

BEFORE THE METRO COUNCIL

TO ADOPT THE HEARINGS OFFICER FINDINGS) ORDINANCE NO. 96-638  
CONCLUSIONS AND FINAL ORDER, DENYING )  
URBAN GROWTH BOUNDARY CONTESTED ) Introduced by Mike Burton,  
CASE 95-2: KNOX RIDGE ) Executive Officer

WHEREAS, Metro received a petition for a locational adjustment for Tax Lot 2600 in Township 1 N., Range 4 W., Section 36, located in the City of Forest Grove; and

WHEREAS, The Urban Growth Boundary bisects the property along the floodplain, as shown in Exhibit "A" attached here; and

WHEREAS, The Petitioner amended the petition to qualify the locational adjustment as a natural area locational adjustment, as shown in Exhibit "B" attached here, identifying the proposed adjustment area identified as "Potential Regional Greenway" in the Metro Greenspaces Master Plan; and

WHEREAS, Metro held a hearing to consider the petition, conducted by an independent hearings officer which began on June 7, 1995, and was continued once to July 20, 1995, and continued a second time to September 21, 1995; and

WHEREAS, The Petitioner requested that the record be re-opened on October 30, 1995, which was granted by the Hearings Officer, with the record closing on December 22, 1995; and


WHEREAS, The Hearings Officer submitted his Report and Recommendation and Findings and Final Order on January 22, 1996, recommending denial of the petition; and

WHEREAS, The Petitioner filed exceptions to the Hearings Officer proposed order and findings, which were considered and heard by the Metro Council upon first reading of this Ordinance; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. To accept the Hearings Officer Report and Recommendation, as attached herein as Exhibit "C"; and
2. The Hearings Officer Findings, Conclusions and Final Order be adopted denying the petition in Contested Case 95-02, as attached herein as "Exhibit "D."


ADOPTED by the Metro Council this 28<sup>th</sup> day of March, 1996.

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

ATTEST:

Approved as to Form:

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

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

## STAFF REPORT

### CONSIDERATION OF ORDINANCE NO. 96-638 TO ADOPT THE HEARINGS OFFICER FINDINGS CONCLUSIONS AND FINAL ORDER, DENYING URBAN GROWTH BOUNDARY CONTESTED CASE 95-2: KNOX RIDGE

Date: March 1, 1996

Presented by: Larry Epstein, Hearings Officer  
Prepared by: Stuart Todd, Growth Management

## BACKGROUND INFORMATION

Benchmark Land Company petitioned Metro in March 1995 for a locational adjustment. The petition sought an adjustment to the urban growth boundary (UGB) for a proposed subdivision called Knox Ridge, off of Gales Creek Road at the southeast edge of the City of Forest Grove. The UGB crosses the 82-acre parcel along the contour of the floodplain (the floodplain as defined by Washington County in 1973), see Exhibit "A" attached to Ordinance No. 96-638. Prior to the petition submission, the applicant and the City of Forest Grove annexed the entire 82-acre parcel (both the portion inside and outside the UGB) into the City of Forest Grove. The Boundary Commission approved this annexation beyond the UGB in order not to split the parcel. The records show the annexation (or denannexation) will be revisited when the UGB decision is made.

The petition was amended twice in the course of the hearings process, through the hearings continuance provision. The petition was amended and enlarged the first time in May providing for wetlands mitigation to a drainage channel which is proposed to be moved. The petition was amended and further enlarged the second time in September to qualify as a natural area amendment (wherein at least half the acreage is donated to a city or county as park or open space), see Exhibit "B" attached to Ordinance No. 96-638. The subject land outside the current UGB is zoned exclusive farm use by Washington County, however, under a natural area adjustment that zoning designation is not an issue, whereas for an ordinary locational adjustment, retention of agricultural land is a fundamental criteria.

A natural area is defined in the Metro Code (3.01) as wholly or substantially in its native and unaffected state without paving or extraction or alteration of watercourses. Also, a natural area must be identified on a local or regional plan and be owned or donated to a city, a county or a parks district.

The reason for the request from Benchmark Land Company and their consultants (W & H Pacific has been acting on their behalf) was to enlarge the urban southern portion of the site so as to allow immediate road access from the north and to provide sufficient land to site houses on both sides of this road. To do this would require approximately six acres at a minimum, of the land outside the current UGB and in the floodplain. The UGB runs along the floodplain contour of a slight hill, which coincides with the awkward shape of the parcel, making it problematic for development. There are

no roads currently serving the southern portion of the site either from the south or the east, but that is not precluded from happening in the future.

The petitioner cited the identification of the proposed UGB amendment area in the Metro Greenspaces Master Plan inventory, thereby qualifying the site for a natural area amendment. The petition proposes donating over 12 acres to the City of Forest Grove as natural area. The City of Forest Grove took a neutral position on the original petition, but has subsequently testified in favor of the petition as a natural area amendment, because of the park provision.

#### STAFF POSITION

Staff has found inconsistencies between the petition and Metro's criteria as defined in Chapter 3.01.035 of the Metro Code. Staff recommended denial at the first hearing on June 7, 1995, responding to the petition as first submitted last March. The staff position for denial was based on the EFU zoning, the unknown floodplain infringement and environmental consequences of moving the drainage channel and filling of the floodplain, and the lack of demonstrated improvements to service and land use efficiencies inside the current boundary. At the continued hearing July 20, 1995, the petitioner asked for a further continuance. This hearing was preceded in June between staff and the petitioner, wherein staff stated a floodplain and wetlands mitigation plan would not suffice to address all other shortfalls in meeting the locational adjustment criteria.

At the continued hearing on September 21, 1995, staff also recommended denial of the amended petition, now a natural area adjustment. Staff based the recommendation on the broad interpretation of the natural area criteria by the petitioner, and by the lack of demonstrated improvements to the efficiency of services and land use inside the UGB. Staff interpreted the Greenspaces Master Plan inventory of the Gales Creek floodplain area as designating the entirety of the proposed amendment site a natural area, which should, therefore, preclude development. Staff also stated that the site has been farmed and does not clearly meet the definition of a natural area. Staff also thought there was still not a definitive improvement in urban services or land use efficiency inside the boundary as a result of the proposed amendment.

Finally, the petitioner asked for the record to be held open to submit conditions of approval for the amendment, showing that unique circumstances exist for approving the petition. Staff wrote a contrary response to these conditions of approval in December 1995, based on the conditions not being unique. The petition could set a precedence of allowing natural area amendments on large areas in the current Metro Greenspaces inventory adjacent to the boundary.

Staff defers to the hearings officer's recommendation, as an objective respondent to the case. The hearings officer provided for a fair hearing and in staff's opinion has given a fair interpretation to the Metro Code criteria.

#### HEARINGS OFFICER RECOMMENDATION AND PROPOSED FINDINGS

The Hearings Officer Report and Recommendation found the petition did not meet the criteria for a natural area locational adjustment. The proposed findings and final order are

attached to the ordinance. Please see Exhibits "C" and "D" attached to Ordinance No. 96-638.

The Hearings Officer found: 1) the subject area does not qualify as a natural area, 2) the petition does not demonstrate a net improvement in efficiency of public facilities and services, 3) the petition does not demonstrate that the proposed addition will result in a superior UGB, and 4) the petition does not include similarly situated contiguous land.

#### EXCEPTIONS TO THE HEARINGS OFFICER RECOMMENDATION AND PROPOSED FINDINGS

The Metro Code (3.01.060) provides for exceptions to the hearings officer's recommendation by parties of record. There is a 20-day period from the date the recommendation and proposed findings and final order are mailed to the parties of record. Metro received one exception which is attached to this report (see Attachment "A"). The exception was filed by a representative of Benchmark Land Company.

The exceptions focus on the following issues: 1) the natural area definition in the Metro Code and in the Greenspaces Master Plan, 2) the hearings officer interpretation of what constitutes an improvement in services and land use efficiencies, 3) the hearings officer finding of adverse economic impact due to the removal of agricultural land, 4) the hearings officer finding that the amendment would not result in a superior UGB, 5) the hearings officer finding that there was not consideration of all similarly situated contiguous lands.

#### PROPOSED ACTION

The Metro Code provides that the full Metro Council will take action on UGB contested cases. Attached is Ordinance No. 96-638, accepting the Hearings Officer's findings and final order for denial of the petition.

The Metro Council may act to approve, remand or deny the petition in whole or in part. Comments before the Metro Council by parties of record must refer specifically to any arguments presented in exceptions filed, and cannot introduce new evidence or arguments. The Metro Council shall take all comment at its first reading, discuss the case, and then either pass the case to a second reading, or remand the proposed order and findings of the hearings officer to the Executive Officer or the hearings officer for new or amended findings. (See Metro Code 3.01.65 Council Action on Quasi-Judicial Amendments.)

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 96-638.

## Exception Form

Metro provides this form for parties to Urban Growth Boundary contested cases who wish to file an exception to the proposed order and findings of the hearings officer.

Standing to file an exception and participate in subsequent hearings is limited to parties to the case.

UGB Contested Case No.: 95-2

Date: February 13, 1996

Name: Knox Ridge Subdivision

Address: c/o Benchmark Land Company  
Suite 203  
16325 S. W. Boones Ferry Road  
Lake Oswego, OR 97035

The basis of an exception must relate directly to the interpretation made by the hearings officer of the ways in which the petition satisfies the standards for approving a petition for a UGB amendment. Exceptions must rely on the evidence in the record for the case. Only issues raised at the evidentiary hearing will be addressed because failure to raise an issue constitutes a waiver to the raising of such issues at any subsequent administrative or legal appeal deliberations. (Metro Code 3.10.60(c))

Parties filing an exception with Metro must furnish a copy of their exception to all parties to the case and the hearings officer.

Please state your exception (attach additional sheets as necessary):

See attached.

Growth Management Services Department  
Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

The following are the Applicant's Exceptions to the Proposed Order and Findings of the Hearings Officer in Contested Case No. 95-02 (Benchmark Land Company):

1. Metro Code (MC) § 3.01.035(g)(2) and (4) Natural Area. The Hearings Officer stated that the Knox Ridge site does not meet the criteria for a "natural area" because the site has been altered by years of agricultural use. Evidence in the record shows that the site is in a "natural state" and the application complies with MC § 3.01.035(g)(2) and includes the following: Exhibit 20 (Natural Area Locational Adjustment Petition, Page 3); Exhibit 25 (W&H letter, September 21, 1995); Exhibits 44-45 (Metropolitan Greenspaces Master Plan and Plan Map); and Photos of the site.

The Hearings Officer also stated that the natural area is not designated as park or open space in the City of Forest Grove's comprehensive plan, due to the city's placement of the "P" (park) designation wholly within the UGB. Testimony submitted by the City of Forest Grove attests that the open space dedication is consistent with the comprehensive plan as follows: Exhibit 20 (Natural Area Locational Adjustment Petition, Page 1 and Exhibit 4); Exhibit 48 (City of Forest Grove Comprehensive Plan Map); Exhibits 9, 54, and 80 (Letters from the City of Forest Grove to Metro). Also confirming this is the testimony of Karl Mawson Forest Grove Community Development Director.

