



Oregon

Theodore R. Kubongski, 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

10/12/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Tualatin Plan Amendment
DLCD File Number 006-09

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, October 23, 2009

This amendment was submitted to DLCD for review 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Colin Cortes, City of Tualatin
Gloria Gardiner, DLCD Urban Planning Specialist
Jennifer Donnelly, DLCD Regional Representative

Bill Holmstrom, DLCD Regional Representative

<paa> YA

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

DEPT OF

OCT 05 2009

**LAND CONSERVATION
AND DEVELOPMENT**
For DLCD Use Only

Jurisdiction: **City of Tualatin**

Local file number: **PMA-09-02**

Date of Adoption: **9/28/2009**

Date Mailed: **10/02/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **7/14/2009**

- | | |
|--|--|
| <input type="checkbox"/> Comprehensive Plan Text Amendment | <input checked="" type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

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

The City adopted a plan map amendment (PMA) from Low Density Residential (RL; 1 to 6.4 DUs per ac) to Office Commercial (CO) for tax lot 2 1E 19C 700 of approximately 0.93 acres located in the portion of the City within Clackamas County. (Tualatin has an integrated comprehensive plan and development code; a "planning district" functions as both a designation of future land use and a zoning district.) Adoption via Ord. No. 1288-09.

Does the Adoption differ from proposal? **No**

Plan Map Changed from: **RL**

to: **CO**

Zone Map Changed from: **RL**

to: **CO**

Location: **6480 SW Nyberg Ln**

Acres Involved: **0.93**

Specify Density: Previous: **1.0 to 6.4 DUs/ac**

New: **no DUs/ac**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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

DLCD No. 006-09 (17694) [15746]

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

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

Local Contact: **Colin Cortes**

Phone: (503) 691-3024 Extension:

Address: **18876 SW Martinazzi Ave**

Fax Number: **503-692-0147**

City: **Tualatin**

Zip: **97062-7092**

E-mail Address: **ccortes@ci.tualatin.or.us**

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, or by emailing **larry.french@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 **larry.french@state.or.us** - **Attention: Plan Amendment Specialist**.

ORDINANCE NO. 1288-09

AN ORDINANCE RELATING TO PLAN MAP AMENDMENT PMA-09-02; APPLYING OFFICE COMMERCIAL (CO) PLANNING DISTRICT DESIGNATION TO 6480 SW NYBERG LANE; AND AMENDING THE COMMUNITY PLAN MAP 9-1

WHEREAS upon the application of Group Mackenzie, a quasi-judicial public hearing was held before the City Council of the City of Tualatin on September 28, 2009, related to applying Office Commercial (CO) Planning District Designation to 6480 SW Nyberg Lane, and Amending the Community Plan Map 9-1 (PMA-09-02); and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication on September 10, 2009, in The Times, a newspaper of general circulation within the City, which is evidenced by the Affidavit of Publication marked "Exhibit A", attached and incorporated by this reference; and by posting a copy of the notice in two public and conspicuous places within the City on August 28, 2009, which is evidenced by the Affidavit of Posting marked "Exhibit B;" and by mailing a copy of this notice under the Tualatin Community Plan on September 2, 2009, which is evidenced by the Affidavit of Mailing marked "Exhibit C", attached and incorporated by this reference; and

WHEREAS the Council heard and considered the testimony and evidence presented on behalf of the applicant, the City staff, and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in approval of the application [Vote 6-0] with Councilor Maddux absent; and

WHEREAS based upon the evidence and testimony heard and considered by the Council, and especially the City staff report dated September 28, 2009 the Council makes and adopts as its findings of fact the findings and analysis in the City staff report, marked "Exhibit D," which is attached and incorporated by reference; and

WHEREAS based upon the foregoing Findings of Fact, the Council finds that it is in the best interest of the residents and inhabitants of the city and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended.

THE CITY OF TUALATIN, OREGON ORDAINS AS FOLLOWS:

Section 1. The Community Plan Map 9-1 is amended to designate as an Office Commercial (CO) Planning District Tax Lot 2S 1E 19C 700 with the address of 6480 SW Nyberg Lane, the portion of right-of-way of SW Nyberg Lane north to the centerline of the right-of-way, and the portion of right-of-way of SW 65th Avenue west to the east boundary of the General Commercial (CG) Planning District.

INTRODUCED AND ADOPTED this 28th day of September, 2009.

CITY OF TUALATIN, OREGON

BY _____

Mayor

ATTEST

BY _____

City Recorder

APPROVED AS TO LEGAL FORM

Grenda L. Braden
CITY ATTORNEY



STAFF REPORT CITY OF TUALATIN

Approved By Tualatin City Council
Date 9-28-09
Recording Secretary M. Smith

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Doug Rux, Community Development Director *DR*
Colin Cortes, Assistant Planner *C. C.*

DATE: September 28, 2009

SUBJECT: AN ORDINANCE RELATING TO PLAN MAP AMENDMENT PMA-09-02; APPLYING OFFICE COMMERCIAL (CO) PLANNING DISTRICT DESIGNATION TO 6480 SW NYBERG LANE; AND AMENDING THE COMMUNITY PLAN MAP 9-1

ISSUE BEFORE THE COUNCIL:

City Council consideration regarding the request for a Plan Map Amendment, PMA-09-02, to change the planning district designation from Low Density Residential (RL) to Office Commercial (CO) of a property of approximately 0.93 acres at 6480 SW Nyberg Lane and the centerline of abutting public rights-of-way of SW 65th Avenue and SW Nyberg Lane.

RECOMMENDATION:

The Tualatin Planning Advisory Committee (TPAC) voted 6-1 on August 13, 2009 recommending that the City Council approve PMA-09-02.

Staff recommends that the City Council consider the staff report and supporting attachments and provide direction.

EXECUTIVE SUMMARY:

- This matter is a land use action requiring a quasi-judicial public hearing.
 - This matter is a Plan Map Amendment (PMA) to amend the Community Plan Map 9-1 of the Tualatin Development Code (TDC).
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- The request is to amend the planning district designation from Low Density Residential (RL) to Office Commercial (CO). CO regulations are Attachment G.
- The applicant is Theresa Paulson of Group Mackenzie representing owner Donald Waterman. Application Materials are in Attachment D.
- The subject property is tax lot 2S 1E 19C 700 (Lot 700) of approximately 0.93 acres located at 6480 SW Nyberg Lane in the portion of the City of Tualatin within Clackamas County, generally at the SE corner of SW 65th Avenue and SW Nyberg Lane. The amendment includes the portion of right-of-way (ROW) of SW Nyberg Lane north to the centerline of the ROW and the portion of ROW of SW 65th Avenue west to the east boundary of the General Commercial (CG) Planning District. This totals approximately 0.48 acres of ROW. Attachments A through C are maps.
- The subject property was undeveloped until approved in 1990 for child day care as a conditional use within RL via application CUP-89-02 and Resolution No. 2423-90. Though RL, the developed site has always been commercial in use.
- Recently occupied by La Petite Academy, the property was vacant until recently reoccupied by a child day care provider through a month-to-month lease.
- Regarding auto traffic, the reasonable worst-case scenario for vehicle trip generation (medical office) is less than that of child day care. Reproduced below is the table from Attachment G:

| <u># of Lots</u> | <u>AM Peak</u> | <u>PM Peak</u> | <u>ADT</u> |
|------------------|----------------|----------------|------------|
| 6 Houses | 5 | 7 | 58 |
| PMA 09-02 | 30 | 45 | 450 |
| Daycare | 80 | 85 | 530 |

- The “worse case” scenario used for the traffic analysis compares the vehicle trip generation of the existing square footage of child day care building with that of a medical office building twice the square footage of the existing child day care building.
- As the analysis and findings (Attachment F) demonstrate, actual site conditions preclude fulfillment of the RL designation through development into single-family (SF) homes. Conditions include the lot size and location relative to wetlands and the wetland buffer that would be required of redevelopment by the contemporary standards of Clean Water Services (CWS), the sewer and stormwater agency for Washington County.
- At the land use level, the present RL (1-6.4 DUs/acre) designation allows for up to six (6) dwelling units (DUs) in the form of SF houses. The effect of the amendment on state and Metro housing regulations is negligible.
- The 120-day requirement imposed by Oregon Revised Statutes (ORS) 227.178(2) applies to this application. This hearing is on day 77 of 120.

- The applicable local policies and regulations that apply to PMA-09-02 include TDC Sections 1.032 Amendments "Burden of Proof" and 6.030 Office Commercial Planning District (CO) "Objectives." Applicable state and Metro regulations are Statewide Planning Goals 2, 10, 11 and 12 and Metro Code 3.07, the Urban Growth Management Functional Plan (UGMFP). Attached to this report are the Analysis and Findings regarding compliance with these applicable policies and regulations (Attachment F).
- Before granting the proposed PMA, the City Council must find that the application meets the plan amendment criteria listed in TDC 1.032. The Analysis and Findings section of this report (Attachment F) examines the application.

OUTCOMES OF DECISION:

Approval of the PMA request would result in the following:

1. A change of the planning district designation of tax lot 2S 1E 19C 700; the portion of right-of-way of SW Nyberg Lane north to the centerline of the right-of-way (ROW); and, the portion of ROW of SW 65th Avenue west to the east boundary of the General Commercial (CG) Planning District from Low Density Residential (RL) to Office Commercial (CO).
2. Allowance for a child day care provider to occupy easily the vacant property as a permitted rather than conditional use, facilitating the owner's deriving economic benefit from the property thereby fostering Tualatin's economy.
3. Negligible effects on public infrastructure and services, particularly in that the return of a child day care provider would generate the same peak period vehicle trips as before and would generate fewer trips as medical offices than other uses permitted in CO.

Denial of the PMA request would result in the following:

1. The subject property and adjoining ROW retain RL Planning District designation.
2. The possibility of vacancy if the present day care provider does not renew the present lease and because child day care would be the only commercial use allowed.
3. The owner cannot derive much economic benefit, and the site does not foster Tualatin's economy.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the TPAC and staff recommendations are:

- Recommend the Council approve the proposed PMA with alterations.
- Recommend the Council deny the request for the proposed PMA.
- Continue the discussion of the proposed PMA and return to the matter at a later date.

Staff Report: PMA-09-02 Waterman – RL to CO
September 28, 2009
Page 4 of 4

FINANCIAL IMPLICATIONS:

The applicant paid the required application fee reflected in the FY 2008/09 budget.

PUBLIC INVOLVEMENT:

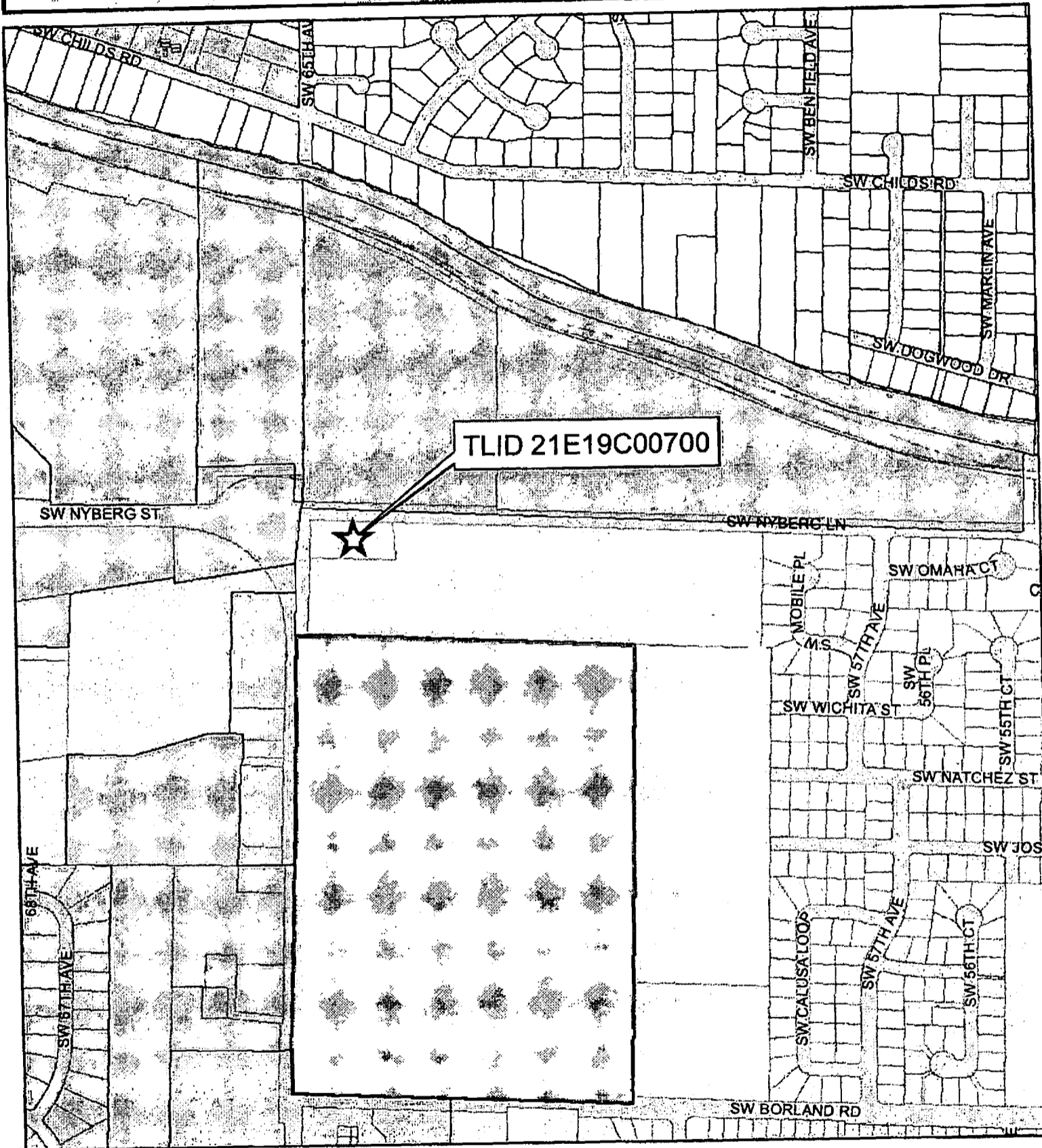
The applicant conducted a neighbor/developer meeting as required by TDC 31.063 on May 20, 2009 at 6:30 p.m. at the Juanita Pohl Center, f.k.a. the Senior Center, within Tualatin Community Park. Six persons other than the applicant's representatives attended, including TPAC member Mark Coolican.








