

BEFORE THE METRO COUNCIL

APPROVING URBAN GROWTH BOUNDARY ) ORDINANCE NO. 98-778  
LOCATIONAL ADJUSTMENT CASE C.G.C. )  
PERSIMMON AND ADOPTING THE HEARING )  
OFFICER'S REPORT INCLUDING FINDINGS ) Introduced by Mike Burton,  
AND CONCLUSIONS ) Executive Officer

WHEREAS, Metro received a petition for a locational adjustment for 19.6 acres located in Multnomah County with the UGB as its western boundary, and the Clackamas, Multnomah County line as a southern boundary, as shown in Exhibit 1; and

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearing Officer, recommending denial of the petition as a result of the applicant not sufficiently showing compliance with the criteria set forth in Metro Code 3.01.035; and

WHEREAS, Metro held a hearing to consider the petition on August 12, 1998, conducted by an independent Hearing Officer; and

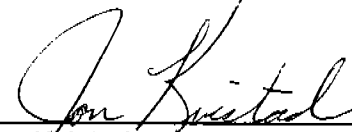
WHEREAS, applicant submitted substantial new information at the public hearing; and

WHEREAS, The Hearing Officer submitted her report on September 18, 1998, recommending approval of the petition for 19.6 acres; now, therefore,

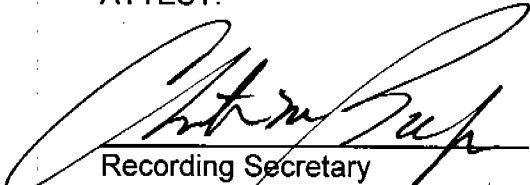
THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. To accept the Hearing Officer's *Report and Recommendation*, as attached herein as Exhibit 2; and
2. The Hearing Officer's *Findings, Conclusions & Final Order*, attached herein as Exhibit 3, be adopted approving the petition in Case 98-9: C.G.C. Persimmon.
3. The urban growth boundary is amended to include approximately 19.6 acres as shown on the map in Exhibit 4.


ADOPTED by the Metro Council this 5<sup>th</sup> day of NOVEMBER, 1998.

  
\_\_\_\_\_  
Jon Kvistad  
Presiding Officer

ATTEST:






  
\_\_\_\_\_  
Recording Secretary

Approved as to Form:

  
\_\_\_\_\_  
Daniel B. Cooper  
General Counsel

# Exhibit 1 98-778

C.G.C. Persimmon  
Locational Adjustment

-  Subject Property
-  Urban Growth Boundary
-  Farm or Forest Zoning
-  Multnomah Clackamas County Line
-  Urban Reserve

0 400 800 Feet

1" = 600 feet



**METRO**

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**EXHIBIT 2**

BEFORE THE HEARINGS OFFICER OF THE  
METROPOLITAN SERVICE DISTRICT

In the matter of the petition of C.G.C. Inc. for a ) HEARINGS OFFICER'S  
locational adjustment to add 19.6 acres ) REPORT AND  
to the Urban Growth Boundary southwest of the ) RECOMMENDATION  
Persimmon Golf Course ) **Contested Case No. 98-09**

I. BASIC FACTS

1. Procedural History of Locational Adjustment. C.G.C. Inc. petitioned for the amendment of the METRO Urban Growth Boundary on March 16, 1998. Metro Associate Regional Planner, Glen Bolen, sent a letter on March 25 informing C.G.C. Inc. that the petition application was incomplete specifying the items that were missing, including a statement from the Multnomah County Board of Commissioners ("Board"), pursuant to Metro Code Section 3,01.033(h)(1). On April 3 petitioners mailed a letter requesting an extension of the April 8 deadline for complete locational adjustment applications. The Metro Council adopted Resolution No. 98-2632 on April 23, 1998 granting a waiver of the deadline for C.G.C. Inc.. Metro informed the petitioner that the waiver was granted and that the application was complete on April 3. Notice of the proposed amendment and date of the final hearing was published. A public hearing was conducted by Pamela J. Beery, Metro Hearings Officer, on August 12, 1998 at Gresham City Hall. The record was held open for 7 days and formally closed at 5:00PM on August 19, 1998. On August 20, petitioners submitted additional information for consideration and requested that it be included in the record. The Metro Hearings Officer requested a letter from petitioners establishing authority to accept the additional information. The additional information is hereby accepted and becomes part of the record pursuant to the reasons stated herein. The complete record of Contested Case No. 98-09 is attached.

2. Location and Zoning of Subject Property. The subject property is located in Multnomah County southwest of the Persimmon Golf Course. The western boundary of the property is coterminous with the Metro Urban Growth Boundary (UGB) and the City of Gresham. The southern boundary straddles the line between Clackamas and Multnomah Counties. The eastern and northern boundary is within Multnomah County and adjacent to the Persimmon Golf Course. The entire parcel is located within Urban Reserve

1 No. 3 which was designated by the Metro Council on March 6, 1997. The parcel is a 19.6 acre portion of  
2 the larger Tax Map/Lot 1S 3E 22 lot 400 which consists of roughly 300 acres zoned for Exclusive Farm  
3 Use. The land to the west of the subject property within the City of Gresham is zoned low density  
4 residential while land to the south is rural residential.

5  
6 3. Uses Adjacent to Subject Property. The Persimmon Golf Course is adjacent to and extends into the  
7 northern section of the property. In particular the twelfth hole comprises less than an acre of the northeast  
8 corner of Urban Reserve No. 3; Golf courses are allowed uses within an Exclusive Farm Use zone  
9 pursuant to ORS 215.283(2)(e) subject to the approval of the local governing body. Immediately east of  
10 the subject property is undeveloped forested area with two residential dwellings. Several relatively large  
11 undeveloped lots are located immediately to the south. A rural residential neighborhood development is  
12 located along SE Yellowhammer St. southeast of the property. West of the property includes property that  
13 is approved for development of the Persimmon Golf Course Community. Construction of Phase 5 and 6 of  
14 the PUD will occur directly to the west of the subject property. Phase 5 and Phase 6 are physically  
15 separated from one another by a steeply sloped area. This limits opportunities for providing utility and  
16 road service connections to Phase 6.

17  
18 4. Existing Uses and Site Description. The property is an undeveloped, steeply-sloped, wooded area of  
19 land. Vegetation consists of mostly big leaf maple and alder trees. The Metro Regional Land Information  
20 System (RLIS) identifies the soil class on the property as Class VI soils with a portion of Class IV soils in  
21 the northern and southern ends of the site. Because the subject site is predominantly a wooded hillside  
22 area, the suitability of the site for agricultural purposes is limited. The site was used for logging in the past.

23  
24 5. Proposed Uses for Subject Property. Petitioners propose to construct a road across the subject property  
25 connecting Phase 5 and Phase 6 of the Persimmon PUD. In addition, utility services will to Phase 6 will be  
26 similarly provided along or under the proposed road. If the locational adjustment is approved, utility  
27 services will be extended between Phase 5 and Phase 6 of the Persimmon PUD allowing for residential  
28 development along the road on the subject property. If the petition is approved, the petitioner will also  
29 request annexation to the City of Gresham within 90 days and the area will likely be zoned for low density  
30 residential use. The connecting road will be constructed on slopes of 15 to 25 percent. Exhibit 32, p. 24.

31  
32 6. Procedural History of Proposed Uses. In 1989 petitioners filed an application to amend the  
33 Comprehensive Plan to obtain exceptions to statewide planning goals to allow roads outside the UGB.

1 Exhibit 32. At that time, petitioners stated in their application that the "Loop Road," as the proposed road  
2 for the subject property was then denominated, would be constructed as a 50-foot wide right of way and  
3 classified as a rural local street. In addition, petitioners offered that a non-access reservation or equivalent  
4 would be dedicated to the county to prohibit vehicular access from the road. Exhibit 32, p.11. Alternative  
5 access routes considered by petitioners included "a plan for an inside-the-UGB alternative to the Loop  
6 Road and for a north-south road alternative inside the UGB (See Exhibits 11 and 12)." Exhibit 32, p.1.<sup>1</sup>

7 The "Loop Road" alternative reduces impact on lands with slopes of greater than 20 percent.  
8 Exhibit 32, p.25. The findings of compliance with Policy 2 of the Multnomah County Comprehensive Plan  
9 addressing off-site impacts for construction of the "Loop Road" stated:

10  
11 The Exception for the Loop Road does not create adverse off-site effects, because access  
12 from the Loop Road to the unincorporated area will be prohibited, the road is contained  
13 entirely within the Site, and it only abuts land in Gresham to the west. The Exception  
14 benefits land to the west by enabling access to it by a route that least cuts and fills land  
15 and has the least grade.

16  
17 The findings for Policy 36 indicate that "a second road must serve this area before it can be developed."  
18 Exhibit 32, p.26. Compliance with Goal 2 of the statewide planning goals indicates alternatives to the  
19 Loop Road within the UGB would likely violate city street grade standards and/or have sharp angles and  
20 substantial grading. Exhibit 32, p.31. The Loop Road was found to be compatible with adjoining land  
21 under Goal 2 because "it is set back from adjoining land by a large distance within which significant grade  
22 changes and existing trees will make the loop virtually undetectable from the south."

23 On June 23, 1992, the Board of County Commissioners approved a Significant Environmental  
24 Concern (SEC) Permit for the new realignment of Butler Road including the connecting road between  
25 Phase 5 and Phase 6 of the Persimmon PUD. (SEC 13-92). Approval of the SEC was conditioned by the  
26 Board as follows:

27  
28 The specific designs for the public road segments outside the UGB shall be conditioned  
29 upon receipt of corresponding approvals of the streets proposed within Gresham to which  
30 the roads will connect. Development of the roads outside the UGB shall not commence  
31 until associated approvals from Gresham are obtained or assured. Sufficient assurances

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<sup>1</sup> Petitioners failed to submit Exhibits 11 and 12 into the record despite the Hearings Officer's request for

1 of approval include a written statement from John Harris, or a Gresham City Official  
2 with similar responsibility, indicating that the road location is consistent with the City's  
3 plans for the roadway. Exhibit 28, p.1.  
4

5 Multnomah County indicated that the road could be constructed regardless of whether the property is  
6 brought within the UGB or not. Exhibit 11, p5.  
7

8 7. Availability of Services. The City of Gresham states that it will provide storm drainage, water, sanitary  
9 sewer and transportation services in a logical fashion provided that: (1) stormwater is mitigated at rates of  
10 2-100 year storm events, (2) additional storage and pumping facilities are provided, (3) pipeline  
11 improvements are made to the trunk line, and (4) the system provides for two access points. Both the Parks  
12 and Recreation Department and School District for the City of Gresham indicated that the proposed  
13 development would not have a negative impact. The City of Gresham has also indicated that it will not  
14 provide utility services outside city limits unless the proposed locational adjustment is approved.  
15

16 8. Record of the Hearing. The testimony may be summarized as follows:  
17

18 (a) *Staff Report*. Associate Regional Planner, Glen Bolen, presented findings contained in his staff  
19 report. Exhibit 11. Mr. Bolen also indicated that his staff report did not include consideration of  
20 information that was submitted on the day of the hearing.

21 (b) *Petitioner*. The petitioner, represented by John Junkin , attorney from Bullivant, Houser and  
22 Bailey, introduced several items to be entered into the record including Exhibits 6, 7 and 9. The petitioner  
23 then presented testimony about the phasing of development and described the history of approval of the  
24 development. Jerry Offer of OTAK Inc. representing C.G.C., Inc. testified that Phases 1-4 are completed  
25 and petitioners are currently working on Phase 5. The development of the subject parcel for residential  
26 purposes was not considered at the time Multnomah County and the City of Gresham approved the larger  
27 PUD plan. Adjacent property to the east of subject property is not really an agricultural piece but rather a  
28 steep wooded area. Connection of Phase 5 and 6 of the development within the UGB is not possible  
29 because of the steepness and soil instability of lands located between Phase 5 and Phase 6. After petitioner  
30 realized the expense in constructing the proposed loop road, they considered the possibility of constructing  
31 residential houses to make the project more cost effective. The project currently has no access to  
32 Yellowhammer Road. Petitioner addressed the Metro Code criterion requiring that property be less than 20

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relevant approvals relating to the road in question.

1 acres indicating that the portions of the urban reserve not included in the petition are either occupied by the  
2 existing golf course or are otherwise too steep for reasonable access for the purposes of residential  
3 construction.

