



**METRO**

**Agenda**

MEETING: METRO COUNCIL  
DATE: August 7, 2008  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. INTEGRATING HABITAT PEOPLE'S CHOICE AWARD VIDEO** Harlan

**4. CONSENT AGENDA**

4.1 Consideration of Minutes for the July 24, 2008 Metro Council Regular Meeting.

**5. RESOLUTIONS**

5.1 **Resolution No. 08-3967**, For the Purpose of Entering an Order Relating To the Tigard Sand and Gravel, LLC, claim for Compensation under Section 9 of Chapter 424 Oregon Laws 2007 (Measure 49) and Metro Code Chapter 2.21

5.2 **Resolution No. 08-3965**, Approving First Round Funding for Nature in Neighborhoods Capital Grants and Authorizing Metro to Award Grants Up to Three Times Per Year. Liberty

**6. CHIEF OPERATING OFFICER COMMUNICATION**

**7. COUNCILOR COMMUNICATION**

**ADJOURN**

**Television schedule for August 7, 2008 Metro Council meeting**

<b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b> Channel 11 – Community Access Network <a href="http://www.tvctv.org">www.tvctv.org</a> – (503) 629-8534 2 p.m. Thursday, August 7 (Live)	<b>Portland</b> Channel 30 (CityNet 30) – Portland Community Media <a href="http://www.pcmtv.org">www.pcmtv.org</a> – (503) 288-1515 8:30 p.m. Sunday, August 10 2 p.m. Monday, August 11
<b>Gresham</b> Channel 30 – MCTV <a href="http://www.mctv.org">www.mctv.org</a> – (503) 491-7636 2 p.m. Monday, August 11	<b>Washington County</b> Channel 30 – TVC-TV <a href="http://www.tvctv.org">www.tvctv.org</a> – (503) 629-8534 11 p.m. Saturday, August 9 11 p.m. Sunday, August 10 6 a.m. Tuesday, August 12 4 p.m. Wednesday, August 13
<b>Oregon City, Gladstone</b> Channel 28 – Willamette Falls Television <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> – (503) 650-0275 Call or visit website for program times.	<b>West Linn</b> Channel 30 – Willamette Falls Television <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> – (503) 650-0275 Call or visit website for program times.

**PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.**

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website [www.oregonmetro.gov](http://www.oregonmetro.gov) and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Consideration of Minutes of the July 24, 2008 Metro Council Regular Meeting

***Consent Agenda***

Metro Council Meeting  
Thursday, August 7, 2008  
Metro Council Chamber

## MINUTES OF THE METRO COUNCIL MEETING

Thursday, July 24, 2008  
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Kathryn Harrington, Robert Liberty, Rex Burkholder, Rod Park, Carl Hosticka, Carlotta Collette

Councilors Absent:

Council President Bragdon convened the Regular Council Meeting at 2:01 p.m.

### 1. INTRODUCTIONS

There were none.

### 2. CITIZEN COMMUNICATIONS

There were none.

### 3. INTEGRATING HABITAT PEOPLE'S CHOICE AWARD VIDEO

Councilor Collette said the Integrating Habitats People's Choice Award student winner in Category 3-Residential infill and oak woodland habitat was: "Symbiotic existence through transactional awareness" from Georgia Institute of Technology, Atlanta, Georgia. She congratulated the team members: Shraddha Srivastav, Amanda Cook and Katherine Creason. Corie Harlan, Nature in Neighborhood Program, provided an update on the Integrating Habitat series.

### 4. PROSPERITY INDEX FOR GREATER PORTLAND

Council President Bragdon introduced Mr. Tim Priest President and Chief Executive Officer (CEO) of Greenlight Greater Portland and Steven Pedigo, Vice President. He noted collaboration efforts with Greenlight Greater Portland on Connecting Green. Mr. Priest explained Greenlight Greater Portland and provided a power point presentation on *Pursing the Future: The outlook for greater Portland*. He spoke to 2008 key objectives. He then briefed Council on forecasting for the region such as jobs, Leadership in Energy and Environmental Design (LEEDs) certified buildings, computer software, and alternative energy. He spoke to quality of life in Portland including bookstores, wineries, brewpubs, and transportation infrastructure. Greater Portland was well positioned. He acknowledged their forecast was more optimistic than Metro's forecast.

Councilor Harrington said she attended the West Side Economic Alliance this morning where this information was presented. This was an effort to market the attributes of the region including economic opportunity and development. She appreciated the marketing efforts of the private sector. She thanked Greenlight Greater Portland for working collaboratively with both the private and public sector. Councilor Park asked if being the cheapest on the west coast was a positive. Mr. Priest said they were looking at the economic case for the region. When you were trying to attract solar companies, they were big land users. It was a challenge in the region since there was a limit of land. He talked about the size of the chip manufactures in the area and their intent to downsize. Mr. Pedigo said that access to human capital in the region was just as important as cost. Councilor Park asked them to speak about comparables to other cities and how that helped

the region in terms of competitiveness. Mr. Priest talked about the number of individuals in the region that had college degrees. There was no presence of a major university in the region. They also found the per capita income was lower than other cities. We needed to make sure we created prosperity for the region. Council President Bragdon appreciated their factual presentation on long-term regional prosperity.

**5. CONSENT AGENDA**

- 5.1 Consideration of Minutes for the July 17, 2008 Metro Council Regular Meeting.
- 5.2 **Resolution No. 08-3913**, For the Purpose of Amending the 2008-11 Metropolitan Transportation Improvement Program (MTIP) to Reduce the ODOT Region 1 Modernization Program
- 5.3 **Resolution No. 08-3962**, For the Purpose of Amending the 2008-11 Metropolitan Transportation Improvement Program (MTIP) to Add the Sundial Road Swigert Way Project.
- 5.4 **Resolution No. 08-3963**, Amending the Natural Areas Implementation Work Plan to Authorize the Chief Operating Officer to Acquire Certain Properties When the Purchase Price is Equal to or Less than \$5,000.

Motion: 

Councilor Harrington moved to adopt the meeting minutes of the July 17, 2008 Regular Metro Council and Resolution Nos. 08-3913, 08-3962, 08-3963.
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Vote: 

Councilors Burkholder, Harrington, Liberty, Park, Collette, Hosticka and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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**6. ORDINANCES – SECOND READING**

- 6.1 **Ordinance No. 07-1162A**, For the Purpose of Adopting the Regional Solid Waste Management Plan, 2008-2018 Update.

Motion:	Councilor Harrington moved to adopt Ordinance No. 07-1162A.
Seconded:	Councilor Park seconded the motion.

Councilor Harrington provided a brief overview of the Regional Solid Waste Management Plan (RSWMP). Metro had a longstanding role in regional solid waste planning, with the earliest solid waste management plan for the region produced back in 1974. Like its predecessors, the Plan before Council provided long term policy and program direction to Metro and its partners in the region's solid waste system. The Plan also satisfied state requirements in ORS 459 for a regional waste reduction program. The following issue areas were addressed in the draft updated Regional Solid Waste Management Plan: 1) Reducing the amount and toxicity of solid waste generated and disposed, 2) Applying sustainability practices to solid waste operations, and 3) Continuing disposal system planning and improvements.

The Metro Council contributed to the development of this Plan in several ways, primarily, through disposal system planning, in which the Council determined the transfer system would

continue to be a public/private hybrid. The outcome of this two-year process shaped RSWMP regional policies on Facility Ownership and New Facilities. In addition, the Rate Policy Subcommittee, chaired by Councilor Park, considered rate issues and provided recommendations that shaped regional policies on Disposal Pricing. Finally, the Council reviewed and approved the waste reduction portion of this Plan in 2006.

This final draft Plan was shaped by four phases of public involvement, five regional workgroups, Metro's Solid Waste Advisory Committee (SWAC), local government staff, Department of Environmental Quality (DEQ), and Metro staff and Council. Members of the Regional Solid Waste Advisory Committee voted 12-0, with two abstentions, to recommend approval of the updated RSWMP to the Metro Council.

In lieu of a presentation at Metro Policy Advisory Committee (MPAC), local elected officials throughout the region were provided briefings on the Plan in late 2007/early 2008. A total of ten jurisdictions requested briefings after receiving Councilor Harrington's October 2007 letter, which offered these briefings. Councilor Harrington said this was the final draft of the RSWMP for Council adoption.

Council President Bragdon opened a public hearing on Ordinance No. 07-1162A. No one came forward. Council President Bragdon closed the public hearing.

Councilor Burkholder commented on the accomplishments of the plan, what we did well and what we could do better. He talked about Denmark's accomplishments in the solid waste arena. This plan set the framework to do a better job of reducing waste. He was very supportive of this plan. He acknowledged Councilor Harrington's efforts. Councilor Collette seconded Councilor Burkholder's comments. She spoke of her trip to Scandinavia and what she had learned about recycling and solid waste. She talked about our landfill and that we needed to be more responsible to reuse everything we possibly could. Councilor Park said this was a start. He acknowledged both staff and councilors efforts on this plan. His hope was that we would recycle more and use less. He would be supporting the plan. He felt it was a good piece of work. Councilor Liberty said he was delighted to vote for this plan. It was worth recognizing that they were having discussions about moving forward on other efforts, which will take us closer to that goal. He said the big challenge ahead was to move from the idea of affluence as being measured by consumption, the quantity of stuff to the quality of experience. He noted the agenda packet, which was very large for this meeting. Some of these issues could be addressed by technology but other changes will be more personal, how we live and how we measure our experience. There was a mountain of challenges ahead of us.

Council President Bragdon said he would support this plan as well. This plan didn't take in to account the enormous increases in energy costs and price. He talked about our transport contract for solid waste. He spoke to his hopes for solid waste and recycling.

Vote:

Councilors Park, Burkholder, Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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6.2 **Ordinance No. 08-1183A**, For the Purpose of Amending Metro Code Title V, Solid Waste, to Add Chapter 5.10, Regional Solid Waste Management Plan, to Implement the Requirements of the 2008-2018 Regional Solid Waste Management Plan.

Motion:	Councilor Harrington moved to adopt Ordinance No. 08-1183A.
Seconded:	Councilor Liberty seconded the motion.

Councilor Harrington said the purpose of 08-1183A was to implement required elements of the 2008-2018 Regional Solid Waste Management Plan or "RSWMP." This measure was a companion ordinance to 07-1162A, the RSWMP adoption ordinance.

On March 27<sup>th</sup> this Council tabled consideration of both ordinances after receiving letters of opposition to 08-1183 from several local governments. Council directed staff to meet with those concerned local governments and also to take the ordinance before the Metro Policy Advisory Committee for review and recommendation. In May and June staff provided briefings on the ordinance to elected officials in the cities of Durham and Hillsboro and to Washington County. The ordinance was revised based on discussions with these and other local governments. On June 11<sup>th</sup> MPAC members recommended approval of 08-1183, as revised, by a vote of twelve to one.

The "A" version now before the Council still ensured that required elements of the RSWMP were clear and precise; local governments had notice and a clear process to certify RSWMP compliance or come into compliance; and required elements of the RSMWP were enforceable.

Primary revisions in this A-version were: 1) An added definition for "substantial compliance," where "comply" or "compliance" appeared in the ordinance, these terms now carried the same meaning as "substantial compliance," 2) a deleted section on Penalties for Violations. Financial penalties had been removed, but the ordinance still provided for Council to issue an order and direct changes in local government action if a violation of RSWMP requirements had occurred, and 3) added Performance Standard language. This new language clarified that Metro's approval of proposed local alternatives to the Regional Service Standard was performance-based, and not subjective. In other words, approved alternatives would have the same or higher level of performance as the service standard requirement.

In conclusion, this amended ordinance was better understood and accepted by local governments. Its provisions would provide an efficient method for local governments to establish compliance with RSWMP requirements, and would satisfy DEQ concerns about Plan enforceability.

Council President Bragdon opened a public hearing on Ordinance No. 08-1183A. No one came forward. Council President Bragdon closed the public hearing.

Councilor Hosticka appreciated the changes that had been made particularly in the realm of performance measures. It was a good thing to do. Councilor Harrington urged support.

Vote:

Councilors Park, Burkholder, Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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## 7. RESOLUTIONS

- 7.1 **Resolution No. 08-3959**, For the Purpose of Approving Portland Milwaukie Light Rail Project Locally Preferred Alternative and Amending the Metro 2035 Regional Transportation Plan (RTP).

Motion:	Councilor Liberty moved to adopt Resolution No. 08-3959.
Seconded:	Councilor Collette seconded the motion

Councilor Liberty said it had been his pleasure to chair the Milwaukie to Portland Light Rail Steering Committee. He said they were looking at the Locally Preferred Alternative (LPA) in this resolution. He further explained the project including a new bridge crossing the Willamette River. They had had very substantial public participation on this project. He noted the types of public involvement that had occurred on the project. It was a big project. He noted potential funding. They were confident that the partners could meet the total funding goal.

Richard Brandman, Deputy Planning Director, explained the resolution before Council. This concluded a two-year process that produced a Supplemental Draft Environmental Impact Statement (SDEIS). He spoke to the history of the project. He noted a variety of routes and alignments that had been studied. He noted the enormous public output on the project. He spoke to benefits and impacts of the project. Joint Policy Advisory Committee on Transportation (JPACT) had unanimously approved the resolution. He read the “resolves” in the resolution. Bridget Wieghart, Planning Department, described the LPA, including timesavings of the light rail and the increase in transit ridership. She outlined the major elements that were different from the 2003 LPA. She noted Park Avenue was the LPA recommendation. She also talked about the different stations along the light rail.

Karen Withrow, Public Affairs Department, provided details of public involvement that took place for the project. She summarized comments that had been received during the comment period. Metro will continue to coordinate with other agencies as the project moved forward.

Fred Hansen, TriMet General Manager and Project Sponsor, talked about the history of the project as well as the history of light rail in the region. He noted that Metro Council and JPACT were to be commended for their efforts to bring all of the partners along. He acknowledged Councilor Liberty’s efforts particularly. He shared details on travel timesavings. He said the proposed bridge was for the 21<sup>st</sup> century because it was an alternative mode bridge only. It also provided great opportunities for pedestrian and bicycle. He stressed the innovation quadrant (IQ) to help that area come together and help develop the South Waterfront. He urged support for both the LPA and the Land Use Final Order (LUFO). Councilor Liberty talked about additional access for bicycles and pedestrian. He noted current volumes on the Hawthorne Bridge.

Council President Bragdon opened a public hearing on Resolution No. 08-3959.

Jim Bernard, Mayor of Milwaukie, 10722 SE Main Street, Milwaukie, OR 97220 talked about the founders in Milwaukie and their desire to be in competition with the City of Portland, having Milwaukie as the hub of transportation. He talked about the impacts to the neighborhoods and the community. He noted discussions at the City of Milwaukie including access, crossings, and stations. He was a strong supporter of alternative transportation. He urged Metro Council support getting this project to Park Avenue. He urged supporting the LPA.

Roger Martin, Oregon Transit Association, 900 Atwater, Lake Oswego, OR 97034 said this was a vital program and he urged Council’s support. He talked about the need for this kind of transportation. He provided some details of other cities where commute times were up to two hours. It was vital that we have this kind of transportation to meet the economic growth in our region. He said light rail ran on electricity and was far more efficient.



Robert Price, 12901 SE 97<sup>th</sup> Suite 180, Clackamas OR 97015 said he was a consultant working for Portland General Electric (PGE). PGE supported light rail and the alignment that was under consideration. He said they found there were significant impacts of this project on their service center. There were significant operational aspects at this site. They planned to complete their evaluation and would be contacting project staff about these impacts. He talked about solutions and mitigation for these impacts.

Ralph Rigdon, St. John's Catholic Church and school, 2417 SE Silver Springs Road, Milwaukie, OR 97222 said he was opposed to light rail coming into Milwaukie. They were against the project because it came so close to the school and church. He talked about the safety issues. He wanted to know why Metro wanted to push light rail into downtown Milwaukie. He felt light rail ruined the neighborhood.

Ed Zumwalt, 10888 SE 29<sup>th</sup>, Milwaukie, OR 97202 said Milwaukie was a small town. Two major rails slashed through Milwaukie. He provided further details of transportation disconnects in Milwaukie. He was concerned how close light rail was to four schools. He noted crime on the light rail lines. He said there had to be a better way to come into Milwaukie. He said everyone was forgetting that the town had a heart and soul. There had to be a better way.

Paul Carlson, OMSI, 1945 SE Water Avenue, Portland, OR provided his letter for the record.

Michael Powell. Portland Streetcar Ind, 7 NW 9<sup>th</sup> Portland OR 97209 supported the alignment and the project. He knew a good deal about transportation in the community. The region had the history to support public transportation. He said this brought vitality to the downtown. This was about building a transportation system. Councilor Park asked about crime and the streetcar. Mr. Powell said to his knowledge there had been no reported crime on the streetcar in the past six years. He understood TriMet's safety challenges. In downtown they welcomed light rail.

Gail and Chris Bach, Stor-room Mini Storage, 4534 SE 17<sup>th</sup> Ave Portland OR 97202 said they were located on Holgate. They had owned their property since 1992. They had provided a needed service to the community. They were in favor of the Portland Milwaukie Light Rail but were concerned with the impact on their business. Mr. Bach talked about the impacts to customers of retail businesses in the area. He urged careful review of traffic patterns. Second, was the issue of rezoning opportunities that were presented in the Plan. He urged immediate rezoning and explained why. Councilor Burkholder said City of Portland controlled zoning, he wondered if there was an effort to rezone. Mr. Bach said the effort had been to condemn their property. Councilor Liberty said they had discussed some of these issues. Ms. Bach said they had been threatened with condemnation for several years. She asked how they raised issues at this time. She wanted to be placed on the mailing list. They were concerned about the impact to 500 storage unit individuals. They were in favor of light rail. Council President Bragdon said their concerns had been heard and they would continue to be informed. Councilor Park clarified that they were asking for a density increase land use issue. Mr. Bach said they agreed that the carbon footprint had to be reduced but there were also impacts to this industrial area. The only thing that made sense was to look at this area as the City of Portland had looked at the Pearl District. He hoped the light rail was the beginning of that process. They would need Metro's support to get this area rezoned (He provided a copy of their letter which summed up issues he addressed in his testimony.)

Les Poole, N. Clackamas Property Owner, 15115 SE Lee Milwaukie OR 97267 said he lived south of the proposed terminus. He mentioned that this had been a tough process. As we move

through this process he was hopeful that we could stay with the issues. He questioned the Mayor's participation in the process because he felt he had a conflict of interest because of where his property was in respect to the proposed light rail. He talked about the cost to extend the light rail to Park Avenue. He said 70% of the money must be obtained to proceed. He provided his testimony for the record.

Lloyd Lindley, Chair Portland Design Commission, 1900 SW 4<sup>th</sup> Portland OR 97205 provided his testimony for the record. Councilor Burkholder asked about the design of the bridge. Mr. Lindley said the Design Commission had not yet seen the design but they would invite TriMet to provide details.

Margaret Gunn, 5344 SE 34<sup>th</sup> Portland OR 97202 provided her comments for the record.

Mark Williams, Oregon Health Science University (OHSU), 3181 SW Sam Jackson Park Rd Portland OR 97239 said they were here to support the resolution before Council. They looked to the future to carry on their mission further in a more sustainability manner. They were not graduating enough health care professions so that was why they were planning to build a health care education center on the waterfront. He said they were pleased to support the alignment. They thought there was an opportunity for a science corridor in the area. He explained further the vision for a science corridor. He talked about a proposal to locate a collaborative building close to the light rail station. Councilor Park asked Mr. Williams about the vision of that area if the light rail didn't happen, what was their Plan B. Mr. Williams said they would look to the streetcar. They strongly supported the effort to get people out of their cars. We must have other kinds of transportation modes.

Craig Flynn, 11294 SE 27<sup>th</sup> Milwaukie OR said he was opposed to unsustainable low capacity light rail to Milwaukie. He said they were building Milwaukie into congestion. He said the transit system didn't go where it should go. Most people don't go downtown. The majority of the jobs were in the suburbs. He suggested using these funds for better projects. He noted that people didn't vote on these projects anymore. He talked about the real cost of transit.

Stephen Klein, PO Box 1709 Clackamas OR 97015 said he had a home in Milwaukie. He was in opposition to the light rail. The public didn't want the planned stations. He felt he had been left out of the loop on the proposed stations. He felt they needed a new way of thinking about the light rail. With light rail they saw density, crime and congestion. He talked about past opposition in Milwaukie to the light rail. He noted environmental carbon footprint with density.

Council President Bragdon closed the public hearing.

Councilor Liberty asked staff about discussions of condemnation of the Bach's property as well as the 17<sup>th</sup> Avenue plan. Dave Unsworth, TriMet, explained that they didn't see condemnation of the property. He explained further their plan for alignment. The current impacts were on the west side of the street. The street remained two ways. The Bach's property was on the east side of the street. Councilor Harrington asked if this information was part of the LPA document. Mr. Unsworth said it was part of the LPA drawings. Councilor Liberty asked about the required public vote. Mr. Brandman said there was no requirement for a public vote on the project. Councilor Burkholder asked about rezoning along that stretch. Ms. Wieghart said there were no current plans to rezone but there were some ideas that had been proposed. Mauricio Leclerc, City of Portland, said when they looked at the comprehensive plan they would consider a stationary process. Councilor Liberty said there had been some rezoning, which had already occurred. He

felt it was necessary to have this planning go hand in hand. Councilor Park asked about the station plans and access to business. Mr. Unsworth responded to his question. Council President Bragdon asked about 17<sup>th</sup> and Holgate and what the process for moving forward to support property owners. Mr. Unsworth said in the design as they moved forward they looked for impacts to the property owners.

Councilor Hosticka commented that this had been a long and interesting process. The first thing he encountered was the Banfield Light Rail. He was happy to see that we had a process where issues could get resolved at a local level. He said this had been a long time coming.

Councilor Burkholder said he was disappointed that the people who had spoken in opposition to this project had left the chamber. He talked about the impacts of the light rail in his neighborhood. He explained the history of the Interstate Light Rail. The neighborhoods had been rejuvenated. There were schools and businesses close to light rail. He felt their fears weren't justified. As every leg of light rail was added, the areas became more useful. As the system developed they saw more connections. It was a more functional system now. In his neighborhood it had made a big difference.

Councilor Harrington said her district was out in Washington County. She supported this project. The constituents in her district supported transit. This was a regional system. This was a project that was needed to keep the regional parts working. She was please to see that the LPA included parking space solutions. It was important to have this as part of solutions. Many will walk, take the bus and bike but it was important to have a parking solution as well. Metro Councilors and multiple agencies had been very inclusive. There had been much involvement to come up with the best project.

Councilor Park iterated Councilor Burkholder's comments about community impacts. He talked about the Gresham station with newer development. The Center for Advanced Learning had deliberately placed their campus close to light rail. It was creating an activity level that was creating jobs, housing, and businesses. He was hopeful the Milwaukie light rail would create that same kind of synergy. We needed to tip our hat to those who had gone before them. Times were changing. He acknowledged former Councilor Newman for his efforts on this project.

Councilor Liberty thanked those who had worked on this project. Thirty years ago this region took a different direction by committing itself to light rail. He doubted that 30 years ago anyone would have believed that there would be 50 miles of light rail in the region. He said his neighbors had looked forward to light rail and there had been a changed in attitude about light rail. We were able to build a bridge that would speak to the future.

Councilor Collette closed by thanking those who had led the project. In addition she thanked City of Milwaukie staff and councilors for their leadership. There was also a long list of neighborhood leaders who supported this project. Milwaukie supported this project. She particularly thanked Dave Unsworth and other TriMet staff. She also acknowledged other regional partners. She shared her vision of those who would take light rail to and from Milwaukie. She was very happy to help make this decision.

Vote:

Councilors Park, Burkholder, Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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Council President Bragdon read the application language for the Land Use Final Order (LUFO) (a copy of these remarks are included in the record). Dan Cooper, Metro Attorney, explained House Bill 3478 requirements (a copy of his explanation is included in the record). Council President Bragdon provided an overview of the hearing (a copy of the proceedings is included in the record).

7.2 **Resolution No. 08-3964**, For the Purpose of Adopting a 2008 South/North Land Use Final Order, to Modify the Proposed Route of the Portland-Milwaukie Segment of the South/North Light Rail Corridor, Relocate Proposed Light Rail Stations, Establish the Light Rail Route Between SE Tacoma Street and SE Park Avenue in Clackamas County, and Establish New Station Locations, Park and Ride Lots, Maintenance Facilities, and Highway Improvements.

Motion:	Councilor Liberty moved to adopt Resolution No. 08-3964.
Seconded:	Councilor Collette seconded the motion

Councilor Liberty introduced the resolution, this provided for the adoption of LUFO and the adoption of land use findings that could support the LUFO amendment. He had asked staff to explain the evidentiary relationship between the LPA, the SDEIS and LUFO. Mark Turpel, Planning Department, present the required elements of the LUFO (a copy of these elements were included in the staff report in the Council packet). Findings were prepared by looking at all of the letters that were provided. The way they were proposing to provide this staff report and the way it had been structured was that there was an Exhibit A which was the map which was what was being proposed as this land use final order which showed the boundaries of the project and were identical to those proposed by TriMet which were also identical to those approved by the LUFO Steering Committee and those recommended by ODOT. They suggested that TriMet, as the applicant provide an overview of the maps. The other requirement for the staff report had to do with going over the criteria and demonstrating that the project met the criteria. The criteria included procedural criteria, impacts that were identified and the measures to resolve those impacts (from the SDEIS), and a number of alternatives, which the criteria urged that they consider such as going to Clackamas Town Center and a light rail extension to Oregon City. The findings were also prepared by looking at all of the letters in the public record received to date and identifying issues, concerns and trying to address those in the proposed findings.

Council President Bragdon opened a public hearing on Resolution No. 08-3964.