Attachments:

- A. Vicinity Map: Existing Planning District
- B. Vicinity Map: Proposed Planning District
- C. Tax Map
- D. Application Materials
- E. Background
- F. Analysis and Findings
- G. Engineering Division Memorandum
- H. Comparative Zoning Table
- I. Ordinance No. ____-09

PMA 09-02 - Existing Planning Districts

TUALGIS 

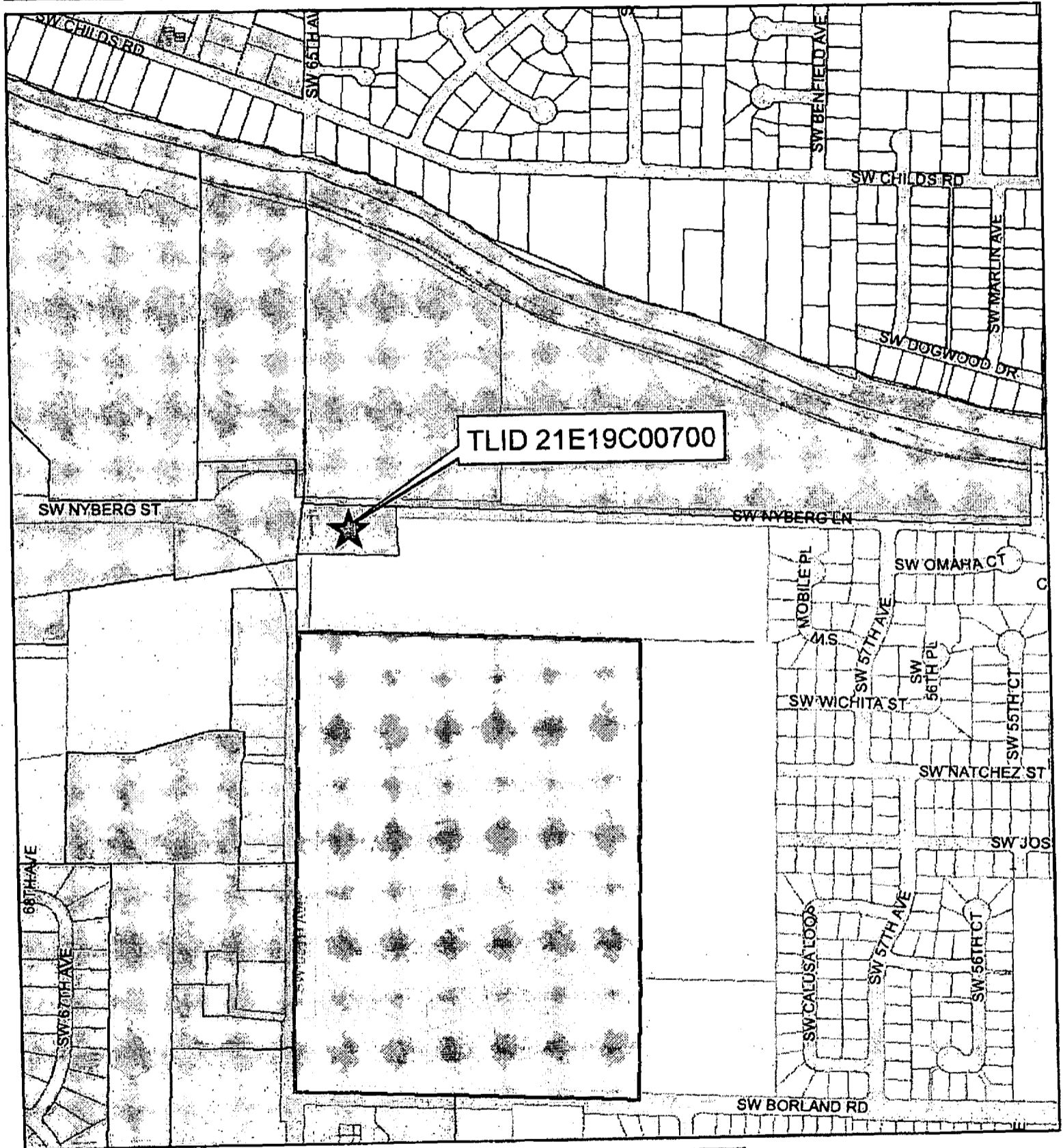









| | | | | | | | |
|---|----|---|-----|---|-----|--|----|
|  | CG |  | CO |  | MC |  | RH |
|  | RL |  | RML |  | RMH | | |

Scale: 1:5,600
Attachment A
Vicinity Map: Existing Planning District

PMA 09-02 - Proposed Planning Districts

TUALGIS 



- | | | | |
|--|---|---|---|
|  CG |  CO |  MC |  RH |
|  RL |  RML |  RMH | |

RF 1:5,600
Vicinity Map: Proposed Planning District

Attachment B

I. PROJECT SUMMARY

Owner: Mr. Don Waterman
18342 NW Gillihan Loop Road
Portland, OR 97231

Owner's Representative: Specht Properties, Inc.
15325 SW Beaverton Creek Court
Beaverton, OR 97006
503-646-2202
Contact: Todd Sheaffer/Brent Hedberg

Land Use Planner: Group Mackenzie
PO Box 14310
Portland, Oregon 97293
503-224-9560
Contact: Theresa Paulson, AICP

Cross Streets: SW Nyberg Lane/SW 65th Avenue

Map/Tax Lot of Site: 2S 1E 19C tax lot 700

Site Size: 43,543 SF
Source: RLIS GIS data

Current Plan Designation: RL (Low-Density Residential)

Applicable Criteria:

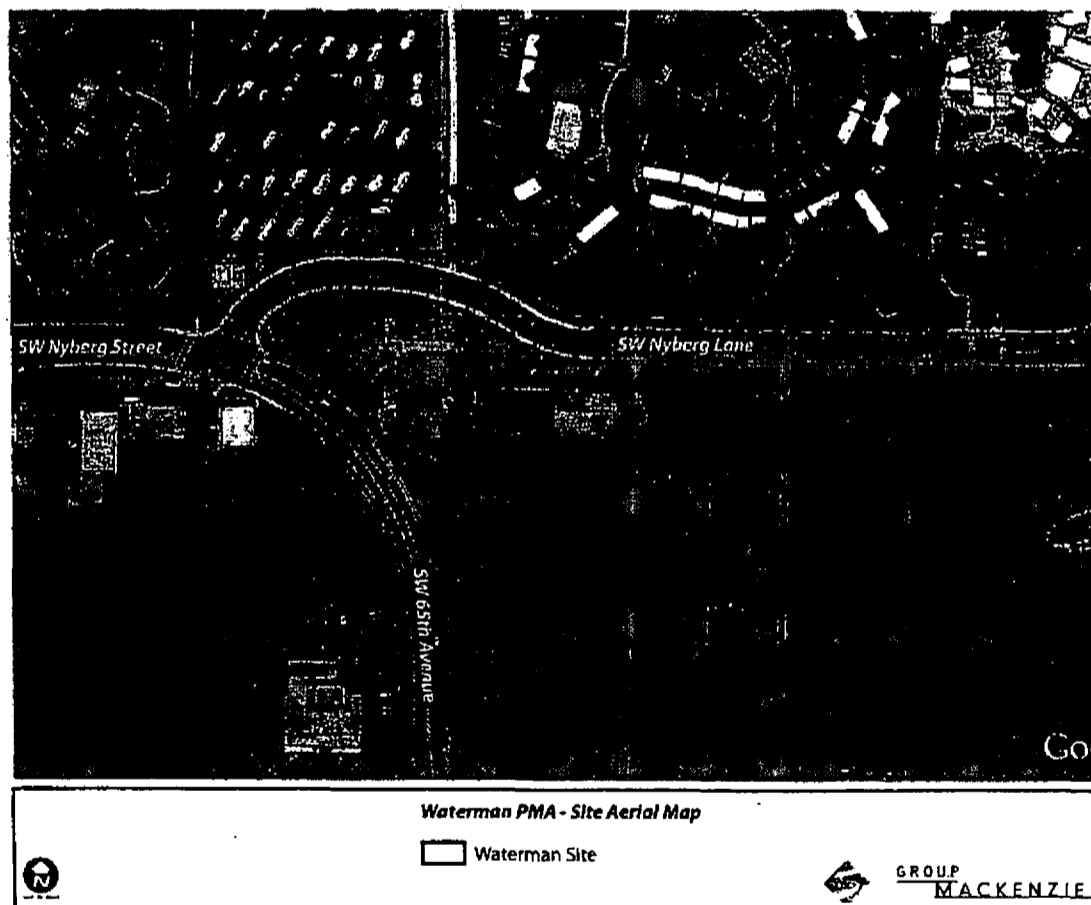
- City of Tualatin Development Code
- Section 1.032 Burden of Proof
- Section 2.020 Tualatin Plan Purpose
- Section 4.050 Community Growth General Objectives
- Section 5.030 Residential Growth General Objectives
- Section 5.040 Residential Planning District Objectives
- Section 6.030 Commercial Planning District Objectives
- Section 11.610 Transportation Goals and Objectives
- Section 12.010 Water System Objectives
- Section 13.015 Sanitary Sewer System Objectives
- Section 14.040 Drainage Objectives
- Section 70.010 Floodplain District – Purpose
- Section 72.010 Natural Resource Protection Overlay District – Purpose
- Section 75.140 Access Management for Collectors
- State of Oregon Planning Goals and applicable Oregon Administrative Rules
- Metropolitan Service District's Urban Growth Management Functional Plan Titles

II. PROPOSAL OVERVIEW

This application proposes to change the City's Plan Map designation of the subject site from Low-Density Residential (RL) to Office Commercial (CO). The following is an introduction to the site history and current conditions.

SITE HISTORY

The nearly one-acre subject property is located at the intersection of SW Nyberg Lane and SW 65th Avenue in Tualatin, Oregon. Since January 1990, the property functioned as a day care operated by La Petite Academy. The day care was approved as a conditional use allowing up to 147 students, and construction was completed in 1990. Prior to 1990, the property was undeveloped. In December 2008, the La Petite Academy lease expired and a new day care operator signed a lease in June 2009. Therefore, though it has been designated for residential use, the property has only developed with commercial type uses for nearly twenty years. The site is improved with an approximately 6,710 SF building, 24 associated parking spaces, an outdoor play area, and site landscaping.



SURROUNDING USES/ZONING

The subject site is surrounded by a mix of uses. To the north, across SW Nyberg Lane, are three medium-high (RMH) and high density (RH) residential developments, consisting of apartments and a trailer park. Browns Ferry Park, a Tualatin Hills Parks and Recreation facility, is also located to the north across SW Nyberg Lane.

Immediately west of the property is a new Clean Water Services (CWS) pump station. Across SW 65th Avenue is the Whitney Professional Office Building and Meridian Professional Office Building, both buildings are occupied by medical office tenants, and both are zoned Office Commercial (CO). Uses farther west, along SW Nyberg Street to Interstate 5, are primarily commercial uses and zoned General Commercial (CG). These uses include a gas station, a McDonald's restaurant, and the Nyberg Crossing Shopping Center consisting of national big-box tenants such as Best Buy, Office Max, Golfsmith, PetSmart, and Old Navy.

Uses to the south are predominantly medical related with zoning of Medical Center (MC) and Office Commercial (CO) zoning, in addition to high- and medium-high density residential (RH and RMH). The River Valley Landing Senior Living Community, a residential assisted living facility, is sited south of the property along SW 65th Avenue. Farther south is the Legacy Meridian Park Hospital campus. The Tualatin Professional Center, south of the hospital on SW Borland Road, and the Legacy Medical Building along SW 65th Avenue are both medical office uses with Office Commercial (CO) zoning. A cluster of General Office buildings are located along SW Sagart Street and are zoned CO as well.

The property immediately to the east of the site, is covered by much of the Nyberg Basin drainage way, and is zoned Low-Density Residential (RL). A conditional use permit, however, was recently approved by City Council for a 90,000 SF athletic complex, to be sited at the far east of the property (adjacent to the Fox Hills residential development). The Fox Hills residential development is further east of the proposed athletic club, and is also zoned Low-Density Residential (RL).



STREETS

The subject site has two existing access drives from SW Nyberg Lane, near both the east and west property boundaries. The site is bound by SW Nyberg Lane to the north, which is classified as a Major Collector by the City, and is under the City of Tualatin's jurisdiction. According to City staff, SW Nyberg Lane was realigned in order to improve driver visibility at the intersection of SW Nyberg Road and 65th Avenue, and to accommodate a pump station located in the vacant land area between the subject site and 65th Avenue.

Though not adjacent to the site, SW 65th Avenue is located to the west of the property and is classified as a Major Arterial by the City, and is under Washington County and Clackamas County's jurisdiction. SW Nyberg Lane turns into SW Nyberg Street at the intersection with SW 65th. SW Nyberg Street is classified as a Major Arterial by the City, and is under the City of Tualatin's jurisdiction. The Interstate 5/Nyberg interchange is located approximately 1,800 LF west of the property.

It should be noted that per the City's Functional Classification plan for city streets, SW 65th is planned to be extended farther north, connecting to the area north of the Tualatin River. However, per City staff, the continuation of 65th Avenue is no longer being considered due to the recent realignment of SW Nyberg Lane. It was explained that the City's Transportation System Plan will likely be revised to reflect this in the next round of updates.

The nearest TriMet bus line (#76) runs along SW 65th and is served every 20 minutes. The nearest bus stop is located on SW 65th Avenue and at the Legacy Meridian Park hospital.

INFRASTRUCTURE

Water: A 6" mainline currently serves the site and is located to the north of the site within SW Nyberg Lane.

Sewer: An 8" sanitary sewer mainline currently serves the site and is located adjacent to the west property line.

Storm: An 18" storm mainline currently serves the site and is located within SW Nyberg Lane adjacent to the north property line.

According to City Engineering staff, the amount of capacity a future commercial use would require is less than or equal to the existing day care use (147 children and employees). The city did not express any concerns regarding capacity.

III. PLAN MAP AMENDMENT APPROVAL CRITERIA

This application requests a Plan Map Amendment of the subject property from Low-density residential (RL) to Office Commercial (CO). As such, the following addresses the approval criteria and how the proposed action satisfies each criterion.

TUALATIN DEVELOPMENT CODE - CHAPTER 1 ADMINISTRATION PROVISIONS

Section 1.032 Burden of Proof

Before granting an amendment to the Plan Text or Plan Map of the Tualatin Development Code (TDC), including the Tualatin Community Plan, the Council shall find that:

(1) Granting the amendment is in the public interest.

Response: This application requests a Plan Map Amendment of the subject parcel from RL to CO. In the RL zone, single-family dwellings are allowed outright, and child day care centers are allowed as a Conditional Use. The CO zone primarily allows office uses (both general and medical), health or fitness facility, and child day care center uses outright. However, a fitness facility is unlikely due to site size, building size, and the proposed fitness center on the adjacent parcel. Restaurant and pharmacy uses require conditional use approval, but must be part of a larger complex (in excess of the subject site's capacity). Product assembly uses also require conditional use approval, but must meet several specific criteria.

The subject parcel is zoned Low-Density Residential, though the property has only been developed for commercial use. Conditional use approval was granted for the operation of a child day care center with up to 147 children and the site has operated as a day care since 1990. In December 2008, the current tenant's lease expired and was not renewed. At that time, the applicant searched for another day care provider to lease the building, which is allowed under the existing conditional use approval. At that time, the applicant was unable to secure another day care operator therefore decided to market the space to medical office users. According to a local area commercial real estate broker, the proximity to the Legacy Meridian Park Hospital, the largest employer in the City of Tualatin with approximately 823 employees, makes the site desirable for medical office uses. Furthermore, the hospital recently held a pre-application conference with the City in preparation of future expansion plans.

