



Oregon

Theodore R. Kulbowski, 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



NOTICE OF ADOPTED AMENDMENT

12/10/2008

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Tigard Plan Amendment
DLCD File Number 007-08

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, December 26, 2008

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Gary Pagenstecher, City of Tigard
Gloria Gardiner, DLCD Urban Planning Specialist
Amanda Punton, DLCD Regional Representative
Meg Fernekees, DLCD Regional Representative

<paa> YA

DLCD

Notice of Adoption

DEPT OF LAND CONSERVATION AND DEVELOPMENT
DEC 05 2008

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

Jurisdiction: City of Tigard

Local file number: CPA2008-00010/SLR2008-0005

Date of Adoption: 11/25/2008

Date Mailed: 12/4/2008

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes Date: 8/22/2008

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation

- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other: Significant Wetlands Map Amendment

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

Implement map changes to City of Tigard's Significant Wetlands and Stream Corridors Map pursuant to Tri-County Shopping Center's 1998 Comprehensive Plan Amendment approval (CPA98-00002) and revise significant habitat areas map accordingly.

Does the Adoption differ from proposal? No

Plan Map Changed from: Removing 1.41 acres of wetlands

to: N/A

Zone Map Changed from: N/A

to: N/A

Location: South of SW Dartmouth Street, west of 72nd Avenue

Acres Involved: 1.41

Specify Density: Previous: N/A

New: N/A

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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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 file No. 007-08 (17102)

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

City of Tigard, Metro and ODOT.

Local Contact: **Gary Pagenstecher**

Phone: **(503) 718-2438** Extension:

Address: **13125 SW Hall Boulevard**

Fax Number: **503-718-2748**

City: **Tigard**

Zip: **97223**

E-mail Address: **garyp@tigard-or.gov**

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.

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 08- 19

AN ORDINANCE APPROVING A COMPREHENSIVE PLAN AMENDMENT (CPA2008-00010) TO CORRECT THE CITY'S SIGNIFICANT WETLANDS AND STREAM CORRIDORS MAP, CONSISTENT WITH THE FINDINGS IN 1998 TRI-COUNTY SHOPPING CENTER APPROVAL (CPA98-0002) AND APPROVING SENSITIVE LANDS REVIEW (SLR2008-00005) TO CORRECT THE SIGNIFICANT HABITAT AREAS MAP ON AN APPROXIMATELY 1.41 ACRE PORTION OF THE SUBJECT 17.17-ACRE PROPERTY LOCATED SOUTH OF SW DARTMOUTH STREET, WEST OF SW 72ND AVENUE, AND EAST OF HWY. 217 IN THE TIGARD TRIANGLE (WCTM 2S101BA, TAX LOT 00101 AND WCTM 1S136CD, TAX LOT 04200).

WHEREAS, In 1998, the City Council approved the Tri-County Shopping Center proposal in 1998 (Comprehensive Plan Amendment (CPA) 98-0002/Site Development Review (SDR) 98-0002/Planned Development Review (PDR) 98-0001/Sensitive Lands Review (SLR) 98-0002/Lot Line Adjustment (MIS) 98-0004), which approved a Comprehensive Plan Amendment to the Water Resources Overlay District that included fill and mitigation of approximately 1.41 acres of existing wetlands on the subject property, and other development.

WHEREAS, Although Council's 1998 approval of CPA98-0002 legally amended the City's Significant Wetlands Map, the resource maps were not revised as indicated in the findings for the decision. Meanwhile, grading, filling and wetland mitigation occurred even though the development was not built

WHEREAS, The Significant Habitat Areas map, based on the wetland inventory, is also in error and needs revision.

