ORDINANCE NO. 1693

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE NUMBER 1438, BY REZONING CERTAIN PROPERTY FROM RESIDENTIAL-TEN (R-10) TO RESIDENTIAL-SEVEN (R-7) ZONES (ZC-90-01).

WHEREAS, a Zoning Map Amendment was considered at a public hearing before the Planning Commission on October 9, 1990, and City Council on November 6, 1990; and

WHEREAS, the City Council finds the application should be approved based on the findings listed below;

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

Section 1. Findings. The following findings of fact and conclusions are adopted:

FINDINGS

1. The current zoning for subject property is R-10.

2. Subject property is designated by the Comprehensive Plan as Low Density Residential.

3. The area involved is identified on Map Exhibit "A."

4. Zoning Map Amendment criteria and Comprehensive Plan conformity are addressed in Exhibit "B."

CONCLUSIONS

1. Zoning Map Amendment criteria have been met.

2. Comprehensive Plan conformity has been shown.

Section 2. Zoning Map Amendment. The Zoning Map of Ordinance 1438 is hereby amended by rezoning subject property as depicted on Map Exhibit "A" (attached) from R-10 to R-7.

Read the first time on November 20, 1990, and moved to a second reading by 3 - 1 vote of the City Council.

Read the second time and adopted by the City Council on December 4, 1990.

Signed by the Mayor on December 4 1990.

Roger Hall
Roger Hall, Mayor

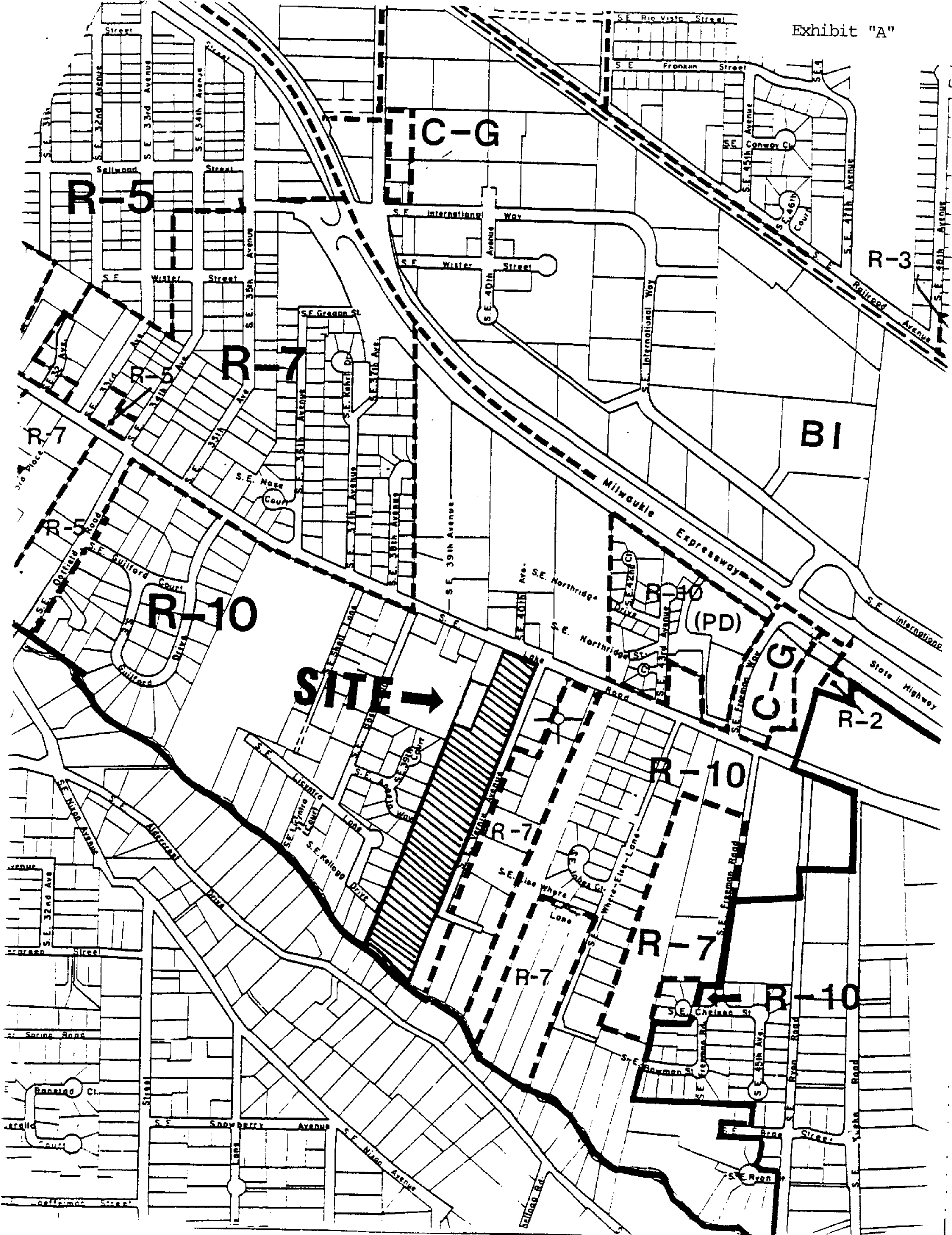
ATTEST:

Jerri L Widner
Jerri L. Widner, City Recorder

Approved as to form:

Tim Ramis, City Attorney

Exhibit "A"



C-G
R-5
R-7
R-3
BI
R-10
(PD)
R-2
SITE
Milwaukie Expressway
State Highway
S.E. Railroad Avenue
Sellwood Street
S.E. Wister Street
S.E. International Way
S.E. Rio Vista Street
S.E. Franklin Street
S.E. Conway Ct.
S.E. Gregan St.
S.E. Nase Court
S.E. Guilford Court
Guilford Drive
S.E. Oatfield Road
S.E. Lake Road
S.E. Northridge Drive
S.E. Northridge St.
S.E. Freeman Way
S.E. Freeman Road
S.E. Licyntra Lane
S.E. Kellogg Drive
S.E. Aldercrest Drive
S.E. Nixon Avenue
S.E. Else Where Lane
S.E. Chelsea St.
S.E. Bowman St.
S.E. Brae Street
S.E. Ryan Road
S.E. Snowberry Avenue
Kellogg Rd.
S.E. 32nd Ave.
S.E. 33rd Avenue
S.E. 34th Avenue
S.E. 35th Avenue
S.E. 37th Avenue
S.E. 38th Avenue
S.E. 39th Avenue
S.E. 40th Avenue
S.E. 42nd Ct.
S.E. 43rd Avenue
S.E. 45th Avenue
S.E. 47th Avenue
S.E. 48th Avenue
S.E. Vierhe Road
Spring Road

November 20, 1990

Exhibit B

FINDINGS FOR THE APPROVAL OF A
ZONING MAP AMENDMENT FROM R-10 TO R-7 FOR THE
KELLOGG CREEK ACRES SUBDIVISION (ZC-90-01)

The applicant proposes to rezone 10.8 acres of property from R-10 to R-7 to allow construction of a 40-lot subdivision. The applicant has also applied for preliminary plat approval (S-90-01) and natural resource review (NR-90-01); those actions, however, are not part of the rezone application considered by the City Council. The adopted Comprehensive Plan map designation for the property is Low Density Residential. The property is located on the west side of Vernie Road south of Lake Road. Access to the subdivision would be via Vernie Road to Lake Road.