As stated above, medical office uses are not allowed under the current zoning, but allowed outright in the CO zone. An amendment to change the designation to CO allows the flexibility to respond to demand for either medical office, general office, or child day care center uses. In addition, a change in designation to CO reflects the actual use and future uses, which will likely not be residential.

The intent of the existing RL zone is to "provide low density residential areas in the City that are appropriate for dwellings on individual lots, as well as other miscellaneous land uses compatible with a low-density residential environment." The subject site is currently zoned (RL) Low-Density Residential, however the actual suitability of the site for providing low density residential is questionable. The RL zone allows a maximum density of 6.4 units per acre. Based on the site size of approximately 43,543 SF, up to 6 homes could be developed on the site. However, approximately 11,747 SF of the site is inundated with wetlands. Due to wetlands being

present on site, Clean Water Services would require a buffer of 50' from the edge of the wetland area to the redeveloped area. The 50' buffer is approximately 16,155 SF in area. Resulting in a net developable area of 15,630 SF or 2 homes. (it should be noted that a reduction to a 25' buffer is possible but requires mitigation and other measures). In addition, direct access from SW Nyberg Lane is not permitted for residential uses. SW Nyberg Lane is the only public street frontage for the property. SW Nyberg Lane is classified as a Minor Collector in the City of Tualatin's Transportation System Plan. Chapter 75 of the TDC states that for new homes, direct access is not permitted from a Minor Collector. The only options for access would be to establish either a local residential street or a shared private tract. Both options would significantly reduce the developable area, making development of this site for low-density residential unfeasible.



The intent of the CO zone is to allow for a range in size of professional office buildings or complexes, located adjacent to or near residential areas. The subject site is strategically located for a commercial use and is in near proximity to high- and low-density residential zones. The site is located at a transition point from commercial/medical/medical office/high-density residential uses, located west of the intersection of SW Nyberg Street and SW 65th Avenue, to more low-density residential uses farther east of the site. In addition, the close proximity to the Interstate 5/Nyberg interchange, an existing signalized intersection, existing commercial and residential uses and the Legacy Meridian Park Hospital makes the site optimal for CO zoning.

If the site's designation remains RL, the existing development is limited to only child day care center tenants. The existing commercial building is not suitable for residential

uses (described above), which is virtually the only use allowed outright in the RL zone. Therefore, any use other than residential must be listed as an allowed conditional use under the RL zone, including condominiums, cemeteries, churches, colleges, public community buildings hospitals, or schools. However, based on the private ownership of the property, the site size and the existing commercial building design and size, these other conditional uses are unlikely. As a result of the constraints stated above, the extreme difficulty in developing the site for residential development, and the unlikely scenario of any of the other RL conditional uses occupying the existing building, a Plan Map Amendment is required to keep the space leased and allow the flexibility to respond to future market demand.

It should be noted that the City of Tualatin is currently in the process of identifying how much population, employment and housing the City envisions for the next 20 to 50 years. This effort, coined the Local Aspirations/Urban and Rural Reserves effort, was undertaken at the request of Metro in order to establish urban and rural reserves for the region. Part of this effort required the creation of an inventory of vacant, redevelopable and infill residential lands within the City. This information is intended to assist the City in determining the adequacy of the residential land supply to accommodate the projected population growth within the stated timeframe. In reference to which properties were inventoried for the City's residential land supply, Page 3 of the March 9, 2009 memo to City Council states that "[...] other tax lots were removed during this analysis process. Such as residentially designated lots with conditional uses like churches or day cares." The aforementioned memo demonstrates that the City views the Site as a commercial property not capable of supporting residential development and has reflected this view in its calculations for accommodating projected population growth. However, the applicant conducted an analysis to ensure that approval of the amendment will still allow a sufficient inventory of residential land and development potential, in addition to an equitable mix of housing. As shown in the response to Statewide Goal 10 (below), the conversion of 0.93 acres of low-density residential land will not materially change the number of potential housing units, the overall potential residential density of the City of Tualatin, or the comparative ratio of low-density housing.

Based on the above, it is in the public's best interest to approve the requested amendment. This criterion is met.

(2) The public interest is best protected by granting the amendment at this time.

Response: If the site's designation remains RL, the existing development is limited to only child day care center tenants. The existing commercial building is not suitable for residential uses (described above), which is virtually the only use allowed outright in the RL zone. Therefore, based on this and the extreme difficulty in developing the site for residential development, and the unlikely scenario of any of the other RL conditional uses to occupy the existing building, a Plan Map Amendment is required to keep the space leased and allow the flexibility to respond to future market demand.

Because of the existing adjacent uses and the projected increase in demand for medical office uses, especially in close proximity to the hospital, a change in designation to the CO zone provides the flexibility to accommodate the existing use and accommodate anticipated future tenants. A Plan Map Amendment process typically takes approximately four to five months from preparation of the application to a decision. Many prospective tenants will not be willing to wait until the necessary entitlements are obtained, making this property not competitive with other sites. This

application is a proactive effort to ensure continued leasing and economic sustainability of the property, if and when the current tenant lease expires.

Based on the above, it is in the public's best interest to approve the requested amendment at this time. This criterion is met.

(3) The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

Section 2.020 Tualatin Plan Purpose

The general purpose of this Plan is to guide the physical development of the City so as to preserve the natural beauty of the area while accommodating economic growth.

Response: The subject site is not proposed for redevelopment at this time. The site is already developed with an approximately 6,710 SF building, 24 associated parking spaces, an outdoor play area, and site landscaping. Any redevelopment of the property must comply with the development standards and associated jurisdictional development regulations. Approval of this amendment will ensure that this already developed commercial property can continue to provide employment for day care providers and accommodate the day care needs of working parents thereby supporting the economic growth of the City. The amendment will also allow office (including medical office) to support the adjacent hospital and anticipated future growth in the health care industry. This criterion is met.

Section 4.050 Community Growth General Objectives

(6) Arrange the various land uses so as to minimize land use conflicts and maximize the use of public facilities as growth occurs.

Response: The proposed Plan Map Amendment to CO is consistent with the predominantly commercial and higher density residential zones currently located along SW Nyberg Street and SW 65th Avenue. Much of the adjacent commercial and higher density residential developments have occurred since the development of the day care facility in 1990. As the surrounding area has developed, there have no conflicts with the surrounding land uses. Demand for services, such as water, sewer, stormwater, and police and fire, has naturally increased with each development, however the City infrastructure and emergency services are within the requisite service levels. According to City Engineering staff, the amount of capacity a future commercial use would require would be less than or equal to the existing day care use (147 children and employees). The city did not express any concerns regarding capacity. This objective is met.

Section 5.030 Residential Growth General Objectives

(1) Provide for the housing needs of existing and future City residents.

Response: As stated above, the City is currently taking an inventory of vacant, redevelopable and infill residential lands within the City to ensure that there is an adequate residential land supply for the City's projected population. The City did not include the subject site in their residential land inventory, as it is developed with a commercial use. However, an analysis for compliance with Statewide Goal 10 was also conducted for this application. As demonstrated in response to Statewide Goal 10 below, this proposal will substantially maintain the potential housing capacity of the City of Tualatin, in addition to an equitable mix of housing. This objective is met.

Section 5.040 Residential Planning District Objectives.

This section describes the purpose of each residential planning district. (1) Low-Density Residential Planning District (RL). To provide areas of the City suitable for single-family dwellings and manufactured homes. Common-wall dwelling units and small-lot subdivisions may be allowed by conditional use permit. Except for retirement housing and nursing and convalescent homes which shall not exceed 10 dwelling units per net acre and small-lot subdivisions and partitions and subdivisions affected by TDC 40.055, which shall not exceed 7.5 dwelling units per net acre, the maximum density of any residential use in this district shall not exceed 6.4 dwelling units per net acre. The raising of agricultural animals and the construction of agricultural structures may be allowed by conditional use permit in those portions of the District designated on the Plan Map.

Response: The objective of the Low-Density Residential district is to establish areas of the City where low-density residential housing is suitable. The subject site is currently zoned (RL) Low-Density Residential, however the actual suitability of the site for providing low density residential is questionable. The RL zone allows a maximum density of 6.4 units per acre. Based on the site size of approximately 43,543 SF, up to 6 homes could be developed on the site. However, approximately 11,747 SF of the site is inundated with wetlands. Due to wetlands being present on site, Clean Water Services would require a buffer of 50' from the edge of the wetland area to the redeveloped area. The 50' buffer is approximately 16, 155 SF in area, resulting in a net developable area of 15,630 SF or 2 homes on the site.

In addition, direct access from SW Nyberg Lane is not permitted for residential uses. SW Nyberg Lane is classified as a Minor Collector in the City of Tualatin's Transportation System Plan. Chapter 75 of the TDC states that for new homes, direct access is not permitted from a Minor Collector. The only options for access would be to either establish a local residential street or a shared private tract, either option would further detract from developable area, making development of this site for low-density residential unfeasible. Also, development of single family residential at this location and intersection is not desirable from a livability standpoint. Based on the above, this objective is met.

Section 6.030 Commercial Planning District Objectives

(1) Encourage commercial development.

Response: The subject property has always functioned as a commercial development. As stated above in Section 5.040, redevelopment of the property for single-family residences is unlikely. Therefore, redesignating the property as CO not only allows the existing child day care center to operate as an allowed use, but also enables potential future office or medical office tenants. This objective is met.

(2) Provide increased employment opportunities.

Response: As stated to response above, if the site's designation remains RL, the existing development is limited to only child day care center tenants and the property is not suitable for residential development. Therefore a Plan Map Amendment to change the designation to CO allows for child day care center, general and medical office uses outright, which provide employment opportunities for the citizens of Tualatin. In addition, the City anticipates additional jobs in the Medical Center zone, which will have a direct impact on the demand for uses associated with the hospital such as the medical office uses existing on SW 65th Avenue and SW Borland Road. This objective is met.

(8) Provide for the continued development of major medical services facilities in the City of Tualatin, especially at the Legacy Meridian Park hospital site. The Medical Center Planning District shall be applied only to a property, or a group of contiguous properties, of no less than 25 acres and shall have frontage on an arterial as designated in Chapter 11, Tualatin Community Plan.

Response: The redesignation of the subject parcel to CO allows the flexibility of the existing development to potentially operate as a medical office use, supporting the planned expansion of the adjacent hospital. As stated in the February 9, 2009 memo to the City Council, 199 new jobs are projected for Medical Center zoned lands. This increase in medical jobs will increase the demand for land which allows medical office uses, especially in close proximity to the MC zone. The subject site is less than one-tenth of a mile away from the Legacy Meridian Park Hospital, making the location optimal for a medical office use. This objective is met.

Section 6.040 Commercial Planning District Objectives

(1) Office Commercial Planning District (CO). To provide areas suitable for professional office uses adjacent to or across from residential areas. Restaurants may be allowed by conditional use permit when designed as an integral part of a major office complex. It is the intent of this district to provide for office development ranging in size from small buildings with one or two tenants to large complexes housing business headquarters offices. In the design of development in this district, care shall be taken to pre-serve significant natural resources and to provide extensive perimeter landscaping, especially adjacent to residential areas and streets.

Response: The intent of the CO zone is to allow for a range in size of professional office buildings or complexes, located adjacent to or near residential areas. The subject site is strategically located for a commercial use and is in near proximity to high and low density residential zones. The site is located at a transition point from commercial/medical/medical office/high-density residential uses, located west of the intersection of SW Nyberg Street and SW 65th Avenue, to more low-density residential uses farther east of the site. In addition, the close proximity to the Interstate 5/Nyberg interchange, an existing signalized intersection, existing commercial and residential uses and the Legacy Meridian Park Hospital makes the site optimal for CO zoning. This objective is met.

Section 11.610 Transportation Goals and Objectives

(2) Goal 1: Mobility

(e) For Plan Map and Text Amendments adopt a Level of Service standard F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types. For development applications, including, but not limited to subdivisions and architectural reviews, a LOS of at least D and E are encouraged for signalized and unsignalized intersections, respectively.

Response: A TPR analysis was conducted based on a reasonable "worst-case" development scenario for the RL zone based on the existing child day care center use. As shown in Exhibit H, developing the property with a reasonable "worst case" density under the CO zone would result in a smaller trip generation potential than under the existing RL zoning designation. Therefore, approval of a Plan Map Designation will not result in a decreased level of service than what exists today. This objective is met.

Section 12.010 Water System Objectives

(6)(a) Reinforcement of the existing water system to provide adequate peak and fire-flow capabilities.

Response: The existing building has operated as a child day care center since 1990 with an allowed maximum capacity of 147 children. The site is served by a 6" water mainline located to the north of the site within SW Nyberg Lane. The water demand required to operate the current day care use is assumed to be equal to or less than an allowed commercial use within the Office Commercial zone. City engineering Staff concurs with this assumption. The proposed Plan Map Amendment is consistent with the purposes of Chapter 12 of the TDC. This objective is met.

Section 13.015 Sanitary Sewer System Objectives

(1) Plan and construct a City sewer system that protects the public health, protects the water quality of creeks, ponds, wetlands and the Tualatin River, provides cost-effective sewer service, meets the demands of users, addresses regulatory requirements and supports the land uses designated in the Tualatin Community Plan.

Response: The existing building has been occupied as a day care facility since 1990. The building is served by an 8" sanitary sewer mainline located adjacent to the west property line. The sanitary demand required to operate the current day care use, with a capacity of 147 children, is assumed to be equal to or less than an allowed use within the Commercial Office district. City Engineering Staff concurs with this assumption. The proposed Plan Map Amendment is consistent with the purposes of Chapter 13 of the TDC. This objective is met.

Section 14.040 Drainage Objectives

(7) Enforce drainage and storm water management standards.

Response: The existing development on the property includes impervious area with the building, parking, and outdoor play area. Surface water runoff is collected into an 18" stormwater line in SW Nyberg Lane, and is routed to the Nyberg Basin watershed east and south of the subject property, requiring no detention. Because the majority of the site is already developed, the sanitary demand required to operate the current day care use, is assumed to be equal to or less than an allowed use within the Commercial Office district. City Engineering Staff concurs with this assumption. The proposed Plan Map Amendment is consistent with the purposes of Chapter 14 of the TDC. This objective is met.

Section 70.010 Floodplain District

Response: Current mapping indicates the property is within the 100-year floodplain and that a portion of the site is located within the floodway. However, based on review of existing conditions and general concurrence by City staff, the accuracy of the flood data shown on the flood maps is questionable. The 1996 Flood Inundation mapping shows that a portion of the site was inundated by the flood waters. However, it appears the inundation in 1996 was due to a backup of the stormwater system causing standing water. In addition, in 2006, Clean Water Services revised the flood maps to show nearly the entire site to be within the floodway. However, the accuracy is questionable at this point given the existing topography and site/building improvements.

