



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

[www.lcd.state.or.us](http://www.lcd.state.or.us)

## NOTICE OF ADOPTED AMENDMENT

May 22, 2007

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Fairview Plan Amendment  
DLCD File Number 001-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: June 8, 2007**

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Meg Fernekees, DLCD Regional Representative  
Amanda Punton, DLCD Natural Resource Specialist  
John Gessner, City of Fairview

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**2** Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD  
**WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION**  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: City of Fairview Local file number: 06-87-PD/SEC  
Date of Adoption: 5/16/07 Date Mailed: 5/18/07  
Date original Notice of Proposed Amendment was mailed to DLCD: \_\_\_\_\_

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: \_\_\_\_\_

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Rezone property to "Master Planned Development"

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "SAME". If you did not give Notice for the Proposed Amendment, write "N/A".

Same

Plan Map Changed from: 4/a to: n/a

Zone Map Changed from: Old Town Overlay to: Master Planned Development

Location: Deport Street Acres Involved: 1.69

Specify Density: Previous: 5.8 du/acre New: 6.13 du/acre

Applicable Statewide Planning Goals: 1, 2, 10

Was an Exception Adopted?  YES  NO

DLCD File No.: 001-07 (15837)



Did the Department of Land Conservation and Development receive a Notice of Proposed Amendment.....

Forty-five (45) days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

Affected State or Federal Agencies, Local Governments or Special Districts:

City of Fairview

Local Contact: John Gessner Phone: (503) 674-6201 Extension: \_\_\_\_\_

Address: 1300 NE Village St City: Fairview

Zip Code + 4: \_\_\_\_\_ Email Address: gessnerj@ci.fairview.or.us

### ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE  
(09-2007)

AN ORDINANCE AMENDING THE CITY OF FAIRVIEW  
ZONING MAP FOR CERTAIN PROPERTIES LOCATED ON THE  
NORTH SIDE OF DEPOT STREET.

WHEREAS, the City of Fairview has previously adopted an acknowledged Comprehensive Plan in compliance with Statewide Planning Goals; and

WHEREAS, the applicant submitted an application to amend the Zoning Map designation from R-7.5 Old Town Overlay to Master Planned Development (PD) for the following tax lots: 1N3E 28DB lots 200 and 400, comprising the southerly 100 feet of Fairview Town Plat Blocks 14 and 15 and vacated portions of 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Street rights-of-way.

WHEREAS, the application was reviewed by the Planning Commission at public hearings held on March 27, 2007 and April 24, 2007, after giving due notice in the manner required by law and prescribed in the Fairview Municipal Code; and

WHEREAS, the Planning Commission found that the applicant demonstrated compliance with Fairview Municipal Code Section 19.450 Master Planned Development; and

WHEREAS, the City Council has received the Planning Commission's recommendation and adopted findings, together with the staff reports and background material, and has fully reviewed and considered the same; and

WHEREAS, the City Council conducted a public hearing on May 16, 2007; and

WHEREAS, based upon its review and analysis of the Planning Commission's recommendations and findings, its own review of the staff reports, public input received and consideration of all pertinent materials as submitted, the City Council finds the following:

1. The City of Fairview presently has a Comprehensive Plan adopted and acknowledged for compliance with Statewide Land Use Goals.
3. The proposed map amendment involves 1.69 acres as shown on Exhibit "A" attached hereto.
4. The applicable criteria in the Fairview Municipal Code have been satisfied as demonstrated in the record of the public hearings conducted by the Planning Commission and City Council.



**NOW, THEREFORE, THE CITY OF FAIRVIEW ORDAINS AS FOLLOWS:**

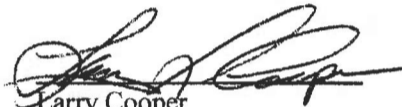
Section 1. The Zoning Map is amended by changing the lands described in Exhibit A from the "Old Town Overlay" land use designation to the "Master Planned Development (PD)" land use designation.

Section 2. This ordinance is effective 30 days after the date of adoption.