Two sets of standards and no others are relevant: (1) the Zoning Map Amendment Criteria of Section 9.03 of the Zoning Ordinance as it was in effect on July 16, 1990 when the applicant submitted its application ("Zoning Map Amendment Criteria"), and (2) certain applicable standards from the Environmental and Natural Resources; Land Use; and Transportation, Public Facilities and Energy Conservation Chapters of the Comprehensive Plan.

I. Zoning Map Amendment Criteria

Section 9.03 of the Zoning Ordinance establishes two criteria that must be met before a zoning map upzoning may be approved; if met, the rezoning shall be approved.

A. Maximum Designation Criterion.

> "1. The proposed zoning must be to the maximum Comprehensive Plan Map designation, unless proof is provided by the applicant that development at full intensity is not possible due to physical conditions (such as topography, street patterns, public service, existing lot arrangements, etc.)."

(City of Milwaukie Zoning Ordinance § 9.03.1.) We find that Map 7 ("Land Use Plan") in the City of Milwaukie Comprehensive Plan shows that the entire area of the proposed subdivision is designated as "Low Density Residential." This designation allows

for either an R-10 or an R-7 zone. The site is currently zoned R-10. Within Objective 2 of the Residential Land Use and Housing Element of the Comprehensive Plan ("Density and Location"), Policy 1 specifies that residential densities will be based on a range of densities. For Low Density Residential areas such as the area of the proposed subdivision, the specified density range is up to 6.7 units per net acre. (Comprehensive Plan at 30.) We find that R-7 is the maximum zone in the Zoning Ordinance that meets this density range. We further find, based upon the narrative submitted by the applicant in support of its application ("applicant's narrative"), that the proposal is to rezone the property to R-7, and that no physical conditions are evident which would prevent development at an R-7 density. We also find, based upon the applicant's narrative, that the actual density proposed will be significantly less than R-7 with an average lot size of over 9,200 square feet. Because the requested R-7 zone is the maximum zone meeting the density range for the Low Density Residential designation in the Comprehensive Plan, we conclude that Criterion 1 of the Zoning Map Amendment Criteria is met.

B. Public Facilities Criterion.

"2. Public facilities to be on the site are adequate to serve the proposed land uses allowed by the designations, are presently available or can be reasonably made available consistent with the Comprehensive Plan Public Facilities Policies, by the time the proposed use qualifies for a certificate of occupancy or completion from the Building Department. For the purposes of this requirement, public facilities include:

a. Water service
b. Sanitary sewers
c. Storm sewers
d. Streets
e. Police and fire protection
f. Schools

Where public utilities are required to be installed or improved by the applicant, a performance contract or bond, assuring their installation to specified standards, is required."

(City of Milwaukie Zoning Ordinance § 9.03.2.)

We find, based upon the applicant's narrative, that the proposed land use is single family detached dwellings. We

further find that the Record contains evidence on the adequacy of services and public facilities as follows:

1. Water Service. Based upon the applicant's preliminary plat and narrative and the September 5, 1990 letter from City Engineer Paul Roeger, we find that water service is available from a City of Milwaukie 8-inch line located on the east side of Vernie Road, which is connected to a 12-inch line in Lake Road. The site can also connect to a 6-inch line in Licyntra Lane and Angela Way. We conclude, therefore, that water service is available and adequate.

2. Sanitary Sewer. Based upon the applicant's preliminary plat and narrative and the September 5, 1990 letter from City Engineer Paul Roeger, we find that sanitary sewer service is available from a City of Milwaukie 8-inch line in Vernie Road which connects to a 42-inch line adjacent to Kellogg Creek. There is also an 8-inch line west of the site just north of the lots along Licyntra Lane. We find that these lines are of adequate size and capacity to serve the proposed area. We further find, based upon the discussion at page 82 of the Comprehensive Plan, that there is ample treatment plant capacity to serve the new development. We conclude, therefore, that sanitary sewer service is available and adequate.

3. Storm Drainage. Based upon the applicant's preliminary plat and narrative, and the September 5, 1990 letter from City Engineer Paul Roeger, we find that storm drainage to Kellogg Creek is available at the end of Licyntra Lane and at three separate points in low spots along the west property line. Storm drainage in the area is currently inadequate and results in periodic ponding in some areas; development of the proposed subdivision will result in substantial drainage system improvements. Ms. Jahala expressed a concern that a drainage system being installed by the applicant for a nearby subdivision was not improving drainage as promised, and questioned whether the system proposed for this subdivision would really improve the situation. She also stated that she thought a retention system was needed. Mr. Corti expressed a similar concern that the property had a water pooling problem. The applicant's engineer, Mr. Bye, testified that the drainage problems at the nearby subdivision occurred at a time when the subdivision was still under construction, when no grading, landscaping or plantings had been made, and as a result of a severe rainstorm after a prolonged drought. He stated that with the contemplated grading and landscaping, the drainage system would improve storm drainage in the adjacent subdivision and that the drainage for this subdivision would also be improved with the planned system. Mr. Bye added that the lack of detention in the proposed storm

sewer system was at the direction of the City Engineer, for the purpose of quickly moving storm water into the Willamette River before the peak flows from upper portions of Kellogg Creek. Mr. Bye's testimony is supported by City Engineer Paul Roeger's September 5, 1990 letter, in which he states that no detention is needed. We find Mr. Bye's explanation of the situation at the nearby subdivision persuasive. We further find, based upon Mr. Bye's testimony, the applicant's preliminary plat and narrative, and City Engineer Paul Roeger's letter, that a storm system with no detention will be built adequate to correct current deficiencies and serve the new development. The system will outfall to Kellogg Creek via existing storm lines west of the site in Licyntra Lane. We conclude that by the time the proposed use qualifies for a certificate of occupancy or completion from the building department, adequate storm sewers will be available to serve the proposed use.

4. Streets. We find, based upon the applicant's narrative, that at seven to ten trips per day per household, the impact on the street system from the zone change and proposed subdivision is estimated at 280 to 400 trips per day. The applicant will mitigate this impact by constructing a half street improvement (24 feet of paving) to Vernie Road, which is currently in a substandard condition. The improvement along Vernie Road will be provided along the full frontage of the subject site and will be extended to the intersection with Lake Road. The Vernie Road portion of the proposed subdivision will have curbs and sidewalks on the west side. Access within the proposed subdivision will be provided by a fully-improved street system with curbs, sidewalks, underground utilities and street lights. A curvilinear road system and cul-de-sacs will provide street frontage for all proposed lots. The extension of Angela Way and Licyntra Lane from developments to the west to Vernie Road will provide additional and alternate circulation patterns to reduce congestion and provide emergency access.

Ms. Jahala testified that compliance with Oregon Department of Transportation ("ODOT") standards for the Lake Road-Vernie Road intersection was needed to avoid problems. Mr. Altman responded for the applicant by stating that the road improvements are required to meet city standards, not ODOT standards. He added that the street improvements were designed at the city's direction and meet city standards.