4 In response to questions from the Hearings Officer, the petitioner indicated that no plans for  
5 utilities had been developed but that a future street plan approval was granted. An issue remained as to  
6 whether or not the City of Gresham would require connection of Phase 6 of the development with  
7 Yellowhammer Road. Petitioner testified that the grade requirements for local streets were 12 or 15  
8 percent. John Hession of OTAK Inc., representing C.G.C. Inc., indicated that extension from Phase 5 to  
9 Phase 6 would be required by the city's master plan. Brian Lessler of C.G.C. Inc. then testified addressing  
10 the status of property just south of the proposed locational adjustment. He described the property as a rural  
11 subdivision including 40-45 lots with access from Borges Rd. to the south and east terminating at the top of  
12 the hill. The lots are largely small acreage, single-family parcels. Mr. Lessler has been involved with the  
13 development since its inception and testified that there was considerable study done concerning access.  
14 The steep, wooded area between Phase 5 and 6 is intended to be preserved as a green belt area with grades  
15 of at least 2:1, and sometimes exceeding 30 to 40%. East of the subject property, access is limited by the  
16 headwaters of Hogan Creek which creates a steep ravine of several hundred feet. The only way to provide  
17 access is via the proposed loop road. John Junkin testified that approval by the County was for the road  
18 only and went on to address the specific criteria necessary for approval under the Metro Code including:

- 19
- 20 (i) Metro Code 3.01.035(c)(1). The City of Gresham's response to the request for comment  
21 concerning the locational adjustment, in particular Bruce Hoyt's comment as Supervisor  
22 of the Engineering Department that the petition would have no efficiency impact, was not  
23 the City's official position and that new evidence addressed that issue and established that  
24 approval of the locational adjustment was necessary for the City of Gresham to allow  
25 utility services underneath the approved road.
- 26 (ii) Metro Code 3.01.035(c)(2). Services from the City of Gresham would not be provided  
27 unless the locational adjustment is approved. Therefore development of Phase 6, property  
28 within the UGB, requires this approval.
- 29

30 Petitioner went on to discuss how the Metro Code regulations governing density provided in the  
31 Metro staff report were not applicable because that criterion concerns only major and legislative  
32 adjustments to the UGB and not locational adjustments such as this one.

33



1 (iii) Metro Code 3.01.035(c)(4). Retention of the lands as agricultural lands would preclude  
2 development of Phase 6 and that alternative routes for access are infeasible or  
3 impracticable.

4 (iv) Metro Code 3.01.035(f)(2). The process of considering the criteria of Metro Code  
5 3.01.035(c) as addressed here leads to the conclusion that the locational adjustment must  
6 be approved based on the new information.

7  
8 Finally, Rob Fussel of the Private and Economic Development Department of the City of Gresham testified  
9 in full support of the petition. He indicated that no specific approvals have been given by the City or  
10 County for utilities other than the future street plan.

11 (c) *Metro Staff*. Mr. Bolen later relayed a conversation with Clackamas County planning director  
12 Doug McClean indicating that the land south of the property included approved rural roads and that the  
13 neighbors had formed an LID. A conversation with Multnomah County indicated that there was no  
14 specific plat for the subject property.

15 (d) *Hearings Officer*. The Hearings Officer emphasized the need for submitting additional  
16 information that would be necessary to determine what alternative designs were considered and whether  
17 earlier approvals had been given when the larger PUD was considered.

18 The Hearings Officer closed the hearing, allowing the petitioner to submit additional arguments  
19 within 7 days, closing the record on August 19, 1998 at 5:00 p.m.

20  
21 II. ADDITIONAL RECORD SUBMITTAL

22  
23 Following close of the record on August 19, legal counsel for the petitioner submitted the  
24 requested documents relating to earlier County approvals affecting the property. These materials were  
25 received on August 20, 1998. Despite the late submittal, the Hearings Officer adopts the legal reasoning  
26 contained in counsel for the petitioner's letter of August 26, 1998 and concludes that no party's substantial  
27 rights would be prejudiced by the inclusion of the additional materials in the record. Therefore, the  
28 materials are hereby accepted and included in the record herein.

29  
30 III. APPLICABLE APPROVAL CRITERIA AND RESPONSIVE FINDINGS

31  
32 Metro Code section 3.01.035 contains the approval criteria for locational adjustments. The  
33 petitioner has the burden of proof to establish that the applicable criteria have been met. The statewide

1 goals do not apply directly to applications for locational adjustments. Metro Code 3.01.035(a).<sup>2</sup> The final  
2 decision is based on whether substantial evidence in the record supports approval or denial of the petition.  
3

4 **1. Locational adjustments shall not exceed 20 net acres. [3.01.035(b)].**

5  
6 The proposed locational adjustment is for 19.6 acres and therefore, the petition complies with this  
7 criterion. The Hearings Officer adopts staff's proposed findings on this criterion.  
8

9 **2. An addition of land to make the UGB coterminous with the nearest property lines may be**  
10 **approved without consideration of the other conditions in this subsection if the adjustment will add a**  
11 **total of two gross acres or less, the adjustment would not be clearly inconsistent with any of the**  
12 **factors in subsection (c) this section, and the adjustment includes all contiguous lots divided by the**  
13 **existing UGB. [3.01.035(f)(1)].**  
14

15 The proposed locational adjustment is for 19.6 acres, a portion of a single tax lot. No continuous  
16 lots are divided by the existing UGB. This criterion is permissive, not mandatory. No additional lands  
17 should be included in the application based on the findings in Section III (4) below, nor is a separate  
18 independent adjustment request for less than two gross acres applicable here. This criterion is met.  
19

20 **3. For all other additions, the proposed UGB must be superior to the UGB as presently**  
21 **located based on a consideration of the factors in subsection (c) of this section. [3.01.035(f)(2)].**  
22

23 Petitioner argues that a review of the factors in subsection (c) of the Metro Code governing  
24 regulation of locational adjustments establishes that approval of the petition for a locational adjustment will  
25 result in a UGB that is superior to the existing UGB. Exhibit 7, p.7.

26 The Hearings Officer finds that a discussion of criteria in the Metro Code 3.01.035(c)(1-5)  
27 presented in 5-9 below indicates that the proposed locational adjustment creates a UGB that is superior to  
28 the existing UGB. Therefore petitioners have met their burden in complying with this criterion.  
29

30 **4. The proposed UGB amendment must include all similarly situated contiguous land that**

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<sup>2</sup> The Metro Code both procedurally and substantively adopted a complete process for considering amendments to Metro's UGB including the statewide goals. League of Women Voters v. Metro Service Dist., 17 Or. LUBA 949, 968 (1989).

1 could also be appropriately included within the UGB as an addition based on the factors above.

2 [3.01.035(f)(3)]

3  
4 The proposed locational adjustment is for 19.6 acres. The subject property is located in Urban  
5 Reserve No.3, an area of approximately 22 acres of Tax Lot 400, consisting of approximately 300 acres  
6 total. Exhibit 11, p.1-2.

7 A majority of Tax Lot 400 not included in the petition has been developed as part of the  
8 Persimmon Golf Course. Exhibit 10, Aerial Photo 1997. Immediately east of the subject property within  
9 Tax Lot 400 is a wooded area of land that is undeveloped except for two small residential homes. A small  
10 road extends from SE Hogan providing access to the two residential houses. The remaining land in Tax  
11 Lot 400 is designated as Urban Reserve No.3. Land not included in the petition but located in Urban  
12 Reserve No. 3 consists in part of portions of the Persimmon Golf Course that overlap with the Urban  
13 Reserve, in particular the western end of the 12<sup>th</sup> hole of the golf course, the associated rough and a path  
14 for golf carts. Exhibit 10, Aerial Photo 1997. The other part of the remaining land is a wooded hillside  
15 area with some slopes that exceed 25%.

16 Petitioner argues that the proposed road allows for a development pattern of residential housing  
17 that is limited to the design plan presented on the master plan map with an area of less than 20 acres.  
18 Exhibit 23, Figure 3 Master Plan Development Map. Petitioner contends that the remaining land within the  
19 urban reserve area can not be developed because it is either part of the Persimmon Golf Course or consists  
20 of steep slopes that would otherwise prevent construction of residential homes.

21 Metro staff found that the proposed locational adjustment complied with this criterion. In  
22 particular, staff noted that the remaining 2.67 acres of the urban reserve area not included in the petition  
23 "may or may not be developable." Exhibit 11, p.4. Staff notes that the remaining lands could be proposed  
24 as open space or the plan could be reconfigured to provide access to the undeveloped portions of the urban  
25 reserve. Staff found that "considering only the portion of Tax Lot 400 that can be served by the proposed  
26 roadway for this amendment is sufficient." Exhibit 11, p.4. Staff notes that the purpose of this criterion is  
27 to prevent carving out a piece of land 20 acres or less in order to qualify for a locational adjustment and to  
28 minimize subsequent petitions for locational adjustments on adjacent land that should have been  
29 considered together with the original proposal.

30 The Hearings Officer finds that the proposed locational adjustment is for less than 20 acres and  
31 that there are no similarly situated lands that are suitable for urban development that have not been  
32 included in the petition. Therefore, the petitioner has presented substantial evidence to support a finding  
33 that the petition complies with this criterion.

1  
2           **5. Orderly and economic provision of public facilities and services. A locational adjustment**  
3 **shall result in a net improvement in the efficiency of public facilities and services, including but not**  
4 **limited to water, sewerage, storm drainage, transportation, parks and open space in the adjoining**  
5 **areas within the UGB. Any area to be added must be capable of being served in an orderly and**  
6 **economical fashion. [3.01.035(c)(1)]**  
7

8           This criterion creates a two-part test: (1) the locational adjustment area must be capable of being  
9 served in an orderly an economical fashion and (2) the locational adjustment must result in a net  
10 improvement in the efficiency of public facilities and services to areas already within the UGB.

11           Under Metro Code 3.01.033(h) a petitioner is required to obtain a written statement from the  
12 governing body of each city or county with land use jurisdiction over the area. The solicited comments  
13 indicate that the City of Gresham will provide services in an orderly and economic fashion upon  
14 annexation. Exhibit 17. The Engineering Supervisor, Bruce Hoyt, expressed a neutral opinion on the  
15 petition and indicated approval would have no efficiency impact. Comments indicated approval would be  
16 possible provided: (1) stormwater runoff is mitigated at rates 2-100 year storm event, (2) additional  
17 storage and pumping facilities are provided, (3) pipeline improvements are made to the trunk line, and (4)  
18 the system provides two access points. Exhibit 17. Petitioners at the public hearing submitted additional  
19 oral and written testimony to clarify comments by the City of Gresham. Bob Fussel testified and submitted  
20 a letter supporting the proposed locational adjustment and indicating that orderly and efficient servicing of  
21 Phase 6 of the Persimmon Community PUD required that lands be brought with the UGB. The City of  
22 Gresham's position was based on existing policy and practice not to expand services outside the UGB. The  
23 Multnomah County Board of Commissioners expressed a "no preference" comment on the petition.  
24 Exhibit 13.

25           An exception to the statewide planning goals and an amendment of the Multnomah County  
26 Comprehensive Plan was approved for construction of the loop road. Exhibit 31. The approval of the road  
27 was allowed subject to a limitation that "non-access" reservations along the "loop road" precluding access  
28 to EFU property be established and approved by the Engineering Services Division. Exhibit 31, p.2. In  
29 1992, Multnomah County approved a Significant Environmental Concern (SEC) permit for expansion of  
30 the boundary for the already approved golf course. This permit was conditioned upon a finding that  
31 designs for the public road outside the UGB be coordinated with approvals from the City of Gresham.  
32 Recent correspondence with Multnomah County established that the road could be constructed independent  
33 of any amendment to the UGB. Exhibit 11, p.5.

1           Petitioners argue that it is necessary to construct a public road through the subject site in order to  
2 connect Phases 5 and 6 of the Persimmon Community PUD. To meet the standards of maximum road  
3 grade and construction standards for the City of Gresham and Multnomah County the proposed road plan is  
4 the only feasible and practicable alternative. Petitioners originally stated that efficiency would be  
5 increased because additional dwellings would be developed along the road utilizing the underlying utility  
6 services. Exhibit 20, p.3. Metro staff rejected that argument and additional information was later provided  
7 by petitioners showing that efficiency would be improved because Phase 6 of the development would not  
8 otherwise be able to develop in an orderly and economical fashion unless services are provide via the  
9 proposed loop road.

