



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

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

### NOTICE OF ADOPTED AMENDMENT

April 6, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Metro Plan Amendment  
DLCD File Number 005-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures\*

### DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: April 19, 2007

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

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

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

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Meg Fernekees, DLCD Regional Representative  
Mark Darienzo, DLCD Flood Map Modernization Program Coordinator  
Tim O'Brien, Metro

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FORM 2

## DLCD

# Notice of Adoption

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

☐ In person ☐ electronic ☐ mailed

DATE  
DEPT OF  
APR 02 2007  
LAND CONSERVATION  
AND DEVELOPMENT  
For DLCD Use Only

Jurisdiction: **Metro**

Local file number: **Case 06-02**

Date of Adoption: **3/22/2007**

Date Mailed: **3/26/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 9/28/2006

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☒ Other: **UGB Amendment**

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

A minor amendment to the UGB where the UGB is intended to be coterminous with the 100-year floodplain based on a recent delineation of the floodplain by a professional engineer registered by the State of Oregon.

Does the Adoption differ from proposal? Yes, Please explain below:

The applicant submitted an amendment to the original application that identified a new floodplain line that both the city and the applicant agreed upon. This resulted in a reduction of the acreage brought into the UGB by approximately 2.7 acres.

Plan Map Changed from: **Rural**

to: **Urban**

Zone Map Changed from: **EFU**

to: **Residential**

Location:

Acres Involved: **4**

Specify Density: Previous: **1du/80 ac**

New: **10 du/ac**

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19  
☐ ☒ ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☒ ☐ ☐ ☐ ☐ ☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD # 005-06 (15605)



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**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

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Local Contact: **Tim O'Brien**

Phone: (503) 797-1840      Extension:

Address: **600 NE Grand Avenue**

Fax Number: **503-797-1930**

City: **Portland**

Zip: **97232-**

E-mail Address: **obrien@metro.dst.or.us**

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### **ADOPTION SUBMITTAL REQUIREMENTS**

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

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

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

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN ORDER ) Resolution No. 07-3792  
RELATING TO THE APPEALS BY DAVID W. )  
MORELLI AND THE CITY OF FOREST GROVE OF )  
CHIEF OPERATING OFFICER ORDER 06-201 )  
(RELATING TO THE APPLICATION FOR A MINOR )  
ADJUSTMENT TO THE URBAN GROWTH )  
BOUNDARY NEAR THE INTERSECTION OF "D" ) Introduced by Chief Operating Officer  
STREET AND 18<sup>TH</sup> AVENUE WITHIN THE CITY ) Michael Jordan with the concurrence of  
LIMITS OF FOREST GROVE) Council President David Bragdon

WHEREAS, Ron and Wanda Rau filed an application for a minor adjustment to the UGB in the vicinity of Forest Grove pursuant to sections 3.01.033 and 3.01.035 of the Metro Code; and

WHEREAS, the Chief Operating Officer ("COO") reviewed the application and entered an order approving the minor adjustment pursuant to section 3.01.033(d) of the Metro Code; and

WHEREAS, David W. Morelli and the city of Forest Grove filed valid appeals of the COO's order pursuant to section 3.01.033(e) of the Metro Code; and

WHEREAS, the Metro Council held a public hearing on the appeal on March 22, 2007, and considered information presented at the hearing; now, therefore

BE IT RESOLVED that the Metro Council

1. Enters Order 07-024, attached to this resolution as Exhibit A, which denies the appeals but modifies COO Order 06-201.
2. Directs the COO to send a copy of Order No. 07-024 to the appellants, persons who participated in the public hearing on the appeal and the Oregon Department of Land Conservation and Development.