Dave Unsworth, TriMet, talked about two next steps. The first next step was moving into preliminary engineering. Next Thursday they would be submitting an application to the Federal Transit Administration as to why this project made sense. They would review it for a number of things including risk. At risk was schedule and making sure that TriMet adhered to schedule and they weren't delayed was an important component. That played into the LUFO. The LUFO was an implementing measure of the LPA that provided certainty to the project and what can be appealed and timelines in which it could happen. He walked Council through what the LUFO was. He said the LUFO Steering Committee met and submitted the LUFO to TriMet for adoption by the Board. The Board adopted the LUFO and asked TriMet staff to submit this for the Metro Council's consideration. This was not the first time they had done this. He provided examples of other LUFO's that had been adopted after an LPA on every one of those occasions. There were two areas on the drawing from downtown Portland to downtown Milwaukie and second, was out in Gresham, the maintenance facility. This element was to define the route, the stations, parking lots for park and ride, highway improvements and a maintenance facility in Gresham. He

reviewed the alignment on the map and the changes to the LUFO that was adopted in 2003. He noted amendments to the alignment from 2003 as well as general locations of stations. He said at Holgate they had widened the area to include a bike lane. He noted Mr. And Mrs. Bach's property and where the station was located in front of their property. He also talked about the proposed Harold Station. He shared other station proposals.

Mark Greenfield provided a brief overview of the LUFO process. SB 573 established this process in 1991 for the west side corridor project. It created an expedited and consolidated land use process for decision-making that involved multiple jurisdictions. There were 10 criteria that required identification of adverse impacts and identification of mitigation measure to mitigate those impacts. The process worked very well. This same process had been applied to other alignments as well. He talked about the steps that were followed. He shared the findings must be made available seven days before the hearing and were based on the SDEIS document. He also read every comment to make sure every comment, which was relevant to the criterion, was addressed. The findings before Council completely considered all of the issues addressed. He acknowledged staff's assistance.

Councilor Hosticka asked about the Lincoln Harbor station. Mr. Unsworth the LPA deleted the station but would go through a process this Fall to get the best bang for their buck.

Council President Bragdon opened a public hearing on Resolution No. 08-3964 for the general public. No general public came forward to testify. Council President Bragdon closed the public hearing.

Staff heard nothing that they needed to rebut.

Councilor Collette said she wanted to talk about getting to Park Avenue. She said it was essential. We should be building park and rides as far as possible from the center. She provided benefits to the Park Avenue station. She was still totally supportive of the project.

Councilor Liberty added his thanks to the attorneys involved.

Vote:

Councilors Park, Burkholder, Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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7.3 **Resolution No. 08-3957A**, For the Purpose of Entering Orders Relating to the Velma Pauline Povey and Lila and Kenneth Saxon Claims For Compensation Under Section 9 of Chapter 424 Oregon Laws 2007 (Measure 49) and Metro Code Chapter 2.21.

Ted Reid, Planning Department, explained the claim for Ms Povey, which was substantially incomplete. He explained what was incomplete about the claim. Council President Bragdon asked about enacted and applied. Staff recommends denial of the claim.

Mr. Reid provided details of the Saxon claim. He said this claim had some fundamental short-comings. He provided details of these short-comings such as the appraisal. Staff recommended denial of the claim. Council President Bragdon asked about the issue of appraisal. He understood that Mr. Cox's claimant did not provide an appraisal whereas the Saxon claimant provided an

appraisal. Councilor Burkholder asked about the relationship of the Council's decision today on the Measure 37 claim. Dick Benner, Senior Metro Attorney, explained the details of Measure 37 and Measure 49. He provided a recommendation to the Council to deny the claims.

Motion:	Councilor Burkholder moved to adopt Resolution No. 08-3957A.
Seconded:	Councilor Harrington seconded the motion

Council President Bragdon opened a public hearing on Resolution No. 08-3957A. Keith Marshall, 19062 SE White Crest Ct Damascus OR 97089 did not come forward. Council President Bragdon closed the public hearing.

Councilor Burkholder said he felt the staff report was clear and that the applicants failed to meet the Measure 49 claims. Council President Bragdon said he would be voting yes on the Chief Operating Officer's recommendation and explained further his vote. Councilor Park commented on the difficulty in dealing with Urban Growth Boundary expansions and the archaic laws they had to deal with in making those decisions.

Vote:

Councilors Park, Burkholder, Collette, Harrington, Hosticka and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed with Councilor Liberty absent from the vote.
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## **8. CHIEF OPERATING OFFICER (COO) COMMUNICATION**

Scott Robinson, Deputy COO, thanked the Solid Waste and Recycling staff for their efforts to step up because of the leadership shortfall. The COO had scheduled meetings with council individually before August 8<sup>th</sup>.

## **9. COUNCIL COMMUNICATION**

Council President Bragdon said he had been compiling questions to be addressed at the retreat.

Councilor Harrington said Council had asked the COO to do quarter updates for programs policy development results happening given objectives that had been agreed upon. She was looking forward to hearing some information on Metro's sustainability efforts. Also Council had conversations about the agency moving from having one primary tool of the budget to having other management tools in play and in practice. Second, City of Cornelius had sent a survey about Metro to Councilors. They had no information about the audience. She was interested in getting support from Metro staff to coordinate a response.

Councilor Park said there was a ground breaking for the Gresham Performing Arts. He also talked about a site that was being developed in that area.

Councilor Burkholder said the Regional Transportation Council of Southwest Washington adopted the Columbia River Crossing resolution last Tuesday night. He would be out of town at the American Public Association on Sustainability Conference next week.

Council President Bragdon said they received word from National Recreation and Park Association that Metro had won an award for leadership and innovation. He also noted that there would be no Council meeting on July 31<sup>st</sup>.

**10. ADJOURN**

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 5:45 p.m.

Prepared by

Chris Billington  
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF  
JULY 24, 2008**

<b>Item</b>	<b>Topic</b>	<b>Doc. Date</b>	<b>Document Description</b>	<b>Doc. Number</b>
7.1	Letter	06/24/2008	TO: Metro Council FROM: Preston Pulliams, District President, Portland Community College RE: Portland-Milwaukie Light Rail	072408c-01
7.1	Letter	06/20/2008	TO: Metro Council FROM: R.J. McEwen, Vice President, Portland Community College RE: Portland-Milwaukie Light Rail	072408c-02
7.1	Letter	06/23/2008	TO: Metro Council FROM: Christopher Mattaliano, General Director, Portland Opera RE: Portland-Milwaukie Light Rail	072408c-03
7.1	Letter	06/10/2008	TO: Metro Council FROM: Ralph Rigdon RE: Portland-Milwaukie Light Rail	072408c-04
7.1	Letter	06/24/2008	TO: Metro Council FROM: Colin S. Diver, President, Reed Collete RE: Portland-Milwaukie Light Rail	072408c-05
7.1	Letter	07/09/2008	TO: JPACT, c/o Rex Burkholder, JPACT Chair FROM: Ted Wheeler, Chair, Multnomah County RE: Portland-Milwaukie Light Rail	072408c-06
7.1	Letter	07/09/2008	TO: Metro Council FROM: Lloyd Lindley II, FASLA, Chair, Portland Design Commission RE: Portland-Milwaukie Light Rail	072408c-07
7.1	Letter, correcting date of same letter, dated 02/05/1008	07/08/2008	TO: Metro Council FROM: Wilda Parks, ACE, President/CEO, North Clackamas Chamber of Commerce RE: Portland-Milwaukie Light Rail	072408c-08
7.1	E-mail	06/20/2008	TO: Robert Liberty & Metro Council FROM: Margaret Gunn RE: Portland-Milwaukie Light Rail	072408c-09
7.1	Cover letter to comment letter dated 06/18/2008 from Carol Howe	07/23/2008	TO: Metro Council FROM: Bridget Wieghart, Transit Project Manager, Metro Staff RE: Portland-Milwaukie Light Rail	072408c-10
7.1	Cover letter to 8 citizen comments	07/23/2008	TO: Metro Council FROM: Bridget Wieghart, Transit Project Manager, Metro Staff - Dean	072408c-11



	with various dates		Scrutton (2), Janet Banks (via Kelly Runnion), Norma McLeod (via Joseph Ossi), Preston Pulliam (see 072408c-01), Tony Keagbine (via Kelly Runnion), Rachel Nolan RE: Portland-Milwaukie Light Rail	
4.0		2008	TO: Metro Council FROM: Tim Priest, President and CEO of Greenlight Greater Portland RE: 2008 Greater Portland Prosperity A Regional Outlook	072408c-12
7.1	Email	7/24/08	To: Christina Billington, Clerk of the Council From: Margaret Gunn Re: Milwaukie Light Rail South Corridor Project	072408c-13
7.3	Attachments to the record	11/27/06	To: Michael Jordan, COO From: Donald Bowerman, Bowerman and Boutin From: Attachment 4 to COO Report	072408c-14
7.3	Attachments to the record	11/22/06	TO Metro Council From: Velma Pauline Povey Re: Resolution No. 07-3776 Attachment to the COO Report	072408c-15
5.1	Minutes	7/17/08	Metro Council Meeting Minutes of July 17, 2008	072408c-16
7.3	"A" version	7/24/08	<b>Resolution No. 08-3957A</b> , For the Purpose of Entering Orders Relating to the Velma Pauline Povey and Lila and Kenneth Saxon Claims For Compensation Under Section 9 of Chapter 424 Oregon Laws 2007 (Measure 49) and Metro Code Chapter 2.21.	072408c-17
7.1	Testimony	7/24/08	To: Metro Council From: Paul Carlson, OMSI Re: Portland-Milwaukie Light Rail	072408c-18
7.1	Testimony	7/23/08	To: Metro Council From: Gail and Chris Bach, Holgate Stor-Room LLC Re: Portland-Milwaukie Light Rail	072408c-19
7.2	Council President and Metro Attorney Statements of Procedure	7/24/08	To: Metro Council From: Dick Benner, Senior Metro Attorney Re: South/North Light Rail Project LUFO Hearing	072408c-20
7.1	Letter	6/19/08 and 10/12/07	To: Mark Turpel, Planning Department and Richard Krochalis, Regional Administrator for Region 10 Federal Transportation Authority From: Douglas DuPriest, Hutchinson, Cox,	072408c-21

			Coons, DuPriest, ORR and Sherlock representing Milwaukie Transportation Coalition and Amagin Consulting Re: NEPA Process for SDEIS for the South Corridor Portland-Milwaukie Light Rail Project Comments on SDEIS	
7.1	Letter	10/16/07	To: Mayor Bernards and Milwaukie City Council Members Re: Ross Roberts, Planning Department Re: Portland to Milwaukie LRT project's compliance with the National Environmental Policy Act (NEPA)	072408c-22
7.1	Letter	10/15/07	To: Richard Krochalis, Regional Administrator for Region 10 FTA Re: NEPA Process for SDEIS for the South Corridor Portland-Milwaukie Light Rail Project – Scoping and Alternatives	072408c-23
7.1	Public Involvement Outreach	7/24/08	To: Metro Council From: Karen Withrow, Public Involvement Manager Re: Public Involvement Outreach – 2007 & 2008 for Portland Milwaukie Light Rail Project	072408c-24
7.2	Exhibit A to Resolution 08-3964	7/24/08	To: Metro Council From: Dick Benner, Senior Metro Attorney Re: 2008 South/North Land Use Final Order Amendment	072408c-25
7.2	LUFO Criteria	7/24/08	To: Metro Council From: Dick Benner, Senior Metro Attorney Re: South/North Project Land Use Final Order Criteria	072408c-26
7.1	Testimony and attachment	7/24/08	To: Metro Council From: Les Poole Re: Milwaukie-Portland Light Rail alignments and rendition of Mass Tram America	072408c-27
7.1	SDEIS Public Comment Report	June 2008	To: Metro Council From: Karen Withrow, Public Involvement Manager Re: South Corridor Portland-Milwaukie Light Rail Project SDEIS Public Comment Report	072408c-28

**Resolution No. 08-3967**, For the Purpose of Entering an Order Relating  
To the Tigard Sand and Gravel, LLC, claim for Compensation under  
Section 9 of Chapter 424 Oregon Laws 2007 (Measure 49) and Metro  
Code Chapter 2.21

Metro Council Meeting  
Thursday, August 7, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN ORDER ) Resolution No. 08-3967  
RELATING TO THE TIGARD SAND & GRAVEL, )  
LLC, CLAIM FOR COMPENSATION UNDER )  
SECTION 9 OF CHAPTER 424 OREGON LAWS ) Introduced by Chief Operating Officer  
2007 (MEASURE 49) AND METRO CODE ) Michael Jordan with the concurrence of  
CHAPTER 2.21 ) Council President David Bragdon

WHEREAS, Tigard Sand & Gravel, LLC., filed a claim for compensation under section 9 of Chapter 424, Oregon Laws, 2007 (Measure 49), and Metro Code Chapter 2.21 contending that a Metro regulation reduced the fair market value of its property; and

WHEREAS, Tigard Sand & Gravel, LLC. had previously filed a claim with Metro under Measure 37; and

WHEREAS, the Chief Operating Officer reviewed the Measure 49 claim and sent notice of his tentative determination of qualification for compensation or waiver to those entitled to notice under Metro Code 2.21.040(b); and

WHEREAS, the Metro Council considered the claim at a public hearing on August 7, 2008; now, therefore

BE IT RESOLVED that the Metro Council:

- 1. Enters Order No. 08-047, attached to this resolution as Exhibit A, which denies the claim.
- 2. Directs the Chief Operating Officer (“COO”) to send copies of the order to the claimant, the cities of Tualatin and Sherwood, Washington County, the Oregon Department of Administrative Services and any person who participated in the public hearing, and to post the order at the Metro website.

ADOPTED by the Metro Council this day of August 7, 2008.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 08-3967  
Order No. 08-047

RELATING TO THE TIGARD SAND & GRAVEL, LLC.. CLAIM FOR COMPENSATION  
UNDER SECTION 9, CHAPTER 424 OREGON LAWS 2007 (MEASURE 49)

Claimant: Tigard Sand & Gravel, LLC.

Property: Washington County, west of Tualatin

Claim: Limitations in Metro Code reduce the fair market value of claimant's property

Claimant submitted its claim to Metro pursuant to section 9 of Chapter 424, Oregon Laws, 2007 (Measure 49), and Metro Code Chapter 2.21. This order is based upon materials submitted by the claimant and the reports prepared by the Chief Operating Officer ("COO") pursuant to section 2.21.060(g), and other materials presented at the public hearing.

The Metro Council considered the claim at a public hearing on August 7, 2008.

IT IS ORDERED THAT:

The claim of Tigard Sand & Gravel, LLC., for compensation or waiver be denied because it does not qualify for the reasons set forth in the reports of the COO.

ENTERED this 7<sup>th</sup> day of August, 2008.

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David Bragdon, Council President

Approved as to form:

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Daniel B. Cooper  
Metro Attorney

**CLAIM FOR COMPENSATION  
UNDER BALLOT MEASURE 49  
AND METRO CODE CHAPTER 2.21**

**REPORT OF THE METRO CHIEF OPERATING OFFICER**

**In Consideration of Council Order No 08-047**

**For the purpose of entering an order relating to the Tigard Sand & Gravel, LLC claim for compensation under Section 9 of Chapter 424 Oregon laws 2007 (Measure 49) and Metro Code Chapter 2.21**

July 29, 2008

**METRO CLAIM NUMBER:** Claim No. 08-047

**NAME OF CLAIMANT:** Tigard Sand and Gravel, LLC

**MAILING ADDRESS:** c/o Elaine R. Albrich  
Stoel Rives, LLP  
900 SW Fifth Ave., Suite 2600  
Portland, OR 97204

**PROPERTY LOCATION:** SW 120<sup>th</sup> Ave., Washington County, Oregon

**LEGAL DESCRIPTION:** T2S, R1W, Section 27C, tax lots 900, 300, 400  
T2S, R1W, Section 34B, tax lots 100, 200, 800  
T2S, R1W, Section 34C, tax lot 500

**DATE OF CLAIM:** June 6, 2008

**I. CLAIM**

Claimant, Tigard Sand and Gravel, LLC, seeks an unspecified amount of compensation for a claimed reduction in fair market value (FMV) of property owned by the Claimant (map included as ATTACHMENT 1) as a result of enforcement of an unspecified Metro regulation. Claimant has not indicated a proposed use for the property.

For the purposes of this report, it is assumed that the claim is based on the regulations that the Claimant previously cited in a Measure 37 claim against Metro: the designation of the property as a Regionally Significant Industrial Area (RSIA) and the other conditions of the property's inclusion in the urban growth boundary (UGB) that are articulated in Exhibit B to Metro Ordinance 02-990A ("For the purpose of amending the urban growth boundary to add land in study areas 47 and 48, Tigard Sand and Gravel Site"). Under Measure 37, the Claimant cited a loss of value of not less than \$35,753,520.

The Chief Operating Officer (COO) sent notice of date, time and location of the public hearing on this claim before the Metro Council on June 24, 2008. The notice indicated that a copy of this report is available upon request and that the report is posted on Metro's website at [www.oregonmetro.gov/measure49](http://www.oregonmetro.gov/measure49).

**II SUMMARY OF COO RECOMMENDATION**

The claim does not meet the basic requirements of Measure 49. The COO recommends that the Metro Council deny the claim for the reasons explained in section IV of this report.

### III TIMELINESS OF CLAIM

#### Findings of Fact

Measure 49, section 10(3) requires that if a claimant has made a Measure 37 claim against Metro before June 28, 2007, but Metro did not make a final decision on the Measure 37 claim before the effective date of Measure 49, Metro shall send notice to the claimant within 90 days after the effective date of Measure 49, notifying the claimant of their right to seek relief under Measure 49.

The Claimant submitted a Measure 37 claim on December 4, 2006. The claim identified Metro's designation of the property as RSIA as the basis of the claim. The designation as RSIA was a condition of the property's inclusion in the UGB and is found in Exhibit B to Metro Ordinance No. 02-990A ("For the purpose of amending the urban growth boundary to add land in study areas 47 and 48, Tigard Sand and Gravel Site").

The Measure 37 claim also cites the lot reconfiguration plan that was another condition of the property's inclusion in the UGB. That condition, which is also found in Exhibit B to Metro Ordinance No. 02-990A, states that a parcel reconfiguration plan will be developed that results in (1) at least one parcel that is 100 acres or larger, and (2) at least one parcel 50 acres or larger.

The public record associated with Metro Ordinance No. 02-990A shows that Claimant supported the ordinance.

Claimant's Measure 37 claim was made before June 28, 2007. Metro had not made a final decision on Claimant's Measure 37 claim by December 6, 2007, the effective date of Measure 49.

Metro sent notice to Claimant on February 14, 2008, notifying Claimant of their rights under Measure 49. That notice was timely as it was sent within 90 days of December 6, 2007, the effective date of Measure 49.

Notified claimants have 120 days after the date of that notice to inform Metro, in writing, of their intention to continue the claim and to file the information required under Measure 49. That required information includes, but is not limited to, an appraisal, prepared as described in Sections 9(6) and 9(7) of Measure 49.

On June 6, 2008, Claimant filed an amended claim against Metro under Measure 49. That claim was timely as it was filed within 120 days of the February 14, 2008 notice from Metro.

Metro staff conducted a preliminary completeness review of Claimant's Measure 49 claim and sent a letter of tentative determination to Claimant on June 11, 2008 (ATTACHMENT 2). In that letter, Staff tentatively determined that the claim was incomplete because it lacked an appraisal as required by Measure 49 and Metro Code 2.21.030(c)(6), that the claim did not meet the basic requirements for a valid claim, and that the claimant was not entitled to relief under Section 9 of Measure 49.

On July 22, two days prior to the scheduled hearing on the claim before the Metro Council, Claimant filed an appraisal. Metro postponed the hearing to August 7, 2008, to allow time for the Chief Operating Officer to evaluate the appraisal and its effect on the validity of the claim.

#### Conclusions of Law

The claim meets this criterion. The claim is complete.

#### IV. ANALYSIS OF CLAIM

##### 1. Ownership

Metro Code Section 2.21.030(b)(1) states that for a claim to be valid, the claimant must be an owner of the property.

##### Findings of Fact

Metro Code section 2.22.020(d) defines "owner" to mean:

- (1) The owner of fee title to the property as shown in the deed records of the county where the property is located;
- (2) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
- (3) If the property is owned by the trustee of a revocable trust, the settler of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

Claimant states that they acquired an ownership interest in the subject property on various dates (specified in the claim) in 1965 and 1966.

##### Conclusions of Law

The claim meets this criterion. The Claimant is the sole owner of the subject property as defined in the Metro Code.

##### 2. Consent of All Owners

Metro Code Section 2.21.030(b)(2) states that for a claim to be valid, all owners must consent in writing to the filing of the claim.

##### Findings of Fact

Claimant's agent, Elaine Albrich of Stoel Rives, LLP has consented writing to the filing of the claim.

##### Conclusions of Law

The claim meets this criterion. All owners of the property have consented in writing, through their agent, to the filing of the claim.

##### 3. Location of property within Metro UGB

Metro Code Section 2.21.030(3) ("Filing an Amended Claim") states that in order to qualify for compensation or waiver by Metro, a property must be wholly or partially located within Metro's UGB.

##### Findings of Fact

In 2002, the Metro Council expanded the UGB by adopting Ordinance No. 02-990A, including the Claimant's property in the UGB expansion area.

##### Conclusions of Law

The claim meets this criterion. The subject property is wholly within the Metro UGB.

##### 4. Allowed number of single-family dwellings

Metro Code Section 2.21.030(4) states that for a claim to be valid, the claimant, on the claimant's property acquisition date, lawfully must have been permitted to establish at least the number of dwellings on the property that are authorized under Ballot Measure 49. Section 9(2) of Measure 49 states that the number of single-family dwellings that may be established may not exceed the lesser of:

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- (a) The number of single-family dwellings described in a waiver issued by Metro, a city or a county before the effective date of Measure 49 (December 6, 2007) or, if a waiver was not issued, the number described in the claim filed with Metro, a city or a county;
- (b) 10, except that if there are existing dwellings on the property, the number of single-family dwellings that may be established is reduced so that the maximum number of dwellings, including existing dwellings located on the property, does not exceed 10; or
- (c) The number of single-family dwellings the total value of which represents just compensation for the reduction in fair market value caused by the enactment or one or more land use regulations that were the basis for the claim

#### Findings of Fact

Claimant asserts that the zoning of the subject property at the time of Claimant's acquisition allowed for the establishment of more than 10 lots, based upon the zoning in effect at the various times of acquisition (Suburban-Residential and Residential-20) of the various lots and parcels that comprise the ownership (1965, 1966 and 1973). This zoning would have allowed the Claimant to establish at least ten new dwellings, the maximum number allowed by Measure 49.

Metro has not issued a waiver to the Claimant of the RSIA designation and the other conditions (found in Exhibit B to Metro Ordinance 02-990A) of the property's inclusion in the UGB. Hence, there is no waiver to limit the number of dwellings to fewer than 10.

There are no existing dwellings on the subject property to subtract from the maximum of ten for which Claimant may be eligible.

The Claimant's appraisal, however, fails to demonstrate that Metro's regulations have reduced the value of its property in any amount. It has failed, therefore, to demonstrate that it is eligible for any dwellings, much less the maximum of ten that it seeks. The appraisal has four fundamental flaws:

First, Section 9(7)(c) of Measure 49 states that the appraisal must expressly determine the highest and best use of the property at the time the land use regulation was enacted. Section 9(8) of Measure 49 states that for a claim to be valid, the highest and best use of the property must have been residential at the time the land use regulation was enacted. The appraisal submitted by the Claimant states that the highest and best use for the property was "hold for future urban development." The appraisal also notes "the site has good appeal as a future industrial site." Nowhere does the appraisal state that the highest and best use of the property was residential.

Second, the appraisal concludes that Metro's regulations reduced the value of the claimant's property, but only on *relative* terms. It specifies no particular amount of reduction. It fails, therefore, to satisfy paragraph (c), above: it does not show that the value of any number of single-family dwellings represents the actual reduction in value caused by the regulations.

Third, at the Claimant's direction, the appraisal is based on incorrect assumptions to support its conclusion of a relative reduction in value. The appraisal compares the value of the property in Suburban-Residential and Residential-20 zoning, as it was in 1973, with its value as zoned today. Measure 49, on the other hand, requires a comparison of the value one year prior to the cited Metro regulations (at that time, parts were zoned exclusive farm use and parts were zoned agriculture/forestry, with an 80-acre minimum parcel) with its value one year after the enactment of the cited regulation. As the appraisal itself states, "the parcel was actually zoned EFU, but this is disregarded per the client's request... **if these assumptions/hypothetical conditions are not made, this valuation is not valid**"

[emphasis by the appraiser]. Thus, given its incorrect assumptions about what uses were allowable at the time of the cited Metro regulations, the appraisal fails even to show a *relative* reduction in value.

Fourth, the appraisal makes its assessment of the property's relative value in 2001 and in 2003. The cited regulation became effective on March 12, 2003. To meet the requirement of Measure 49, the appraisal should have determined the property's value on March 12, 2002 and on March 12, 2004

#### Conclusions of Law

The claim does not meet this criterion. As described in Section 9(2) of Measure 49, the maximum number of allowable single-family dwellings is the lesser of choices a, b, and c (detailed above). In order to make that determination, there must be a quantification of diminished value (if any) that is attributable to the cited Metro regulation. Claimant's appraisal has not provided adequate information to establish a right under Measure 49 to further divide the property into single-family lots.

#### 5. Residential use

Metro Code Section 2.21.030(5) states that a claimant must establish that the property is zoned for residential use.

#### Findings of Fact

The current zoning of the property is FD20 (Future Development, 20-acre minimum) with the Metro designation of RSIA. Claimant has correctly stated in the claim that the property is not currently zoned for residential use.

#### Conclusions of Law

The claim does not meet this criterion. The subject property is not zoned for residential use.

#### 6. Prohibition of establishing single-family dwellings

Section 9(5)(f) of Measure 49 states that, for a claim to be valid, a claimant must establish that one or more land use regulations prohibit the establishment of the single-family dwellings.