WHEREAS, Section 18.380.030.A of the City of Tigard Community Development Code requires quasi-judicial zoning map amendments to be undertaken by means of a Type III-PC procedure, as governed by Section 18.390.050, using standards of approval contained in Subsection 18.380.030.B; and

WHEREAS, Section 18.380.030.A.2 of the City of Tigard Community Development Code requires the Commission to make a recommendation to the Council on an application for a Comprehensive Plan Map Amendment; and

WHEREAS, Section 18.380.030.B.1 of the City of Tigard Community Development Code, requires demonstration of compliance with all applicable Comprehensive Plan Policies and map designations; and

WHEREAS, Section 18.380.030.B.2 of the Tigard Development Community Development Code requires demonstration of compliance with all applicable standards of any provision of this code or other applicable implementing ordinances; and

WHEREAS, Section 18.380.030.B.3 of the City of Tigard Community Development Code requires evidence of change in the neighborhood or community, or a mistake or inconsistency in the Comprehensive Plan or Zoning Map as it relates to the property which is the subject of the development application; and

WHEREAS, pursuant to Section 18.390.060G of the Tigard Development Code, a recommendation by the Commission, and a decision by the Council, shall be based on consideration of Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes; any federal or state statutes or regulations found applicable; any applicable Metro regulations; and

WHEREAS, the Tigard Planning Commission held a public hearing on October 6, 2008, and recommended approval of CPA2008-00010/SLR2008-00005 by motion with a unanimous vote in favor; and

WHEREAS, the Tigard City Council held a public hearing on November 25, 2008, to consider the request for a quasi-judicial Comprehensive Plan Amendment and determined that the amendments will not adversely affect the health, safety and welfare of the City and meets all applicable review criteria.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Comprehensive Plan Amendment (CPA2008-00010) and Sensitive Land Review (SLR2008-00005) are hereby approved by the City Council.

SECTION 2: The attached findings in the 9/24/08 Staff Report to the Planning Commission are hereby adopted in explanation of the Council's decision.

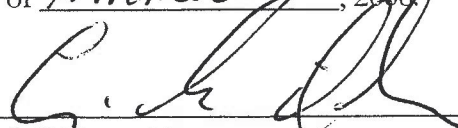
SECTION 3: The City's Significant Wetlands and Stream Corridors Map and Significant Habitat Areas Map shall be amended to represent the approved changes

SECTION 4: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

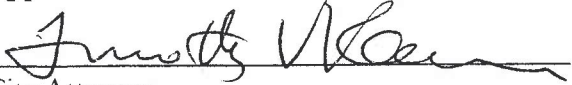
PASSED: By unanimous vote of all Council members present after being read by number and title only, this 25th day of November, 2008.



Carol A. Krager, Deputy City Recorder

APPROVED: By Tigard City Council this 25th day of November, 2008.


Craig Dirksen, Mayor

Approved as to form:


City Attorney
November 25, 2008

Date

**STAFF REPORT TO THE
PLANNING COMMISSION
FOR THE CITY OF TIGARD, OREGON**



120 DAYS = N/A

SECTION I. APPLICATION SUMMARY

FILE NAME: TRI-COUNTY SHOPPING CENTER APPROVAL WETLAND AND
STREAM CORRIDOR MAP AMENDMENT

CASE NOS.: Comprehensive Plan Amendment CPA2008-00010
Sensitive Lands Review SLR2008-00005

APPLICANT: City of Tigard
Community Development Dept.
Attn: Tom Coffee
13125 SW Hall Boulevard
Tigard, OR 97223

OWNER: PacTrust
15350 SW Sequoia Parkway
Suite 300
Portland, OR 97224

PROPOSAL: The Community Development Director requests a Comprehensive Plan Map Amendment to correct the City's Significant Wetlands and Stream Corridors Map in the vicinity of SW Dartmouth Street and Hwy. 217. The City Council approved the Tri-County Shopping Center proposal (Comprehensive Plan Amendment (CPA) 98-0002/Site Development Review (SDR) 98-0002/Planned Development Review (PDR) 98-0001/Sensitive Lands Review (SLR) 98-0002/Lot Line Adjustment (MIS) 98-0004), which approved a Comprehensive Plan Amendment to the Water Resources Overlay District that included fill and mitigation of approximately 1.41 acres of existing wetlands on the subject property, and other development.

Although Council's approval of CPA98-0002 legally amended the City's Significant Wetlands Map, the resource maps were not revised as indicated in the findings for the decision. Meanwhile, grading, filling and mitigation occurred, even though the development was not built. The Significant Habitat Areas map, based on the wetland inventory, is also in error and needs to be revised.

LOCATION: The subject property is located south of SW Dartmouth Street and west of SW 72nd Avenue in the Tigard Triangle; Washington County Tax Assessor's Map 2S101BA, Tax Lot 00101 and 1S136CD, Tax Lot 04200.

