (including crack sealing where needed) projects during the summer of 2010.

The proposed 2010 Street Repair project map is attached as Exhibit C.

Division Street

The Division Street reconstruction project between Molalla Avenue and 15th Street continues to be a priority for the Street Division. Past inquiries into the best solution(s) for Division Street have forced staff to step back and take a more

comprehensive look at Division Street. It's our intent to work with an engineering consultant to develop a comprehensive solution that looks at the underground utility and road section needs to accommodate TriMet bus traffic, sidewalk improvements and ADA measures. At this time, we anticipate a phased approach to Division Street with consideration for the cost of the project, available funding and the upcoming intersection improvements at Molalla Avenue/Taylor Street/7th Street/Division Street.

StreetSaver Pavement Management System

March and April 2010 included inspections and a new StreetSaver analysis of the City's pavement system. During 2010, The City will be using the new inspections and PCI calculations to develop scenarios, considering different annual funding contributions, to establish the City's 5-year paving CIP program. The StreetSaver results will be compared with the 2010 Water Master Plan to build a comprehensive list of paving projects that coordinate water and other utility improvement projects. A more reliable 5-year look ahead at how best to complete the City's pavement improvement projects is expected for the 2010 Pavement Maintenance Utility Fee Report.

Conclusion

The summer of 2009 was a productive and successful continuation of the City's pavement management program. This is a new program which we are committed to working into our already heavy workload. We know this program is important and valuable to the community. We continue to improve our in-house paving program and balance the demands on the department with the demands of the paving season. Our small paving crew and lightweight equipment continue to provide strong support for the more robust abilities of construction companies in the business of milling and paving.

Preventive maintenance continues to be a top priority for the City's 10 to 15 year-old residential streets, in some cases, even older streets. This is consistent both with the direction we received from the Transportation Funding Study Citizen Committee and with the way other agencies with proven preventive pavement maintenance programs proceed.

Thus far, all pavement maintenance expenses have stayed within the City's PMUF budget allocation. Highly competitive bids have been the new standard seen by local agencies which means City staff continues to be more confident that the PMUF will improve the City's overall PCI once fully funded and implemented.

Attachments:

Exhibit A, PMUF Major Accomplishments (2008-2009) Map

Exhibit B, 2009 Street Repair Projects

Exhibit C, Proposed 2010 Street Repair Projects

Exhibit D, In-House pavement Repair Stopgap Measures

Exhibit E, Project Cover Sheet – 2009 Pavement Rehabilitation

Exhibit F, Bid Tabulation Sheet – 2009 Pavement Rehabilitation Project

U:\Pavement Maintenance Utility Fee\Annual Report\2009 Report\2009 annual report (3).docx

Appendix A

Preventive Pavement Maintenance Areas (2009)

Type II Slurry Seal @ \$1.02/sq. yd.

Street	Beginning	Ending	Length (ft)	Total Area (sf)	Total Area (sy)	Total Cost
Highland Drive	Boynton Street	Central Point Road	1,629	47,241	5,249	\$5,353.98
Boynton Street	Highland Drive	Central Point Road	1,683	55,539	6,171	\$6,294.42
Tower Hill Drive	Boynton Street	Highland Drive	255	7,395	822	\$838.44
Clearbrook Drive	Barker Avenue	End	1,085	34,310	3,812	\$3,888.24
Pin Oak Drive	Woodlawn Avenue	Clearbrook Drive	280	8,680	964	\$983.28
Wake Robin Circle	Gilman Drive	End	1,145	30,425	3,381	\$3,448.62
Cominger Drive	Pease Road	Lot Whitcomb Drive	589	24,834	2,759	\$2,814.18
Cominger Court	Lot Whitcomb Drive	End	160	10,810	1,201	\$1,225.02
Gilman Drive	Division Street	Wake Robin Circle	1,215	35,235	3,915	\$3,993.30
Trillium Park Drive	Gilman Drive	Davis Road	1,321	33,025	3,669	\$3,742.38
Shelby Rose Drive	South End Road	Maywood Street	1,472	54,488	6,054	\$6,175.08
Bean Court	Trillium Park Drive	End	472	17,875	1,986	\$2,025.72
Canyon Court	Trillium Park Drive	End	169	4,225	469	\$478.38
Swordfern Court	Trillium Park Drive	End	135	9,175	1,019	\$1,039.38
Merchant Place	North end of loop	Brandow Street	155	4,340	482	\$491.64
Maywood Street	City limits	Shelby Rose Drive	589	17,081	1,898	\$1,935.96
Maywood Court	Maywood Street	End	158	9,482	1,054	\$1,075.08
Rusty Terrace	Brandow Street	Shelby Rose Drive	351	10,179	1,131	\$1,153.62
Brandow Street	All		1,433	53,182	5,909	\$6,027.18

Street	Beginning	Ending	Length (ft)	Total Area (sf)	Total Area (sy)	Total Cost
Lot Whitcomb Drive	Leland Road	Leland Road	651	20,181	2,242	\$2,286.84
Cook Street	Lawton Road	End of old pavement near Oaktree Avenue	1,228	39,368	4,374	\$4,461.48
Julie Ann Drive	Cook Street	Josephine Street	689	19,981	2,220	\$2,264.40
Sunny Lane	Julie Ann Drive	Where road widens into a circle	223	6,467	719	\$733.38
Josephine Street	One lot north of Julie Ann Drive	End	246	6,888	765	\$780.30
Auburn Drive	Boynton Street	Start of new pavement	107	3,103	345	\$351.90
Spring Valley Drive	Partlow Road	Boynton Street	1,461	42,369	4,708	\$4,802.16
Parrish Road	South End Road	145 ft southeast of Pennys Way	780	22,620	2,513	\$2,563.26
Linda Drive	Parrish Road	Karen Scott Drive	167	8,226	914	\$932.28
Karen Scott Drive	Linda Drive	Todd Kelli Way	197	9,366	1,041	\$1,061.82
Todd Kelli Way	Karen Scott Drive	Start of new pavement	97	2,716	302	\$308.04
Pennys Way	Parrish Road	Finnegan's Way	740	25,020	2,780	\$2,835.60
Finnegan's Way	Pennys Way	City Limits	220	6,160	684	\$697.68
Kari Ann Court	Pennys Way	End	80	8,435	937	\$955.74
Jennifer Lynn Court	Pennys Way	End	139	9,842	1,094	\$1,115.88
Filbert Drive	South End Road	Pine Place	633	17,724	1,969	\$2,008.38
Pine Place	Filbert Drive	Start of new pavement	246	7,134	793	\$808.86
Elmar Drive	Woodlawn Avenue	End	258	10,240	1,138	\$1,160.76
Totals			22,458		81,483	\$83,112.66

City of Oregon City

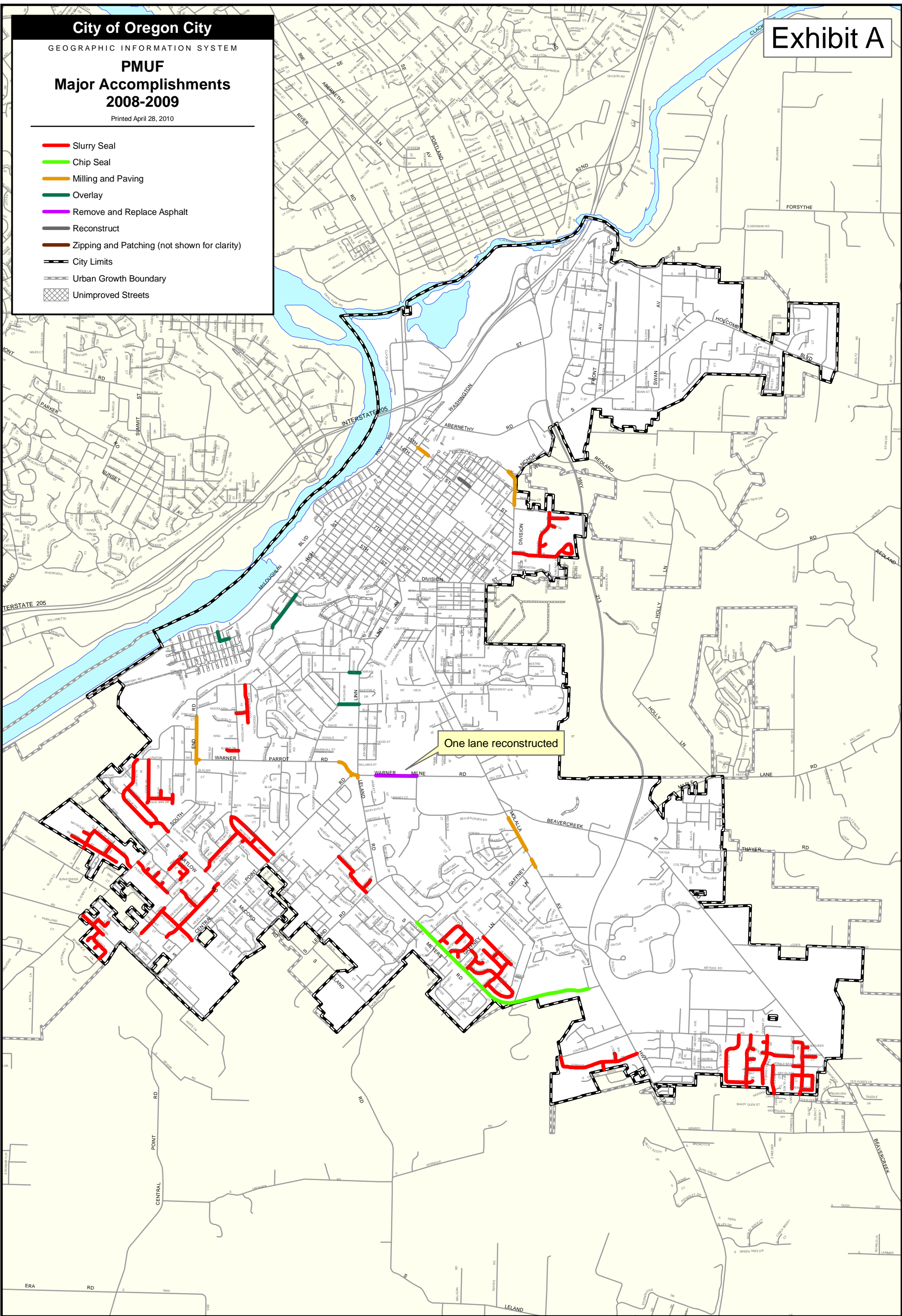
GEOGRAPHIC INFORMATION SYSTEM

PMUF
Major Accomplishments
2008-2009

Printed April 28, 2010

- Slurry Seal
- Chip Seal
- Milling and Paving
- Overlay
- Remove and Replace Asphalt
- Reconstruct
- Zippering and Patching (not shown for clarity)
- City Limits
- Urban Growth Boundary
- Unimproved Streets

Exhibit A



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.