Finally, the Hearings Officer found that the Greenspaces Master Plan definition of "natural area" is not applicable to requests for natural area locational adjustments. He said that "[t]he Master Plan uses a broader definition of natural area which does not require that the area be 'substantially in a native an unaffected state.'" The Master Plan definition is as follows:

A Natural area is "a landscape unit composed of plant and animal communities, water bodies, soil and rock; largely devoid of human-made structures; maintained and managed in such a way as to promote or enhance populations of wildlife." See Exhibit 45 (Metropolitan Greenspaces Plan, p. 132). There is no evidence in the record to show that this definition is inconsistent with the intent of MC § 3.01.035(g)(2). The Metro Council should find that the policies for UGB adjustment and Greenspaces protection are mutually compatible and beneficial, especially because the property will be dedicated for preservation purposes.

2. MC § 3.01.035(g)(5) and MC 3.01.035(c)(1) Public Service Efficiencies. The Hearings Officer found a positive net gain in public service efficiency through park dedication and full utilization of street frontage for lots (Findings,

Conclusions and Final Order, Contested Case 95-02, pages 16-17). Evidence of this (analysis of cul de sac and through-street alternatives was also submitted by the applicant. There are no adverse impacts to public service efficiency as a result of the adjustment. Therefore the Council should find that the application results in a "positive net impact" and complies with the above criteria.

3. MC § 3.01.035(c)(2) Facilitate Needed Development on Adjacent Urban Land. The Hearings Officer stated that the facilitates development on adjacent urban land, due to increased number of lots and a reduction to the amount of under-developed land in the existing UGB (Findings, Conclusions and Final Order, Contested Case 95-02, page 19). The proposal does not interfere with orderly development elsewhere in the UGB. Therefore the Council can find that the application meets the standard of MC § 3.01.035(c)(2).

4. MC § 3.01.035(c)(3) EESE Consequences. The Hearings Officer found that the application will have an adverse economic impact due to removal of agricultural land, creation of a potentially unusable agricultural parcel, and "stimulation of speculation in farmland on the edge of the UGB" (Findings, Conclusions and Final Order, pp 20 and 25). Environmental, social and energy consequences are deemed positive. There is evidence in the record to show that economic impacts will be positive as a result of this locational adjustment. Exhibits submitted with the Natural Area Locational Adjustment petition demonstrate that the proposal facilitates development within the UGB. Land speculation is irrelevant to the locational adjustment request, as land speculation occurs all the time, particularly now that Metro is studying urban reserve areas for potential large-scale amendments to the UGB. The subject locational adjustment will have a positive economic impact by increasing the number of developable residential lots (i.e., assessed valuation) within the urban growth boundary (See Exhibit 20 Natural Area Locational Adjustment Petition), while preserving a natural space area which the City of Forest Grove had indicated will be integrated into the City's pathway and open space plan.

5. MC § 3.01.035(f)(2) Superior UGB. Upon review of the Metro Code excerpt provided by Metro staff, this criterion was thought to be non-applicable to "natural area" locational adjustments. Nevertheless, the applicant provided supplementary evidence to the Hearings Officer (Exhibit 25). The Hearings Officer finding that "the proposed addition would reduce the amount of actual open space adjacent to the urban area" (Findings, Conclusions and Final Order, Contested Case 95-02, page 22) is incorrect. The existing zoning and conditions of the site do not ensure perpetual open space. The rural zoning (AF-20) district allows a variety of non-open space land uses, including commercial activities in conjunction with farm uses, farm and non-farm related dwellings, radio/television and other



transmission towers, bed and breakfast facilities, schools, seasonal farm worker housing, solid waste disposal sites, utility facilities and public buildings, airstrip and personal airport facilities, stables and other horse boarding facilities, campgrounds, churches, golf courses, kennels, and mining. The physical conditions of the site (floodplain) do not necessarily preclude any of these measures are feasible for floodplain development. See Exhibit 20 (Natural Area Locational Adjustment Petition). The proposed conditions for approval, will on the other hand, preserve under Metro and Forest Grove control, the designated open space area from any development uses. This is far superior to the existing circumstances.

6. MC § 3.01.035(f)(3) Similarly Situated Contiguous Land. Upon review of the Metro Code excerpt provided by Metro staff, this criterion was thought to be non-applicable to "natural area" locational adjustments. The contested case citations at p. 23 of the Final Order are from non-natural area UGB amendments. In any event, there is evidence in the record indicating that all similarly situated contiguous lands which could appropriately be included with the UGB are part of the petition. The applicant has included all contiguous land under its ownership, except for Tract "D", as shown on Exhibit 5 of the Petition. Tract D is not appropriate for inclusion due to the fact that a sale is pending on this property and the new owner is not willing to develop the tract with urban uses or dedicate it as open space. Properties to the south of the Knox Ridge would not be appropriate for urbanization or open space dedication due to the fact that they are in agricultural production and under different ownership. Prior decisions by the Metro Council indicate that property ownership is one factor in determining "appropriate" lands for inclusion in the locational adjustment (Jenkins Estate Contested Case 95-003). See also, Exhibit 20 (Natural Area Locational Adjustment).

### **Conclusion**

Metro staff and the Hearings Officer have implied that a decision to approve the Knox Ridge locational adjustment may set a precedent and stimulate speculation all around the UGB. This is certainly a sensitive issue, particularly at a time when the Metro Council is studying urban reserve areas. But this is a political issue which should have no bearing on the applicable review criteria for locational adjustments to the UGB. The proposed findings and conditions to approval, endorsed by the City of Forest Grove and the applicant, document why the circumstances present in this case will be quite difficult to replicate in any future case. The locational adjustment policy was adopted to address these small UGB adjustments. The open

space dedication will set a permanent edge/buffer to the urban growth boundary and facilitate efficient use of an area appropriate for urban use.

Submitted by:

W&H Pacific and  
Ball, Janik & Novack  
representing the Applicant

By: Jack L. Orchard

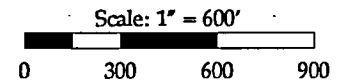
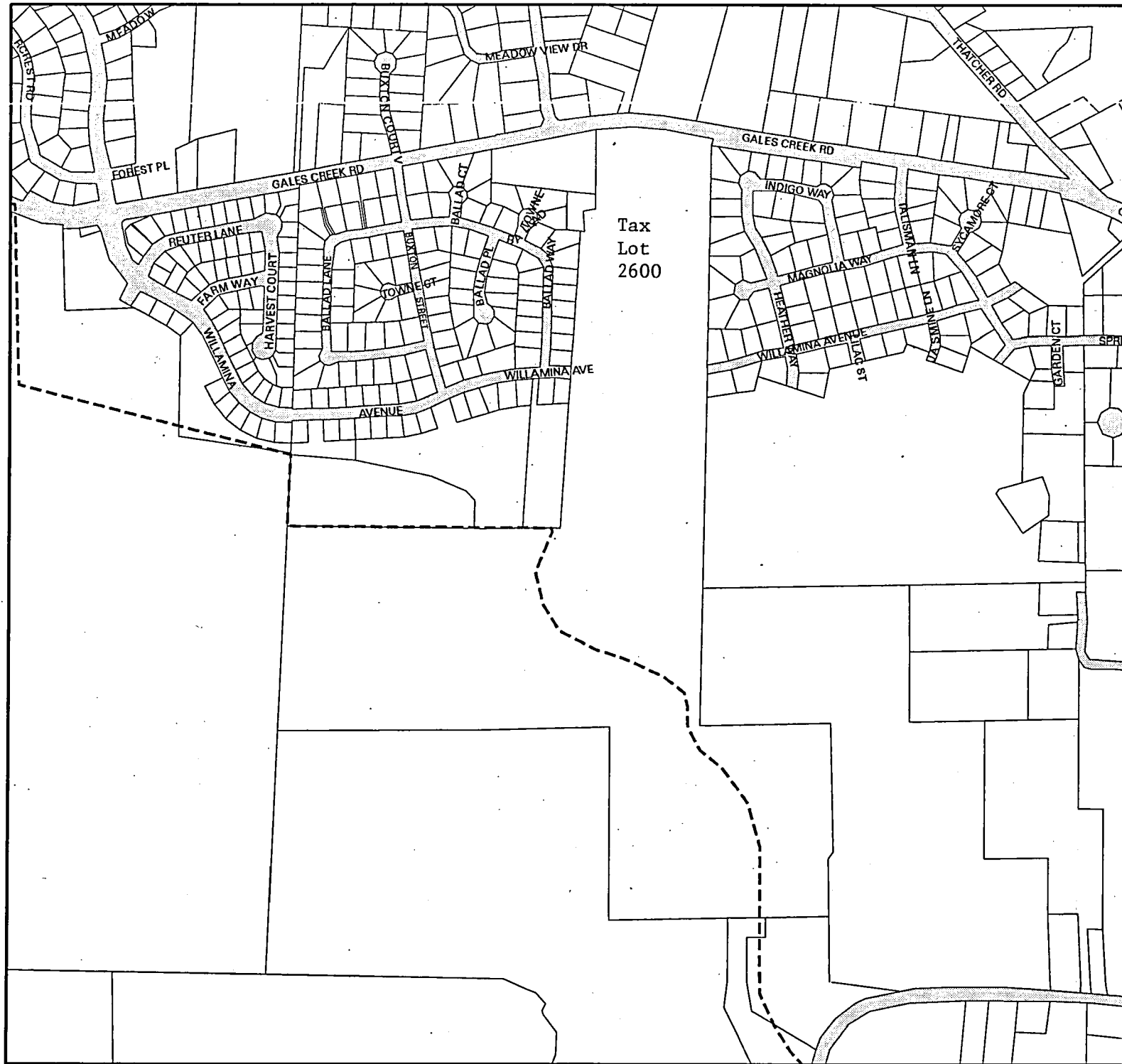
Jack L. Orchard  
of Ball, Janik & Novack