We find, based upon the submissions and testimony of the applicant and the letter from the City Engineer that the applicant has addressed the relevant traffic and roadway standards and that these standards have been met. We further find, based upon the applicant's preliminary plat and narrative

and the City Engineer's letter, that with the planned improvements the street system will be adequate to serve the proposed subdivision. Based upon the above findings, we conclude that the proposed roadways are adequate or can reasonably be made available by the time the houses are occupied.

5. Police and Fire Protection. Although the proposed development will create additional potential demand on police and fire services, we find that the improved streets and circulation patterns, sidewalks, street lights, looped water systems and fire hydrants will all increase public safety within the proposed subdivision. We also find that the October 30, 1990 letter from the Milwaukie Police Department states that the Department's resources are adequate to serve the proposed development. We further find that staff stated at the November 6, 1990 hearing that the Milwaukie Fire Department said that it can provide adequate service for the development. Based upon the evidence from the Police and Fire Departments, we conclude that police and fire protection are adequate to serve the uses allowed in the R-7 zone.

6. Schools. We find that information on school capacities and enrollment from the North Clackamas School District indicates that projected enrollments are within practical classroom loads and well below the maximum load. Expected student enrollment from the proposed development will not significantly impact school capacities. We recognize Ms. Jahala's concerns about large class sizes, but are persuaded by the school district's projections that its schools have sufficient capacity. We conclude, therefore, in light of the evidence from the school district, that the schools are adequate to serve the proposed land use allowed by the R-7 designation.

In summary, we conclude that Criterion 2 of the Zoning Map Amendment Criteria is met.

II. Comprehensive Plan Standards

CHAPTER 3 - ENVIRONMENTAL AND NATURAL RESOURCES

A. Natural Hazards Element.

1. Objective 1 - Floodplain. Objective 1 establishes policies to manage identified 100 year floodplains to protect their natural function as waterways and to protect the lives and property of those individuals and concerns currently located within and along the floodplain boundary.

a. Policy 1 under Objective 1 requires that new construction and development be regulated so that water flow will not be increased and the capacity of the floodplain will not be reduced by development activities. We find, based upon a review of the applicant's preliminary plat and narrative, that the extreme southern portion of the property is within the 100 year floodplain of Kellogg Creek. We further find, based upon those same documents and the September 5, 1990 letter from City Engineer Paul Roeger, that the proposed subdivision will be constructed with a formal storm drainage system which will manage and direct water flow into Kellogg Creek without detention to improve the ability of Kellogg Creek to handle the upstream storm peak flows. We find that this system will change the timing of the water flow into Kellogg Creek to increase the short-term flow, but that the overall effect of the system will be to protect the natural function of Kellogg Creek as required by the Objective. We further find, based upon the above documents, that there will be little or no development within or adjacent to the floodplain and that, as a result, the floodplain capacity will not be reduced. We conclude, therefore, that the standards in Policy 1 have been met.

b. Policy 3 under Objective 1 requires that the finished elevations of the lowest floor of buildings and streets be a minimum of one foot above the 100 year flood elevation. We find, based upon a review of the applicant's preliminary plat and narrative, that the 100 year floodplain elevation is at approximately 42 feet and that the proposed construction of all homes will be significantly above that elevation. We conclude, therefore, that the standards in Policy 3 have been met.

c. Policy 4 under Objective 1 requires that whenever possible the floodplain be retained as open space used for recreation, wildlife or trails. It also encourages the dedication of lands or public easements within the floodplain when indicated by the Recreational Needs Element, and provides that such dedication may be required as a condition of development along creeks and rivers or other water bodies or wetlands. We find, based upon a review of the applicant's narrative and accompanying Natural Resources Assessment ("applicant's assessment"), that the proposed subdivision will retain the floodplain as open space and will protect it for its riparian and wildlife values under the provisions of the Natural Resource Overlay Zone. We further find that the Recreational Needs Element of the Comprehensive Plan does not identify the floodplain as an area to be dedicated to the public. We also find, in light

of the protection to the area provided by the Natural Resource Overlay Zone, that dedication is not required as a condition of development. We conclude, therefore, that the standards in Policy 4 have been met.

2. Objective 2 - Seismic Conditions. Objective 2 requires that the structural integrity of all developments within the city be regulated consistent with the provisions of the Uniform Building Code, Earthquake Regulations. We find, based upon a review of Map 3 in the Comprehensive Plan, that a fault line extends through the center of the subject site in a northwesterly direction. We further find, based upon the applicant's narrative, that the applicant agrees to comply with the Uniform Building Code, Earthquake Regulations, and that the city will have an opportunity to review each building design through the building permit process. We conclude, therefore, that the standards in Objective 2 have been met.

B. Open Spaces, Scenic Areas, and Natural Resources Element.

1. Objective 1 - Open Space. Objective 1 requires the protection of open space resources of the City of Milwaukie to improve the quality of the environment. Objective 1 is implemented through 11 policies, several of which are relevant to this zone change and proposed development.

a. Policy 3 under Objective 1 requires that the natural resource areas along Kellogg Creek, as defined under Objective 2, be considered open space of special importance to all city residents, and that passive recreational public use of these areas for walking trails, nature parks and the like be encouraged. We find, based upon a review of the applicant's narrative and assessment, that the proposed development will preserve the area along Kellogg Creek in its natural state and that this preservation can be considered open space protection. We further find, from the above documents, that the applicant proposes no general public access to the area along Kellogg Creek because its small size is not sufficient to accommodate both wildlife needs and public use, and because such public use would conflict with the standards and objectives of the Natural Resource Overlay Zone which applies to that area. We agree with the applicant that the size of this area is too small to allow passive recreational use of the area consistent with the Natural Resource Overlay Zone designation. We conclude, therefore, that the standards in Policy 3 have been met.

b. Policy 4 under Objective 1 requires the city to encourage the dedication of public easements to and through important Open Space/Natural Resource areas, utilizing tax deferral programs or density transfer programs, so that open space can be conserved and easements dedicated without undue hardships for private land owners. We find, as discussed above under Policy 3, that the size of the Open Space/Natural Resource area in the proposed development is not sufficiently large to allow public use of the area without detrimentally impacting the natural resources. We further find that the applicant proposes to preserve that area in its natural state. We find, therefore, that dedication of public easement through this Open Space/Natural Resource area is not appropriate or consistent with the Natural Resource Overlay Zone designation. We conclude, therefore, that the standards in Policy 4 have been met.

c. Policy 8 under Objective 1 requires the city to utilize the Open Space/Natural Resource designation of the Comprehensive Plan Map as one of the guides for open space dedication, when feasible, during the development process. We find, as discussed in the finding for Policies 3 and 4, above, that the Open Space/Natural Resource designation of the extreme southern part of the subject property is not appropriate for dedication. We conclude, therefore, that the standards in Policy 8 have been met.

d. Policy 9 under Objective 1 requires the Parks and Recreation Master Plan to outline detailed methods for requiring new public open space. It also requires the Natural Resource Overlay Zone provisions of the Zoning Ordinance to outline methods for protecting privately owned lands designated as Open Space/Natural Resource. We find that the city has not yet adopted a Parks and Recreation Master Plan. We further find that the extreme southern portion of the proposed development contains a natural resource area subject to Natural Resource Overlay Zone development standards, and that the requirements of that zone have been met as shown in the Planning Commission's findings for NR-90-01, incorporated herein by reference. We conclude, therefore, that the standards in Policy 9 have been met.

e. Policy 10 under Objective 1 requires that the city consider for designation as natural resources: floodplains, wetlands, water bodies, riparian areas, wooded or vegetated uplands or other natural resource areas as determined by the Goal 5 process. It also requires that the

city identify those natural resource lands and regulate the development and use of them to protect natural resource values and significant natural features in the community. We find that the city has completed its Goal 5 process, has designated natural resources to be protected in the City Natural Resources Inventory, and has adopted a Natural Resource Overlay Zone with requirements regulating the development and use of designated natural resource lands to protect natural resource values within them. We further find, as shown in the Planning Commission's findings for NR-90-01, incorporated herein by reference, that the applicant has complied with all applicable requirements of the Natural Resource Overlay Zone. We conclude, therefore, that the standards in Policy 10 have been met.