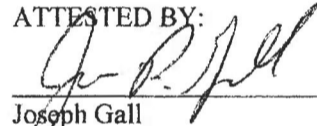
Date of First Reading May 16, 2007

Date of Second Reading and Adoption May 16, 2007

CITY OF FAIRVIEW

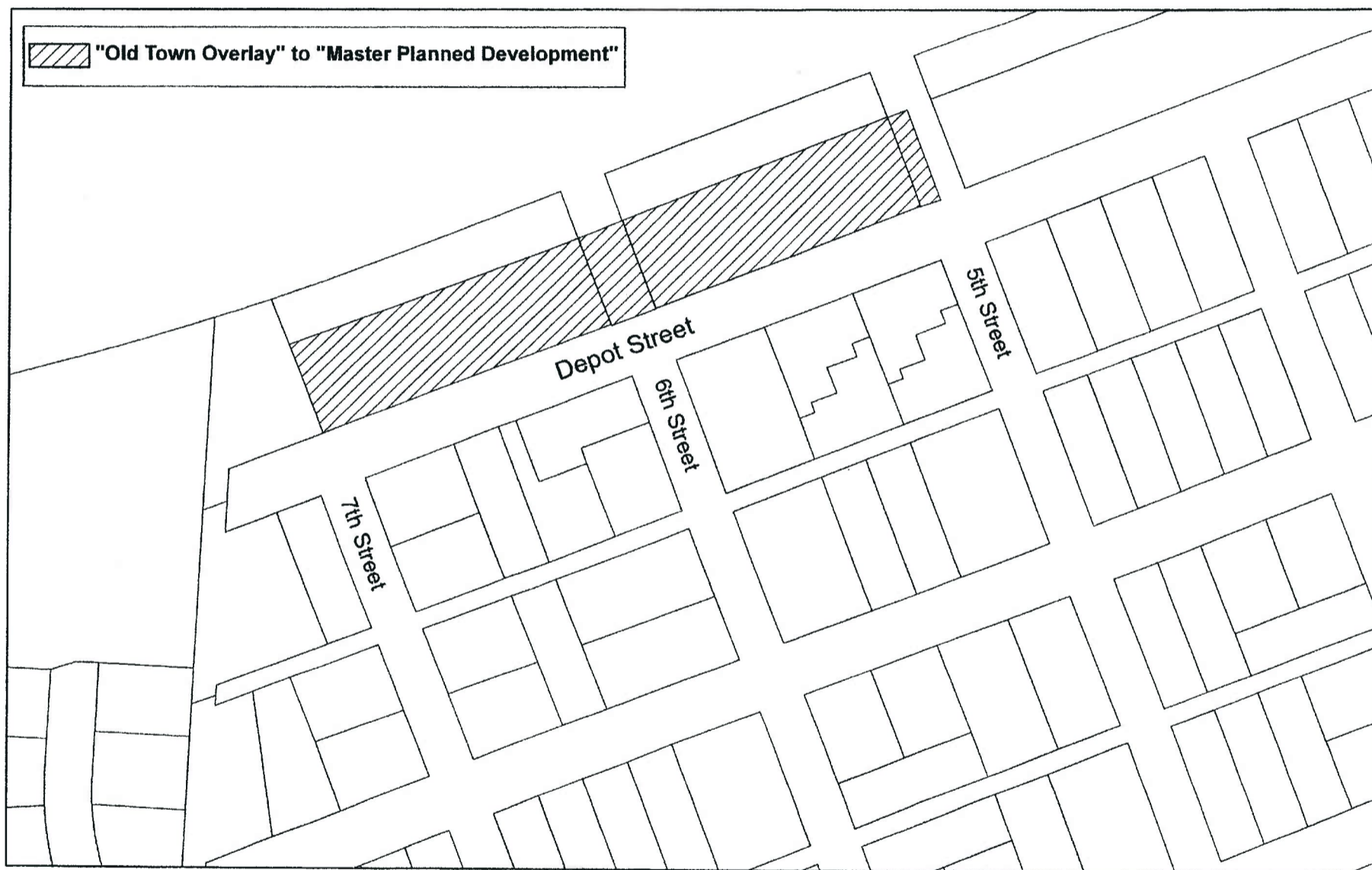
  
Larry Cooper  
Council President

ATTESTED BY:

  
Joseph Gall  
City Administrator/Recorder

Ordinance 09-2007  
Exhibit A  
Zoning Map Amendment

May 16, 2007







## NOTICE OF DECISION

**DECISION:** Approved with Conditions

**DATE:** May 17, 2007

**PROJECT NUMBER:** 06-87-PD/SEC

**REQUEST:** 10-lot Planned Development  
Replat  
Significant Environmental Concern Overlay

**LOCATION:** North side of Depot Street between 5<sup>th</sup> and 7<sup>th</sup> Streets

**TAX MAP & LOT:** 1N 3E 228DB Lots 200 and 400

**SITE SIZE:** 1.69 acres

**ZONING:** R-7.5 Old Town Overlay

**PROPERTY OWNER:** The Church at Rockwood  
17021 E. Burnside Street  
Portland, OR 97233

**APPLICANT:** Jeff Robinson  
Jim Murrell  
Vision Development  
PO Box 33072  
Portland, OR 97292

**APPLICABLE CRITERIA:** Fairview Municipal Code (FMC)

- 19.30 Residential Zones
- 18.100 Significant Environmental Concern Overlay
- 19.106 Wetland and Riparian Buffer Overlay
- 19.162- 19.165 Design Standards (Access, Circulation, Street Trees, Road Improvements, and Utilities.)

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- 19.416 Legislative Procedures
- 19.430 Land Divisions and Lot Line Adjustments
- 19.450 Master Planned Development

### **CONCLUSION**

1. On May 16, 2007, the Fairview City Council conducted a public hearing to review the Planning Commission's recommendation to approve the proposed rezoning, replat, and Significant Environmental Concern Overlay applications. Notice of the public hearing was provided in accordance with applicable law.
2. The City Council was provided with documents and other information that was included in the record of hearings conducted by the Planning Commission. Records of the Planning Commission public hearings and the May 16, 2007 City Council hearing are incorporated in this notice by reference.
3. At the May 16, 2007 public hearing heard and considered all testimony and evidence. Based upon its review of the Planning Commission's recommendation and testimony and evidence heard at the May 16, 2007 public hearing, the City Council adopted Ordinance 09-2007 amending the zoning map for the site to Master Planned Development and approved application 06-87-PD/SEC subject to the findings and conditions recommended by the Planning Commission as shown below. The adopted ordinance is made part of this notice; see attached.

### **FINDINGS OF APPROVAL**

1. The applicant has requested certain land use approvals as described below:
  - a. 10 single family residential lots ranging in area between 19,031 square feet and 4,577 square feet. The applicant is seeking a 1-lot density bonus and flexible lot sizes as allowed by the Significant Environmental Concern Overlay and Master Planned Development.
  - b. Tree preservation and replanting.
  - c. Installation of water and sewer services.
  - d. Improvements along Depot Street as follows:<sup>1</sup>
    - Curb, sidewalk, and 28 foot paved street section between 5<sup>th</sup> and 6<sup>th</sup> Streets.
    - A paved 20-foot travel surface with no curb or sidewalk between 6<sup>th</sup> Street westerly to 25 feet west of the driveway for lot 1.

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<sup>1</sup> The approved street improvements differ from the applicant's proposed improvements. See Conditions of Approval for required improvements.