In order to reduce hazards due to flooding, Chapter 70 of the TDC requires new non-residential development to either establish a finished floor elevation one foot above the flood elevation or use alternative design methods. No new development is proposed at this time. Therefore, this criterion does not apply.

Section 72.010 Natural Resource Protection Overlay District – Purpose

(1) To identify and protect by preservation and conservation the designated significant natural resources and Other Natural Areas. The designated significant natural resources are greenways and natural areas, which include the riparian areas and scenic areas of the Tualatin River and certain creeks and drainage swales, wetlands, upland forests, meadows, fish and wildlife resources, and the geologic features of the Tonquin Scablands.

Response: The wetland areas located adjacent to the south have been designated as significant areas for protection and conservation by the City of Tualatin. Map 73-3 designates the wetland area as Significant Wetlands, as well as designating the area within a Wetland Preservation District (WPNA) on Map 73-1. The stream corridor is designated as a Protected Greenway as well. The designations that the City of Tualatin has placed on these sensitive areas allow for a continuous ecological viable stream corridor. This objective is met.

(2) To provide sufficient area for stormwater runoff to reduce flood hazards and enhance water quality.

Response: The existing development on the property includes impervious area with the building, parking, and outdoor play area. Surface water runoff is collected into an 18" stormwater line in SW Nyberg Lane, and is routed to the Nyberg Basin watershed east and south of the subject property, requiring no detention. Because the majority of the site is already developed, the infrastructure required to accommodate the current day care use is assumed to be equal to or less than an allowed use within the Commercial Office district. City Engineering Staff concurs with this assumption. This objective is met.

Section 75.140 Access Management for Collectors

(b) Minor Collectors. Except for collectors designated Cs&p and Cs&2p, direct access from newly constructed single family homes, duplexes or triplexes shall not be permitted. Except for collectors designated Cs&p and Cs&2p, as minor collectors in residential areas are fully improved, or adjacent land redevelops, direct access should be relocated to the nearest local street where feasible.

Response: SW Nyberg Lane is classified as a Minor Collector in the City of Tualatin's Transportation System Plan. Chapter 75 of the TDC, states that for new homes, direct access is not permitted from a Minor Collector. In order to gain access for a low-density residential development from SW Nyberg Lane, either a local residential street or a shared private tract would need to be established with a width under 40'. The public street would be required to be constructed 1' above the flood plain elevation of 122.25'. According to City staff, there would be some additional concerns regarding visibility and interaction with other existing driveways. Either of these options would consume too much of the developable area, making redevelopment of the site for low-density residential unfeasible. This objective is met.

(4) The following factors were consciously considered:

The various characteristics of the areas in the City;

Response: The subject site is strategically located for a commercial use and is in near proximity to high and low density residential zones. The site is located at a transition point from commercial/medical/medical office/high-density residential uses, located west of the intersection of SW Nyberg Street and SW 65th Avenue, to more low-density residential uses farther east of the site. In addition, the close proximity to the Interstate 5/Nyberg interchange, an existing signalized intersection, existing commercial and residential uses and the Legacy Meridian Park Hospital makes the site optimal for CO zoning, while still compatible with the surrounding land uses.

The suitability of the areas for particular land uses and improvements in the areas;

Response: The site is obviously suitable for commercial development, as it has been developed with a commercial use for nearly twenty years. A change in the Plan designation will change the designation on the plan map to reflect the actual use of the property.

Trends in land improvement and development;

Response: The redesignation of the subject parcel to CO allows the flexibility of the existing development to potentially operate as a medical office use, supporting the planned expansion of the adjacent hospital. As stated in the February 9, 2009 memo to the City Council, 199 new jobs are projected for Medical Center zoned lands. This increase in medical jobs will increase the demand for land which allows medical office uses, especially in close proximity to the MC zone. The subject site is less than one-tenth of a mile away from the Legacy Meridian Park Hospital, making the location optimal for a medical office use. However, with the increase in employment projected in the area around the subject site, a child day care center also supports working parents either employed in the area or in the adjacent residential neighborhoods.

Property values;

Response: The value of adjacent developed properties should not be negatively affected by the proposed Plan Map Amendment. Existing land uses adjacent to the subject property include a hospital, medical office, general commercial, and high-density residential.

Uses allowed outright in the CO zone are primarily office, medical office, and child day care center uses. These uses are generally consistent with the surrounding aforementioned uses.

Much of the adjacent development in the area has occurred since 1990, after the subject property was already development with a commercial use. Therefore, because the commercial development was allowed as a conditional use under the RL zone, a change in Plan Map designation to allow the existing development use outright in the CO will not negatively impact surrounding property values. The proposed change in designation to CO is compatible with the surrounding development, will support market demand and land values, and is consistent with anticipated development trends for an increase in medical office demand. Therefore, property values should not be adversely affected with a change in designation from RL to CO.

The needs of economic enterprises and the future development of the area;

Response: The site is already developed with an approximately 6,710 SF building, 24 associated parking spaces, an outdoor play area, and site landscaping. Approval of this amendment will ensure that this already developed commercial property can continue to provide employment for either day care providers, and accommodate the day care

needs of working parents thereby supporting the economic growth of the City, or function as an office use (and potentially a medical office use) to support the nearby hospital and medical facilities.

Needed right-of-way and access for and to particular sites in the area;

Response: SW Nyberg Lane was recently improved and realigned. Any required dedication would likely have taken place during the improvements for the right of way. No new dedication is anticipated, as no new development or new accesses are proposed with this application.

Natural resources of the City and the protection and conservation of said resources;

Response: Natural resources were considered in requesting a Plan Map Amendment to the CO zone. Based on the City of Tualatin Map 72-1, the natural resources located on site and/or adjacent to the site are protected under the requirements of the Natural Resources Protection Overlay district and Wetland Preservation District. The change in the zoning from RL to CO has no impact on any mapped Goal 5 resources, as the resources are regulated and protected by Clean Water Services. No development is proposed with this application.

Prospective requirements for the development of natural resources in the City;

Response: The applicant is unaware of any pending natural resources requirements currently under consideration by the City or CWS. If redevelopment of the property is proposed in the future, the development plans will be required to comply with the standards at that time.

The public need for healthful, safe, aesthetic surroundings and conditions.

Response: A rezone from RL to CO would allow the property owner the flexibility to potentially redevelop the property in the future. The CO planning district standards would require the property to be redeveloped consistently with the surrounding commercial and medical uses.

Proof of change in a neighborhood or area, or a mistake in the Plan Text or Plan Map for the property under consideration are additional relevant factors to consider.

Response: This application does not suggest that a mistake in the Plan Map was made. Rather, this application states that based on the site context, the City's residential land inventory, the existing use of the property, the existing commercial development, and projected demand for medical office uses that a Plan Map Amendment from RL to CO is warranted. This burden of proof addresses the criteria necessary for a Plan Map Amendment.

(5) The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

Response: The proposed amendment is not for residential uses, nor is the subject site identified for a future Tigard-Tualatin School District Facility. This criterion does not apply.

(6) Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

Response: The following items address how the proposed Plan Map Amendment applies to the Statewide Planning Goals:

1. CITIZEN INVOLVEMENT Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local governments to have a committee for citizen involvement (CCI) to monitor and encourage public participation in planning.

Response: The City of Tualatin has developed a comprehensive public involvement process to ensure that citizens may be involved in land use issues and policies that affect their community. According to the requirements of the City's land use review process, the proper procedures were followed to ensure adequate opportunities for public involvement. On May 20, 2009, the owners met and discussed this proposal and identified any issues. Mr. Waterman was represented by Todd Sheaffer and Brent Hedberg of Specht Development in addition to Land Use Planner Theresa Paulson of Group Mackenzie. The requisite meeting minutes and other neighborhood/applicant meeting materials are included in Exhibit D.

The land use procedure for a quasi-judicial Plan Map Amendment, such as this application, requires a Tualatin Planning Advisory Committee meeting and at least one public hearing before the City Council. Prior to the hearing, the City will mail notices to adjacent property owners and other parties that may be impacted by the proposed land use action. The City also provides public notice in the newspaper. This goal is met.

2. LAND USE PLANNING Goal 2 outlines the basic procedures of Oregon's statewide planning program. It says that land use decisions are to be made in accordance with a comprehensive plan, and that suitable "implementation ordinances" to put the plan's policies into effect must be adopted. It requires that plans be based on "factual information"; that local plans and ordinances be coordinated with those of other jurisdictions and agencies; and that plans be reviewed periodically and amended as needed. Goal 2 also contains standards for taking exceptions to statewide goals. An exception may be taken when a statewide goal cannot or should not be applied to a particular area or situation.

Response: As required by Goal 2, the City has adopted criteria and procedures to evaluate and make decisions regarding land use applications. The City reviews applications based on established regulations and policies and then prepares detailed findings. These findings will allow the City Council to render a decision based on factual data. The City of Tualatin has adopted a land use procedure to render decisions as required by this goal. Therefore, this goal is met.

3. AGRICULTURAL LANDS Goal 3 defines "agricultural lands." It then requires counties to inventory such lands and to "preserve and maintain" them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.

Response: The Community Plan Map does not identify the subject site as agricultural land. This goal does not apply.

4. FOREST LANDS This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."

Response: The Community Plan Map does not identify the subject site as forest land. This goal does not apply.

5. *OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES* Goal 5 covers more than a dozen natural and cultural resources such as wildlife habitats and wetlands. It establishes a process for each resource to be inventoried and evaluated. If a resource or site is found to be significant, a local government has three policy choices: preserve the resource, allow proposed uses that conflict with it, or strike some sort of a balance between the resource and the uses that would conflict with it.

Response: The subject site contains Goal 5 natural resources. However, a rezone from RL to CO will not affect or encroach upon the existing natural resources because no development is proposed with this application. This goal does not apply.

6. *AIR, WATER AND LAND RESOURCES QUALITY* This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.

Response: Approval of the Plan Map Amendment will not adversely affect air, water, and land resources in applicable air sheds and river basins. The site is already developed with a commercial use, including an approximately 6,710 SF building, 24 associated parking spaces, an outdoor play area, and site landscaping. Redevelopment of the property is not proposed at this time. Any redevelopment will require compliance with city, state, and federal environmental quality statutes, rules, and standards. This goal is met.

7. *AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS* Goal 7 deals with development in places subject to natural hazards such as floods or landslides. It requires that jurisdictions apply "appropriate safeguards" (floodplain zoning, for example) when planning for development there.

Response: The entire property is located within the 100-year floodplain and portions of the property are located within the floodway. FEMA, Clean Water Services, and the City of Tualatin have placed strict regulations regarding development within these areas. This application does not propose any new development, therefore this goal is not applicable.

8. *RECREATION NEEDS* This goal calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed standards for expedited siting of destination resorts.

Response: The subject site is not designated for recreational purposes (bike or pedestrian trail, park), nor has the site been identified for a destination resort development. This goal does not apply.

9. *ECONOMY OF THE STATE* Goal 9 calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

Response: The proposed change in designation from RL to CO will allow for the continued use of the property with a day care use, but also will allow the flexibility to respond to an anticipated demand in medical office related to the adjacent hospital. This is especially timely as the hospital recently held a pre-application conference with City Staff to discuss future expansion plans. This goal is met.

10. *HOUSING* This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing. It requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

Response: Goal 10 of the Statewide Planning Goals stipulates that, "Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density." In simple terms, a post-acknowledgement plan amendment must not undermine a sufficient inventory of residential land and development potential, nor should it undermine an equitable mix of housing. In this limited sense, the small conversion of 0.93 acres of low-density residential land will not significantly change either the number of potential housing units, the overall potential residential density of the City of Tualatin, or the comparative ratio of low-density housing.

More specifically, Tualatin's moderate size and its inclusion within Metro's boundary requires that it is consistent with several applicable Oregon Administrative Rules, which implement relevant statutes. These are listed below:

660-007-0030: New Construction Mix

(1) Jurisdictions other than small developed cities must either designate sufficient buildable land to provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing or justify an alternative percentage based on changing circumstances.

660-007-0035: Minimum Residential Density Allocation for New Construction

The following standards shall apply to those jurisdictions which provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing:

(2) Clackamas and Washington Counties, and the cities of Forest Grove, Gladstone, Milwaukie, Oregon City, Troutdale, Tualatin, West Linn and Wilsonville must provide for an overall density of eight or more dwelling units per net buildable acre.

660-007-0060: Applicability

2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:

(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or

(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.

In order to demonstrate compliance with the applicable criteria listed above, the applicant reviewed data from the most recent plan map amendment within the City, dated June 8, 2009 (PMA 09-01). This action involved a conversion of RL land to RML, and prompted City staff to do an updated analysis of their buildable residential land including all recent land use plan amendments. The data resulting from this analysis was updated to include the proposed conversion of approximately 0.93 acre of RL land to CO and is shown in the tables below:

| TABLE 1 | | | | | | |
|---|--------|--------|--------|--------|-------|-------------|
| RESIDENTIAL DENSITY AFTER PROPOSED PLAN MAP AMENDMENT | | | | | | |
| | RL | RML | RMH | RH | RH/HR | Total |
| Total Acres in Each Residential District | 2211.1 | 265.0 | 188.2 | 166.0 | 18.2 | 2848.5 |
| Acres Proposed for Removal from Residential District | 0.9 | | | | | |
| Total Acres of ROW in Each Residential District | 442.7 | 59.2 | 32.4 | 23.6 | 3.4 | 561.3 |
| Total Gross Buildable Acres | 1767.5 | 205.8 | 155.8 | 142.4 | 14.8 | 2286.3 |
| Environmental Restrictions | 293.5 | 44.4 | 54.8 | 76.4 | 12.6 | 481.7 |
| Non-Buildable Land (Based on Use/Ownership) | 297.1 | 11.8 | 6.3 | 0.2 | 0.1 | 315.5 |
| Total Net Buildable Acres | 1176.9 | 149.6 | 94.7 | 65.8 | 2.1 | 1489.1 |
| Units Permitted In Each Residential District | 6.4 | 10.0 | 15.0 | 25.0 | 30.0 | |
| Total Dwelling Units Permitted | 7532.0 | 1496.0 | 1420.5 | 1645.0 | 63.0 | 12156.5 |
| Dwelling Units Per Acre | | | | | | 8.16 |

| TABLE 2 | | | | | | | |
|--|--------|--------|--------|--------|-------|---------|--------------|
| HOUSING TYPE BALANCE AFTER PROPOSED PLAN MAP AMENDMENT | | | | | | | |
| | RL | RML | RMH | RH | RH/HR | Total | |
| Total acres in each residential district | 2211.1 | 265.0 | 188.2 | 166.0 | 18.2 | 2848.5 | |
| Acres proposed for removal from residential district | 0.9 | | | | | | |
| Total acres of ROW in each residential district | 442.7 | 59.2 | 32.4 | 23.6 | 3.4 | 561.3 | |
| Total gross buildable acres | 1767.5 | 205.8 | 155.8 | 142.4 | 14.8 | 2286.3 | |
| Environmental Restrictions | 293.5 | 0.0 | 0.0 | 0.0 | 0.0 | 293.5 | |
| Non-Buildable Land (based on use/ownership) | 297.1 | 11.8 | 6.3 | 0.2 | 0.1 | 315.5 | |
| Total net buildable acres | 1176.9 | 194.0 | 149.5 | 142.2 | 14.7 | 1677.3 | |
| Units permitted in each residential district | 6.4 | 10.0 | 15.0 | 25.0 | 30.0 | | |
| Total Dwelling Units Permitted | 7532.0 | 1940.0 | 2242.5 | 3555.0 | 441.0 | 15710.5 | |
| Total Single Family Units (% of Total) | 7532.0 | | | | | 7532.0 | 47.9% |
| Total Attached/Multi-Family Units (% of Total) | | 1940.0 | 2242.5 | 3555.0 | 441.0 | 8178.5 | 52.1% |

Note that these tables include the approximately 6.1 acres of land redesignated pursuant to PMA-09-01 as part of the baseline land supply. The results are substantially similar to the previously calculated residential density and housing mix: PMA-09-01 would result in an overall potential density of 8.16, and would provide for 48% of dwellings to be single-family residential and 52% of dwellings to be moderate/high density (i.e., multi-family) housing. The proposed change has no mathematically significant affect on the overall residential density of the City, which is still in excess of the minimum of 8 units per acre required by OAR 660-007-0035. Similarly, the comparative mix of housing types remains similar to the existing mix in the City, and in any case, fulfills the new construction mix required by OAR 660-007-0030. As the proposal meets both the minimum density and mix standards that implement Goal 10, the proposal is thereby consistent with the primary approval criterion of OAR 660-007-0060.