2. Objective 2 - Natural Resource Areas. Objective 2 requires the preservation and maintenance of important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas and water bodies, and significant tree and vegetative cover, while retaining their functions and values. It further requires the regulation of development within designated water bodies, riparian areas, wetlands, uplands, and drainage areas. We find that Objective 2 applies to the natural resource areas that appear on the Natural Resources Map (Map 5 in the Comprehensive Plan), as more fully described in the City Natural Resources Inventory, which includes the extreme southern portion of the subject property. Although Mr. Luneke testified that the entire upland portion of the property under cultivation has wetland characteristics, we are persuaded by the expert testimony of Mr. Geiger of Scientific Resources, Inc., and the soil sampling done to support Mr. Geiger's testimony, that there are no regulated wetlands on the upper part of the property. We find that the standards and protection required under Objective 2 and its policies are implemented through the provisions of the Natural Resource Overlay Zone requirements of the Zoning Ordinance of the City of Milwaukie. We further find, as shown in the findings addressing compliance with the requirements of that overlay zone (Planning Commission findings for NR-90-01, incorporated herein by reference), that the applicant has shown compliance with the standards applicable to review and approval of development within the Natural Resource Overlay Zone. We conclude, therefore, that Objective 2 has been met.

C. Air, Water and Land Resources Quality Element.

Objective 3 - Noise. Objective 3 requires the city to assist federal and state environmental regulatory agencies in their efforts to ensure that noise levels generated within the city will be compatible with adjacent land uses.

Policy 6 under Objective 3 requires that all new residential development adjacent to high noise impact arterials (including Lake Road) provide, through site planning or building design, that interiors and private outdoor areas are protected from excessive noise intrusion. We find, based upon a review of the applicant's narrative, that noise mitigation techniques such as limiting windows on the north side of homes and additional insulation and soundproofing wall materials can be utilized on the two lots adjacent to Lake Road to reduce such impacts. We find that such techniques will be sufficient to protect those properties from excessive noise intrusion. We conclude, therefore, that the standards in Policy 6 have been met.

CHAPTER 4 - LAND USE

A. Residential Land Use and Housing Element.

1. Objective 1 - Buildable Lands. Objective 1 requires that lands in the city be utilized according to their relative measure of buildability based upon the classification of lands to meet special policies.

a. Policy 1 under Objective 1 requires the city to apply policies and standards found in the Historic Resources, Natural Hazard and Open Spaces, Scenic Areas, and Natural Resources Elements of the Comprehensive Plan to appropriate areas of the city. It also requires the city to implement those policies and standards through the city's zoning, building and safety enforcement process, and to direct urban development toward more suitable areas through density transfer. We find, based upon a review of the Comprehensive Plan and the applicant's preliminary plat, narrative and assessment, that the subject site is generally suitable to support the proposed type of development. We find, however, also based upon the applicant's documents, that the site contains some areas covered by special policy classifications, particularly a floodplain, a seismic fault and a natural resource area. We find, as shown in findings for Chapter 3, above, and in the Planning Commission's findings for NR-90-01, incorporated herein by reference, that the applicant has complied with all the relevant policies and standards in those elements or will comply as

implemented through the city's zoning, building and safety enforcement process. We conclude, therefore, that the standards of Policy 1 have been met.

b. Policy 2 under Objective 1 requires that, prior to the approval of any building permit or other development approval, the developer of any vacant land within special policies classification areas submit a report indicating how the applicable policies in the Environmental and Natural Resources Chapter are to be met. It requires that the report describe the proposed type of site preparation and building techniques, how these techniques meet the applicable policies, and the mitigation measures, if any, proposed to lessen impacts on construction. We find, based upon a review of the applicant's preliminary plat, narrative and assessment, that the applicant's documents state that no development will take place in the floodplain and that appropriate construction measures will be used to protect against seismic conditions. The documents also identify how the requirements of the Natural Resource Overlay Zone standards will be met. We find, based upon the applicant's submissions, that the applicant has indicated how the policies in the special classification areas will be met. We conclude, therefore, that the standards in Policy 2 have been met.

2. Objective 2 - Residential Land Use: Density and Location. Objective 2 requires the location of higher density residential uses so that the concentration of people will help to support public transportation services and major commercial centers.

a. Policy 1 under Objective 2 requires that residential densities be based on specified net density ranges. For low density areas the range is up to 6.7 units per net acre. We find that the subject area is designated on the Comprehensive Plan Map as "Low Density Residential," within which densities up to 6.7 units per net acre are allowed. We further find that the "net acres" calculation outlined in the Comprehensive Plan is based on 25 percent of the gross site area being subtracted out for right-of-way dedication. This site contains a total of 10.8 acres; the net area would be 8.1 acres. With 40 lots proposed, the net density would be 3.7 units per acre. This is within the maximum density allowed. In a November 6, 1990 letter, 1000 Friends of Oregon stated that they support a higher density than that proposed by the applicant, to more fully utilize the potential of the site for residential use. We find that the development as proposed is within the density range

required by the Comprehensive Plan. We further find that the proposed density is reasonable based upon the shape and proposed improvements to the property and upon the need to balance the provision of residential use with the conservation of neighborhood character. We conclude, therefore, that the standards in Policy 1 have been met.

b. Policy 2 under Objective 2 requires, in relevant part, that the predominant housing type in low density residential developments be single family detached housing. The Comprehensive Plan defines single family detached housing as:

> "A house normally occupied by one family with no structural connection to adjacent units. The unit may be situated at a specified distance from lot lines, or with one wall on a side property line. Typical density is 4-6.7 units per acre."

(Plan at 30.) We find, based upon the applicant's preliminary plat and narrative, that the proposed subdivision is for 40 residential lots with single family detached dwellings in an R-7 zone. This would result in the required type of homes within the required density. We conclude, therefore, that Policy 2 has been met.