- A 6-foot wide pedestrian pathway between 7<sup>th</sup> Street and the proposed street improvements to the east.
  - On-site stormwater drainage facilities including infiltration and bioswales to manage and treat stormwater
- e. Establishment of a conservation easement over the wooded and steeply sloped area on Lot 1.
2. The Planning Commission held public hearings on March 27, 2007 and April 24, 2007, for which notice was provided in accordance with state, regional, and city requirements.
3. At the March 27, 2007 public hearing the applicant submitted documents entitled "Exactions and Rough Proportionality" and "Findings for Planned Development and Subdivision Replat", both dated March 27, 2007. The public hearing was continued to April 24, 2007 to allow adequate time to review these documents. The City Attorney, reviewed the memo on "Exactions and Rough Proportionality" and determined that proposed conditions concerning street improvements and the need for one fire hydrant at 7<sup>th</sup> and Depot do not violate relevant legal principles of Dolan v. City of Tigard. While the proposed 20-foot storm easement does involve Dolan issues, the modified 15-foot easement is proportional based on the minimum needs for safe maintenance of the existing storm sewer. The City Attorney's April 6, 2007 memo is made part of this decision by reference. The applicant's March 27, 2007 "Findings for Planned Development and Subdivision Replat" are not accepted.
4. The Planning Commission heard testimony and evidence presented by staff, the applicant, and the assembled audience. Upon consideration of evidence and testimony the City Council finds the following:
- a. In the case of this application street trees required by FMC 19.163 may be counted toward tree replacement requirements due to unique circumstances and limitations of the site for siting replacement trees, when it can be shown there are practical alternatives for on-site planting locations.
  - b. Conditions of approval regarding public works requirements specified herein are consistent with FMC 19.162 through 19.165.
  - c. Conditions regarding Traditional Street Lighting are consistent with adopted city ordinances and intergovernmental agreements with the Multnomah County Lighting District.
  - d. The Public Works Director believes that a minimum 15-foot access and construction easement over the storm drain on Lot 5 is necessary to allow reasonable access and minimize maintenance impacts to adjoining properties, and is therefore accepted by the Planning Commission.
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- e. Half-street improvements along the entire street frontage of the site are required in accordance with the Fairview Municipal Code as described herein. A minimum 20-foot paved travel way between 6<sup>th</sup> and 7<sup>th</sup> Streets is required in order to meet fire access requirements.
5. Support for the Depot Street connection to 7<sup>th</sup> Street is found in FMC 19.162, 19.165, and the Fairview Transportation System Plan, and analysis as follows:
- a. Depot Street and 7<sup>th</sup> Street are identified as connected local streets in the original plan that laid out the Old Town neighborhood. That Depot Street is not now connected to 7<sup>th</sup> Street is a circumstance of the railroad's ownership history, lack of prior development interest, and adoption of code changes that require street improvements. The railroad's improper land division previously documented in the rezoning application for the site does not dismiss the need for required street improvements concurrent with present development.
  - b. Transportation System Plan goals for a "Balanced Transportation System" specify that "Local streets shall be designed to encourage a reduction in trip length by providing connectivity and limiting out-of-direction travel." (Policy 6)
  - c. The purpose of access and circulation requirements are "...to ensure that developments provide safe and efficient access and circulation for pedestrians and vehicles" and to require "...all development to construct planned streets (arterials and collectors) and to extend local streets." (19.162.010 and 19.162.020)
  - d. City street standards require that all local streets that abut development are extended within the site to provide through circulation unless there are environmental or topographic constraints that preclude street connection. (19.165 (l) (3))
  - e. "Transportation standards are necessary so that the Fairview street system remains intact and well connected. Streets are critical to the connection of neighborhoods, businesses, schools, etc." (19.165.020)
  - f. The following street improvements results in approximately 757 square feet less paving than as proposed by the applicant.
    - 335-ft., 14-ft wide paving between 5<sup>th</sup> and 6<sup>th</sup> Streets
    - 335-ft, 20-ft wide fire access road between 6<sup>th</sup> and 7<sup>th</sup> Streets.
    - 5-ft. sidewalk from 5<sup>th</sup> to 7<sup>th</sup> Street.