**ZONING/
COMP. PLAN
DESIGNATION:** C-G (PD): General Commercial District. The C-G zoning district is designed to accommodate a full range of retail, office and civic uses with a City-wide and even regional trade area. Except where non-conforming, residential uses are limited to single-family residences which are located on the same site as a permitted use. A wide range of uses, including but not limited to adult entertainment, automotive equipment repair and storage, mini-warehouses, utilities, heliports, medical centers, major event entertainment, and gasoline stations, are permitted conditionally.

**APPLICABLE
REVIEW
CRITERIA:** Community Development Code Chapters 18.380, 18.390 and 18.775; Comprehensive Plan Goals 1 and 2, and Policy 3; Statewide Planning Goals 1, 2 and 5; and Metro Functional Plan Titles 3 and 13.

SECTION II. STAFF RECOMMENDATION

The Director recommends that the Planning Commission recommend **APPROVAL** to City Council of the proposed Comprehensive Plan Amendment and Sensitive Lands Review.

SECTION III. BACKGROUND INFORMATION

Site History

The Council approved the Tri-County Shopping Center proposal (Comprehensive Plan Amendment (CPA) 98-0002/Site Development Review (SDR) 98-0002/Planned Development Review (PDR) 98-0001/Sensitive Lands Review (SLR) 98-0002/Lot Line Adjustment (MIS) 98-0004), which approved a Comprehensive Plan Amendment to the Water Resources Overlay District, including fill and mitigation of a approximately 1.41 acres of existing wetlands on the subject property, and other development. However, the resource maps were not revised as indicated in the findings for the decision (Final Order, page 19). Meanwhile, grading, filling and mitigation occurred, even though the development was not built. The Significant Habitat Areas map, based on the wetland inventory, is therefore also in error and needs to be revised. It is also noted that the fill and mitigation that occurred followed permits granted by the Division of State Lands and US Army Corps of Engineers.

Vicinity Information

The subject 17.17-acre property is located south of SW Dartmouth Street, west of SW 72nd Avenue, and east of Hwy. 217 in the Tigard Triangle. A 10.42-acre significant wetland associated with Red Rock Creek is located adjacent to the site on the west. The C-G (PD)-zoned land is surrounded on the north, west and east by the same zone and on the south by land zoned MUE.

Proposal Description

The Community Development Director requests a Comprehensive Plan Map Amendment to correct the City's Wetlands and Stream Corridors Map and Significant Habitat Areas Map (**Attachment 1**).

SECTION IV. APPLICABLE CRITERIA, FINDINGS AND CONCLUSIONS

TIGARD DEVELOPMENT CODE CHAPTER 18.380:

18.380.030 Quasi-Judicial Amendments and Procedures to this Title and Map

Quasi-judicial zoning map amendments shall be undertaken by means of a Type III-PC procedure, as governed by Section 18.390.050, using standards of approval contained in Subsection B below.

A. The Commission shall make a recommendation to the Council on an application for a comprehensive plan map amendment.

Staff requests a quasi-judicial comprehensive plan map amendment under Type III-PC procedure to correct the City's Wetlands and Stream Corridors Map consistent with the findings in CPA98-0002. In addition, staff requests a correction in the City's Significant Habitat Areas Map reflecting the corrected Wetlands and Stream Corridor Map on which Metro's habitat inventory was based (Metro Ordinance 05-1077C, Exhibit C, Attachment 3 includes the wetland inventory map that was adopted as part of the habitat inventory). These resource plans are included by reference in the City's Comprehensive Plan. The Commission shall make a recommendation to the Council on this proposed comprehensive plan amendment.

B. Standards for making quasi-judicial decisions. A recommendation or decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:

18.380.030. B.1

Demonstration of compliance with all applicable comprehensive plan policies and map designations;

COMPREHENSIVE PLAN - GOAL 1: CITIZEN INVOLVEMENT

Goal 1.1 Provide citizens, affected agencies and other jurisdictions the opportunity to participate in all phases of the planning process.

The City has mailed notice of the Planning Commission hearing on September 15, 2008 to property owners within 500 feet of the subject site, interested citizens, and agencies. The City published notice of the hearing and posted the site pursuant to TDC 18.390.050 for Type III Procedures. After the Planning Commission public hearing, additional notice will be published prior to the City Council hearing. Two public hearings are held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided.