In summary, the proposal will substantially maintain the potential housing capacity of the City of Tualatin. Further, as the subject property is currently developed with a non-residential use that covers the majority of the site, it is unlikely that it would ever

be a contributing element in Tualatin's housing inventory. The proposal is therefore consistent with Goal 10.

11. PUBLIC FACILITIES AND SERVICES Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.

Response: Goal 11 requires cities to plan and develop in a timely, orderly, and efficient manner, with public facilities and services to serve as a framework for urban and rural development. The City of Tualatin has enacted a general plan and a development code that includes provisions requiring efficient planning for public services. As stated previously, all necessary public facilities and services are currently available and provided to the existing development. The site is served by the Tualatin Valley Water District, and sanitary sewer and storm drainage provided by Clean Water Services. The proposed Plan Map Amendment to CO should not trigger any unnecessary increases in the public services. This goal is met.

12. TRANSPORTATION The goal aims to provide "a safe, convenient and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged."

Response: Goal 12 requires local governments to provide a "safe, convenient and economic transportation system." This goal is implemented through the transportation element of the City's General Plan and through the Transportation Planning Rule (TPR), OAR 660-012-0060.

The TPR requires an applicant for a Plan Map Amendment to demonstrate that the proposed change will not significantly affect a transportation facility. A transportation memo is included with this application (see Exhibit H) which demonstrates that no outright or conditional uses under the proposed CO designation has the potential to generate more trips than the existing RL plan designation. This goal is met.

13. ENERGY Goal 13 declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."

Response: A change in designation from RL to CO will allow for child day care centers and both general and medical office uses to be allowed outright, in a location that is adjacent to an existing hospital, has a mix of residential and commercial development, and is less than 1,800 LF from a freeway interchange. Due to this optimal location, shared trips are encouraged and trip lengths may be reduced, having the potential to help conserve fossil fuels. Any redevelopment of the site will be required to comply with all applicable energy codes and regulations. This goal is met.

14. URBANIZATION This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land." It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.

Response: The subject site is located within the existing Urban Growth Boundary. The proposed Plan Map Amendment will apply to a parcel that is currently served by existing public facilities and services. This goal is met.

15. *WILLAMETTE GREENWAY* Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.

Response: The subject site is not located within the Willamette River Greenway. This goal does not apply.

16. *ESTUARINE RESOURCES* This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units."

Response: The site is not located near or within any of the 22 estuaries in the State of Oregon. This goal does not apply.

17. *COASTAL SHORELANDS* The goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water related" uses.

Response: The subject site does not contain nor is it near coastal shorelands. This goal does not apply.

18. *BEACHES AND DUNES* Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active foredunes, but allows some other types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.

Response: The subject site does not contain nor is it near beaches or dunes. This goal does not apply.

19. *OCEAN RESOURCES* Goal 19 aims "to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf." It deals with matters such as dumping of dredge spoils and discharging of waste products into the open sea. Goal 19's main requirements are for state agencies rather than cities and counties.

Response: The subject site is not in the vicinity of ocean resources and will therefore not have an impact on ocean resources. This goal does not apply.

(7) Granting the amendment is consistent with the Metropolitan Service District's Urban Growth Management Functional Plan.

Title 1 – Housing and Employment Accommodation:

Response: Tualatin's location within the jurisdictional boundaries of Metro requires that it makes land use decisions coordinated with the regional needs that it serves. Regional coordination is required by Oregon Administrative Rules, as stated below:

660-007-0050: *Regional Coordination*

(1) *At each periodic review of the Metro UGB, Metro shall review the findings for the UGB. They shall determine whether the buildable land within the UGB satisfies housing needs by type and density for the region's long-range population and housing projections.*

(2) *Metro shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.*

In this case, the City must determine that its regional share of 4,054 units between 1994 and 2017 is maintained or, if not currently available, the deficiency is not made

significantly worse. At 0.93 acres, the subject property, as currently zoned, has a density potential of six units per acre. When necessary right-of-way is added (approximately 30% of the site area), and environmental land and associated buffers are factored, only two units could likely be established on the site. This projection does not consider that the subject property is currently developed for non-residential uses, and is unlikely to be converted to residential use in the foreseeable future. In this sense, the proposal will not have a significant affect on the overall housing inventory of Tualatin (estimated to be some 15,719 units), especially with the recent redesignation of 6.1 acres of low- to medium-density residential land. The proposal therefore will have no significant affect on the ability of Tualatin to meet its mandated residential land allocation. The proposal is therefore consistent with Metro Title 1.

Title 2 – Regional Parking Policy:

Response: According to Performance Standard 3.07.220 of the Regional Parking Policy, cities and counties within the Urban Growth Boundary are required to amend their comprehensive plan to meet the minimum and maximum allowed parking requirements as outlined in Title 2. Therefore, any future development of the subject property will be in compliance with Title 2. No development is proposed with this application, therefore this title does not apply.

Title 3 – Water Quality, Flood Management, and Fish and Wildlife Conservation:

Response: A portion of the site contains preserved wetlands and is located within both the 100-year floodplain and the floodway. The wetlands and flood area are protected and regulated by Clean Water Services. At this time, no development is proposed that would affect either of these areas. This application is for a Plan Map Amendment to rezone the property from RL to CO.

Title 4 – Industrial and Other Employment Areas:

Response: The subject site is designated as “Inner Neighborhood” on the 2040 Growth Concept Map. Therefore, this title does not apply.

Title 5 – Neighbor Cities and Rural Reserves:

Response: SW Nyberg Lane is not designated as a “Green Corridor”. This title does not apply.

Title 6 – Central City, Regional Centers, Town Centers, and Station Communities:

Response: The subject site is not part of the Tualatin City Center. This title does not apply.

Title 7 – Affordable Housing:

Response: Metro has established a voluntary 5-year affordable housing production program intended to broaden the variety and costs of available affordable housing in the city. For the most part, the City of Tualatin has worked towards its affordable housing goals by supporting an equitable mix of housing types, with a focus on multi-family units as the primary source of affordable housing units.

This proposal has no affect on Tualatin’s responsibilities set forth in Title 7. The subject property is currently developed with a non-residential use that is predicted to remain. Further, its designation for low-density residential uses is not, in and of itself, supportive of affordable housing which typically is characterized by medium-high residential densities. Finally, the loss of potentially two residential units would have no significant affect on the affordable housing capacity of the city. The proposal is therefore consistent with Metro Title 7.

Title 8 – Compliance Procedures:

Response: Title 8 requires that all jurisdictions are held to the same standards of the Functional Plan. This title is not applicable to the proposed Plan Map Amendment.

Title 9 – Performance Measures:

Response: Title 9 requires that all performance measures related to the Functional Plan are implemented. This title is not applicable to the proposed Plan Map Amendment.

Title 10 – Functional Plan Definitions:

Response: Title 10 lists definitions of terms listed in the Functional Plan. This title is not applicable to the proposed Plan Map Amendment.

Title 11 – Planning for New Urban Areas:

Response: The subject site is located within the Urban Growth Boundary. This title does not apply.

Title 12 – Protection of Residential Neighborhoods:

Response: The proposed Plan Map Amendment does not increase the residential density of a single family neighborhood, nor is the site designated as a Neighborhood Center, nor does the proposed amendment affect access to parks or schools. Therefore, this title is not applicable to the proposed Plan Map Amendment.

Title 13 – Nature in Neighborhoods:

Response: The wetland areas located adjacent to the south have been designated as significant areas for protection and conservation by the City of Tualatin. Map 73-3 designates the wetland area as Significant Wetlands, as well as locating the area within a Wetland Preservation District (WPNA) on Map 73-1. The stream corridor is also designated as a Protected Greenway. The designations the City of Tualatin has placed on these areas allows them to be a continuous ecological viable stream corridor. No new development is proposed with this application, therefore this title does not apply.

(8) Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

Response: A transportation memo is included with this application (see Exhibit H) which demonstrates that no outright or conditional uses under the proposed CO designation has the potential to generate more trips than the existing RL plan designation. This criterion is met.

IV. CONCLUSION

The subject parcel is zoned Low-Density Residential, though the property has only been developed for commercial use for nearly twenty years. Based on the site access requirements from SW Nyberg Lane and the net developable area, this site is virtually unfeasible for low-density residential development. In addition, the conditional uses listed in the RL zone are also unlikely to be developed on this parcel. Therefore, a Plan Map Amendment is required to keep the space leased and allow the flexibility to respond to future market demand.

The site is located at a transition point from commercial/medical/medical office/high-density residential uses, located west of the intersection of SW Nyberg Street and SW 65th Avenue, to more low-density residential uses farther east of the site. In addition, the close proximity to the Interstate 5/Nyberg interchange, an existing signalized intersection, existing commercial and residential uses, and the Legacy Meridian Park Hospital makes the site optimal for CO zoning.

The City's Local Aspirations/Urban and Rural Reserves effort excluded the subject property from the residential land inventory as it has been developed as commercial for many years. Therefore, the City does not envision the site for residential use to accommodate the projected population growth, but rather as a commercial property. However, the applicant conducted an analysis to ensure that approval of the amendment will still allow a sufficient inventory of residential land and development potential, in addition to an equitable mix of housing, in compliance with Statewide Goal 10. The analysis concluded that the conversion of 0.93 acres of low-density residential land will not significantly change either the number of potential housing units, the overall potential residential density of the City of Tualatin, or the comparative ratio of low-density housing.

Based on the above, it is in the public's best interest to approve the requested amendment.

APPLICATION FOR PLAN *MAP* AMENDMENT

City of Tualatin Community Development Dept - Planning Division
18880 SW Martinazzi Avenue
Tualatin, OR 97062
503-691-3026

Case No. _____
Fee Rec'd. _____
Receipt No. _____
Date Rec'd. _____
By _____

.....
PLEASE PRINT IN BLACK INK OR TYPE

Nature of amendment requested Rezone property currently designated as RL (Low Density Residential) to (CO) Commercial Office.

State the specific section number(s) of the Code to be amended Community Plan Map : Map 9-1

As the applicant and person responsible for this application, I, the undersigned hereby acknowledge that I have read the instructions and information sheet and understand the requirements described therein, and state that the information supplied is as complete and detailed as is currently possible, to the best of my knowledge.

Applicant's Signature _____

Applicant's Name Theresa Paulson, Planner - Group Mackenzie Phone (503) 224-9560

Applicant's address 1515 SE Water Avenue Portland Oregon 97214
(street) (city) (state) (zip)

Applicant is: Owner _____ Contract Purchaser _____ Developer _____ Agent X
Other _____

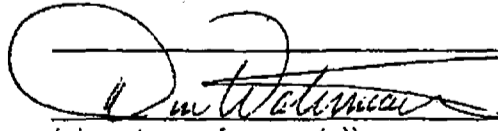
If the request is for a specific property:

County Washington Map # 21E19C Tax Lot #(s) 00700

Owner's Name Don Waterman

Owner's Address 18342 NW Billings Rd Portland OR 97231
(street) (city) (state) (zip)

Owner recognition of application: _____



(signature of owner(s))

| | |
|---|---------------------------------|
| Name of Document For Recording: Waiver Of Rights And Remedies Grantor: (Petitioner(s)) Grantee: City of Tualatin Consideration: None. Tax Statement to be mailed to: No change. After Recording, Return To: City of Tualatin, Attn: City Recorder, 18880 SW Martinazzi, Tualatin, OR 97062 | (For County Recording Use Only) |
|---|---------------------------------|

Measure 37 Waiver Of Rights And Remedies

Whereas, DONALD L. WATERMAN ("Petitioner", including collectively all petitioners) has petitioned to the City of Tualatin ("City") to commence certain proceedings, i.e., annexation, planning district change, and/or plan text amendment for the following described real property,

See attached legal description

Whereas, under Ballot Measure 37 (effective December 2, 2004), a property owner may seek just compensation or waiver of certain land use regulations if a public entity enacts or enforces the land use regulations after the property owner acquired the property; and

Whereas, Oregon electors or the Oregon Legislature may, in the future, enact further statutory or constitutional amendments relating to compensation for the impact of local regulations upon real property, under certain circumstances; and

Whereas, City does not wish to approve the Petitioner's requested proceedings if such approval could result in the owner or the owner's successors or assigns filing a claim for compensation for the land use regulations in effect upon the effective date of the proceedings or a claim seeking to require the City to waive its land use regulations, which are being newly imposed upon the property as a result of the Petitioner's requested proceedings; and

Whereas, Petitioner wishes to obtain the City's approval of Petitioner's requested proceedings and therefore agrees to eliminate the potential of claim for compensation or the right to seek waiver from the City's land use regulations existing as of the effective date of the proceedings.

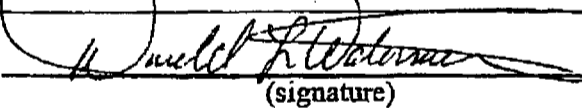
Now, therefore, Petitioner warrants that the Petitioner executing this Waiver Agreement holds the full and complete present ownership or any interest therein in the property, and agrees as follows:

1. As inducement to the City to proceed with the following proceeding(s) affecting the subject real property: Annexation, planning district change, and/or plan text amendment which may include designation of the property as subject to additional applicable overlay zones and districts, e.g., Mixed Use Commercial Overlay District, Industrial Business Park Overlay District, Flood Plain District, Wetlands Protection District, Greenway Protection Overlay District and Natural Areas, and/or design districts ("proceedings"), the undersigned Petitioner, on behalf of Petitioner, Petitioner's heirs, devisees, executors,

administrators, successors and assigns, agrees and covenants to the City of Tualatin, its officers, agents, employees and assigns that the Petitioner hereby waives, releases and forever discharges, and agrees that Petitioner shall be estopped from asserting any rights and remedies, actions, causes of action, suits, claims, liabilities, demands, and rights to waivers arising under or granted by any statutory or constitutional regulatory compensation or waiver provisions, including but not limited to Ballot Measure 37 (2004) or otherwise enacted after the date of this proceeding which would create a right of claim for compensation or waiver from city land use regulations that exist upon the effective date of the proceeding and which, by the approval of the proceeding, are then applicable to the property.