#### Findings of Fact

This criterion's reference to "the single-family dwellings" refers to the number of dwellings that would be allowable under Measure 49. As previously noted, Claimant's appraisal fails to demonstrate a loss of value. Consequently, Claimant has not provided adequate information to determine the maximum number of dwellings that would be allowable under Section 9(2) of Measure 49.

Neither the RSIA designation, nor any of the other conditions found in Metro Ordinance No, 02-990A ("For the purpose of amending the urban growth boundary to add land in study areas 47 and 48, Tigard Sand and Gravel Site") prohibits the establishment of single-family dwellings on claimant's property.

#### Conclusions of Law

The claim does not meet this criterion. Neither the RSIA designation, nor any of the other conditions found in Metro Ordinance No, 02-990A ("For the purpose of amending the urban growth boundary to add land in study areas 47 and 48, Tigard Sand and Gravel Site") prohibits the establishment of single-family dwellings. Furthermore, Claimant has not provided a basis to support its asserted right to further divide the property into an unspecified number of single-family residential lots.

#### 7. Exemptions under ORS 197.352(3)

Metro Code Section 2.21.030(b)(7) states that land use regulations as described in ORS 197.352(3) that prohibit the establishment of a single-family dwelling are exempt under Measure 49.

#### Findings of Fact

ORS 197.352(3) states that a claim cannot be made under Measure 49 for land use regulations that:

- (a) Restrict or prohibit activities commonly and historically recognized as public nuisances under common law;
- (b) Restrict or prohibit activities for the protection of public health and safety;
- (c) Are required to comply with federal law; or
- (d) Restrict or prohibit the use of a property for the purpose of selling pornography or performing nude dancing.

#### Conclusions of Law

The claim meets this criterion. Neither the RSIA designation, nor any of the other conditions found in Metro Ordinance No. 02-990A ("For the purpose of amending the urban growth boundary to add land in study areas 47 and 48, Tigard Sand and Gravel Site") are exempt from Measure 49 under ORS 197.352(3).

#### 8. Timing of the Enactment of the Metro Regulation and the Property's Inclusion in the UGB

Metro Code Section 2.21.030(b)(8) states that for a claim to be valid, the cited land use regulation must have been enacted after the date the property, or any portion of it, was brought into the UGB.

#### Findings of Fact

Section 2(3) of Measure 49 defines "enacted" as enacted, adopted, or amended.

On December 12, 2002, the Metro Council expanded the UGB by adopting Ordinance No. 02-990A (effective March 12, 2003), thereby including the Claimant's property in the UGB. That same ordinance, in its Exhibit B, simultaneously applied the RSIA designation and the other conditions cited by Claimant.

#### Conclusions of Law

The claim does not meet this criterion. The cited regulations were applied to the subject property simultaneously with the property's inclusion in the UGB (by the same ordinance). The regulation was not enacted after the date that the property was brought into the UGB.

#### 9. Timing of the Enactment of the Metro Regulation and the Property's Inclusion in Metro's Jurisdictional Boundary

Metro Code Section 2.21.030(b)(9) states that for a claim to be valid, the cited land use regulation must have been enacted after the date the property, or any portion of it, was included within the jurisdictional boundary of Metro.

#### Findings of Fact

The entire subject property has been inside Metro's jurisdictional boundary since the January 1, 1979 establishment of the boundary. The RSIA designation and the other conditions of the property's inclusion in the UGB became effective on March 12, 2003.

#### Conclusions of Law

The claim meets this criterion. The RSIA designation and the other conditions of the property's inclusion in the UGB were applied to the property after its inclusion in Metro's jurisdictional boundary.

#### 10. Effect of the Land Use Regulation on Fair Market Value

Section 2.21.030(b)(10) of the Metro Code states that for a claim to be valid, the enactment of a land use regulation must have caused a reduction in the fair market value of the property. In order to demonstrate a reduction in value, Metro Code Section 2.21.030(c)(6) states that the Claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use

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regulation and one year after enactment, and expressly determining the highest and best use of the property at the time the land use regulation was enacted. Sections 9(6) and 9(7) of Measure 49 provide further details regarding how diminished value is to be determined.

#### Findings of Fact

Claimant's appraisal is fundamentally flawed in the ways described in section 4, above, and fails to comply with the specifications for appraisals in Measure 49.

#### Conclusions of Law

The claim does not meet this criterion. Claimant has not demonstrated that the RSIA designation and the other conditions of the property's inclusion in the UGB had the effect of reducing the fair market value of the subject property.

#### 11. Highest and Best Use

Metro Code Section 2.21.030(b)(11) states that for a claim to be valid, at the time the land use regulation was enacted, the highest and best use of the property must have been residential use. Section 9(7)(c) of Measure 49 states that the appraisal to be provided by the Claimant must expressly determine the highest and best use of the property at the time that the land use regulation was enacted.

#### Findings of Fact

The appraisal submitted by the Claimant states that the highest and best use for the property at the time of Metro's cited regulation was "hold for future urban development." The appraisal also notes "the site has good appeal as a future industrial site." Nowhere does the appraisal state that the highest and best use of the property was residential. The appraisal supplied by the Claimant provides an argument to the contrary, that the highest and best use may, in fact, have been industrial.

#### Conclusions of Law

The claim does not meet this criterion. Claimant has not demonstrated that, at the time that the regulation was applied to the property, the highest and best use was residential.

#### 12. Relief for Claimant

#### Findings of Fact

Waiver of the RSIA designation and the other conditions of the property's inclusion in the UGB (found in Exhibit B to Metro Ordinance No. 02-990A) would diminish the region's supply of land for employment uses. It would also undermine the City of Tualatin's planning that is intended to create a complete and livable community with employment opportunities.

#### Conclusions of Law

Based on the record, the Claimant has not established that they are entitled to relief in the form of compensation or waiver of the RSIA designation and the other conditions of the property's inclusion in the UGB.

#### Recommendation of the Chief Operating Officer

The Metro Council should deny the Tigard Sand and Gravel, LLC claim for the following reasons:

In the Measure 49 claim filing, the Claimant has not cited a specific Metro regulation as the cause of a loss of property value.

The property is not zoned for residential use.

The RSIA designation and the other conditions of the property's inclusion in the UGB do not prohibit single-family residential uses.

The cited regulations were applied to the property simultaneously (same ordinance) with the property's inclusion in the UGB, not after its inclusion.

The appraisal provided by the Claimant does not establish that, at the time the cited Metro regulations were applied to the property, residential use was the property's highest and best use.

Claimant's appraisal is fundamentally flawed, does not meet the standards set forth in Measure 49, and does not demonstrate that the RSIA designation and the other conditions of the property's inclusion in the UGB had the effect of reducing the value of the subject property.

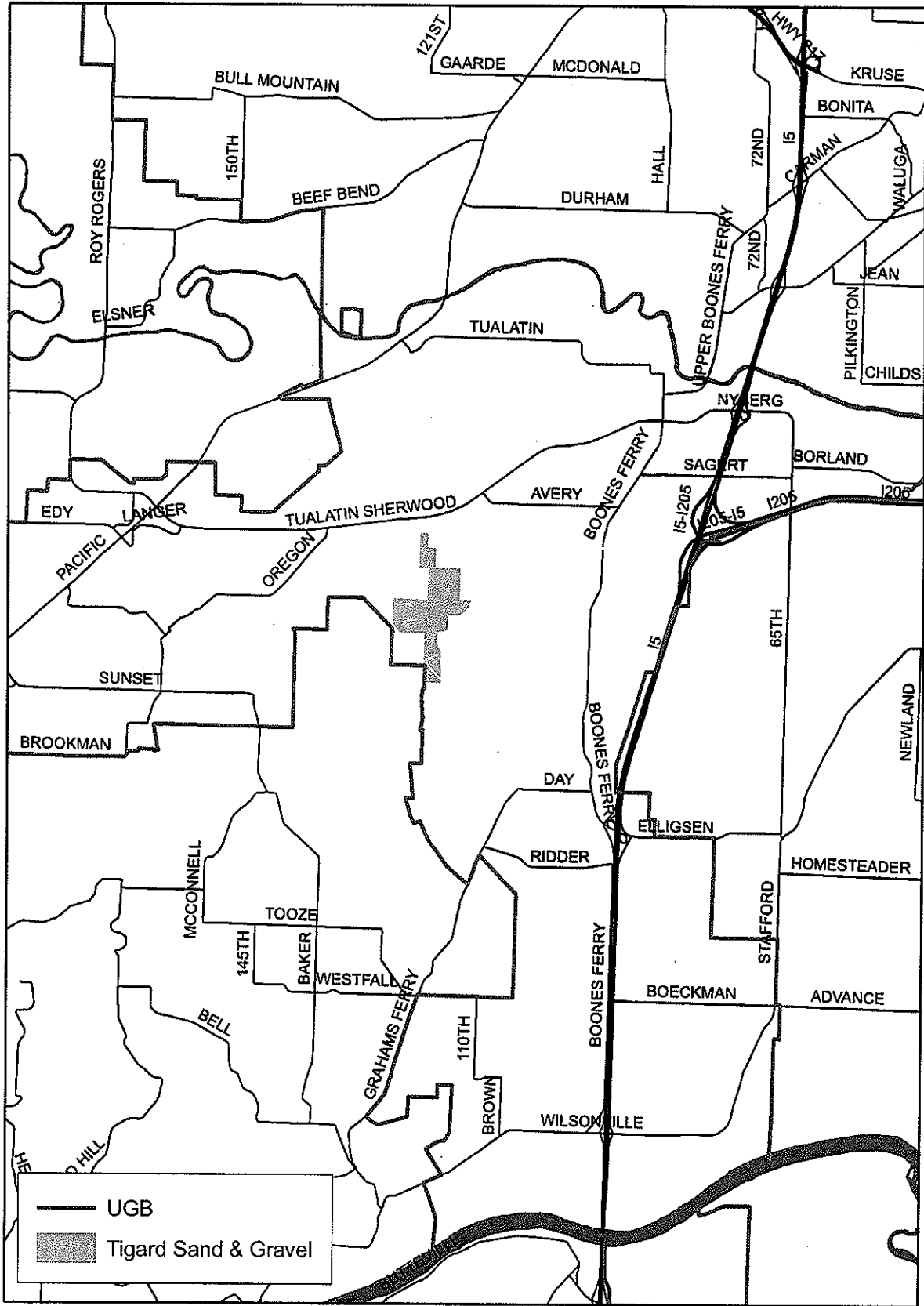
### **ATTACHMENTS TO THE REPORT OF THE CHIEF OPERATING OFFICER**

Attachment 1: Site Map of the Tigard Sand and Gravel property

Attachment 2: June 11, 2008 letter of tentative determination from Metro to Claimant

Attachment 3: Tigard Sand & Gravel Measure 49 claim (as supplemented on July 22, 2008)

# Attachment 1 to COO Report



0 3,500 7,000 14,000 Feet





**METRO**

June 11, 2008

Elaine Albrich  
Stoel Rives, LLP  
900 SW Fifth Ave., Suite 2600  
Portland, OR 97204

**RE: Tigard Sand and Gravel Measure 49 claim against Metro**  
Property Location: SW 120<sup>th</sup> Ave., Washington County, Oregon  
Legal Description: T2S, R1W, Section 27C, tax lots 900, 300, 400  
T2S, R1W, Section 34B, tax lots 100, 200, 800  
T2S, R1W, Section 34C, tax lot 500

Dear Ms. Albrich:

We are in receipt of your client, Tigard Sand and Gravel's, Measure 49 claim against Metro. Pursuant to Section 10(4) of Measure 49, Metro has conducted a tentative review of the claim and has determined that the claimant does not qualify for relief under Section 9 of Measure 49. Pursuant to Section 10(4) of Measure 49, your client has fifteen (15) days from the date of this notice to submit additional evidence to support the claim, after which date the Metro Council will make a final determination on the claim.

Metro's tentative review of the claim identified the following deficiencies:

Zoning for residential use

Metro Code Section 2.21.030(5) and Section 9(5)(e) of Measure 49 require that for a claim to be valid, the property must be zoned for residential use. The claimant has stated in the claim that the property is *not* zoned for residential use. The property is currently zoned FD-20 (future development – 20-acre minimum lot size). The property was brought into the urban growth boundary (UGB) on December 12, 2002, with the Metro Council's adoption of Ordinance 02-990A. As a condition to the property's inclusion in the UGB, the ordinance also designated the claimant's property as a Regionally Significant Industrial Area. Once a permanent zoning designation is applied, it will reflect Metro's RSIA designation and will not be zoned for residential use.

Prohibition of establishing single-family dwellings

Section 9(5)(f) of Measure 49 states that a claimant must establish that one or more land use regulations prohibit the establishment of single-family dwellings. The claimant has not identified any specific Metro regulation as the basis of the claim.

Timing of regulation

Metro Code Section 2.21.030(b)(8) states that for a claim to be valid, the cited land use regulation must have been enacted after the date the property, or any portion of it, was brought into the UGB. As noted above, the claimant has not identified any specific Metro regulation as the basis for the claim. However, as also noted above, Metro's designation of the property as RSIA was simultaneous with its inclusion in

the UGB (both by Metro Ordinance 02-990A). The RSIA designation was not applied to the property after its inclusion in the UGB.

Appraisal required


For a claim to be valid, a claimant must provide an appraisal, performed according to the standards set forth in Measure 49 Sections 9(6) and 9(7) and section 2.21.050(b)(6), that demonstrates a decrease in fair market value that was caused by the cited regulation. The claimant has not provided an appraisal and, thus, has not demonstrated a loss of value attributable to a Metro regulation.

Highest and best use

Metro Code Section 2.21.030(b)(11) states that for a claim to be valid, at the time the cited land use regulation was enacted, the highest and best use of the property must have been residential use. Section 9(7)(c) of Measure 49 states that the appraisal to be provided by the claimant must expressly determine the highest and best use of the property at the time that the land use regulation was enacted. As noted, the claimant has not cited a Metro regulation, nor has the claimant provided an appraisal that determines the property's highest and best use at the time of the enactment of the (unspecified) Metro regulation. At the time of the property's inclusion in the UGB, portions of the property were designated EFU (exclusive farm use, 80-acre minimum lot size) and portions were designated AF20 (agriculture, forestry, 20-acre minimum lot size). Neither of these designations is for residential use.

If you have any questions or concerns, please do not hesitate to contact me.

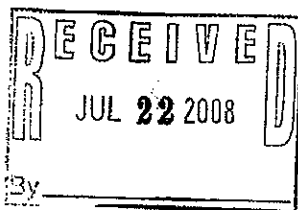
Sincerely,



Ted Reid  
Long Range Policy and Planning  
(503) 797-1768  
[Ted.Reid@oregonmetro.gov](mailto:Ted.Reid@oregonmetro.gov)

cc: Washington County  
City of Tualatin  
Department of Land Conservation and Development





900 S.W. Fifth Avenue, Suite 2600  
Portland, Oregon 97204  
main 503.224.3380  
fax 503.220.2480  
www.stoel.com

July 22, 2008

ELAINE R. ALBRICH  
Direct (503) 294-9394  
eralbrich@stoel.com

**VIA HAND DELIVERY**

Ted Reid  
Long Range Policy and Planning  
Metro  
600 NE Grand Avenue  
Portland, OR 97232

**Re: Supplemental Information for Tigard Sand and Gravel's Measure 49 Claim**

Dear Mr. Reid:

On June 24, 2008, Tigard Sand and Gravel ("TSG") received Metro's Notice of Public Hearing and Report of the Metro Chief Operating Officer in consideration of Metro Council Order No. 08-046 concerning TSG's Measure 49 claim (the "Report"). This letter provides supplemental information to support approval of TSG's claim for property located at SW 120th Avenue in Washington County, and more specifically described in the legal description of the Report (the "Property").

First, enclosed is an appraisal prepared by PGP Valuation, Inc. to support findings that the enactment of the subject land use regulations caused a reduction in the Property's fair market value. Second, the following sections address the Report's recommended findings and conclusions of law and provide supplemental arguments for why TSG's claim is valid. Specifically, TSG addresses the recommended findings and conclusions in Section IV(4)-(6), (8), and (10)-(11).

Section IV(4) Allowed Number of Single-Family Dwellings. As outlined in Attachments A and C of TSG's Metro Measure 49 Election Form, TSG acquired the Property in 1965, 1966, and 1973. At the time TSG acquired the Property, it was zoned either Suburban Residential ("S-R") or Residential District R-20 ("R-20") under the Washington County Development Code ("WCDC"). The SR and the R-20 zones both allow for single-family residential development on lots as small as 20,000 square feet. Accordingly, Metro Code ("MC") 2.21.030(b)(4) is satisfied in that TSG would have been permitted to establish at least 10 dwellings (the number of dwellings authorized under Measure 49) when TSG acquired the Property, given that the Property is approximately 153 acres.

Oregon  
Washington  
California  
Utah  
Idaho



Ted Reid  
 July 22, 2008  
 Page 2

The zoning at the time of the urban growth boundary (“UGB”) expansion is irrelevant as is the discussion on whether Metro issued a waiver of the Regionally Significant Industrial Area (“RSIA”) designation. MC 2.21.030(b)(4) only requires that a claimant be lawfully permitted to establish “at least the number of dwellings on the property that are authorized under Ballot Measure 49” as of the claimant’s acquisition date. TSG has demonstrated that it was lawfully permitted to establish at least 10 dwellings when it acquired the Property in 1965, 1966, and 1973, and therefore this criterion is satisfied.

Section IV(5) Zoned for Residential Use and Section IV(6) Land Use Regulation Prohibits Establishing A Single-Family Dwelling. MC 2.21.030(b)(6) requires a claimant demonstrates that “[a] land use regulation prohibits the establishment of a single-family dwelling.” It is impossible for TSG to demonstrate that the Property is zoned for residential use under MC 2.21.030(b)(5) and also demonstrate that a land use regulation prohibits the establishment of a single-family dwelling under MC 2.21.030(b)(6). TSG, however, can demonstrate that the current zoning prohibits TSG from establishing a single-family dwelling. The Property is currently zoned Future Development-20 Acre District (“FD-20”) under the WCDC and designated RSIA by Metro. Both land use designations, by their terms, prohibit development of a single-family dwelling on the Property. Further, an appraisal is not necessary to determine that the FD-20 and RSIA prohibit a single-family dwelling nor is it a pre-requisite for making findings under MC 2.21.030(b)(6). MC 2.21.030(b)(6) simply requires looking at the current zoning to determine whether a single-family dwelling is allowed. For these reasons, Metro erred in concluding that TSG did not meet MC 2.21.030(b)(6). And until the internal inconsistency is addressed between MC 2.21.030(b)(5) and (b)(6), TSG cannot demonstrate that it meets both criterion.

Section IV(8) Property’s Inclusion in the UGB and Enactment of the FD-20 and RSIA. The findings presented in Section IV(8) seem unreasonable. The Property could not have been zoned FD-20 and RSIA unless it was first included in the Metro UGB. Although the Property may have been included in the UGB and rezoned on the same day, Metro first had to make the decision to include the Property in the UGB, which then triggered the zone change and RSIA designation thereby making the zoning designation enacted “after” the Property was included in the UGB. In other words, “but for” the Property inclusion in the UGB, it would not have been zoned FD-20 and RSIA. This is sufficient to demonstrate that the Property meets the intent of Measure 49 and the requirement in MC 2.21.030(b)(8).

Section IV(10) Reduction in Fair Market Value and Section IV(11) Highest and Best Use. TSG encloses the appraisal prepared by PGP Valuation, Inc. to support findings under MC 2.21.030(b)(10) and MC 2.21.030(b)(11).



Ted Reid  
July 22, 2008  
Page 3

Thank you for your consideration. Please include this supplemental information in the record of the July 24, 2008 hearing on TSG's pending Metro Measure 49 claim.

Very truly yours,

Elaine R. Albrich

ERA/pjn  
Enclosures

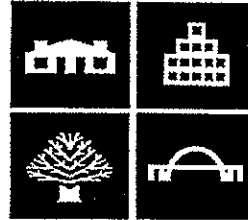
cc: Roger Metcalf  
Tony Urbanak  
Robert D. Van Brocklin

**REAL PROPERTY CONSULTING  
APPRAISAL REPORT**

**SUBJECT PROPERTY**

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**Tigard Sand and Gravel**  
21455 SW 120<sup>th</sup> Avenue  
Tualatin, Oregon 97062



**PGP**  
VALUATION INC

**PREPARED FOR**

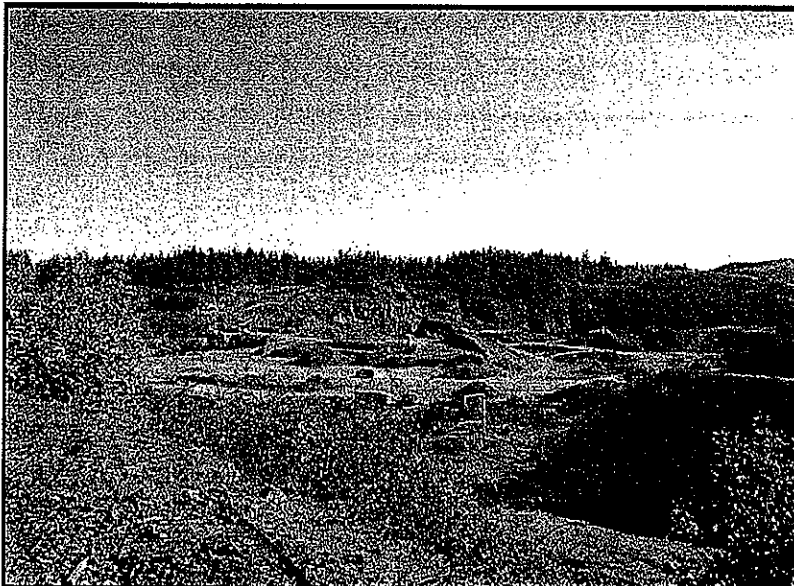
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Ms. Elaine R. Albrich  
Stoel Rives LLP  
900 SW 5<sup>th</sup> Avenue, Suite 2600  
Portland, OR 97204

**PREPARED BY**

---

Jeff L. Grose





June 26, 2008

Elaine R. Albrich  
 Attorney  
 Stoel Rives LLP  
 900 SW 5<sup>th</sup> Avenue, Suite 2600  
 Portland, Oregon 97204  
[eralbrich@stoel.com](mailto:eralbrich@stoel.com)

**RE: MEASURE 49 CLAIM - TIGARD SAND AND GRAVEL**  
 21455 SW 120<sup>th</sup> Avenue  
 Tualatin, OR

Ms. Albrich:

I have completed my analysis of the relative value impact resulting from different zoning designations on the above mentioned property. This valuation does not address the overall value of the property as a whole, but just the relative value impact of the zoning.

This report represents a real property consulting appraisal assignment and is intended to comply with the reporting requirements of Standard (5) of the Uniform Standards of Professional Appraisal Practice (USPAP) Real Property Appraisal Consulting, Reporting, as adopted by the Appraisal Institute, and the Oregon Appraiser Certification and Licensure Board.

The purpose of this appraisal is to estimate the value impact of a zone change on the subject property.

We have not performed title research on the subject property. The client has provided the following detail on the property ownership:

Property Number	Township	Range	Section	Tax Lot	Current Zoning	Original Zoning	Date Acquired	AC
R546868	2S	1W	27C	900	FD20	S-R	12/30/65	40
R1492236	2S	1W	34B	100	FD20	R-20	09/07/65	3.08
R558596	2S	1W	34B	100	FD20	R-20	09/07/65	58.68
R546797	2S	1W	27C	300	FD20	S-R	11/19/73	2.27
R546804	2S	1W	27C	400	FD20	S-R	11/19/73	12.33
R558603	2S	1W	34B	200	FD20	R-20	07/12/66	12.59
R558667	2S	1W	34B	800	FD20	R-20	07/12/66	15.53
R558729	2S	1W	34C	500	FD20	R-20	07/12/66	8.38

This consultation report is not intended to provide legal counsel regarding the potential Measure 49 claim.

LETTER OF TRANSMITTAL (CONTINUED)

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Per your request, the value impact is measured between 2001 (one year before the site was zoned FD-20) and in 2003 (one year after the property was zoned FD-20).

**This valuation is based upon the following Hypothetical Condition:**

It is assumed that the site was zoned to allow a maximum density of 20,000 square foot home sites (S-R and R-20 according to the client) prior to inclusion in the UGB. The parcel was actually zoned EFU, but this is disregarded per the client's request. Given the need for well and septic, this density may not be physically possible barring an on-site sewer system and water system. However, per the client's instructions, the appraiser is to value the property as if it had a zoning that allows for lots as small as 20,000 square feet. It is further assumed that the zoning would allow a range in densities so that acreage home sites would be permitted. *If these assumptions/hypothetical conditions are not made, this valuation analysis is not valid.*

**The following Extraordinary Assumptions have been made:**

- The gross site area reported by the client that is under this claim 153 acres. We have estimated the net usable area at 122 acres based upon wetlands and slopes. A survey or engineered site plan was not provided. Therefore, the net usable area estimate of 122 acres is assumed to be correct.
- It is assumed that on-site wells and septic systems would be feasible. The appraiser is not qualified to determine the feasibility of these systems necessary for rural residential development.
- No engineering information has been provided to the appraiser. Based upon need for water and sewer, most likely well and septic for each lot, the likely density would be 2 acre home sites. Considering shape, configuration, and interior roads, the net usable acreage is reduced 25% to 91.5. At a density of 1 home site per 2 acres, the indicated density is 46 home sites. This figure is an approximation and it is recommended that the client engage a qualified professional to create a site plan in order to determine the number of home sites.
- It is assumed that the subject is within all state and county requirements for mining and reclamation.

The subject was Metro added lands designated for future industrial development in December 2002 and June 2004. This area; which is comprised of a total of 431 acres (primarily consisting of the subject site) is adjacent to the City of Tualatin. The property is currently zoned under Washington County. The zoning applied is Future Development 20 Acre District (FD-20). This is an interim zoning designation for the Concept Plan area. The FD-20 district "recognizes the desirability of encouraging and retaining limited interim uses until the urban comprehensive planning for future urban development of these areas is completed. The provisions of this District are also intended to implement the requirements of Metro's Urban Growth Management Functional Plan." This zoning will apply to the subject area until such a time when the site is annexed into the City of Tualatin.

