



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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Fax (503) 378-5518

www.lcd.state.or.us

AMENDED NOTICE OF ADOPTED AMENDMENT

October 5, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Clackamas County Plan Amendment
DLCD File Number 006-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: October 23, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. 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 ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist
Amanda Puntun, DLCD Natural Resource Specialist
Clay Glasgow, Clackamas County

<paa> ya/email

FORM 2

D L C D 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

DEPT OF

(See reverse side for submittal requirements)

OCT 02 2007.

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: Clackamas County Local File No.: 20293-07-CP
(If no number, use none)

Date of Adoption: 9-20-07 Date Mailed: 9-27-07
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 6-25-07

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

(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write see Attached.≡

Post Acknowledgement Plan Amendment (Comprehensive Plan Map Amendment) to remove from the Goal 5 Inventory (River and Stream Conservation Area Maps) a portion of a "Small Stream" crossing the subject property

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 AN/A.≡

same

Plan Map Changed from: inventoried stream to NON-inventoried stream

Zone Map Changed from: _____ to _____

Location: 21E 01 BA TL 3300 2735 SE Park Avenue Milwaukie 97227 Acres Involved: 0.68

Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: 1, 2, 5, 10

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 006-07(16201)

Did the Department of Land Conservation and Development **receive** a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**? Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

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

Local Contact: Clay Glasgow Area Code + Phone Number: 503 354 4520

Address: 9101 SE SUNNYbrook Blvd City: Clackamas

Zip Code+4: 97015 Email Address: clayg@co.clackamas.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 ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a Comprehensive
Plan Amendment for Fadi Hachem

File No.: Z0293-07-CP

ORDER NO. 2007-457

This matter coming regularly before the Board of County Commissioners, and it appearing that Fadi Hachem made application for a Comprehensive Plan amendment on property described as T2S, R1E, Section 01BA, Tax Lot 3300, W.M. , located on the northwest corner of the intersection of SE Park Avenue and SE McLoughlin Boulevard ; and

It further appearing that planning staff, by its report dated August 6, 2007, recommended approval of the application; and

It further appearing that the Planning Commission, at its August 13, 2007 meeting, recommended approval of the application; and

It further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on September 12, 2007, at which testimony and evidence were presented, and that a preliminary decision was made by the Board on September 12, 2007;

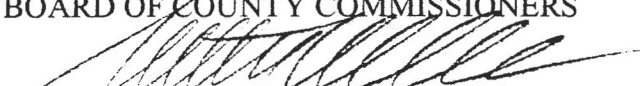
Based upon the evidence and testimony presented, this Board makes the following findings and conclusions:

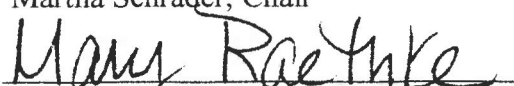
1. The applicant requests approval of a Comprehensive Plan amendment to remove the designation of a small stream buried on his property as a Goal 5 significant resource.
2. This request complies with the applicable criteria for the reasons stated in the August 6, 2007 Planning Staff Report/Recommendation, which is hereby adopted as findings and conclusions of this Board.

NOW, THEREFORE, IT IS HEREBY ORDERED that the requested Comprehensive Plan amendment is granted.

DATED this 20th day of September, 2007.

BOARD OF COUNTY COMMISSIONERS


Martha Schrader, Chair


Mary Raethke, Recording Secretary



Campbell M. Gilmour
Director

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUNNYBROOK SERVICE CENTER
9101 SE SUNNYBROOK BLVD. | CLACKAMAS, OR 97015

NAME: Fadi Hachem
FILE NO: Z0293-07-CP
REPORT AUTHOR: Clay Glasgow
HEARING DATE: August 13, 2007 (PC), September 12, 2007 (BCC)
REPORT DATE: August 6, 2007

PLANNING STAFF REPORT/RECOMMENDATION
TO THE PLANNING COMMISSION

FACTS

GENERAL INFORMATION

Applicant: Fadi Hachem; 365 NW 81st Place; Portland, OR 97229

Owner: Same

Proposal: Post Acknowledgement Plan Amendment (Comprehensive Plan Map Amendment) to remove from the Goal 5 Inventory, River and Stream Conservation Area Maps in the Comprehensive Plan, a portion of a "Small Stream".

Location: Northwest corner of the intersection of SE Park Avenue and SE Mcloughlin Boulevard

Legal Description: T2S, R1E, Section 01BA, Tax Lots 3300; W.M

Comprehensive Plan Designation: Commercial

Zone: C-3

Total Area Involved: Approximately 0.68 acres

RECOMMENDATION: Approval of a Comprehensive Plan Map Amendment to remove from the Goal 5 Inventory a portion of an unnamed tributary of Kellogg Creek crossing the subject property. Specifically, that portion of the tributary from the north side of SE Park Place to a location on the west side of SE Mcloughlin Boulevard approximately 160 feet north of the Mcloughlin Blvd/Park Ave. intersection.