February 13, 1996

# UGB Contested Case: 95-2

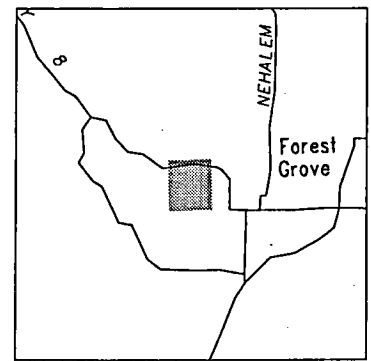
Knox Ridge

Urban growth boundary

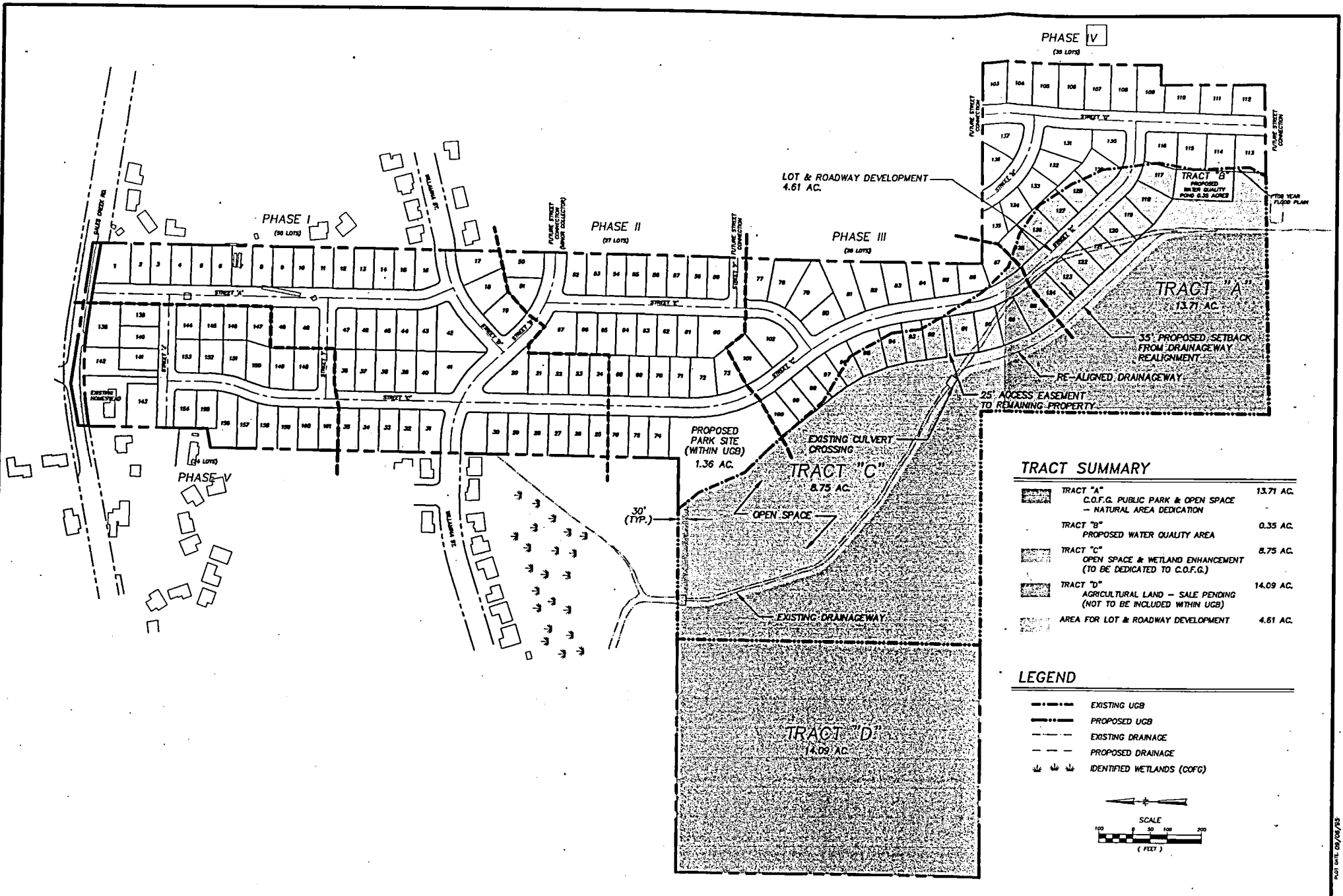


METRO

600 NORTHEAST GRAND AVENUE  
 PORTLAND, OREGON 97232 2736  
 TEL 503 797 1742  
 FAX 503 797 1909  
 Internet drc@metro.org



Location map

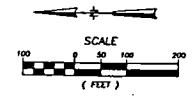


**TRACT SUMMARY**

	TRACT "A" C.O.F.G. PUBLIC PARK & OPEN SPACE - NATURAL AREA DEDICATION	13.71 AC.
	TRACT "B" PROPOSED WATER QUALITY AREA	0.35 AC.
	TRACT "C" OPEN SPACE & WETLAND ENHANCEMENT (TO BE DEDICATED TO C.O.F.G.)	8.75 AC.
	TRACT "D" AGRICULTURAL LAND - SALE PENDING (NOT TO BE INCLUDED WITHIN UGB)	14.09 AC.
	AREA FOR LOT & ROADWAY DEVELOPMENT	4.61 AC.

**LEGEND**

	EXISTING UGB
	PROPOSED UGB
	EXISTING DRAINAGE
	PROPOSED DRAINAGE
	IDENTIFIED WETLANDS (COFG)



DATE	BY	REVISION	CR'D	APP'D

**BENCHMARK LAND COMPANY**  
 16325 S.W. BOONES FERRY ROAD #203  
 LAKE OSWEGO, OREGON 97035  
 (503) 635-6202

**W-PACIFIC**  
 8408 E. W. Macleod Avenue  
 BENTLEYVILLE, OH 45005-7158  
 Phone: (503) 638-2448 Fax: (503) 638-2775  
 Landmark Engineering & Surveying Services

DESIGNED BY:   JABC    
 DRAWN BY:   KOB    
 CHECKED BY:     
 APPROVED BY:   

**KNOX RIDGE SUBDIVISION**  
**U.G.B. ADJUSTMENT PLAN**

DESIGNED BY:   JABC    
 DRAWN BY:   KOB    
 CHECKED BY:     
 APPROVED BY:   

SCALE: AS SHOWN PROJECT NO. 4-1445-0101 DRAWING FILE NAME: PPLMPS04.DWG SHEET **EXHIBIT 2**

EXHIBIT "B"

PLOT DATE: 09/20/05

BEFORE THE METRO HEARINGS OFFICER  
IN THE STATE OF OREGON

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In the matter of the petition of Benchmark Land Company ) HEARINGS OFFICER'S  
for a Natural Area Locational Adjustment to the Urban ) REPORT AND  
Growth Boundary south of Willamina Avenue and ) RECOMMENDATION  
north of Gales Creek in the City of Forest Grove ) Contested Case No. 95-02

I. INTRODUCTION

This report contains a summary of the findings the hearings officer recommends to the Metro Council regarding a petition for a natural area locational adjustment to the Urban Growth Boundary ("UGB"). The petition raises the following major issues:

- Whether the subject property qualifies as a "natural area" as defined by the Metro Code and is therefore eligible for a "natural area locational adjustment."
- Whether MC 3.01.035(g)(3) through (g)(5) preclude development of the subject property, because all of the property is designated as a potential regional greenway in the Metro Greenspace Master Plan.
- Whether the petitioner bore the burden of proof that including the proposed developable area in the UGB increases the efficiency of service to land already in the UGB.
- Whether the petition includes all similarly situated lands.
- Whether granting the petition results in a superior UGB.

II. SUMMARY OF BASIC FACTS

1. Benchmark Land Company ("petitioner") filed a petition for a *locational adjustment* to add 6.2 acres to the Urban Growth Boundary ("UGB") on March 15, 1995. That petition later was amended to propose to add 12.87 acres to the UGB. The petitioner submitted a new petition on September 7, 1995 for a *natural area locational adjustment* to add 27.42 acres (the "subject property") to the UGB. It is the September 7 petition that is the subject of this report.

1 a. The subject property is a 27.4-acre portion of an 81-acre parcel identified  
2 as tax lot 2600, T1N-R4W, Section 36, Washington County. The subject property is  
3 located south of Willamina Street and north of Gales Creek in the City of Forest Grove.  
4

5 b. The UGB is the east edge of the subject property and the edge of the  
6 100-year floodplain for a tributary of Gales Creek that bisects the subject property. The  
7 subject property is mostly a grassy-covered plain.  
8

9 c. The petitioner proposes to develop the east roughly 5 acres of the subject  
10 property for lots, roads and utilities. That area is designated low density residential on the  
11 city comprehensive plan. The remainder is designated and zoned for resource use. Within  
12 that area the petitioner will relocate part of the tributary on the subject property and will  
13 mitigate for the impacts of that relocation, affecting about 9 acres of the subject property.  
14 The petitioner will dedicate roughly 22 acres of the subject property to the City of Forest  
15 Grove, including 13.71 acres of pasture  
16

17 d. In 1995, the city approved a subdivision for the part of TL 2600 already  
18 in the UGB. The southeast corner of the subdivision is connected to the rest of the  
19 subdivision by a small area inside the UGB. If the petition is granted, the two areas will be  
20 connected by a wider area inside the UGB. If the petition is not granted, the southeast  
21 corner of the subdivision could be developed with fewer homes than planned or  
22 development could be deferred until access is provided through adjoining land in the UGB.  
23

24 e. Land uses in the vicinity include homes inside the UGB northwest of the  
25 subject property, a cemetery and a school outside the UGB to the southwest, and a vacant  
26 parcel inside the UGB to the northeast. Land to the south and west is in agricultural use.  
27

28 2. The subject property is not served by public sewer or water. The petition was  
29 accompanied by comments from affected jurisdictions and service providers, each of whom  
30 certified they can provide urban services in an orderly and timely manner. All service  
31 providers took a neutral position regarding the locational adjustment. None objected to it.  
32

33 3. Metro hearings officer Larry Epstein ("hearings officer") held public hearings on  
34 June 7 and July 20, 1995 to review the locational adjustment and on September 21, 1995 to  
35 review the natural area locational adjustment. At the petitioner's request, the hearings  
36 officer held the public record open until 5 PM, December 22, 1995.

1                    **III. SUMMARY OF APPLICABLE CRITERIA AND RESPONSIVE FINDINGS**

2  
3                    1. A natural area locational adjustment to add land to the UGB must comply with  
4 the relevant provisions of Metro Code ("MC") sections 3.01.035(f) and (g) (see below)  
5 and with the Transportation Planning Rule in Oregon Administrative Rules section 660-12.  
6  
7

8                    **APPROVAL CRITERIA FOR A NATURAL AREA LOCATIONAL ADJUSTMENT**

9

<i>Metro Code §</i>	<i>Approval Criteria</i>
3.01.035(g)(1)	Natural area adjustments must be proposed by the property owner with concurrence from the agency accepting the natural area.
3.01.035(g)(2)	At least 50% of the land and all land in excess of 40 acres in the petition shall be owned or donated to a parks district in its natural state without extraction of resources or alteration of water features.
3.01.035(g)(3)	Any developable portion of the area included in the petition, not designated as natural area, shall not exceed 20 acres and shall lie between the existing UGB and the natural area.
3.01.035(g)(4)	The natural area must be identified in a city or county comprehensive plan as open space or the equivalent, or in Metro's natural area and open space inventory.
3.01.035(g)(5)	The developable portion of the petition shall meet the additional locational adjustment criteria set out in section 3.01.035(b), (c)(1), (c)(2) and (c)(3).
3.01.035(b)	All locational adjustment additions for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres.
3.01.035(c)(1)	A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion.
3.01.035(c)(2)	The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans.
3.01.035(c)(3)	Economic, environmental, social & energy consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.
3.01.035(f)(2)	[T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section.
3.01.035(f)(3)	The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors above.