2. This Waiver and release shall bind the undersigned's heirs, devisees, executors and administrators, successors in interests, and assigns. This waiver, release and discharge shall run with the land, and this instrument or a memorandum of it may be recorded in the official records of the County in which the subject real property is located. This instrument may be terminated upon the filing of a Notice of Termination of Waiver filed by the City of Tualatin.
3. If this instrument is given contemporaneous with a consent to future proceedings to be initiated by the City, Petitioner acknowledges that the proceedings may be initiated by the City of Tualatin at any time in the discretion of the City and that this waiver and release is applicable to any ordinances adopted prior to the effective date of the proceeding.
4. This document is executed of my own free will and without duress. I/we respectively acknowledge that I/we have been advised to obtain legal advice prior to the execution of this document, and that either I, or each of us respectively, have either obtained legal advice or have independently elected not to seek legal advice prior to the execution of this document, recognizing that this document may affect our legal rights and remedies.

DATED this 8 day of JUNE, 2009.

| | |
|---|------------------|
|  (signature) | (signature) |
| Petitioner Name: <u>DONALD L. WATERMAN</u> | Petitioner Name: |
| Date Signed: <u>JUNE 8 2009</u> | Date Signed: |

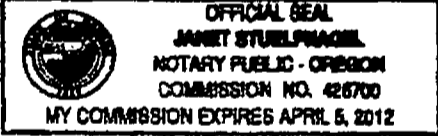
Petitioner (corporation, etc.) Name: _____
 By: _____
 Name of Signor: _____
 Office/Title of Signor: _____

State of Oregon _____
 County of Multnomah

On this 8th day of June, 2009, before me the undersigned Notary Public, personally appeared

Donald L. Waterman
 (Name of Petitioners signing; not Notary name)

- Personally known to me
 Proved to me on the basis of satisfactory evidence
To be the person who executed the within instrument
 As _____ or on behalf of the entity therein named, pursuant to authority, and acknowledged to me the execution hereof.

| | |
|--|---|
| WITNESS my hand and official seal (Do not write outside of the box) | Place Notary Seal Below |
| Notary Signature <u>Janet Stuelpnagel</u> Notary name (legible): <u>JANET STUELPNAGEL</u> |  |

This document is accepted pursuant to authority and approved for recording.

City of Tualatin, Oregon

 City Manager

State of Oregon)
County of Clackamas)

On this _____ day of _____, _____, before me the undersigned Notary Public, personally appeared _____,

- personally known to me
- proved to me on the basis of satisfactory evidence

To be the person who executed the within instrument as City Manager or on behalf of the entity therein named, pursuant to authority, and acknowledged to me the execution hereof.

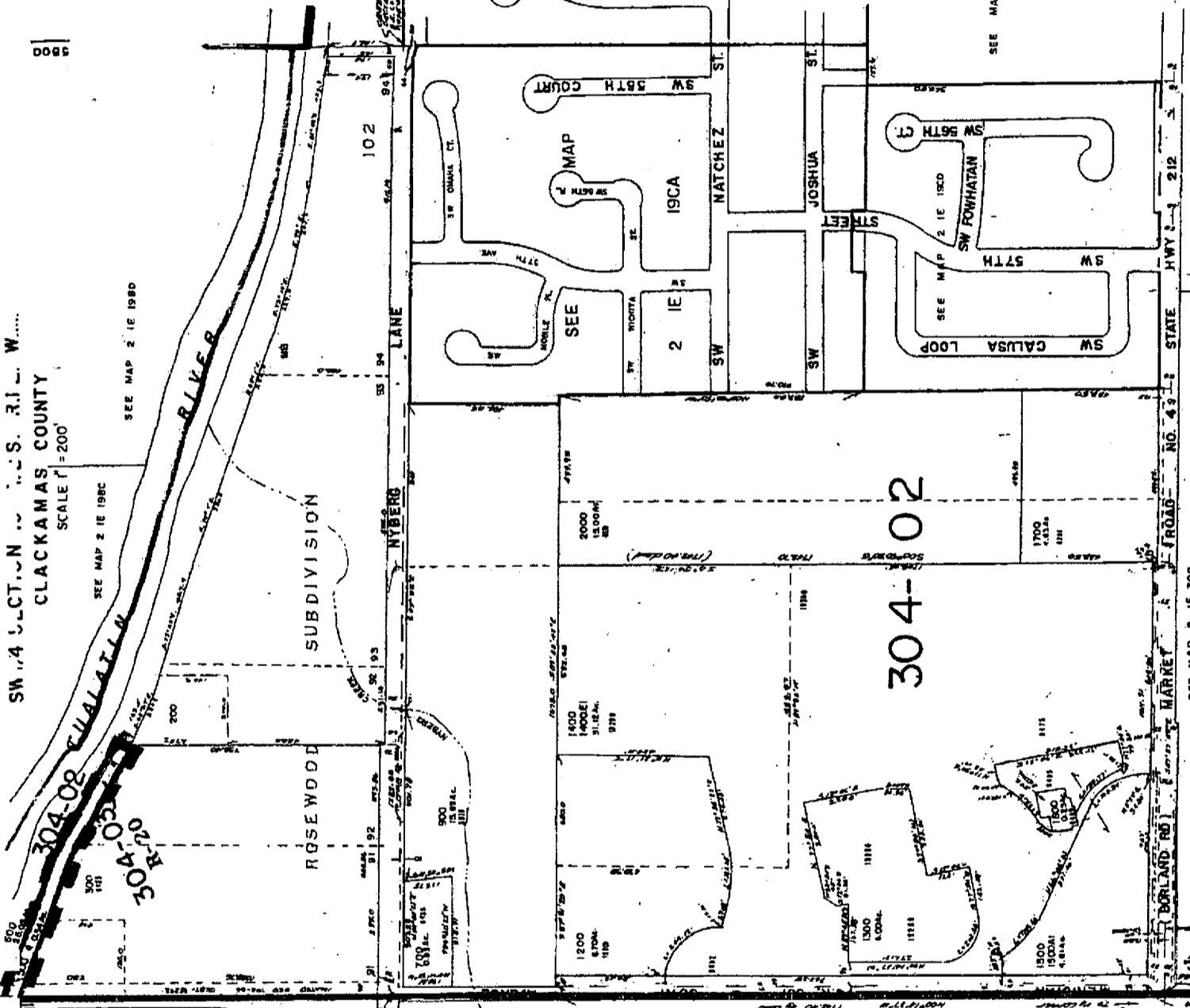
| | |
|--|--|
| WITNESS my hand and official seal Do not write outside of the box | Place Notary Seal Below (Do not place seal over any portion of text or signature) |
| Notary Signature _____ | |
| Notary name (legible): _____ | |
| | |

2 IE 19C

SW 1/4 SECTION 20 S. R. 1 W.
CLACKAMAS COUNTY
SCALE 1" = 200'

1980

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This map was prepared for assessment purposes only

WASHINGTON COUNTY

Map of 12-17-88

T.B.A.
TUALATIN

STATE HWY 212

NO. 43

MARKET

BORLAND RD

19500

SEE MAP 2 IE 19D

SEE MAP 2 IE 19B



First American Title Insurance Company
National Commercial Services
200 SW Market Street, Suite 250
Portland, Oregon 97201

Escrow Officer: **No escrow requested**

Phone:

Fax:

E-mail

File No:

Title Officer: **Jennifer L. Watson**

Phone: **(503)790-7866**

Fax: **(503)795-7614**

E-mail **jewatson@firstam.com**

File No: **NCS-392756-OR1**

PRELIMINARY TITLE REPORT

| | | | | | | |
|----------------------------------|-----------|----|-----|---------|----|-----|
| ALTA Owners Standard Coverage | Liability | \$ | TBD | Premium | \$ | TBD |
| ALTA Owners Extended Coverage | Liability | \$ | | Premium | \$ | |
| ALTA Lenders Standard Coverage | Liability | \$ | | Premium | \$ | |
| ALTA Lenders Extended Coverage | Liability | \$ | | Premium | \$ | |
| ALTA Leasehold Standard Coverage | Liability | \$ | | Premium | \$ | |
| ALTA Leasehold Extended Coverage | Liability | \$ | | Premium | \$ | |
| Endorsements | Liability | \$ | | Premium | \$ | |
| Govt Service Charge | | | | Cost | \$ | |
| Other | | | | | \$ | |

We are prepared to issue Title Insurance Policy or Policies in the form and amount shown above, insuring title to the following described land:

The land referred to in this report is described in Exhibit "A" attached hereto.

and as of **03/31/2009** at **8:00 a.m.**, title vested in:

Donald L. Waterman

Subject to the exceptions, exclusions, and stipulations which are ordinarily part of such Policy form and the following:

This report is for the exclusive use of the parties herein shown and is preliminary to the issuance of a title insurance policy and shall become void unless a policy is issued, and the full premium paid.

INFORMATIONAL NOTES

NOTE: This report does not include a search for Financing Statements filed in the office of the Secretary of State, or in a county other than the county wherein the premises are situated, and no liability is assumed if a Financing Statement is filed in the office of the County Clerk (Recorder) covering fixtures on the premises wherein the lands are described other than by metes and bounds or under the rectangular survey system or by recorded lot and book.

NOTE: Taxes for the year 2008-2009, paid in full.

| | |
|---------------------|--------------|
| Tax Amount: | \$14,087.83 |
| Code No.: | 304-002 |
| Map & Tax Lot No. | 21E19C 00700 |
| Property ID/Key No. | 01362475 |



First American Title Insurance Company of Oregon

SCHEDULE OF EXCLUSIONS FROM COVERAGE

ALTA LOAN POLICY (10/17/92)

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy; (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

ALTA OWNER'S POLICY (10/17/92)

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy. (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE OF STANDARD EXCEPTIONS

The ALTA standard policy form will contain in Schedule B the following standard exceptions to coverage:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceeding by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law or not shown by the public records.

NOTE: A SPECIMEN COPY OF THE POLICY FORM (OR FORMS) WILL BE FURNISHED UPON REQUEST

TJ 149 Rev. 6-06

GROUP

MACKENZIE

PORTLAND, OR | SEATTLE, WA | VANCOUVER, WA
RiverEast Center | 1515 Water Avenue, Suite 100 | Portland, OR 97214
P.O. Box 14310 | Portland, OR 97293
T: 503.224.9560 | F: 503.228.1285 | www.groupmackenzie.com

MEETING MINUTES

PROJECT NUMBER: 2090091.00 ISSUE DATE: May 21, 2009
PROJECT NAME: Waterman Site – Plan Map Amendment

RECORDED BY: Theresa Paulson, Senior Planner
TO: FILE
PRESENT: Angie Wrahtz, Warren Mays, Brad Bullock, Mark Coolian, Julie Sepp, Kevan Rasmussen – Neighborhood Attendees
Brent Hedberg, Todd Scheaffer – Specht Development
Theresa Paulson – Group Mackenzie

SUBJECT: Neighborhood Meeting (May 20, 2009)

A neighborhood meeting was held regarding a proposed Plan Map Amendment for the property owned by Mr. Don Waterman, located at 6480 SW Nyberg Lane in Tualatin, Oregon. The proposal is to change the City's Plan Map designation from Low Density Residential (RL) to Office Commercial (CO). Since January 1990, the property functioned as a day care operated by La Petite Academy with an approximately 6,710 SF building and 23 associated parking spaces. The daycare was approved as a conditional use, allowing up to 147 students. Prior to 1990, the property was undeveloped. Therefore, the only use of the property though zoned residential, has been for commercial use.

The purpose of the meeting was to provide a means for the applicant and surrounding property owners to meet and discuss this proposal and identify any issues. Mr. Waterman was represented by Todd Scheaffer and Brent Hedberg of Specht Development in addition to land use planner Theresa Paulson of Group Mackenzie. No specific development is proposed at this time. Mr. Waterman anticipates leasing the existing building to other tenants or tenants. Because of the close proximity to the Meridian Park Hospital, a medical office tenant(s) is anticipated. No tenants have been secured to date. At the meeting, the following questions were posed and the associated responses are listed below:

1. Is the day care still in operation?

Response: No, the daycare the La Petite Academy lease expired in December 2008. Mr. Waterman has sought to find another day care operator to lease the space but has not been able to secure another day care operator.

2. Is development of this property proposed at this time?

Response: No. Any future development will have to go through Architectural Review, which is a public process in which a neighborhood meeting is required (in addition to public noticing and a public comment period). Therefore, any redevelopment of the site (though not proposed at this time) would require public involvement.

3. How long has Mr. Waterman owned the property?

Response: Mr. Waterman purchased the property in 1990, after development of the site.

Neighborhood Meeting (May 20, 2009)
Waterman Site – Plan Map Amendment
Project Number
Page 3

Response: No official market research has been accomplished to date. However, a local commercial realtor was consulted and indicated that proximity to the hospital makes the space attractive for potential medical office users.

10. When is the Plan Map Amendment application anticipated to be submitted?

Early June.

11. Is Mr. Waterman interested in selling the property?

Response: At this time Mr. Waterman anticipates leasing the building to one or multiple tenants, however, he is open to selling the property. To date, there have been no offers to purchase the property from Mr. Waterman.

The team indicated that they are willing to meet again if the neighbors or others have additional questions or concerns regarding the proposed Plan Map Amendment.

Every effort has been made to accurately record this meeting. If any errors or omissions are noted, please provide written response within five days of receipt.

c: Present
File

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Ryan Schera, being first duly sworn, depose and say:

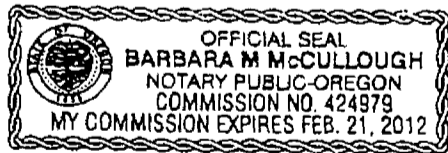
As the applicant for the Waterman PMA project, I hereby certify that I posted copies of the Notice of the Neighborhood/Developer meeting in accordance with the requirements of the Tualatin Development Code and the Community Development - Planning Division on the 6th day of May, 2009, copy attached; and that I posted said copies in public and conspicuous places within the City at the subject property, to wit:

1. At subject property, facing right of way
2. _____
3. _____
4. _____

Dated this 19 day of May, 2009.

[Signature]
Signature

Subscribed and sworn to before me this 19th day of May, 2009.