SITE AND AREA DESCRIPTION AND SERVICE PROVIDERS

Site Description: The subject property is approximately 0.68 acres in size, and is vacant. Previous development on the site has been limited to outdoor type activities such as Christmas tree sales.

An unnamed tributary of Kellogg Creek historically traversed the site from the south, flowing northeasterly to near the northeast corner of the parcel as an open-water stream, exiting the site through a culvert under Mcloughlin Boulevard. Sometime in the early to mid-90's, the stream was located into a corrugated metal pipe, buried under some 15-30 feet of fill, and connected to the box culvert under Mcloughlin Boulevard. The pipe is apparently 48 inches in diameter, though this is an assumption only as there has not been any formal inspection completed. Regardless, there is no longer any surface expression of the stream on the subject property.

Directly upstream from the subject property, to the south across Park Avenue, the stream is in a culvert. Further upstream the watercourse "daylights" along some stretches, with other portions being in a culvert. Further downstream, across McLoughlin Boulevard, the stream is largely a surface feature, to include riparian vegetation. The large aerial photo (Exhibit 3), to be presented at the hearing, shows the condition of the stream in the area.

In November, 2004, METRO removed the stream segment from their inventory via "Goal 5 Inventory Map Correction, Case 122-001" (see Exhibit 5). Also, the Division of State Lands was requested to perform an onsite wetland determination. The investigation concluded that "there are no jurisdictional wetlands or waterways on the property" (see Exhibit 4). Comments from ODFW dated August, 2007 (Exhibit 10), indicate that Agency believes deregulation of this portion of the stream will not adversely affect fish and wildlife and associated habitat. A fish passage waiver was granted by ODFW in 2006 (Exhibit 6).

This application concerns the stream segment on the subject property only.

Surrounding Conditions: The property falls within the McLoughlin Boulevard commercial corridor. Commercial zoning and uses exist to the north, across Park Avenue to the south, and across Mcloughlin Boulevard to the east. Property adjacent to the west is in the City of Milwaukie, and is zoned R-5.

Service Providers:

1. Sewer: Oak Lodge Sanitary District
2. Water: Oak Lodge Water District
3. Surface Water: The subject property is within the jurisdiction of Oak Lodge Sanitary with respect to surface water management
4. Fire Protection: Clackamas County Fire District #1

Responses Requested:

1. City of Milwaukie
2. Clackamas County Fire District #1
3. Oak Lodge Sanitary District
4. DTD, Traffic Engineering
5. DLCD
6. Oak Lodge CPO
7. ODOT
8. Division of State Lands
9. Oregon Dept. of Fish and Wildlife
10. Metro
11. Property owners within 300'

CPO Recommendation: The subject property is located within the Oak Lodge Citizen Planning Organization (CPO). The CPO has not submitted any comments or a recommendation on this proposal.

Exhibits: See Exhibit List following the last page of this report. Exhibits submitted by the applicant are labeled alphabetically. Planning Staff exhibits are labeled numerically.

FINDINGS AND CONCLUSIONS

Section 1. Comprehensive Plan Map Amendment. This application is subject to and must be consistent with the Statewide Planning Goals, Metro Functional Plan, County Comprehensive Plan (CP) policies and Oregon Administrative Rules (OARs).

Part 1 – Compliance with Statewide Planning Goals.....Page 3-8
Part 2 – Compliance with Metro Functional Plan.....Page 9
Part 3 – Compliance with County Comprehensive Plan Policies.....Page 9-17
Part 4 – Compliance with Oregon Administrative Rule 660, Division 23.....Page 17,18
Part 5 – Summary of Findings for the Comprehensive Plan Map Amendment..Page 19

PART 1. COMPLIANCE WITH STATEWIDE PLANNING GOALS:

A. Goal 1: Citizen Involvement: *To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.*

The Planning Staff adopts the findings in the submitted application addressing this Goal in addition to the findings provided below.

This is a quasi-judicial land use application. The Clackamas County Comprehensive Plan and Section 1300 of the Zoning and Development Ordinance (ZDO) contain adopted and acknowledged procedures for citizen involvement and public notification. This

application has been processed consistent with the notification requirements in Section 1300 including notice to individual adjacent and surrounding property owners within 300 feet of the subject property, notice in the local newspapers, and notice to affected agencies, dual interest parties and to the Community Planning Organization in the area. One or more advertised public hearings will also be conducted before the Clackamas County Planning Commission and Board of County Commissioners, which provides an opportunity for additional citizen involvement and input.

The proposal is consistent with Goal 1.

B. Goal 2; Land Use Planning: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 requires coordination with affected governments and agencies. Notice of this application has been provided to the following agencies and governments for comments; Oak Lodge Sanitary, City of Milwaukie, Oak Lodge CPO, ODOT, Division of State Lands, Department of Land Conservation and Development (DLCD), Metro, Clackamas County Fire District #1, and Oregon Department of Fish and Wildlife.

The subject property is located within the Urban Growth Management Area (UGMA) of the City of Milwaukie. That jurisdiction has been notified of this proposal. No comments were received as of this staff report. Planning staff has reviewed the UGMA, and finds no conflict resulting from this proposal.