3. Objective 3 - Residential Land Use: Design. Objective 3 encourages a desirable living environment by allowing flexibility in design, minimizing the impact of new construction on existing development, and assuring that natural open spaces and developed recreational areas are provided whenever feasible.

a. Policy 6 under Objective 3 requires that existing tree coverage be preserved whenever possible, and that areas of trees and shrubs remain connected particularly along natural drainage courses. We find, based upon a review of the preliminary plat and the applicant's narrative and assessment, that the primary area of existing tree and shrub coverage on the subject property is along Kellogg Creek, and that this area will be preserved and will remain connected along the course of Kellogg Creek. We also find that many of the other trees currently existing on the property are within the right-of-way for the improvement of Vernie Road and will have to be removed to construct that improvement. We further find that it will be necessary to remove certain other trees to allow the construction of buildings on identified lots, but that some existing trees will probably remain where possible around the location of

buildings. We conclude, therefore, that the standards in Policy 6 have been met.

b. Policy 7 under Objective 3 requires that specified trees be protected during construction in accordance with conditions attached to building permits. We find, based upon a review of the applicant's narrative and assessment, that a significant number of the existing trees will be preserved under the protection of the Natural Resource Overlay Zone. We further find, given the few remaining existing large trees that are outside areas that must be developed to allow the subdivision to be constructed and the streets to be improved, and given the applicant's desire to protect trees where appropriate, that no additional protection for specified trees is needed. We conclude, therefore, that the standards in Policy 7 have been met.

c. Policy 8 requires that sites within open space, natural hazard or natural resource areas be protected according to specifications in the Natural Hazard and Natural Resources Elements. We find, as discussed above in the findings for Chapter 3, that the applicant has shown compliance with the requirements of the Natural Hazard and Natural Resources Elements. We conclude, therefore, that the standards in Policy 8 have been met.

4. Objective 4 - Neighborhood Conservation. Objective 4 requires maximizing the opportunities to preserve, enhance and reinforce the identity and pride of existing well-defined neighborhoods in order to encourage long-term maintenance of the city's housing stock. We find, based upon the applicant's narrative and the staff report, that the area of the proposed development is an area in transition from rural residential to a more suburban residential, with a mixture of single family detached homes ranging in size from 900 square feet to 4,700 square feet on lots ranging from 7,000 square feet to almost an acre. The area includes some agricultural property, but the area is no longer rural. It is within the city's urban growth boundary and is currently undergoing infill. Because this is a transition area of such diverse property, we find that the area is not an existing, well-defined neighborhood. As the area builds out, it will develop a pride and identity. We find that the proposed development will contribute to and enhance such a pride and identity. The homes to be built will be of comparable height, scale and bulk to those in the area. Vernie Road will be improved beyond its current narrow width to a 24-foot paved surface. New access routes and drainage improvements will be made. We conclude that there will be significant enhancement of

the neighborhood from the proposed rezoning and development because it will result in improved amenities and facilities.

Policy 5 under Objective 4 requires that within low density areas, new projects maintain a single family building bulk, scale and height when abutting existing single family areas, or when abutting the street where existing single family houses face the project. We find, from a review of the applicant's narrative, that the surrounding area is developed with single family residences all within the Low Density Residential Comprehensive Plan designation. Housing densities vary by location. The existing building bulk, scale and height are associated with single family development, with one and two story structures. The proposed subdivision will create only single family dwellings, with homes meeting the R-7 standards. This will result in homes of similar bulk, scale and height to the existing single family homes in the area. We conclude, therefore, that the standards in Policy 5 have been met.

B. Neighborhood Element.

1. Objective 1 - Neighborhood Character. Objective 1 requires that the residential character of designated neighborhood areas be maintained. We find that the residential character of this neighborhood (Neighborhood #1 as designated in the Comprehensive Plan) is single family detached homes, defined by single family residential bulk, scale and density. We further find, as shown in the findings for Objective 4 under the Residential Land Use and Housing Element, that the neighborhood is in transition and, based upon the applicant's narrative and the staff report, that the size of homes in the neighborhood ranges from 900 square feet to 4,700 square feet and that the size of lots ranges from 7,000 square feet to almost an acre. We also find, from the applicant's narrative, that the proposed development will contain homes of between 1,800 and 4,000 square feet on lots between 7,400 and almost 25,000 square feet, with an average lot size of over 9,200 square feet. We also find, from the applicant's narrative, that the planned homes will be of one and two story construction like those already in the neighborhood. Although Mr. Luneke and Mr. Corti stated that the character of the area was defined by large lots, we find that the Record shows a broad range and variety in lot sizes in the neighborhood, and that consequently the neighborhood character is not one of large lots. In addition, although Mr. Luneke testified that property value and construction quality and materials were elements of neighborhood character, we find that these considerations are not relevant in determining whether the standard of maintaining the residential character of the neighborhood is met. We find that the proposed one and two story

single family residences on lots averaging 9,200 square feet, with most lots well above 7,000 square feet, will result in a residential bulk, scale and density similar to that already existing in the neighborhood. We conclude, therefore, that the standards in Objective 1 have been met.

2. Objective 2 - Neighborhood Needs. Objective 2 requires that the needs of neighborhood areas for public facilities and services be met. We find, based upon the applicant's preliminary plat and narrative and our findings for the Zoning Map Amendment Criteria discussed above, that the proposed development will significantly increase the public facilities and services in the area by improving substandard streets, extending streets to improve the circulation pattern, improving drainage and water service and adding sidewalks, lights and fire hydrants to improve safety and convenience. We conclude, therefore, that the standards in Objective 2 have been met.

3. Guidelines for Neighborhood Area 1.

a. Guideline 1 - Single Family Character. Guideline 1 provides that the single family character of designated single family areas should be maintained by improving the quality of new residential development. We find, based upon the applicant's narrative, that the proposed subdivision, which will be developed exclusively with single family housing, will provide improved streets, sidewalks, curbs, storm drainage, street lights and water systems. We find that these additions will improve the quality of the area. We conclude, therefore, that Guideline 1 has been met.

b. Guideline 3 - Residential Open Space. Guideline 3 states that new residential development, especially multifamily development, should provide adequate open space and facilities for the children expected in the project, and open space and landscaping to create an aesthetically pleasing transition to adjacent properties. We find, based upon the applicant's preliminary plat and narrative, that the proposed subdivision is not multifamily and involves no transfer of density to compensate for provided open space areas and facilities. We further find, based upon the above documents that the average lot size of the proposed subdivision will be over 9,200 square feet. We find that this will provide adequate open space and facilities for children expected in the project. We also find that the open space and landscaping under the proposed subdivision are not significantly different from that which

would be provided within an R-10 zone. We further find that this is adequate open space to create an aesthetically pleasing transition to adjacent properties. In addition, we find that the proposed subdivision will maintain Open Space/Natural Area at the extreme southern part of the property as part of the Natural Resources Overlay Zone and that this will positively contribute to the aesthetics of the area. We conclude, therefore, that the standards in Guideline 3 have been met.

c. Guideline 4 - Community Open Space. Guideline 4 provides that designated open space in the neighborhood and in natural areas along Kellogg Creek should be preserved. We find, based upon a review of the preliminary plat and the applicant's narrative and assessment, that the natural area along Kellogg Creek will be preserved and protected as a natural area under the City's Natural Resource Overlay Zone. We further find that public access to Kellogg Creek along the southern portion of this property is not desirable due to the small size of the area involved and the desirability of limiting access to this area to preserve its riparian and habitat values. We find that the proposed development will protect a substantial number of trees in the area maintained in its natural state under the Natural Resource Overlay Zone, with the option of additional trees to be protected elsewhere outside the Natural Resource Overlay Zone boundary. We conclude, therefore, that the standards in Guideline 4 have been met.

d. Guideline 8 - Walkways. Guideline 8 provides that adequate walkways be constructed in new residential areas and adequately maintained once installed. We find, based upon a review of the applicant's narrative, that the proposed subdivision will include the construction of sidewalks on all internal streets and also the west side of Vernie Road. We further find that, consistent with city policy, once built the sidewalks will be maintained by individual homeowners. We conclude, therefore, that the standards in Guideline 8 have been met.