10  
11                    2. The hearings officer found the petition complies with some but not all of the  
12 approval criteria. The hearings officer's findings are summarized immediately hereafter.  
13 Because a petitioner has the burden of proving that the petition complies with all approval  
14 criteria, the hearings officer recommends that the Metro Council deny the petition.

1 a. The petitioner is authorized by the property owner to make the petition.  
2 The City of Forest Grove expressed an intent to accept the proposed dedication. Therefore  
3 the petition complies with MC section 3.01.035(g)(1).  
4

5 b. The petitioner proposes to dedicate 50% of the subject property in its  
6 existing condition, i.e., pasture. Therefore Council *could* find that the petition complies  
7 with MC section 3.01.035(g)(2).  
8

9 (1) But the hearings officer found that MC section 3.01.035(g)(2)  
10 is ambiguous, because it does not define the term "natural state." If land is not in its  
11 "natural state," then it cannot be dedicated to fulfill MC section 3.01.035(g)(2). The  
12 hearings officer found that the subject property is not in its natural state as the Metro  
13 Council intended that term, because the property has been altered by years of agricultural  
14 use too much for it to be considered in a natural state. Therefore the hearings officer  
15 believes the petition does not comply with MC section 3.01.035(g)(2). This is consistent  
16 with Council action in Contested Case 95-003 (*Jenkins Estate*).  
17

18 (2) If the subject property is a "natural area," any farmland on the  
19 edge of the UGB would be eligible for a natural area locational adjustment if all or a portion  
20 of it is designated as a potential greenway or equivalent. The hearings officer does not  
21 believe that was Metro Council's intent for natural area locational adjustments.  
22

23 c. Less than 20 acres of the subject property is proposed for development,  
24 and that portion lies between the existing UGB and the area proposed to be dedicated as  
25 open space. Therefore Council *could* find that the petition complies with MC section  
26 3.01.035(g)(3). The hearings officer recommends Council adopt such a finding.  
27

28 (1) Metro staff argued that MC section 3.01.035(g)(3) should be  
29 construed so that land designated as a potential greenway is not developable; therefore,  
30 none of the subject property can be developed. The hearings officer recommends Council  
31 construe the term "natural area" in subsection (g)(3) to refer to the natural area proposed by  
32 a petitioner rather than to the area designated as such in local or regional plans.  
33

34 d. The subject property is identified as a portion of a potential regional  
35 greenway (currently unprotected floodplain) on the Metro Greenspaces Master Plan.  
36 Therefore the petition complies with MC section 3.01.035(g)(4).



1 e. The proposed developable area is less than 5 acres. Therefore the  
2 petition complies with MC section 3.01.035(b). Metro staff dispute this, arguing none of  
3 the subject property is developable, because all of it is designated as a potential regional  
4 greenway. For the same reason as above, the hearings officer recommends Council  
5 construe subsection (g)(4) and (g)(5) so a petitioner can propose to develop land designated  
6 as a potential regional greenway or equivalent on a local or regional plan or inventory.  
7

8 f. The hearings officer recommends the Council find the record does not  
9 show that including the developable portion of the subject property in the UGB improves  
10 the efficiency of public facilities and services to land already in the UGB consistent with  
11 MC section 3.01.035(c)(1).  
12

13 (1) The hearings officer concluded the petition increases the  
14 efficiency of open spaces for land already in the UGB by preserving open space at no  
15 public cost and without displacing use of developable land in the UGB. Existing zoning  
16 already largely preserves the subject property for non-extractive resource use. Natural  
17 conditions make it likely all of the subject property will remain open space if it is not in the  
18 UGB. But including the developable area in the UGB results in enhancement and  
19 dedication of habitat at no direct public cost. It increases the publicly-owned habitat area  
20 without increasing costs. Arguably this increases efficiency.  
21

22 (2) Council *could* find the petition results in greater transportation  
23 system efficiencies for land already in the UGB, because it facilitates access between the  
24 southeast corner of the Knox Ridge subdivision and the rest of that subdivision. The  
25 hearings officer believes that MC section 3.01.035(c)(1) requires a petitioner to show  
26 public efficiencies result from the locational adjustment. The petitioner failed to provide  
27 substantial evidence that meaningful efficiencies will result from approval of the petition.  
28 The portion of TL 2600 already in the UGB can be developed without the subject property.  
29

30 (3) Petitioner did not submit substantial evidence that including in  
31 the UGB the developable portion of the subject property will increase the efficiency of  
32 other services for land already in the UGB. The petition did not meet the burden of proof.  
33

34 g. Including the developable portion of the subject property in the UGB  
35 marginally facilitates development on adjacent urban land consistent with its plan map  
36 designation. Therefore the petition complies with MC 3.01.035(c)(2).

1 h. Including the developable portion of the subject property in the UGB  
2 results in negative economic consequences and positive social and environmental  
3 consequences. The hearings officer recommends that Council find the petition does not  
4 comply with MC section 3.01.035(c)(2), because of adverse economic consequences.

5  
6 i. The petitioner argued the proposed UGB is better than the existing UGB,  
7 because it has positive impacts. The hearings officer disagreed, finding the record does  
8 not show it will result in service efficiencies; it would remove land from agricultural use  
9 and could stimulate speculation on farmland on the edge of the UGB; it could reduce the  
10 quantity of open space; and it would relocate the boundary between urban and rural lands  
11 from a natural feature to an arbitrary location in the middle of a field. The hearings officer  
12 recommends Council find the petition does not comply with MC section 3.01.035(f)(2).

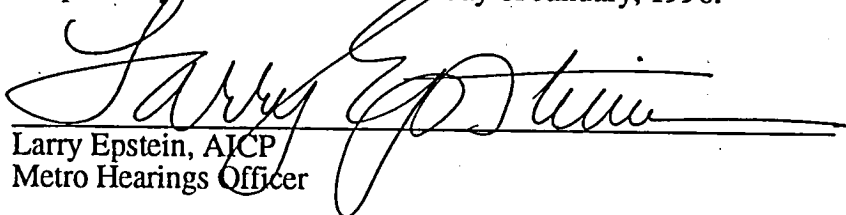
13  
14 j. The hearings officer found that the petition does not include all similarly  
15 situated land, because the remainder of tax lot 2600 is under the same ownership and as  
16 much as perhaps 100 contiguous acres is similar physically. The hearings officer  
17 recommends Council find the petition does not comply with MC section 3.01.035(f)(3).

18  
19 k. The locational adjustment will not significantly affect a transportation  
20 facility. Therefore it is exempt from the Transportation Planning Rule. OAR 660-12-060.

21  
22 IV. ULTIMATE CONCLUSION AND RECOMMENDATION

23  
24 The hearings officer concludes the petition does not comply with all of the approval  
25 standards for a natural area locational adjustment adding land to the UGB. Therefore the  
26 hearings officer recommends the Metro Council deny the petition based on this Report and  
27 Recommendation and the Findings, Conclusions and Final Order attached hereto.

28  
29 Respectfully submitted this 22nd day of January, 1996.

30  
31   
32 Larry Epstein, AICP  
33 Metro Hearings Officer  
34

BEFORE THE METRO COUNCIL  
OF THE STATE OF OREGON

In the matter of the petition of Benchmark Land Company ) for a Natural Area Locational Adjustment to the Urban ) Growth Boundary south of Willamina Avenue and ) north of Gales Creek in the City of Forest Grove )	FINDINGS, CONCLUSIONS & FINAL ORDER Contested Case No. 95-02
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I. BASIC FACTS

1. On March 15, 1995, W & H Pacific filed a petition for a locational adjustment to the Urban Growth Boundary ("UGB") on behalf of the Benchmark Land Company ("petitioner"). See Exhibit 1 for the locational adjustment petition ("locational petition"). On September 7, 1995, after two public hearings to review the locational petition, petitioner withdrew the locational petition and submitted a petition for a natural area locational adjustment. See Exhibit 21 for the natural area locational adjustment petition (the "natural area petition"). Basic facts about the natural area petition include the following:

a. The land to be added to the UGB is an irregularly-shaped 27.42-acre portion of tax lot 2600, Section 36, T1N-R4W, WM, Washington County (the "subject property"). Tax lot 2600 contains about 81 acres of which about 39.5 acres are located in the existing UGB, 27.42 acres are proposed to be added to the UGB, and 14 acres will remain outside the proposed UGB. Based on the petition, there are 2 dwellings and barns and sheds on the portion of tax lot 2600 to remain outside the UGB. The existing UGB follows the edge of the floodplain for a drainage channel that flows southeast to northwest through tax lot 2600 (the "drainage channel"). The edge of the floodplain is about the east edge of the area to be added to the UGB. The subject property is designated as a potential regional greenway on the Metro Greenspaces Master Plan (the "Greenspaces Plan").

b. The subject property is about 600 feet south of Willamina Street. It does not have street frontage. Willamina Street is stubbed at the east and west boundaries of tax lot 2600. These stubs will be connected as part of the development approved for tax lot 2600. See Exhibits 1, 2 and 21 for maps showing the subject property.

c. The subject property is designated Rural-Exclusive Farm Use on the Washington County Comprehensive Plan Map and is zoned EFU (Exclusive Farm Use).

If the petition is approved, Forest Grove plans to designate and zone the developable area of the subject property as Single Family Residential, R1-7. The portion of TL 2600 inside the existing UGB is zoned Single Family Residential, R1-7 (7,000 square foot minimum lot size). The City of Forest Grove annexed tax lot 2600 in March, 1995.

d. Tax lot 2600 was used for farming. The subject property now is used as pasture and for growing hay, wheat and clover. The property slopes gently to the drainage channel and floodplain. The floodplain and area west of the drainage channel are level. The only vegetation other than pasture grasses is a single clump of small trees.

e. The petitioner proposes to develop the east 4.61 acres of the subject property with roads, residential lots and a drainage facility as part of phases III and IV of the Knox Ridge subdivision. The petitioner proposes to relocate a portion of the drainage channel southwest of its current location to create more developable land for lots. The petitioner will enhance the realigned drainage channel with native riparian plantings to mitigate for the impacts of the proposed relocation on delineated wetlands. The petitioner proposes to dedicate the roughly 9 acres used for the relocated drainage channel and mitigation area to the city. The petitioner also proposes to dedicate the remaining 13.71 acres of the subject property to the city in its existing condition, i.e., pasture.

f. Surrounding uses include residential development along Willamina Street northwest of the subject property; a cemetery and a school southwest of tax lot 2600; and a large vacant parcel to the northeast. The City of Forest Grove has approved a tentative plan for a subdivision for the portion of tax lot 2600 already in the UGB. Land to the south and west is currently being farmed.

g. The subject property is not served by a public sanitary or storm sewer or water system.

h. The locational or natural area petition was accompanied by comments from affected jurisdictions and service providers. Exhibits 4 through 6 and 11 through 16. The City of Forest Grove commented that the city could serve the subject property with storm and sanitary sewer and water, but that approval of the petition would not improve efficiency of service delivery in the UGB. The City Council adopted a motion to express no preference on the petition. No information was provided regarding the impact of the proposed addition on area schools.