Barbara M. McCullough
Notary Public for Oregon
My Commission expires:

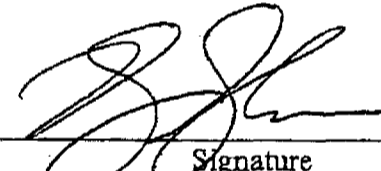
RE: _____

AFFIDAVIT OF MAILING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

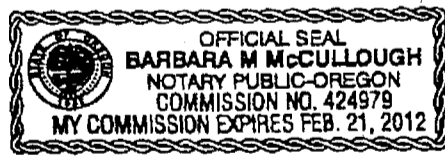
I, Ryan Schava, being first duly sworn, depose and say:

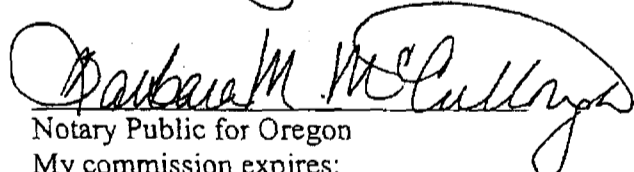
That on the 6th day of May, 2006, I served upon the persons shown on Exhibit "A," attached hereto and by this reference incorporated herein, a copy of the Notice of Neighborhood/Developer meeting marked Exhibit "B," attached hereto and by this reference incorporated herein, by mailing to them a true and correct copy of the original hereof. I further certify that the addresses shown on said Exhibit "A" are their regular addresses as determined from the books and records of the Washington County and/or Clackamas County Departments of Assessment and Taxation Tax Rolls, and that said envelopes were placed in the United States Mail with postage fully prepared thereon.



Signature

SUBSCRIBED AND SWORN to before me this 19th day of May, 2009.





Notary Public for Oregon
My commission expires:

RE: _____

Waterman PMA
Zoning & Adjacent Uses Map

Waterman Site

Residential Uses

- Low Density
- Medium Low Density
- Medium High Density
- High Density

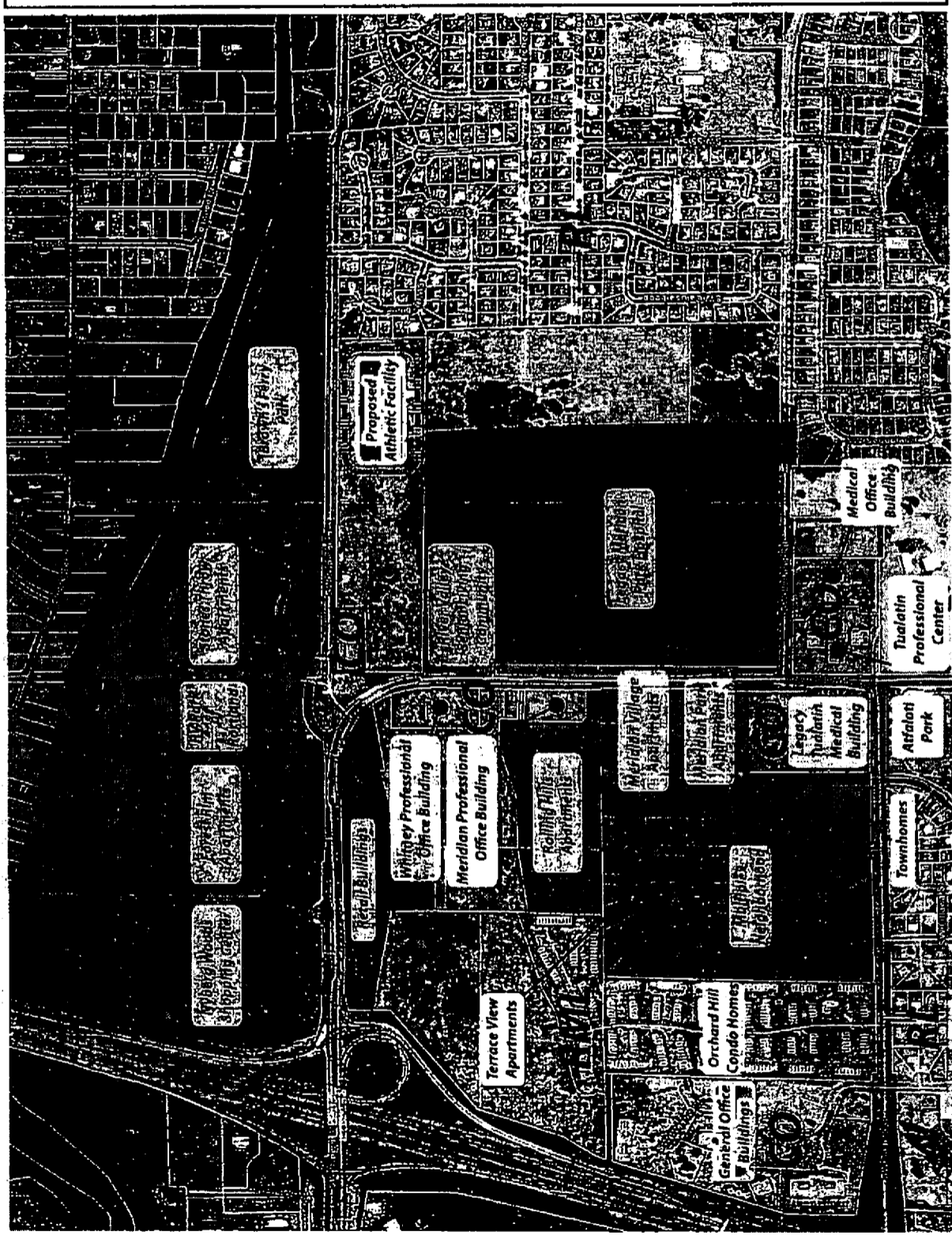
Commercial Uses

- Medical Center
- General
- Office

Other Uses

- Park
- Vacant

GROUP MACKENZIE

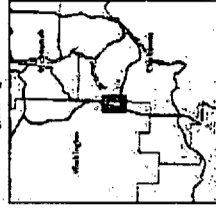


Waterman PMA

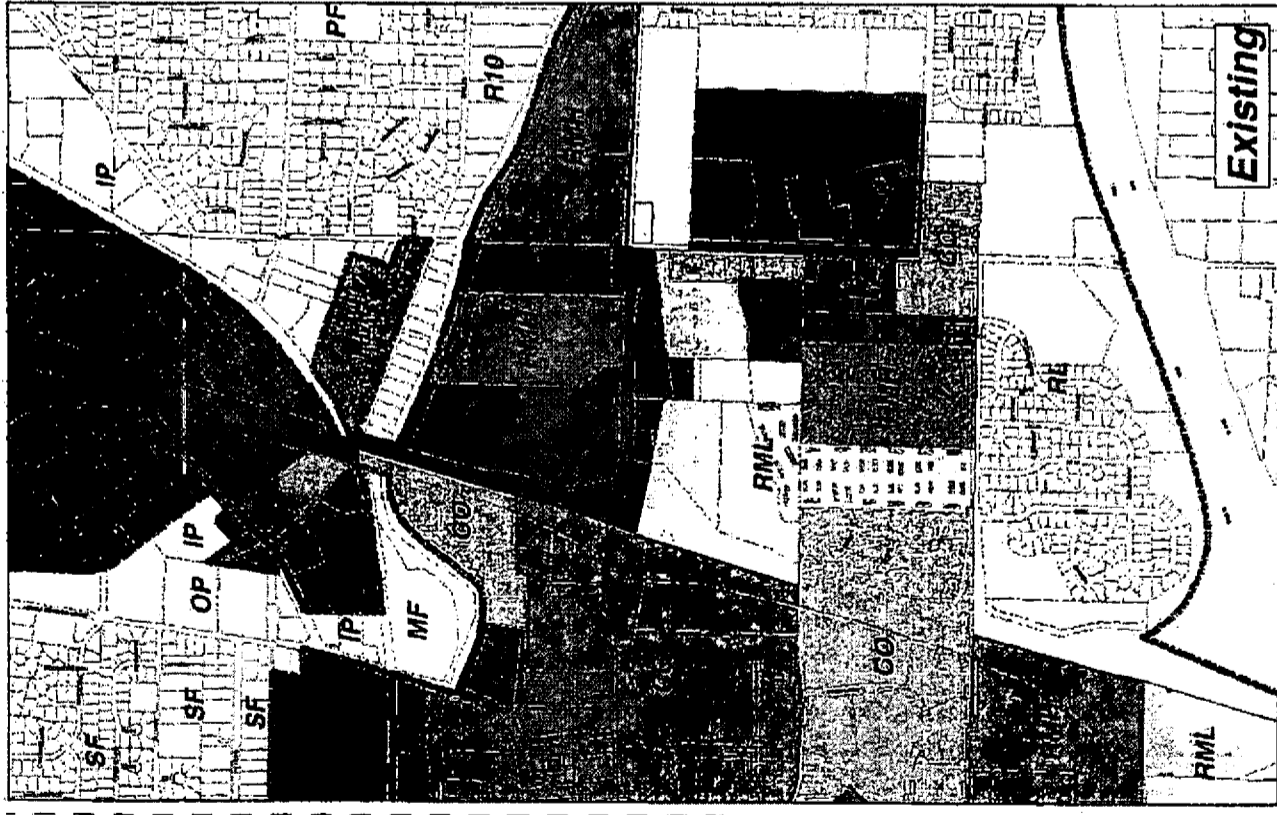
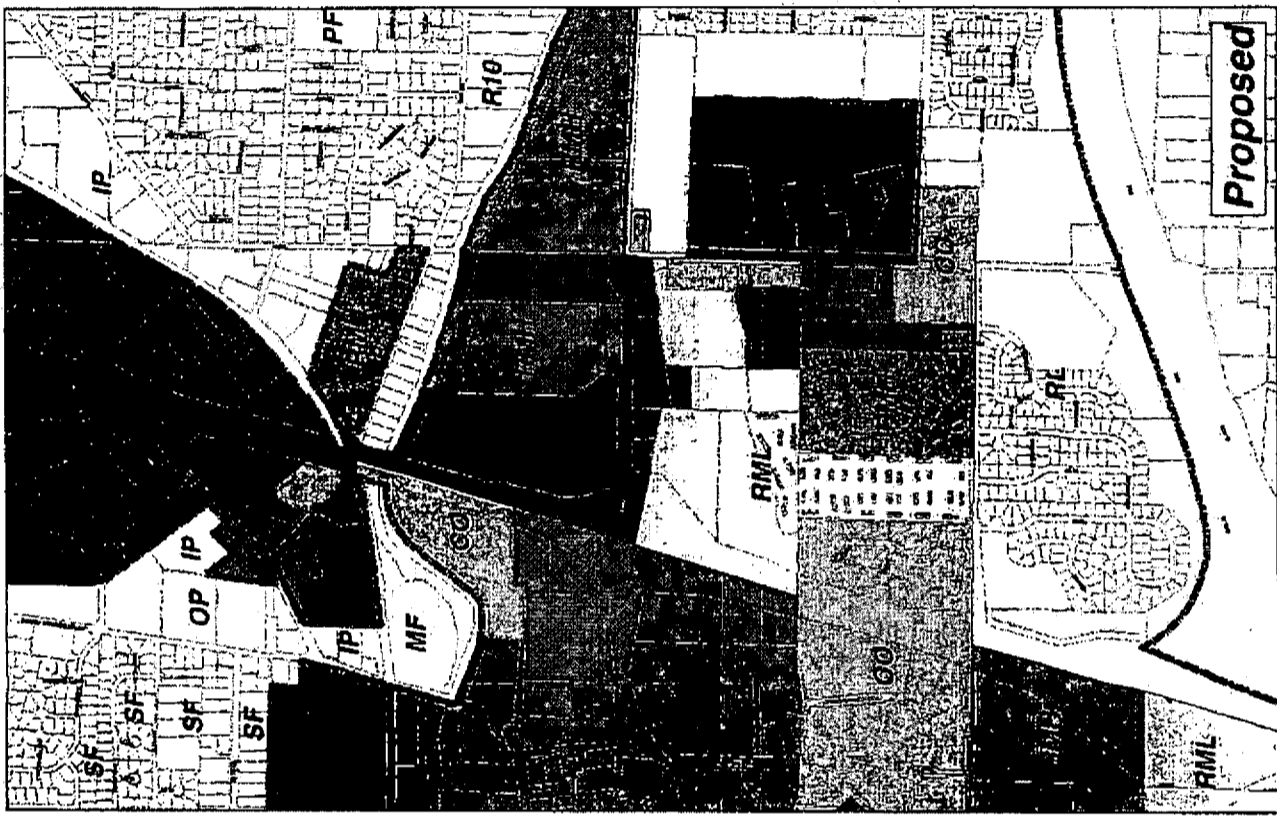
- Legend**
- Waterman Site
 - City Boundaries
 - Tribal
 - Planning District Designations
 - CC
 - CG
 - CO
 - CR
 - IN
 - MC
 - MG
 - ML
 - MO/H
 - MP
 - RI
 - RH/HR
 - RL
 - ES
 - RMH
 - RML



Project No. 15-001
City of Waterman, Nebraska
City Planning Department
1500 S. 10th Street, Suite 100
Waterman, NE 68785



1500 S. 10th Street, Suite 100
Waterman, NE 68785
781.833.1234





Waterman PMA
Developable Area Map

- Waterman Site
- Wetland Area
- CWS 50' Buffer

Developable Area Calculation

Site Area: 43,542 SF
Wetlands: 11,757 SF
CWS Buffer: 16,155 SF
Net Developable Area: 15,630 SF



GROUP
MACKENZIE





KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

810 SW Alder Street, Suite 700, Portland, OR 97205 : 503.228.5230 : 503.273.8169

MEMORANDUM

Date: June 15, 2009 Project #: 10205.0
To: Mike McKillip
City of Tualatin
Engineering & Building Department
Engineering Division
18880 SW Martinazzi Avenue
Tualatin, OR 97062-0369
From: Chris Tiesler, P.E. and Wen Si
Project: Waterman Property Rezone
Subject: Transportation Planning Rule Analysis for the Proposed Rezone – Tualatin, Oregon

Signed:
6/15/09

EXPIRES: 6/30/ 2010

Don Waterman is proposing a comprehensive plan and zoning map amendment for an approximately one-acre site located in Tualatin, Oregon. The subject property is located in the southeast quadrant of the SW 65th Avenue/SW Nyberg Lane intersection, and is illustrated in Figure 1. Under the proposed plan map amendment, the site would change designation from Low Density Residential (RL) to Commercial Office (CO).