CHAPTER 5 - TRANSPORTATION, PUBLIC FACILITIES AND ENERGY CONSERVATION

A. Transportation Element.

Objective 3 - Roadway Construction and Improvements. Objective 3 requires the improvement of access, circulation and safety of roadways. Policy 5 under Objective 3 requires that

transportation improvements be provided as properties develop and be made at a level consistent with the land use plan and roadway functional classifications. We find, based upon a review of the applicant's preliminary plat and narrative, that the proposed subdivision will provide a street network between Boss Lane and Vernie Road in a circuitous route, consistent with the local street design policy in Objective 1 of the Transportation Element. We further find, based upon the above documents, a September 5, 1990 letter from City Engineer Paul Roeger, and our findings for the Zoning Map Amendment Criteria discussed above, that the applicant will be making substantial additional improvements to Vernie Road to improve its safety and carrying capacity and will also provide curbs, sidewalks and lights within the other streets of the proposed subdivision. We find that these improvements are consistent with the roadway functional classifications and the Comprehensive Plan. We conclude, therefore, that the standards in Policy 5 have been met.

B. Public Facilities and Services Element. The goal under this element is "to plan, develop and maintain a timely, orderly and efficient arrangement of public facilities and services to serve urban development." The findings for Section 9.03.2 of the Zoning Ordinance (Zoning Map Amendment Criteria relating to public facilities), show that the public facilities and services are adequate or can be made available for urban development of this area. We conclude, therefore, that the standards in this Element have been met.

C. Energy Conservation Element. The goal under this element is "to conserve energy by encouraging energy efficient land use patterns and transportation systems, and by encouraging the construction industry and private homeowners to participate in energy conservation programs." We find, based upon a review of the applicant's preliminary plat and narrative, that the proposed zone change would conserve energy by allowing for more density than the current R-10 zoning. We find that this increased density would encourage more efficient land use patterns which would provide for more efficient utilization of existing public facilities and services. We further find that the street orientation around the subject property is such that maximum solar exposure is not available. We find also that construction techniques are available for the design and construction of homes in the proposed subdivision to allow for a high energy efficiency. We conclude, therefore, that the relevant standards under the Energy Conservation Element have been met.

In summary, we find that the requested zone change is in compliance with the two explicit zone change criteria in

Section 9.03 of the City of Milwaukie Zoning Ordinance. The proposal provides for maximum density and utilization of the land. Based upon site conditions, there is no compelling reason for limiting the density to R-10. We also find that there are adequate public facilities available or which can be made available to serve the development. Because the two zone change criteria of the Zoning Ordinance have been met, we find that the zone change must be approved. We further find that the proposed zone change is in compliance with the applicable standards of the City of Milwaukie Comprehensive Plan. We conclude, therefore, that all standards applicable to a zone change have been met. Consequently, we approve the zone change.

sa887

October 23, 1990

EXHIBIT 1

FINDINGS FOR NATURAL RESOURCE OVERLAY ZONE REVIEW AND APPROVAL FOR THE KELLOGG CREEK ACRES SUBDIVISION (NR-90-01)

Applicant proposes a subdivision on 10.8 acres of property within the City of Milwaukie Natural Resource Overlay Zone. The applicable approval standards for development within the Natural Resource Overlay Zone are those found in Sections 3.21.07 through 3.21.18 of the Zoning Ordinance of the City of Milwaukie.

I. Development Standards

Section 3.21.07 of the Zoning Ordinance of the City of Milwaukie establishes development standards for activities within the Natural Resource Overlay Zone. Compliance with these development standards must be shown in a written report provided by the applicant. We find that the applicant has submitted a narrative in support of its application ("applicant's narrative") and an accompanying Natural Resources Assessment prepared by Scientific Resources, Inc. ("applicant's assessment"). We find, from a review of these documents, and as more fully discussed below, that the documents address compliance with all of the applicable standards of the Natural Resource Overlay Zone. We find further, as is more fully discussed below in the finding for Section 9.21.09, that the boundary of the natural resource location is as depicted on Exhibit F, that no development is being approved at this time south of that boundary, and that this boundary defines which of the applicant's proposed development activities are subject to the standards in Sections 3.21.07.A and 3.21.07.B. We conclude, therefore, that the written report requirement of Section 3.21.07 has been met and that the development standards in Section 3.21.07 apply to the proposed development based upon the natural resource location as depicted on Exhibit F.

A. Development Activities Within a Designated Natural Resource Site Outside of the Natural Resource Location. Section 3.21.07.A requires that development activities within a designated natural resource site adjacent to or outside of a specific natural resource location comply with specified standards.

1. Section 3.21.07.A.1 requires site preparation and construction practices which prevent drainage of hazardous materials or erosion, pollution, or sedimentation to the adjacent natural resource location. We find, based upon the preliminary plat and the applicant's narrative and assessment, that the proposed subdivision includes proposed development activities adjacent to and outside of the specific natural resource location. We further find, from the applicant's narrative, that the applicant proposes to prepare a construction management plan with provisions to ensure protection of the adjacent natural resource location from drainage of hazardous materials or erosion, pollution, or sedimentation. The construction management plan, which will be reviewed as part of the city's building review, will provide protection through such practices as the fueling and maintenance of construction vehicles and equipment at distant locations and the use of erosion control barriers such as hay bales adjacent to the natural resource location to contain and control erosion and sedimentation. We find that such practices will be sufficient to prevent drainage of hazardous materials or erosion, pollution, or sedimentation to the adjacent natural resource location. We conclude, therefore, that the standards in Section 3.21.07.A.1 have been met.

2. Section 3.21.07.A.2 requires a development setback which adequately protects the resource site. We find, based upon the applicant's narrative and assessment, and based upon our finding for Section 3.21.09 regarding the location of the natural resource location and that no development is being approved at this time within that location, that all development will take place north of the natural resource location. We find that the lack of development in the natural resource location, in conjunction with the protective measures to be established in the construction management plan for activities adjacent to the natural resource location, create a sufficient development setback to protect the resource site. We conclude, therefore, that the standard in Section 3.21.07.A.2 has been met.

3. Section 3.21.07.A.3 requires that vehicle maneuvering and parking areas, outside storage and display areas, and trash collection areas be screened from the natural resource location by site obscuring vegetation or fencing. We find, based upon a review of the applicant's preliminary plat and narrative, that the proposed subdivision will not include any vehicle maneuvering and parking areas or storage, display or trash collection areas

adjacent to the natural resource location except for small areas incidental to residential use. We further find that the intent of this section was to screen larger scale commercial activities and storage areas from the natural resource location. We conclude, therefore, that the standards in Section 3.21.07.A.3 have been met.

4. Section 3.21.07.A.4 prohibits outdoor activities which create large amounts of noise, dust or glare. We find, based upon the applicant's narrative, that the proposed subdivision will only include single family residential homes and no commercial or industrial uses. We find further that this section was intended to primarily apply to sustained commercial and industrial activities and not to residential uses. We conclude, therefore, that this standard has been met.