2. On or about May 17, 1995, Metro staff mailed notices of a hearing to consider the petition by certified mail to the owners of property within 250 feet of the subject property, to the petitioner, to Washington County, and to the City of Forest Grove. A copy of the notice is included as Exhibit 18. A notice of the hearing also was published in The Oregonian at least 10 days before the hearing.

3. On June 7, 1995, Metro hearings officer Larry Epstein (the "hearings officer") held a public hearing at the Light and Power Auditorium in Forest Grove to consider the locational petition. After the hearings officer described the rules for the hearing and the relevant standards for the petition, four witnesses testified in person.

a. Metro planner Stuart Todd verified the contents of the record and introduced exhibits into the record. He summarized the staff report, (Exhibit 16), including basic facts about the site, the UGB and urban services, and comments from Forest Grove.

b. Jimmy Bellomy of W & H Pacific appeared on behalf of the petitioner and requested that the hearings officer continue the hearing.

c. Linda Duling expressed concerns regarding the effects of the proposed alteration of the floodplain.

d. Kevin Closson expressed concern about the traffic impacts from the proposed development.

e. At the close of the June 7 hearing, the hearings officer continued the hearing until July 20, 1995

4. The hearings officer reconvened the hearing on July 20, 1995 at the Metro offices in Portland. After the hearings officer described the rules for the hearing and the relevant standards for the petition, three witnesses testified in person.

a. Mr. Todd testified that he had not received any new material since the last hearing. He testified that he discussed with the petitioner the possibility of changing the locational petition to a natural area adjustment. He supported petitioner's request for a

continuance to allow them to pursue this option. He summarized the standards for a natural area adjustment petition.

b. Frank Angelo of W & H Pacific testified that the petitioner was in the process of amending the petition to include a natural area adjustment. He requested that the hearings officer continue the hearing for at least 30 days to allow time to complete the natural area petition.

c. Ms. Duling testified that the subject property and surrounding area is subject to high groundwater and standing water after storms. She introduced 14 photographs showing standing water on the site and surrounding area. Exhibits 29 - 43.

d. At the close of the July 20 hearing, the hearings officer continued the hearing until September 21, 1995.

5. Between July 20 and September 21, 1995, the hearings officer received other written evidence and testimony including the following:

a. A petition for natural area locational adjustment. Exhibit 21.

b. Reports by Metro staff for the natural area petition. Exhibits 23 and 25.

c. The petitioner's response to the staff report. Exhibit 25.

d. A notice Metro staff sent on or about September 11, 1995 by certified mail to the owners of property within 250 feet of the subject property, the petitioner, Washington County, and the City of Forest Grove. Exhibit 25. A notice of the hearing was also published in *The Oregonian* at least 10 days before the hearing.

6. The hearings officer reconvened the hearing on September 21, 1995 at the Metro offices in Portland. After the hearings officer described the rules for the hearing and the relevant standards for the amended petition, four witnesses testified in person.

a. Mr. Todd summarized the amended staff report. He submitted a memo dated September 21, 1995 (Exhibit 25) in which he concludes the natural area petition complies with MC section 3.01.35(g)(4), because the subject property is designated a

potential greenway in the Metro Greenspaces Master Plan (the "Master Plan"). He submitted a photographic slide of the subject property. Exhibit 50. He noted that the subject property is designated Rural Reserve on the Metro Region 2040 Concept Plan. He argued that the Metro 2040 Concept Plan reflects an intent to limit expansion of the UGB onto farmland. He argued the petition cannot comply with MC section 3.01.35(g)(3), because there is no developable area on the subject property that is not designated a potential greenway. He urged the hearings officer to recommend that Council deny the petition. He argued that there are numerous properties with similar circumstances and allowing this amendment could be a dangerous precedent.

b. Jack Orchard and Frank Angelo testified for the petitioner.

(1) Mr. Orchard objected to Mr. Todd's amendment of the Staff Report at the hearing and to the submission of new evidence that is inconsistent with Exhibits 23 and 25.<sup>1</sup> Mr. Orchard made the following arguments in favor of the petition:

(a) He argued that MC 3.01.35(g)(2) only requires that land to be added as "natural area" be dedicated in a *substantially* natural state. He argued that the pasture condition of the subject property is a natural setting that meets the criteria, because it has been maintained in natural grasses for many years. He argued that there is no evidence of human development on the subject property. He argued that most mapped natural areas are not in their pristine natural state and that the lack of trees is a common feature which should not be considered in determining whether the subject property is in its natural state. He argued that all natural areas have seen some form of human activity. He argued that Metro determined that the subject property is in its natural state when it was included in the inventory of open spaces. He argued that the fact that there is no distinction between the area proposed for open space and that proposed for development is irrelevant.

(b) He disputed Mr. Todd's statement that this case will be a precedent. He argued that this is an unusual situation where the developer is willing to dedicate open space, and the city is willing to accept the dedication. Similar situations are unlikely to occur elsewhere.

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<sup>1</sup> The hearings officer denied the objection and allowed the evidence, holding that the evidence is relevant to the applicable approval criteria and that nothing in State law or the Metro Code prohibits oral modification of the Staff Report at the hearing.

(c) He argued that approval of the petition would provide the result desired by Metro and the city: preservation of the floodplain as a regional greenway and dedication of open space to the city. He argued that the subject property and the remainder of tax lot 2600 will be developed eventually. If the petition is denied, the open space will be lost. All available land will be developed. He testified that the petitioner would accept a condition to prohibit development of the dedicated open space.

(2) Mr. Angelo introduced a copy of the Metropolitan Greenspaces Master Plan which designates the subject property as a potential regional greenway in which agricultural uses predominate. He summarized the proposed development and dedication. He argued that the open space area will be distinguishable from the developed area once the site is developed.

c. Karl Mawson, Community Development Director for the City of Forest Grove, appeared on behalf of the city planning staff. He opined that the proposed addition is necessary to develop the Knox Ridge subdivision site due to topography and the layout of existing roads. He opined that the southeast corner of tax lot 2600 could be developed without the proposed UGB addition by allowing larger lots, but this would be inconsistent with the Region 2040 Plan. He testified that the City of Forest Grove has no funds for acquisition of parks and open space, and this may be the only way that such areas can be acquired. He argued that open spaces and trails were not big issues when the comprehensive plan was adopted in 1981. He argued that the drainage channel is a year-round stream and an important corridor for the city which should be protected and enhanced. He urged the hearings officer to recommend the Council approve the petition.

7. At the close of the September 21 hearing, the hearings officer left the record open until 5 PM, October 2, 1995.

8. On October 27, 1995, the petitioner filed a Motion to Re-Open the Record. Exhibit 50. By written order dated October 30, 1995, the hearings officer granted the motion and re-opened the record until December 22, 1995. Exhibit 51.

9. Between October 30 and December 22, 1995, the hearings officer received written evidence and testimony including the following:



a. The petitioner submitted proposed findings and conditions of approval in Exhibit 53.

b. James Reitz, associate planner with the City of Forest Grove, testified in favor of the proposed findings and conditions of approval. He requested that an additional condition be added requiring access to Tract "C" in the vicinity of Lot 113. Exhibit 54.

c. Mr. Todd testified that the petitioner's proposed findings and conditions of approval are inadequate to address the potential precedent-setting effect of approval of the petition. He argued that similar "unique" circumstances could be found for any natural area locational adjustment. He argued that allowing development based on "unique" is not consistent with the Metro Code. Exhibit 55.

d. Ms. Duling argued that the subject site is in a 100-year floodplain and that development in the floodplain would reduce the flood storage capacity and increase downstream flooding. Exhibit 56. She submitted photographs showing stormwater accumulations on the subject property at various times. Exhibits 57 through 78.

e. The petitioner submitted a letter disputing Mr. Todd's response to the proposed findings and conditions of approval. The petitioner argued that the petition should be granted due to the specific and unique circumstances that exist on the subject property, including: the annexation of the subject property; the designation of the proposed natural area as a park site by the City; and the Metro Greenspaces designation. He argued that other applications subject to these circumstances also should be approved. Exhibit 79.

f. Mr. Mawson argued that the circumstances of this case are not easy to duplicate. He argued that approval of the petition would benefit the City of Forest Grove through improved open spaces and Metro through protection of greenspaces and wildlife corridors and a better defined UGB. He argued that the loss of agricultural land and floodplain is insignificant in terms of the region. He argued that this petition represents a good precedent which should be encouraged by the Metro Council. Exhibit 80.

10. On January 22, 1996, the hearings officer filed with the Council a report, recommendation, and draft final order denying the petition. Copies of the report and recommendation were timely mailed to parties of record together with an explanation of rights to file exceptions thereto and notice of the Council hearing to consider the matter.

## II. APPLICABLE APPROVAL CRITERIA AND RESPONSIVE FINDINGS

1. Metro Code section 3.01.035(f) and (g) contain approval criteria for natural area locational adjustments. The relevant criteria from those sections are reprinted below in boldfaced italic font. Following each criterion are findings explaining how the petition does or does not comply with that criterion.

*Natural area adjustments must be proposed by the property owner with concurrence from the agency accepting the natural area.* Metro Code section 3.01.035(g)(1)

2. The petitioner is a contract purchaser of the property. The property owner authorized the petitioner to file the petition. The City of Forest Grove expressed an intent to accept the proposed dedication. Therefore the petition complies with MC 3.01.035(g)(1).

*At least 50% of the land and all land in excess of 40 acres in the petition shall be owned or donated to a parks district in its natural state without extraction of resources or alteration of water features.* Metro Code section 3.01.035(g)(2)

3. The petitioner proposes to dedicate the area designated Tract "A" to the City of Forest Grove for use as open space.<sup>2</sup> This 13.71-acre tract is 50% of the property to be included in the UGB. Therefore the petition complies with the first two requirements of MC section 3.01.035(g)(2).

4. However, there is a dispute about whether Tract "A" is in a "natural state". The term "natural state" is ambiguous and is not defined by the Code. In the absence of a definition, the Council must construe the words in practice. It does so in this case consistent with the manner in which it has construed those words in the only other natural area locational adjustment it has considered to date.