10           As to the issue of providing utilities between Phase 5 and 6, petitioner presented written and oral  
11 testimony that the open space area between Phase 5 and Phase 6 consists of steep slopes preventing utility  
12 services from extending through this area. Exhibit 7, p.3. Petitioners submit that although it is technically  
13 feasible to place utilities in this area, it would be impractical because of the limitations on vehicular access  
14 for construction and maintenance of the utility lines. Exhibit 9, p.1-2. Petitioners cite specifically to the  
15 Gresham Community Development Code and the City of Gresham Public Works Design Standards that  
16 require "unobstructed vehicle access be provided to publicly owned [utilities] for maintenance purposes."  
17 Exhibit 9, p.2. In addition to access to the utilities, easements would be required including a minimum 45-  
18 foot wide swath that would significantly impact the wooded hillside area that is being preserved as open  
19 space. This new information is all that has been considered to date in terms of utility planning.  
20 Apparently the City and the County in approving this portion of the Persimmon Community PUD and the  
21 approved road outside the UGB never required any consideration of how utilities could be provided.  
22 Exhibit 9, p.1.

23           The connecting road between Phase 5 and Phase 6 of the Persimmon PUD is an approved road  
24 that can be constructed regardless of whether the petition for a locational adjustment is approved or not.  
25 Although development of houses is inconsistent with the conditions for which the road was approved, it is  
26 up to the City and the County to coordinate in their planning activities. Under ORS 195.025 each county is  
27 responsible for "coordinating all planning activities affecting land uses within the county, including  
28 planning activities of the county, cities, special districts and state agencies, to assure an integrated  
29 comprehensive plan for the entire area of the county." In addition each local government and special  
30 district that provides services within the UGB is required to enter into an urban services agreement  
31 addressing the provision of services in the future, assigning roles and responsibilities and defining  
32 necessary transitions in provision of urban services. ORS 195.065. Given these statutory requirements for  
33 coordination it is of concern that petitioners and the City have reached a point in the planning process

1 where no consideration has been given to utility provisions and that the suggested solution requires  
2 extension of a road and associated utility services outside the UGB and is inconsistent with an earlier  
3 County approval. The City support for developing these lands is in direct conflict with the County's  
4 conditioning of approval of the road 10 years ago prohibiting access from the road to prevent off-site  
5 impacts.

6 Despite the apparent lack of utility planning and coordination between the City of Gresham and  
7 Multnomah County, the issue here is whether or not it is necessary to locate utilities under or adjacent to  
8 the proposed loop road and outside the UGB in order to facilitate development of Phase 6 lands within the  
9 UGB. Because the facts presented in this case indicate that the only reasonable and practicable alternative  
10 for the provision of utility facilities is through the loop road connecting Phase 5 and 6, the Hearings Officer  
11 finds that the petition complies with this criterion. Later proceeding before the County or City of Gresham  
12 will be the mechanism to address the other issues identified in the findings on this criterion.

13  
14 **6. Maximum efficiency of land uses. The amendment shall facilitate needed development on**  
15 **adjacent existing urban land. Needed development, for the purposes of this section, shall mean**  
16 **consistent with the local comprehensive plan and/or applicable regional plans. [3.01.035(c)(2)]**  
17

18 Petitioner essentially presents the same argument as in the preceding criterion, that approval of the  
19 petition will facilitate development of Phase 6 of the Persimmon PUD.

20 Needed development is specifically defined as development that is consistent with local  
21 comprehensive plans and applicable regional plans. The only evidence presented by petitioner on this  
22 issue is a letter from the City of Gresham's Community Development Department. That letter specifically  
23 addresses the location of Phase 6 within the Hillside Physical Constraint District and whether or not the  
24 proposed development will meet the density requirements of the Metro Regional Framework Plan. The  
25 evidence presented does not address the broader question of overall compliance of Phase 6 with all aspects  
26 of both the local and regional plans. However, it is implicit in the earlier PUD approvals that the County  
27 made such a finding in order to allow the development to move forward<sup>3</sup>.

28 It is of concern here that the need for utility services for lands inside the UGB which can only be

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<sup>3</sup> In Alliance for Responsible Land Use in Deschutes County v. Deschutes County, the Oregon Court of Appeals held a local government's decision constitutes an interpretation of local legislation, and is therefore subject to deference, if that decision "suffices to identify and explain in writing the decisionmaker's understanding of the meaning of the local legislation." Alliance for Responsible Land Use in Deschutes County v. Deschutes County, 149 Or. App. 259, 266 (1997) citing Larson v. Wallowa County, 116 Or. App. 96 (1992) and Weeks v. Tillamook County, 117 Or. App. 449, 452-53 (1992).

1 met by utilizing lands outside it has been essentially created by the developer's own design lay out for the  
2 Persimmon Community PUD as dictated by earlier land use approvals. This could have the indirect effect  
3 of potentially undermining urban service boundary policies.

4 However, based on the evidence presented in this record, the Hearings Officer finds that the  
5 proposed locational adjustment will facilitate development of lands within the UGB and is therefore in  
6 compliance with this criterion.

7  
8 **7. Environmental , energy, economic and social consequences. Any impact on regional**  
9 **transit corridor development must be positive and any limitations imposed by the presence of hazard**  
10 **or resource lands must be addressed. [3.01.035(c)(3)]**

11  
12 The site is a largely wooded area consisting of unmanaged big leaf maples and alders. There are  
13 intermittent drainage-ways which pass through the site, but there is no standing water. Exhibit 11, p.6.  
14 Because of logging activities in the past the wildlife habitat is of low to moderate quality. The nearest  
15 transit corridor is Powell Boulevard which is several miles away.

16 Petitioner argues that the proposed locational adjustment will not have any negative  
17 environmental, energy, economic or social impacts. No evidence was submitted to the contrary. Metro  
18 staff, based on the information submitted by the petitioner, found that this criterion was satisfied.

19 The Hearings Officer agrees with Metro staff that based on the evidence submitted by petitioner,  
20 the locational adjustment petition is in compliance with the requirements of this criterion.

21  
22 **8. Retention of agricultural land. When a petition includes land with Agricultural Class I-IV**  
23 **soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be**  
24 **approved unless it is factually demonstrated that:**

25  
26 The subject property is a mix of Class VI and Class IV soils. Exhibit 10, Soil classification and  
27 slope map. The area is zoned an Exclusive Farm Use zone by Multnomah County. Petitioners argue that  
28 the agricultural suitability of the site is limited because the area is predominantly a wooded hillside making  
29 the slopes too severe for cultivation or pasturing of animals. In addition there are no nearby agricultural  
30 activities that can utilize this area at some point in the future.

31 The original approval of the "loop road" in 1989 by the Multnomah County Planning Commission  
32 ("Planning Commission") addressed the issue of agricultural lands in the area. In particular, the Planning  
33 Commission found that the development was consistent with County Policy #9 regulating agricultural land

1 areas for the following reasons: (1) the loop road is located on land sloped 10 to 25 percent creating  
2 erosion potential that otherwise prohibits use of the area for tilling, (2) most of the loop road will be built  
3 on Class VI soils, and (3) lot sizes and land uses to the south make it unlikely that the land used for the  
4 loop road could be combined with other land for a farm or forest purpose. In addition the Planning  
5 Commission found that the policies of Goal 3 of the statewide planning goals should not apply to the Loop  
6 Road for the following reasons: (1) the loop road is isolated from the surrounding area by steep slopes  
7 making it unlikely that it will be combined with other areas for agricultural purposes, (2) the steep slopes in  
8 the area make it unsuitable for tilling, (3) the land uses to the south are primarily residential residences  
9 making it unlikely that the area will be combined with other land to provide a large enough area for an  
10 agricultural use.

11  
12 **(A) Retention of any agricultural land would preclude urbanization of an adjacent area**  
13 **already inside the UGB, or**  
14

15 Metro staff concluded that the petitioners failed to present sufficient evidence indicating that  
16 retention of the subject property for agricultural purposes would preclude development of lands within the  
17 UGB. The petitioner argues that the retention of this area for agricultural purposes would preclude  
18 urbanization of Phase 6 of the Persimmon PUD because the City of Gresham would not otherwise permit  
19 extension of utilities along the proposed loop road unless it is brought within the UGB.

20 The proposed loop road is within an area that is designated as an EFU zone. The area has been  
21 designed to include sufficient lands for the construction of residential homes as well as for inclusion of the  
22 loop road area thereby allocating Class IV soils for development. While inclusion of the additional lands to  
23 the east of the loop road for residential housing consumes areas containing Class IV soils the record  
24 establishes that these areas are not otherwise suitable for agricultural purposes.

25 The Hearings Officer finds that because those areas containing Class IV soils have been found by  
26 the County to be unsuitable for agricultural purposes, because the County granted an exception to Goal 3 of  
27 the statewide planning goals, those areas are not agricultural lands that were otherwise intended to be  
28 protected from development under this criterion. Therefore, the proposed locational adjustment is in  
29 compliance with this criterion.

30  
31 **(B) Retention of the agricultural land would make the provisions of urban services to an**  
32 **adjacent area inside the UGB impracticable. [3.01.035(c)(4)]**  
33



1 The same argument presented by petitioner applies to this criterion. As such the Hearings Officer  
2 finds that retention of those areas designated as Class IV soils within the proposed locational adjustment  
3 would make the provision of urban services to Phase 6 impracticable. The application is therefore in  
4 compliance with this criterion.

5  
6 **9. Compatibility of proposed urban uses with nearby agricultural activities. When a**  
7 **proposed adjustment would allow an urban use in proximity to existing agricultural activities, the**  
8 **justification in terms of all factors of this subsection must clearly outweigh the adverse impact of any**  
9 **incompatibility. [3.01.35(c)(5)]**

10  
11 Aerial photography of the area indicates that there are no agricultural activities in the nearby  
12 areas. Exhibit 10, Aerial Photo 1997. Because there are no agricultural activities in the nearby areas, the  
13 Hearings Officer finds that this criterion does not apply.

14  
15 III. CONCLUSION AND RECOMMENDATION

16  
17 The Hearings Officer finds that the proposed locational adjustment should be approved because:

- 18  
19 1. The proposed locational adjustment of the UGB will result in a net improvement of the  
20 efficiency of public services to lands within the Urban Growth Boundary by providing utilities to Phase 6  
21 of the Persimmon Golf Course Community PUD via the public right of way for the loop road connecting  
22 Phase 5 and Phase 6.
- 23 2. The provision of utilities allows for needed development of Phase 6.
- 24 3. Pursuant to the reasons presented in 1 and 2, the extension of the UGB to include lands  
25 designated in the petition will result in a more superior Urban Growth Boundary.

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2 IV. DECISION  
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4 Based on the findings and conclusions adopted herein and on the public record in this matter, the  
5 Hearings Officer finds the petition in Contested Case 98-09 should be approved.  
6

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9 DATED: September 18, 1998  
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12 Respectfully Submitted By:

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16 Pamela J. Beery, Metro Hearings Officer  
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30 metro/cgc/cgcreport2  
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**RECORD IN THE MATTER OF  
CONTESTED CASE NO. 98-09  
(C.G.C. Inc.)**

<u>Exhibit No.</u>	<u>Subject Matter</u>
1.....	Letter from John M. Junkin to Pamela J. Beery dated August 26, 1998: Response to request for authority to allow evidence submitted after the record closed
2.....	Letter from Pamela J. Beery to John Junkin dated August 21, 1998: Request for authority to allow evidence submitted after the record closed
3.....	Letter from John M. Junkin to Pamela J. Beery dated August 20, 1998: Submission of additional information
4.....	Notice of Hearing dated August 12, 1998
5.....	Letter from Terry Vaderkooy, Development Planning Manager from the City of Gresham, and Letter from Rob Fussel, Private & Economic Development for City of Gresham to Pamela J. Beery dated August 12, 1998: Compliance with densities in Metro's Regional Framework Plan
6.....	Letter from John M. Junkin to Pamela J. Beery dated August 12, 1998: Additional support addressing review criteria
7.....	Audiotape of Hearing for Metro Urban Growth Boundary Locational Adjustment
8.....	Letter from John Hession and Jerry Offer, Otak Inc. representing C.G.C. Inc., to Pamela J. Beery dated August 11, 1998: Utility Feasibility Analysis
9.....	Additional maps prepared by Metro dated August 3, 1998
10.....	Staff Report from Metro Associate Regional Planner, Glen Bolen, to Pamela J. Beery dated July 31, 1998: Staff recommendation
11.....	Letter from Jerry Offer to Glen Bolen dated May 3, 1998: Notice to petitioner that waiver of application deadline was granted
12.....	Resolution No. 98-42 approved by the Multnomah County Board of Commissioners on April 23, 1998: "No preference" comment on petition
13.....	Resolution No. 98-2632 adopted by the Metro Council on April 23, 1998: Granting waiver of deadline for filing application
14.....	Letter from Ray Valone, Metro Senior Regional Planner, to Mr. Jerry Offer dated April 10, 1998: Notice of Proposed Resolution to extend application filing deadline