Goal 2 requires that all land use actions be consistent with the acknowledged Comprehensive Plan. This application has been evaluated against all the applicable goals and policies of the Clackamas County Comprehensive Plan. The background information and findings provided by the applicant and within this report, and comments received from agencies and interested parties provide an adequate factual base for rendering an appropriate decision consistent with the adopted County Comprehensive Plan.

This proposal is consistent with Goal 2.

C. Goal 3; Agricultural Land: To preserve and maintain agricultural lands.

This proposal does not involve any land planned or zoned for Farm uses.

Goal 3 is not applicable.

D. Goal 4; Forest Land: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture.

This proposal does not include any land planned or zoned for Forest uses.

Goal 4 is not applicable.

E. Goal 5; Open Spaces, Scenic and Historic Areas, and Natural Resources: To conserve open space and protect natural and scenic resources.

Goal 5 resources include open space areas, scenic and historic resources and other natural features. Chapter 3 of the Clackamas County Comprehensive Plan identifies significant Goal 5 resources within the County.

No outstanding scenic views/sites, wilderness areas, historic sites or structures, cultural areas, potential or approved Oregon recreation trails identified in the Comprehensive Plan are located on the subject property. The property adjacent to the west, formally owned by the Portland Traction Line, may become a ped/bike trail, but it is offsite.

The stream, which is the subject of this application is identified on the River and Stream Conservation Area Map and is considered a "Significant" Goal 5 resource. This stream is not identified as a wetland on the National Wetland Inventory maps. OAR 660-023 implements Statewide Planning Goal 5 and outlines the process for determining and protecting a Goal 5 resource. OAR 660-023-0090 outlines the requirements for evaluating "Riparian Corridors." The submitted application and Part 4 of this report includes an analysis and evaluation of the significance of this stream under OAR 660-023-0090. This analysis includes substantial evidence demonstrating that the portion of the stream on the property is not a significant resource and does not warrant protection under Goal 5. Those findings are adopted to address this Goal.

This application is consistent with Goal 5.

F. Goal 6; Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water and land resources of the state.

The County Comprehensive Plan and ZDO contain adopted implementing regulations to protect the air, water and land resources. The County also has adopted public facilities and service plans to accommodate all waste and process discharges in order to protect watersheds, airsheds and land resources. Section 1008 of the ZDO also includes regulations for storm drainage and erosion control in the unincorporated areas of the County. Comments received from the Surface Water Management Agency for the area (Oak Lodge Sanitary) request that the applicant provide additional information relative to the movement of storm water in this area. The 49 inch pipeline is buried some 30 feet under ground, and serves a watershed of approximately 500 acres. The comments go on to state that, while the District has not formally inspected the culvert, the condition of the pipe is suspect. Failure of the pipe could create a catastrophic flooding condition both upstream and downstream. Staff notes that this application is not a proposal to put the creek on the subject property in a culvert. That has already occurred. Baring requiring the owner to un-bury the creek and restore it to it's natural state. approval or denial of the

current request will have not specific bearing on maintaining and improving the “quality of the air, water and land resources of the state.” Subsequent land use proposals on the site will require satisfaction of Section 1008, and the local Surface Water Management Agency (Oak Lodge.) These regulations will be applied to any future development proposals (grading, etc.) on the property and will protect the affected air, water and land resources. The proposed Comprehensive Plan map amendment will not affect the quality of any air, water or land resources.

Goal 6 is not applicable.

G. Goal 7; Areas Subject to Natural Disasters and Hazards: *To protect life and property from natural disasters.*

According to the FEMA Floodplain Maps, the subject property is not located within a designated floodplain. According to the Department of Geology and Mineral Industries (DOGAMI) map, there are no geologic hazards or significant slopes located on the subject property.

Goal 7 is not applicable.

H. Goal 8; Recreational Needs: *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate to provide for the siting of necessary recreational facilities including destination resorts.*

This proposal does not involve any designated recreational or open space lands, or affect access to any significant recreational uses in the area. This project will have no impact on the recreational needs of the County or State.

Goal 8 is not applicable.

I. Goal 9; Economic Development: *“To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon’s citizens.”*

This Goal is intended to ensure Comprehensive Plans contribute to a stable and healthy economy in all regions of the state. Goal 9 also requires the County to provide for an adequate supply of sites of suitable sizes, types, locations, and services for a variety of industrial and commercial uses consistent with plan policies. This proposal includes opening up a commercially zoned property for development, and as such furthers Goal 9.

This application is consistent with Goal 9.

J. Goal 10; Housing: *“To provide for the housing needs of citizens of the state.”*

This goal requires local jurisdictions to provide for an adequate number of needed housing units and to encourage the efficient use of buildable land within urban growth

boundaries. OAR 660-007 and 660-008 defines the standards for determining compliance with Goal 10. OAR 660-008 addresses the general housing standards. OAR 660-007 addresses the housing standards inside the Portland Metropolitan Urban Growth Boundary. OAR 660-007 takes precedence over any conflicts between the two rules.