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<sup>2</sup> The petitioner also proposes to dedicate the 8.75-acre Tract "C" to the City of Forest Grove. However, because the petitioner intends to alter a water feature (relocate the drainageway) within this tract, it cannot qualify as a "natural area" as defined by the Metro Code.

a. The Council previously defined "natural state" as property that is "exclusively or substantially without human development, structures and paved areas and which is wholly or substantially in a native and unaffected state." Contested Case 95-03 (*Jenkins-Estate*). The Council was careful to limit this definition. The subject property must meet both parts of this criteria. Property in its natural state must be both "substantially without human development, structures and paved areas" and "substantially in a native and unaffected state."

(1) The Council determined that the *Jenkins Estate* property was substantially in its "native and unaffected state." A portion of the property in that case had been used as a farm, park and day camp. There were structures and improvements reflecting that historic use. However the Council found the majority of the 68-acre *Jenkins Estate* site was in its natural, substantially undisturbed forested condition. A relatively small area included sports fields, parking areas and a few structures.

(2) In this case, the area proposed to be dedicated as "natural area" is essentially flat pasture divided by a small drainage channel. Although the subject property is located in a floodplain, it contains little or no vegetation other than grasses and a single clump of small trees. The majority of the subject property and contiguous commonly-owned land was used for crop production for many years and continues to be so used until recently.<sup>3</sup> The land was cleared to facilitate farming.

(3) The Council finds that the subject property is no longer in its native and unaffected state, because of its years of agricultural use. Farming activities have prevented the subject property from reverting to its natural state.

(4) If the subject property is a "natural area," any farmland on the edge of the UGB would be eligible for a natural area locational adjustment if all or a portion is designated as a natural area or equivalent. That is not Council's intent for natural area adjustments. The Council finds that land that has been actively farmed or grazed and that is without substantially unaffected natural features is not "substantially in a native and unaffected state." If the majority of a proposed natural area locational adjustment does not

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<sup>3</sup> The "Preliminary Wetland Assessment" by W & H Pacific (Exhibit of the Natural Area Adjustment Petition, Metro Exhibit 21) notes that the property west of the drainage channel is planted in wheat. The original locational adjustment petition states that the area now proposed for addition as "natural area" is currently planted in clover. See exhibit 1. Although these plants occur naturally, the Council finds that they are not "natural grasses" where they have been planted as the exclusive vegetation.

consist of something more natural than land that has been actively farmed or grazed and that is without substantially unaffected natural features, then it does not qualify for a natural area locational adjustment.

5. The Metropolitan Greenspaces Master Plan (the "Master Plan") identifies the subject property as a "Potential Regional Greenway<sup>4</sup> (Currently Unprotected Floodplains)." Exhibit 44. The Council finds that this designation alone is insufficient to meet the requirement of MC section 3.01.35(g)(2) that the subject property be in its natural state. The Council further finds that designation as a potential greenway by the Master Plan is not sufficient to comply with this criterion, absent other evidence that the property is "substantially in a native and unaffected state". The Master Plan uses a broader definition of natural area<sup>5</sup> which does not require that the area be "substantially in a native and unaffected state." Land proposed for dedication as a natural area must be designated open space, natural area or equivalent pursuant to MC section 3.01.35(g)(4), and it must be substantially in a natural state pursuant to MC section 3.01.035(g)(2). The petitioner bears the burden of proving the petition complies with both criteria.

a. The petitioner argued that the majority of areas mapped by local governments and Metro do not meet this definition of "natural state". This may be true, but it is irrelevant to the natural area locational adjustment. The Master Plan recognizes that many areas that are mapped for possible acquisition or preservation must be restored and enhanced to serve their intended function. The Master Plan "is not regulatory nor is it site-specific." Master Plan, p. 5. Responsible Metro staff stated that the potential regional greenway designation represents a general area and is for planning purposes, noting ...

<sup>4</sup> "A regional greenway is a linear corridor, in a riparian setting, that serves wildlife needs and also accommodates pedestrian, equestrian and bicycling uses. The master plan defines lands that the Soil Conservation Service has identified as prone to flooding as potential greenways. Regional greenways provide linkages for wildlife between habitat needs. Designation as a greenway does not presume pedestrian access to privately owned land but encourages management compatible with riparian preservation and enhancement. Each greenway should:

"1. Provide continuous riparian habitat along a stream or river as well as pedestrian, equestrian and bicycling uses when possible.

"2. Provide access to a river trail with some provision for parking and passive recreational activities.

"3. Provide recreational opportunities such as camping that are in short supply along river corridors."

Greenspaces Plan, p. 35.

<sup>5</sup> A "natural area" is "a landscape unit composed of plant and animal communities, water bodies, soil and rock; largely devoid of human-made structures; maintained and managed in such a way as to promote or enhance populations of wildlife." Greenspaces Plan, p. 132.

"further refinement work is required prior to designating components of a greenway in the Gales Creek area." Attachment D of Exhibit 22 (the September 18, 1995 staff report).

7. The petitioner proposed findings and conditions of approval intended to limit the precedential effect of approving this application as a natural area adjustment. However, conditions of approval cannot be substituted for the approval criteria. *Viznia v. Douglas County*, 16 Or LUBA 936 (1988). The Metro Code requires that land to be added as a natural area must be substantially in its natural state. The Council finds that the area proposed natural area in this case, Tract A, is not in its natural state. Conditions cannot alter that fact, and the petition must be denied.

a. In addition, the Council finds that the findings and conditions proposed fail to demonstrate that this is a "unique situation".

(1) The petitioner alleged that the natural area is "a predominate, pre-existing feature relating to the property proposed for annexation." The Council finds that the majority of the natural area is farmland which is currently used for crop production. The drainage channel and associated floodplain are hardly unique. Similar features exist on many other properties surrounding the Metro area, including the adjoining properties to the north and south of the subject property.

(2) The petitioner alleged that "the natural area, as well as the property proposed for annexation, are both immediately adjacent to the existing urban growth boundary." This "unique" criteria could easily be replicated by other properties. The same conditions exist on land adjoining the subject property to the north and south. This circumstance is required to approve a petition. It is not unique.

(3) The Council finds that the proposed natural area is not designated as park or open space in the City of Forest Grove's comprehensive plan. The city's comprehensive plan map contains a "proposed park area" northeast of the subject property. This designation is not located on the subject property. Although, according to the city, the parks symbol on the plan is conceptual and is intended to be "non-site specific", it is located completely within the existing UGB. The Council finds that this indicates the city's express intent to locate a park within the existing UGB. If the city intended to locate a park outside the existing UGB, it could have demonstrated this intent by placing the parks designation symbol fully or partially outside the existing UGB. The

city has expressed such an intent on land southeast of the subject property. See Forest Grove Comprehensive Plan Map, Exhibit 49. The city has not done so in this case.

(4) The petitioner alleged that "the natural area is identified in the Metro Greenspaces Master Plan as an area where greenspaces should be preserved." This same designation exists on the adjoining properties to the north, south and west of the subject property. In addition, some such designation is required to comply with the natural area adjustment criteria. MC 3.01.035(g)(4). All natural area petitions must have a similar designation in order to meet this criterion. It is not a unique condition.

(5) Dedication of the natural area for public use, and acceptance by the local government is required for approval of a natural area adjustment. MC 3.01.035(g)(2) and 3.01.035(g)(1). The petitioner's offer to dedicate this area and acceptance by the City of Forest Grove is not unique.

(6) The petitioner argues that the "existing street and utility pattern already established for a pre-existing subdivision warrant inclusion of the area proposed for annexation." However the petitioner largely established that street and utility pattern in the "pre-existing" Knox Ridge subdivision (except for the stubs of B and D Streets). It is a self-created hardship to establish the pattern and then to use the pattern to justify a locational adjustment. Limits on development of the subdivision due to the location of the UGB were or should have been known to the petitioner. Council finds that the existing street and utility patterns in this case are not unique. On the contrary if the Council allowed the petitioner to create the pre-existing conditions that justify the locational adjustment, it will be an example others could emulate. To find that "existing street patterns" created by a petitioner create a "unique situation" encourages future petitioners to subdivide property within the existing UGB to create similar rationales to justify adding land to the UGB.

(7) Natural areas added to the UGB must be administered by the local government or a public agency. MC 3.01.035(g)(2). Such areas must be "in proximity to the necessary services and facilities required for development." MC 3.01.035(c)(1). The petitioner's proposal to have the city administer the open space is required by the Metro Code and does not make this proposal unique.

(8) Annexation by the adjacent city is required for all approved additions to the UGB. In this case, the City of Forest Grove annexed the subject property

prior to the Council's approval of the petition. This is further evidence of the city's concurrence in the petition. However the Council finds that it does not represent a unique situation. The adjacent city must be willing to accept the proposed addition in order for the petition to be approved. MC 3.01.035(g)(2) and (4). Therefore Council finds that the city's prior annexation of the subject property is not a unique situation.

(9) The conditions proposed by the petitioner are not unique. The Metro Code authorizes the Council to impose conditions of approval on all additions to the UGB. MC 3.01.040. The Council has imposed similar conditions in prior cases.

(A) The substance of these conditions of approval were imposed on the petition in Contested Case 95-03 (*Jenkins Estate*). The Council found in that case that such conditions were necessary to ensure that the property added to the UGB as "natural area" remained substantially in that condition. The Council is likely to impose similar conditions of approval on any subsequent natural area petitions.

(B) The Council can and has imposed conditions of approval restricting development of land added to the UGB to substantially what was proposed in the petition. See, e.g., Contested Case 94-01 (*Starr/Richards*) where the Council adopted conditions limiting the permitted use of the land to professional offices and open space although applicable zoning allowed for broader range of uses.

(C) Therefore Council finds that the proposed conditions of approval do not show that the addition proposed in this petition represents a "unique situation" that is unlikely to be replicated by future petitions.

b. The Council further notes that prior petition approvals are of limited value as precedent. Although the decisions of the Council should be consistent, the Council is not bound by its prior decisions. All property is unique. Each petition must demonstrate individual compliance with all applicable approval criteria.

8. The Greenspaces Plan calls for preservation of the Gales Creek floodplain, including the subject property. The Council recognizes that the proposed enhancement and dedication of the drainage channel floodplain as public open space would further habitat-related goals of the Greenspaces Plan. However this is not relevant to this criterion. Neither is the city's present lack of funds for park and open space acquisition.

*Any developable portion of the area included in the petition, not designated as natural area, shall not exceed 20 acres and shall lie between the existing UGB and the natural area.*

Metro Code section 3.01.035(g)(3)

9. In this case the portion of the subject property the petitioner has proposed for development is smaller than 20 acres, and it lies between the existing UGB and the area proposed to be dedicated as open space.