- 15.....Fax from Jerry Offer to Glen Bolen dated April 8, 1998: Comments from Parks and Recreation Division for the City of Gresham
- 16.....Fax from Jerry Offer to Glen Bolen dated April 7, 1998: Comments from Bruce Hoyt, Engineering Development Supervisor for the City of Gresham
- 17.....Letter from Jerry Offer to Mike Burton, Executive Officer for Metro dated April 3, 1998: request for extension of deadline
- 18.....Comments from Michelle Gromger-Moore, Director of Business Services for the Gresham School District to Metro dated March 26, 1998: Comments from service provider
- 19.....Letter from Jerry Offer to Metro Growth Management Section dated March 26, 1998: Responses to Metro Code and map sets
- 20.....Letter from Glen Bolen to Mr. Don Hanson, Otak Inc. representing C.G.C. Inc., dated March 25, 1998: petition not complete
- 21.....Letter from Jerry Offer to Metro Growth Management Section dated March 23, 1998: Mailing list of adjacent property owners
- 22.....Letter from Jerry Offer to Metro Growth Management Section dated March 16, 1998: Petition for locational adjustment
- 23.....Letter from Don Hanson to Metro dated March 16, 1998: Notice of intent to annex after approval within 90 days
- 24.....Calculation of UGB Amendment Deposit dated March 16, 1998
- 25.....Letter from Gussie McRobert, Mayor for the City of Gresham, to Mike Burton: support for application for locational adjustment
- 26.....Maps submitted by applicant dated December 1, 1994
- 27.....Hearings Officer approval of new alignment for Butler Road dated June 8, 1992
- 28.....Significant Environmental Concern permit for new Butler Road alignment for Crystal Springs Country Club, Multnomah County Board of Commissioners package dated June 23, 1998
- 29.....Exceptions to Goals 3 and 14 for the Crystal Springs Country Club, Planning Commission dated July 19, 1989
- 30.....Planning Commission Decision
- 31.....Application to amend the comprehensive plan to grant exceptions to statewide planning goals

**EXHIBIT 3**

BEFORE THE METRO COUNCIL

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In the matter of the petition of C.G.C. Inc. for a ) FINDINGS,  
locational adjustment to add 19.6 acres ) CONCLUSIONS, AND  
to the Urban Growth Boundary southwest of the ) FINAL ORDER  
Persimmon Golf Course ) Contested Case No. 98-09

I. SUMMARY OF BASIC FACTS

The petitioners, C.G.C. Inc., filed an application for a locational adjustment to the Urban Growth Boundary on March 16, 1998. The petition requests that the Urban Growth Boundary be adjusted to include 19.6 acres of an Exclusive Farm Use zone in unincorporated Multnomah County. The proposed property is located within Urban Reserve No. 3 southwest of the Persimmon Golf Course.

The proposed property is primarily an unmanaged, wooded hillside area consisting of big leaf maple and alder trees. There is intermittent running water through the site and no standing water. The value of the area for wildlife habitat is limited because of past logging activities. The soils are classified as Class IV and Class VI soils.

In 1989 petitioners applied for an amendment to the Multnomah County Comprehensive Plan and an exception to the statewide planning goals for construction of a road outside the Urban Growth Boundary connecting Phases 5 and 6 of the Persimmon Golf Course Community development. At that time, Multnomah County conditioned development of the road based on the granting of non-access reservations to prohibit vehicular access from the road. In addition, other lands in the area and vicinity of the road were found to be unsuitable for agriculture. The approved road can be constructed without adjusting the UGB.

The petition requests inclusion of the proposed property in order to facilitate development of the Persimmon Golf Course Community Planned Unit Development, in particular to provide utilities under the approved road connecting Phase 5 and Phase 6. The 19.6 acres at issue here includes land that is accessible for residential housing development from the approved road.

The City of Gresham strongly supports the proposed locational adjustment and will provide all the public services necessary for development of the proposed property and lands within the UGB. The petitioner will apply for annexation to the City of Gresham within 90 days of approval of this petition. Multnomah County has expressed no preference on the application.

1 On August 12, 1998, Metro Hearings Officer Pamela J. Beery conducted a duly noticed public  
2 hearing; the record was left open until August 19, 1998. Information submitted after August 19 was  
3 accepted at the discretion of the Hearings Officer.

4  
5 II. SUMMARY OF APPLICABLE APPROVAL CRITERIA  
6

7 A locational adjustment to add land to the UGB must comply with the applicable criteria in Metro  
8 Code §3.01.035. The petitioner has the burden of showing that the locational adjustment meets all of the  
9 applicable criteria. The final decision of the Hearings Officer must be supported by substantial evidence in  
10 the record. The Metropolitan Service District concludes that the application for a locational adjustment  
11 complies with all the applicable criteria contained in §3.01.035 of the Metro Code governing locational  
12 adjustments based on the findings summarized below:

13  
14 1. The locational adjustment is for less than 20 acres. §3.01.035(b) is satisfied.

15 2. The petition is for more than 2 acres, therefore §3.01.035(f)(1) does not apply.

16 3. Based on review of the factors in Metro Code §3.01.035(c), see 5-9 below, the proposed  
17 adjustment to the Urban Growth Boundary is superior to the existing boundary, therefore §3.01.035(f)(2) is  
18 satisfied.

19 4. The petition includes all contiguous properties that are available for urban development based  
20 on the approved road and adjacent land use activities, therefore §3.01.035(f)(3) is satisfied.

21 5. Approval of the petition will improve the net efficiency of public services to lands located  
22 within the UGB. In particular, an adjustment to the UGB including the proposed property will allow for  
23 public services to be constructed in coordination with the approved public right of way in order to facilitate  
24 development of Phase 6 of the Persimmon PUD. Without approval of the petition, Phase 6 of the PUD will  
25 not be able to develop. Alternative solutions for the provision of public services are unavailable or  
26 impracticable based on the steep slopes between Phase 5 and Phase 6 within the UGB. Therefore  
27 §3.01.035(c)(1) is satisfied.

28 6. Approval of the petition will facilitate needed development within the UGB based on the  
29 argument presented in 5, since inclusion of the proposed property within the UGB will allow public  
30 services to be extended to Phase 6 for development of residential houses. Therefore, §3.01.035(c)(2) is  
31 satisfied.

32 7. There will be no negative impact on regional transit corridors and no negative social, energy,  
33 environmental or economic consequences. Therefore, §3.01.035(c)(3) is satisfied.

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8. The Multnomah County Planning Commission has established that areas within the proposed locational adjustment petition that have soil types of Class IV are unsuitable for agricultural use based on steep slopes, the potential for erosion, and the lack of other adjacent agricultural activities. Therefore, §3.01.035(c)(4) is not applicable.

9. There are no surrounding agricultural activities. Therefore §3.01.035(c)(5) does not apply.

III. CONCLUSION

Based on the findings and conclusions adopted herein and on the public record in this matter, the Council hereby approves the petition in Contested Case 98-09.

DATED: \_\_\_\_\_

By Order of the Metro Council

By: \_\_\_\_\_

**EXHIBIT 4**

**LEGAL DESCRIPTION  
PERSIMMON UGB AMENDMENT  
September 25, 1998  
Revised October 8, 1998**

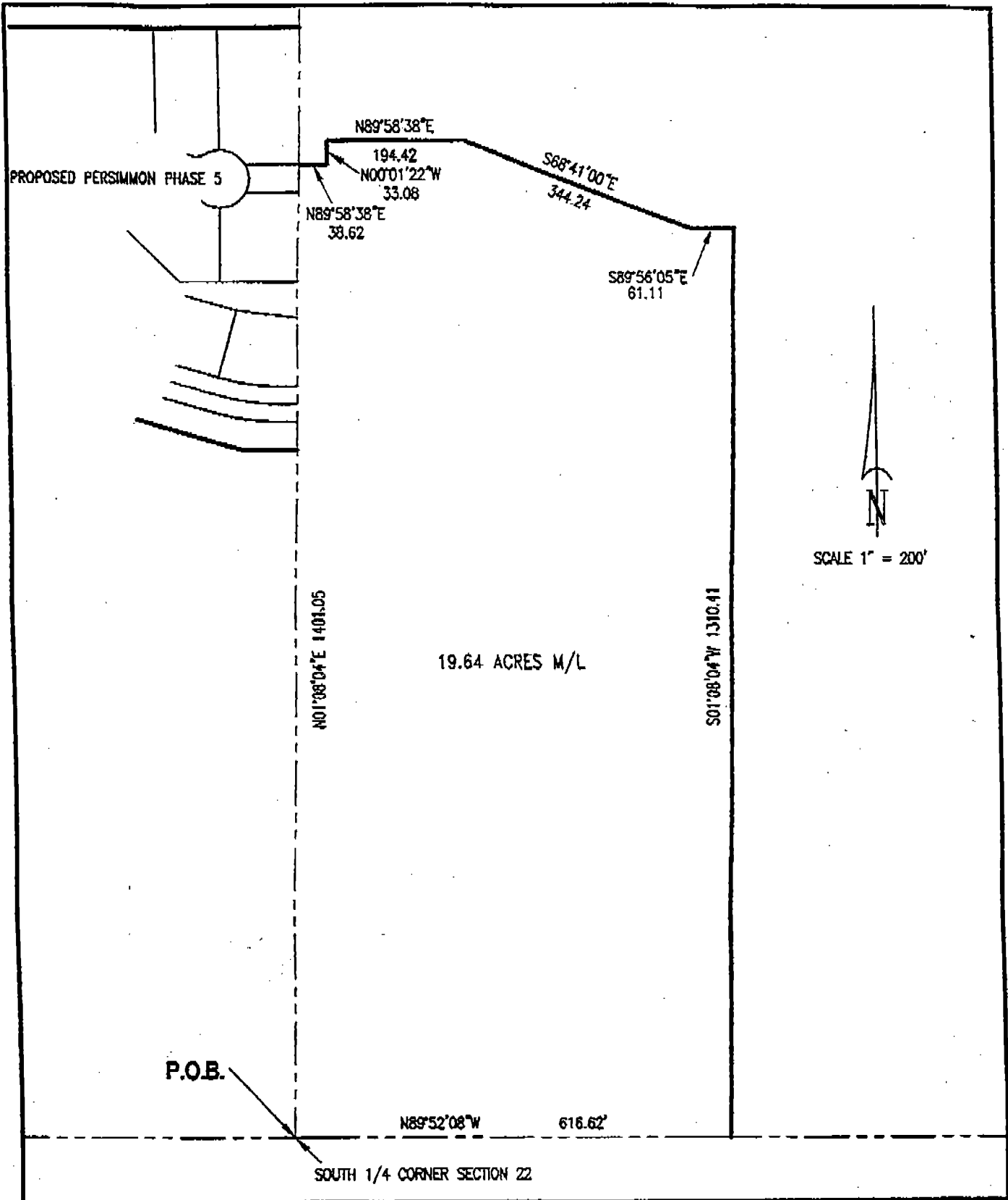
A parcel of land located in the southeast one-quarter of Section 22, Township 1 South, Range 3 East, W.M., City of Gresham, Multnomah County, Oregon and being more particularly described as follows:

Beginning at the south one-quarter of said Section 22, a Multnomah County brass cap found and running thence N.01°08'04"E., on the north-south centerline of said Section 22, a distance of 1401.05 feet; thence leaving said centerline and running N.89°58'38"E., a distance of 38.62 feet; thence N.00°01'22"W., a distance of 33.08 feet; thence N.89°58'38"E., a distance of 194.42 feet; thence S.68°41'00"E., a distance of 344.24 feet; thence S.89°56'05"E., a distance of 61.11 feet; thence S.01°08'04"W., a distance of 1310.41 feet to the south line of said Section 22; thence N.89°52'08"W., on said south line a distance of 616.62 feet to the Point of Beginning.

The parcel to which this description applies contains 19.64 acres, more or less.

Bearings are based on Survey Number 51690, Multnomah County Survey Records.





**VICINITY MAP**  
**PERSIMMON UGB AMENDMENT**

**otak**  
 Incorporated  
 surveyors  
 engineers  
 planners

17355 S.W. BOONES FERRY ROAD  
 LAKE OSWEGO, OREGON 97035  
 (503)635-3618 FAX (503)635-5595

## STAFF REPORT

### CONSIDERATION OF ORDINANCE NO. 98-778 APPROVING URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENT CASE 98-9: C.G.C. PERSIMMON, AND ADOPTING HEARING OFFICER'S REPORT INCLUDING FINDINGS AND CONCLUSIONS

---

Date: October 9, 1998

Presented by: Pamela J. Beery, Hearings Officer  
Prepared by: Glen Bolen, Growth Management

#### PROPOSED ACTION

Adoption of Ordinance 98-778, approving *Case 98-9: C.G.C. Persimmon*, a locational adjustment to the urban growth boundary (UGB).