ADOPTED by the Metro Council this 22nd day of March, 2007

  
David Bragdon, Council President

Approved as to form:

  
Daniel B. Cooper, Metro Attorney



Resolution No. 07-3792

Order No. 07-024

RELATING TO THE APPEALS BY DAVID W. MORELLI AND  
THE CITY OF FOREST GROVE OF THE CHIEF OPERATING OFFICER'S  
ORDER NO. 06-201, A MINOR ADJUSTMENT TO THE UGB

IT IS ORDERED THAT:

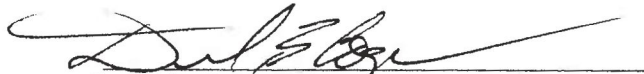
1. The appeals of David W. Morelli and the City of Forest Grove be denied for the reasons set forth in the Metro Staff Report dated February 28, 2007.
2. Section 2 of COO Order 06-201 is revised to read as follows:

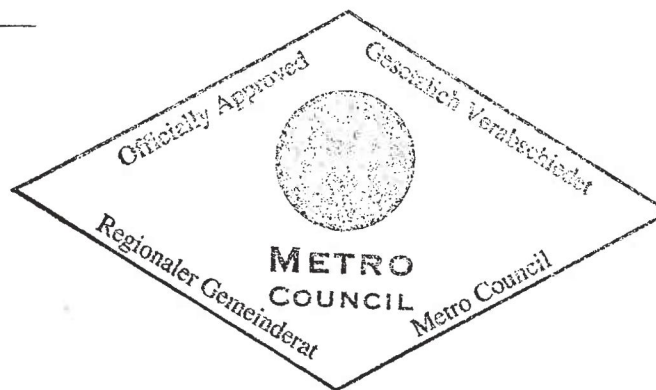
"The land included in this amendment shall be designated as Inner Neighborhood on the Metro 2040 Growth Concept Map and zoned by the City of Forest Grove to allow an Average density of 10 units per net developable acre."

ENTERED this 22nd day of March, 2007.

  
David Bragdon, Council President

Approved as to form:

  
Daniel B. Cooper, Metro Attorney



## STAFF REPORT

RESOLUTION NO. 07-3792, RELATING TO THE APPLICATION FOR A MINOR ADJUSTMENT TO THE URBAN GROWTH BOUNDARY NEAR THE INTERSECTION OF D STREET AND 18<sup>th</sup> AVENUE WITHIN THE CITY LIMITS OF FOREST GROVE

Date: February 28, 2007

Prepared by: Tim O'Brien  
Senior Regional Planner

### BACKGROUND

CASE: COO Order 06-201

APPELLANTS: City of Forest Grove  
PO Box 326  
Forest Grove, OR 97116

David W. Morelli  
1320 Cedar Street  
Forest Grove, OR 97116

PROPOSAL: Metro Chief Operating Officer's Order No. 06-201 approved an amendment to the Urban Growth Boundary (UGB) through Minor Adjustment Case No. 06-02: Rau/Gales Creek. Approval of this minor adjustment resulted in 4.2 acres of land being added to the UGB near the intersection of "D" Street and 18<sup>th</sup> Avenue within the city limits of Forest Grove. Approval of this order is appealed to the Metro Council.

LOCATION: The site is located near the intersection of D Street and 18<sup>th</sup> Avenue within the city limits of Forest Grove. A map of the site is attached as Attachment 1.

### Grounds for Appeal

Argument 1 (City of Forest Grove): A "delineation" of the floodplain, as used in Metro Code 3.01.035(e), requires a study of the Gales Creek floodplain. Metro failed to complete a study of the floodplain. Without the study, the minor adjustment violates 3.01.035(e).

Staff Response: There is no requirement in 3.01.035(e) that Metro or an applicant for a minor adjustment complete a study of the floodplain. Paragraph 3.01.035(e)(1) requires a delineation of the floodplain by a professional engineer registered by the State of Oregon. Applicants submitted such a delineation in support of the application.