5. Section 3.21.07.5 requires that types, sizes and intensities of lights be placed so that they do not shine directly into the natural resource locations. We find that this section was intended primarily to address commercial and industrial uses. We find further that the standard is applicable to residential outdoor lights such as porch lights or spotlights. We find that this standard can be met through a condition prohibiting porch lights or outdoor lights on the residential lots abutting the natural resource location from being placed so that they shine directly into the natural resource location. We conclude, therefore, that subject to such a condition, the standards in Section 3.21.07.A.5 have been met.

B. Development Activities Within a Natural Resource Location.

1. Section 3.21.07.B.1 requires that any development of trails, rest points, view points, and other facilities for the enjoyment of the resource be done in a way that reduces impacts on the natural resource while allowing for the enjoyment of the natural resource. We find, based upon the preliminary plat and the applicant's narrative, that there is no access proposed for the general public. We also find that Section 3.21 does not require that trails be developed within the natural resource location. We find, therefore, that the standards in Section 3.21.07.B.1 are not applicable.

2. Section 3.21.07.B.2 requires that development in areas of dense standing trees be designed to minimize the number of trees to be cut to no more than 50 percent of the

mature standing trees (six inch dbh) without a one-for-one replacement with comparable species. It further requires that the site plan for the proposed activity identify all mature standing trees proposed for removal by type, size, and location, and where and what type of tree replacement if any is to occur. We find, based upon the applicant's assessment (particularly Figure 6) in conjunction with the natural resource location as depicted on Exhibit F, that there are 23 trees or groves of mature standing trees of six inch dbh or greater within the boundary of the natural resource location. We find that the information supplied in the applicant's assessment identifies all mature standing trees by type, size and location. We further find that no development (including removal of trees) is being approved at this time within the natural resource location. We conclude, therefore, that the standards in Section 3.21.07.B.2 have been met.

3. Section 3.21.07.B.3 prohibits harvesting of uncultivated timber except as allowed by Section 3.21.07.B.2. We find, based upon the fact that no development is being approved at this time within the natural resource location, that no harvesting of uncultivated timber will occur. We conclude, therefore, that the standard in Section 3.21.07.B.3 has been met.

4. Section 3.21.07.B.4 requires that areas of standing trees, shrubs, and natural vegetation remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved. The purpose of retaining such vegetation is to provide a transition between the proposed development and the natural resource, to provide opportunity for food, water, and cover for animals located within the natural resource location, and to protect the visual amenity values of the natural resource. We find, based upon a review of the applicant's narrative and assessment, that the natural resource location will result in a continuous corridor of standing trees, shrubs and natural vegetation along Kellogg Creek which will connect to vegetation to the east and west of the property. We find, based upon the applicant's assessment, that the preservation of this wide vegetative corridor in its natural condition will protect the major stream corridor and adjacent diverse upland habitat which are the area's most valuable assets, and also provide visual attractiveness of the undisturbed vegetation. We conclude, therefore, that the standards in Section 3.21.07.B.4 have been met.

5. Section 3.21.07.B.5 requires that the natural riparian vegetation along streams and drainageways be maintained and preserved, except where mitigation is approved, for a minimum of 15 feet from the normal high water line in those areas with slopes of 10 percent or less. We find, based upon a review of the preliminary plat and the applicant's narrative and assessment, that the natural riparian vegetation along Kellogg Creek will be preserved, where it exists, for more than 15 feet from the 100 year floodplain level which defines the riparian zone. We further find, from the same documents, that the 100 year floodplain level is at least as far back from Kellogg Creek as the normal high water line, and that the slopes of the property at that point do not exceed 10 percent. We also find that the applicant proposes no selective cutting, trimming or thinning to allow access to the waterway. We conclude, therefore, that the standards in Section 3.21.07.B.5 have been met.

6. Section 3.21.07.B.6 requires that storm flows from the proposed development within and to natural drainage courses shall not exceed natural flows as determined by the City Public Works Department. We find, based upon the preliminary plat, the applicant's narrative and the September 5, 1990 letter from Paul Roeger, Office Engineer (Exhibit G), that after the proposed subdivision is constructed, storm water flows through the natural resource location will be significantly reduced as a result of the collection and distribution of storm waters by the storm sewer system and discharge to the west of the property. We further find that storm water flows and storm system design will be consistent with the flow specification determined appropriate by the City Public Works Department. We conclude, therefore, that the standards in Section 3.21.07.B.6 have been met.

7. Section 3.21.07.B.7 requires that construction practices include steps to ensure that land cuts are not exposed to storm water flows, that land and trenches are graded to allow direct flow into natural drainage courses and that grading not expose unprotected surfaces to water flows and possible erosion. We find that no approval is being given at this time for construction within the natural resource location. We further find, as discussed above in the finding of compliance with Section 3.21.07.A.1, that the applicant will prepare and obtain approval for a construction management plan prior to development of the property and that this construction management plan will provide for the protection of the natural resource location

from construction activities occurring adjacent to that location. We find that as a result of the lack of development in the natural resource location and the protective measures to be applied adjacent to the natural resource location that the proposed development will ensure that unprotected surfaces are not exposed to storm water flows and erosion. We further find that since no development is approved in the natural resource location, and since the proposed subdivision will direct water into a storm water sewer system, there is no need for grading land or trenches to allow direct flow into natural drainage courses. We conclude, therefore, that the standards in Section 3.21.07.B.7 have been met.

8. Section 3.21.07.B.8 requires that development be designed to have the least possible impact on the natural features and values of the site, and that the development should look at alternative designs and locations to mitigate the impact. We find that this section must be interpreted in conjunction with Section 3.21.03, which states the provisions of the Natural Resource Overlay Zone do not prohibit uses allowed by the primary zone, but merely regulate the amount and placement of those uses. In this context, we find that this section was not intended to prohibit all impacts of development on the natural features and values within a natural resource location, but was intended to be read consistently with other parts of Section 3.21 which allow development if specified conditions are met, even if impacts on the natural resource values result. We find, however, as is discussed more fully in the finding for Section 3.21.09, that no approval is being given at this time for development in the natural resource location. We further find, based upon the findings for Section 3.21.07.A, that the proposed development activities outside of the natural resource location comply with all applicable standards. We also find, based upon the applicant's assessment and the lack of approved development within the natural resource location, that the impact of the applicant's proposed subdivision will have a negligible impact on the values of the natural resource site. Despite concerns raised by some members of the public that additional protection of the natural resource values should be required in the form of open space or required participation in a tax deferral program, we find that such actions are not required by Section 3.21 and are not necessary to provide the protection required by the approval standards in Section 3.21. We conclude, in light of these considerations, that the standards in Section 3.21.07.B.8 have been met.

9. Section 3.21.07.B.9 requires that road crossings of major natural drainage courses be minimized as much as possible. We find, based upon a review of the preliminary plat and the applicant's narrative, that there are no proposed road crossings of Kellogg Creek, the only natural drainage course in the area of the proposed development. We find, therefore, that the standard in Section 3.21.07.B.9 is not applicable.