#### BACKGROUND AND ANALYSIS

On April 23, 1998, C.G.C. Inc. completed filing a petition for a 19.6-acre locational adjustment to the UGB for the purpose developing the site for residential use.

#### Proposal Description:

The 19.6-acre site is located in Multnomah County with the UGB as its western boundary, and the Clackamas, Multnomah County line as a southern boundary. The site is adjacent to and southeast of the Persimmon Golf Course. It consists of a portion of Tax Map/Lot 1S 3E 22 lot 400. The subject property is situated in the southwestern corner of a roughly 300-acre area zoned for Exclusive Farm Use by Multnomah County. Land to the west is zoned low density residential by the City of Gresham. Land to the south is zoned for rural residential use by Clackamas County. The CGC Persimmon property comprises the majority of land within Urban Reserve No. 3, which was designated by the Metro Council on March 6, 1997.

The petitioners propose to adjust the UGB for the purpose of developing the site with residential uses. The applicant intends for the property to be developed with 25 to 35 residential dwelling units. Multnomah County or the City of Gresham if the site is annexed, will make the final zoning determination. The City of Gresham has shown support for this locational adjustment.

#### Hearings Officer Recommendation and Proposed Findings

The Hearings Officer, Pamela J. Beery, conducted a public hearing at the Gresham City Hall Auditorium on August 12, 1998. She submitted a report and recommendation to Metro on September 18, 1998, recommending approval of the petition (Attachment B).

The criteria from Metro Code 3.01.035 include: 1) Locational adjustments shall not exceed 20 net acres; 2) The site can be served with public facilities and services in an orderly and economic manner, and the adjustment would result in a net improvement in their efficiency; 3) The amendment will facilitate needed development on adjacent existing urban land; 4) The environmental, energy, economic and social consequences of amending the UGB have been considered; 5) Designated agricultural lands will be retained unless land inside the UGB cannot be developed, or service provision to that would be impracticable; 6) The proposed use would be compatible with nearby agricultural

activities; 7) The proposed UGB location would be superior to the existing UGB location; and 8) The proposed adjustment must include all similarly situated contiguous land which could also be appropriately included within the UGB.

The Hearings Officer recommends approval of *Case 98-9: C.G.C. Persimmon* based upon the findings and conclusions in her report that:

- All application and noticing requirements are met.
- A public hearing was conducted according the requirements and rules of Metro Code 3.01.050 and 3.01.055.
- The criteria for a locational adjustment to the UGB contained in Metro Code 3.01.035 are met by the petitioner.

The Hearings Officer states in her report that criterion 5 is not applicable due to steep slopes, erosion prone soils, and current development patterns. The Metro Code states that this criterion is applicable when the petition contains class IV soils and is designated for farm or forest use by the applicable comprehensive plan. In her decision the Hearings Officer is making a determination of agricultural suitability. She further explains that if criterion 5 were applicable, this petition would satisfy the requirements based on other evidence in the record. Staff does not necessarily agree that the Metro Council should be making determinations of agricultural suitability. However, staff agrees with the Hearings Officer that this petition should be approved based on the record in this case.

The case record contains the petitioner submittals, Metro staff report, notification lists and the Hearing Officer's report. The complete record list is included as part of the Hearings Officer's report.






#### **BUDGET IMPACT**

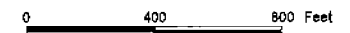
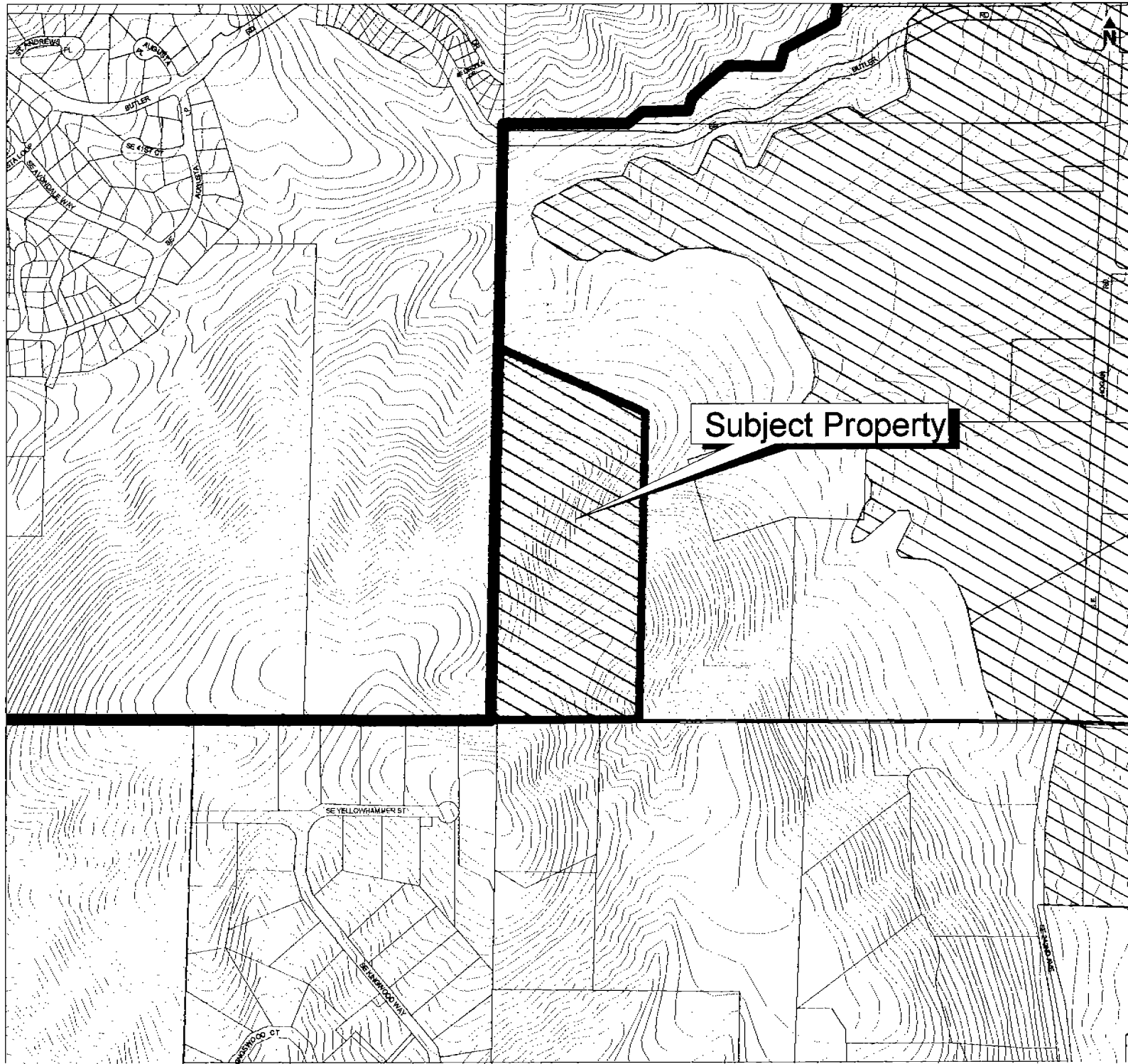
There is no budget impact from adopting this ordinance.

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# Attachment A 98-778

C.G.C. Persimmon  
Locational Adjustment

-  Subject Property
-  Urban Growth Boundary
-  Farm or Forest Zoning
-  Multnomah Clackamas County Line
-  Urban Reserve



1" = 600 feet



**METRO**

600 NE Grand Ave.  
 Portland, OR 97232-2736  
 503 797-1742 FAX 503 797-1909  
 Email: [drc@metro.dst.or.us](mailto:drc@metro.dst.or.us)

**ATTACHMENT B**

BEFORE THE METRO COUNCIL

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3	In the matter of the petition of C.G.C. Inc. for a )	FINDINGS,
4	locational adjustment to add 19.6 acres )	CONCLUSIONS, AND
5	to the Urban Growth Boundary southwest of the )	FINAL ORDER
6	Persimmon Golf Course )	<b>Contested Case No. 98-09</b>
7		
8		

I. SUMMARY OF BASIC FACTS

The petitioners, C.G.C. Inc., filed an application for a locational adjustment to the Urban Growth Boundary on March 16, 1998. The petition requests that the Urban Growth Boundary be adjusted to include 19.6 acres of an Exclusive Farm Use zone in unincorporated Multnomah County. The proposed property is located within Urban Reserve No. 3 southwest of the Persimmon Golf Course.

The proposed property is primarily an unmanaged, wooded hillside area consisting of big leaf maple and alder trees. There is intermittent running water through the site and no standing water. The value of the area for wildlife habitat is limited because of past logging activities. The soils are classified as Class IV and Class VI soils.

In 1989 petitioners applied for an amendment to the Multnomah County Comprehensive Plan and an exception to the statewide planning goals for construction of a road outside the Urban Growth Boundary connecting Phases 5 and 6 of the Persimmon Golf Course Community development. At that time, Multnomah County conditioned development of the road based on the granting of non-access reservations to prohibit vehicular access from the road. In addition, other lands in the area and vicinity of the road were found to be unsuitable for agriculture. The approved road can be constructed without adjusting the UGB.

The petition requests inclusion of the proposed property in order to facilitate development of the Persimmon Golf Course Community Planned Unit Development, in particular to provide utilities under the approved road connecting Phase 5 and Phase 6. The 19.6 acres at issue here includes land that is accessible for residential housing development from the approved road.

The City of Gresham strongly supports the proposed locational adjustment and will provide all the public services necessary for development of the proposed property and lands within the UGB. The petitioner will apply for annexation to the City of Gresham within 90 days of approval of this petition. Multnomah County has expressed no preference on the application.

1 On August 12, 1998, Metro Hearings Officer Pamela J. Beery conducted a duly noticed public  
2 hearing; the record was left open until August 19, 1998. Information submitted after August 19 was  
3 accepted at the discretion of the Hearings Officer.  
4

5 II. SUMMARY OF APPLICABLE APPROVAL CRITERIA  
6

7 A locational adjustment to add land to the UGB must comply with the applicable criteria in Metro  
8 Code §3.01.035. The petitioner has the burden of showing that the locational adjustment meets all of the  
9 applicable criteria. The final decision of the Hearings Officer must be supported by substantial evidence in  
10 the record. The Metropolitan Service District concludes that the application for a locational adjustment  
11 complies with all the applicable criteria contained in §3.01.035 of the Metro Code governing locational  
12 adjustments based on the findings summarized below:  
13

14 1. The locational adjustment is for less than 20 acres. §3.01.035(b) is satisfied.

15 2. The petition is for more than 2 acres, therefore §3.01.035(f)(1) does not apply.

16 3. Based on review of the factors in Metro Code §3.01.035(c), see 5-9 below, the proposed  
17 adjustment to the Urban Growth Boundary is superior to the existing boundary, therefore §3.01.035(f)(2) is  
18 satisfied.

19 4. The petition includes all contiguous properties that are available for urban development based  
20 on the approved road and adjacent land use activities, therefore §3.01.035(f)(3) is satisfied.

21 5. Approval of the petition will improve the net efficiency of public services to lands located  
22 within the UGB. In particular, an adjustment to the UGB including the proposed property will allow for  
23 public services to be constructed in coordination with the approved public right of way in order to facilitate  
24 development of Phase 6 of the Persimmon PUD. Without approval of the petition, Phase 6 of the PUD will  
25 not be able to develop. Alternative solutions for the provision of public services are unavailable or  
26 impracticable based on the steep slopes between Phase 5 and Phase 6 within the UGB. Therefore  
27 §3.01.035(c)(1) is satisfied.

28 6. Approval of the petition will facilitate needed development within the UGB based on the  
29 argument presented in 5, since inclusion of the proposed property within the UGB will allow public  
30 services to be extended to Phase 6 for development of residential houses. Therefore, §3.01.035(c)(2) is  
31 satisfied.

32 7. There will be no negative impact on regional transit corridors and no negative social, energy,  
33 environmental or economic consequences. Therefore, §3.01.035(c)(3) is satisfied.

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8. The Multnomah County Planning Commission has established that areas within the proposed locational adjustment petition that have soil types of Class IV are unsuitable for agricultural use based on steep slopes, the potential for erosion, and the lack of other adjacent agricultural activities. Therefore, §3.01.035(c)(4) is not applicable.