0 0.25 0.5 1 1.5 Miles

0 1,000 2,000 4,000 6,000 8,000 Feet

City of Oregon City
P.O. Box 3040
625 Center St.
Oregon City, OR 97045
503-657-0891 phone
503-657-6629 fax
www.ci.oregon-city.or.us



Plot date: April 28, 2010
Plot name: 2008 and 2009 Street Repair Projects - 11x17P - 20100428.pdf
Map name: 2008 and 2009 Street Repair Projects - 11x17P.mxd

City of Oregon City

GEOGRAPHIC INFORMATION SYSTEM

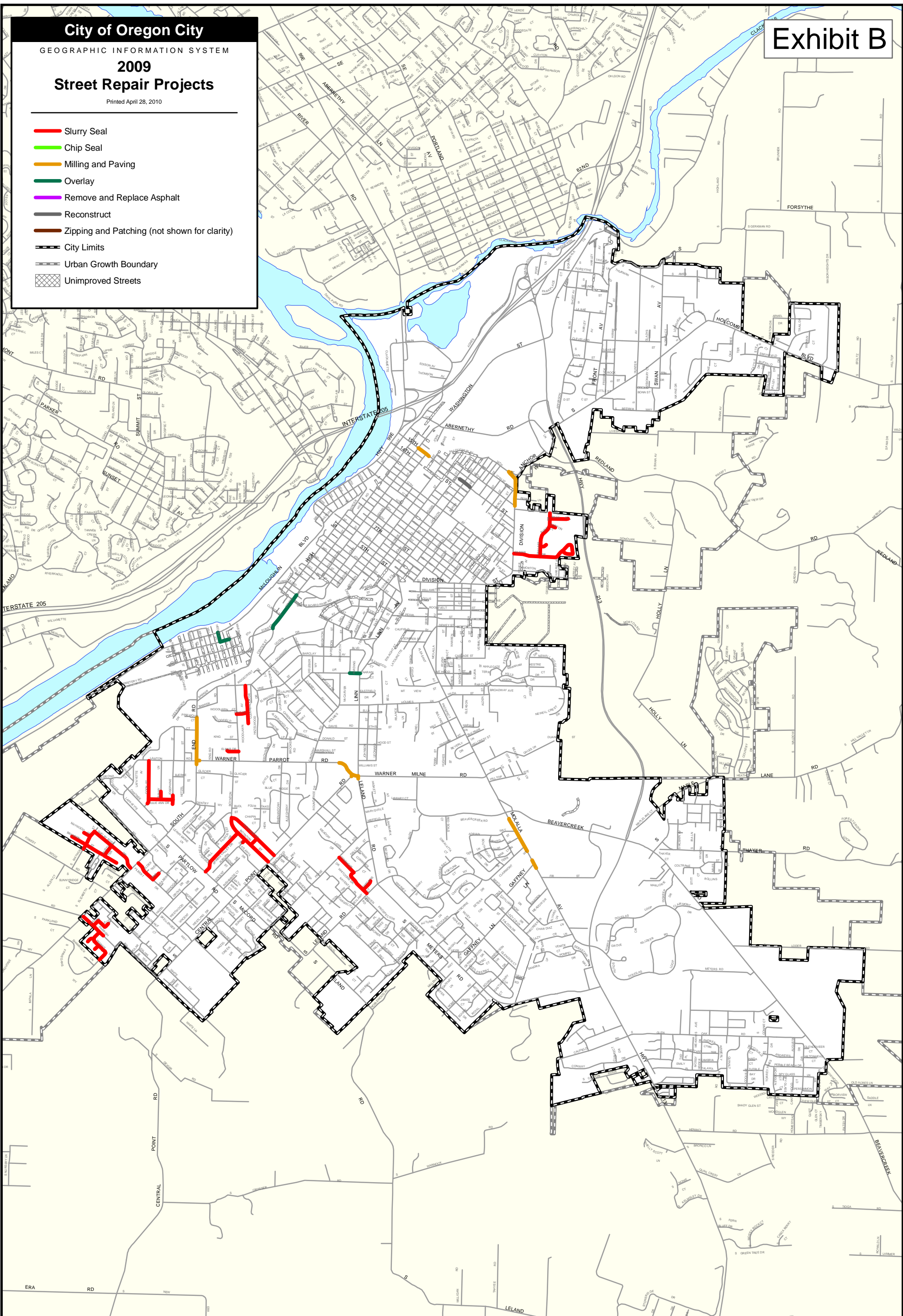
2009

Street Repair Projects

Printed April 28, 2010

- Slurry Seal
- Chip Seal
- Milling and Paving
- Overlay
- Remove and Replace Asphalt
- Reconstruct
- Zippering and Patching (not shown for clarity)
- City Limits
- Urban Growth Boundary
- Unimproved Streets

Exhibit B



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0 1,000 2,000 4,000 6,000 8,000 Feet

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Plot date: April 28, 2010
Plot name: 2009 Street Repair Projects - 11x17P - 20100428.pdf
Map name: 2009 Street Repair Projects - 11x17P.mxd

City of Oregon City

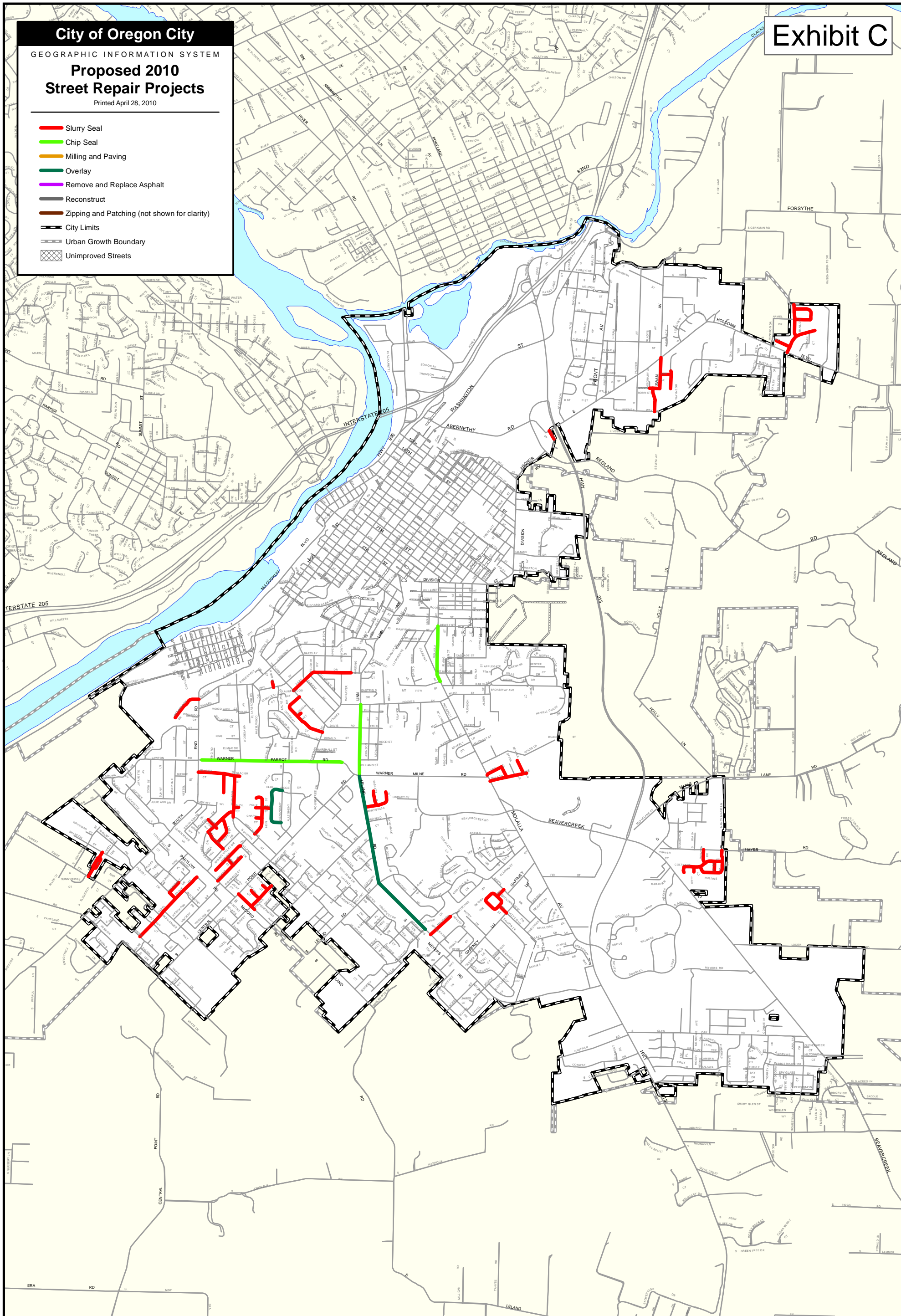
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Proposed 2010 Street Repair Projects

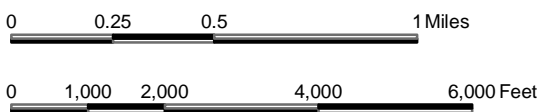
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- Milling and Paving
- Overlay
- Remove and Replace Asphalt
- Reconstruct
- Zippering and Patching (not shown for clarity)
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- Urban Growth Boundary
- Unimproved Streets

Exhibit C



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P.O. Box 3040
625 Center St
Oregon City, OR 97045
503-657-0891 phone
503-657-6629 fax
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Plot date: April 28, 2010
Plot name: PMJUF - 2010 Projects Map - 20100428 - 11x17P.pdf
Map name: PMJUF - 2010 Projects Map - 20100428 - 11x17P.mxd

City of Oregon City

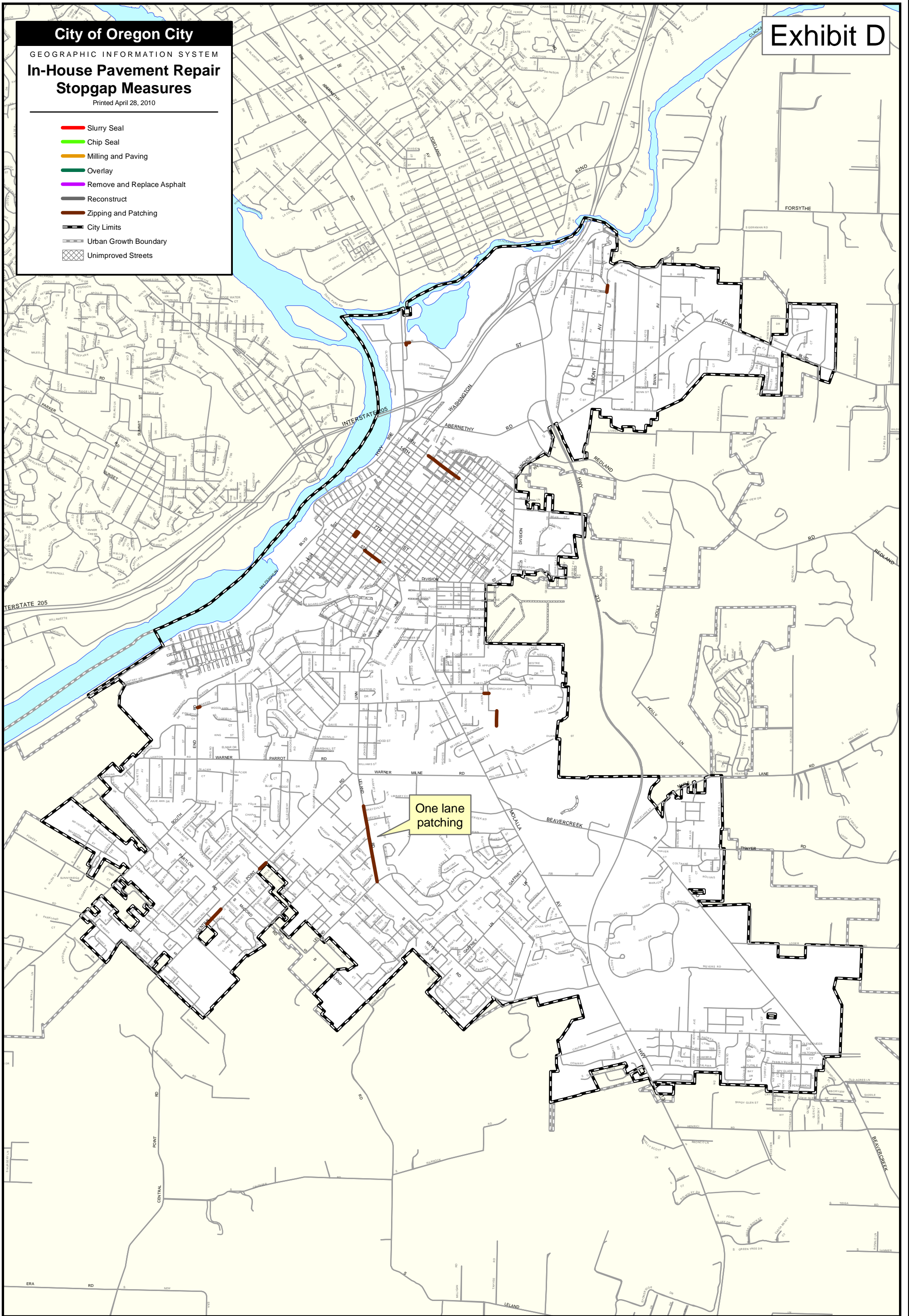
GEOGRAPHIC INFORMATION SYSTEM

In-House Pavement Repair Stopgap Measures

Printed April 28, 2010

- Slurry Seal
- Chip Seal
- Milling and Paving
- Overlay
- Remove and Replace Asphalt
- Reconstruct
- Zippering and Patching
- City Limits
- Urban Growth Boundary
- Unimproved Streets