Metro has designated the subject and the Southwest Tualatin Concept Plan as a Regional Significant Industrial Area (RSIA). The future land use designation is anticipated to allow a mix of light industrial and high-tech uses in a corporate campus setting. The RSIA designated area requires at least one 100-acre parcel and one 50-acre parcel for large industrial users. The remainder of the plan area will likely be light industrial with limited commercial services allowed.

LETTER OF TRANSMITTAL (CONTINUED)

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The appraisal question to be answered is: Did the change in the underlying zoning from what the client reported should be SR or R-20 to FD-20 have a negative impact on value?

**Conclusions**

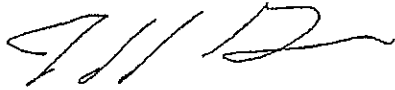
There is a negative impact on value. Regardless of the type of future urban development (industrial or residential) the subject site between 2001 and 2003 reflected a highest and best use as held for future urban development. From an investment perspective, the downside in the investment (assuming the site does not get annexed or approved for more intensive urban development with public utilities) is greater with the FD-20 zoning. The FD-20 zoning is more restrictive and allows fewer uses at less density. Therefore, there is a measurable value impact between the FD-20 zoning and the SR/R-20 zoning designation. In other words, there is less risk if the underlying zoning allows for more intensive use of the site. Less risk produces more value from a market perspective.

The purpose of this consulting assignment is to estimate the value difference between the subject site being zoned as the client has requested (zoning that would allow suburban residential development as described above) and the implementation of the FD-20 zoning following the site's inclusion in the Urban Growth Boundary (UGB). Based upon my investigation and analysis of available information, there is a negative impact on value. Further research and analysis is required in order to provide a quantified dollar amount.

This valuation is subject to the conditions and comments presented in this report. If questions arise concerning this report, please contact the undersigned.

Sincerely,

**PGP VALUATION INC**



Jeff L. Grose  
Certified General Real Estate Appraiser  
State of Oregon License #C000722  
503-542-5411  
[jeff.grose@pgpinc.com](mailto:jeff.grose@pgpinc.com)

**PRELIMINARY APPRAISAL INFORMATION**



**APPRAISAL SUMMARY**

**Name:** Tigard Sand and Gravel

**Property Type:** Rock quarry with future development potential

**Address:** 21455 SW 120<sup>th</sup> Avenue, Tualatin, Oregon

**Site Description:**

Size: 153 gross acres as reported by the client.

Topography: Steeply sloped with a level areas.

Zoning: FD-20 (future development site identified as regionally significant industrial site).

Comp Plan: Light Industrial

**Highest & Best Use:**

As Vacant: Interim mining and reclamation with future development

**Property Rights Appraised:** The fee simple interest

**PGP File Number:** C080171B

**Purpose, Use, and Users of the Appraisal**

The purpose of this appraisal is to estimate the value impact of a change in zoning based upon the hypothetical condition presented in this report. This appraisal is to be used by the client (Stoel Rives) for internal decision making regarding a Measure 49 claim.

**Definition of Market Value**

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming that the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and



**PRELIMINARY APPRAISAL INFORMATION (CONTINUED)**

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5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>1</sup>

**Property Rights Appraised**

Fee Simple Estate, is defined in *The Dictionary of Real Estate Appraisal*, Third Edition (1993), as:

"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."

**Subject Property Inspection**

An inspection of the subject property was conducted on August 21, 2007 and again on September 11, 2007 by Jeff Grose.

**SCOPE OF WORK**

- Preparation of this report included the following:
- Inspected the subject property.
- Reviewed county records for information on taxes and assessment as well as comparable data.
- Inspected the subject property neighborhood.
- Gathered information on the site's history and use.
- Analyzed supply and demand conditions for aggregate resources, rural residential uses, and industrial land in the subject's area.
- Prepared of a consultation report.

**Sources of Information**

The relevant market data was obtained from the buyer, the seller's broker, quarry owners and operators, real estate agents/brokers, appraisers, lenders, and various sources of secondary market data. In addition representatives from various municipal offices were also contacted to obtain relevant market and/or property information.

**Disclosure of Competency**

I am aware of the competency provision of *USPAP* and the authors of this report meet the standards.

**Availability of Information**

Engineering necessary in order to quantify the development potential as a rural residential development was not available. In addition, a geologic survey was not provided indicating the quality and quantity of the resource. These items would strengthen the analysis. All other necessary information was provided for this analysis.

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<sup>1</sup> Office of Comptroller of the Currency (OCC), Title 12 of the Code of Federal Regulation, Part 34, Subpart C - Appraisals, 34.42 (g); Office of Thrift Supervision (OTS), 12 CFR 564.2 (g); This is also compatible with the RTC, FDIC, FRS and NCUA definitions of market value.

**PRELIMINARY APPRAISAL INFORMATION (CONTINUED)****Personal Property**

There is currently an ongoing aggregate operation that includes mining, crushing, and aggregate processing. There is personal property and equipment associated with this operation which is *not* included in this valuation.

**Deductions and Discounts**

None were applied.

**Sales History and Ownership**

**Current Owner** – Tigard Sand and Gravel and Oregon Asphaltic Paving

**Three-Year Sales History** – No transactions involving the subject have occurred in the past 3 years.

**Subject Sale Status** – The subject property is not currently listed for sale.

**Assessment and Tax Information**

The subject's assessed values and property taxes for the current year are summarized in the following table:

SUBJECT PARCEL INFORMATION AND TAXES (07/08)										
Map#	Tax Lot	Parcel #	Gross		RMV			Assessed	Taxes	
			Size (AC)	Zoning	Land	Imp.	Total RMV			
2S127C	300	546797	2.27	FD-20	\$22,130	\$0	\$22,130	\$17,540	\$264	
2S127C	400	546804	12.33	FD-20	\$120,220	\$20,370	\$140,590	\$116,230	\$1,751	
2S127C	900	546868	40	FD-20	\$390,000	\$486,410	\$876,410	\$776,190	\$11,690	
2S134B	100	558596	58.68	FD-20	\$572,130	\$0	\$572,130	\$453,300	\$6,827	
2S134B	200	558603	12.59	FD-20	\$122,750	\$0	\$122,750	\$97,260	\$1,465	
2S134B	800	558667	15.53	FD-20	\$151,420	\$0	\$151,420	\$119,970	\$1,807	
2S134C	500	558729	8.38	FD-20	\$81,710	\$0	\$81,710	\$64,730	\$975	
2S134B	100	1492236	3.08	FD-20	\$30,030	\$0	\$30,030	\$23,790	\$390	

Note: There may be parcels that are assessed under a deferral program. Additional tax liability may be required. In Oregon, Measure 50 was passed in the May 20, 1997 special election. This measure establishes the maximum assessed value of property in Oregon for the 1997/1998 tax year as 90 percent of the property's real market value in the 1995/96 tax year. Any increases in assessed value for tax years following 1997/1998 are limited to 3 percent per year. Assessed value will be adjusted for new property or property improvements and certain other events. Certain local option taxes are permitted, if approved by voters. Measure 50 retains the existing total property tax rate for all property taxes, including local option taxes but excluding taxes for bonds at \$5 per \$1,000 of value for schools and \$10 per \$1,000 of value for non-school government. Future taxes are generally limited to a 3 percent annual increase, with some variation associated with changing bond indebtedness. The subject property is not encumbered by bonds.

PRELIMINARY APPRAISAL INFORMATION (CONTINUED)

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**Exposure Time**

Exposure time is defined as "the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market."

Reasonable exposure time is impacted by the aggressiveness and effectiveness of a property's exposure to market participants, availability and cost of financing, and demand for similar investments. Exposure time is best established upon the experience of recent comparable sales and discussions with market participants. There is a narrow market for similar properties. They can often sell without exposure to the open market, but when exposed, the exposure period can be up to 2 years or more. Based upon this information and considering the physical characteristics and location of the subject property, a reasonable estimate of exposure time for the subject is 2 years.

## ASSUMPTIONS AND LIMITING CONDITIONS



This appraisal is subject to the following assumptions and limiting conditions:

### **This valuation is based upon the following Hypothetical Condition:**

It is assumed that the site was zoned to allow a maximum density of 20,000 square foot home sites (S-R and R-20 according to the client) prior to inclusion in the UGB. The parcel was actually zoned EFU, but this is disregarded per the client's request. Given the need for well and septic, this density may not be physically possible barring an on-site sewer system and water system. However, per the client's instructions, the appraiser is to value the property as if it had a zoning that allows for lots as small as 20,000 square feet. It is further assumed that the zoning would allow a range in densities so that acreage home sites would be permitted. ***If these assumptions/hypothetical conditions are not made, this valuation analysis is not valid.***

### **The following Extraordinary Assumptions have been made:**

- The gross site area reported by the client that is under this claim 153 acres. We have estimated the net usable area at 122 acres based upon wetlands and slopes. A survey or engineered site plan was not provided. Therefore, the net usable area estimate of 122 acres is assumed to be correct.
- It is assumed that on-site wells and septic systems would be feasible. The appraiser is not qualified to determine the feasibility of these systems necessary for rural residential development.
- No engineering information has been provided to the appraiser. Based upon need for water and sewer, most likely well and septic for each lot, the likely density would be 2 acre home sites. Considering shape, configuration, and interior roads, the net usable acreage is reduced 25% to 91.5. At a density of 1 home site per 2 acres, the indicated density is 46 home sites. This figure is an approximation and it is recommended that the client engage a qualified professional to create a site plan in order to determine the number of home sites.
- It is assumed that the subject is within all state and county requirements for mining and reclamation.

### **General Assumptions and Conditions**

A survey has not been provided to the appraiser. If further verification is required, a survey by a registered surveyor is advised.

We assume no responsibility for matters legal in character, nor do we render any opinion as to title, which is assumed to be marketable. All existing liens, encumbrances, and assessments have been disregarded, unless otherwise noted, and the property is appraised as though free and clear, under responsible ownership, and competent management.

The exhibits in this report are included to assist the reader in visualizing the property. We have made no survey of the property and assume no responsibility in connection with such matters.

Unless otherwise noted herein, it is assumed that there are no encroachments, zoning, or restrictive violations existing in the subject property.

ASSUMPTIONS AND LIMITING CONDITIONS (CONTINUED)

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The appraiser assumes no responsibility for determining if the property requires environmental approval by the appropriate governing agencies, nor if it is in violation thereof, unless otherwise noted herein.

Information presented in this report has been obtained from reliable sources, and it is assumed that the information is accurate.

This report shall be used for its intended purpose only, and by the party to whom it is addressed. Possession of this report does not include the right of publication.

The appraiser may not be required to give testimony or to appear in court by reason of this appraisal, with reference to the property in question, unless prior arrangements have been made therefore.

The statements of value and all conclusions shall apply as of the dates shown herein.

The appraiser has no present or contemplated future interest in the property which is not specifically disclosed in this report.

Neither all, nor any part of, the contents of this report shall be conveyed to the public through advertising, public relations, news, sales, or other media without the written consent or approval of the author. This applies particularly to value conclusions and to the identity of the appraiser and the firm with which he or she is connected.

This report must be used in its entirety. Reliance on any portion of the report independent of others, may lead the reader to erroneous conclusions regarding the property values. No portion of the report stands alone without approval from the authors.

The liability of PGP Valuation Inc, its principals, agents, and employees is limited to the client. Further, there is no accountability, obligation, or liability to any third party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraisers are in no way responsible for any costs incurred to discover or correct any deficiency in the property.

The appraiser is not qualified to detect the presence of toxic or hazardous substances or materials which may influence or be associated with the property or any adjacent properties, has made no investigation or analysis as to the presence of such materials, and expressly disclaims any duty to note the degree of fault. PGP Valuation Inc and its principals, agents, employees, shall not be liable for any costs, expenses, assessments, or penalties, or diminution in value, property damage, or personal injury (including death) resulting from or otherwise attributable to toxic or hazardous substances or materials, including without limitation hazardous waste, asbestos material, formaldehyde, or any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, solids or gasses, waste materials or other irritants, contaminants or pollutants.

The appraisers assume no responsibility for determining if the subject property complies with the *Americans with Disabilities Act (ADA)*. PGP Valuation Inc, its principals, agents, and employees, shall not be liable for any costs, expenses, assessments, penalties or diminution in value resulting from non-compliance. This appraisal assumes that the subject meets an acceptable level of compliance with *ADA* standards; if the subject is not in compliance, the eventual renovation costs and/or penalties would negatively impact the present value of the subject. If the magnitude and time of the cost were known today, they would be reduced from the reported value conclusion.

An on-site inspection of the subject property was conducted. No evidence of asbestos materials on-site was noted. A Phase 1 Environmental Assessment was not provided for this analysis.

ASSUMPTIONS AND LIMITING CONDITIONS (CONTINUED)

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This analysis assumes that no asbestos or other hazardous materials are stored or found in or on the subject property. If evidence of hazardous materials of any kind occurs, the reader should seek qualified professional assistance. If hazardous materials are discovered and if future market conditions indicate an impact on value and increased perceived risk, a revision of the concluded values may be necessary.

A detailed soils study was not provided for this analysis. The subject's soils and sub-soil conditions are assumed to be suitable based upon a visual inspection, which did not indicate evidence of excessive settling or unstable soils. No certification is made regarding the stability or suitability of the soil or sub-soil conditions.

This analysis assumes that the financial information provided for this appraisal, including historical income, accurately reflect the current and historical operations of the subject property.

## MARKET AREA DESCRIPTION



The subject is located in the western portion of the City of Tualatin, which is a suburb of the Portland metropolitan area, located ten miles southwest of downtown Portland. Tualatin is a growing suburban city and is located in the Interstate 5 (I-5) corridor, which is south of Portland. This corridor consists of the suburban cities of Tigard, Lake Oswego, Tualatin, Sherwood, and Wilsonville. These cities have developed into desirable suburban residential areas, as well as an industrial/distribution location, partially due to the good access provided by the freeway system. The subject market area boundaries are Rock Creek on the west, the I-5 freeway on the east, the Tualatin River on the north, and Tualatin city limits on the south. The immediate subject market area consists primarily of industrial development.

### INDUSTRIAL DEVELOPMENT

Industrial uses in the City of Tualatin are established and expanding, consisting primarily of warehouse/distribution, light manufacturing, multi-tenant industrial parks, and small incubator business parks developed since the 1970s. Historically, the market has been dominated by owner-occupied, single-tenant facilities. However, new development in recent years has included a significant number of multi-tenant industrial parks oriented toward light industrial, warehouse/office users as well as some flex oriented facilities. Tualatin has been one of the most active areas for new industrial development in the Portland metropolitan area and the supply of developable sites has been substantially reduced. Most of the remaining vacant industrial sites are not for sale or are large parcels without services. Corporate neighbors in the immediate vicinity of the subject include Coca-Cola, Columbia Corrugated Box, La-Z-Boy, Lumber Products, Milgard, Novellus, Pacific Foods, Pacific Cornetta and United Parcel Service.

### RESIDENTIAL DEVELOPMENT

Tualatin's residential base is expanding with average to good quality contemporary-styled homes and newer subdivisions. On the outskirts to the south, west, and north are a mixture of older farm buildings and newer contemporary homes on small acreage parcels. Several older apartment complexes are south and east of the central city core; newer apartment complexes are in the northwest and eastern portions of Tualatin.

### COMMERCIAL DEVELOPMENT

Most commercial development is near the commercial core on SW Nyberg, SW Boones Ferry and SW Tualatin-Sherwood roads. Fred Meyer and Kmart are across from one another at the SW Nyberg Road exit west of I-5. Strip retail, office and commercial buildings are in this area. Substantial new mixed-use development is at the intersection of SW Boones Ferry Road and SW Tualatin-Sherwood Road, including Hedges Green community shopping center, a medical office facility and a multi-family complex. Major office development in the market area is at South Center, a 235,000 square foot, multiple building complex constructed in phases between 1985 and 1990. Additional office development is located on the east side of Interstate 5 on SW 72<sup>nd</sup> Avenue.

### COMMUNITY/TRANSPORTATION

The subject market area is positively influenced by its close proximity to major interstate freeways, including Interstate 5 (I-5) and Interstate 205 (I-205), and major highways including Highway 217 and Highway 99W. SW Tualatin-Sherwood Road is the primary east/west arterial serving the city and connects with I-5 on the east and Highway 99W in the City of Sherwood on

**MARKET AREA DESCRIPTION (CONTINUED)**

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the west. This is a heavily used roadway that experiences substantial traffic congestion. Construction is in process to attempt to alleviate the congestion.

The subject market area is also served by various spurs of the Southern Pacific and Burlington Northern Railroads. All major municipalities within the Portland metropolitan area are within reasonable vehicle access. The City of Tualatin is also served by various Tri-Met bus lines, servicing the greater Portland area. The Portland International Airport is approximately 25 miles northeast of the neighborhood via I-205.

A 14.7-mile commuter rail line is proposed between Wilsonville and Beaverton. This line will serve Tualatin along an existing rail corridor. The corridor is currently being acquired and the total cost is anticipated to be \$103.5 million. Construction began in 2006 and completion is planned for 2008.

**MARKET AREA SUMMARY**

In summary, the subject market area has experienced substantial new development and redevelopment over the past several years, benefiting from the close proximity to Portland and the Interstate freeway system. The overall outlook for this area is good. Overall, all sectors are expected to continue growing at a moderate pace. Real estate values will remain stable or increase with trends similar to the Portland metropolitan area.





## SITE DESCRIPTION



<b>Hazardous Waste/Asbestos:</b>	Upon physical inspection of the site, no hazardous material was evident. We have made no independent investigation regarding this issue. This appraisal assumes the site is free of all hazardous waste and toxic materials. Please refer to the Assumptions and Limiting Conditions section regarding this issue.
<b>Current Use:</b>	Permitted quarry. There is an ongoing mining operation in addition to ongoing reclamation/filling.
<b>Subject Size:</b>	The gross site area reported by the client that is under this claim 153 acres. We have estimated the net usable area at 122 acres based upon wetlands and slopes. A survey or engineered site plan was not provided. Therefore, the net usable area estimate of 122 acres is assumed to be correct.
<b>Rock Quantity:</b>	Unknown, but assumed to be over 5,000,000 tons.
<b>Shape:</b>	Irregular; please refer to the plat map.
<b>Topography:</b>	Topography is sloping to level, reflecting that the site has been mined.
<b>Abutting Properties—</b>	
North:	Industrially zoned property within the City of Tualatin.
South:	Aggregate quarry and rural industrial uses
West:	Rural development and quarry
East:	Rail line (future Wilsonville to Beaverton commuter rail line) across which is subdivision development within the City of Tualatin.
<b>Utilities:</b>	The site is currently not served by urban water and sewer service. There is a planned 16-inch water pipe identified in the Tualatin Water Master Plan (2003). In addition, Tualatin's Sanitary Sewer Master Plan calls for a 24-inch trunk line along Tualatin Sherwood Road. A sewer pump may be required to serve portions of the subject, depending on the final site grade. The industrial site to the north has had utility services extended to the site along SW 115th Avenue.
<b>Street Improvements:</b>	The subject currently has access via SW 120 <sup>th</sup> Avenue. However, access may also be possible via SW 115 <sup>th</sup> Avenue at the northeast corner.  For future development, the City of Tualatin has identified the following significant projects that will impact/benefit the site:
	<ul style="list-style-type: none"> <li>• Widening of SW Tualatin Sherwood Road.</li> <li>• Wilsonville-Beaverton commuter rail.</li> </ul>

**SITE DESCRIPTION (CONTINUED)**

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- Extending SW 124<sup>th</sup> Avenue from 99W to intersect with SW Tualatin Sherwood Road at a new traffic signal.
- Extending new alignments for SW 115<sup>th</sup> and 120<sup>th</sup> Avenue from Tualatin Sherwood Road, through the subject as well as the extension of Blake Street.

**Accessibility:**

The site has good access for an aggregate site with nearby access to Tualatin Sherwood Road. For future development, access is anticipated to be average to good, with future plans for an industrial arterial traveling north/south through the property.

**Easements  
and Encumbrances:**

A title report was not available to the appraisers. A physical inspection and review of planning documents indicates there are two major overhead power transmission line easements over the property. PGE has a 100-foot wide easement traversing northwest to southeast. BPA holds another easement that varies in width but is typically 287.5 feet wide and also travels northwest to southeast across the property. If questions arise regarding easements and encumbrances, further research is advised.

**Zoning:**

The subject is within a planning area referred to as the Southwest Tualatin Concept Plan area. Metro added lands designated for future industrial development in December 2002 and June 2004. This area, which is comprised of a total of 431 acres (primarily consisting of the subject site) is adjacent to the City of Tualatin. The property is currently zoned under Washington County. The zoning applied is Future Development 20 Acre District (FD-20). This is an interim zoning designation for the Concept Plan area. The FD-20 district "recognizes the desirability of encouraging and retaining limited interim uses until the urban comprehensive planning for future urban development of these areas is completed. The provisions of this District are also intended to implement the requirements of Metro's Urban Growth Management Functional Plan." This zoning will apply to the subject area until such a time when the site is annexed into the City of Tualatin.

Metro has designated the subject and the Southwest Tualatin Concept Plan as a Regional Significant Industrial Area (RSIA).

The future land use designation is anticipated to allow a mix of light industrial and high-tech uses in a corporate campus setting. The RSIA designated area requires at least one 100-acre parcel and one 50-acre parcel for large industrial users. The remainder of the plan area will likely be light industrial with limited commercial services allowed.

**SITE DESCRIPTION (CONTINUED)**

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It is possible that a new "Business Park" zone will be applied to the area.

There is a 22.28-acre parcel separated from the larger group of parcels. This site is zoned AF-20 by Washington County. It is an agricultural zoning that typically allows for one home site per 20-acres. This parcel is not within the Southwest Tualatin Plan area.

**Mining Regulations:**

There is an active reclamation permit with DOGAMI. It is assumed that the operator is in compliance with all mining regulations.

**Aggregate Description:**

A geologic survey was not provided. Only a small portion of the aggregate is reported to meet ODOT standards for asphalt and concrete. The majority of the site consists of aggregate that is typically used for base rock on construction projects, landscaping, and gravel driveways.

**Flood Plain:**

According Metro Map and Washington County GIS system, the subject does not appear to be impacted by flood areas.

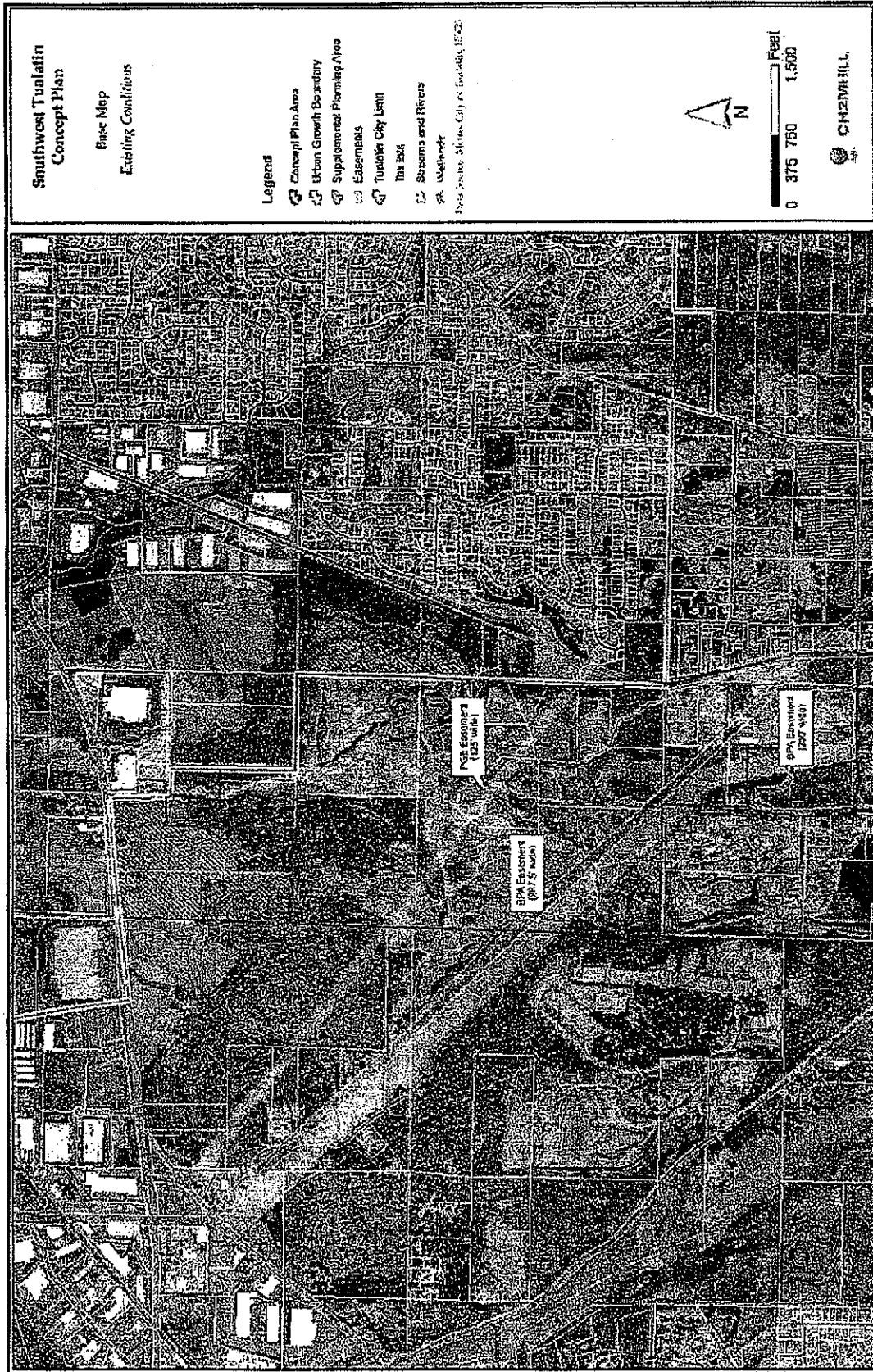
**Site Rating:**

Average for aggregate mining. The site has good appeal as a future industrial site. Metro as well as the City of Tualatin have identified the site as a key industrial site for the region. Planning has been completed to allow for future infrastructure necessary to development site upon annexation and completion of reclamation.