9. There are no surrounding agricultural activities. Therefore §3.01.035(c)(5) does not apply.

III. CONCLUSION

Based on the findings and conclusions adopted herein and on the public record in this matter, the Council hereby approves the petition in Contested Case 98-09.

DATED: \_\_\_\_\_

By Order of the Metro Council

By: \_\_\_\_\_

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BEFORE THE HEARINGS OFFICER OF THE  
METROPOLITAN SERVICE DISTRICT

In the matter of the petition of C.G.C. Inc. for a ) HEARINGS OFFICER'S  
locational adjustment to add 19.6 acres ) REPORT AND  
to the Urban Growth Boundary southwest of the ) RECOMMENDATION  
Persimmon Golf Course ) **Contested Case No. 98-09**

I. BASIC FACTS

1. Procedural History of Locational Adjustment. C.G.C. Inc. petitioned for the amendment of the METRO Urban Growth Boundary on March 16, 1998. Metro Associate Regional Planner, Glen Bolen, sent a letter on March 25 informing C.G.C. Inc. that the petition application was incomplete specifying the items that were missing, including a statement from the Multnomah County Board of Commissioners ("Board"), pursuant to Metro Code Section 3,01.033(h)(1). On April 3 petitioners mailed a letter requesting an extension of the April 8 deadline for complete locational adjustment applications. The Metro Council adopted Resolution No. 98-2632 on April 23, 1998 granting a waiver of the deadline for C.G.C. Inc.. Metro informed the petitioner that the waiver was granted and that the application was complete on April 3. Notice of the proposed amendment and date of the final hearing was published. A public hearing was conducted by Pamela J. Beery, Metro Hearings Officer, on August 12, 1998 at Gresham City Hall. The record was held open for 7 days and formally closed at 5:00PM on August 19, 1998. On August 20, petitioners submitted additional information for consideration and requested that it be included in the record. The Metro Hearings Officer requested a letter from petitioners establishing authority to accept the additional information. The additional information is hereby accepted and becomes part of the record pursuant to the reasons stated herein. The complete record of Contested Case No. 98-09 is attached.

2. Location and Zoning of Subject Property. The subject property is located in Multnomah County southwest of the Persimmon Golf Course. The western boundary of the property is coterminous with the Metro Urban Growth Boundary (UGB) and the City of Gresham. The southern boundary straddles the line between Clackamas and Multnomah Counties. The eastern and northern boundary is within Multnomah County and adjacent to the Persimmon Golf Course. The entire parcel is located within Urban Reserve



1 No. 3 which was designated by the Metro Council on March 6, 1997. The parcel is a 19.6 acre portion of  
2 the larger Tax Map/Lot 1S 3E 22 lot 400 which consists of roughly 300 acres zoned for Exclusive Farm  
3 Use. The land to the west of the subject property within the City of Gresham is zoned low density  
4 residential while land to the south is rural residential.

5  
6 3. Uses Adjacent to Subject Property. The Persimmon Golf Course is adjacent to and extends into the  
7 northern section of the property. In particular the twelfth hole comprises less than an acre of the northeast  
8 corner of Urban Reserve No. 3; Golf courses are allowed uses within an Exclusive Farm Use zone  
9 pursuant to ORS 215.283(2)(e) subject to the approval of the local governing body. Immediately east of  
10 the subject property is undeveloped forested area with two residential dwellings. Several relatively large  
11 undeveloped lots are located immediately to the south. A rural residential neighborhood development is  
12 located along SE Yellowhammer St. southeast of the property. West of the property includes property that  
13 is approved for development of the Persimmon Golf Course Community. Construction of Phase 5 and 6 of  
14 the PUD will occur directly to the west of the subject property. Phase 5 and Phase 6 are physically  
15 separated from one another by a steeply sloped area. This limits opportunities for providing utility and  
16 road service connections to Phase 6.

17  
18 4. Existing Uses and Site Description. The property is an undeveloped, steeply-sloped, wooded area of  
19 land. Vegetation consists of mostly big leaf maple and alder trees. The Metro Regional Land Information  
20 System (RLIS) identifies the soil class on the property as Class VI soils with a portion of Class IV soils in  
21 the northern and southern ends of the site. Because the subject site is predominantly a wooded hillside  
22 area, the suitability of the site for agricultural purposes is limited. The site was used for logging in the past.

23  
24 5. Proposed Uses for Subject Property. Petitioners propose to construct a road across the subject property  
25 connecting Phase 5 and Phase 6 of the Persimmon PUD. In addition, utility services will to Phase 6 will be  
26 similarly provided along or under the proposed road. If the locational adjustment is approved, utility  
27 services will be extended between Phase 5 and Phase 6 of the Persimmon PUD allowing for residential  
28 development along the road on the subject property. If the petition is approved, the petitioner will also  
29 request annexation to the City of Gresham within 90 days and the area will likely be zoned for low density  
30 residential use. The connecting road will be constructed on slopes of 15 to 25 percent. Exhibit 32, p. 24.

31  
32 6. Procedural History of Proposed Uses. In 1989 petitioners filed an application to amend the  
33 Comprehensive Plan to obtain exceptions to statewide planning goals to allow roads outside the UGB.

1 Exhibit 32. At that time, petitioners stated in their application that the "Loop Road," as the proposed road  
2 for the subject property was then denominated, would be constructed as a 50-foot wide right of way and  
3 classified as a rural local street. In addition, petitioners offered that a non-access reservation or equivalent  
4 would be dedicated to the county to prohibit vehicular access from the road. Exhibit 32, p.11. Alternative  
5 access routes considered by petitioners included "a plan for an inside-the-UGB alternative to the Loop  
6 Road and for a north-south road alternative inside the UGB (See Exhibits 11 and 12)." Exhibit 32, p.1.<sup>1</sup>

7 The "Loop Road" alternative reduces impact on lands with slopes of greater than 20 percent.  
8 Exhibit 32, p.25. The findings of compliance with Policy 2 of the Multnomah County Comprehensive Plan  
9 addressing off-site impacts for construction of the "Loop Road" stated:

10  
11 The Exception for the Loop Road does not create adverse off-site effects, because access  
12 from the Loop Road to the unincorporated area will be prohibited, the road is contained  
13 entirely within the Site, and it only abuts land in Gresham to the west. The Exception  
14 benefits land to the west by enabling access to it by a route that least cuts and fills land  
15 and has the least grade.

16  
17 The findings for Policy 36 indicate that "a second road must serve this area before it can be developed."  
18 Exhibit 32, p.26. Compliance with Goal 2 of the statewide planning goals indicates alternatives to the  
19 Loop Road within the UGB would likely violate city street grade standards and/or have sharp angles and  
20 substantial grading. Exhibit 32, p.31. The Loop Road was found to be compatible with adjoining land  
21 under Goal 2 because "it is set back from adjoining land by a large distance within which significant grade  
22 changes and existing trees will make the loop virtually undetectable from the south."

23 On June 23, 1992, the Board of County Commissioners approved a Significant Environmental  
24 Concern (SEC) Permit for the new realignment of Butler Road including the connecting road between  
25 Phase 5 and Phase 6 of the Persimmon PUD. (SEC 13-92). Approval of the SEC was conditioned by the  
26 Board as follows:

27  
28 The specific designs for the public road segments outside the UGB shall be conditioned  
29 upon receipt of corresponding approvals of the streets proposed within Gresham to which  
30 the roads will connect. Development of the roads outside the UGB shall not commence  
31 until associated approvals from Gresham are obtained or assured. Sufficient assurances

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<sup>1</sup> Petitioners failed to submit Exhibits 11 and 12 into the record despite the Hearings Officer's request for

1 of approval include a written statement from John Harris, or a Gresham City Official  
2 with similar responsibility, indicating that the road location is consistent with the City's  
3 plans for the roadway. Exhibit 28, p.1.

4  
5 Multnomah County indicated that the road could be constructed regardless of whether the property is  
6 brought within the UGB or not. Exhibit 11, p5.

7  
8 7. Availability of Services. The City of Gresham states that it will provide storm drainage, water, sanitary  
9 sewer and transportation services in a logical fashion provided that: (1) stormwater is mitigated at rates of  
10 2-100 year storm events, (2) additional storage and pumping facilities are provided, (3) pipeline  
11 improvements are made to the trunk line, and (4) the system provides for two access points. Both the Parks  
12 and Recreation Department and School District for the City of Gresham indicated that the proposed  
13 development would not have a negative impact. The City of Gresham has also indicated that it will not  
14 provide utility services outside city limits unless the proposed locational adjustment is approved.

15  
16 8. Record of the Hearing. The testimony may be summarized as follows:

17  
18 (a) *Staff Report*. Associate Regional Planner, Glen Bolen, presented findings contained in his staff  
19 report. Exhibit 11. Mr. Bolen also indicated that his staff report did not include consideration of  
20 information that was submitted on the day of the hearing.

21 (b) *Petitioner*. The petitioner, represented by John Junkin , attorney from Bullivant, Houser and  
22 Bailey, introduced several items to be entered into the record including Exhibits 6, 7 and 9. The petitioner  
23 then presented testimony about the phasing of development and described the history of approval of the  
24 development. Jerry Offer of OTAK Inc. representing C.G.C., Inc. testified that Phases 1-4 are completed  
25 and petitioners are currently working on Phase 5. The development of the subject parcel for residential  
26 purposes was not considered at the time Multnomah County and the City of Gresham approved the larger  
27 PUD plan. Adjacent property to the east of subject property is not really an agricultural piece but rather a  
28 steep wooded area. Connection of Phase 5 and 6 of the development within the UGB is not possible  
29 because of the steepness and soil instability of lands located between Phase 5 and Phase 6. After petitioner  
30 realized the expense in constructing the proposed loop road, they considered the possibility of constructing  
31 residential houses to make the project more cost effective. The project currently has no access to  
32 Yellowhammer Road. Petitioner addressed the Metro Code criterion requiring that property be less than 20

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relevant approvals relating to the road in question.

1 acres indicating that the portions of the urban reserve not included in the petition are either occupied by the  
2 existing golf course or are otherwise too steep for reasonable access for the purposes of residential  
3 construction.

4 In response to questions from the Hearings Officer, the petitioner indicated that no plans for  
5 utilities had been developed but that a future street plan approval was granted. An issue remained as to  
6 whether or not the City of Gresham would require connection of Phase 6 of the development with  
7 Yellowhammer Road. Petitioner testified that the grade requirements for local streets were 12 or 15  
8 percent. John Hession of OTAK Inc., representing C.G.C. Inc., indicated that extension from Phase 5 to  
9 Phase 6 would be required by the city's master plan. Brian Lessler of C.G.C. Inc. then testified addressing  
10 the status of property just south of the proposed locational adjustment. He described the property as a rural  
11 subdivision including 40-45 lots with access from Borges Rd. to the south and east terminating at the top of  
12 the hill. The lots are largely small acreage, single-family parcels. Mr. Lessler has been involved with the  
13 development since its inception and testified that there was considerable study done concerning access.  
14 The steep, wooded area between Phase 5 and 6 is intended to be preserved as a green belt area with grades  
15 of at least 2:1, and sometimes exceeding 30 to 40%. East of the subject property, access is limited by the  
16 headwaters of Hogan Creek which creates a steep ravine of several hundred feet. The only way to provide  
17 access is via the proposed loop road. John Junkin testified that approval by the County was for the road  
18 only and went on to address the specific criteria necessary for approval under the Metro Code including:

- 19
- 20 (i) Metro Code 3.01.035(c)(1). The City of Gresham's response to the request for comment  
21 concerning the locational adjustment, in particular Bruce Hoyt's comment as Supervisor  
22 of the Engineering Department that the petition would have no efficiency impact, was not  
23 the City's official position and that new evidence addressed that issue and established that  
24 approval of the locational adjustment was necessary for the City of Gresham to allow  
25 utility services underneath the approved road.
- 26 (ii) Metro Code 3.01.035(c)(2). Services from the City of Gresham would not be provided  
27 unless the locational adjustment is approved. Therefore development of Phase 6, property  
28 within the UGB, requires this approval.
- 29

30 Petitioner went on to discuss how the Metro Code regulations governing density provided in the  
31 Metro staff report were not applicable because that criterion concerns only major and legislative  
32 adjustments to the UGB and not locational adjustments such as this one.

33

- 1 (iii) Metro Code 3.01.035(c)(4). Retention of the lands as agricultural lands would preclude  
2 development of Phase 6 and that alternative routes for access are infeasible or  
3 impracticable.
- 4 (iv) Metro Code 3.01.035(f)(2). The process of considering the criteria of Metro Code  
5 3.01.035(c) as addressed here leads to the conclusion that the locational adjustment must  
6 be approved based on the new information.