Exhibit D



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0 1,000 2,000 4,000 6,000 Feet

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City of Oregon City
P.O. Box 3040
625 Center St
Oregon City, OR 97045
503-657-0891 phone
503-657-6629 fax
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Plot date: April 28, 2010
Plot name: PMJUF - Stopgap Measures Map - 20100428 - 11x17P.pdf
Map name: PMJUF - Stopgap Measures Map - 20100428 - 11x17P.mxd

CITY OF OREGON CITY

2009 PAVEMENT REHABILITATION PROJECT

July 2009

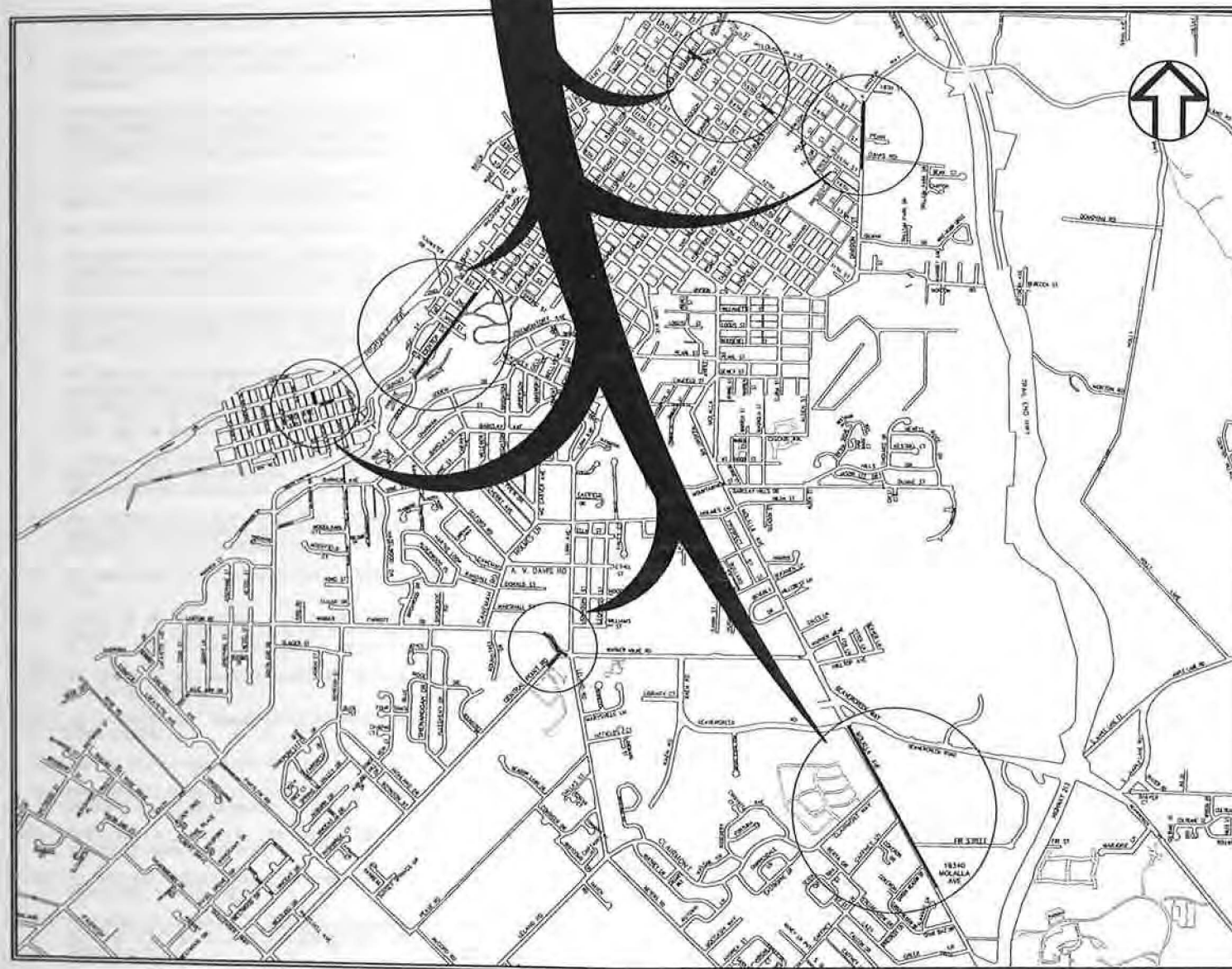
INDEX TO DRAWINGS

GENERAL

C1	COVER & INDEX
C2	NOTES, LEGEND, TYPICAL SECTIONS, & DETAILS
C3	15TH STREET
C4	3RD AVENUE
C5	HEDGES STREET
C6	MOLALLA AVE
C7	MOLALLA AVE II
C8	MOLALLA AVE III
C9	CENTER STREET
C10	CENTER STREET II
C11	WARNER PARROTT ROAD
C12	DIVISION STREET
C13	DIVISION STREET II
C14	STANDARD DETAILS
C15	STANDARD DETAILS II

SITE LOCATIONS

SEE DRAWING INDEX



PROJECT SITE MAP

NOT TO SCALE

NOTE:
1. INFORMATION SHOWN IS BASED ON THE CITY'S AVAILABLE GIS DATA BASE. CONTRACTOR SHALL VISIT SITE AND VERIFY ALL EXISTING CONDITIONS PRIOR TO BEGINNING CONSTRUCTION. SEE GENERAL NOTES, SHEET C2 FOR ADDITIONAL REQUIREMENTS.

wallis
engineering

Civil Engineer: Wallis Engineering
215 W 4th Ave., Suite 200
Vancouver, Washington 98660
(360) 695-7041
Contact: Braddy Richins, P E



Owner: City of Oregon City
P O Box 3040
320 Warner Milne Road
Oregon City, Oregon 97045
Oregon City Public Works Department
Contact: John Lewis, Project Manager
(503) 657-8241

EXISTING

---	EXISTING PROPERTY LINE
---	EXISTING EDGE OF PAVEMENT
---	EXISTING CURB
---	EXISTING CONCRETE SIDEWALK
---	EXISTING STORM SEWER
---	EXISTING SANITARY SEWER
---	EXISTING WATER
---	EXISTING GAS
---	EXISTING BUILDING
---	EXISTING GUARDRAIL
---	EXISTING DRAINAGE WAY
---	EXISTING MANHOLE
---	EXISTING CATCH BASIN
---	EXISTING CURB INLET
---	EXISTING WATER METER
---	EXISTING WATER VALVE
---	EXISTING FIRE HYDRANT
---	EXISTING UTILITY POLE
---	EXISTING SIGN
---	EXISTING MAILBOX
---	EXISTING LOOP DETECTOR

PROPOSED

---	PROPOSED SIDEWALK
---	PROPOSED ROADWAY RECONSTRUCTION
---	PROPOSED ROADWAY OVERLAY
---	PROPOSED ROADWAY INLAY
---	PROPOSED CURB
---	PROPOSED STORM SEWER
---	PROPOSED SAWCUT
---	PROPOSED CATCH BASIN

PART V - CONTRACT DRAWINGS

Bid Tabulation
2009 Pavement Rehabilitation Project
City of Oregon City, OR
Prepared by Wallis Engineering, JSI
Bid Opening: July 28, 2009 2:00 PM
WE#1264A
= Original Bid Error

DATE CREATED: 7/29/2009

Item No	Item Description	Qty	Unit	Brix Paving Co.		Portland Road		Eagle Elsner, Inc.		Parker NW Paving Co.		Knife River		Engineer's Estimate	
				Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1.	Mobilization	1	LS	\$9,398.15	\$9,398.15	\$14,250.00	\$14,250.00	\$0.00	\$0.00	\$24,600.00	\$24,600.00	\$30,100.00	\$30,100.00	\$35,126.91	35,126.91
2.	Temporary Work Zone Traffic Control, Complete	1	LS	\$14,766.94	\$14,766.94	\$27,500.00	\$27,500.00	\$42,500.00	\$42,500.00	\$35,000.00	\$35,000.00	\$36,000.00	\$36,000.00	\$60,000.00	60,000.00
3.	Erosion Control	1	LS	\$559.75	\$559.75	\$1,000.00	\$1,000.00	\$300.00	\$300.00	\$3,000.00	\$3,000.00	\$1,300.00	\$1,300.00	\$1,500.00	1,500.00
4.	Pollution Control Plan	1	LS	\$111.95	\$111.95	\$1,000.00	\$1,000.00	\$200.00	\$200.00	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$500.00	500.00
5.	Removal of Inlets	4	EA	\$279.88	\$1,119.52	\$200.00	\$800.00	\$1,400.00	\$5,600.00	\$200.00	\$800.00	\$260.00	\$1,040.00	\$500.00	2,000.00
6.	General Excavation	260	CY	\$38.06	\$9,895.60	\$39.50	\$10,270.00	\$22.00	\$5,720.00	\$31.00	\$8,060.00	\$35.00	\$9,100.00	\$20.00	5,200.00
7.	12-Inch Subgrade Stabilization	100	SY	\$14.55	\$1,455.00	\$31.00	\$3,100.00	\$20.00	\$2,000.00	\$20.00	\$2,000.00	\$26.00	\$2,600.00	\$35.00	3,500.00
8.	Trench Foundation	5	CY	\$33.59	\$167.95	\$70.00	\$350.00	\$90.00	\$450.00	\$35.00	\$175.00	\$53.00	\$265.00	\$100.00	500.00
9.	12-Inch Storm Sewer Pipe	135	LF	\$80.60	\$10,881.00	\$15.00	\$2,025.00	\$69.00	\$9,315.00	\$37.00	\$4,995.00	\$55.00	\$7,425.00	\$60.00	8,100.00
10.	Concrete Inlets, Type G-2 Catch Basin with Sump	4	EA	\$1,339.73	\$5,358.92	\$1,375.00	\$5,500.00	\$1,307.00	\$5,228.00	\$1,500.00	\$6,000.00	\$1,050.00	\$4,200.00	\$1,500.00	6,000.00
11.	Adjust Existing Structure to Grade	57	EA	\$127.27	\$7,254.39	\$125.00	\$7,125.00	\$179.00	\$10,203.00	\$250.00	\$14,250.00	\$100.00	\$5,700.00	\$350.00	19,950.00
12.	Connection to Existing Structures	2	EA	\$391.83	\$783.66	\$440.00	\$880.00	\$416.00	\$832.00	\$500.00	\$1,000.00	\$265.00	\$530.00	\$1,000.00	2,000.00
13.	Temporary Asphalt Trench Resurfacing	263	SF	\$3.32	\$873.16	\$3.00	\$789.00	\$2.50	\$657.50	\$3.50	\$920.50	\$2.10	\$552.30	\$3.00	789.00
14.	Cold Plane Pavement Removal, 0-2 Inch Depth	5950	SY	\$5.84	\$34,748.00	\$7.00	\$41,650.00	\$6.00	\$35,700.00	\$5.70	\$33,915.00	\$5.75	\$34,212.50	\$11.25	66,937.50
15.	Cold Plane Pavement Removal, 2-3 Inch Depth	1245	SY	\$11.81	\$14,703.45	\$7.00	\$8,715.00	\$7.70	\$9,586.50	\$5.70	\$7,096.50	\$6.00	\$7,470.00	\$13.50	16,807.50
16.	3/4 Inch - 0 Aggregate Base	71	CY	\$39.18	\$2,781.78	\$60.00	\$4,260.00	\$59.00	\$4,189.00	\$60.00	\$4,260.00	\$43.00	\$3,053.00	\$40.00	2,840.00
17.	1-1/2 Inch - 0 Aggregate Base	128	CY	\$34.70	\$4,441.60	\$60.00	\$7,680.00	\$57.00	\$7,296.00	\$50.00	\$6,400.00	\$43.00	\$5,504.00	\$35.00	4,480.00
18.	Level 2, 1/2-Inch Dense HMAC, PG 64-22	1158	TON	\$74.78	\$86,595.24	\$74.00	\$85,692.00	\$72.00	\$83,376.00	\$68.00	\$78,744.00	\$75.00	\$86,850.00	\$85.00	98,430.00
19.	Level 3, 1/2-Inch Dense HMAC, PG 70-22	1787	TON	\$75.08	\$134,167.96	\$71.00	\$126,877.00	\$72.00	\$128,664.00	\$75.00	\$134,025.00	\$71.00	\$126,877.00	\$90.00	160,830.00
20.	Asphalt Ditch Lining	905	LF	\$5.98	\$5,411.90	\$8.00	\$7,240.00	\$4.00	\$3,620.00	\$7.00	\$6,335.00	\$5.50	\$4,977.50	\$3.00	2,715.00
21.	Concrete Curbs, Standard	143	LF	\$17.32	\$2,476.76	\$13.40	\$1,916.20	\$26.00	\$3,718.00	\$30.00	\$4,290.00	\$33.00	\$4,719.00	\$18.00	2,574.00
22.	Concrete Walks	382	SF	\$16.28	\$6,218.96	\$15.60	\$5,959.20	\$10.00	\$3,820.00	\$11.25	\$4,297.50	\$9.00	\$3,438.00	\$5.00	1,910.00
23.	Permanent Striping, Complete	1	LS	\$17,128.36	\$17,128.36	\$14,000.00	\$14,000.00	\$16,065.00	\$16,065.00	\$19,000.00	\$19,000.00	\$17,000.00	\$17,000.00	\$12,000.00	12,000.00
24.	Remove and Reinstall Existing Signs	1	LS	\$223.90	\$223.90	\$450.00	\$450.00	\$800.00	\$800.00	\$175.00	\$175.00	\$515.00	\$515.00	\$500.00	500.00
25.	Traffic Signal Loop Detector Modifications	21	EA	\$526.17	\$11,049.57	\$500.00	\$10,500.00	\$500.00	\$10,500.00	\$500.00	\$10,500.00	\$445.00	\$9,345.00	\$1,000.00	21,000.00
26.	CBU Mailbox Relocation	1	EA	\$167.93	\$167.93	\$500.00	\$500.00	\$200.00	\$200.00	\$750.00	\$750.00	\$105.00	\$105.00	\$750.00	750.00
Total				382,741.40		390,028.40		390,540.00		411,088.50		403,878.30		536,939.91	