With these public involvement provisions, the proposed zone change is consistent with applicable Citizen Involvement policies.

COMPREHENSIVE PLAN - GOAL 2: LAND USE PLANNING

Goal 2.1: Maintain an up-to-date Comprehensive Plan, implementing regulations and action plans as the legislative foundation of Tigard's land use planning program.

The Director requested amendments to the City's Wetlands and Stream Corridors Map and the City's Significant Habitat Areas Map, included by reference in the Comprehensive Plan. The map corrections will provide accurate information on which future development proposals can rely, consistent with maintaining an up-to-date Comprehensive Plan.

COMPREHENSIVE PLAN - POLICY 3: NATURAL FEATURES AND OPEN SPACE

Policy 3.2.1: The city shall prohibit development within areas designated as Significant wetlands on the floodplain and wetlands map. No Development shall occur on property adjacent to areas designated as Significant wetlands on the floodplain and wetlands map within twenty five (25) feet of the designated wetlands area. Development on property adjacent to significant wetlands shall be allowed under the planned development section of the code.

The Council, under CPA98-0002, approved removal of approximately 1.41 acres of wetlands on the subject property. Even though the development was not built, the developer graded, filled and mitigated for the wetlands. However, the resource maps were not revised as indicated in the findings for the decision (Final Order, page 19). Therefore, the prohibition of development for those wetlands should no longer apply. This proposal would revise the City's Wetlands and Stream Corridors Map, consistent with the legal and material status of the subject wetlands. The subject parcel is zoned C-G (PD) and is adjacent to a 10.42-acre significant wetland associated with Red Rock Creek on the west. Therefore, future development on the site will occur under the planned development section of the code (Chapter 18.350).

FINDING: Based on the analysis above, staff finds that the proposed map revisions are consistent with the applicable goals and policies contained in the Tigard Comprehensive Plan.

18.380.030.B.2

Demonstration of compliance with all applicable standards of any provision of this code or other applicable implementing ordinance; and

Zoning Map and Text Amendments (18.380)

The applicable Sections of Chapter 18.380 including the process for map amendments and approval standards are addressed in this staff report.

Decision Making (18.390)

The standards of Chapter 18.390.050 for Type III-PC procedures are applicable to this proposal, as identified in 18.380.030. Section 18.390.050 requires a preapplication conference, application requirements, and procedures for Planning Commission hearings. A pre-application conference was held in July and documented in the July 31, 2008 Memorandum from Tom Coffee to Dick Bewersdorff. An Impact Statement is not required under 18.390.050.B.e. because no development is proposed. Pursuant to 18.380.030.A.2, the Commission shall make a recommendation to the Council on an application for a comprehensive plan map amendment.

In addition, 18.775.130 states that any owner of property affected by the Goal 5 safeharbor protection of significant wetlands may apply for a quasi-judicial comprehensive plan amendment under a Type IV procedure. CPA98-0002 used the Type IV procedure to remove the wetlands through the ESEE safeharbor analysis. The procedures for this Type III PC process and the Type IV process are similar in that both require hearings at the Planning Commission with a recommendation to Council who makes the decision. However, Type IV decisions require consideration of additional criteria, including any applicable Metro, State and Federal regulations. These additional regulations are addressed below.

Sensitive Lands (18.775)

18.775.130 Plan Amendment Option

Any owner of property affected by the Goal 5 safeharbor (1) protection of significant wetlands and/or (2) vegetated areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek may apply for a quasi-judicial comprehensive plan amendment under Type IV procedure. This amendment must be based on a specific development proposal. The effect of the amendment would be to remove Goal 5 protection from the property, but not to remove the requirements related to the CWS Stormwater Connection Permit, which must be addressed separately through an Alternatives Analysis, as described in Section 3.02.5 of the CWS "Design and Construction Standards". The applicant shall demonstrate that such an amendment is justified by an Environmental, Social, Economic and Energy (ESEE) consequences analysis.

CPA98-0002, which was a specific development proposal, included an ESEE analysis that formed the basis of the Council's approval and removal of the Goal 5 protection from the property.

If the application is approved, then the ESEE analysis shall be incorporated by reference into the Tigard Comprehensive Plan, and the "Tigard Wetland and Stream Corridor Map" shall be amended to remove the site from the inventory.