7  
8 Finally, Rob Fussel of the Private and Economic Development Department of the City of Gresham testified  
9 in full support of the petition. He indicated that no specific approvals have been given by the City or  
10 County for utilities other than the future street plan.

11 (c) *Metro Staff*. Mr. Bolen later relayed a conversation with Clackamas County planning director  
12 Doug McClean indicating that the land south of the property included approved rural roads and that the  
13 neighbors had formed an LID. A conversation with Multnomah County indicated that there was no  
14 specific plat for the subject property.

15 (d) *Hearings Officer*. The Hearings Officer emphasized the need for submitting additional  
16 information that would be necessary to determine what alternative designs were considered and whether  
17 earlier approvals had been given when the larger PUD was considered.

18 The Hearings Officer closed the hearing, allowing the petitioner to submit additional arguments  
19 within 7 days, closing the record on August 19, 1998 at 5:00 p.m.

20  
21 II. ADDITIONAL RECORD SUBMITTAL

22  
23 Following close of the record on August 19, legal counsel for the petitioner submitted the  
24 requested documents relating to earlier County approvals affecting the property. These materials were  
25 received on August 20, 1998. Despite the late submittal, the Hearings Officer adopts the legal reasoning  
26 contained in counsel for the petitioner's letter of August 26, 1998 and concludes that no party's substantial  
27 rights would be prejudiced by the inclusion of the additional materials in the record. Therefore, the  
28 materials are hereby accepted and included in the record herein.

29  
30 III. APPLICABLE APPROVAL CRITERIA AND RESPONSIVE FINDINGS

31  
32 Metro Code section 3.01.035 contains the approval criteria for locational adjustments. The  
33 petitioner has the burden of proof to establish that the applicable criteria have been met. The statewide

1 goals do not apply directly to applications for locational adjustments. Metro Code 3.01.035(a).<sup>2</sup> The final  
2 decision is based on whether substantial evidence in the record supports approval or denial of the petition.

3  
4 **1. Locational adjustments shall not exceed 20 net acres. [3.01.035(b)].**

5  
6 The proposed locational adjustment is for 19.6 acres and therefore, the petition complies with this  
7 criterion. The Hearings Officer adopts staff's proposed findings on this criterion.

8  
9 **2. An addition of land to make the UGB coterminous with the nearest property lines may be**  
10 **approved without consideration of the other conditions in this subsection if the adjustment will add a**  
11 **total of two gross acres or less, the adjustment would not be clearly inconsistent with any of the**  
12 **factors in subsection (c) this section, and the adjustment includes all contiguous lots divided by the**  
13 **existing UGB. [3.01.035(f)(1)].**

14  
15 The proposed locational adjustment is for 19.6 acres, a portion of a single tax lot. No continuous  
16 lots are divided by the existing UGB. This criterion is permissive, not mandatory. No additional lands  
17 should be included in the application based on the findings in Section III (4) below, nor is a separate  
18 independent adjustment request for less than two gross acres applicable here. This criterion is met.

19  
20 **3. For all other additions, the proposed UGB must be superior to the UGB as presently**  
21 **located based on a consideration of the factors in subsection (c) of this section. [3.01.035(f)(2)].**

22  
23 Petitioner argues that a review of the factors in subsection (c) of the Metro Code governing  
24 regulation of locational adjustments establishes that approval of the petition for a locational adjustment will  
25 result in a UGB that is superior to the existing UGB. Exhibit 7, p.7.

26 The Hearings Officer finds that a discussion of criteria in the Metro Code 3.01.035(c)(1-5)  
27 presented in 5-9 below indicates that the proposed locational adjustment creates a UGB that is superior to  
28 the existing UGB. Therefore petitioners have met their burden in complying with this criterion.

29  
30 **4. The proposed UGB amendment must include all similarly situated contiguous land that**

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<sup>2</sup> The Metro Code both procedurally and substantively adopted a complete process for considering amendments to Metro's UGB including the statewide goals. League of Women Voters v. Metro Service Dist., 17 Or. LUBA 949, 968 (1989).

1 could also be appropriately included within the UGB as an addition based on the factors above.

2 [3.01.035(f)(3)]

3  
4 The proposed locational adjustment is for 19.6 acres. The subject property is located in Urban  
5 Reserve No.3, an area of approximately 22 acres of Tax Lot 400, consisting of approximately 300 acres  
6 total. Exhibit 11, p.1-2.

7 A majority of Tax Lot 400 not included in the petition has been developed as part of the  
8 Persimmon Golf Course. Exhibit 10, Aerial Photo 1997. Immediately east of the subject property within  
9 Tax Lot 400 is a wooded area of land that is undeveloped except for two small residential homes. A small  
10 road extends from SE Hogan providing access to the two residential houses. The remaining land in Tax  
11 Lot 400 is designated as Urban Reserve No.3. Land not included in the petition but located in Urban  
12 Reserve No. 3 consists in part of portions of the Persimmon Golf Course that overlap with the Urban  
13 Reserve, in particular the western end of the 12<sup>th</sup> hole of the golf course, the associated rough and a path  
14 for golf carts. Exhibit 10, Aerial Photo 1997. The other part of the remaining land is a wooded hillside  
15 area with some slopes that exceed 25%.

16 Petitioner argues that the proposed road allows for a development pattern of residential housing  
17 that is limited to the design plan presented on the master plan map with an area of less than 20 acres.  
18 Exhibit 23, Figure 3 Master Plan Development Map. Petitioner contends that the remaining land within the  
19 urban reserve area can not be developed because it is either part of the Persimmon Golf Course or consists  
20 of steep slopes that would otherwise prevent construction of residential homes.

21 Metro staff found that the proposed locational adjustment complied with this criterion. In  
22 particular, staff noted that the remaining 2.67 acres of the urban reserve area not included in the petition  
23 "may or may not be developable." Exhibit 11, p.4. Staff notes that the remaining lands could be proposed  
24 as open space or the plan could be reconfigured to provide access to the undeveloped portions of the urban  
25 reserve. Staff found that "considering only the portion of Tax Lot 400 that can be served by the proposed  
26 roadway for this amendment is sufficient." Exhibit 11, p.4. Staff notes that the purpose of this criterion is  
27 to prevent carving out a piece of land 20 acres or less in order to qualify for a locational adjustment and to  
28 minimize subsequent petitions for locational adjustments on adjacent land that should have been  
29 considered together with the original proposal.

30 The Hearings Officer finds that the proposed locational adjustment is for less than 20 acres and  
31 that there are no similarly situated lands that are suitable for urban development that have not been  
32 included in the petition. Therefore, the petitioner has presented substantial evidence to support a finding  
33 that the petition complies with this criterion.

1  
2           **5. Orderly and economic provision of public facilities and services. A locational adjustment**  
3 **shall result in a net improvement in the efficiency of public facilities and services, including but not**  
4 **limited to water, sewerage, storm drainage, transportation, parks and open space in the adjoining**  
5 **areas within the UGB. Any area to be added must be capable of being served in an orderly and**  
6 **economical fashion. [3.01.035(c)(1)]**  
7

8           This criterion creates a two-part test: (1) the locational adjustment area must be capable of being  
9 served in an orderly an economical fashion and (2) the locational adjustment must result in a net  
10 improvement in the efficiency of public facilities and services to areas already within the UGB.

11           Under Metro Code 3.01.033(h) a petitioner is required to obtain a written statement from the  
12 governing body of each city or county with land use jurisdiction over the area. The solicited comments  
13 indicate that the City of Gresham will provide services in an orderly and economic fashion upon  
14 annexation. Exhibit 17. The Engineering Supervisor, Bruce Hoyt, expressed a neutral opinion on the  
15 petition and indicated approval would have no efficiency impact. Comments indicated approval would be  
16 possible provided: (1) stormwater runoff is mitigated at rates 2-100 year storm event, (2) additional  
17 storage and pumping facilities are provided, (3) pipeline improvements are made to the trunk line, and (4)  
18 the system provides two access points. Exhibit 17. Petitioners at the public hearing submitted additional  
19 oral and written testimony to clarify comments by the City of Gresham. Bob Fussel testified and submitted  
20 a letter supporting the proposed locational adjustment and indicating that orderly and efficient servicing of  
21 Phase 6 of the Persimmon Community PUD required that lands be brought with the UGB. The City of  
22 Gresham's position was based on existing policy and practice not to expand services outside the UGB. The  
23 Multnomah County Board of Commissioners expressed a "no preference" comment on the petition.  
24 Exhibit 13.

25           An exception to the statewide planning goals and an amendment of the Multnomah County  
26 Comprehensive Plan was approved for construction of the loop road. Exhibit 31. The approval of the road  
27 was allowed subject to a limitation that "non-access" reservations along the "loop road" precluding access  
28 to EFU property be established and approved by the Engineering Services Division. Exhibit 31, p.2. In  
29 1992, Multnomah County approved a Significant Environmental Concern (SEC) permit for expansion of  
30 the boundary for the already approved golf course. This permit was conditioned upon a finding that  
31 designs for the public road outside the UGB be coordinated with approvals from the City of Gresham.  
32 Recent correspondence with Multnomah County established that the road could be constructed independent  
33 of any amendment to the UGB. Exhibit 11, p.5.



1           Petitioners argue that it is necessary to construct a public road through the subject site in order to  
2 connect Phases 5 and 6 of the Persimmon Community PUD. To meet the standards of maximum road  
3 grade and construction standards for the City of Gresham and Multnomah County the proposed road plan is  
4 the only feasible and practicable alternative. Petitioners originally stated that efficiency would be  
5 increased because additional dwellings would be developed along the road utilizing the underlying utility  
6 services. Exhibit 20, p.3. Metro staff rejected that argument and additional information was later provided  
7 by petitioners showing that efficiency would be improved because Phase 6 of the development would not  
8 otherwise be able to develop in an orderly and economical fashion unless services are provide via the  
9 proposed loop road.

10           As to the issue of providing utilities between Phase 5 and 6, petitioner presented written and oral  
11 testimony that the open space area between Phase 5 and Phase 6 consists of steep slopes preventing utility  
12 services from extending through this area. Exhibit 7, p.3. Petitioners submit that although it is technically  
13 feasible to place utilities in this area, it would be impractical because of the limitations on vehicular access  
14 for construction and maintenance of the utility lines. Exhibit 9, p.1-2. Petitioners cite specifically to the  
15 Gresham Community Development Code and the City of Gresham Public Works Design Standards that  
16 require "unobstructed vehicle access be provided to publicly owned [utilities] for maintenance purposes."  
17 Exhibit 9, p.2. In addition to access to the utilities, easements would be required including a minimum 45-  
18 foot wide swath that would significantly impact the wooded hillside area that is being preserved as open  
19 space. This new information is all that has been considered to date in terms of utility planning.  
20 Apparently the City and the County in approving this portion of the Persimmon Community PUD and the  
21 approved road outside the UGB never required any consideration of how utilities could be provided.  
22 Exhibit 9, p.1.

23           The connecting road between Phase 5 and Phase 6 of the Persimmon PUD is an approved road  
24 that can be constructed regardless of whether the petition for a locational adjustment is approved or not.  
25 Although development of houses is inconsistent with the conditions for which the road was approved, it is  
26 up to the City and the County to coordinate in their planning activities. Under ORS 195.025 each county is  
27 responsible for "coordinating all planning activities affecting land uses within the county, including  
28 planning activities of the county, cities, special districts and state agencies, to assure an integrated  
29 comprehensive plan for the entire area of the county." In addition each local government and special  
30 district that provides services within the UGB is required to enter into an urban services agreement  
31 addressing the provision of services in the future, assigning roles and responsibilities and defining  
32 necessary transitions in provision of urban services. ORS 195.065. Given these statutory requirements for  
33 coordination it is of concern that petitioners and the City have reached a point in the planning process

1 where no consideration has been given to utility provisions and that the suggested solution requires  
2 extension of a road and associated utility services outside the UGB and is inconsistent with an earlier  
3 County approval. The City support for developing these lands is in direct conflict with the County's  
4 conditioning of approval of the road 10 years ago prohibiting access from the road to prevent off-site  
5 impacts.