This proposal does not involve a request to amend the Comprehensive Plan map to or from a Residential plan designation, and therefore will have no effect on the County's inventory of land for housing needs.

Goal 10 is not applicable.

K. Goal 11; Public Facilities and Services: *"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."*

This Goal provides guidelines for cities and counties in planning for the timely, orderly and efficient arrangement of public facilities and services, such as sewer, water, solid waste and storm drainage. The Goal requires these public facilities and services to be provided at levels necessary and suitable for urban and rural uses, as appropriate. The subject property is located within the Urban Growth Boundary and is considered "urban" land. The area is located within and serviced by public, sewer and storm drainage service facilities. While no change in the Comprehensive Plan designation or zoning district is proposed in this application, the changes to the site will/have affected storm drainage facilities, and ultimately sewer and water if the site is further developed. Staff refers to the comments received from Oak Lodge Sanitary, relative to storm drainage (Exhibits 7, 10). The Oak Lodge Sanitary District considers the piped stream as a private facility, with the property owner liable for failure or maintenance of this facility. The application shows a 20 foot easement over the pipe. If the applicant intends to dedicate this pipe as a public facility, the Oak Lodge Sanitary District will require that the facility meet the District's engineering requirements and provides capacity as defined in the Oak Lodge Sanitary District Stormwater Master Plan.

With certain conditions of approval, this application can be consistent with Goal 11.

L. Goal 12; Transportation; *"To provide and encourage a safe, convenient and economic transportation system."*

Oregon Administrative Rule (OAR) 660-012 (Transportation Planning Rule) implements Statewide Planning Goal 12.

OAR 660-012-0060 applies to any plan map amendment which significantly affects a transportation facility. OAR 660-012-0060(1) requires any amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility to demonstrate that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.

This proposal involves removing a segment of a designated protected stream from the County's Goal 5 inventory. This proposal will not change the Comprehensive Plan designation or result in any increase in traffic. This proposal does not result in a change in the functional classification of an existing or planned transportation facility, nor change the standards implementing a functional classification. The proposal will not result in any increase in traffic impacts. Therefore the proposal will not create any change in the types or levels of land uses which are inconsistent with the functional classification (minor arterial) of the transportation facility or reduce the performance standards of the transportation facility.

Goal 12 is not applicable

M. Goal 13; Energy Conservation: *To conserve energy.*

This proposal will have no impact on any known or inventoried energy sites or resources. There are no planning or implementation measures under this Goal applicable to this application.

Goal 13 is not applicable.

N. Goal 14; Urbanization: *To provide for an orderly and efficient transition from rural to urban land uses.*

The subject property is located within the UGB. This proposal does not involve a change in the location of the UGB, a conversion of rural land to urban land, or urbanizable land to urban land. The land is already considered urban. There are no planning or implementation measures under this Goal applicable to this application.

Goal 14 is not applicable.

O. Goal 15: Willamette River Greenway: *To protect, conserve, enhance and maintain the natural scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The subject property is not located within the Willamette River Greenway.

Goal 15 is not applicable.

P. Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes) and Goal 19 (Ocean Resources).

Goals 16, 17, 18 and 19 are not applicable to Clackamas County.

PART 2. COMPLIANCE WITH METRO FUNCTIONAL PLAN:

The subject property is located within the Metro Urban Growth Boundary, and therefore is regulated under the Metro Functional Plan – specifically Title 3: “Water Quality, Flood Management and Fish and Wildlife Conservation.”, as well as Title 13: “Nature in Neighborhoods.” The applicant has submitted a letter from Metro, Carol Krigger (Senior Regional Planner), dated November 2, 2004 indicating the stream segment on this property has been removed from the Regional Fish and Wildlife Habitat Inventory Map. Therefore the property is no longer considered to be significant wildlife habitat or riparian area under the Metro Functional Plan. This letter is labeled as Exhibit 5. That letter states, in part, “We have examined the 2003 aerial photos and agree that there is not a stream located on the property. We have removed the stream segment from our inventory. The consequence of the map change removes significant wildlife and/or riparian value designations on the property.”

Clackamas County takes this to mean applicable criteria from Title 3 as well as Title 13 are met with this proposal.

The Metro Functional Plan is satisfied by this proposal.

PART 3. COMPLIANCE WITH CLACKAMAS COUNTY COMPREHENSIVE PLAN POLICIES:

A. **Chapter 1; Introduction:** *This Chapter identifies the purpose of the Comprehensive Plan and how to use the Plan.*

This Chapter of the Plan includes a general introduction to the plan and describes how to use the plan. This Chapter does not include any Goals or Policies applicable to a quasi-judicial land use application.

Chapter 1 is not applicable.

B. **Chapter 2; Citizen Involvement:** *The purpose of this Chapter is to promote citizen involvement in the governmental process and in all phases of the planning process.*

There is one specific policy in this Chapter applicable to this application.

Policy 1.0; Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representation, not only of property owners and Countywide special interests, but also of those within the neighborhood or areas in question.