Note: Unit Price for Mobilization bid item
was not entered



OREGON CITY

Pavement Maintenance Annual Report - 2009



Prepared by:

John Lewis, P.E., Public Works
Operations Manager
Jim Burch, Public Works Street
Supervisor

April, 2010

In accordance with Ordinance No. 08-1007, which established City Code 13.30, Transportation Utility Fee:

“City staff shall prepare an annual report that presents how revenues were spent.”

- ★ May 2008 - City Commission approves Pavement Maintenance Utility Fee (PMUF). Rate = \$4.50 per month
- ★ First Year Revenue (08/09) = \$605,650.
- ★ Second Year residential rate = \$6.00 per month.
- ★ Second Year Revenue projection (09/10) = \$971,000

2009 PMUF Accomplishments



Preventative Maintenance



In-house Pavement Maintenance and Street Reconstruction



Contract Street Reconstruction/Paving



Pavement Management Program

Preventative Maintenance

Contract Slurry Seal \$85,000



Highland Dr	Boynton St - Central Point Rd	Cook St	Lawton Rd - end of old pavement near Oaktree Ave
Boynton St	Highland Dr - Central Point Rd	Julie Ann Dr	Cook St - Josephine St
Tower Hill Dr Clearbrook Dr	Boynton St - Highland Dr Barker Ave - End	Sunny Ln Josephine St	Julie Ann Dr - place where road widens into a circle End - one lot north of Julie Ann Dr
Pin Oak Dr	Woodlawn Ave - Clearbrook Dr	Auburn Dr	Boynton St - start of new pavement
Wake Robin Cir	Gilman Dr - End	Spring Valley Dr	Partlow Rd - Boynton St
Cominger Dr Cominger Ct	Pease Rd - Lot Whitcomb Dr Lot Whitcomb Dr - End	Parrish Rd Linda Dr	South End Rd - 145 ft southeast of Penny's Way Parrish Rd - Karen Scott Dr
Gilman Dr	Division St - Wake Robin Cir	Karen Scott Dr	Linda Dr - Todd Kelli Way
Trillium Park Dr	Gilman Dr - Davis Rd	Todd Kelli Way	Karen Scott Dr - start of new pavement
Shelby Rose Dr Bean Ct Canyon Ct Swordfern Ct	South End Rd - Maywood St Trillium Park Dr - End Trillium Park Dr - End Trillium Park Dr - End	Penny's Way Finnegans Way Kari Ann Ct Jennifer Lynn Ct	Parrish Rd - Finnegans Way Penny's Way - City Limits Penny's Way - End Penny's Way - End
Merchant Pl	North end of loop - Brandow St	Filbert Dr	South End Rd - Pine Pl
Maywood St Maywood Ct	City Limits - Shelby Rose Dr Maywood St - End	Pine Pl Elmar Dr	Filbert Dr - start of new pavement Woodlawn Ave - End
Rusty Terr Brandow St	Brandow St - Shelby Rose Dr All	Lot Whitcomb Dr	Leland Rd - Leland Rd

Summer Seasonal Employees



Crack Sealing



Public Outreach

2009 Oregon City Slurry Seal Project



The City of Oregon City has contracted with Blackline, Inc. to install a slurry seal on selected city streets.

This project will begin on **Friday August 21st**, continue on **Monday the 24th** and will be completed on **Tuesday August 25th. (depending upon favorable weather)** Check the schedule below and note what day your street will be impacted.

Crews will begin staging equipment and preparing streets early in the morning (6:30am), with the Slurry Seal crew not far behind. Generally these crews will work until 5:00 pm.



- Downtown Circulation Study
- ▶ Holcomb Blvd Pedestrian Improvement Project
- Hwy 213 Widening
- McLoughlin Boulevard Enhancement Project Phase I
- Oregon City/West Linn Bridge Reconstruction
- South End Road Pavement Construction
- 2009 Oregon City Slurry Seal Project
- ▶ Other projects
- Willamette Terrace Dedication



Search the Site

Go

In-House Pavement Milling & Repair



Leland Road

In-House Pavement Milling & Repair



Park Drive
Base Repair/Re-Base
Coordination with Utility Work

Locations:

LeLand Road

15th Street

Park Drive

Main Street Extension

Pioneer Center
Parking Lot

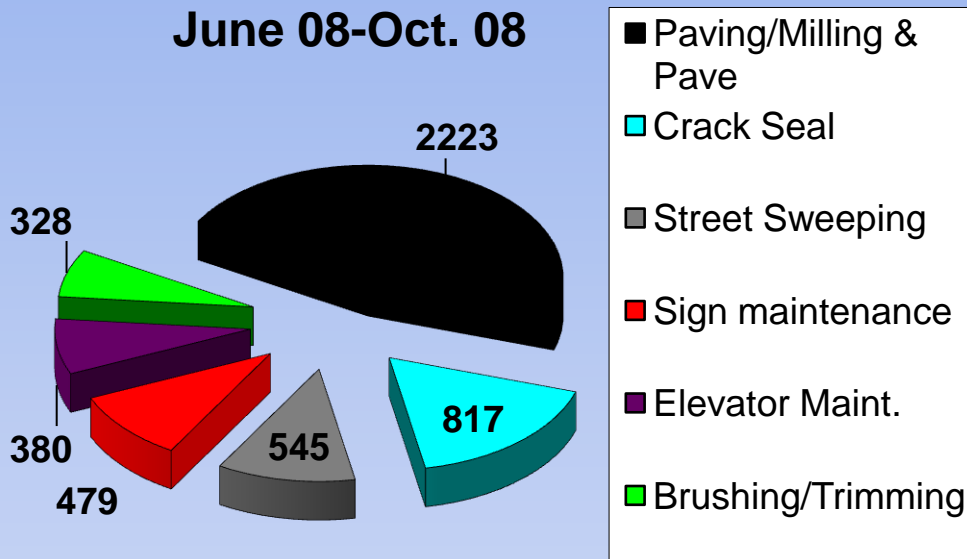
5th Street

Mtn. View Cemetery

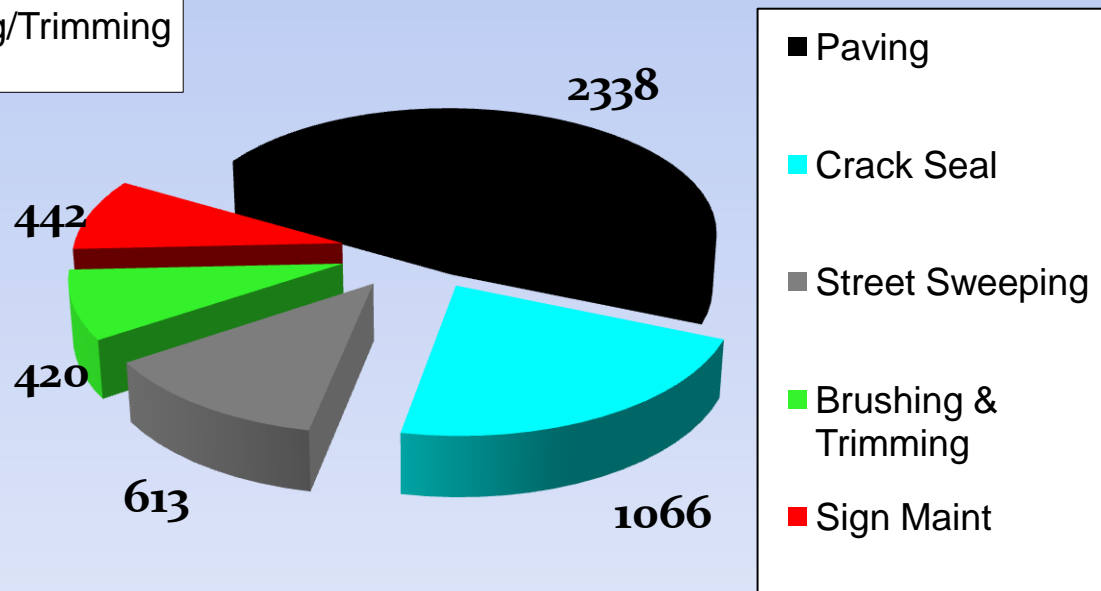
Barker Road

In House Work Tasks (Hours)

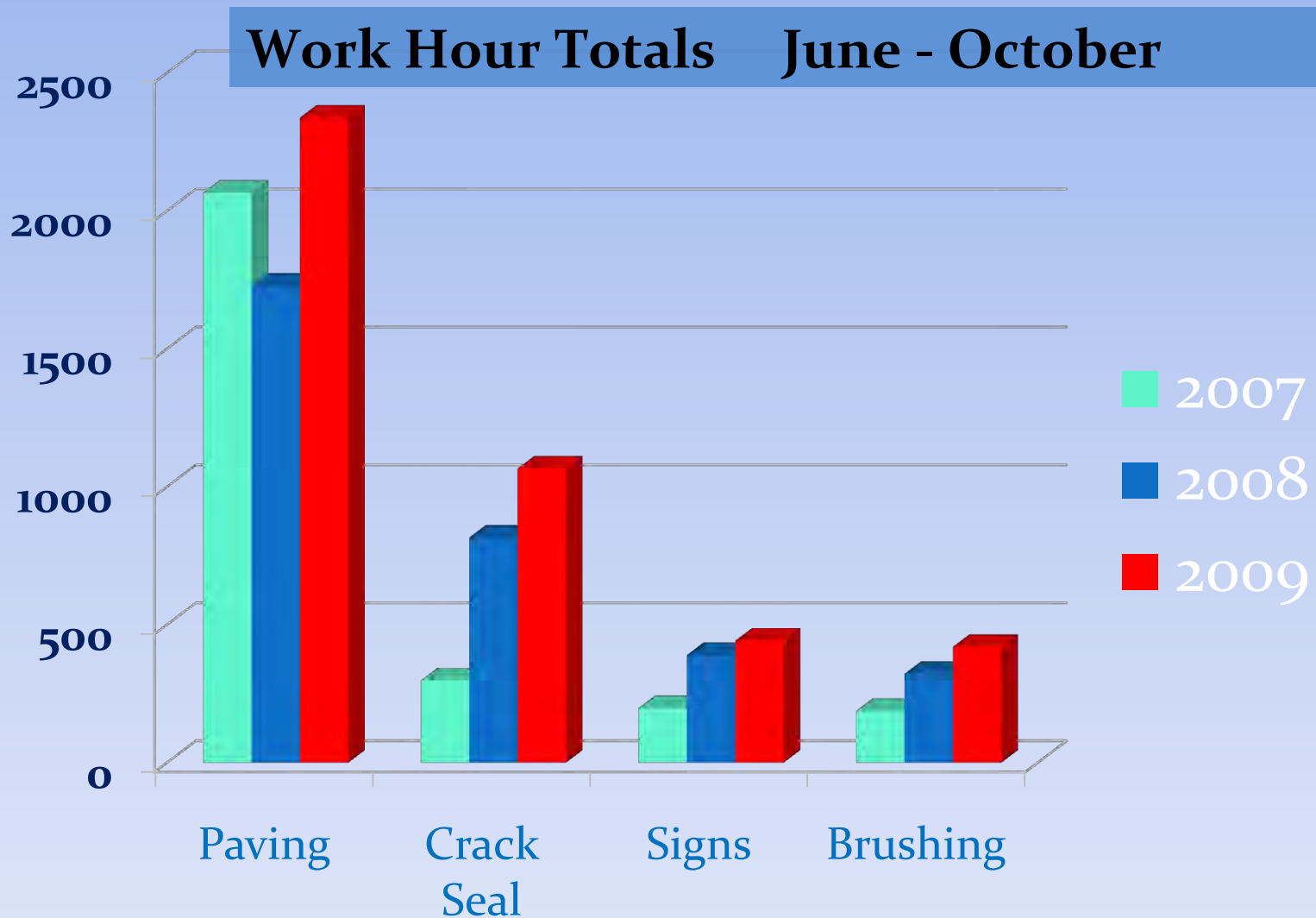
**Work Hours
June 08-Oct. 08**



**Work Hours
June 09-Oct. 09**



In-House Work Task (Hours)