6 Despite the apparent lack of utility planning and coordination between the City of Gresham and  
7 Multnomah County, the issue here is whether or not it is necessary to locate utilities under or adjacent to  
8 the proposed loop road and outside the UGB in order to facilitate development of Phase 6 lands within the  
9 UGB. Because the facts presented in this case indicate that the only reasonable and practicable alternative  
10 for the provision of utility facilities is through the loop road connecting Phase 5 and 6, the Hearings Officer  
11 finds that the petition complies with this criterion. Later proceeding before the County or City of Gresham  
12 will be the mechanism to address the other issues identified in the findings on this criterion.

13  
14 **6. Maximum efficiency of land uses. The amendment shall facilitate needed development on**  
15 **adjacent existing urban land. Needed development, for the purposes of this section, shall mean**  
16 **consistent with the local comprehensive plan and/or applicable regional plans. [3.01.035(c)(2)]**

17  
18 Petitioner essentially presents the same argument as in the preceding criterion, that approval of the  
19 petition will facilitate development of Phase 6 of the Persimmon PUD.

20 Needed development is specifically defined as development that is consistent with local  
21 comprehensive plans and applicable regional plans. The only evidence presented by petitioner on this  
22 issue is a letter from the City of Gresham's Community Development Department. That letter specifically  
23 addresses the location of Phase 6 within the Hillside Physical Constraint District and whether or not the  
24 proposed development will meet the density requirements of the Metro Regional Framework Plan. The  
25 evidence presented does not address the broader question of overall compliance of Phase 6 with all aspects  
26 of both the local and regional plans. However, it is implicit in the earlier PUD approvals that the County  
27 made such a finding in order to allow the development to move forward<sup>3</sup>.

28 It is of concern here that the need for utility services for lands inside the UGB which can only be

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<sup>3</sup> In Alliance for Responsible Land Use in Deschutes County v. Deschutes County, the Oregon Court of Appeals held a local government's decision constitutes an interpretation of local legislation, and is therefore subject to deference, if that decision "suffices to identify and explain in writing the decisionmaker's understanding of the meaning of the local legislation." Alliance for Responsible Land Use in Deschutes County v. Deschutes County, 149 Or. App. 259, 266 (1997) citing Larson v. Wallowa County, 116 Or. App. 96 (1992) and Weeks v. Tillamook County, 117 Or. App. 449, 452-53 (1992).

1 met by utilizing lands outside it has been essentially created by the developer's own design lay out for the  
2 Persimmon Community PUD as dictated by earlier land use approvals. This could have the indirect effect  
3 of potentially undermining urban service boundary policies.

4 However, based on the evidence presented in this record, the Hearings Officer finds that the  
5 proposed locational adjustment will facilitate development of lands within the UGB and is therefore in  
6 compliance with this criterion.

7  
8 **7. Environmental , energy, economic and social consequences. Any impact on regional**  
9 **transit corridor development must be positive and any limitations imposed by the presence of hazard**  
10 **or resource lands must be addressed. [3.01.035(c)(3)]**

11  
12 The site is a largely wooded area consisting of unmanaged big leaf maples and alders. There are  
13 intermittent drainage-ways which pass through the site, but there is no standing water. Exhibit 11, p.6.  
14 Because of logging activities in the past the wildlife habitat is of low to moderate quality. The nearest  
15 transit corridor is Powell Boulevard which is several miles away.

16 Petitioner argues that the proposed locational adjustment will not have any negative  
17 environmental, energy, economic or social impacts. No evidence was submitted to the contrary. Metro  
18 staff, based on the information submitted by the petitioner, found that this criterion was satisfied.

19 The Hearings Officer agrees with Metro staff that based on the evidence submitted by petitioner,  
20 the locational adjustment petition is in compliance with the requirements of this criterion.

21  
22 **8. Retention of agricultural land. When a petition includes land with Agricultural Class I-IV**  
23 **soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be**  
24 **approved unless it is factually demonstrated that:**

25  
26 The subject property is a mix of Class VI and Class IV soils. Exhibit 10, Soil classification and  
27 slope map. The area is zoned an Exclusive Farm Use zone by Multnomah County. Petitioners argue that  
28 the agricultural suitability of the site is limited because the area is predominantly a wooded hillside making  
29 the slopes too severe for cultivation or pasturing of animals. In addition there are no nearby agricultural  
30 activities that can utilize this area at some point in the future.

31 The original approval of the "loop road" in 1989 by the Multnomah County Planning Commission  
32 ("Planning Commission") addressed the issue of agricultural lands in the area. In particular, the Planning  
33 Commission found that the development was consistent with County Policy #9 regulating agricultural land

1 areas for the following reasons: (1) the loop road is located on land sloped 10 to 25 percent creating  
2 erosion potential that otherwise prohibits use of the area for tilling, (2) most of the loop road will be built  
3 on Class VI soils, and (3) lot sizes and land uses to the south make it unlikely that the land used for the  
4 loop road could be combined with other land for a farm or forest purpose. In addition the Planning  
5 Commission found that the policies of Goal 3 of the statewide planning goals should not apply to the Loop  
6 Road for the following reasons: (1) the loop road is isolated from the surrounding area by steep slopes  
7 making it unlikely that it will be combined with other areas for agricultural purposes, (2) the steep slopes in  
8 the area make it unsuitable for tilling, (3) the land uses to the south are primarily residential residences  
9 making it unlikely that the area will be combined with other land to provide a large enough area for an  
10 agricultural use.

11  
12 **(A) Retention of any agricultural land would preclude urbanization of an adjacent area**  
13 **already inside the UGB, or**  
14

15 Metro staff concluded that the petitioners failed to present sufficient evidence indicating that  
16 retention of the subject property for agricultural purposes would preclude development of lands within the  
17 UGB. The petitioner argues that the retention of this area for agricultural purposes would preclude  
18 urbanization of Phase 6 of the Persimmon PUD because the City of Gresham would not otherwise permit  
19 extension of utilities along the proposed loop road unless it is brought within the UGB.

20 The proposed loop road is within an area that is designated as an EFU zone. The area has been  
21 designed to include sufficient lands for the construction of residential homes as well as for inclusion of the  
22 loop road area thereby allocating Class IV soils for development. While inclusion of the additional lands to  
23 the east of the loop road for residential housing consumes areas containing Class IV soils the record  
24 establishes that these areas are not otherwise suitable for agricultural purposes.

25 The Hearings Officer finds that because those areas containing Class IV soils have been found by  
26 the County to be unsuitable for agricultural purposes, because the County granted an exception to Goal 3 of  
27 the statewide planning goals, those areas are not agricultural lands that were otherwise intended to be  
28 protected from development under this criterion. Therefore, the proposed locational adjustment is in  
29 compliance with this criterion.

30  
31 **(B) Retention of the agricultural land would make the provisions of urban services to an**  
32 **adjacent area inside the UGB impracticable. [3.01.035(c)(4)]**  
33

1 The same argument presented by petitioner applies to this criterion. As such the Hearings Officer  
2 finds that retention of those areas designated as Class IV soils within the proposed locational adjustment  
3 would make the provision of urban services to Phase 6 impracticable. The application is therefore in  
4 compliance with this criterion.

5  
6 **9. Compatibility of proposed urban uses with nearby agricultural activities. When a**  
7 **proposed adjustment would allow an urban use in proximity to existing agricultural activities, the**  
8 **justification in terms of all factors of this subsection must clearly outweigh the adverse impact of any**  
9 **incompatibility. [3.01.35(c)(5)]**

10  
11 Aerial photography of the area indicates that there are no agricultural activities in the nearby  
12 areas. Exhibit 10, Aerial Photo 1997. Because there are no agricultural activities in the nearby areas, the  
13 Hearings Officer finds that this criterion does not apply.

14  
15 III. CONCLUSION AND RECOMMENDATION

16  
17 The Hearings Officer finds that the proposed locational adjustment should be approved because:

18  
19 1. The proposed locational adjustment of the UGB will result in a net improvement of the  
20 efficiency of public services to lands within the Urban Growth Boundary by providing utilities to Phase 6  
21 of the Persimmon Golf Course Community PUD via the public right of way for the loop road connecting  
22 Phase 5 and Phase 6.

23 2. The provision of utilities allows for needed development of Phase 6.

24 3. Pursuant to the reasons presented in 1 and 2, the extension of the UGB to include lands  
25 designated in the petition will result in a more superior Urban Growth Boundary.

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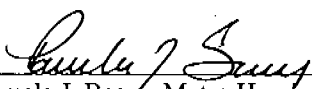
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1  
2 IV. DECISION  
3

4 Based on the findings and conclusions adopted herein and on the public record in this matter, the  
5 Hearings Officer finds the petition in Contested Case 98-09 should be approved.  
6

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8  
9 DATED: September 18, 1998  
10

11  
12 Respectfully Submitted By:

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16 Pamela J. Beery, Metro Hearings Officer  
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30 metro/cgc/cgcreport2  
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RECORD IN THE MATTER OF  
CONTESTED CASE NO. 98-09  
(C.G.C. Inc.)

<u>Exhibit No.</u>	<u>Subject Matter</u>
1.....	Letter from John M. Junkin to Pamela J. Beery dated August 26, 1998: Response to request for authority to allow evidence submitted after the record closed
2.....	Letter from Pamela J. Beery to John Junkin dated August 21, 1998: Request for authority to allow evidence submitted after the record closed
3.....	Letter from John M. Junkin to Pamela J. Beery dated August 20, 1998: Submission of additional information
4.....	Notice of Hearing dated August 12, 1998
5.....	Letter from Terry Vaderkooy, Development Planning Manager from the City of Gresham, and Letter from Rob Fussel, Private & Economic Development for City of Gresham to Pamela J. Beery dated August 12, 1998: Compliance with densities in Metro's Regional Framework Plan
6.....	Letter from John M. Junkin to Pamela J. Beery dated August 12, 1998: Additional support addressing review criteria
7.....	Audiotape of Hearing for Metro Urban Growth Boundary Locational Adjustment
8.....	Letter from John Hession and Jerry Offer, Otak Inc. representing C.G.C. Inc., to Pamela J. Beery dated August 11, 1998: Utility Feasibility Analysis
9.....	Additional maps prepared by Metro dated August 3, 1998
10.....	Staff Report from Metro Associate Regional Planner, Glen Bolen, to Pamela J. Beery dated July 31, 1998: Staff recommendation
11.....	Letter from Jerry Offer to Glen Bolen dated May 3, 1998: Notice to petitioner that waiver of application deadline was granted
12.....	Resolution No. 98-42 approved by the Multnomah County Board of Commissioners on April 23, 1998: "No preference" comment on petition
13.....	Resolution No. 98-2632 adopted by the Metro Council on April 23, 1998: Granting waiver of deadline for filing application
14.....	Letter from Ray Valone, Metro Senior Regional Planner, to Mr. Jerry Offer dated April 10, 1998: Notice of Proposed Resolution to extend application filing deadline

- 15.....Fax from Jerry Offer to Glen Bolen dated April 8, 1998: Comments from Parks and Recreation Division for the City of Gresham
- 16.....Fax from Jerry Offer to Glen Bolen dated April 7, 1998: Comments from Bruce Hoyt, Engineering Development Supervisor for the City of Gresham
- 17.....Letter from Jerry Offer to Mike Burton, Executive Officer for Metro dated April 3, 1998: request for extension of deadline
- 18.....Comments from Michelle Gromger-Moore, Director of Business Services for the Gresham School District to Metro dated March 26, 1998: Comments from service provider
- 19.....Letter from Jerry Offer to Metro Growth Management Section dated March 26, 1998: Responses to Metro Code and map sets
- 20.....Letter from Glen Bolen to Mr. Don Hanson, Otak Inc. representing C.G.C. Inc., dated March 25, 1998: petition not complete
- 21.....Letter from Jerry Offer to Metro Growth Management Section dated March 23, 1998: Mailing list of adjacent property owners
- 22.....Letter from Jerry Offer to Metro Growth Management Section dated March 16, 1998: Petition for locational adjustment
- 23.....Letter from Don Hanson to Metro dated March 16, 1998: Notice of intent to annex after approval within 90 days
- 24.....Calculation of UGB Amendment Deposit dated March 16, 1998
- 25.....Letter from Gussie McRobert, Mayor for the City of Gresham, to Mike Burton: support for application for locational adjustment
- 26.....Maps submitted by applicant dated December 1, 1994
- 27.....Hearings Officer approval of new alignment for Butler Road dated June 8, 1992
- 28.....Significant Environmental Concern permit for new Butler Road alignment for Crystal Springs Country Club, Multnomah County Board of Commissioners package dated June 23, 1998
- 29.....Exceptions to Goals 3 and 14 for the Crystal Springs Country Club, Planning Commission dated July 19, 1989
- 30.....Planning Commission Decision
- 31.....Application to amend the comprehensive plan to grant exceptions to statewide planning goals