6. The application is consistent with requirements of the Master Planned Development code as follows:
    - a. Single family development is a permitted use in the underlying residential zone.
    - b. Lots will be developed in accordance with development standard of FMC 19.450.140.
    - c. The project will comply with FMC Article III Design Standards. (See discussion in following sections.)
    - d. Submission requirements of 19.450.160 have been substantially met.
    - e. The proposal meets approval criteria of 19.450.170 as follows:
      1. The manner of development is substantially the same as allowed by the underlying residential zone and is therefore consistent with the Comprehensive Plan.
      2. The application is consistent with requirements for land divisions.
      3. Development will be consistent with development standards of FMC Article II including building height, lot coverage, and yards.
    - f. Density bonus and amenity requirements can be satisfied by conditions of approval including:
      - Apply the conservation easement to all portion of lot 1 excluding the building envelope as shown on the plans submitted and all area within 20 feet to the north and west of the envelope and the eastern side yard.
      - To ensure long term tree health in conservation easement area, ivy should be removed from trees in the conservation easement area prior to issuance of building permits.
      - A maintenance plan for care of the conservation easement area including planting native species, managing invasive plants, and tree care should be required.
  7. The application is consistent with the following requirements of FMC 19.162.
    - a. Access permits are required for all development on public streets. If approved, the Planned Development constitutes required access permission.
    - b. Traffic studies are not required for development with 10 or fewer dwellings.
    - c. There are no existing curb cuts that require consolidation or elimination.
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- d. The proposed driveways on Depot Street are consistent with access options of FMC 19.162.020(F).
  - e. The 50-foot minimum driveway spacing standard cannot be met due to proposed lot widths. The proposed driveway locations are reasonable given the development configuration.
  - f. Each lot has only 1 driveway access in accordance with 19.162.020(H).
  - g. When constructed, driveway openings will be consistent with design requirements of FMC 19.162.020(L).
  - h. Pedestrian connections will be provided by construction of a sidewalk along Depot Street in accordance with FMC 19.165.
8. The application is consistent with FMC 19.163 Landscaping, Street Trees, Fences, and Walls as follows:
- a. FMC 19.163 governs landscape preservation and maintenance and protection of significant trees.
  - b. FMC 19.163.030 New Landscaping applies to site design review and does not therefore apply to this application.
  - c. FMC 19.163.040 requires street trees. A condition of approval will ensure compliance with street tree requirements at the time of development.
9. As conditioned the application complies with 19.165 Public Facility Standards requirements for transportation, stormwater, water and sanitary sewer.
10. The application is consistent with FMC 19.430 Land Divisions and Lot Line Adjustments.

#### **CONDITIONS OF APPROVAL**

- 1. A final plat and development plan showing development envelopes, street improvements, utilities, driveway, and tree protection shall be submitted in accordance with FMC 19.430 Land Divisions and Lot Line Adjustments. This condition satisfies the review process FMC 19.450.120.
- 2. The final plat and development of the site is subject to the approved tree preservation plan as follows:  
  
Continuing compliance with section 19.100 and the tree preservation and replacement plan throughout the construction process is required. Dead trees located within the Significant Environmental Concern Overlay are not required to be replaced if removed.



Prior to any earth disturbing activities taking place and/or the placement of fill, equipment, or materials, tree protection measures as specified in the tree protection plan shall be installed and inspected to the satisfaction of the Community Development Director. There shall be no excavation, placement of fill, materials, or equipment within required tree protection zones during the construction process except as approved. Any encroachments within tree protection zones shall be subject to prior notice to the Community Development Director and prior review and supervision of the applicant's arborist.

Installation of replacement plantings shall be guaranteed for not less than 2 years from planting. The form of guarantee shall be as approved by the City Attorney. The timing for planting of replacement trees should be consistent with best practices for long term survival. The guarantee may take into account seasonal planting considerations. The guarantee shall be submitted at the time of application for final plat.