Argument 2 (City of Forest Grove; David Morelli): The following language of the Minor Adjustment Order No. 06-210 exceeds Metro's authority:

*"The land included in this amendment shall be designated as Inner Neighborhood on the Metro 2040 Growth Concept Plan and zoned by the City of Forest Grove to allow the density of residential development currently allowed by the city's High Density Residential plan designation."*



Staff Response: Among the requirements for minor adjustment to the UGB is the following:

*"If a minor adjustment adds more than two acres of land available for housing to the UGB, Metro shall designate the land to allow an average density of at least 10 units per net developable acre or other such density that is consistent with the 2040 Growth Concept designation for the area."*

Metro Code 3.01.035(f). The land within the City of Forest Grove that is adjacent to the land added to the UGB is designated as Inner Neighborhood on the Metro 2040 Growth Concept Map, is within the city's High Density Residential plan designation and is zoned Multi-Family (A-2). In order to provide consistency with the city plan designation, the order specified a zoned density consistent with the city's High Density Residential plan designation. Although the staff believes the Chief Operating Officer (COO) and the Metro Council have the authority to set any density that is consistent with the Inner Neighborhood design type designation, the staff recommends that the Metro Council amend section 2 of Order No. 06-210 to read:

*"The land included in this amendment shall be designated as Inner Neighborhood on the Metro 2040 Growth Concept Plan and zoned by the City of Forest Grove to allow an average density of 10 units per net developable acre."*

This amendment is proposed by the City of Forest Grove and complies with Metro Code 3.01.035(e).

Mr. Morelli contends that Metro cannot both designate the added territory as Inner Neighborhood *and* specify a density that is greater than the person/acre number associated with the Inner Neighborhood designation in Title 1 of the Urban Growth Management Functional Plan (Metro Code section 3.07.170).<sup>1</sup> He argues that 3.01.035(f) says whatever density Metro assigns must be consistent with the Growth Concept designation. Staff believes the amended language recommended above fully complies with 3.01.035(f). A density of 10-units per net developable acre is not inconsistent with the Inner Neighborhood designation, which is the higher density residential designation in the Growth Concept (Outer Neighborhood is the lower density designation.) Also, the persons per acre number in Title 1 is illustrative only; it is not a legal requirement or limitation on residential density.

#### **ANALYSIS/INFORMATION**

**Known Opposition:** There are no other known opponents to this action.

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<sup>1</sup> For the area of each of the 2040 Growth Concept design types, the following average densities for housing and employment are recommended to cities and counties:

Central City - 250 persons per acre  
Regional Centers - 60 persons per acre  
Station Communities - 45 persons per acre  
Town Centers - 40 persons per acre  
Main Streets - 39 persons per acre  
Corridor - 25 persons per acre  
Employment Areas - 20 persons per acre  
Industrial Areas - 9 employees per acre  
Regionally Significant Industrial Area - 9 employees per acre  
Inner Neighborhoods - 14 persons per acre  
Outer Neighborhoods - 13 persons per acre

**Legal Antecedents:** Metro Code 3.01.035(e) allows, through an administrative process, adjustments to the Urban Growth Boundary where the UGB is intended to be coterminous with the 100-year floodplain, based on a recent delineation of the floodplain by a professional engineer registered by the State of Oregon. Code Section 3.01.033(e) allows any person who commented on the application may appeal the Chief Operating Officer's order to the Metro Council and the Council shall consider the appeal at a public hearing. Code Section 3.01.033(g) directs the Council to uphold, deny or modify the Chief Operating Officer's order.

**Anticipated Effects:** This resolution and order will amend COO Order 06-201, bringing into the UGB a 4.2-acre parcel that is already within the city limits of the City of Forest Grove.

**Budget Impacts:** As the applicant was required to file an application fee to cover all costs of processing this minor adjustment, there is no budget impact.

#### **RECOMMENDED ACTION**

Staff recommends that the Metro Council adopt Resolution No 07-3792 amending the Chief Operating Officer's Order 06-201, to read:

- "2. The land included in this amendment shall be designated as Inner Neighborhood on the Metro 2040 Growth Concept Plan and zoned by the City of Forest Grove to allow an average density of 10 units per net developable acre."



# Attachment 1, UGB Minor Adjustment, Res. No 07-3792

1S4W01

Annexation to the Urban Growth Boundary

Washington Co



Data Resource Center  
600 NE Grand Ave  
Portland, OR 97232-2736  
(503) 797-1742  
<http://www.metro-region.org/drc>

Taxlots  
Urban Growth Boundary  
Land to added to UGB

1:3,000  
Ron and Wanda Rau

Attachment 1  
UGB Minor Adjustment  
Res. No 07-3792