Meyers Road
Chip Seal (2008)

Contract Street Reconstruction/Paving

South End Road

Estimated
Treatment Unit
Cost = \$16/SY



Contract Street Reconstruction/Paving

15th & Jackson Street

Estimated Treatment Unit Cost = \$55/SY



2009 PMUF Accomplishments



- ★ Urban Chip Seal
- ★ Slurry seal (mixed reviews)
- ★ In-house Coordination / Economies of Scale
- ★ In-House Work / Scheduling
- ★ Coordination with underground utility work
- ★ Standards

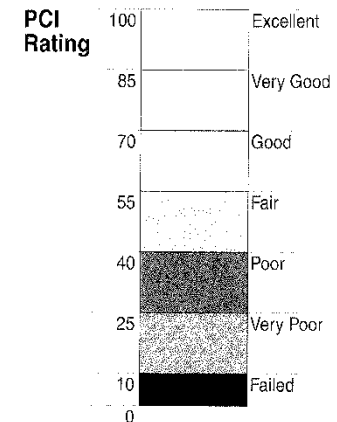
Pavement Condition Index (PCI)

Year	Deferred Maintenance Liability*	Average PCI
2004	\$11.0 Million	67
2007	\$9.3 Million	68
2010	\$17.2 Million	62
2014**	\$28.0 Million	65

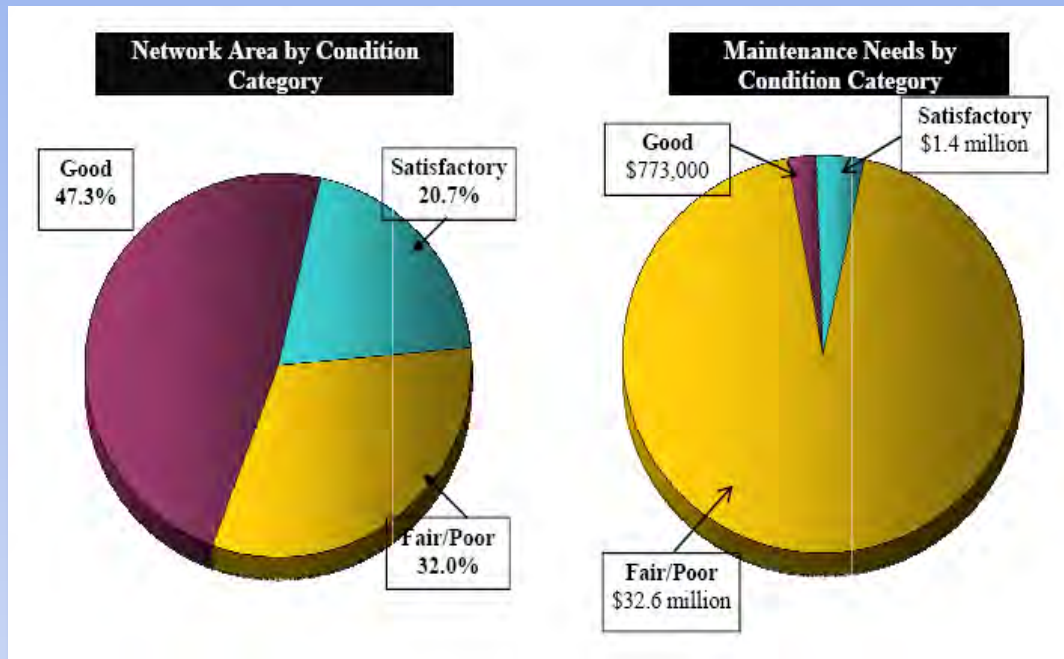
* Amount of liability is based on an optimal network PCI of low to mid 80's.

** Data assumes funding scenario as planned over the next five years.

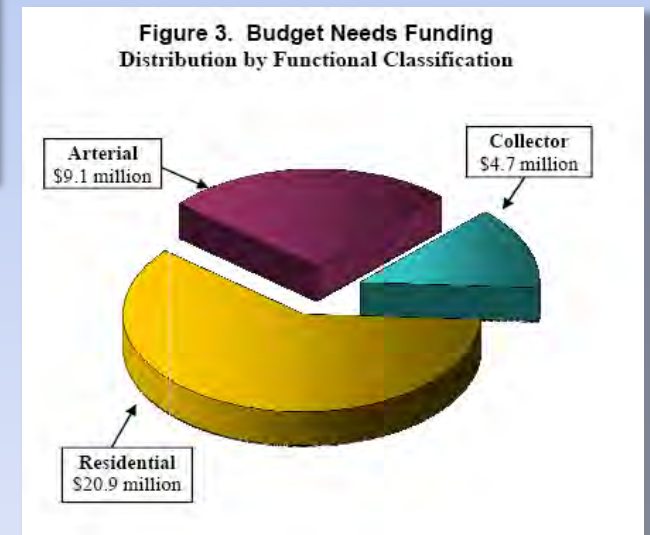
Pavement Condition Index



Oregon City's 2010 Pavement Condition Analysis



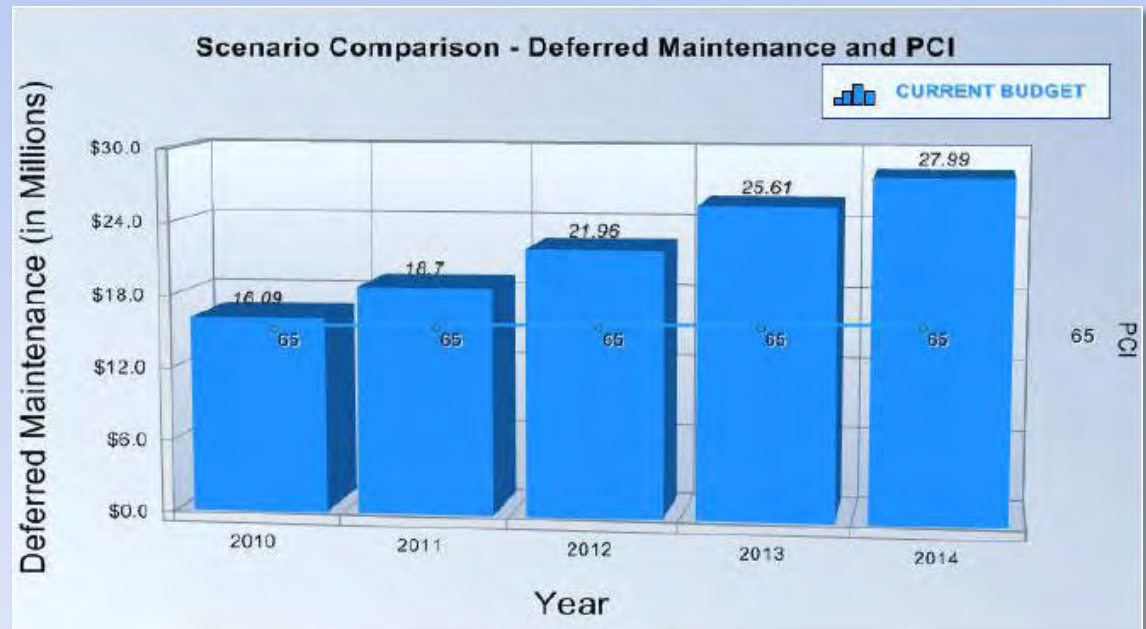
Dollar amounts listed are based on five year needs analysis.



Oregon City's 2010 Pavement Investment Analysis

Table 5. Summary of Results from Scenario 2 — Current Investment Level

	2010	2011	2012	2013	2014	Total
Budget	\$1,124,000	\$1,348,000	\$1,685,000	\$1,685,000	\$1,685,000	\$7,527,000
Rehabilitation	\$984,000	\$1,204,524	\$1,538,262	\$1,538,383	\$1,544,607	\$6,809,776
Preventative Maintenance	\$139,923	\$143,354	\$146,493	\$146,283	\$138,897	\$714,950
Deferred Maintenance	\$16,086,781	\$18,704,733	\$21,960,732	\$25,606,786	\$27,986,096	---
Stop Gap	\$234,255	\$54,150	\$51,734	\$68,731	\$45,471	\$454,341
PCI	65	65	65	65	65	
Condition Category results 2014	Good	Satisfactory	Fair	Poor		
	66.7%	5.8%	6.1%	21.4%		



Proposed 2010 Street Repair Projects:

Street	Beginning	Ending	Treatment Unit Cost (\$/sy)	Concept Estimate Project Cost*	General Treatment Description
Leland Road	Warner Milne Road	Clairmont Way	\$30	\$300,000	3" overlay; coordinate with utilities
Meyers Road	Clairmont Way	Frontier Parkway	\$26	\$150,000	3" overlay
Blue Ridge Drive	Shenandoah Drive	Shenandoah Drive	\$17	\$85,000	2" overlay
Warner Parrott Road	100' east of South End Road	650' west of Linn Avenue	\$2.90	\$30,450	Chip seal
Linn Avenue	50 feet north of Warner Parrott Road	Holmes Lane	\$2.90	\$14,750	Chip seal
Molalla Avenue	Dewey Street	Mountainview Street	\$2.90	\$12,000	Chip seal



OREGON CITY

Questions ??

**CITY OF OREGON CITY
CITY COMMISSION AND PLANNING COMMISSION
JOINT WORK SESSION**

April 13, 2010

Convene Joint Work Session of April 13, 2010, and Roll Call

1.

Roll Call: Mayor Alice Norris; Commissioner Doug Neeley; Commissioner James Nicita; Commissioner Rocky Smith, Jr.; Commissioner Daphne Wuest; PC Commissioner Tim Powell; PC Commissioner Dan Lajoie; PC Commissioner Carter Stein; PC Commissioner Chris Groener; and PC Commissioner Charles Kidwell.

Staff Present: David Frasher, City Manager; Nancy Kraushaar, City Engineer and Public Works Director; Bill Kabeiseman, City Attorney; Nancy Ide, City Recorder; Pete Walter, Planner; Dan Drentlaw, Economic Development Manager; and Teri Bankhead, Assistant to the City Manager.

Mayor Norris called the meeting to order at 5:10 p.m.

2. **Discussion Items**

a. **[L 08-01 Code Amendments 6-month Update -Planning Commission Joint Work Session](#)**

Pete Walter, Planner, said the City Commission opened the public hearing for L 08-01 on March 17, 2010. The record was currently open and the next hearing would be April 21, 2010. He went through the memo describing the proposed Code amendments and the outstanding issues from the July 2009 adoption of the amendments.