10. However there is a dispute regarding the meaning of this criterion.

a. Metro staff argued that, because the entire subject property is "designated a natural area" in the Greenspaces Plan, there is no "developable portion" of the subject property. That is, they argue the Council should construe the criterion as follows:

*(1) In a natural area locational adjustment, only land that is not designated as a natural area in a local or regional plan or inventory may be developed; and*

*(2) Land to be developed cannot exceed 20 acres and must lie between the existing and proposed UGB. (emphasis added)*

b. The petitioner argued that it should be construed so that the petition states which land is proposed to be natural and which land is proposed to be developed.

c. Metro Code section 3.01.035(g)(3) is ambiguous and could be read either way. In the *Jenkins Estate* case, Council held that "any land *can* be developed" and "land that is held exclusively for parks and open space use and is identified as such in the Metro inventory of open spaces is not developable." (emphasis added)

(1) Applying *Jenkins Estate* to this case, the entire subject property *can* be developed. The petitioner proposes to develop a portion of the subject property that is "identified as such in the Metro inventory of open spaces." However because it will be developed, it will not be "held exclusively for parks and open space." Council finds the words, "any developable portion of the area included in the petition, not designated as



natural areas," in MC section 3.01.035(g)(3) means the area proposed for development in the petition. In this case it means the area proposed for development by the petitioner, i.e., all but the 13.71-acre natural area. The subject property is identified as a "potential regional greenway" in the Greenspaces Plan. However the Greenspaces Plan is advisory only. It is not a regulatory document prohibiting development in mapped areas.

(2) The portion of the site proposed as natural area will be "held exclusively for parks and open space use and is identified as such in the Metro inventory of open spaces." Therefore, based on the holding in the *Jenkins Estate* case, it is not developable; provided, if the petition is granted, conditions are imposed restricting this area to park and open space uses.

*The natural area must be identified in a city or county comprehensive plan as open space or the equivalent, or in Metro's natural area and open space inventory.*

Metro Code section 3.01.035(g)(4)

11. The subject property is included in the "natural areas and open space inventory" in the Greenspaces Plan. Therefore the petition complies with this criterion.

*The developable portion of the petition shall meet the additional locational adjustment criteria set out in section 3.01.035(b), (c)(1), (c)(2) and (c)(3).*

Metro Code section 3.01.035(g)(5)

12. Section 3.01.035(b), (c)(1), (c)(2) and (c)(3) are reprinted below followed by responsive findings. Based on these findings, Council finds the petitioner did not bear the burden of proving compliance with this criterion.

*All locational adjustment additions for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres.*

3.01.035(b)

13. Less than 100 net acres have been proposed for adjustment addition this year, and the developable portion of the subject property is smaller than 20 acres. Therefore the petition complies with this criterion.

*A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion. Metro Code section 3.01.035(c)(1)*

14. The Council finds that the subject property can be served in an orderly and economic manner by public facilities and services, including water, sanitary sewers, roads, storm drainage, transit and emergency services, based on the comments in the record from the service providers. The proposed addition will add approximately 25 additional lots to the UGB. 82% of the subject property is proposed to be dedicated as open space. The locational adjustment will place only a slightly increased burden on public facilities.

15. Metro rules do not define how to calculate net efficiency of urban services. In the absence of such rules, the Council must construe the words in practice. It does so consistent with the manner in which it has construed those words in past locational adjustments. The Council concludes that the locational adjustment proposed in this case does not result in a net improvement in the efficiency of services sufficient to comply with Metro Code section 3.01.035(c)(1), based on the following findings:

a. Council finds that including the developable area of the subject property in the UGB has a positive net impact on park and open space services and facilities for land already in the UGB, because of the enhancement of Tract C and its dedication to the city at no public cost.<sup>6</sup>

(1) Council notes that, under existing zoning, use of the subject property is so constrained that it is reasonably likely to remain undeveloped and substantially in an open space character even if it is not included in the UGB. But that

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<sup>6</sup> The proposed natural area dedication, Tract A, is not relevant to this criterion. Metro Code section 3.01.035(g)(5) requires that the developable portion of the petition increase the net efficiency of services. The natural area dedication is by definition not developable.

would not result in habitat enhancement. Including the subject property in the UGB actually may reduce the area actually in an open space character, because about 5 acres of the subject property will be developed for urban uses in addition to roughly 9 acres that will be affected by the creek relocation and wetland enhancement. Perhaps the enhancement offsets the urban development. But this is not relevant to the criterion, because it does not affect the efficiency of open space services.

b. Council finds the petitioner failed to bear the burden of proof that including the developable portion of the subject property in the UGB increases the net efficiency of transportation services for land already in the UGB more than a *de minimis* amount.

(1) In order to develop the southeast corner of tax lot 2600, which already is in the UGB, access must be provided to it. Streets do not serve that portion of tax lot 2600. It is possible to provide access to the southeast corner of tax lot 2600 without adding land to the UGB. Proposed "Street C" can be extended as shown in the petitioner's "through street alternative" (following page 13 in Exhibit 20).

(2) The petitioner calculates the "through street" alternative results in about 0.69 acres of "undevelopable" land inside the UGB. About 350 feet of road will have lots on only one side and about 400 feet of road will abut undevelopable land on both sides. The petitioner showed that including the subject property in the UGB enables the petitioner to create lots on both sides of a street connecting the southeast corner of tax lot 2600 with the remainder of that tax lot inside the UGB. The Council finds that it is more efficient to have lots on both sides of a street, but the small number of lots in this case renders that efficiency a negligible one to the public.

(3) Petitioner showed that development of a "cul-de-sac alternative" results in about 0.94 acres of "undevelopable" land inside the UGB. This equals 5 minimum-size lots. The amount of "undevelopable area" created by the "cul-de-sac alternative" could be reduced by connecting the two proposed cul-de-sac as a through street when the adjoining property develops. This would provide access to a lot in what is labeled "area B" in the "cul-de-sac alternative" further reducing differences in efficiency.

(4) The "cul de sac alternative" may delay development of the southeast corner of tax lot 2600. Council finds that this delay will not have a significant

effect on transportation efficiency, because it is at the edge of the urban area. Existing zoning prevents development of the adjoining parcel south of the site and extension of proposed "Street G" for the foreseeable future. Development of this portion of the site will not enhance the transportation network in this area as there is no need for transportation in this area until the southeast corner of tax lot 2600 is developed. Development of the "cul-de-sac alternative" would also cause a slight increase in travel distance between the northern and southern portions of tax lot 2600. But petitioner can avoid this result by building the connecting road shown in the through street alternative. Granting the petition is not necessary to avoid this increased travel distance.

c. The Council concludes, based on the lack of evidence in the record, that including the subject property in the UGB does not increase the efficiency of storm drainage, sanitary sewage, water and other public facilities and services.<sup>7</sup>

(1) The petitioner would have to extend the same size utility lines in approximately the same locations regardless of the proposed addition. The petitioner argued that the public utilities to be located in the proposed roadway are "ideally located from an efficiency standpoint"; that the proposed street alignment will reduce the amount of trenching required for placement of buried utilities; and that alternative designs will result in "increased cost per housing unit." But petitioner did not provide substantial evidence to support these assertions. Council has found in past locational adjustment cases that the benefit to the petitioner of being able to amortize the cost of required improvements over a larger development area does not improve service efficiency. See Contested Case 88-02 (*Mt. Tahoma*). In this case the petitioner's ability to amortize the cost of utilities and other improvements over more lots does not improve service efficiency.

(2) The petitioner argued the proposed development will "accommodate stormwater from existing residential development to the west." There is substantial evidence in the record that stormwater affects existing development in the area. See photographs and testimony of Linda Duling. But the petitioner provided no evidence that addition of the subject property to the UGB is necessary to reduce these impacts.

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<sup>7</sup> See the Council Final Order in the matter of Contested Case 88-04 (*Bean*) for an example of where a locational adjustment improves the efficiency of water services (in that case, by creating a looped water system and providing water to land already in the UGB). See the Council Final Order in the matter of Contested Case 94-01 (*Starr/Richards*) for an example of where a locational adjustment improves the efficiency of sewer services (in that case, by allowing service of land already in the UGB with a gravity flow sewer rather than a less efficient pump system).

There is no evidence in the record that this stormwater cannot be accommodated through development of the portion of the site within the existing UGB. There is no evidence that the "planned minor-collector street which drains the area" cannot be connected and completed without the proposed addition. Therefore Council finds that there is insufficient evidence in the record that the proposed addition will increase storm drainage efficiency.

(3) The petitioner failed to provide substantial evidence of the extent of the alleged efficiencies if the subject property is added to the UGB. Council cannot find the proposed addition provides sufficient efficiencies to warrant approval of the petition.

*The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans.*

Metro Code section 3.01.035(c)(2)

16. The proposed addition could marginally facilitate needed development on adjacent land already in the UGB by marginally increasing the number of lots and reducing the amount of under-developed land in the existing UGB. But on balance, Council finds the petition does not comply with MC section 3.01.035(c)(2), based on the following.

17. The proposed addition is not necessary to develop the remainder of tax lot 2600 in the UGB, including the southeast corner of tax lot 2600. Access to this area can be provided within the existing UGB. It is not necessary to enable urban use of land in the UGB. It does not provide access which otherwise does not exist to the adjoining property; it does not provide services which would not otherwise exist to the adjoining property; it does not remedy physical development limitations which exist on the adjacent property.

18. The proposed addition and dedication of open space does not facilitate needed park development inside the existing UGB. The proposed open space is outside the existing UGB. The petitioner can dedicate the amount of open space required by law for the Knox Ridge subdivision from the area already in the UGB.

19. The petitioner argued that dedication of this much land inside the existing UGB "would result in displacement of 188 future housing units" which

would have to be made up elsewhere, presumably by amending the UGB." The Council rejects this conclusion. There is no proposal to dedicate a similar amount of land within the existing UGB as open space if this petition is denied. Approval of this petition would displace an existing agricultural use on the subject property. It will not "free up" land for development that would otherwise be used for open space purposes within the existing UGB.

*Environmental, energy, social & economic consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.* Metro Code section 3.01.035(c)(3)

20. Council finds that the addition of the proposed developable area would have an adverse economic impact by removing approximately 13.71 acres of land from agricultural use and creating a potentially unusable agricultural parcel. Tract D contains only 14 acres, which may be too small to accommodate accepted farm practices.