CPA98-0002 approved the application and the ESEE analysis was incorporated by reference in the Tigard Comprehensive Plan. The finding in the decision stated "If this application is approved, staff will undertake the appropriate revisions to the resource maps." However, staff did not revise the Tigard Wetland and Stream Corridor Map, which is the subject of the Director's request.

18.775.140 Significant Habitat Areas Map Verification Procedures

The Significant Habitat Areas Map shall be the basis for determining the general location of significant habitat areas on or adjacent to the site. Applicants who believe that the map is inaccurate shall submit a detailed delineation conducted by a qualified professional in accordance with the following methodology to verify the precise boundaries of the inventoried habitat areas by means of a Type II procedure.

Verifying boundaries of inventoried riparian habitat. Locating habitat and determining its riparian habitat class is a four-step process: a) Locate the Water Feature that is the basis for identifying riparian habitat, b) Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas, c) Determine whether the degree that the land slope upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the vegetated corridor measurement methodology as described in Clean Water Services Design and Construction Standards), and d) Identify the riparian habitat classes applicable to all areas on the property using Table 18.775.2 and Table 18.775.3.

The City believes the Significant Habitat Areas Map is inaccurate because it is based on an inaccurate wetlands inventory as described in this report and shown in Attachment 1. The methodology prescribed to verify habitat area boundaries includes locating the water feature that is the basis for identifying riparian habitat. In this case, CPA98-0002 removed two island wetlands that were the basis for the "strictly limit" habitat classification. Staff proposes to amend the Significant Habitat Areas Map to remove only those two "strictly limit" areas associated with the wetlands that no longer exist legally or materially.

Metro Land Use and Planning submitted a comment letter dated September 5, 2008, in which Metro staff concluded that there are no significant issues with the Director's request related to Metro's Habitat Inventory Map or Water Quality Resource Area map. However, Metro staff requested the following

comments be entered into the record based on the requested change and as the City works with the property owner on future development:

- ◆ The stream on the property, which has been scarified for some time, does appear to be in error. There may be a small remnant in the northeast corner of the lot. Metro receives all its stream layers from the local jurisdictions; consequently we would rely on your identification of this resource and its location.
- ◆ Metro staff has reviewed aerial photography over several years and has seen no evidence of the two small wetlands shown on the current maps. A previous Comprehensive Plan Amendment passed by the Tigard City Council has already removed the wetlands from the inventory. Since Metro can find no evidence of wetlands in the past, the removal of the habitat designation is consistent with previous decisions on this property. Again, Metro receives local wetlands inventory from the local jurisdictions.
- ◆ The lot involved to the west, TLID 2S101BA00200, identifies important riparian habitat which provides important protection for both wildlife habitat and water quality within the City of Tigard.

RESPONSE:

The stream on the subject property currently runs in a course adjacent to SW Dartmouth and is included in the on-going 10-year mitigation effort permitted by DLCD and USACE. The original stream course is indicated on the CWS Stream Corridors Map and on the Significant Habitat Areas Map as "lightly limit". The original stream course is scarified as a result of the grading approved under CPA98-000 and mapping should reflect these changes. The City's Long Range Planning Staff will work with CWS and Metro to amend their respective maps.

The City's Wetland and Stream Corridors Map will be revised by removing the subject wetland areas and adding the mitigation wetland areas, consistent with this application, if approved.

The adjacent TLID 2S101BA00200, owned by Costco, contains important riparian habitat associated with Red Rock Creek. On August 29, 2008, the City received an application for retail development on the property that is the subject of this application. The application will be processed as a planned development. The purposes of the Planned Development chapter include preserving to the greatest extent possible the existing landscape features and amenities and to provide a means to better relate the built environment to the natural environment through sustainable and innovative building and public facility construction methods and materials. Application of the Planned Development standards and process should ensure protection for both wildlife habitat and water quality on the adjacent parcel.

FINDING: The proposal is consistent with the applicable standards of Tigard Development Code.

18.380.030.B.3

Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application.

The Director has initiated a comprehensive plan map amendment to address errors in the City's Wetlands and Stream Corridors Map and the City's Significant Habitat Areas Map, which are incorporated by reference into the comprehensive plan map. Consistent with the findings in CPA98-0002, the City proposes to revise the Wetlands and Stream Corridors Map removing the wetlands designation on the subject 1.41 acres of mapped wetlands.