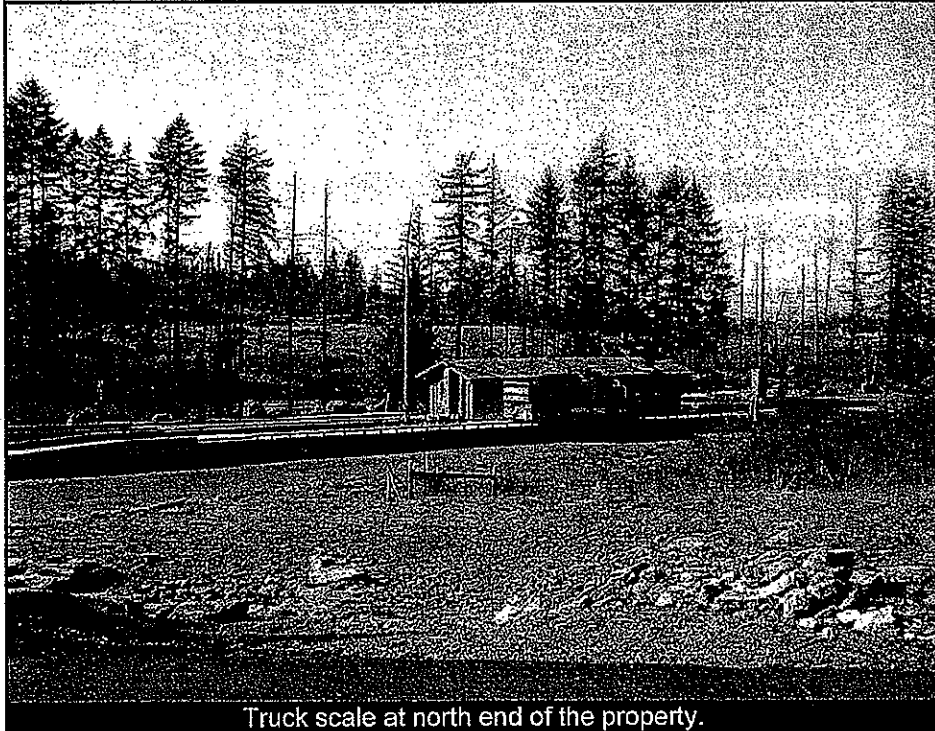
**Improvement Description:**

There are improvements associated with the current mining operation. This includes a modular office building, multiple 2 shop buildings, truck scale with office, and a dilapidated industrial barn and industrial shop building at the north end of the site. These improvements contribute to the interim mining operation, but do not provide measurable value to the site. There description is therefore limited.

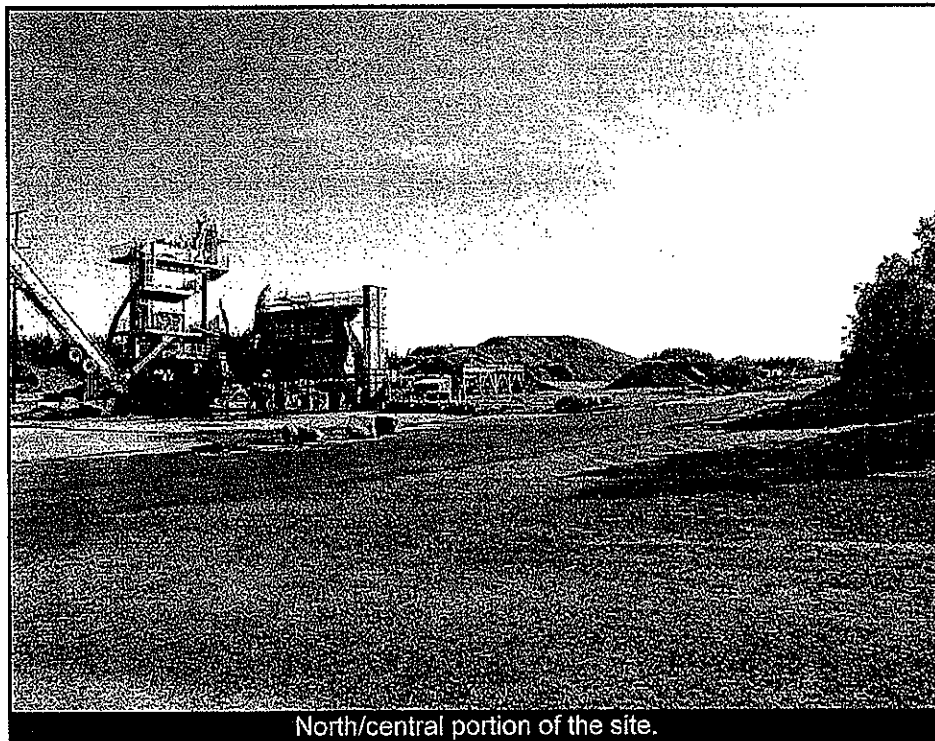
**SOUTHWEST TUALATIN CONCEPT PLAN**



**SUBJECT PROPERTY PHOTOGRAPHS**



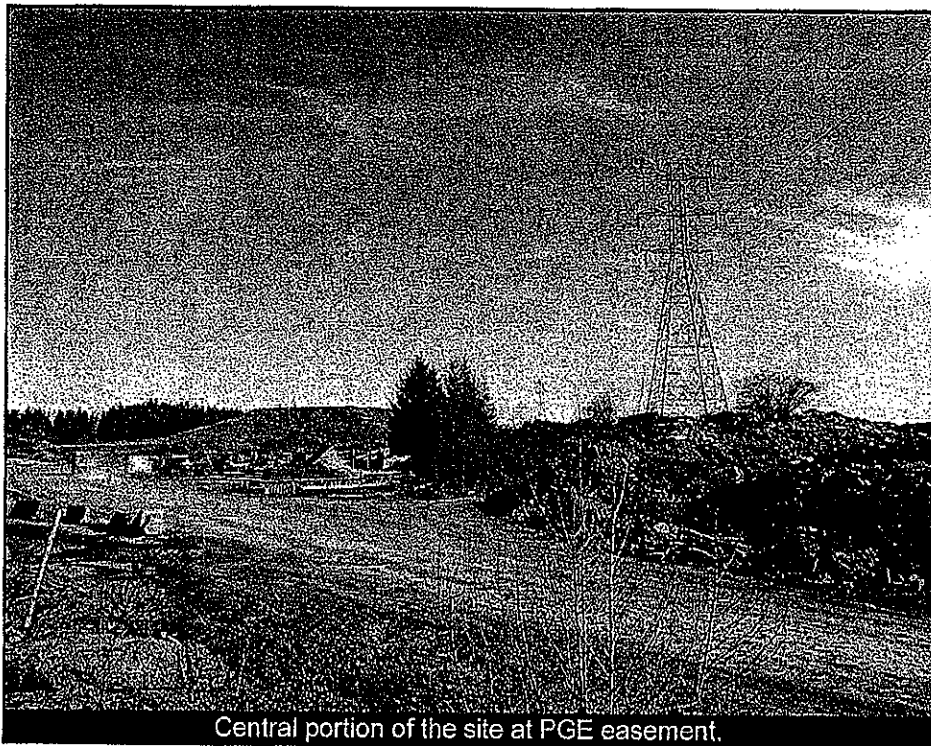
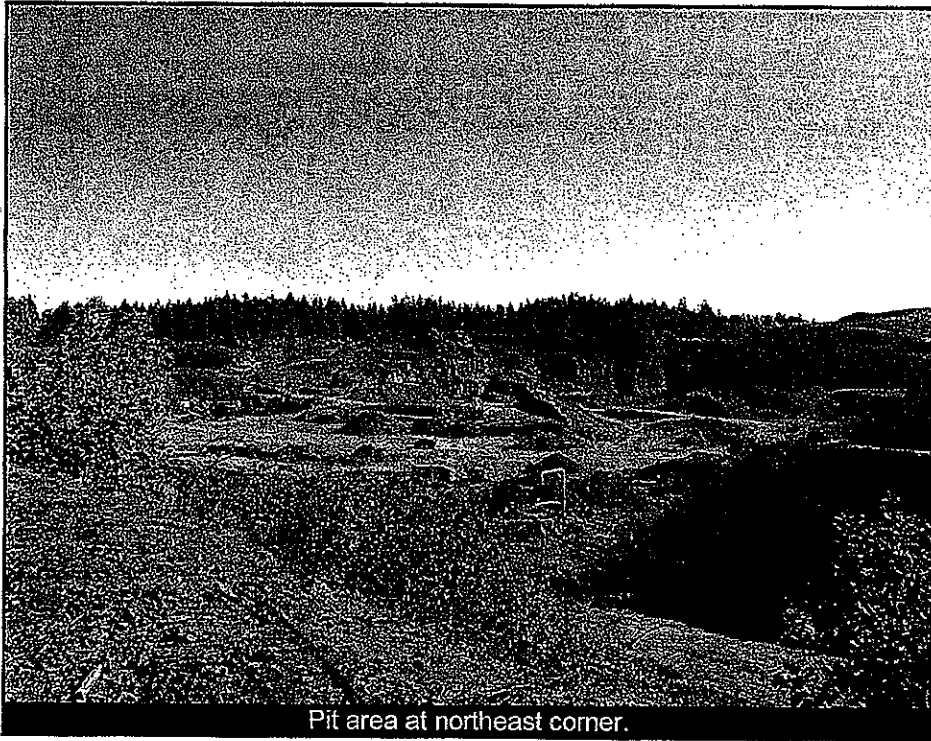
Truck scale at north end of the property.



North/central portion of the site.

SUBJECT PROPERTY PHOTOGRAPHS (CONTINUED)

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CERTIFICATE OF APPRAISAL



We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are the signer's personal, impartial, and unbiased professional analyses, opinions, and conclusions.
The signers of this report have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
The signers have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
The engagement in this assignment was not contingent upon developing or reporting predetermined results.
The compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
The analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and the Uniform Standards of Professional Appraisal Practice, as set forth by the Appraisal Standards Board of the Appraisal Foundation.
Jeff L. Grose made a personal inspection of the property that is the subject of this report, and all the sale comparables. Brian L. Kelley, MAI reviewed the report in its entirety.
No other persons provided significant assistance to the signers of this report.
The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this appraisal, Brian L. Kelley, MAI, is currently certified under the continuing education program of the Appraisal Institute.

Signature of Jeff Grose
Jeff Grose
OR State Certified General Appraiser
No. C000722

June 26, 2008
Date

Signature of Brian L. Kelley
Brian L. Kelley, MAI
OR State Certified General Appraiser
No. C000141

June 26, 2008
Date



**ADDENDA**



**DEFINITIONS**

## DEFINITIONS



These definitions were extracted from the following sources or publications:

- *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, Chicago, Illinois, 2002 (*Dictionary*).
- *Uniform Standards of Professional Appraisal Practice*, 2006 Edition (*USPAP*).
- *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, Chicago, Illinois, 2001 (*12<sup>th</sup> Edition*).
- *Marshall Valuation Service*, Marshall & Swift, Los Angeles, California (*MVS*).

### Absolute Net Lease

A lease in which the tenant pays all expenses including structural maintenance and repairs; usually a long-term lease to a credit tenant. (*Dictionary*)

### Accrued Depreciation

The difference between the reproduction or replacement cost of the improvements on the effective date of the appraisal and the market value of the improvements on the same date. (*Dictionary*)

### Ad Valorem Tax

A real estate tax based on the assessed value of the property, which is not necessarily equivalent to its market value. (*12<sup>th</sup> Edition*)

### Aggregate of Retail Values (ARV)

The sum of the appraised values of the individual units in a subdivision, as if all of the units were completed and available for retail sale, as of the date of the appraisal. The sum of the retail sales includes an allowance for lot premiums, if applicable, but excludes all allowances for carrying costs. (*Dictionary*)

### Arm's-length Transaction

A transaction between unrelated parties under no duress. (*12<sup>th</sup> Edition*)

### As-Is Value

The value of specific ownership rights to an identified parcel of real estate as of the effective date of the appraisal; relates to what physically exists and is legally permissible and excludes all assumptions concerning hypothetical market conditions or possible rezoning. (*Dictionary*)

### Assessed Value

The value of a property according to the tax rolls in ad valorem taxation; may be higher or lower than market value, or based on an assessment ratio that is a percentage of market value. (*12<sup>th</sup> Edition*)

### Average Daily Room Rate (ADR)

In hotel analysis, total guest room revenue divided by the total number of occupied rooms. (*Dictionary*)

### Band of Investment

A technique in which the capitalization rates attributable to components of a capital investment are weighted and combined to derive a weighted-average rate attributable to the total investment. (*Dictionary*)

### Cash Equivalence

A price expressed in terms of cash, as distinguished from a price expressed totally or partly in terms of the face amounts of notes or other securities that cannot be sold at their face amounts. Calculating the cash-equivalent price requires an appraiser to compare transactions involving atypical financing to transactions involving comparable properties financed at typical market terms. (*Dictionary*)

### Common Area

The total area within a property that is not designated for sale or rental but is available for common use by all owner, tenant, or their invitees, e.g., parking and its appurtenances, malls, sidewalks, landscaped areas, recreation areas, public toilets, truck and service facilities. (*Dictionary*)

### Contract Rent

The actual rental income specified in a lease; may be a combination of base rent, percentage rents, and expense reimbursements. (*12<sup>th</sup> Edition*)

### Cost Approach

A set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial profit, deducting depreciation from the total cost, and adding the estimated land value. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised. (*12<sup>th</sup> Edition*)

### Curable Functional Obsolescence

An element of depreciation; a curable defect caused by a flaw in the structure, materials, or design. (*Dictionary*)

### Debt Coverage Ratio (DCR)

The ratio of net operating income to annual debt service; measures the ability of a property to meet its debt service out of net operating income; also called debt service coverage ratio (DSCR). (*Dictionary*)

### Deferred Maintenance

Curable, physical deterioration that should be corrected immediately, although work has not commenced; denotes the need for immediate expenditures, but does not necessarily suggest inadequate maintenance in the past. (*Dictionary*)

### Depreciation

In appraising, a loss in property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date. (*Dictionary*)

## DEFINITIONS (CONTINUED)

**Direct Costs**

1. Expenditures for the labor and materials used in the construction of improvements;
  2. The labor, material, subcontractor, and heavy equipment costs directly incorporated into the construction of physical improvements. (R.S. Means)
- Also called hard costs. (*Dictionary*)

**Discounted Cash Flow (DCF) Analysis**

The procedure in which a discount rate is applied to a set of projected income streams and a reversion. The analyst specifies the quantity, variability, timing, and duration of the income streams as well as the quantity and timing of the reversion and discounts each to its present value at a specified yield rate. DCF analysis can be applied with any yield capitalization technique and may be performed on either a lease-by-lease or aggregate basis. (*Dictionary*)

**Discount Rate**

An interest rate used to convert future payments or receipts into present value. The discount rate may or may not be the same as the internal rate of return (IRR) or yield rate depending on how it is extracted from the market and/or used in the analysis. See also risk rate; safe rate; yield rate (Y). (*Dictionary*)

**Easement**

An interest in real property that conveys use, but not ownership, of a portion of an owner's property. Access or right of way easements may be acquired by private parties or public utilities. Governments dedicate conservation, open space, and preservation easements. (*Dictionary*)

**Effective Age**

The age of property that is based on the amount of observed deterioration and obsolescence it has sustained, which may be different from its chronological age. (*USPAP*)

**Effective Date**

The date at which the analyses, opinions, and advice in an appraisal, review, or consulting service apply. (*USPAP*)

**Effective Date**

The rental rate net of financial concessions such as periods of no rent during the lease term; may be calculated on discounted basics reflecting the time value of money, or on a simple, straight-line basis. (*12<sup>th</sup> Edition*)

**Economic Life**

The period over which improvements to real property contribute to property value; the term relates to the market extraction and age-life methods of estimating depreciation. (*12<sup>th</sup> Edition*)

**Effective Gross Income (EGI)**

The anticipated income from all operations of the real property after an allowance is made for vacancy and collection losses. Effective gross income includes items constituting other income, i.e., income generated from the operation of the real property that is not derived from space rental (e.g., parking rental or income from vending machines). (*Dictionary*)

**Effective Gross Income Multiplier (EGIM)**

The ratio between the sale price (or value) of a property and its effective gross income; a single year's EGI expectancy or an annual average of several years' EGI expectancies ( $EGIM = V/EGI$ ). (*Dictionary*)

**Eminent Domain**

The right of government to take private property for public use upon the payment of just compensation. The Fifth Amendment of the U.S. Constitution, also known as the takings clause, guarantees payment of just compensation upon appropriation of private property. (*Dictionary*)

**Entrepreneurial Incentive**

A market-derived figure that represents the amount an entrepreneur expects to receive for his or her contribution to a project and risk. (*12<sup>th</sup> Edition*)

**Entrepreneurial Profit**

A market-derived figure that represents the amount an entrepreneur receives for his or her contribution to a project and risk; the difference between the total cost of a property (cost of development) and its market value (property value after completion), which represents the entrepreneur's compensation for the risk and expertise associated with development. (*12<sup>th</sup> Edition*)

**Excess Land**

In regard to an improved site, the land not needed to serve or support the existing improvement.

In regard to a vacant site or a site considered as though vacant, the land not needed to accommodate the site's primary highest and best use. Such land may be separated from the larger site and have its own highest and best use, or it may allow for future expansion of the existing or anticipated improvement. (*Dictionary*)

**Excess Rent**

The amount by which contract rent exceeds market rent at the time of the appraisal; created by a lease favorable to the landlord (lessor) and may reflect a locational advantage, unusual management, unknowledgeable parties, or a lease execution in an earlier, stronger rental market. Due to the higher risk inherent in the receipt of excess rent, it may be calculated separately and capitalized at a higher rate in the income capitalization approach. (*Dictionary*)

**Expense Stop**

A clause in a lease that limits the landlord's expense obligation because the lessee assumes any expenses above an established level. (*Dictionary*)

**Exposure Time**

The time a property remains on the market. The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market. (*Dictionary*)

## DEFINITIONS (CONTINUED)

**External Obsolescence**

An element of depreciation; a defect, usually incurable, caused by negative influences outside a site and generally incurable on the part of the owner, landlord, or tenant. (*Dictionary*)

**Extraordinary Assumption**

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. An extraordinary assumption may be used in an assignment only if:

- It is required to properly develop credible opinions and conclusions;
- The appraiser has a reasonable basis for the extraordinary assumption;
- Use of the extraordinary assumption results in a credible analysis; and
- The appraiser complies with the disclosure requirements set forth in USPAP for extraordinary assumptions. (*USPAP*)

**Feasibility Analysis**

A study of the cost-benefit relationship of an economic endeavor. (*12<sup>th</sup> Edition*)

**Fee Simple Estate**

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat. (*Dictionary*)

**Floor Area Ratio (FAR)**

The relationship between the above-ground floor area of a building, as described by the building code, and the area of the plot on which it stands; in planning and zoning, often expressed as a decimal, e.g., a ratio of 2.0 indicates that the permissible floor area of a building is twice the total land area. See also land-to-building ratio. (*Dictionary*)

**Functional Obsolescence**

An element of depreciation resulting from deficiencies or superadequacies in the structure. See also curable functional obsolescence; incurable functional obsolescence. (*Dictionary*)

**Functional Utility**

The ability of a property or building to be useful and to perform the function for which it is intended according to current market tastes and standards; the efficiency of a building's use in terms of architectural style, design and layout, traffic patterns, and the size and type of rooms. (*12<sup>th</sup> Edition*)

**Furniture, Fixtures, and Equipment (FF&E)**

The movable property of a business enterprise not classified as stock or inventory or leasehold improvements; frequently found in the ownership of hotels or motels, restaurants, assisted-living facilities, service stations, car washes, greenhouses and

nurseries, and other service-intensive properties. Furniture, fixtures, and equipment frequently wears out much more rapidly than other components of those properties. (*Dictionary*)

**Gross Building Area (GBA)**

The total floor area of a building, including below-grade space but excluding unenclosed areas, measured from the exterior of the walls. Gross building area for office buildings is computed by measuring to the outside finished surface of permanent outer building walls without any deductions. All enclosed floors of the building including basements, mechanical equipment floors, penthouses, and the like are included in the measurement. Parking spaces and parking garages are excluded. See also area. (*Dictionary*)

**Gross Leasable Area or Gross Living Area. (GLA)**

The total floor area designed for the occupancy and exclusive use of tenants, including basements and mezzanines, and measured from the center of interior partitioning to outside wall surfaces; the standard measure for determining the size of shopping centers where rent is calculated based on the GLA occupied. The area for which tenants pay rent. See also area. (*Dictionary*)

**Garden Apartments**

An apartment development of two- or three-story, walk-up structures built in a garden-like setting; customarily a suburban or rural-urban fringe development. (*Dictionary*)

**Going-concern Value**

1. The market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; also called value of the going concern.
2. Tangible and intangible elements of value in a business enterprise resulting from factors such as having a trained work force, an operational plant, and the necessary licenses, systems, and procedures in place.
3. The value of an operating business enterprise. Goodwill may be separately measured but is an integral component of going-concern value. (*USPAP*)

**Highest & Best Use**

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility and maximum productivity. (*Dictionary*)

**Highest and Best Use of Land or a Site as Though Vacant**

Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements. (*Dictionary*)

## DEFINITIONS (CONTINUED)

**Highest and Best Use of Property as Improved**

The use that should be made of a property as it exists. An existing improvement should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one. *(Dictionary)*

**Hypothetical Condition**

That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. *(Dictionary)*

**Hypothetical Value**

The monetary relationship between properties and those who buy, sell or use those properties, based on a hypothetical condition. *(USPAP)*

**Income Capitalization Approach**

A set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year's (stabilized) income expectancy can be capitalized at a market-derived capitalization rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate. *(12<sup>th</sup> Edition)*

**Incurable Functional Obsolescence**

An element of depreciation; a defect caused by a deficiency or superadequacy in the structure, materials, or design, which cannot be practically or economically corrected. *(Dictionary)*

**Indirect Costs**

Expenditures or allowances for items other than labor and materials that are necessary for construction, but are not typically part of the construction contract. Indirect costs may include administrative costs; professional fees; financing costs and the interest paid on construction loans; taxes and the builder's or developer's all-risk insurance during construction; and marketing, sales, and lease-up costs incurred to achieve occupancy or sale. Also called soft costs. *(Dictionary)*

**Insurable Value**

The value of an asset or asset group that is covered by an insurance policy; can be estimated by deducting costs of non-insurable items (e.g., land value) from market value. *(MVS)*

**Interim Use**

The temporary use to which a site or improved property is put until it is ready to be put to its future highest and best use. *(12<sup>th</sup> Edition)*

**Leased Fee Interest**

An ownership interest held by a landlord with the rights of use and occupancy conveyed by the lease to others. The rights of the lessor (the leased fee owner) and the lessee are specified by contract terms contained within the lease. *(Dictionary)*

**Leasehold Interest**

The interest held by the lessee (the tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions. *(Dictionary)*

**Legally Nonconforming Use**

A use that was lawfully established and maintained, but no longer conforms to the use regulations of the current zoning in the zone where it is located. *(Dictionary)*

**Market Study**

A macroeconomic analysis that examines the general market conditions of supply, demand, and pricing or the demographic of demand for a specific area or property type. A market study may also include analyses of construction and absorption trends. *(12<sup>th</sup> Edition)*

**Marketability Study**

A microeconomic study that examines the marketability of a given property or class of properties, usually focusing on the market segments in which the property is likely to generate demand. Marketability studies are useful in determining a specific highest and best use, testing development proposals, and projecting an appropriate tenant mix. *(12<sup>th</sup> Edition)*

**Market Analysis**

1. The identification and study of the market for a particular economic good or service.  
2. A study of market conditions for a specific type of property. *(USPAP)*

**Market Area**

The defined geographic in which the subject property competes for the attentions of market participants; the term broadly defines an area containing diverse land uses. *(12<sup>th</sup> Edition)*

**Market Rent**

The rental income a property would probably command in the open market; indicated by the current rents that are either paid or asked for comparable space as of the date of the appraisal. *(12<sup>th</sup> Edition)*

**Market Value**

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their own best interests;

**DEFINITIONS (CONTINUED)**

3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (*Office of Comptroller of the Currency (OCC), Title 12 of the Code of Federal Regulation, Part 34, Subpart C - Appraisals, 34.42 (g); Office of Thrift Supervision (OTS), 12 CFR 564.2 (g); This is also compatible with the RTC, FDIC, FRS and NCUA definitions of market value.*)

**Net Operating Income (NOI)**

The actual or anticipated net income that remains after all operating expenses are deducted from effective gross income, but before mortgage debt service and book depreciation are deducted; may be calculated before or after deducting replacement reserves. (*Dictionary*)

**Obsolescence**

One cause of depreciation; an impairment of desirability and usefulness caused by new inventions, changes in design, improved processes for production, or external factors that make a property less desirable and valuable for a continued use; may be either functional or external. (*12 Edition*)

**Off-site Costs**

Costs incurred in the development of a project, excluding actual building construction costs, e.g., the costs of streets, sidewalks, curbing, traffic signals, water and sewer mains; also called common costs; or off-site improvement costs. (*Dictionary*)

**On-site Costs**

Costs incurred for the actual construction of buildings and improvements on a particular parcel of land. See also construction cost; direct costs. (*Dictionary*)

**Overage Rent**

The percentage rent paid over and above the guaranteed minimum rent or base rent; calculated as a percentage of sales in excess of a specified breakeven sales volume. (*12<sup>th</sup> Edition*)

**Overall Capitalization Rate (OAR)**

An income rate for a total real property interest that reflects the relationship between a single year's net operating income expectancy and the total property price or value; used to convert net operating income into an indication of overall property value. (*Dictionary*)

**Potential Gross Income (PGI)**

The total income attributable to real property at full occupancy before vacancy and operating expenses are deducted. (*Dictionary*)

**Potential Gross Income Multiplier (PGIM)**

The ratio between the sale price of a property and its potential gross income (PGIM / VPGI). (*Dictionary*)

**Present Value (PV)**

The value of a future payment or series of future payments discounted to the current date or to time period zero. (*Dictionary*)

**Parking Ratio**

The number of available parking spaces per rentable unit of area, residential unit, hotel room, restaurant seat, etc.; also, the ratio of total parking area to gross leasable area. The parking ratio is a standard comparison that indicates the relationship between parking spaces or parking area and an economic or physical unit of comparison. (*Dictionary*)

**Prospective Value Opinion**

A forecast of the value expected at a specified future date. A prospective value opinion is most frequently sought in connection with real estate projects that are proposed, under construction, or under conversion to a new use, or those that have not achieved sellout or a stabilized level of long-term occupancy at the time the appraisal report is written. (*Dictionary*)

**Qualitative Analysis**

In the sales comparison approach, the process of accounting for differences between comparables that are not quantified; usually follows quantitative adjustment. (*Dictionary*)

**Quantitative Adjustment**

In the sale comparison approach, the process of making numerical adjustments to the sale prices of comparable properties, including data analysis techniques (paired data analysis, grouped data analysis, and secondary data analysis), statistical analysis, graphic analysis, trend analysis, cost analysis (cost-to-cure, depreciated cost), and capitalization of rent differences; usually precedes qualitative analysis. (*Dictionary*)

**Rentable Area**

The amount of space on which the rent is based; calculated according to local practice. (*Dictionary*)

**Replacement Cost**

The estimated cost to construct, at current prices as of the effective appraisal date, a building with utility equivalent to the building being appraised, using modern materials and current standards, design, and layout. (*12 Edition*)

**Reproduction Cost**

The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all the deficiencies, superadequacies, and obsolescence of the subject building. (*12 Edition*)

**Retrospective Value Opinion**

An opinion of value that is likely to have applied as of a specified historic date. A retrospective value opinion is most frequently sought in connection with appraisals for estate tax, condemnation, inheritance tax, and similar purposes. (*Dictionary*)

## DEFINITIONS (CONTINUED)

**Sales Comparison Approach**

A set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison and making adjustments to the sale prices of the comparables based on the elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant; it is the most common and preferred method of land valuation when comparable sales data is available. (12<sup>th</sup> Edition)

**Scope of Work**

The amount and type of information researched and the analysis applied in an assignment. Scope of work includes, but is not limited to, the following:

- The degree to which the property is inspected or identified;
- The extent of research into physical or economic factors that could affect the property;
- The extent of data research; and
- The type and extent of analysis applied to arrive at opinions or conclusions. (Dictionary)

**Shopping Center Types**

**Community Center:** A shopping center of 100,000 to 300,000 square feet that usually contains one junior department store, a variety store or discount department store, a supermarket, and specialty stores. A community shopping center generally has between 20 and 70 retail tenants and the market support of more than 5,000 households.