21. Council also finds that the plan amendment will have positive social and environmental impacts.

a. The proposed enhancement of the re-aligned drainage channel will improve the habitat values and water quality of the drainage channel on the property.

b. The proposed development will provide a buffer between urban residential land and adjacent agricultural land. Under current conditions, there is no separation between land that could be developed for residential uses and the existing agricultural uses. Dedication of the proposed open space tract will increase the physical separation between urban residential and rural agricultural uses. The proposed wetland mitigation and drainage channel enhancement will provide a vegetative screen between these uses. This is likely to reduce potential conflicts between agricultural and urban uses.

c. The proposed addition has some positive social impacts from adding public open space to the urban area. However, the subject property already serves as privately owned open space due to the strict limitations on development imposed by the current zoning. In addition, because a portion of the subject property will be developed for residential uses, the proposed addition will reduce the amount of actual open space in the

area to some extent. Therefore, the only benefit of adding the subject property results from the public ownership of the open space which provides public access for limited recreational uses and the ability to enhance the open space.

d. The majority of the subject property is within the floodplain. See photos introduced by Linda Duling, Exhibits 30 to 44 and 57 to 78. However, any development in the floodplain will be required to meet all local, state and federal floodplain regulations. Any loss in flood storage capacity must be compensated for. Therefore Council finds that proposed development will not have adverse environmental consequences.

e. The petitioner argued that the proposed street design results in energy conservation benefits due to reductions in out-of-direction travel and vehicle-miles-traveled, compared to other design alternatives. The petitioner did not provide any evidence regarding the differences between the alternative designs. Based on the plat maps provided with the application, the Council finds that any reductions in out-of-direction travel and vehicle-miles-traveled resulting from the proposed design will be minor. There is only a minimal difference between the alternative designs.

f. Water quality facilities serving the development will be required to "meet all applicable local and state requirements for stormwater discharge and water quality" regardless of the addition. Therefore, the Council finds that the proposed addition will have no effect on stormwater treatment.

g. Development of the entire site as a single economic unit may have positive economic benefits for the petitioner. But the proposed addition is not necessary to achieve this benefit. The site can be developed as a single unit with a "through street alternative" that provides access to the southeast corner of tax lot 2600. In addition, economic benefit to the petitioner from the proposed addition is not relevant except to the extent they are shared by the public. See Contested Case 88-02 (*Mt. Tahoma*).

*[T]he proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section. Metro Code section 3.01.035(f)(2)*

22. The petitioner did not address this criterion. Based on the evidence in the record, the Council finds that the proposed UGB is not superior to the existing UGB, because:

a. The existing UGB is located at the edge of the 100-year floodplain, a recognized natural feature. The proposed boundary is an arbitrary line in an existing pasture the location of which is based on the petitioner's need to dedicate at least 50% of the property to be added as "natural area". The proposed UGB would not align with existing property boundaries or natural features.

b. The proposed UGB would result in scant service and land use efficiencies for the public.

c. The proposed addition would remove existing agricultural land from active production.

d. The proposed addition would reduce the amount of actual open space adjacent to the urban area. Due to existing zoning and natural conditions, the subject property is likely to remain undeveloped open space without adding it to the UGB.

*The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors above.* Metro Code section 3.01.035(f)(3)

23. The petitioner did not address this criterion. The evidence in the record shows no substantial difference between that portion of tax lot 2600 proposed to be added to the UGB and that portion of tax lot 2600 proposed to remain outside the UGB, Tract D. In addition, there is no substantial difference, other than ownership, between adjacent properties and the subject site. Adjoining properties are also zoned EFU and are used for farming and crop production. Adjoining properties are also designated as "Potential Regional Greenways" in the Master Plan. The drainage channel that crosses the subject property continues onto adjoining properties to the north and south. Therefore the Council concludes the petition does not include all similarly situated properties.



a. Adjoining non-urban land to the north, south and west is similar to land in the petition, particularly "Tract D" which is in the same ownership as the subject site, and property south of the site through which the proposed stub road at the southern boundary of the site could be extended to connect with Pacific Avenue/Ritchy Road, thereby completing the planned road network in this area. It appears from the photographs of the area that, if all similarly situated property is included, the petition would potentially involve more than 100 acres.

b. The petitioner argued that there will be a distinction between the urban and rural areas after the site is developed. However, the Council finds that this criteria must be met based on existing conditions. Post-development differences are irrelevant. To hold otherwise would allow petitioners to meet this criteria based on the development proposed, making this criterion meaningless.

c. The facts in this case are different from those in prior cases. The property proposed for addition in prior cases had some natural or man-made physical feature that separated the subject property from adjoining non-urban land. See, e.g., Contested Case 94-01 (*Starr/Richards*) (I-5 freeway provided a significant physical separation between the subject property and adjoining non-urban land), Contested Case 95-01 (*Harvey*) (existing railroad tracks) and Contested Case 87-4 (*Brennt*) (steep slopes). In this case, the subject property is indistinguishable from adjoining non-urban land.

24. Although it is not an applicable approval standard in the Metro Code, a quasi-judicial amendment to the UGB is subject to compliance with the Transportation Planning Rule if the amendment will significantly affect a transportation facility.<sup>8</sup>

a. The Council finds the proposed amendment *per se* does not increase the number of vehicle trips to and from the property. Development proposed by petitioner would increase the total number of vehicle trips associated with the property by about 250 vehicle trips per day assuming it resulted in 25 additional lots (based on the ITE Trip Generation Manual).

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<sup>8</sup> Oregon Administrative Rule (OAR) 660-12-060(1) provides:

*Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with identified function, capacity, and level of service of the facility.*

b. Because of the relatively small number of trips and location of the subject property on the edge of the urban area, Council finds that the locational adjustment is unlikely to have an adverse effect on the level of service at affected intersections or to cause affected streets to exceed their engineered capacity. The proposed amendment does not change the functional classification of adjoining roads or the standards for implementing a functional classification system. It does not allow uses inconsistent with the functional classification of the adjoining roads and is unlikely to reduce the level of service of the facility. OAR 660-12-060(2)

c. Based on the foregoing, the Council finds the amendment in this case will not significantly affect a transportation facility. Therefore it is not subject to the Transportation Planning Rule. In any event, the Council finds the amendment will allow only land uses that are consistent with identified function, capacity and level of service of the facility. Therefore the amendment complies with the Transportation Planning Rule.

### III. CONCLUSIONS

Based on the foregoing findings, the Council adopts the following conclusions.

1. The petition complies with MC section 3.01.035(g)(1), (g)(3) and (g)(4) for the reasons provided herein above.

2. The petition does not comply with MC section 3.01.035(g)(2), because the area proposed for dedication as "natural area" is not in a "substantially native and unaffected state."

3. Granting the petition, subject to appropriate conditions, will result in a net increase in publicly owned and privately enhanced open space at no public cost and in some service efficiencies from having more lots on both sides of a connecting street. But these efficiencies are negligible, and there is no evidence of efficiencies in other urban services. On balance, Council concludes the petition does not comply with MC section 3.01.035(g)(5) and MC section 3.01.035(c)(1), because the petition does not show including the developable area in the UGB will result in a net improvement in the efficiency of public facilities and services.

4. Granting the petition will result in negative economic consequences, because of the loss of farmland and the stimulation of speculation in farmland on the edge of the UGB. Granting the petition will result in positive social and environmental consequences. Energy consequences are negligible. The presence of floodplains on the subject property can be addressed. Because of the adverse economic consequences, Council concludes the petition does not comply with MC section 3.01.035(g)(5) and MC section 3.01.035(c)(3).

5. The petition failed to show that the proposed addition will result in a superior UGB.

6. The petition does not include all similarly situated contiguous land outside the UGB.

#### IV. DECISION

Based on the findings and conclusions adopted herein and on the public record in this matter, the Metro Council hereby denied the petition in Contested Case 95-02.

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

By Order of the Metropolitan  
Service District Council

By  
\_\_\_\_\_

EXHIBITS IN THE MATTER OF CONTESTED CASE 95-02

Exhibit No.    Subject matter

- 1 ..... Petition for locational adjustment dated March 15, 1995
- 2 ..... Map of flood plain and proposed subdivision date March 6, 1995
- 3 ..... Letter from Jim Bellomy, W&H Pacific dated March 6, 1995
- 4 ..... Forest Grove staff report dated March 13, 1995
- 5 ..... Forest Grove City Council Agenda dated March 13, 1995
- 6 ..... Minutes of Forest Grove City Council Meeting dated March 13, 1995
- 7 ..... Copy of check for petition fee date March 14, 1995
- 8 ..... Notice of incomplete application dated March 20, 1995
- 9 ..... Letter from Karl Mawson dated March 21, 1995
- 10 ..... Certification of property owners list dated April 5, 1995
- 11 ..... Comment from Forest Grove Water Bureau dated March 28, 1995
- 12 ..... Comment from Forest Grove Storm Sewer Bureau dated March 28, 1995
- 13 ..... Comment from Forest Grove Service Bureau dated March 28, 1995
- 14 ..... Letter from Jim Bellomy, W&H Pacific, dated April 5, 1995
- 15 ..... Statement from Jim Bellomy, W&H Pacific dated May 30, 1995
- 16 ..... Metro Staff Report dated May 31, 1995 with attachments
- 17 ..... Letter from Stuart Todd dated June 1, 1995
- 18 ..... Metro hearing notice
- 19 ..... Letter requesting continuance from Jack L. Orchard dated July 19, 1995
- 20 ..... Petition for natural area locational adjustment dated September 6, 1995
- 21 ..... Letter from Stuart Todd dated September 8, 1995
- 22 ..... Metro Staff Report II dated September 18, 1995 with attachments
- 23 ..... Memo from Stuart Todd to Larry Epstein dated September 18, 1995
- 24 ..... Memo from Stuart Todd to Larry Epstein dated September 21, 1995
- 25 ..... Letter from Frank Angelo to Larry Epstein dated September 21, 1995
- 26 ..... Metro hearing notice, courtesy follow up notice re amended petition
- 27 ..... Memo from Stuart Todd dated September 22, 1995
- 28 ..... Letter from Stuart Todd to Larry Epstein dated September 28, 1995
- 29-43 ..... Photos of site
- 44 ..... Metropolitan Greenspaces Master Plan Map
- 45 ..... Metropolitan Greenspaces Master Plan
- 46 ..... Portions of Region 2040 Growth Concept dated December 6, 1995
- 47 ..... 2040 Growth Concept Map
- 48 ..... City of Forest Grove Comprehensive Plan Map
- 49 ..... Slide Photo of site
- 50 ..... Petitioners Motion to Re-open the Record dated October 27, 1995
- 51 ..... Order to Re-open the Record dated October 30, 1995
- 52 ..... Memo from Stuart Todd dated November 1, 1995
- 53 ..... Letter from Frank Angelo to Stuart Todd dated November 27, 1995
- 54 ..... Letter from James Reitz to Larry Epstein dated December 1, 1995
- 55 ..... memo from Stuart Todd to Larry Epstein dated December 11, 1995
- 56 ..... Letter from Linda Duling to Larry Epstein received 12/11/95
- 57-61 ..... Photos of site taken 11/11/95
- 62-66 ..... Photos of site taken 11/25/95
- 67-68 ..... Photos of site taken 11/29/95
- 69-78 ..... Photos of site taken 11/29/95
- 79 ..... Letter from Jack Orchard to Larry Epstein dated December 21, 1995
- 80 ..... Letter from Karl Mawson dated December 22, 1995
- 81 ..... Transmittal from Stuart Todd to Larry Epstein dated December 22, 1995