There was discussion about the definition of temporary membrane structures and protection of trees on private property. It was suggested to add a requirement to mitigate for trees that were removed prior to a development application and a requirement to replant on private lots as part of an approval. It was also stated that enforcement might be difficult and would have additional costs.

City Commissioner Nicita suggested the archeological map be done in cooperation with the tribes from Oregon City. Planning Commissioner Groener suggested adding that in the criteria for the scoping document for the future archeological map. City Commissioner Nicita suggested incorporating in the Code the National Register Bulletin 38 which had detail on the process of consulting for tribal heritage.

Planning Commissioner Powell discussed adding language that at the discretion of the Community Development Director, master plan expirations could be extended.

City Commissioner Neeley discussed multi-family housing visitor parking and adding language to require a certain amount of parking designated for visitor spaces.

The Planning Commission had approved these Code amendments and passed the recommendation on to the City Commission.

Mr. Walter addressed the issues that were raised at the March 17, 2010 hearing. He added requirements for interior parking lot landscaping into the record. He also explained the urban reserves area map in the vicinity of Newell Creek Canyon.

There was discussion about adding binding language for conservation easements for what kind of development would be permitted.

Mayor Norris said some of the outstanding issues were the cost of enforcement, archeological map, and what to do about the trees. Mr. Walter said staff would provide a recommendation of how to proceed in the interim and recommendation for future work items.

3. **Adjournment**

Mayor Norris adjourned the meeting at 6:46 p.m.

Respectfully submitted,

Nancy Ide, City Recorder

**CITY OF OREGON CITY
CITY COMMISSION
WORK SESSION MINUTES**

April 13, 2010

1. Convene Work Session of April 13, 2010, and Roll Call

Roll Call: Mayor Alice Norris; Commissioner Doug Neeley; Commissioner James Nicita; Commissioner Rocky Smith, Jr.; and Commissioner Daphne Wuest.

Staff Present: David Frasher, City Manager; Bill Kabeiseman, City Attorney; Mike Conrad, Police Chief and Public Safety Director; Nancy Kraushaar, City Engineer and Public Works Director; Scott Archer, Community Services Director; David Wimmer, Finance Director; Nancy Ide, City Recorder; Jim Loeffler, Human Resources Director; Dan Drentlaw, Economic Development Manager; Teri Bankhead, Assistant to City Manager; and John Lewis, Operations Manager.

Mayor Norris called the meeting to order at 6:57 p.m.

2. Future Agenda Items

No future agenda items were suggested.

3. Discussion Items

a. Oregon City Stormwater Management Permit (NPDES MS4 Stormwater Permit) - Update on Program and Permit Renewal

Nancy Kraushaar, City Engineer and Public Works Director, discussed the different activities the department undertook to maintain and operate the City's stormwater system.

Krista Reininga, Project Manager with Brown and Caldwell, discussed water quality issues and standards and the history of how stormwater had been managed in Oregon City especially since the City obtained a National Pollution Discharge Elimination System Permit in 1995.

Bill Kabeiseman, City Attorney, discussed litigation for the 2004-2009 permits. The new permit would come out this year and there had been discussions about the issues.

John Lewis, Operations Manager, gave an overview of Oregon City's Stormwater Program.

Ms. Reininga discussed the current status of the permit and new elements proposed. Stormwater was complex and Oregon City had been adaptively managing and improving the Stormwater Plan over time and striving to achieve the standard. The new permit requirements would necessitate significant additional resources.

Ms. Kraushaar said DEQ hoped to issue the new permits in September. An update would be brought back to the Commission in May or June.

c. [Loan to South Fork Water Board](#)

John Collins, General Manager of South Fork Water Board, discussed a proposed loan for 2.4 million dollars from the City of Oregon City to South Fork Water Board.

Richard Seals, Finance Director for the City of West Linn, said when they looked at their fund balances, the City of West Linn was not in the financial position to participate in the loan.

Mayor Norris asked if there was a non cash way West Linn could contribute. Mr. Seals explained the services they could provide to help.

Commissioner Nicita clarified that West Linn would be a co-signer and accepted liability.

Mr. Collins gave background on how Oregon City and West Linn worked together regarding water issues.

Commissioner Nicita discussed the interest rate and that perhaps 2.5 percent was too low. He also asked if there was a conflict of interest since many City Commissioners also sat on the South Fork Water Board. Mr. Kabeiseman would look into it.

Commissioner Neeley wanted the worse-case scenario in terms of the use of the PERS funds for the loan. Commissioner Nicita wanted the interest profit on the general fund portion dedicated to water conservation projects.

b. [Singer Falls Rotary Project](#)

Scott Archer, Community Services Director, introduced Marcia Wimmer, president of the Rotary Club, who would give a presentation on the proposed Singer Falls Rotary project. He said the Club had been discussing project ideas with City staff and staff was in favor of moving forward with the Singer Falls project.

Mayor Norris said Ms. Wimmer would be applying for a Metro Enhancement Grant and the Commission sat as the funding board, but after consulting with Mr. Kabeiseman, it was allowable for them to listen to the presentation as an informational item.

Marcia Wimmer, Rotary Club President, said the Rotary Club would be celebrating its 75th anniversary in Oregon City in 2011. The Singer Falls Project acknowledged the Rotary's tenure in Oregon City through public art and enhancing landscapes. The project included replacing the pioneer sign at the foot of Singer Falls, a Singer Falls Garden at City Hall, and Singer Falls landscape enhancement. She described the three phases recommended for making these improvements. She discussed how the art would be selected and project funding. She announced the First City Celebration on Saturday, July 31, 2010 which will include community fundraising for the project.

The Commission thanked Ms. Wimmer for her presentation.

d. [Willamette Falls Heritage Area Coalition Statement of Support](#)
[Mayor Alice Norris](#)

Mayor Norris said this was a declaration of cooperation for participation in the Willamette Falls Heritage Area Coalition. The Commission would provide leadership, letters of support, and funding. The funding would be \$5,000.

4. [City Manager's Report](#)

There was no City Manager's report.

5. **Adjournment**

Mayor Norris adjourned the meeting at 8:31 p.m.

Respectfully submitted,

Nancy Ide, City Recorder

**CITY OF OREGON CITY
CITY COMMISSION
MEETING MINUTES**

April 21, 2010

1. [Convene Regular Meeting of April 21, 2010, and Roll Call](#)

Roll Call: Mayor Alice Norris; Commissioner Doug Neeley; Commissioner Rocky Smith, Jr.; Commissioner James Nicita; and Commissioner Daphne Wuest.

Staff Present: David Frasher, City Manager; Bill Kabeiseman, City Attorney; Nancy Kraushaar, City Engineer and Public Works Director; Scott Archer, Community Services Director; David Wimmer, Finance Director; Nancy Ide, City Recorder; Jim Loeffler, Human Resources Director; Mike Conrad, Police Chief and Public Safety Director; Maureen Cole, Library Director; Tony Konkol, Community Development Director; and Teri Bankhead, Assistant to the City Manager.

Mayor Norris called the meeting to order at 7 p.m.

2. [Flag Salute](#)

3. [Ceremonies, Proclamations, Presentations](#)

4. [Citizen Comments](#)

Darin Park representing the Oregon City Black Socks Baseball program requested a waiver of the \$737 fee and \$15 mailing fee on a Minor Site Plan Review. This would be brought back to the next Commission meeting.

Bryan Watt of Oregon City discussed the Swim Team's project for a slide and competitive starting block for Lane Three. The estimated cost was \$20,000. The team was raising funds and asked for additional help from the City to do the project in September. This would also be brought back to the next Commission meeting.

5. [Adoption of the Agenda](#)

The agenda was adopted as presented.

6. [Public Hearings](#)

a. [AP 10-02: Appeal of the Historic Review Board's Approval with Conditions of Applications](#) [HR 10-01 and HR 10-02, Atkinson Memorial Church](#)

Commissioner Smith was an employee of Atkinson Church and would recuse himself from the hearing.

Bill Kabeiseman, City Attorney, discussed the hearing format and criteria. This was an appeal

hearing, the decision was on the record and there would be no new evidence. He asked if there was any bias, conflict of interest, or ex parte contacts to declare.

Mayor Norris said before the application was filed she had a conversation with a neighbor about the impending addition to the church.

Commissioner Nicita said the Commission received an email from a former Oregon City Mayor and response to the email regarding comments made by the McLoughlin Neighborhood Association representative to the Historic Review Board. He also occasionally attended Atkinson Church and on Easter a citizen informed him that the Neighborhood Association had approved the proposed design.

Mr. Kabeiseman asked if the Commission could make their decision disregarding the email communication. The Commission could.

Mary Johnson, attorney representing the appellant in this case, wanted to know the substance of the emails and Mayor Norris explained it.

Pete Walter, Associate Planner, said the appeal was made by Margaret Foss to appeal the Historic Review Board's decision to approve the addition of an education building to Atkinson Memorial Church. The Historic Review Board also reviewed a demolition application for the Oregon City Preschool. Staff recommended the Commission deny the appeal and uphold the decision of the Historic Review Board. He went over the criteria for proposed additions and new construction in Historic Review Overlay Districts and design guidelines for alterations and additions. In addition to the public comment that was submitted prior to and at the hearing, there were letters of support submitted by Denyse McGriff and the State Historic Preservation Office. The Historic Review Board voted 4-1 to approve the application for demolition of the existing building and construction of the new education building. He discussed the appeal issues, which were wrong information on the public notice in regard to the location of the hearing, the economic affect of the proposed addition to the value of the historic district, incompatibility of the building with adjacent structures with respect to materials, location of the proposed electrical distribution box, and building footprint height and windows. The Site Plan and Design Review and Conditional Use application would go before the Planning Commission on May 24.

Mayor Norris opened the public hearing.

Paul Falsetto of Carleton Hart Architecture was representing Atkinson Memorial Church. The applicant had talked to all the necessary people early on in the process and wanted to be a good neighbor and was well aware of the historic property and location. The applicant attended a Design Advice Review with the Historic Review Board and met with the McLoughlin Neighborhood Association and the feedback was incorporated in the final design. The building had been reviewed as a new building and as an addition and had satisfied the criteria for both. He addressed the concerns of the appellant. This application brought value not only by presenting new and energetic buildings into the neighborhood, but also by allowing accessibility to a greater number of people to use the church and Oregon City Preschool.

Mary Johnson was representing Margaret Foss who lived in an adjoining historic house on Jefferson Street. This application would take away Ms. Foss's view of the Povey window and replace it with a transformer pad. However, what drove this appeal was the applicant, staff, and Historic Review Board did not apply the criteria correctly and there was an incomplete record that needed to be sent back to the Historic Review Board for further consideration. This appeal was only under the Code subsection D, not subsection E as staff had characterized.

Mr. Kabeiseman said this was a new issue whether or not the Historic Review Board applied the correct criteria. The question was whether the Historic Review Board was correct in its evaluation of the economic affect of the structure and the design compatibility with the existing neighborhood.

Ms. Johnson said the value was interpreted as economic value, but the value was historical. The applicant had to meet the criteria that it would preserve or enhance the historical value of the neighborhood and building itself. The design of the addition did not show it was compatible with the historic building, the church. Her client was withdrawing the issues of the public notice, location of the electrical distribution box, and the building height was appropriate so long as the window was protected. Allowing a modern addition to the gothic revival church would be counterproductive to the long term historic policy of the City to get the whole conservation district listed as a national register historic district.

Mr. Kabeiseman advised that the Commission not consider number 18 of the materials submitted by Ms. Johnson because it had not been reviewed by the Historic Review Board.

Robert Foss of Oregon City said the addition to the church did not keep with the character and spirit of the historic district. This would be a large and overwhelming change in the heart of the district. It was a modern building and they wanted to keep the district special and historic and the Commission should not approve the building permit.

Kim Walch of Oregon City encouraged the Commission to deny the appeal and uphold the decision of the Historic Review Board. This addition would not hurt property values and the church brought people into the community and did many projects to enhance the community. The appellant thought the new building should be three stories tall, and that would not fit in the neighborhood.

Mark Mask of Oregon City said the new building plans did not show any respect for the historical integrity of the neighborhood. He thought the Historic Review Board rejected other requests in the name of historical integrity, but the church was treated favorably and allowed to ignore several concepts of historical integrity. Most of those from the church who were in favor of the addition did not live in the community. He respected the needs of the church, but he thought the building plans needed to be revised so they better fit in a historical neighborhood.