**Neighborhood Center:** The smallest type of shopping center, generally with a gross leasable area of less than 100,000 square feet. Typical anchors include supermarkets and pharmacies. Neighborhood shopping centers offer convenience goods and personal services and usually depend on the market support of more than 1,000 households.

**Power Center:** A large community shopping center with more than 250,000 square feet of space anchored by three or more tenants that occupy 60% to 90% of the space; the number of specialty stores is kept to a minimum. See also shopping center.

**Regional Center:** A shopping center that offers a variety of general merchandise, apparel, furniture, home furnishings, services, and recreational facilities and is built around one or more full department stores of at least 100,000 square feet each. Regional shopping centers generally have between 400,000 and 750,000 square feet of gross leasable area. (Dictionary)

**Superadequacy**

An excess in the capacity or quality of a structure or structural component; determined by market standards. (Dictionary)

**Surplus Land**

Land not necessary to support the highest and best use of the existing improvement but, because of physical limitations, building placement, or

neighborhood norms, cannot be sold off separately. Such land may or may not contribute positively to value and may or may not accommodate future expansion of an existing or anticipated improvement. (Dictionary)

**Tenant Improvements (TIs)**

1. Fixed improvements to the land or structures installed and paid for by a tenant or lessee.
2. The original installation of finished tenant space in a construction project; subject to periodic change for succeeding tenants. (Dictionary)

**Triple net lease**

A net lease under which the lessee assumes all expenses of operating a property, including both fixed and variable expenses and any common area maintenance that might apply, but the landlord is responsible for structural repairs. (Dictionary)

**Usable Area**

The area available for assignment or rental to an occupant, including every type of usable space; measured from the inside finish of outer walls to the office side of corridors or permanent partitions and from the centerline of adjacent spaces; includes subdivided occupant space, but no deductions are made for columns and projections. There are two variations of net area: single occupant net assignable area and store net assignable area. (Dictionary)

**Useful Life**

The period of time over which a structure may reasonably be expected to perform the function for which it was designed. (Dictionary)

**Vacancy and Collection Loss**

An allowance for reductions in gross potential income attributable to projected vacancy (physical or economic) and potential collection loss considerations. Vacancy is an expected loss in income as a result of periodic vacant space attributable to unrented space and tenant turnover. Credit loss considers nonpayment of rent and can consider units rented at below-market rates (also known as lag vacancy). Vacancy and collection loss is usually estimated on a property-specific basis as part of the reconstructed operating statement in the income capitalization approach and applied, as a percentage, to potential gross income or as a percentage of rentable area of the property; may also refer to a study of vacancy and collection loss in a defined market or submarket. See also frictional vacancy. (Dictionary)

**Yield Capitalization**

The capitalization method used to convert future benefits into present value by discounting each future benefit at an appropriate yield rate or by developing an overall rate that explicitly reflects the investment's income pattern, value change, and yield rate. (Dictionary)

**QUALIFICATIONS OF PGP VALUATION INC**



## QUALIFICATIONS OF PGP VALUATION INC



PGP VALUATION INC is a leading provider of real estate valuation and consulting services. Founded in 1978, PGP has offices in Atlanta, Boise, Calgary, Dallas, Edmonton, Halifax, Honolulu, Irvine, Las Vegas, Los Angeles, Phoenix, Portland, Sacramento, San Diego, Seattle, Toronto, Vancouver (BC), and Vancouver (WA). PGP's partnership with Colliers Macaulay Nicholls, Inc (Colliers CMN), one of the largest commercial real estate services providers in the world, has expanded PGP's ability to serve clients globally.

PGP has extensive experience in a diverse range of commercial property appraisals, with an expertise in large portfolio valuations. With over 200 experienced appraiser professionals and an efficient commercial appraisal system, PGP has built a reputation for excellence, customer service and responsiveness.

PGP's comprehensive valuation reports are created using the most advanced analytical tools and recognized appraisal methods. PGP's appraiser professionals adhere to the Code of Ethics established by the Appraisal Institute, and strive to maintain the highest level of professional integrity.

### PROFESSIONAL SERVICES

PGP Valuation Inc offers a wide range of services related to the valuation of real estate:

<b>Appraisals:</b>	Single asset and portfolio valuations on all property types, including residential, commercial, industrial, Low Income Housing Tax Credits (LIHTC), infrastructure and easements  Partial interest and business valuations
<b>Highest and Best Use &amp; Market Studies:</b>	Consultation regarding the most profitable utilization of real property assets  Feasibility and absorption studies of housing and commercial developments  Preparation of FNMA condominium market studies and valuation
<b>Consultation:</b>	Analysis of real estate regarding values, site development potential, market standards versus competitive edge amenities, market conditions, etc.
<b>Litigation Support:</b>	Professional opinions as expert witnesses regarding the valuation of real estate
<b>Property Tax Analysis/Appeal:</b>	Representation before government agencies regarding ad valorem taxes, including preliminary value consultation appraisals and Board of Equalization presentations

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Howie Charters, CLP, FRI  
Managing Director

**NORTH AMERICAN & INTERNATIONAL PRACTICES**



**NET LEASED PROPERTIES**

Contact: Sean S. Yousofy

**SELF STORAGE**

Contact: Jeff Shouse

**PARTIAL INTEREST VALUATIONS & GAS STATIONS C-STORE**

Contact: Ben Wilcox, MAI

**MANUFACTURED HOUSING**

Contact: Rob Detling

**GOVERNMENT SERVICES**

Contact: Lance Dore

**EMERGING MARKETS- RUSSIA**

Contact: Dmitri Isaev

**QUALIFICATIONS OF APPRAISERS**

**JEFF L. GROSE**

**Managing Director/Team Leader – Industrial & Office**



Jeff Grose graduated from Willamette University with a Bachelor of Science degree in Business Economics. Since graduating, he has resided in Portland, Oregon.

Jeff joined PGP VALUATION INC in 1998 and has valued a wide range of property types including industrial, office, golf courses, resource land, retail, and right-of-way valuation. Jeff also manages a team specializing in industrial and office properties.

**PROFESSIONAL EDUCATION**

Willamette University ♦ Salem, Oregon ♦ 1997  
Bachelor of Science Degree ♦ Business Economics

**APPRAISAL INSTITUTE COURSES**

Course 320, General Applications  
Course 510, Advanced Income Capitalization  
Course 520, Highest and Best Use  
Course 530, Advanced Sales Comparison Cost Approaches  
Course 540, Report Writing and Valuation Analysis  
Course 550, Advanced Applications  
Course 710 and 720, Condemnation Appraising  
Appraisal of Non-Conforming Uses

**REAL ESTATE EXPERIENCE**

PGP VALUATION INC ♦ Portland, Oregon  
Real Estate Appraiser ♦ 1998 to Present

**LICENSE AND CERTIFICATION**

Certified General Real Estate Appraiser ♦ State of Oregon  
Certificate No. C000722  
Certified General Real Estate Appraiser ♦ State of Washington  
License No. 27011 1100446  
Certified General Real Estate Appraiser ♦ State of California  
License No. AG043820

**PROFESSIONAL AFFILIATIONS**

National Association of Industrial and Office Properties  
Appraisal Institute



# Appraiser Certification and Licensure Board

## State Certified General Appraiser

*28 hours of continuing education required for renewal*

License No: C000722

Issue Date: 1/8/2008

Expiration Date: 12/31/2009

Jeff L Grose  
PGP Valuation INC  
110 SW Yamhill ST STE 200  
Portland OR 97204

R. A. (Bob) Keith, Administrator

**BRIAN L. KELLEY, MAI**

Principal



Brian L. Kelley was born and raised in Portland, Oregon. He attended Franklin High School in Portland, where he participated in varsity football, basketball, and baseball. He graduated from the University of Oregon with a degree in Business Finance, minoring in Real Estate. For seven years prior to joining PGP Valuation Inc he was active in real estate sales in the Portland metropolitan area. Brian's appraisal assignments vary from timberland to major income-producing properties. He formerly managed the Multi-Family department and is currently a senior member of PGP Valuation Inc's Central Review Team.

**PROFESSIONAL EDUCATION**

University of Oregon ♦ 1978  
Bachelor of Science ♦ Business Administration

**COLLEGE REAL ESTATE COURSES**

Introduction to Real Estate  
Real Estate Law  
Real Estate Finance  
Real Estate Taxation  
Real Estate Management  
Real Estate Investment Analysis  
Real Estate Environment Analysis

**APPRAISAL INSTITUTE COURSES**

Course 1A-1, Real Estate Appraisal Principles  
Course 1A-2, Basic Valuation Procedures  
Course 1B-A, Capitalization Theory and Technique - Part A  
Course 1B-B, Capitalization Theory and Technique - Part B  
Course 2-1, Case Studies in Real Estate Valuation  
Course 2-2, Valuation Analysis and Report Writing

**CLASSES/SEMINARS**

Standards of Professional Practice Update  
Standards of Professional Practice - Part A  
Standards of Professional Practice - Part B  
Standards of Professional Practice - Part C  
Hotel/Motel Valuation  
Wetlands Evaluation Issues  
Americans with Disabilities Act Seminar  
Anatomy of a Real Estate Deal  
Developing Tax Credit Financed Low-Income Housing  
How to Value Income Property  
30 Specialized Appraisal Issues



Qualifications of Brian L. Kelley, MAI (Continued)

---

Commercial Construction  
Appraisal of Non-Conforming Properties  
Elderly Care Facility Appraisal  
Security Issues and Building Design Seminar  
Siding and Mold Issues Seminar  
Real Estate Fraud: The Appraisers Responsibilities and Liabilities Seminar  
Market Analysis and the Site to do Business  
Non USPAP Regulatory Compliance  
National USPAP 7-Hour Update  
Business Practices and Ethics

**REAL ESTATE EXPERIENCE**

Real Estate Appraiser ♦ PGP Valuation Inc  
Associate Real Estate Broker ♦ Steve Meredith Realtors, Inc.  
Real Estate Sales Associate ♦ Stan Wiley Realtors, Inc.

**LICENSE AND CERTIFICATION**

Certified General Real Estate Appraiser ♦ State of Oregon  
Certificate No. C000141  
MAI, Appraisal Institute ♦ Certificate No. 8097

**PROFESSIONAL AFFILIATIONS**

Oregon Mortgage Lenders Association  
Portland Metropolitan Association of Realtors



# Appraiser Certification and Licensure Board

## State Certified General Appraiser

*28 hours of continuing education required for renewal*

License No: C000141

Issue Date: 10/1/2007

Expiration Date: 9/30/2009

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JUN - 6 2008

June 6, 2008

ELAINE R. ALBRICH  
Direct (503) 294-9394  
eralbrich@stoel.com

**VIA HAND DELIVERY**

Michael J. Jordan  
Chief Operating Officer  
Metro  
600 NE Grand Avenue  
Portland, OR 97323

**Re: Tigard Sand and Gravel, Claim No. 07-027 Election**

Dear Mr. Jordan:

Our office represents Tigard Sand and Gravel ("TSG") and, on its behalf, submits the Metro Measure 49 Election Claim Form for Claim No. 07-027 with supporting documentation. An appraisal will be provided under separate cover. Please contact me if Metro requires additional information to process TSG's claim under Measure 49.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Elaine R. Albrich".

Elaine R. Albrich

ERA/pjn  
Enclosure

cc: Roger Metcalf  
Robert D. Van Brocklin

RECEIVED

JUN 6 2008

OFFICE OF METRO ATTORNEY

Oregon  
Washington  
California  
Utah  
Idaho

# Metro Measure 49 Claim Form

Claimants are also required to submit the items listed on the back of this form  
Return completed form and additional listed items to:

Chief Operating Officer  
Metro  
600 NE Grand Ave.  
Portland, OR 97232

Claimant name: Tigard Sand & Gravel (Claim No. 07-027)

Claimant mailing address: P.O. Box 4810  
Tualatin, OR 97062

Claimant phone number: (503) 254-5517

- 1) Are you an owner of the property? yes
- 2) Are there other owners of the property? no
- 3) If there are other owners, do they all consent to the filing of this claim? N/A  
Please have all owners sign the attached consent form.
- 4) On what date did you acquire the property? See Attachments A & B
- 5) Have you had continuous ownership of the property since you acquired it? yes
- 6) Is the property located, in whole or in part, inside the Metro urban growth boundary?  
yes
- 7) On the date of your acquisition of the property, how many dwelling units were you lawfully permitted to establish on the property? over 10 units
- 8) Is the property currently zoned for residential use? no
- 9) Does a Metro land use regulation prohibit the establishment of a single-family dwelling on the property? yes
- 10) Is there currently a dwelling unit on the property? no  
If so, how many dwelling units are there? N/A
- 11) Have you provided Metro with all of the additional items listed on the back of this form?  
Appraisal will follow under separate cover.



**Tigard Sand and Gravel  
Supplemental Information for Measure 49 Election**

**State Claim No. M133933  
Metro Claim No. 07-027  
Washington County Claim No. 37CL0860**

**1. Measure 49 Election Form and Supplemental Information Forms**

Tigard Sand and Gravel ("Claimant") seeks to continue the above claim for property described in Attachment A. The election form is enclosed. Claimant is the sole owner of the property.

Measure 49 creates a distinction between urban and rural lands for processing retrospective Measure 37 claims. Claimant seeks to continue its claim under Measure 49 § 9 as all Claimant's property is located within the urban growth boundary.

**2. Proof of Ownership**

Attachment B demonstrates proof of Claimant's current ownership as well as the date of original acquisition.

**3. Written Narrative**

Attachment C outlines the desired use of the property and identifies the specific regulations prohibiting the proposed residential use.

**4. Appraisal**

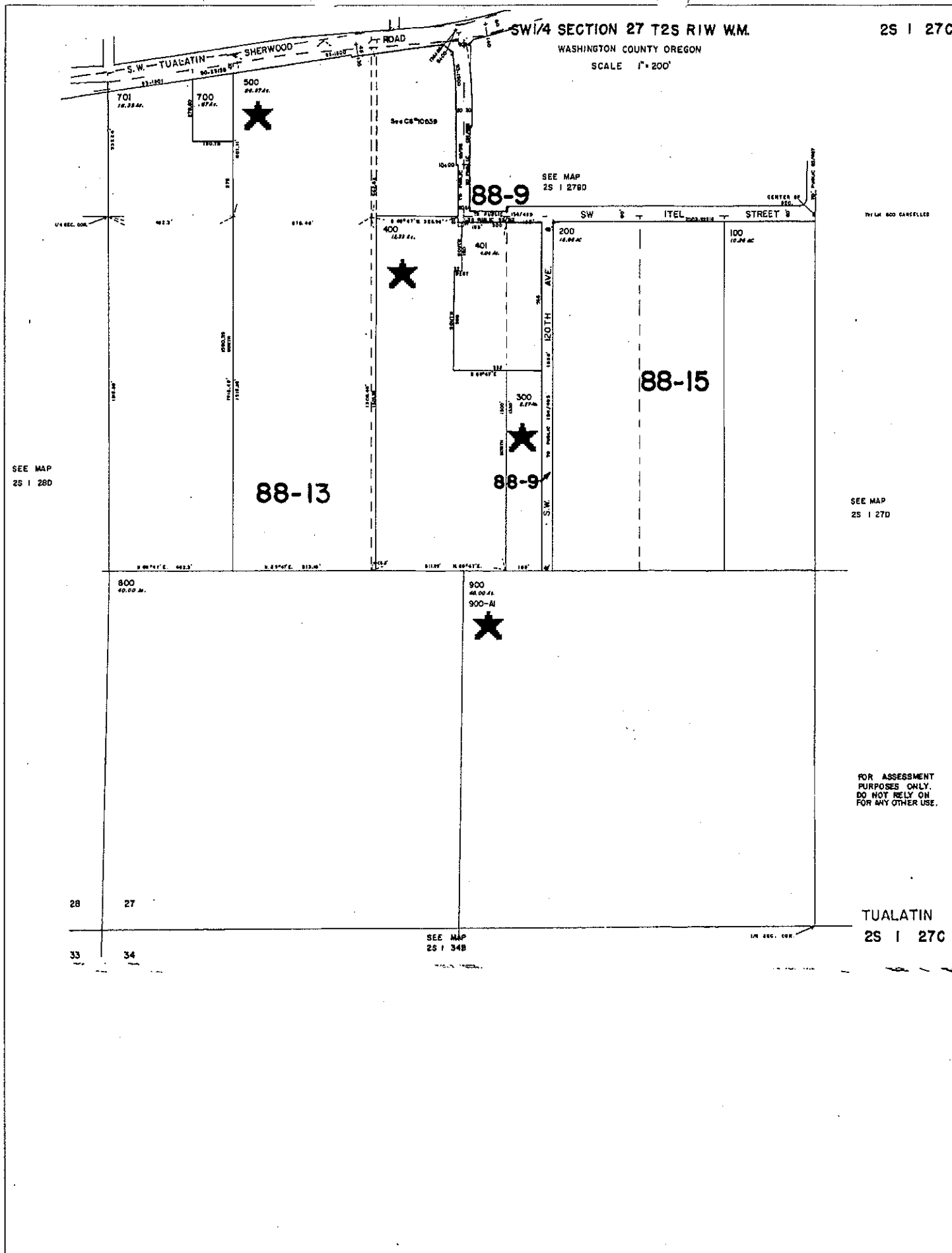
An appraisal demonstrating a reduction in fair market value will be provided as a supplement to this election form submission.

**ATTACHMENT A  
PROPERTY INFORMATION**

**Claimant's Urban Land**

<b>Property Number</b>	<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Tax Lot</b>	<b>Current Zoning</b>	<b>Original Zoning</b>	<b>Date Acquired</b>	<b>Acreage</b>
R546868	2S	1W	27C	900	FD20	S-R	12/30/65	40
R1492236	2S	1W	34B	100	FD20	R-20	09/07/65	3.08
R558596	2S	1W	34B	100	FD20	R-20	09/07/65	58.68
R546797	2S	1W	27C	300	FD20	S-R	11/19/73	2.27
R546804	2S	1W	27C	400	FD20	S-R	11/19/73	12.33
R558603	2S	1W	34B	200	FD20	R-20	07/12/66	12.59
R558667	2S	1W	34B	800	FD20	R-20	07/12/66	15.53
R558729	2S	1W	34C	500	FD20	R-20	07/12/66	8.38

Approximately 153 acres



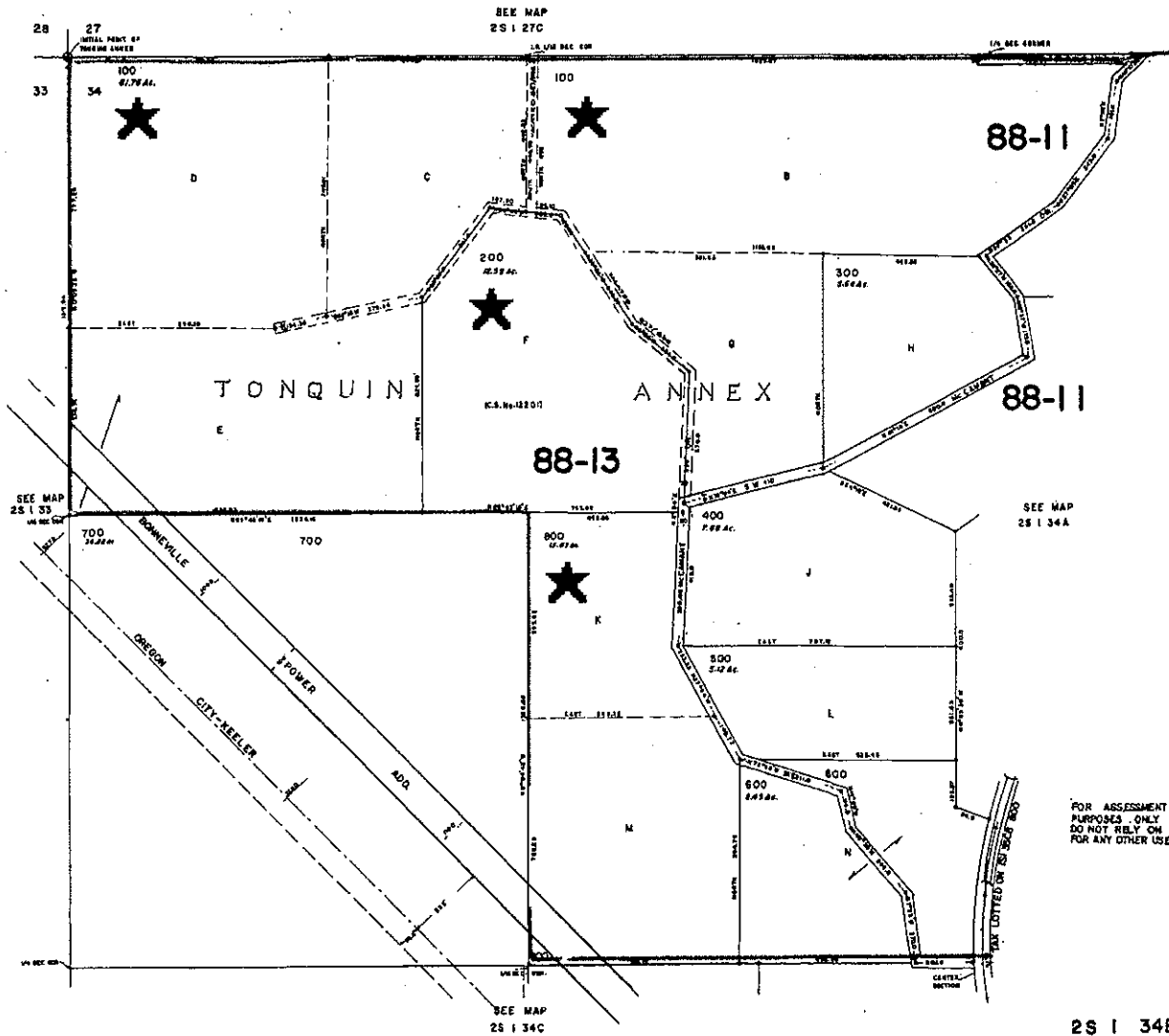


NW 1/4 SECTION 34 T2S R1W W.M.