In addition, the City intends to revise the City's Significant Habitat Areas Map consistent with Metro's adopted Metro's Goal 5 program known as Nature in Neighborhoods. The wetland inventory map (Metro Ordinance 05-1077C, Exhibit C, Attachment 3) that was adopted as part of the habitat inventory was based on the City's erroneous Wetlands and Stream Corridors Map, which included the wetlands removed under CPA98-0002. The City's Significant Habitat Areas Map shows "strictly limit" habitat areas associated with wetlands. The removal of the mapped wetlands would remove the basis for the habitat designation.

FINDING: The direction for map revision in the findings for CPA98-0002 provides evidence of a mistake in the City's Wetlands and Stream Corridors Map and the City's Significant Habitat Areas Map relating to the subject property.

18.380.030.C

Conditions of approval. A quasi-judicial decision may be for denial, approval, or approval with conditions as provided by Section 18.390.050. A legislative decision may be approved or denied.

FINDING: The land use action requested is quasi-judicial as it is limited to a specific parcel and does not apply generally across the City. Therefore, the Planning Commission recommendation to Council may be for denial, approval, or approval with conditions.

APPLICABLE METRO, STATE AND FEDERAL REGULATIONS

Pursuant to 18.390.060.G, review of the following Metro, State and Federal regulations are applicable to Type IV procedures which apply generally to legislative matters such as the creation, revision, or large-scale implementation of public policy and specifically to Goal 5 safeharbor protection of significant wetlands (18.775.130).

Metro Framework Plan

Metro Functional Plan Title 3 - Water Quality, Flood Management, and Fish/Wildlife Habitat Conservation - protect beneficial uses and functional values of water quality and flood management resources by limiting uses in these areas. Establish buffer zones around resource areas to protect from new development.

The proposed map corrections simply acknowledge what was previously permitted under CPA98-0002 and the DSL and USACE permits. Therefore, the proposed amendments do not conflict with Title 3 requirements.

Metro Functional Plan Title 13 - Nature in Neighborhoods - conserve, protect, and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and control and prevent water pollution for the protection of the public health and safety, and to maintain and improve water quality throughout the region.

Title 13 is part of the regional approach to implement Statewide Planning Goal 5. As part of the original land use application for CPA98-0002, wetlands, vegetated corridor and habitat were inventoried and delineated and an Environmental, Social, Economic and Energy (ESEE) analysis was conducted. The decision required compensatory mitigation and reestablishment of wetland areas. The new wetland areas have been established and will be added back into the inventory of protected sites (GeoEngineers, Wetland Delineation, Figure 6). The Year-Five Wetland Mitigation Monitoring Report, dated December 21, 2007, by GeoEngineers found that the work completed at the Tigard Retail Development site has been conducted in general accordance with the *Proposed Mitigation Compliance Action Punch List* reviewed with USACE and DSL. The GeoEngineers monitoring survey completed on November 27, 2007 included establishment of eight monitoring stations that will be used over the remaining five years of the 10-year monitoring period to document the success of the mitigation efforts. Completion of the proposed mitigation activities will create the capability for proper functioning at the site, consistent with the aim of Nature in Neighborhoods.

With this application, the City is simply proposing to amend the City's Wetlands and Stream Corridors and Significant Habitat Areas maps for the wetlands removed under CPA98-0002. New wetlands created will also be mapped accordingly.

FINDING: Based on the analysis above, staff finds that the proposed project has addressed the relevant Metro policies.

Statewide Planning Goals

Statewide Planning Goal 1 - Citizen Involvement:

This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

This goal has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390. A notice was mailed to all property owners within 500 feet of the project site and the notice was additionally published in the Tigard Times prior to the hearing. After the Planning Commission public hearing, additional notice will be published prior to the City Council hearing. Two public hearings are held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided.

Statewide Planning Goal 2 - Land Use Planning:

This goal outlines the land use planning process and policy framework.

The City's Comprehensive Plan was acknowledged by DLCD as being consistent with the statewide planning goals. The Development Code implements the Comprehensive Plan. The Development Code establishes a process and standards to review changes to the Comprehensive Plan. As discussed within this report, the proposed amendments comply with the Development Code and Comprehensive Plan criteria.