Patrick Sweeney of Oregon City said he was disappointed in the Neighborhood Association that was supposed to speak for the neighbors. He discussed several contradictions in regard to style and the addition did not fit in the architectural style of the neighborhood and block.

Denyse McGriff of Oregon City said the only thing the Neighborhood Association reviewed for this application was the same criteria that was being used to make the decision. They found the proposed design was compatible with the design guidelines and they concurred with the staff report and findings of the State Historic Preservation Office.

Karin Morey of Clackamas County said the function of the structure was not an issue, it was necessary to the church. The two comparables sited in the design of this structure were the Ermatinger House and Carnegie building, and using those buildings as the basis of the design was inconsistent with the neighborhood. The church had unique structures and shapes and the addition was square and institutional looking and did not compliment the church or surrounding neighborhood.

Mr. Falsetto said the 1925 gothic revival church was a different aesthetic and they used the strategy

of creating a distance and separation from the church to create a building that would not look exactly like the church. He discussed the design of the addition and how the materials and size were chosen. He read from Preservation Brief 14 regarding new exterior additions to historic buildings preservation concerns. This design had been approved by many entities who thought it was an appropriate design for an addition to a historic building and neighborhood.

The Commission discussed the design of the proposed addition with the applicant.

Mayor Norris closed the public hearing.

Commissioner Wuest said they did not want the addition to compete or mirror the original building. She understood where they were going and she thought it was respectful to the neighborhood in scale and massing.

Commissioner Nicita discussed what he appreciated about the design. He thought the materials that were chosen were inappropriate for the facade and could be more authentic to Oregon City architecture and design.

Commissioner Neeley thought the application should go back to the Historic Review Board for review of the materials.

Mr. Kabeiseman discussed the 120 day deadline. Mr. Falsetto said they would be willing to grant an extension to allow the Commission to adopt the findings on their first meeting in July if an extension was necessary.

Motion by Commissioner Doug Neeley, second by Commissioner James Nicita to remand the application back to the Historic Review Board to consider changes to the materials for the facade that were more compatible with the surrounding neighborhood and authentic to Oregon City.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner James Nicita, and Commissioner Daphne Wuest voting aye and Commissioner Rocky Smith, Jr. abstained. [4:0:1]

b. [Continuance of 6-month Review of Development Code Amendments, L 08-01](#)

Tony Konkol, Community Development Director, said the Planning Commission and City Commission held a joint Work Session to discuss the Code amendments. Several issues were raised at that meeting and staff requested to continue the hearing to May 5 to allow time to respond.

Mayor Norris asked for any public testimony. There was none.

Motion by Commissioner Doug Neeley, second by Commissioner James Nicita to continue the 6-month review of the Development Code Amendments, L 08-01, to May 5, 2010.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner Rocky Smith, Jr., Commissioner James Nicita, and Commissioner Daphne Wuest voting aye. [5:0:0]

7. **General Business**

a. [Sales Contract for Purchase of Eastham School for Permanent Home of the Oregon City Public Library](#)

Mayor Norris said this item would not be discussed since the School District did not have a contract yet.

Maureen Cole, Library Director, said in regard to parking, if they designated parking around the Carnegie Center for patrons of the Library, they could not count the spots as parking that would be credited to the building.

Commissioner Neeley suggested not restricting the parking for 24 hours, but for a certain time period. Staff would check into the option.

b. [Update from Clackamas County on the Tri-City Wastewater Treatment Plant Master Plan and Plant Expansion Construction Project.](#)

Mayor Norris reviewed the requirements for the plant expansion and guiding principles of the master plan. The City had to give up the host fee, but there would be some mitigation as they would be hosting part of the regional solution on the waterfront.

Randy Rosane, Project Engineer for Water Environmental Services, and Doug Waugh, Capital Program Manager for Clackamas County Water Environmental Services, gave a presentation on the site concept plan which was projected to be at full build out in 2050 in seven phases. The first phase was explained and where they were currently in the project as well as the future phases of the project and coordination with the Cove development.

Nancy Kraushaar, City Engineer and Public Works Director, discussed the outstanding issues that still needed to be addressed.

Mayor Norris clarified this was a state of the art plant on the smallest possible footprint, as green and sustainable as possible, and there would be a distinctive design of the facility.

Commissioner Neeley wanted to look into the areas in the Cove and Tri-Cities that could be used for stormwater detention and reuse of the water for wetlands in the area.

c. [Loan to South Fork Water Board](#)

John Collins, South Fork Water Board Manager, gave a recap of what had been discussed earlier regarding the South Fork bond covenant issues. South Fork was requesting to borrow 2.4 million dollars with an interest rate of 3.5% from the City to pay off the bonds. The City of West Linn was financially unable to participate.

David Wimmer, Finance Director, discussed the interest rate options.

William Gifford of Oregon City said the concept of the loan was a good idea because it was favorable to both parties. He thought the interest rate should be cut in half equally. He wanted to know what they would do with the profit the City would be making.

Kami Kehoe was a Commissioner with the Clackamas River Water District and submitted a document from CRW to be part of the record. In the letter it described a possible loan from CRW to

South Fork at a lower interest rate than what Oregon City offered. She clarified that the loan amount and fees were to pay off the bond.

Commissioner Neeley said the Commission could make the decision about how the money from the interest would be distributed at a later date.

Commissioner Nicita said if they made the loan at the 4.6% rate he could support it if the profit was dedicated to a water related purpose such as water conservation, water quality, and water amenity development projects.

Motion by Commissioner Doug Neeley, second by Commissioner Rocky Smith, Jr. to approve the loan to the South Fork Water Board with an interest rate of 3.5%.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner Rocky Smith, Jr., and Commissioner Daphne Wuest voting aye and Commissioner James Nicita voting no. [4:1:0]

Commissioner Neeley said there was a need for this loan and both parties would benefit. He was open to discuss how the loan interest rates would be distributed.

Commissioner Smith agreed with the 3.5% and did want to discuss how the interest would be spent. He did not have any concerns other than the fact that West Linn would not be involved. It was time to make a decision.

Mayor Norris thought it was a good idea to use the funds for water related issues.

d. **[Ordinance No. 10-1004, Authorizing the Vacation of a Westerly Portion of Main Street Located South of Agnes Avenue - City File No. SV10-0001](#)**

Ms. Kraushaar explained the location of the vacation. The vacation would not affect the realignment or current functioning.

Motion by Commissioner Doug Neeley, second by Commissioner Daphne Wuest to adopt on first reading Ordinance No. 10-1004, authorizing the vacation of the westerly portion of Main Street located south of Agnes Avenue.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner Rocky Smith, Jr., Commissioner James Nicita, and Commissioner Daphne Wuest voting aye. [5:0:0]

e. **[Resolution No. 10-09, Accepting Jurisdictional Transfer of a Portion of Clackamas River Drive from Clackamas County](#)**

Ms. Kraushaar said there was a revised Exhibit A that would be attached to the request to the County for the jurisdictional transfer. This section of Clackamas River Drive was inside the Urban Growth Boundary and she explained the benefits of the City taking over jurisdiction. The County would provide all the as-built drawings for the stormwater facilities. The paving north of the Jug Handle area was in good condition, however the paving in the area of the Jug Handle was in poor condition but it would be reconstructed. It was .59 miles of roadway, not .625 as previously stated.

Motion by Commissioner Daphne Wuest, second by Commissioner Rocky Smith, Jr. to approve Resolution No. 10-09, accepting jurisdictional transfer of a portion of Clackamas River Drive from Clackamas County.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner Rocky Smith, Jr., Commissioner James Nicita, and Commissioner Daphne Wuest voting aye. [5:0:0]

8. **Consent Agenda**

- a. **OLCC Liquor License Application: Full On Premise Sales and Greater Privilege, Applying as a Corporation, She Bee, Inc., DBA Falls View Tavern Located at 100 S. McLoughlin Blvd., Oregon City, Oregon 97045**
- b. **Minutes of the March 17, 2010 Regular Meeting**
Minutes of the April 7, 2010 Regular Meeting
- c.

Motion by Commissioner Daphne Wuest, second by Commissioner Rocky Smith, Jr. to approve the consent agenda as presented.

A roll call was taken and the motion passed with Mayor Alice Norris, Commissioner Doug Neeley, Commissioner Rocky Smith, Jr., Commissioner James Nicita, and Commissioner Daphne Wuest voting aye. [5:0:0]

9. **Communications**

- a. **City Manager**

David Frasher, City Manager, passed out the annual financial report. The two findings from the auditors were addressed by the Finance Department and they now had a clean report. The Urban Renewal Budget was being worked on and tomorrow would be Bring Your Kid to Work Day.

- b. **Mayor**

Mayor Norris thanked Nancy Ide, City Recorder, for putting out a published list of the Commission's goals and actions. There was a good turnout for Earth Day. She reported on MPAC and the discussion of when the Urban Growth Boundary should be expanded. The Climate Change Conference was now on Metro's website.

- c. **Commissioners**

Commissioner Nicita reported that he had spoken to the Holcomb Outlook CPO last week. He also suggested the South Fork Water Board IGA be amended to make the Board the full City Commissions of Oregon City and West Linn. He asked for a legal opinion on several questions relating to the South Fork Water Board. Mr. Kabeiseman would research the questions.

10. **Adjournment**

Mayor Norris adjourned the meeting at 10:51 p.m.

Respectfully submitted,

Nancy Ide, City Recorder

DRAFT

MEMO

DATE: April 27, 2010

TO: Mayor Norris, City Commission, City Manager, PRAC, City Staff, Media and other interested parties

FROM: Denise Kai, Assistant Parks and Recreation Director

RE: Sportcraft Boat Ramp Replacement Project Delay Notice

Oregon State Marine Board (OSMB) has been a very supportive partner to meet the end goal of renovating the Sportcraft Boat Ramp. As you are probably aware, the boat ramp is in dire need of renovation. In June of 2009, OSMB unanimously approved our funding application to receive \$332,509 in the 2009-11 biennium. The funds come from two sources: OSMB boater funds (\$166,255) and federal Sport Fish Restoration funds from Or Dept. of Fish and Wildlife (\$166,254). The project also includes Oregon City's match of \$87,491 cash (included in our adopted 2009-10 budget) and \$43,346 of in-kind contribution (funds we have already spent on permitting and staff time).

To accomplish the project, the Community Services Department has been actively pursuing Army Corps of Engineers (COE) permits and other required permits to move forward in the construction to replace the Sportcraft Boat Ramp. Construction has been anticipated to initiate during the summer 2010 in-water work period of July to October. The permitting process with the COE and other permitting agencies has been in progress for the past three years. We are very close to completing the permitting process, however due to circumstances beyond the City's control it appears our final COE permit will not be ready in time to start work this summer. Once permits are finalized, we will work with Oregon State Marine Board to prepare final construction documents, bid packets, and prepare the project to go out to bid. We are estimating the project to begin and be completed during the 2011 summer in-water work period.

Being a highly anticipated project by the boating community, we understand the frustration this delay may cause. We are looking forward to getting this important project completed. Please feel free to forward inquiries to me at, 503. 496.1565 or Scott Archer 503.496.1546.

Thank you.



MEMORANDUM

ENTERED INTO THE RECORD

DATE RECEIVED: 5-5-10

SUBMITTED BY: David Frasher

SUBJECT: Item 9a

To: Madame Mayor and City Commissioners

From: David W. Frasher, City Manager

Re: Election Questions

Date: May 5, 2010

Commissioner Nicita recently passed along a question from a constituent, Kevin Hunt (see attached), regarding the City's practice of seeking criminal history information on applications for elected, appointed, and employed positions with the City.

The City's past practice is authorized pursuant to Ordinance No. 01-1031 and provides the City Manager with discretion to determine whether to require criminal history information during application for the aforementioned positions with the City.

More specifically, one of the questions forwarded challenged whether the City should continue to require criminal history information for persons applying for elective office for City positions. The rationale for requiring criminal history information for those in public service has been articulated in Ordinance No. 01-1031. Clearly, there is a public interest in seeking to ensure employees, appointees, and candidates for elective office meet certain requirements, particularly for positions having influence or oversight of public funds, personnel matters, law enforcement functions or other confidential or sensitive matters affecting City operations.