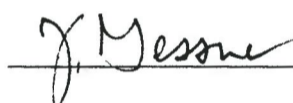
3. A proposed conservation easement that details conservation requirements and prohibited activities in the conservation area shall be submitted with the final plat application.
  4. The development envelope and riparian buffer encroachment on Lot 1 shall not exceed the footprint as shown on the approved development plan.
  5. Final occupancies for individual lots shall be subject to compliance with conditions of approval for tree replacement and compliance with the stormwater management plan.
  6. Trees preserved under this application are subject to ongoing preservation requirements. Tree removal without prior approval from the City of Fairview may result in enforcement action including the requirement to replace removed trees.
  7. The following conditions of Gresham Fire and Emergency Services shall be resolved prior to issuance of building permits:
    - a. Depot Street shall be constructed to the City of Fairview Public Works standards.
    - b. Provide a fire flow test for the area from the water provider. Minimum fire flow is 1000 gallons a minute for homes 3600 square feet and less. The fire flow for homes 3601 square feet and larger is per the table B105.1
  8. Trees within the SEC area that are removed shall be replaced on a one-for-one basis. They may be distributed among the individual lots and conservation area. Replacement trees required under the SEC regulations may be counted towards street tree requirements only after showing there are no practicable on-site locations to the satisfaction of the Community Development Director.
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9. The conservation area required under PD regulations is subject to the following conditions, which shall be resolved by submission of applicable documents and recording instruments with the final plat application:
  - a. The conservation easement applies to all portion of lot 1 excluding the following
    1. The building envelope as shown on development plans.
    2. A 10-foot yard around the north and northwest side of building envelope extending southerly to a point 50-feet from the wetland.
    3. That area along the south side of the lot between the building envelope, south of a line drawn 50 feet from a parallel to the wetland to a point 75 feet east of the west property line of lot 1.
  - b. To ensure long term tree health in conservation easement area, ivy should be removed from trees in the conservation easement area prior to issuance of building permits.
  - c. A maintenance plan for care of the conservation easement area including planting native species, managing invasive plants, and tree care is required.
  - d. The City of Fairview shall have enforcement authority over the conservation easement.
10. The following Public Works conditions shall be resolved as conditions on the final plat.
  - a. A 15-foot wide access and utility easement centered on the existing 18" City storm drain pipe located in the vacated 6<sup>th</sup> Street ROW and on the northeast corner of tax lot 400 shall be shown on the final plat. The exact location of the easement will be determined by the Public Works Director based on a survey provided by the applicant.
  - b. An engineering analysis determining stormwater flows and downstream conveyance capacity. On-site detention for post development flows for the 2-, 10-, and 25-year, 24-hour return storms, may be required if downstream constrictions are identified shall be submitted with the final plat. The design shall demonstrate how a 100-year event will be accommodated.
  - c. Stormwater treatment runoff shall be managed in accordance with Best Management Practices (BMPs) as specified in the "City of Portland, Stormwater Quality Facilities Design Guidance Manual".
  - d. An operations and maintenance agreement with the City of Fairview for all private stormwater quality facilities shall be submitted with the final plat.



- e. Half-street improvements on the north side of Depot Street between 5<sup>th</sup> Street and 7<sup>th</sup> Street including a 5-foot sidewalk, curb, and a paved 20-foot travel way. (Sidewalk design requirements may be modified by the Public Works Director as allowed for consideration of alternative stormwater management techniques.)
  - f. Traditional style streetlights are required along the north side of Depot Street between 5<sup>th</sup> Street and 7<sup>th</sup> Street. Multnomah County Lighting District shall approve street light construction drawings.
  - g. Plans and Specifications for the Depot Street improvements shall be prepared by a professional engineer registered in the State of Oregon and reviewed and approved by the Public Works Department.
11. The following conditions apply at the time of development.
- a. The developer shall reimburse the City for the cost of the installation of individual  $\frac{3}{4}$ " residential water meters for each lot and provide survey staking of the back of curb to accommodate the installation.
  - b. The blow-off valve located at the northeast corner of 7<sup>th</sup> and Depot Streets shall be replaced with a City approved fire hydrant.
  - c. The sanitary sewer laterals shall connect to the 8" city main in Depot Street. Each lot shall have a separate sanitary sewer connection installed prior to paving for the half street improvements.
  - d. All work to meet the City of Fairview specifications. Plans and calculations shall be submitted for review and approval to the Public Works Dept.
  - e. The developer shall enter into an Improvement Agreement with the City of Fairview for the public improvements at the time of the final plat or improvement plan approval.
  - f. A bond or other performance guarantee for the public improvements in the amount of 110 percent of the approved engineers estimate shall be posted to assure compliance with the agreement.
  - g. System Development Charges for sewer, water and stormwater are required at the time of permitting for individual lots.
  - h. City of Fairview right-of-way, erosion control, and grading permits are required.
  - i. If a DEQ 1200-C Erosion Control Permit is required, a copy shall be submitted with the grading permit application.
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- j. All work shall meet the City of Fairview specifications. Plans shall be submitted for review and approval to the Public Works Dept.
- k. All costs associated with the improvements shall be paid by the developer.
- l. As-built drawings shall be provided by the design engineer upon completion of the project in both mylar and electronic format. In addition to the drawings, a letter shall be submitted to the City stating that construction was in accordance with the plans and specifications. All construction inspection required to provide certification shall be paid for by the applicant.
- m. When it is agreed by the City that the project (as defined on the approved plan) is complete and has been accepted by the City in writing, the City will relinquish its interest in the performance bond and accept a 2-year maintenance bond in the amount of 10% of the original performance bond.

 date 5/17/07

John Gessner  
Community Development Director

Attachment: Ord. 09-2007