Statewide Planning Goal 5 - Natural Resources

This goal requires the inventory and protection of natural resources, open spaces, historic areas and sites suitable for removal and processing of mineral and aggregate resources.

This goal is met because the resources have been inventoried and delineated. Protections are in place via the development code restrictions. Staff is proposing to amend the Wetland and Stream Corridors and Significant Habitat Areas maps to correct mapping errors when the subject wetlands were removed from the inventory pursuant to CPA98-0002, but not removed from the maps. The review process also required compensatory mitigation and reestablishment of wetland areas. The new wetlands on the subject site have been established (Geo Engineers Wetland Delineation, 5/18/07) and will be added back into the inventory of protected sites. A thorough review by state (DSL, RF-9256) and federal (USACE, case number 98-666) agencies has been conducted and approvals have been issued.

FINDING: Based on the analysis above, staff finds that the proposed amendments are consistent with applicable Statewide Planning Goals.

State and Federal Regulations

Oregon Revised Statutes Chapter 196

Oregon Revised Statutes Chapter 196 addresses general wetland requirements within the state. These statutes are administered by Division of State Lands. DSL reviewed the proposal and issued an approval permit for the subject property (DSL RF-9256).

Federal Clean Water Act, section 404

The clean water act is responsible for regulating impacts to wetlands and other navigable waters of the United States. The agency primarily responsible for implementing these federal statutes is the Army Corps of Engineers. The Corps has reviewed the proposal and issued an approval for wetland fill (USACE, case number 98-666)

FINDING: Based on the analysis above, staff finds that the proposed amendments are consistent with applicable State and Federal regulations.

SECTION V. OTHER STAFF COMMENTS

City of Tigard Long Range Planning Division has reviewed the proposal and intends to amend the maps that are the subject of this proposal.

SECTION VI. AGENCY COMMENTS

Oregon Departments of Fish and Wildlife, Land Conservation and Development, Environmental Quality and Division of State Lands were given the opportunity to review this proposal and submitted no comments or objections.

Clean Water Services (CWS) has reviewed the proposal and submitted a general comment letter date September 2, 2008. CWS comments do not address the particulars of this application but rather issues related to the eventual development of the site.

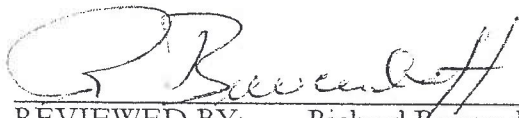
Metro Land Use and Planning submitted a comment letter dated September 5, 2008, in which Metro staff concluded that there were no significant issues with the request related to Metro's Habitat Inventory Map or Water Quality Resource Area map. However, there are several comments that Metro staff would like entered into the record based on the requested change.

These comments are included in the body of this staff report. A copy of the letter can be found in the land use file for this application.



PREPARED BY: Gary Pagenstecher
Associate Planner

September 24, 2008
DATE



REVIEWED BY: Richard Bowersdorff
Planning Manager






September 24, 2008
DATE

I:\curpln\gary\comprehensive plan amendments\cpa2008-00010 (Tri-County)



ATTACHMENT 1

CPA2008-00010
 City of Tigard
 Oregon

-  Subject Site
-  Significant Wetland
-  Highest Value Habitat
-  Moderate Value Habitat
-  Lower Value Habitat

Significant Habitat designation
 to be removed

Wetlands removed by
 CPA98-00002

** The information represented on this map is current as of August 30, 2008. Revisions will be made as new decisions or amendments occur to alter the content of the map.



Source: City of Tigard, Oregon; Community Development Dept. 4th of August, 2008
 This map is a map of the City of Tigard, Oregon. It is not a legal document. It is for informational purposes only. It is not to be used for any other purpose. It is not to be used for any other purpose. It is not to be used for any other purpose.

CITY OF TIGARD
CURRENT PLANNING
13125 SW HALL BLVD.
TIGARD, OR 97223-8189

CERTIFIED MAIL™



7008 1830 0004 3346 8683



RETURN RECEIPT
REQUESTED

ATTN: PLAN AMENDMENT SPECIALIST
Oregon Dept. of Land Conservation & Development
635 Capital Street NE, Suite 150
Salem, OR 97301-2540