At this time, I believe it is important that the City continue to require criminal history information for non-elective positions, largely because there are few, if any, other vetting opportunities if the City does not perform this function. However, I do not intend to continue the past practice of the City requiring or asking candidates for elective City positions for criminal history information in applying for these positions. While such information may be valuable in evaluating the fitness of a particular candidate, there are many more appropriate avenues for such vetting, including the public and media scrutiny inherent in the political process and the opportunity for political opponents and citizens to investigate any candidate through a variety of means under the law.

Please let me know if you have any questions or concerns about my interpretation of Ordinance No. 01-1031 or other issues related to any of the documents attached hereto.

David Frasher

From: James Nicita
Sent: Monday, May 03, 2010 3:10 PM
To: David Frasher; Bill Kabeiseman
Cc: Daphne Wuest; Rocky Smith, Jr.; Doug Neeley; Alice Norris
Subject: RE: Obnoxious Election Regulations

Hi David and Bill,

I am following up on the e-mail the City received recently from resident Kevin Hunt. I myself was curious and a little put off by the Criminal History Authorization when I ran.

I would like to raise this matter during my Commissioner communication on Wednesday. I would appreciate some background information on when the policy was adopted, and under what circumstances. Is it a mandate of state law, or a product of a conservative mindset, or what. I wonder if there are constitutional implications of the policy.

I am not as concerned about the sign reg, but since a citizen has raised it, I feel we should address it.

Thanks,

Jim Nicita

-----Original Message-----

From: J. Kevin Hunt, Esq. [mailto:jkhesq@comcast.net]
Sent: Sat 4/17/2010 10:34 PM
To: Alice Norris
Cc: Daphne Wuest; Rocky Smith, Jr.; James Nicita; Doug Neeley
Subject: Obnoxious Election Regulations

"One temporary sign per street frontage of property under a single ownership provided such a sign does not cause a public safety hazard or nuisance, has no more than two faces, and that no sign face exceeds four square feet in area."

"Step #4: Submit the Criminal History Authorization form and Candidate Profile to the City Recorder's Office."

-

April 17, 2010

Dear Mayor and Commissioners:

I am wondering why the City of Oregon City has a mandatory requirement that candidates for the Mayoral and Commission elections submit to a police criminal background check.

Arguably such a requirement makes some sense with regard to regular employees and volunteers, but for the City to erect such a requirement for a citizen's entry into the municipal electoral arena is very strange.

Exactly with whom are those data shared? And if a candidate has a past record, or no record at all, what difference does it make as far as the legality of the candidacy? State law precludes prisoners serving sentences from running for public office. A mere past record is not a disqualifier.

The potential for unfair abuse of this requirement is obvious.

Would you PLEASE inform me as to whom the criminal background check data are provided once procured pursuant to a candidate's written waiver and consent?

And then there is this ludicrous campaign sign regulation.

ONE sign? I have to CHOOSE ONE out of the numerous candidates for office and ballot measures , that I may promote or oppose by means of exercise of my Article I, section 8 Oregon Constitutional right to freedom of expression?

I don't think so!

I expect to have SEVERAL campaign signs on MY PROPERTY.

I guess I need to work on an extra one, too, that reads "THIS SIGN IS ILLEGAL."

Or maybe, "SUPPORT YOUR LOCAL POLICE STATE."

With positions 1 and 4 open in the next election, if they are both contested, then I have to choose which race will be the subject of a campaign sign in my yard, when both seats are at-large? And what about the Mayoral race...I have to refrain from expressing my preference on that one, or else limit such expression that one, only?

I DON'T THINK SO!

I'd love to write more, but I must go now. Janet the Cat, Lucky the Labrador and I have a House Meeting at which the top agenda item is:

"Shall the residents of 1145 Sunny Lane SECEDE from the City of Oregon City and declare said premises a LIBERATED ZONE?"

I'll let you know how the vote on that question turns out.

Here's a constructive citizen suggestion for you:

Look up the Oregon Constitution and copy/paste Article I onto a page, print it out, and keep it in your pocket. Pull it out and consult it each time you are about to adopt or enforce a STUPID, UNCONSTITUTIONAL ordinance such as the two at issue above.

You took oaths to protect and obey that constitution....so reading it is a reasonable thing to do.

Thank you for your time and consideration.

All the best,

/s/ J. Kevin Hunt
Free American Citizen

"...Then the heat came 'round and busted me for smiling on a cloudy day..."

-- Garcia/Hunter

ORDINANCE NO. 01-1031

AN ORDINANCE AMENDING TITLE 2 OF THE CITY OF OREGON CITY MUNICIPAL CODE BY ADOPTING A NEW CHAPTER 2.54 ESTABLISHING CRIMINAL HISTORY RECORD CHECK POLICIES CONCERNING APPLICANTS FOR EMPLOYMENT AND PUBLIC SERVICE VOLUNTEERS, AND REAFFIRMING ALL REMAINING PROVISIONS OF TITLE 2 OF THE CITY OF OREGON CITY MUNICIPAL CODE.

WHEREAS, ORS 181.555 AND OAR 257-010-0025 establish procedures for access to criminal record information possessed by the Oregon State Police (OSP) through the Law Enforcement Data System (LEDS); and,

WHEREAS, OAR 257-010-0025(1)(a) permits a criminal justice agency access to OSP criminal offender information required to implement a local ordinance; and,

WHEREAS, the Law Enforcement Data System User Agreement with the Oregon City Police Department provides access to Department of Motor Vehicle information by criminal justice agencies and by other state and local agencies; and,

WHEREAS, OAR 166-040-0080 provides for retention of employment selection information for a period of three years; and,

WHEREAS, the City of Oregon City Commission and the City of Oregon City Police Department find that for the reasons recited below in the ordaining section of this ordinance that it is in the public interest to access OSP criminal offender information through the LEDS system, for all prospective employees, and volunteer positions as determined by the City Manager, with the City of Oregon City;

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

The Municipal Code of the City of Oregon City is amended by adding thereto a new chapter to read as follows:

Chapter 2.54

CRIMINAL BACKGROUND CHECKS

Sections

- .010 Purpose.
- .020 Criminal record check required.
- .030 Procedure.
- .040 Retention of criminal record checks.
- .050 Use of criminal record checks.
- .060 Section 5 provisions subject to Civil Service System.

2.54 .010 Purpose. A. The Commission finds as follows: In order for the City of Oregon City government to operate effectively, persons selected for employment

or as a public service volunteer with the City of Oregon City must have the highest degree of citizen and public trust and confidence.

B. All City of Oregon City employees and public service volunteers represent the City to its citizens. Many City employees and volunteers have responsibilities to regulate and maintain public health and safety. Most City employees and volunteers have access to public funds and property, and possess access to privileged and proprietary information submitted to the City in confidence. Additionally, City employees and volunteers may be required to operate publicly owned vehicles.

C. The Commission concludes that the aforementioned considerations justify the use of a criminal background check for all prospective city employees, and some volunteer positions where it is in the public interest to do so. Volunteer positions requiring criminal background checks will be determined by the City Manager, based on the duties and responsibilities of the position or public safety.

2.54 .020 Criminal Record Check Required. Prospective applicants and volunteers with the City of Oregon City shall be required to authorize the City to conduct a criminal offender information check through the OSP LEDS system. Additionally, applicants shall authorize the City to conduct a check of their driving record and status. The criminal history and driving record/status authorization form shall be maintained by the City Personnel Department.

2.54 .030 Procedure. City Personnel Department shall forward the authorization form on prospective employees and volunteers with the request that a records check be conducted to the Police Department. Upon receipt of the authorization form a member of the Police Department trained and authorized to perform criminal history and driving record/status checks through the LEDS system shall conduct the check on the prospective employee or volunteer. The Police Department member conducting the records check shall orally report to the City that the applicant's record indicates "no criminal record" or "criminal record." The Police Department member shall also orally provide driving record and status information to the City. Any "hard copy" of the records check shall then be shredded. The Police Department will maintain the records check authorization form. If the applicant's record is reported as "criminal record", the City may, under OAR 257-010-0025(1)(c), request a written criminal history report from the OSP Identification Services Section and pay the applicable fee for this service. If a written criminal history record has been obtained the City of Oregon City shall make it available to the official making the selection.

2.54 .040 Retention of Criminal Record Checks. The written criminal history record on persons who are not hired as an employee or a volunteer shall be retained in accordance with the requirements of OAR 166-040-0080 for a period of three years and thereafter shall be destroyed by shredding. The criminal history record of applicants and volunteers with a criminal history that are hired or appointed shall become a part of the confidential personnel file of that employee or volunteer. Access to confidential personnel files is limited to only authorize persons who have an official need to access such files that is sanctioned by law or regulation.


2.54 .050 Use of Criminal Record Checks.

Applicants for employment

or a volunteer position who have a felony criminal conviction, or a history of conviction of a misdemeanor involving moral turpitude, violence or theft, shall be closely examined by selecting officials to determine if the person possesses the required degree of citizen and public trust and confidence. Each employment or volunteer selection will, however, be made on an individual, case-by-case basis, taking into account the person's qualifications, the requirements of the particular job or volunteer post applied for, and the results of the criminal history check. Factors such as the age of an offender at the time of the offense, the type of offense and subsequent rehabilitation, and the public sensitivity of the position under consideration, must, be taken into account in evaluating a criminal history report.

2.54 .060 Section 5 provisions subject to Civil Service System. The provisions of section 5 of this ordinance are subject to the Civil Service System of the City, as well as City contracts with recognized unions.

Read for the first time at a regular meeting of the City Commission held on the 20th day of November 2001, and the foregoing ordinance was finally enacted by the City Commission this 5th day of December 2001.


JOHN F. WILLIAMS, Jr.
Mayor

ATTESTED this 5th day of December 2001


LEILANI BRONSON-CRELLY
City Recorder

ORDINANCE NO. 01-1031
Effective Date: January 4, 2002

David Frasher

From: Nancy Ide
Sent: Wednesday, May 05, 2010 11:29 AM
To: David Frasher
Subject: Candidate Background Checks and Sign Code
Attachments: image001.jpg

David, below is my "memo" to Mr. Hunt. Shall I send it to him as is, or do you wish to make changes?
Nancy

Mr. Hunt,

Thank you for bringing to the City's attention your concerns regarding candidate background checks and code regulations for political signs. Following conversation with our new city manager, David Frasher, I would like to address your concerns below.

1. Candidate background checks.

History: In 2001, the City Commission approved ordinance no. 01-1031 which establishes the criminal history record check for applicants for employment and public service volunteers. The ordinance states the following reasons for using a criminal background check in Section 2.54.010(B): "...many City employees and volunteers have responsibilities to regulate and maintain public health and safety... have access to public funds and property, and possess access to privileged and proprietary information submitted to the City in confidence." Subsection (C) gives the City Manager the authority to determine which volunteer positions require a background check. Background checks for candidates have been required since approximately 2005.

Current: In reviewing the history with our new city manager, David Frasher, he has determined that the background check for candidates for City Commission not be required, but to retain the policy for employees and appointees. As such, the form will be removed from the City's Web site and from hard-copy candidate packets.

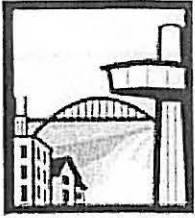
2. Sign code for Political Signs

The sign code included on the City's Web site under "Posting Political Signs" is an abbreviated version of the code section 15.28. The intent was to simplify the code for easier understanding. I spoke with the Planning Division and they confirmed that, in addition to the one temporary sign, another sign where the "display surface area does not exceed two square feet" is also permitted. In addition, signs posted on the indoor-side of a window or door are unlimited. You can visit our city code at the following link, and search for section 15.28 for the complete version.

<http://library.municode.com/index.aspx?clientId=16540&stateId=37&stateName=Oregon&customBanner=16540.jpg&imageclass=D&cl=16540.txt>

The Web site will be revised to further clarify the code requirements for political signs.

Again, thank you for bringing these matters to our attention.



**OREGON
CITY**

Nancy Ide, CMC

City Recorder

nide@orc.gov

City of Oregon City

PO Box 3040

625 Center Street

Oregon City, Oregon 97045

503-496-1505 Direct phone

503-657-0891 City phone

503-657-7026 fax

Website: www.orcity.org | [Recorder Page](#)

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