WASHINGTON COUNTY OREGON

SCALE 1"=200'

2S 1 34B



Tigard Sand

= METROSCAN PROPERTY PROFILE =  
Washington (OR)

Dated  
June 3, 2008

\*\*\*\*\*

=====
OWNERSHIP INFORMATION
=====

Reference Parcel #: 2S127C0 00300
Parcel Number : R0546797 RTSQ:01W - 02S - 27 - SW
Owner : Tigard Sand & Gravel Co Inc
CoOwner :
Site Address : \*no Site Address\*
Mail Address : 1220 SE 190th Ave Portland Or 97233
Telephone : Owner: Tenant:

=====
SALES AND LOAN INFORMATION
=====

Transferred : Loan Amount :
Document # : 9540540 Lender :
Sale Price : Loan Type :
Deed Type : Interest Rate :
% Owned : Vesting Type :

=====
ASSESSMENT AND TAX INFORMATION
=====

MktLand : \$22,130 Exempt Amount :
MktStructure: Exempt Type :
MktOther : % Improved :
MktTotal : \$22,130 Levy Code : 08813
07-08 Taxes : \$264.18 School Dist : Sherwood
Assessed Tot: \$17,540

=====
PROPERTY DESCRIPTION
=====

Map Grid : Class Code :
Census : Tract: Block :
NbrhdCd : Yrin MillRate : 15.0613
Sub/Plat :
Land Use : 3002 Vacant, Industrial
Legal : ACRES 2.27

=====
PROPERTY CHARACTERISTICS
=====

Bedrooms : Lot Acres : 2.27 Year Built :
Bathrooms : Lot SqFt : 98,881 EffYearBlt :
Heat Method : BsmFin SF : Floor Cover :
Pool : BsmUnfinSF : Foundation :
Appliances : BsmLowSF : Roof Shape :
Dishwasher : Bldg SqFt : Roof Matl :
Hood Fan : 1stFlrSqFt : InteriorMatl :
Deck : UpperFlSF : Paving Matl :
Garage Type : Porch SqFt : Const Type :
Garage SF : Attic SqFt : Ext Finish :
Deck SqFt :

\*\*\*\*\*

Information compiled from various sources. Real Estate Solutions makes no representations or warranties as to the accuracy or completeness of information contained in this report.

= METROSCAN PROPERTY PROFILE =  
Washington (OR)

\*\*\*\*\*

=====

OWNERSHIP INFORMATION

=====

Reference Parcel #:2S127C0 00400  
 Parcel Number :R0546804 RTSQ:01W - 02S - 27 - SW  
 Owner :Tigard Sand & Gravel Co Inc  
 CoOwner :  
 Site Address :21455 SW 120th Tualatin 97062  
 Mail Address :1220 SE 190th Ave Portland Or 97233  
 Telephone :Owner: Tenant:

=====

SALES AND LOAN INFORMATION

=====

Transferred :	Loan Amount :
Document # :9540540	Lender :
Sale Price :	Loan Type :
Deed Type :	Interest Rate :
% Owned :	Vesting Type :

=====

ASSESSMENT AND TAX INFORMATION

=====

MktLand :\$120,220	Exempt Amount :
MktStructure:\$20,370	Exempt Type :
MktOther :	% Improved :14
MktTotal :\$140,590	Levy Code :08813
07-08 Taxes :\$1,750.59	School Dist :Sherwood
Assessed Tot:\$116,230	

=====

PROPERTY DESCRIPTION

=====

Map Grid :685 B6	Class Code :
Census :Tract:321.05	Block :1
NbrhdCd :Yrin	MillRate :15.0613
Sub/Plat :	
Land Use :3012 Ind,Improved	
Legal :ACRES 12.33	

=====

PROPERTY CHARACTERISTICS

=====

Bedrooms :	Lot Acres :12.33	Year Built :
Bathrooms :	Lot SqFt :537,094	EffYearBlt :
Heat Method :	BsmFin SF :	Floor Cover :
Pool :	BsmUnfinSF :	Foundation :
Appliances :	BsmLowSF :	Roof Shape :
Dishwasher :	Bldg SqFt :	Roof Matl :
Hood Fan :	1stFlrSqFt :	InteriorMat :
Deck :	UpperFlSF :	Paving Matl :
Garage Type :	Porch SqFt :	Const Type :
Garage SF :	Attic SqFt :	Ext Finish :
	Deck SqFt :	

\*\*\*\*\*

8343

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, that OREGON ASPHALTIC PAVING CO., a corporation duly existing under the laws of the State of Oregon, Grantor, for valuable consideration, does hereby grant, bargain, sell and convey unto TIGARD SAND & GRAVEL CO., INC., an Oregon corporation, Grantee, and Grantee's successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Washington, State of Oregon, described as follows, to-wit:

Beginning 10.0 rods East of the Northwest corner of the Northeast quarter of the Southwest quarter of Section 27, Township 2 South of Range 1 West of the Willamette Meridian; Washington County, Oregon, and running thence 10.0 rods; thence South 80.0 rods; thence West 10.0 rods and thence 80.0 rods to the place of beginning, EXCEPTING therefrom the North 20 feet and the East 40.0 feet thereof heretofore conveyed to the public for road purposes; ALSO; Beginning at a point 975.46 feet East of the quarter section corner between Sections 27 and 28, Township 2 South, Range 1 West of the Willamette Meridian, Washington County, Oregon; running thence South 1315.38 feet; thence North 89°47' East 511.99 feet to a point; thence North 78 rods 13 feet to the South boundary of 20 foot deeded road; thence West along the Southerly boundary of said deeded road a distance of 10 rods 20 feet to an angle point; thence North 20 feet along the Westerly boundary of said deeded road a distance of 20 feet to a point; thence South 89°47' West 326.99 feet to the place of beginning, EXCEPTING the West 1 rod thereof which was conveyed to Joe Itef, et ux, by deed in Book 178, Page 225, deed records of Washington County, Oregon

EXCEPTING THEREFROM that certain property conveyed by Grantor to Harold B. Stark and Sylvia Stark, husband and wife, and Richard A. Stark and Jan Stark, husband and wife, by Deed dated January 4, 1972, as described on Exhibits "A" and "B" attached hereto,

but including in this conveyance Grantor's right and title to Easement No. 1 and Easement No. 2 described in Exhibit "A" and "B" attached hereto.

To Have and to Hold the same unto the Grantee and Grantee's successors and assigns forever.

The actual consideration consists of other value given which is the whole consideration.

IN WITNESS WHEREOF, Grantor has caused this deed to be

BANK 354 540

8343

executed this 19th day of November, 1973.

OREGON ASPHALTIC PAVING CO.

By Orin W. Adams Pres

By Jack C. Kneavin Sec

STATE OF OREGON }  
County of Multnomah } ss.

November 19, 1973

Personally appeared Orin W. Adams and Jack C. Kneavin, the president and secretary of Oregon Asphaltic Paving Co., a corporation, and each of them acknowledged said instrument to be its voluntary act and deed.



Cynthia M. Worland  
Notary Public for Oregon  
My Commission Expires Nov 14, 1975

RETURN AFTER RECORDING TO:

Kobin & Meyer  
Suite 800, 610 SW Alder  
Portland, Oregon 97205

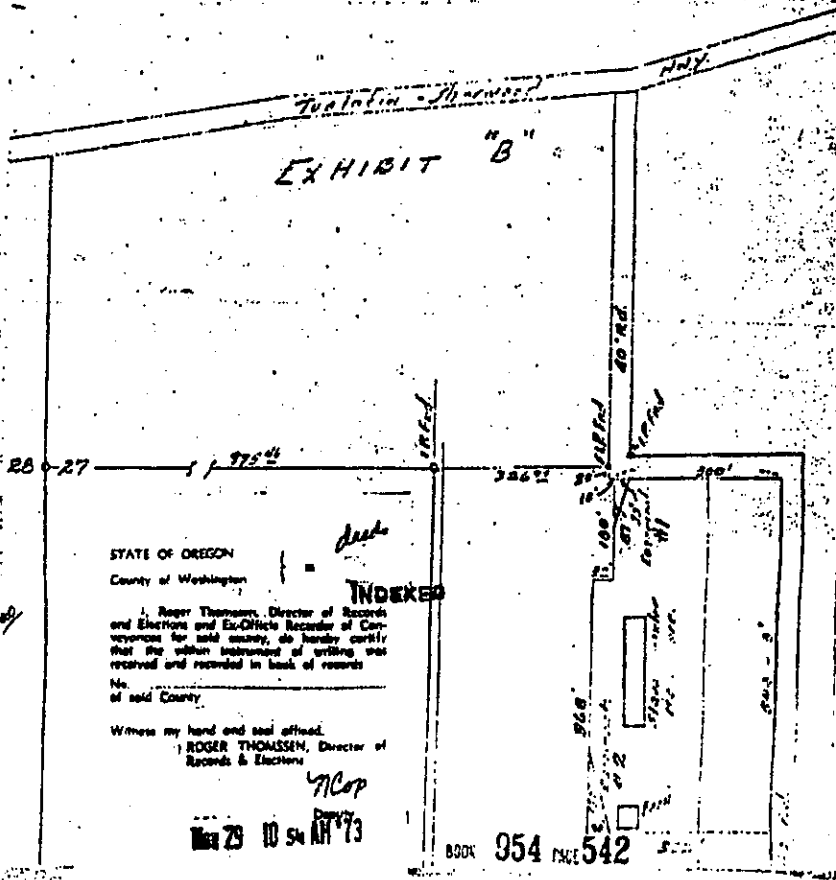
8343

EXHIBIT "A"

Being portions of Tax Lots 25 and 26 in Section 27, T.2 S., R.1 W., W.M., and being more particularly described as follows:

Beginning at a point 975.46 feet East of the Quarter Section corner between Sections 27 and 28, T.2 S., R.1 W., W.M., in Washington County, Oregon, running thence N. 89°47' 2.326.99 feet to an iron pipe on the West line of a 40 foot deeded road; thence South along said West line 20 feet to the Southwest corner of said 40 foot deeded road; thence N. 89°47' E. along the South line of said road 10 feet to the true point of beginning of the parcel herein described; thence South 180 feet to a point; thence S 89°47' W 32 feet to a point; thence South 368 feet to a point; thence N 89°47' E. 332 feet more or less to a point in the West line of a 40 foot deeded road; thence North along said West line of said deeded road 140 feet to the South line of a 40 foot deeded road; thence S 89°47' W. along said South line of said deeded road 300 feet, more or less, to the point of beginning, and reserving therefrom to the grantor two permanent easements for roadway purposes as shown on Exhibit "B" below and more particularly described as follows:

Easement No. 1: Beginning at the point of beginning above described; thence S. 87 feet; thence Northeasterly to a point 30 feet east of the point of beginning along the south line of the road; thence 30 feet West along the south line of the road to the point of beginning; and  
Easement No. 2: Beginning at the Southwest corner of the herein described property; thence north 130 feet; thence southeasterly to a point along the south boundary of the above described property which is 40 feet east of said southwest corner; thence west 40 feet to said southwest corner.



FORM NO. 515-WARRANTY DEED

3917

OREGON NOTARY PUBLIC CO. PORTLAND, ORE.

KNOW ALL MEN BY THESE PRESENTS, That Walter E. Stockman and Audrey A. Stockman, husband and wife,

hereinafter called the grantor, Dollars,

In consideration of Ten (\$10) and other valuable consideration to grantor paid by OREGON ASPHALTIC PAVING CO., a corporation,

hereinafter called the grantor.

does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Washington and State of Oregon, described as follows, to-wit:

Beginning 10.0 rods East of the Northwest corner of the Northeast quarter of the Southwest quarter of Section 27, Township 2 South of Range 1 West of the Willamette Meridian, Washington County, Oregon, and running thence 10.0 rods; thence South 80.0 rods; thence West 10.0 rods and thence 80.0 rods to the place of beginning, EXCEPTING therefrom the North 20 feet and the East 40.0 feet thereof heretofore conveyed to the public for road purposes, ALSO: Beginning at a point 975.46 feet East of the quarter section corner between Sections 27 and 28, Township 2 South, Range 1 West of the Willamette Meridian, Washington County, Oregon; running thence South 1315.38 feet; thence North 89°47' East 511.99 feet to a point; thence North 78 rods 13 feet to the South boundary of 20 foot deeded road; thence West along the Southerly boundary of said deeded road a distance of 10 rods 20 feet to an angle point; thence North 20 feet along the Westerly boundary of said deeded road a distance of 20 feet to a point; thence South 89°47' West 326.99 feet to the place of beginning, EXCEPTING the West 1 rod thereof which was conveyed to Job Ital, et ux, by deed in Book 178 (\*\*cont. below)

To Have and to Hold the above described and granted premises unto the said grantor and grantor's heirs, successors and assigns forever.

And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully mixed in fee simple of the above granted premises, free from all encumbrances

and that grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever. The actual consideration paid for this transfer stated in terms of dollars is \$14,989.42.

In construing this deed and where the context so requires, the singular includes the plural. WITNESS grantor's hand and seal this 24th day of AUGUST 1966

Walter E. Stockman (Seal)

Audrey A. Stockman (Seal)

\*\*Page 225, deed records Washington County, Oregon

STATE OF OREGON, County of Multnomah, on AUGUST 24th 1966

Personally appeared the above named Walter E. Stockman and Audrey A. Stockman, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.



Notary Public for Oregon My commission expires MAY 7, 1970

WARRANTY DEED

WALTER E. STOCKMAN, et ux TO OREGON ASPHALTIC PAVING CO.

Robin & Meyer 1740 NE Oregon Street Portland, Oregon 97205 Suite 500, 510 S.W. Alder

STATE OF OREGON County of Washington

INDEXED

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Aug 19 9 13 AM '71

= METROSCAN PROPERTY PROFILE =  
Washington (OR)

=====
OWNERSHIP INFORMATION
=====

Reference Parcel #: 2S127C0 00900
Parcel Number : R0546868 RTSQ:01W - 02S - 27 - SW
Owner : Tigard Sand & Gravel Co Inc
CoOwner :
Site Address : 21455 SW 120th Tualatin 97062
Mail Address : 1220 SE 190th Ave Portland Or 97233
Telephone : Owner: Tenant:

=====
SALES AND LOAN INFORMATION
=====

Transferred : Loan Amount :
Document # : 5860002 Lender :
Sale Price : Loan Type :
Deed Type : Interest Rate :
% Owned : Vesting Type :

=====
ASSESSMENT AND TAX INFORMATION
=====

MktLand : \$390,000 Exempt Amount :
MktStructure: \$486,410 Exempt Type :
MktOther : % Improved : 56
MktTotal : \$876,410 Levy Code : 08813
07-08 Taxes : \$11,690.45 School Dist : Sherwood
Assessed Tot: \$776,190

=====
PROPERTY DESCRIPTION
=====

Map Grid : 685 B6 Class Code :
Census : Tract: 321.05 Block : 1
NbrhdCd : Yrin MillRate : 15.0613
Sub/Plat :
Land Use : 3012 Ind, Improved
Legal : ACRES 40.00, SEE A1 ACCOUNT

=====
PROPERTY CHARACTERISTICS
=====

Bedrooms : Lot Acres : 40.00 Year Built :
Bathrooms : Lot SqFt : 1,742,400 EffYearBlt :
Heat Method : BsmFin SF : Floor Cover :
Pool : BsmUnfinSF : Foundation :
Appliances : BsmLowSF : Roof Shape :
Dishwasher : Bldg SqFt : 3,120 Roof Matl :
Hood Fan : 1stFlrSqFt : 3,120 InteriorMat :
Deck : UpperFlSF : Paving Matl :
Garage Type : Porch SqFt : Const Type :
Garage SF : Attic SqFt : Ext Finish :
Deck SqFt :



= M E T R O S C A N P R O P E R T Y P R O F I L E =  
Washington (OR)

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=====

OWNERSHIP INFORMATION

=====

```

Reference Parcel #:2S127C0 00900
Parcel Number      :R0546877          RTSQ:01W - 02S - 27 - SW
Owner              :Safeco Credit Co Inc
CoOwner           :
Site Address       :*no Site Address*
Mail Address       :1220 SE 190th Ave Portland Or 97233
Telephone         :Owner:              Tenant:
    
```

=====

SALES AND LOAN INFORMATION

=====

```

Transferred :          Loan Amount :
Document #   :          Lender      :
Sale Price   :          Loan Type   :
Deed Type    :          Interest Rate :
% Owned      :          Vesting Type :
    
```

=====

ASSESSMENT AND TAX INFORMATION

=====

```

MktLand      :          Exempt Amount :
MktStructure:$556,630    Exempt Type   :
MktOther     :          % Improved    :100
MktTotal     :$556,630    Levy Code     :08813
07-08 Taxes  :$8,245.03  School Dist   :Sherwood
Assessed Tot:$556,630
    
```

=====

PROPERTY DESCRIPTION

=====

```

Map Grid      :          Class Code   :
Census        :Tract:          Block      :
NbrhdCd       :Ytsh           MillRate   :15.0613
Sub/Plat      :
Land Use      :3012 Ind,Improved
Legal         :MACHINERY AND/OR EQUIPMENT ONLY
    
```