The Clackamas County Comprehensive Plan and ZDO have adopted and acknowledged

procedures for citizen involvement. This application has been processed consistent with those procedures. Specifically, the County has provided notice to the Citizen's Planning Organization in the area (Oak Lodge CPO), to property owners within 300 feet of the subject property, and published public notices in the newspaper consistent with State law and Section 1302 of the ZDO. The Planning Commission and Board of County Commissioners will also hold one or more public hearings, as necessary, consistent with Section 1303 of the ZDO. These public mailings, notices and hearings will ensure an opportunity for citizens to participate in the land use process.

This application is consistent with Chapter 2.

C. Chapter 3; Natural Resources and Energy: *The purpose of this Chapter is to provide for the planning, protection and appropriate use of the County's land, water and air resources, mineral and aggregate resources, wildlife habitats, natural hazard areas and energy sources.*

This Chapter contains eight (8) distinct Sections addressing; 1) Water Resources; 2) Agriculture; 3) Forests; 4) Mineral and Aggregate Resources; 5) Wildlife Habitats and Distinctive Resource Areas; 6) Natural Hazards; 7) Energy Sources and Conservation and; 8) Noise and Air Quality. Each of these Sections is addressed below.

1. Water Resources: This Section of the Chapter identifies policies applicable to River and Stream Corridors, Principal River Conservation Areas, Stream Conservation Areas, Wetlands and Groundwater.
 - a. River and Stream Corridors and Principal River and Stream Conservation Area Policies: The creek, which is the subject of this application, is designated as a "Small Stream" on the River and Stream Conservation Area map. Policy 12.0 is applicable to this application.

1. Policy 12.0: *Designate stream conservation areas along the corridors of fish-bearing streams based on Water Protection Rule Classification (WPRC) Maps created through the cooperative efforts of the Oregon Department of Forestry (DOF) and Oregon Department of Fish and Wildlife (ODFW) pursuant to OAR 629-635-000.*

This policy and the related subpolicies (Subpolicies 12.1 through 12.4) support the designation and protection of fish bearing streams. The subject stream was originally designated as a "Significant" stream in the Goal 5 process completed by the County because the stream was identified as a fish bearing stream on the Oregon Department of Forestry (DOF) Water Protection Rule Classification maps. Section 704 – River and Stream Conservation Area ordinance of the ZDO implements Policy 12.0 above. Section 704.03 – Area of Application includes the criteria for applying the Large, Medium and Small Stream designation throughout the County. These standards only apply to Type F (Fish Bearing) and not to Type N (Non-fish Bearing) streams.

The submitted application includes a letter from the Oregon Dept. of Fish and Wildlife, Tom Stahl, Fish Passage Coordinator. See Exhibit 6. Essentially the letter exempts the site from the requirement to provide fish passage. As noted elsewhere in the application, the "box culvert" at McLoughlin Boulevard eliminates the possibility for upstream fish passage.

The removal of this stream from the River and Stream Conservation Area map is consistent with Policy 12.0 and the "Area of Application" standards in Section 704 of the ZDO because it is not a fish bearing stream.

This proposal complies with Policy 12.0.

- b. Wetlands: The subject stream is not identified as a wetland on the National Wetland Inventory. The County recognizes the NWI as a resource document for identifying wetlands in the County. The County Comprehensive Plan and ZDO includes policies and standards for the protection or mitigation of these wetlands in urban areas of the County. The Division of State Lands (DSL) is also responsible for the administration of State wetland laws. The applicant has submitted an "Onsite Wetland Determination Report" form, prepared by the Division of State Lands. That report states there are "no.....wetlands on site".
- c. Groundwater: The subject property is not located in any Limited or Critical Groundwater Area identified by the Oregon Department of Water Resources.

This application complies with the Water Resources Section of Chapter 3.

- 2. Agriculture: The subject property is designated commercial on the Comprehensive Plan map. No change in the plan designation is proposed in this application. There are no policies in this Section of the Comprehensive Plan applicable to this proposal.
- 3. Forests: This application does not involve any land planned or zoned for Forest uses. There are no policies in this Section of the Comprehensive Plan applicable to this proposal.
- 4. Mineral and Aggregate Resources: The subject property is not identified on the "Inventory of Mineral and Aggregate Resource Sites" in Table III-2 of the Comprehensive Plan. There are no policies in this Section of the Comprehensive Plan applicable to this proposal.
- 5. Wildlife Habitats and Distinctive Resource Areas: There are no significant wildlife habitats or scenic areas identified on Map III-2 of the Comprehensive Plan located on or near the subject property. There are no policies in this Section of the Comprehensive Plan applicable to this proposal.
- 6. Natural Hazards: This Section of the Chapter identifies policies applicable to floodplains, natural and geologic hazards, steep hillsides and areas with limiting soil characteristics such as shrink-swell soils, compressed soils, etc.

The subject property is not located within a designated floodplain. According to the DOGAMI maps there are no natural or geologic hazards, steep slopes or shrink-swell soils located on the property. There are no policies in this Section of the Comprehensive Plan applicable to this proposal.