10. Section 3.21.07.B.10 requires that construction of the development be done in such a manner to safeguard the portions of the site within the Natural Resource Overlay Zone that have not been approved for development in order to avoid harm to the natural resource area. We find that no approval is being given at this time to development within the natural resource location. We find further, as discussed above in the findings for Section 3.21.07.A, that the applicant will obtain approval of a construction management plan prior to development and will take other specified measures which will provide safeguards to protect the natural resource location from activities occurring adjacent to the natural resource location. We find that these protective measures will be sufficient to avoid harm to the natural resource location. We conclude, therefore, that the standards in Section 3.21.07.A.10 have been met.

11. Section 3.21.07.B.11 requires a mitigation plan, as determined under Section 3.21.10, for development activities that would adversely impact the natural resource values of the site. We find, based upon the finding for Section 3.21.10, that no mitigation plan is required of the applicant. We find, therefore, that the standards in Section 3.21.07.B.11 are not applicable.

II. Site Surveys

A. Section 3.21.08 requires site surveys to inventory the location, nature, and characteristics of the natural resources when: (1) the extent of the natural resource location is not specifically identified by the City Natural Resources Inventory, (2) the applicant believes the Natural Resource Overlay Zone boundary is inaccurate, or (3) modifications impacting the natural resource are proposed. We find, based upon a review of the applicant's narrative and assessment and the City Natural Resources Inventory, that the location of the riparian area and upland habitat for this property are not specifically identified in the City Natural Resources Inventory and that consequently a site survey is required. We find further that the

applicant has performed an on-site survey as described in the applicant's assessment. We find, therefore, that the requirements in Section 3.21.08 have been met.

B. Section 3.21.09 requires a site survey to include: (1) a scaled site plan clearly identifying the nature and characteristics of the natural resources at the site (including a description of the species and habitats observed); the location of both existing and proposed structures, parking/maneuvering areas, utilities and other development; the physical characteristics of the site (including slope, water course location, and vegetation location and type); and information provided for the site on the City Natural Resources Inventory; and (2) a narrative describing the proposed activity and its relation to the location of the natural resources. We find, based upon a review of the applicant's narrative and assessment, that the applicant has comprehensively described the physical and biological features of the natural resource site, including a description of the species and vegetation thereon. We further find, based upon a review of the preliminary plat, that the applicant has identified the location of existing development and generally identified the location of proposed development. We also find, based upon a review of the applicant's narrative and assessment, that the applicant has thoroughly described the physical characteristics of the site, including slope, water course location and vegetation location, and that the vegetation has been described with regard to species and the location of trees six inches in diameter or larger at five feet above the ground. Despite questions raised by certain opponents of the development regarding the adequacy of sampling and inventory procedures, we are persuaded by the qualifications of the Scientific Resources, Inc. personnel who worked on the applicant's assessment, the content of the assessment, and the testimony of Dave McAllister of Scientific Resources, Inc. that the techniques used were adequate and up to standards of the profession. We also find that we have reviewed and incorporated as part of the record the information provided for this site in the City Natural Resources Inventory. We further find that the applicant's narrative and assessment describe the proposed activity and its relation to the location of the natural resources. We find, in interpreting this section, that the site survey is the appropriate place to establish the boundary of the natural resource location where that location is not specifically identified in the City Natural Resources Inventory. After reviewing the City Natural Resources Inventory and the applicant's assessment, we find that the boundary of the natural resource location should be established as depicted by the dashed line of the staff recommendation on Exhibit F. We choose this location rather than the applicant's development line as proposed

on Figure 9 of Exhibit E because we find the proposed development line on Figure 9 does not include the diverse mixture of large trees on Lot 40 north of the applicant's proposed development line, and because the applicant's assessment identifies large and diverse trees as an important vegetation component of the value of the upland wildlife habitat. For Lots 37 to 39, we choose the staff's recommendation, which was similar to the applicant's proposal, based upon the applicant's narrative and assessment, because of the ease of implementing this line and because of the lack of diversity of trees north of this boundary. We further find, based upon the City Natural Resources Inventory, the applicant's narrative, and the testimony of David McAllister at the Planning Commission hearing on October 9, 1990, that there are no wetlands on the upper portion of the property that are of significant size or were intended to be within the Natural Resource Overlay Zone. Despite the testimony of several people that some wetlands may exist on that property, we were persuaded by Mr. McAllister's expert testimony that an adequate assessment of the area had been made and that the presence of any wetlands was insignificant. We find further that the applicant has not made a specific proposal for development on lots subject to the natural resource location as we have established it. We further find that in establishing the natural resource location we are not at this time approving any development to the south of that line, and that any such development will require further review under this Section 3.21. In conclusion, then, we find that all of the information required by Section 3.21.09 has been provided. We conclude, therefore, that this standard has been met.

III. Mitigation Plan

Section 3.21.10 requires the preparation of a mitigation plan if avoidance of the resource area is not practical and development has the potential for reducing the natural resource value of the site in question to the point of no longer qualifying as a natural resource site on the City Natural Resources Inventory. We find, based upon the findings above, that no development is being approved at this time within the natural resource location as depicted on Exhibit F. We further find, based upon a review of the applicant's narrative and assessment, and the City Natural Resources Inventory, that the natural resource values of the site relate to its riparian and upland wildlife habitat values. We find, based upon the conclusions in the applicant's assessment with regard to the development proposed by the applicant, and based upon the fact we are approving less development in the natural resource location than proposed by the applicant and evaluated in the applicant's assessment, that the approved development would not significantly impact the existing values of the natural resource area, and that

the resulting natural resource values would still rank the site as a highly valuable site relative to other sites within the city. We find, therefore, that the site, even with the approved development, would still qualify as a natural resource site on the City Natural Resources Inventory. We find, therefore, that no mitigation plan is required for the site. We conclude, therefore, that the standards in Section 3.21.10 have been met.

IV. Natural Resource Management Plan

Section 3.21.11 provides for natural resource management plans which can be approved as part of the development review process for larger scale, long-term or phased developments. We find that the proposed development is not a larger scale, long-term or phased development and has not requested approval of such a natural resource management plan. We find, therefore, that the standards in Section 3.21.11 are not applicable.

V. Preparation of Plans and Surveys

Section 3.21.12 requires that natural resource site surveys, mitigation plans and management plans be prepared by competent professionals with expertise in natural resources. We find, based upon a review of the qualifications of Steven R. Helm and Richard Forbes, who prepared the assessment for Scientific Resources, Inc., that the assessment has been prepared by competent professionals with expertise in natural resources. We conclude, therefore, that the standards in Section 3.21.12 have been met.

VI. Miscellaneous

Sections 3.21.13 through 3.21.18 establish requirements relating to density transfers, procedures for modifying Natural Resource Overlay Zone boundaries, dedication for trails and coordination among regulatory agencies. We find, based upon a review of the applicant's proposal, that these sections either do not apply to the proposed development or do not establish standards of approval. We find, therefore, that these sections are not applicable to natural resource area approval for the proposed development.

In conclusion, we find that the approval standards applicable to this Natural Resource Overlay Zone review have been fully met. We further find that the boundary of the natural resource location be established as depicted on Exhibit F, that no development be approved at this time in the area of the property south of that boundary, that the boundary be shown on

the Final Plat of S-90-01 and referred to in deed covenants for Lots 37 to 40, and that the boundary remain valid if, for some reason, S-90-01 and ZC-90-01 are not finalized. Consequently, we approve the proposed development of the natural resource site subject to certain stated conditions.

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