=====

PROPERTY CHARACTERISTICS

=====

```

Bedrooms      :          Lot Acres   :          Year Built :
Bathrooms     :          Lot SqFt    :          EffYearBlt  :
Heat Method   :          BsmFin SF    :          Floor Cover :
Pool          :          BsmUnfinSF  :          Foundation   :
Appliances    :          BsmLowSF    :          Roof Shape    :
Dishwasher    :          Bldg SqFt   :          Roof Matl     :
Hood Fan      :          1stFlrSqFt  :          InteriorMat  :
Deck          :          UpperFlSF  :          Paving Matl    :
Garage Type   :          Porch SqFt  :          Const Type    :
Garage SF     :          Attic SqFt  :          Ext Finish    :
Deck SqFt     :          Deck SqFt   :
    
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FORM NO. 413 - WARRANTY DEED

STEVENS-HEIN LAW FIRM, PORTLAND, ORE.

7  
243-169  
IRS  
660

MC 3180

KNOW ALL MEN BY THESE PRESENTS, That we, WALTER R. HAWKHURST and BOBETTE A. HAWKHURST, husband and wife, hereinafter called the grantor,

in consideration of Ten and no/100 and other valuable consideration to grantor paid by TIGARD SAND AND GRAVEL CO., INC., an Oregon corporation,

does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Washington and State of Oregon, described as follows, to-wit:

The Southeast Quarter of the Southwest Quarter of Section 27, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon



To Have and to Hold the above described and granted premises unto the said grantee and grantee's heirs, successors and assigns forever.

And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances EXCEPTING rights of the public in any portion within streets, roads and highways, conditions, restrictions and assessments of public record and any encumbrances arising on and after November 29, 1956

and that grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except as above stated.

In construing this deed and where the context so requires, the singular includes the plural.

WITNESS grantor's hand and seal this 30th day of December, 1965.

Walter R. Hawkhurst (SEAL)

Bobette A. Hawkhurst (SEAL)

(SEAL)

(SEAL)

STATE OF CALIFORNIA, County of Riverside ) ss. December 30, 1965  
Personally appeared the above named WALTER R. HAWKHURST and BOBETTE A. HAWKHURST  
and acknowledged the foregoing instrument to be their voluntary act and deed.

(SEAL) WILLARD C. JOY  
NOTARY PUBLIC - CALIFORNIA  
COUNTY OF RIVERSIDE

Before me:  
Willard C. Joy  
Notary Public for Oregon California  
My commission expires January 17, 1968

19  
3180  
No. 3180  
WARRANTY DEED  
Walter R. Hawkhurst et ux  
TO  
Tigard Sand & Gravel Co., Inc.  
AFTER RECORDING RETURN TO  
Kobin & Meyer, attys  
Oregon Bank Bldg  
Portland, Ore

NOTE: SEE THIS SPACE RESERVES FOR ASSIGNING LABEL IN FUTURE THIS WARE DEED.

INDEXED  
STATE OF OREGON  
County of Washington  
WILLARD C. JOY  
I, Roger Thomassen, Director of Records and Surveys and Ex-Officio Recorder of Conveyances for said county, do hereby certify that the within instrument of writing was received and entered in Book 586 Page 2 of said County of Washington  
Witness my hand and seal this 26th day of January, 1966  
ROGER THOMASSEN, Director  
[Signature] Deputy

Jan 26 10 51 AM '66

BOOK 586 PAGE 2





= METROSCAN PROPERTY PROFILE =  
Washington (OR)

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OWNERSHIP INFORMATION

=====

Reference Parcel #: 2S134B0 00800  
Parcel Number : R0558667 RTSQ:01W - 02S - 34 - NW  
Owner : Tigard Sand & Gravel Co Inc  
CoOwner :  
Site Address : \*no Site Address\*  
Mail Address : 1220 SE 190th Ave Portland Or 97233  
Telephone : Owner: Tenant:

=====

SALES AND LOAN INFORMATION

=====

Transferred : Loan Amount :  
Document # : Lender :  
Sale Price : Loan Type :  
Deed Type : Interest Rate :  
% Owned : Vesting Type :

=====

ASSESSMENT AND TAX INFORMATION

=====

MktLand : \$151,420 Exempt Amount :  
MktStructure: Exempt Type :  
MktOther : % Improved :  
MktTotal : \$151,420 Levy Code : 08813  
07-08 Taxes : \$1,806.90 School Dist : Sherwood  
Assessed Tot: \$119,970

=====

PROPERTY DESCRIPTION

=====

Map Grid : Class Code :  
Census : Tract: Block :  
NbrhdCd : Yrin MillRate : 15.0613  
Sub/Plat :  
Land Use : 3002 Vacant, Industrial  
Legal : ACRES 15.53

=====

PROPERTY CHARACTERISTICS

=====

Bedrooms : Lot Acres : 15.53 Year Built :  
Bathrooms : Lot SqFt : 676,486 EffYearBlt :  
Heat Method : BsmFin SF : Floor Cover :  
Pool : BsmUnfinSF : Foundation :  
Appliances : BsmLowSF : Roof Shape :  
Dishwasher : Bldg SqFt : Roof Matl :  
Hood Fan : 1stFlrSqFt : InteriorMat :  
Deck : UpperFlSF : Paving Matl :  
Garage Type : Porch SqFt : Const Type :  
Garage SF : Attic SqFt : Ext Finish :  
Deck SqFt :

\*\*\*\*\*

FORM NO. 611-MARSHALL 1965 STENOGRAPHIC SYSTEMS CO., PORTLAND, OREGON

613 BOOK 002 PAGE 100

KNOW ALL MEN BY THESE PRESENTS, That J. A. ROBBINS and ANNA MAE ROBBINS, husband and wife,

in consideration of TEN (\$10) Dollars, hereinafter called the grantor, and other valuable consideration, to grantor paid by TIGARD SAND & GRAVEL CO., INC., a corporation,

does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereto belonging or appertaining, situated in the County of Washington and State of Oregon, described as follows, to-wit: Parcel 1: The northwest quarter of the northeast quarter of the southwest quarter of section 34, township 2 south of range 1 west of the Willamette Meridian, Washington County, Oregon, save and except that part thereof lying south and west of the D. C. Harron Road, excepting therefrom the right of way of the United States of America (Bonneville Power).

Parcel 2: Lot M, Tonquin Annex, excepting therefrom the right of way of the United States of America (Bonneville Power), all in Washington County, Oregon.

Parcel 3: Lot K, Tonquin Annex, in Washington County, Oregon.

Parcel 4: Lot F, Tonquin Annex, in Washington County, Oregon.

To Have and to Hold the above described and granted premises unto the said grantee and grantee's heirs, successors and assigns forever.

And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in his single of the above granted premises, free from all encumbrances except access road easements to DEB affecting Parcel 1, rec. 2-2-43, Wash. Co. Deed Rec. Bk. 214, p. 682, and affecting Parcel 2, rec. 7-21-47, Wash. Co. Deed Rec. Bk. 207, p. 637; transmission line easement to DEB, rec. 1-24-57, Wash. Co. Deed Rec. Bk. 277, p. 322, and transmission line easement to P&E Co., rec. 4-18-53, Wash. Co. Deed Rec. Bk. 204, p. 447; and that grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever.

In executing this deed and where the contract so requires, the singular includes the plural. WITNESS grantor's hand and seal this 12th day of July, 1966.

J. Robbins (REAL)
Anna Mae Robbins (REAL)



STATE OF OREGON, County of Multnomah, July 12, 1966. Personally appeared the above named J. A. ROBBINS and ANNA MAE ROBBINS, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Notary Public for Oregon
My commission expires Feb. 6, 1970

WARRANTY DEED
J. A. ROBBINS, et al.

TIGARD SAND & GRAVEL CO., INC.

Robin & Meyer
314 Oregon Bank Bldg.
Portland, Oregon
97204

BOOK 747 PAGE 828

613
INDEXED

STATE OF OREGON
County of Washington
INDEXED
Notary Public for Oregon
My commission expires Feb. 6, 1970







FORM NO. 701 - WARRANTY DEED - CORPORATION

212106

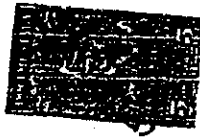
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5669

KNOW ALL MEN BY THESE PRESENTS, that DORRDAY, INC. a corporation duly organized and existing under the laws of the State of OREGON, hereinafter called grantor, in consideration of Ten and no/100 Dollars

to grantor paid, does hereby grant, bargain, sell and convey unto TIGARD SAND & GRAVEL CO., INC. hereinafter called grantees and grantees heirs, successors and assigns, that certain real property with the tenements, hereditaments and appurtenances therunto belonging or appertaining, situated in the County of WASHINGTON and State of Oregon, described as follows, to-wit:

Tracts C, D, E and G, and all that portion of Tract B, TOMQUIN ANNEK, except that portion dedicated to The Public by A. S. Pattullo et al, by deed recorded February 8, 1932, in Book 148, page 546, Deed Records, Washington County, Oregon.



To Have and to Hold the above described and granted premises unto the said grantees and grantees heirs, successors and assigns forever.

And said grantor hereby covenants to and with said grantees and grantees heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances EXCEPT EASEMENT GRANTED BY BRADLEY STATES OF AMERICA RECORDED APRIL 21, 1932 IN BOOK 148, PAGE 301, DEED RECORDS, AND EASEMENT TO PORTLAND GENERAL ELECTRIC CO. RECORDED APRIL 29, 1963, IN BOOK 486, PAGE 7, DEED RECORDS OF WASHINGTON COUNTY, OREGON

and that grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever.

In construing this deed and where the context so requires, the singular includes the plural.

Done by order of the grantor's board of directors, with its corporate seal attached, this 7 day of September, 1965.

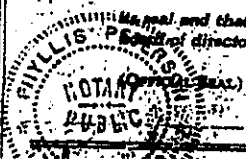
(CORPORATE SEAL)

DORRDAY, INC.  
By Frank E. Day President  
By Carlton E. Raizer Secretary

STATE OF OREGON, County of Multnomah ss. September 7, 1965.  
Personally appeared Frank E. Day and Carlton E. Raizer

who, being sworn, each for himself and not one for the other, stated that the former is the President and that the latter is the Secretary of grantor corporation and that the seal affixed hereto is the seal of said corporation and that this deed was voluntarily signed and sealed in behalf of the corporation by authority of its Board of directors.

Before me: Phyllis Peterson  
Notary Public for Oregon.  
My commission expires 11/19/68



WARRANTY DEED CORPORATION  
DORRDAY, INC.  
TO  
TIGARD SAND & GRAVEL CO., INC.  
AFTER RECORDING RETURN TO  
KOBIN & MEYER  
ATTORNEYS AT LAW  
314 OREGON BANK BLDG.  
PORTLAND 4, OREGON  
CAPITOL 3-1108

RIGHT USE THIS SPACE, OBSERVE FOR RECORDING LABEL IN BOTTOM WHERE INDICATED

STATE OF OREGON  
County of Washington  
INDEXED  
BOOK THOMSEN, DEEDS  
DEPUTY

SEP 9 3 15 PM '65

5669  
127  
761

BOOK 566 PAGE 262

**ATTACHMENT B  
PROOF OF OWNERSHIP**

The following title reports and deed records demonstrate Claimant's current ownership as well as the date Claimant acquired the property.

**ATTACHMENT C  
WRITTEN NARRATIVE**

Claimant owns eight lots located within the urban growth boundary.

Claimant acquired Tax Lot 900 in Township 2 South, Range 1 West, Section 27C on December 30, 1965. At the time Claimant acquired the property, it was zoned Suburban Residential ("S-R") under Washington County's Zoning Ordinance and single-family residential use was allowed on lots as small as 20,000 square feet.

Claimant acquired Tax Lots 100 in Township 2 South, Range 1 West, Section 34B on September 7, 1965. At the time Claimant acquired the property, both lots were zoned Residential District R-20 ("R-20"). As of the date of acquisition Tax Lots 100 could have been developed for single-family residential use on lots as small as 20,000 square feet.

Claimant acquired Tax Lots 300 and 400 in Township 2 South, Range 1 West, Section 27C on November 19, 1973. At the time Claimant acquired the property, both tax lots were zoned S-R, which allowed for single-family residential use on lots as small as 20,000 square feet.

Claimant acquired Tax Lot 200 and 800 in Township 2 South, Range 1 West, Section 34 B and Tax Lot 500 in Township 2 South, Range 1 West, Section 34 C on July 12, 1966. At the time Claimant acquired the property, all three tax lots were zoned R-20. As of the date of acquisition, Tax Lots 200, 800, and 500 could have been developed for single-family residential use on lots as small as 20,000 square feet.

Now, the all Claimant's urban property is zoned FD-20 under CDC Article III, Chapter 308, "Future Development 20 Acre District," which prohibits single-family residential use. FD-20 applies to the unincorporated urban lands added to the urban growth boundary by Metro through a Major or Legislative Amendment process after 1998. FD-20 allows limited interim uses on the property until the urban comprehensive planning for future urban development of these areas is complete. CDC Article III, Chapter 308.

Under Measure 49 § 9, Claimant seeks a waiver of the restrictive land use regulations, including the FD-20 to divide the urban property to allow for home sites as would have been allowed when Claimant acquired the properties in 1965, 1966 and 1973 to the extent allowed under Measure 49.

**Resolution No. 08-3965**, Approving First Round Funding for Nature  
in Neighborhoods Capital Grants and Authorizing Metro to Award  
Grants up to Three Times per Year.

Metro Council Meeting  
Thursday, August 7 , 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

APPROVING FIRST ROUND FUNDING FOR ) RESOLUTION NO. 08-3965  
NATURE IN NEIGHBORHOODS CAPITAL )  
GRANTS AND AUTHORIZING METRO TO ) Introduced by Chief Operating Officer  
AWARD GRANTS UP TO THREE TIMES PER Michael Jordan, with the concurrence of  
YEAR Council President David Bragdon

WHEREAS, Metro Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area A General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” was approved by the Metro Council on March 9, 2006.

WHEREAS, at the election held on November 7, 2006, the voters approved Measure 26-80, the Natural Areas Bond Measure; and

WHEREAS, the Measure, in addition to providing funds for regional and local share programs dedicated to the acquisition of natural areas from willing sellers, provided for \$15 million to fund a Nature in Neighborhoods Capital Grants Program (the “Capital Grants Program”), intended to increase natural features and the ecological function and water quality of public lands in neighborhoods; and

WHEREAS, the Measure provided for the creation of a grant review committee composed of no fewer than seven members to review grant applications and make grant award recommendations to the Metro Council; and

WHEREAS, on November 1, 2007, the Metro Council adopted Ordinance No. 07-1163, “Amending Metro Code Chapter 2.19 To Establish The Nature in Neighborhoods Capital Grants Review Committee, And Declaring An Emergency”; and

WHEREAS, on November 1, 2007, the Metro Council also adopted Resolution No. 07-3879, “Confirming the Appointment of Members to the Nature in Neighborhoods Capital Grants Review Committee;” and

WHEREAS, on May 29, 2008 the Grants Review Committee reviewed five proposals and selected three projects that best meet the criteria for the grant program to recommend to the Council for funding; and

WHEREAS, attached as Exhibit A to this resolution is a summary of first round grant awards; and

WHEREAS, attached as Exhibit B to this resolution is an example of the Intergovernmental Agreement with the grant recipients; and

WHEREAS, in order to encourage and expedite the development and funding of eligible grant projects in a prudent manner, the Council seeks to amend its policy established in Resolution No. 06-3672B that provided for grants to be solicited and awarded once each year to now provide for up to three grant award cycles per year; now therefore

BE IT RESOLVED that the Metro Council hereby:

1. Approves the award of Nature in Neighborhoods Capital Grants to those recipients and projects, and for the funding amounts, listed in Exhibit A to this resolution,
2. Authorizes the Chief Operating Officer to enter into an intergovernmental agreement with each of the grant recipients substantially in conformance with Exhibit B to this resolution to provide them with such grant funding, and
3. Establishes that it is Metro policy to solicit and award Nature in Neighborhoods Capital Grants up to three times per year.

ADOPTED by the Metro Council this 7 day of August, 2008

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

**Exhibit A to Resolution No. 08-3965**

Nature in Neighborhood Capital Grants Program  
First Round Grant Awards

Project: Conservation Corner  
Recipient: East Multnomah Soil and Water Conservation District  
Grant Amount: \$99,500

Transform a neglected historic property into a neighborhood asset by installing demonstration projects that will help re-nature and re-green this low-income neighborhood.

Project: Crystal Springs Enhancements  
Recipient: Portland Parks & Recreation  
Grant Amount: \$150,000

Restore a 2,100-foot section of Crystal Springs Creek by removing a concrete channel that currently lines the creek and also removing an existing playground from the floodplain and installing native plants. The project includes the development of a nature-based play area that connects users to the site using creative elements that encourages free-form play.

Project: Hawthorne Grove Park  
Recipient: Clackamas County Development Agency  
Grant Amount: \$140,000

Acquire and develop a small neighborhood park within the North Clackamas Revitalization Area, a park deficient, low-income community.

Project: Natural Areas Capital Grants Program

Contract No. \_\_\_\_\_

INTERGOVERNMENTAL AGREEMENT  
Natural Areas Bond Measure  
Capital Grant Award

This Intergovernmental Agreement (this “Agreement”), entered into under the provisions of ORS chapter 190 and effective on the date the Agreement is fully executed (the “Effective Date”), is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the \_\_\_\_\_, located at \_\_\_\_\_ (“Grant Recipient”).

RECITALS

WHEREAS, the electors of Metro approved Ballot Measure 26-80 on November 7, 2006, authorizing Metro to issue \$227.4 million in bonds to preserve natural areas, clean water, and protect fish and wildlife (the “Measure”);

WHEREAS, the Measure allocated \$15 million from bond proceeds to the Nature in Neighborhoods Capital Grants Program to complement the regional and local share portions of the Measure by providing opportunities for the community to actively protect fish and wildlife habitat and water quality in areas where people live and work;

WHEREAS, Metro has determined to make a grant award to Grant Recipient to fund [SPECIFY PROJECT] (the “Project”) as more specifically identified within the Scope of Work attached hereto as Exhibit A (the “Work”);

WHEREAS, the Grant Recipient is the owner of certain property where the Project is to occur and be located, which is more specifically identified in Exhibit A;

WHEREAS, this Agreement between Metro and Grant Recipient is now needed to satisfy the terms and conditions of the Nature in Neighborhoods Capital Grants Program as provided for in the Measure; and



WHEREAS, except as specifically provided in this Agreement, including the scope of work attached hereto as Exhibit A, and otherwise notwithstanding any statements or inferences to the contrary, Metro neither intends nor accepts any (1) direct involvement in the Project (2) sponsorship benefits or supervisory responsibility with respect to the Project; or (3) ownership or responsibility for care and custody of the tangible products which result from the Project;

NOW THEREFORE, the parties agree as follows:

1. Purpose; Scope of Work; Limitations

The purpose of this Agreement is to implement the Measure and facilitate the funding of a Nature in Neighborhoods Capital Grants Program project. Grant Recipient shall perform all activities described in the Scope of Work attached hereto as Exhibit A (the “Work”). As a condition precedent to Metro’s agreement to fund the Project, Grant Recipient hereby approves the Project and agrees to comply with the terms and conditions of this Agreement and the applicable provisions of the Measure. At no time will Metro have any supervisory responsibility regarding any aspect of the Work. Any indirect or direct involvement by Metro in the Work shall not be construed or interpreted by Grant Recipient as Metro’s assumption of a supervisory role.

2. Declaration of Capital Project

In accordance with the Measure, Metro may only provide funds to Grant Recipient for the Project so long as such funds are exclusively used for capital expenses. Grant Recipient hereby confirms that the Project will result in the creation of a capital asset to be owned by Grant Recipient. Grant Recipient covenants that it will (a) own and hold all such capital improvements and real property interests acquired pursuant to this Agreement, and (b) record the asset created by the Project as a fixed, capital asset in Grant Recipient’s audited financial statement, consistent with Generally Accepted Accounting Principles (“GAAP”) and with Grant Recipient’s financial bookkeeping of other similar assets.

3. Contract Sum and Terms of Payment

Metro shall compensate Grant Recipient for performance of the Work as described in Exhibit A. Metro shall not be responsible for payment of any materials, expenses or costs other than those that are specifically described in Exhibit A.

4. Limitations on Use of the Capital Asset That Results from the Project

Throughout the term of this Agreement, Grant Recipient shall maintain and operate the capital asset that results from the Project in a manner consistent with one or more of the following intended and stated purposes of the Measure (the “Nature in Neighborhood Approved Purposes”):

- To safeguard water quality in local rivers and streams;
- To protect and enhance fish and wildlife habitats;
- To promote partnerships that protect and enhance nature in neighborhoods; and
- To increase the presence of ecological systems and plant and animal communities in nature deficient and other disadvantaged neighborhoods;

Grant Recipient may not sell, use, or authorize others to use such capital asset in a manner inconsistent with such purposes.

Notwithstanding the foregoing, secondary uses that arise as a result of such capital asset being used primarily in accordance with the Nature in Neighborhood Approved Purposes will be permitted, but only to the extent such secondary uses affect a *de minimis* portion of such capital asset or are necessary in order to facilitate the primary Nature in Neighborhood Approved Purposes. For example, if, as part of a land use review proceeding initiated to obtain the necessary approvals to operate such capital asset consistent with the Nature in Neighborhood Approved Purposes, a portion of such capital asset was required to be dedicated as a road, such road dedication would be a permitted secondary use.

5. Funding Recognition

Grant Recipient shall recognize in any publications, media presentations, or other presentations referencing the Project produced by or at the direction of Grant Recipient, including, without limitation, any on-site signage, that funding for the Project came from the Metro Natural Areas Bond Measure’s Nature in Neighborhoods Capital Grants Program. Such

recognition shall comply with the recognition guidelines detailed in the Measure. Grant Recipient shall also permit Grant Recipient to place at or near the Project's location signage that communicates that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program.

6. Term

It is the intent of the parties for the Project to have been completed, and for all Metro funding to have been provided to Grant Recipient prior to [INSERT PROJECT DEADLINE]. Notwithstanding the forgoing, all provisions set forth in this Agreement, and the obligations of Grant Recipient hereunder, shall continue in effect after the completion of the Project until June 30, 2027.

7. Termination for Cause

A. Subject to the notice provisions set forth in Section 7.B below, Metro may terminate this Agreement, in full or in part, at any time during the term of the Agreement if Metro reasonably determines that Grant Recipient has failed to comply with any provision of this Agreement and is therefore in default.

B. Prior to terminating this Agreement in accordance with Section 7.A above, Metro shall provide Grant Recipient with written notice that describes the reason(s) that Metro has concluded that Grant Recipient is in default and includes a description of the steps that Grant Recipient shall take to cure the default. From the date that such notice of default is received by Grant Recipient, Grant Recipient shall have 30 days to cure the default. In the event Grant Recipient does not cure the default within the 30-day period, Metro may terminate all or any part of this Agreement, effective on any date that Metro chooses following the 30-day period. Metro shall notify Grant Recipient in writing of the effective date of the termination.

C. Grant Recipient shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. Following such termination, should Metro later determine or a court find that Grant Recipient was not in default or that the default was excusable (e.g. due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of, Grant Recipient) this Agreement shall

be reinstated or the parties may agree to treat the termination as a joint termination for convenience whereby the rights of Grant Recipient shall be as set forth below in Section 8.

8. Joint Termination for Convenience

Metro and Grant Recipient may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective only upon the mutual, written termination agreement signed by both Metro and Grant Recipient.

9. Oregon Constitution and Tax Exempt Bond Covenants

Grant Recipient acknowledges that Metro's source of funds for the Nature in Neighborhoods Capital Grants Program is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d, and 11e of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. Grant Recipient covenants that it will take no actions that would cause Metro not to be able to maintain the current status of the real property taxes imposed to repay these bonds as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules. In the event Grant Recipient breaches this covenant, Grant Recipient shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursing Metro for any Projects funded under this Agreement that resulted in Grant Recipient's breach of its covenant described in this Section.

10. Liability and Indemnification

As between Metro and Grant Recipient, Grant Recipient assumes full responsibility for the performance and content of the Work; provided, however, that this provision is not intended to, and does not, create any rights by third parties. Grant Recipient shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by Grant Recipient or Grant Recipient's officers, agents, or employees, subject to the limitations and conditions of the

Oregon Tort Claims Act, ORS chapter 30. Grant Recipient is solely responsible for paying Grant Recipient's contractors and subcontractors. Nothing in this Agreement shall create any contractual relationship between Metro and any such contractor or subcontractor.

11. Contractors' Insurance

A. Grant Recipient shall require all contractors performing any of the Work to purchase and maintain at each contractor's expense, the following types of insurance covering the contractor, its employees and agents:

1. Commercial general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. Grant Recipient and Metro, and their elected officials, departments, employees and agents, shall be named as additional insureds.

2. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. Grant Recipient and Metro, and their elected officials, departments, employees, and agents, shall be named as additional insureds. Notice of any material change or policy cancellation shall be provided to Grant Recipient thirty (30) days prior to the change.

B. This insurance required by Grant Recipient, as well as all workers' compensation coverage for compliance with ORS 656.017, must cover all contractors' operations under this Agreement, whether such operations are by a contractor, by any subcontractor, or by anyone directly or indirectly employed by any contractor or subcontractor.

C. Grant Recipient shall require all contractors performing any of the Work to provide Grant Recipient with a certificate of insurance complying with this section and naming Grant Recipient and Metro as additional insureds within fifteen (15) days of execution of a contract between Grant Recipient and any contractor or twenty-four (24) hours before services such contract commence, whichever date is earlier.

D. In lieu of the insurance requirements in Sections 11.A through 11.D, above, Grant Recipient may accept evidence of a self-insurance program from any contractor. Such contractor shall name Grant Recipient and Metro as additional insureds within fifteen (15) days of

execution of a contract between Grant Recipient and any contractor or twenty-four (24) hours before services such contract commence, whichever date is earlier.

## 12. Safety

Grant Recipient shall take all necessary precautions for the safety of employees, volunteers and others in the vicinity of the Work and the Project, and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

## 13. Metro's Right to Withhold Payments

Metro shall have the right to withhold from payments due Grant Recipient such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grant Recipient's performance or failure to perform under this Agreement or the failure of Grant Recipient to make proper payment to any suppliers, contractors or subcontractors. All sums withheld by Metro under this Section shall become the property of Metro and Grant Recipient shall have no right to such sums to the extent that Grant Recipient has breached this Agreement.

## 14. Project Records, Audits, and Inspections

A. For the term of this Agreement, Grant Recipient shall maintain comprehensive records and documentation relating to the Project and Grant Recipient's performance of this Agreement (hereinafter "Project Records"). Project Records shall include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with any Project.

B. In accordance with Section 2 above, Grant Recipient shall maintain all fiscal Project Records in accordance with GAAP. In addition, Grant Recipient shall maintain any other records necessary to clearly document:

(i) Grant Recipient's performance of its obligations under this Agreement, its compliance with fair contracting and employment programs, and its compliance with Oregon law on the payment of wages and accelerated payment provisions;

(ii) Any claims arising from or relating to (a) Grant Recipient's performance of this Agreement, or (b) any other contract entered into by Grant Recipient that relates to this Agreement or the Project;

(iii) Any cost and pricing data relating to this Agreement; and

(iv) Payments made to all suppliers, contractors, and subcontractors engaged in any work for Grant Recipient related to this Agreement or the Project.

C. Grant Recipient shall maintain Project Records for the longer period of either (a) six years from the date the Project is completed, or (b) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement or the Project and that commences within six years from the date the Project is completed.

D. Grant Recipient shall make Project Records available to Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places, regardless of whether litigation has been filed on any claims. If the Project Records are not made available within the boundaries of Metro, Grant Recipient agrees to bear all of the costs incurred by Metro to send its employees, agents, or consultants outside the region to examine, audit, inspect, or copy such records, including, without limitation, the expense of travel, per diem sums, and salary. Such costs paid by Grant Recipient to Metro pursuant to this Section shall not be recoverable costs in any legal proceeding.

E. Grant Recipient authorizes and permits Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, to inspect, examine, copy, and audit the books and Project Records of Grant Recipient, including tax returns, financial statements, other financial documents relating to this Agreement or the Project. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provision of Section 12(F) below.

F. Grant Recipient agrees to disclose Project Records requested by Metro and agrees to the admission of such records as evidence in any proceeding between Metro and Grant Recipient, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

G. In the event the Project Records establish that Grant Recipient owes Metro any sum of money or that any portion of any claim made by Grant Recipient against Metro is not warranted, Grant Recipient shall pay all costs incurred by Metro in conducting the audit and inspection.

15. Public Records

All Project Records shall be public records subject to the Oregon Public Records Law, ORS 192.410 to 192.505. Nothing in this Section shall be construed as limiting Grant Recipient's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).

16. Law of Oregon; Public Contracting Provisions

The laws of the state of Oregon shall govern this Agreement and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that Grant Recipient and all employers working under this Agreement are subject to and will comply with ORS 656.017 and that, for public works subject to ORS 279C.800 to 279C.870 pertaining to the payment of prevailing wages as regulated by the Oregon Bureau of Labor and Industries, Grant Recipient and every contractor and subcontractor shall comply with all such provisions, including ORS 279C.836 by filing a public works bond with the Construction Contractors Board before starting work on the project, unless exempt under that statute.

17. Notices and Parties' Representatives

Any notices permitted or required by this Agreement shall be addressed to the other party's representative(s) as set forth below and shall be deemed received (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return



receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this Section of this Agreement.

Grant Recipient’s Designated Representatives:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax \_\_\_\_\_

Metro’s Designated Representatives:

Natural Areas Bond Program Manager  
Metro Regional Center  
600 N.E. Grand Ave.  
Portland, OR 97223  
Fax (503)-797-1849

with copy to:

Metro Attorney  
600 N.E. Grand Ave.  
Portland, OR 97223  
Fax (503) 797-1792

18. Assignment

Grant Recipient may not assign any of its responsibilities under this Agreement without prior written consent from Metro, which consent shall not be unreasonably withheld.

19. Severability

If any term or provision in this Agreement shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of the remainder of the Agreement, which remaining terms and provisions shall be valid and be enforced to the fullest extent permitted by law.

20. No Waiver of Claims; Modifications

Metro’s failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision of this Agreement. This Agreement may be amended

only by written instrument signed by both Metro and Grant Recipient and no waiver, consent, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

21. Integration of Agreement Documents

All of the provisions of any proposal documents including, but not limited to, Requests for Proposals, Grant Proposals and Scopes of Work that were utilized in conjunction with the award of this Grant are hereby expressly incorporated herein by reference; provided, however, that the terms described in Sections 1 through 21 of this Agreement and in Exhibit A shall control in the event of any conflict between such terms and such other incorporated documents. Otherwise, this Agreement represents the entire and integrated agreement between Metro and Grant Recipient and supersedes all prior negotiations, representations or agreements, either written or oral. The law of the state of Oregon shall govern the construction and interpretation of this Agreement. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year indicated below.

**[Name of City/County/District]**

**METRO**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Michael Jordan

Metro Chief Operating Officer

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Paul A. Garrahan  
Senior Assistant Metro Attorney

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 08-3965, APPROVING FIRST ROUND FUNDING FOR NATURE IN NEIGHBORHOODS CAPITAL GRANTS AND AUTHORIZING METRO TO AWARD GRANTS UP TO THREE TIMES PER YEAR

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Date: August 7, 2008

Prepared by: Kathleen Brennan-Hunter  
Mary Rose Navarro

## BACKGROUND

In March 2006, the Metro Council adopted Resolution 06-3672B which provided \$15 million to fund a Nature in Neighborhoods capital grants program. The resolution limits the expenditure of funds to no more than 15% of the total program amount in any given year.

The program was first announced in September of 2007. Seventeen letters of interest have been received. Of these letters, six were invited to participate in the final grant application process.

The extensive review process included site visits, staff assessments and two Grant Review Committee (GRC) meetings. The GRC engaged in a thoughtful and thorough evaluation of each application. On May 29 the GRC met to review the final slate of applications and to make a recommendation to the Metro Council.

The following projects are recommended for funding.

#### Conservation Corner

This project will transform a neglected historic property into a neighborhood asset by installing demonstration projects that will help re-nature and re-green this low-income neighborhood. The GRC recommends a grant of \$99,500 to the East Multnomah Soil and Water Conservation District to assist with the creation of a demonstration garden that includes sustainable components such as a rain garden, a cistern, porous pavement, a butterfly/pollinator garden and creative downspout disconnect art. The project will enhance people's appreciation of how nature can be incorporated into the landscape in a dense and mixed-income urban neighborhood.

#### Crystal Springs Enhancements

This project proposes restoration of a 2,100-foot section of Crystal Springs Creek by removing a concrete channel and an existing playground from the floodplain and installing native plants. The project also includes the development of a nature-based play area that connects users to the site using creative elements that encourages free-form play. The GRC recommends a grant of \$150,000 to Portland Parks & Recreation because of the project's ability to provide new streamside habitat and improve water quality in an important urban, fish-bearing tributary to Johnson Creek.

#### Hawthorne Grove Park

This project plans to acquire and develop a small neighborhood park within the North Clackamas Revitalization Area. The committee recommends a grant of \$140,000 to the Clackamas County Development Agency to assist with the development of a small neighborhood park in a park deficient, low-income community. Active participation from a diverse array of partners demonstrates the type of community and creativity this grant program hopes to inspire.

The GRC found these three projects compelling because they:

- Improve critical habitat conditions in a fish-bearing urban stream
- Connect underserved communities to nature
- Are located in low-income neighborhoods with access to permanent affordable housing opportunities
- Involve a unique array of partners including a private developer and a non-profit affordable housing provider.
- Encourage private property owners to increase the ecological functions of their landscapes.

The total amount of funding for these three projects is \$389,500. Projects will last from one to three years in length.

All three applicants are governmental agencies. Therefore, Metro will enter into an Intergovernmental Agreement (IGA) to facilitate the funding of the recommended projects. A sample of the IGA is attached as Exhibit B.

This resolution also allows the Metro Council to make grant awards up to three times per year. Resolution No. 06-3672B, states that “Grants will be solicited and awarded once yearly for a total of up to ten years. The Metro Council will seek to develop a program that limits the expenditure of funds to no more than 15% of the total program amount in any given year.” The intention of this language, in part, was to ensure that the \$15 million in funding is distributed evenly over time and that the program is competitive. There are several potential applicants and more capacity to go through at least one more grant cycle this year. This change will enable staff to work with applicants and the Grant Review Committee to prepare another award recommendation for the Metro Council to consider.

## ANALYSIS/INFORMATION

1. **Known Opposition:**

None.

2. **Legal Antecedents:** Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area A General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection.”

Metro Code Section 2.19.230, "Nature in Neighborhoods Capital Grants Review Committee," establishing the committee and prescribing its authority to review capital grants applications and make grant funding recommendations to the Metro Council.

3. **Anticipated Effects:** This Resolution awards Nature in Neighborhood capital grants and begins the individual contract award process for the selected grant applicants. Projects are from one to three years in length.

4. **Budget Impacts:** The 2006 Natural Areas Bond authorized spending up to \$15 million toward this program, with no more than \$2.25 million spent in any given fiscal year. The grant awards here are the first within this program. The adopted FY 2008-09 budget includes the necessary appropriation authority for reimbursement of these grants.

## RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Resolution No. 08-3965.