7. Energy Sources and Conservation: This Section of the Chapter identifies policies intended to conserve energy and promote energy efficiency through source development, recycling, land use circulation patterning, site planning, building design and public education. There are no policies in this Section applicable to this application.
8. Noise and Air Quality. This Section of the Chapter identifies policies intended to minimize noise and improve air quality. There are no policies in this Section applicable to this application.

This application is consistent with Chapter 3.

D. Chapter 4; Land Use: *This Section of the Comprehensive Plan provides the definitions for urban and rural land use categories, and outlines policies for determining the appropriate Comprehensive Plan land use designation for all lands within the County.*

This Chapter contains three distinct Sections: 1) Urbanization; 2) Urban Growth Concepts and; 3) Land Use Policies for the following Land Use Plan designations; Residential, Commercial, Industrial, Open Space and Floodplains, Rural Communities, Rural, Agriculture and Forest. Each of these Sections is addressed below.

1. Urbanization Section. This Section of the Plan outlines policies guiding land use in Immediate Urban Areas, Future Urban Areas, Future Urban Study Areas and Urban Reserve Areas.

The subject property is within the Metro Urban Growth Boundary, and is considered an "Immediate Urban Area." There are no policies in the Immediate Urban Area Section application to this proposal. The property is not located in a Future Urban Area, Future Urban Study Area or Urban Reserve Area.

There are no applicable Urbanization Policies with this proposal.

2. Urban Growth Concept Policies. The Urban Growth Concept policies in this Section of the Plan are intended to implement the Region 2040 Growth Concept Plan.

The Urban Growth Concept Policies are not applicable.

3. Land Use Plan Designations. The subject property is currently designated Commercial on the Comprehensive Plan map. The proposal does not involve a change to the

Commercial designation. There are no policies in the Commercial Section of the Plan applicable to this application.

The remaining policies pertaining to the Residential, Industrial, Open Space and Floodplains, Rural Communities, Rural and Forest plan designations in this Section of the plan are not applicable.

There are no applicable Land Use Plan Designation Policies from Chapter 4 relative to this proposal.

E. Chapter 5; Transportation: *This Chapter outlines policies addressing all modes of transportation.*

This Chapter contains six (6) distinct Sections addressing; 1) Roadways; 2) Transportation Demand Management; 3) Parking; 4) Transit; 5) Pedestrian and Bicycle Facilities and; 6) Freight, Rail, Air, Pipelines and Water Transportation. Each of these Sections is addressed below.

1. Roadways. The purpose of this Section is to create and maintain a safe, continuous County-wide road system that accommodates movement by all modes. The adopted County Roadway Standards are also used to ensure a safe and adequate road system.

There are no policies in this Section of the Chapter applicable to this application.

2. Transportation Demand Management. This Section outlines strategies to achieve efficiency in the transportation system by reducing demand and vehicle miles traveled.

There are no policies in this Section of the Chapter applicable to this application.

3. Parking. This Section of the Chapter outlines policies for parking standards to meet the Region 2040 Growth Concept Plan, Transportation Planning Rule and DEQ's Air Quality Maintenance Plan.

There are no policies in this Section of the Chapter applicable to this application.

4. Transit. This Section of the Chapter outlines policies for accommodating transit services and facilities.

There are no policies in this Section of the Chapter applicable to this application.

5. Pedestrian and Bicycle Facilities. This Section of the Chapter outlines policies for providing pedestrian and bicycle facilities.

There are no policies in this Section of the Chapter applicable to this application.

6. Freight, Rail, Air, Pipelines and Water Transportation. This Section of the Chapter outlines policies applicable to these various travel modes of movement of people and goods.

There are no policies in this Section of the Chapter applicable to this application.

Chapter 5 is not applicable.

F. Chapter 6; Housing: *The purpose of the Housing element of the Plan is to, "Provide opportunities for a variety of housing choices, including low and moderate income housing, to meet the needs, desires, and financial capabilities of all Clackamas County residents to the year 2010."*

There are no policies in this Chapter applicable to this application.

Chapter 6 is not applicable.

G. Chapter 7; Public Facilities and Services: *The goal of the Public Facilities and Services Chapter is to ensure an appropriate level of public facilities and services are necessary to support the land use designations in the Comprehensive Plan, and to provide those facilities and services at the proper time to serve the development in the most cost effective way.*

The subject property is located within Metro Urban Growth Boundary, and is located within public sewer, water and storm drainage districts. This proposal is to remove a segment of a protected stream in an urban area of the County from the County's Goal 5 inventory. This proposal in and of itself will have no affect on any public facilities (sanitary sewer, water, storm drainage, solid water, street lighting) or public services (fire, law enforcement, education / schools, or County government). Oak Lodge Sanitary has submitted comments addressing their concerns regarding surface water issues. Planning staff believes these questions are better addressed through a specific development proposal for the site. There are no policies in this Section of the Comprehensive Plan applicable to this application.

Chapter 7 is not applicable.

H. Chapter 8; Economics: *The goal of the Economics element of the Plan is to "Establish a broad-based, stable and growing economy to provide employment opportunities to meet the needs of the County residents." This Chapter contains 4 Sections related to; 1) Existing Industry and Business; 2) New Industry and Business; 3) Coordination; and 4) Target Industries.*

There are no policies in this Section of the Plan applicable to this proposal.

Chapter 8 is not applicable.

I. Chapter 9; Open Space, Parks, and Historic Sites: *The purpose of this Chapter of the Plan is to protect the open space resources of the County, to provide land, facilities and programs which meet the recreation needs of County residents and visitors, and to preserve the historical, archaeological, and cultural resources of the County.*

The subject property does not include any lands designated as park land. There are no designated Historic Landmarks, Historic Districts or Historic Corridors on or adjacent to the subject property.

Chapter 9 is not applicable.

J. Chapter 10; Community Plan and Design Plans: *This Chapter of the Comprehensive Plan includes the Mt. Hood Community Design Plan, Kruse Way Design Plan, Sunnyside Village Plan, Clackamas Industrial Area and North Bank of the Clackamas River Design Plan, Clackamas Regional Center Area Design Plan, Sunnyside Corridor Community Plan, and McLoughlin Corridor Design Plan.*

The subject property is located within the McLoughlin Corridor Design Plan area. Planning staff has reviewed the Plan, and finds no criteria applicable to this proposal report.

Chapter 10 is not applicable.

K. Chapter 11; The Planning Process: *The purpose of this Chapter is to establish a framework for land use decisions that will meet the needs of Clackamas County residents, recognize the County's interrelationships with its cities, surrounding counties, the region, and the state, and insure that changing priorities and circumstances can be met.*

This Chapter contains two (2) Policy Sections titled: 1) City, Special District and Agency Coordination and; 2) Amendments and Implementation. In the City, Special District and Agency Coordination Section of this Chapter, Policy 1.0 is applicable to this application. In the Amendments and Implementation Section, Policy 1.0 and 3.0 are applicable.

1. City, Special District and Agency Coordination Section

a. Policy 1.0; *Participate in interagency coordination efforts with federal, state, Metro, special purpose districts and cities. The County will maintain an updated list of federal, state and regional agencies, cities and special districts and will invite their participation in plan revisions, ordinance adoptions, and land use actions which affect their jurisdiction or policies.*

Notice of this application has been provided to the following agencies and governments for comments; City of Milwaukie, Oak Lodge Sanitary District, Oak Lodge Water District, Division of State Lands, DLCDC, Metro, and Oregon Department of Fish and Wildlife. This notice and advertised public hearings before the Planning Commission and Board of County Commissioners provide an adequate opportunity for interagency

coordination efforts of this plan amendment and demonstrates substantial compliance with this policy. The submitted application includes comments and recommendations from the Oregon Department of Fish and Wildlife and Metro – those agencies primarily responsible for regulatory review of fish bearing river and stream corridors within the Urban Area.

This policy is met.

2. Amendments and Implementation Section

a. Policy 1.0; *Assure that the Comprehensive Plan and County ordinances meet the goals of LCDC, the Region 2040 Urban Growth Management Functional Plan and the Metro Framework Plan.*"

Based on the findings in Part 1 of this report this proposal is consistent with the Statewide (LCDC) Planning Goals, the Urban Growth Management Functional Plan and Metro Framework Plan.

This policy is met.

b. Policy 3.0; *Amend the Comprehensive Plan pursuant to the following procedures and guidelines (listed in subpolicies 3.1 through 3.6). This is a quasi-judicial Comprehensive Plan map amendment and is subject to subpolicies 3.1, 3.3 and 3.4.*

1. Subpolicy 3.1; *A map amendment may be initiated only by the Board of County Commissioners, the Planning Commission, the Planning Director, or the owner of the property for which a change is requested.*

This application has been initiated by the property owner, Fadi Hachem.

This policy is met.

2. Subpolicy 3.3; *All proposed Comprehensive Plan amendments are to be considered at advertised public hearings before the Planning Commission, in accordance with state law and County requirements.*

Both the Planning Commission and Board of County Commissioners will review this application through one or more public hearings. Notice of the hearings have been published in the local newspaper and advertised consistent with or exceeding all adopted ZDO notice requirements.

This policy is met.

3. Subpolicy 3.4; *If the proposed amendment is quasi-judicial, property owners will be notified as required. The Community Planning Organization in the affected area shall be notified at least 35 days prior to the first hearing.*

The property owners within 300 feet of the subject property were notified of this application on June 26, 2007, consistent with the requirement of Section 1303 of the ZDO. The Oak Lodge Community Planning Organization was also notified of the application on June 26, 2007 - over 35 days prior to the first hearing before the Planning Commission.

This policy is met.

This application has been processed consistent with Chapter 11.

PART 4. OREGON ADMINISTRATIVE RULE 660 – DIVISION 23

1. OAR 660-023 outlines the procedures and requirements for complying with Goal 5. The following Sections of OAR 660-023 are applicable to this application: Section 10 (Definitions), Section 30 (Inventory Process), Section 60 (Notice and Land Owner Involvement), Section 90 (Riparian Corridors) and Section 250 (Applicability). A copy of OAR 660-23 is included as Exhibit 2.

2. The submitted application includes an analysis and evaluation of the applicable Sections of OAR 660-023. See pages 9-14. The Planning Staff concurs with and adopts this analysis as part of this staff report by reference therein.

3. The Planning Staff finds this proposal complies with all applicable requirements of OAR 660-023 based on the findings submitted by the applicant and the additional findings below:

a. OAR 660-023-0030(1) outlines the steps for the Goal 5 inventory process. This Section allows the inventory process to be followed for a single site as proposed in this application. The inventory process requires; 1) Collection of information about the Goal 5 resource; 2) Determine the adequacy of the information; 3) Determine the significance of resource sites and; 4) Adopt a list of significant sites.

b. OAR 660-023-0030(3) requires a determination of the adequacy of the information regarding the resource site. The information about the Goal 5 resource shall be deemed adequate if it provides the location, quality and quantity of the resource. The location information must include a description or map of the resource site. The quality information requires an evaluation of the resource site's value relative to other known examples of the same resource. The quantity information shall include an estimate of the relative abundance or scarcity of the resource.

The submitted application includes adequate location information including a map, aerial photo and written description of the resource site. The application also includes an evaluation of the relative value and characteristics of different portions or segments of stream (i.e. drainage ditch, degraded non-fish bearing channel without a riparian area and

perennial fish bearing segment). There is no information about the relative abundance or scarcity (quantity) of the resource site. The Planning Staff does not believe that is a significant factor in evaluating the significance of a site specific stream corridor.

c. OAR 660-023-0030(4) requires a determination of the significance of the resource site.

The applicant has provided (collected) information about the subject stream. This information includes a review and analysis by ODFW, Metro and DSL describing the location and physical characteristics of the specific stream. See Exhibits.

The DLCD has submitted comments, indicating concerns over whether or not the stream segment is a “fish-bearing” resource. The Planning Staff believes the applicant has submitted adequate and reliable information to evaluate the significance of the resource site because it provides a site specific analysis of the resource from two governing agencies responsible for stream and fish protection. The analysis provided from these experts demonstrates a portion of the stream is not a significant resource because it has been placed in a pipe and buried. There is no surface evidence that a stream ever existed at this location. A review of historical aerial photographs, along with personal knowledge of the area, indicate the stream channel has been in this condition since at least the early to mid-90’s. ODFW and Metro have indicated this portion of the stream is not a fish bearing stream nor does it have characteristics to support fish. Based on this information the portion of the stream under consideration is not a significant resource site and does not warrant protection under Goal 5.

d. OAR 660-023-0060 identifies the requirements for Notice and Land Owner Involvement. This section requires the County to provide notice to landowners and opportunities for citizen involvement. Notification of this application has been provided to adjacent and nearby property owners within 300 of the subject property, to the Far West CPO and affected State and local agencies. Notice of the application has been provided consistent with State law, County Comprehensive Plan policies and ZDO requirements.

e. OAR 660-023-0090(5) addresses the “Safe Harbor” provisions for complying with Riparian Corridors. The applicant has identified and addressed this Section on page 12 of the application. The Planning Staff does not believe this Section of the OAR is applicable because the stream is not considered a “significant” resource site.

f. OAR 660-023-0090(7) address the requirements of the ESEE process and analysis. The applicant has identified and addressed this Section on page 12 of the application. The ESEE analysis is only required to address conflicting uses for a “significant” resource site. The Planning Staff does not believe this Section of the OAR is applicable because the stream is not considered a “significant” resource site.

PART 5. SUMMARY OF FINDINGS AND CONCLUSIONS ON THE PAPA

Parts 1-4 of this report outlines and addresses all the policies, standards and criteria found to be applicable to this proposal in the Statewide Planning Goals, Metro Functional Plan, County Comprehensive Plan Policies and Oregon Administrative Rule. In consideration of the findings in Parts 1-4, the Planning Staff finds that this proposal should be approved for the following reasons:

1. This proposal is consistent with the Statewide Planning Goals.
 2. This proposal is consistent with the Metro Functional Plan. This stream segment has been removed from the Metro Regional Fish and Wildlife Habitat Inventory Map.
 3. This proposal is consistent with the Clackamas County Comprehensive Plan. Specifically, Policy 12.0 in the Water Resources Section of Chapter 3 because the segment of the stream included in this application is not a fish bearing stream.
 5. This proposal is consistent with OAR 660-023.
 - a. The submitted application and the information in this application include adequate information about the location, quality and quantity of the resource site.
 - b. The ODFW, and Metro concur that the stream is not a fish bearing stream, nor does it contain characteristics suitable to support fish.
 - c. The WPRC maps identify fish (F) bearing and non-fish (N) bearing streams and were the primary source for identifying significant streams in the Goal 5 process completed by the County.
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