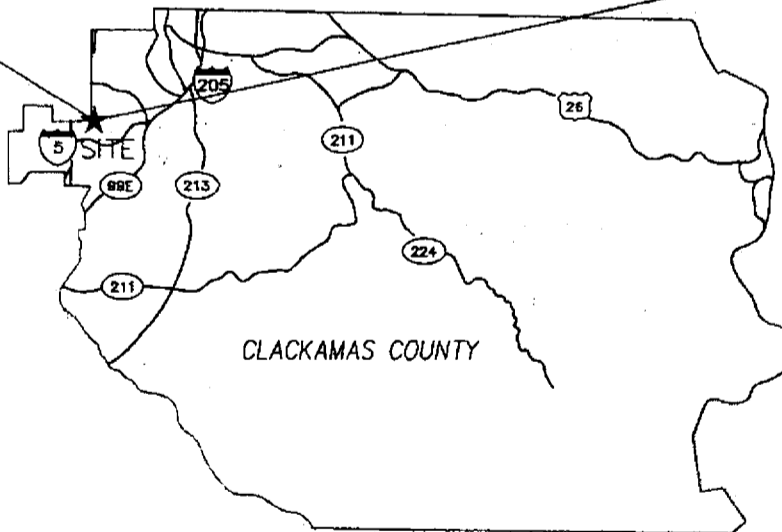
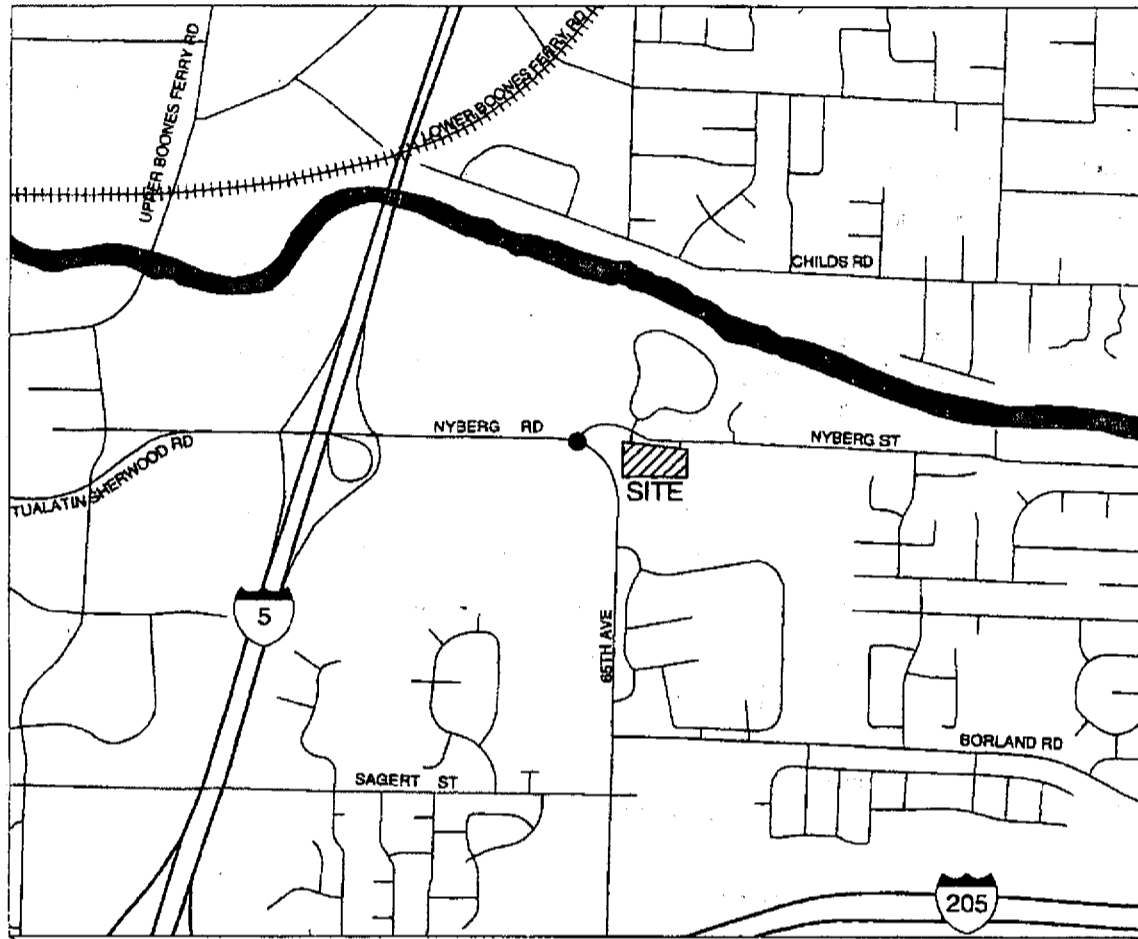
SUMMARY OF FINDINGS

This memorandum analyzes the proposed plan map amendment in compliance with the Transportation Planning Rule (TPR), OAR 660-012-0060. A two-step review process is required. The first step of the analysis is to determine if there will be a significant effect on surrounding transportation facilities because of the proposed amendment. The analysis of impacts is conducted for a horizon year corresponding to the end of the planning period identified in the local jurisdiction's adopted Transportation System Plan, typically a 20-year time frame. In the event that there is a significant impact, then the second step is to provide appropriate mitigation measures under OAR 660-012-0060(2).

Based on the analysis presented in this memorandum, rezoning the property to CO and developing to a reasonable "worst-case" density would result in a smaller trip generation potential than under the existing zoning designation. Therefore, the proposed plan map amendment complies with the TPR.

BACKGROUND

The site is zoned RL, which allows for single-family dwellings, residential facilities, and family daycare. Prior to 1989, the site was vacant. At that time, a conditional use permit was applied for and obtained to construct and operate a Daycare Center. The conditional use permit allows a



H:\projects\10205 - Waterman Property Rezone\dwg\figs\10205fig01.dwg Jun 15, 2009 - 2:30pm - chrisfer Layout Tab: Fig01

LEGEND

● - STUDY INTERSECTION

**SITE VICINITY MAP
TUALATIN, OREGON**

**FIGURE
1**

maximum building size of 6,710 square-feet, which was constructed and opened in January 1990. The site has operated as a daycare center since that time.

Transportation Planning Rule

The TPR institutes criteria under which the transportation impacts of a post-acknowledgement plan amendment and zoning map amendment must be evaluated (OAR 660-012-0060(1)). If a proposed amendment is expected to result in an increase in potential trips generated by the site beyond that which would occur through reasonable "worst case" development of the site under the existing designation, an operational analysis is required to assess the long-term transportation needs. However, if the trip generation is not expected to increase, no additional analysis is necessary to satisfy the TPR. If a significant affect results, the TPR allows mitigation measures, one of which is a "trip cap" that will limit future land uses on the site such that there are no significant transportation impacts as a result of the land use changes.

TRIP GENERATION POTENTIAL COMPARISON

Using the standard reference manual, *Trip Generation, 8th Edition*, published by the Institute of Transportation Engineers (ITE) (Reference 1), the potential site trip generation was estimated for two scenarios:

- an assumed reasonable "worst case" under the current RL designation
- an assumed reasonable "worst case" under the proposed CO designation

As noted previously, the site currently operates as a 6,710 square-foot Daycare Center, which is considered the reasonable "worst-case" scenario allowed under the RL designation in terms of trip generation. For the proposed CO zoning, a Medical Office land use would represent the worst-case for trip generation purposes. Based on landscaping, parking minimums and setback requirements required by the zoning code, the reasonable "worst-case" build out is calculated to be approximately 12,470 square-feet.

Table 1 shows the estimated trip generation comparison between the existing RL designation and proposed CO designation worst case development scenarios.

**Table 1
Worst Case Trip Generation Scenario Comparison**

| ITE Land Use | ITE Code | Size | Daily Trips | Weekday AM Peak Hour | | | Weekday PM Peak Hour | | |
|--|----------|--------|-------------|----------------------|------------|------------|----------------------|------------|------------|
| | | | | Total | In | Out | Total | In | Out |
| Existing RL Plan Map | | | | | | | | | |
| Daycare Center | 565 | 6,710 | 530 | 80 | 40 | 40 | 85 | 40 | 45 |
| Proposed CO Plan Map | | | | | | | | | |
| Medical Office Building | 720 | 12,470 | 450 | 30 | 25 | 5 | 45 | 10 | 35 |
| Proposed Zoning - Existing Zoning | | | -80 | -50 | -15 | -35 | -40 | -30 | -10 |

As shown in Table 1, the worst-case land uses associated with the proposed CO designation have a trip generation potential smaller than the existing RL designation (resulting in a reduction of approximately 80 daily trips, 50 weekday a.m. peak hour trips, and 40 weekday p.m. peak hour trips). As a result, no additional analysis is required to satisfy the TPR for rezone purposes.

OPERATIONAL ANALYSIS

An operational analysis of the SW 65th Avenue/SW Nyberg Lane intersection has been provided at the request of City staff to demonstrate that the proposed rezone will not degrade the operations of the intersection today or in the future. While not required to satisfy the TPR, this analysis clearly demonstrates that the proposed rezone will not have a significant effect on the transportation system.

Existing Conditions

As noted previously, the site currently operates as a 6,710 square-foot daycare center, which is considered the reasonable "worst-case" scenario allowed under the RL designation in terms of trip generation. As such, the existing zoning scenario was analyzed to demonstrate that the intersection will operate acceptably both today and at the end of the 20-year planning horizon.

This analysis is contained in the *Stafford Hills Racquet & Fitness Club Transportation Impact Analysis* prepared by Kittelson & Associates, Inc. (Reference 3). Table 2 summarizes the operational analysis results at the SW Nyberg Lane/SW 65th Avenue intersection under existing zoning conditions.

Table 2
SW Nyberg Lane/SW 65th Avenue Existing Conditions Operational Analysis Summary¹

| Zoning Scenario | Weekday AM Peak Hour | | | Weekday PM Peak Hour | | |
|----------------------|----------------------|------|-------|----------------------|------|-------|
| | LOS | V/C | Delay | LOS | V/C | Delay |
| Existing Zoning (RL) | B | 0.60 | 13.9 | B | 0.71 | 17.0 |

LOS = Level of Service

V/C = Volume-to-capacity ratio

Delay measured in seconds

¹ As reported in the *Stafford Hills Racquet & Fitness Club Transportation Impact Analysis* dated February 2009 prepared by Kittelson & Associates, Inc.

As shown in Table 2, the subject intersection operates acceptably during both the weekday a.m. and p.m. peak hours under the existing zoning scenario. Because the proposed zone change will result in a net reduction of trips to this intersection, the intersection will continue to operate acceptably assuming approval of the zone change.

Year 2028 Horizon Year Conditions

The existing zoning scenario was also analyzed under year 2028 traffic conditions to demonstrate that the intersection will operate acceptably at the end of the 20-year planning horizon.

Table 3 summarizes the operational analysis at the SW Nyberg Lane/SW 65th Avenue intersection under horizon year 2028 traffic conditions.

Table 3
SW Nyberg Lane/SW 65th Avenue Horizon Year 2028 Operational Analysis Summary¹

| Zoning Scenario | Weekday AM Peak Hour | | | Weekday PM Peak Hour | | |
|----------------------|----------------------|------|-------|----------------------|------|-------|
| | LOS | V/C | Delay | LOS | V/C | Delay |
| Existing Zoning (RL) | B | 0.83 | 18.8 | C | 0.84 | 22.9 |

LOS = Level of Service

V/C = Volume-to-capacity ratio

Delay - measured in seconds

¹ As reported in the Stafford Hills Racquet & Fitness Club Transportation Impact Analysis dated February 2009 prepared by Kittelson & Associates, Inc.

As shown in Table 3, the subject intersection is forecast to continue to operate acceptably during both the weekday a.m. and p.m. peak hours under the existing zoning scenario in the horizon year 2028. Because the proposed zone change will result in a net reduction of trips to this intersection, the zone change will not significantly affect the transportation system over the 20-year planning horizon.

CONCLUSION

Based on this analysis and the size of the site, no outright or conditional use under the proposed CO designation has the potential to generate more trips than the existing RL designation. However, the applicant is open to the idea of imposing a "trip cap" for the proposed rezone if it is ultimately deemed necessary by the City. The trip cap could be established to limit the future trip generation potential of the site to the maximum reasonable worst-case scenario that exists under the current conditional use RL designation. This would ensure that no additional trips are generated to or from the site as a result of future redevelopment under the proposed rezone.

We trust this letter adequately addresses the transportation issues associated with the proposed comprehensive plan change and rezone. If you have any questions or comments, please contact us at (503) 228-5230.

REFERENCES

1. Institute of Transportation Engineers. *Trip Generation, 8th Edition*. 2008.
2. Transportation Research Board. *Highway Capacity Manual*. 2000.
3. Kittelson & Associates, Inc. *Stafford Hills Racquet & Fitness Club Transportation Impact Analysis*. February 2009.

PMA-09-02 ATTACHMENT E:

BACKGROUND

The subject land use application is Plan Map Amendment PMA-09-02 requesting redesignation of 6480 SW Nyberg Lane (Tax Lot 2S 1E 19C 700); the portion of right-of-way of SW Nyberg Lane north to the centerline of the right-of-way (ROW); and, the portion of ROW of SW 65th Avenue west to the east boundary of the General Commercial (CG) Planning District from Low Density Residential (RL) to Office Commercial (CO) Planning District. The property of approximately 0.93 acres with approximately 0.48 acres of adjacent ROW is near the southeast corner of SW 65th Avenue and SW Nyberg Lane, north of Legacy Meridian Park Hospital and south of Stonestrow Apartments. Refer to the maps in Attachment A, B, and C.

The site itself has been developed for child day care, a commercial use, via conditional use permit CUP-89-02 and Resolution No. 2423-90 since 1990; prior to that the site was undeveloped. Designation of CO would allow child day care, professional offices, and athletic and fitness clubs as permitted uses as specified in TDC 50.020. La Petite Academy was the child day care provider occupying the site.

While the PMA criteria remain at a conceptual land use level, site redevelopment constraints are relevant. The RL Planning District designation allows for up to 6 DUs in the form of single-family (SF) houses given the approximate site area of 0.93 acres. Because of the proximity of Nyberg Creek and associated wetlands and the contemporary wetland buffer requirements of Clean Water Services (CWS), the Washington County sewer and stormwater agency that has jurisdiction also within that portion of the City within Clackamas County, the net redevelopable acreage is reduced by 64% and feasible density is also reduced. The economics of the site as presently designated RL indefinitely preclude redevelopment into two houses. The PMA would have a negligible effect on housing capacity within the planning area boundary of the city.

Attachment F contains the analysis and findings demonstrating how the PMA meets the approval criteria of Tualatin Development Code (TDC) Section 1.032.

Attachment G examines the affect of the PMA on public facilities, including roads and streets.

Attachment H is a table that summarizes the permitted and conditional uses in the CO Planning District.

PMA-09-02 ATTACHMENT F:

ANALYSIS AND FINDINGS

The approval criteria of the Tualatin Development Code (TDC), Section 1.032, must be met if the proposed PMA is to be granted. The plan amendment criteria are addressed below:

1. Granting the amendment is in the public interest.

The amendment is in the public interest because it fulfills the objective of the requested Office Commercial (CO) Planning District stated in TDC 6.040(1), which is "to provide areas suitable for professional office uses adjacent to or across from residential areas." The subject property and the adjacent parcel to the east and south are presently within the Low Density Residential (RL) Planning District. Most of this adjacent parcel is undeveloped wetlands associated with Nyberg Creek. Across SW Nyberg Lane to the north is a garden apartment complex within a Medium-High Density (RMH) Planning District. To the west across SW 65th Avenue and to the northwest across SW Nyberg Lane is a General Commercial (CG) Planning District. The requested planning district designation introduces an appropriate transition between residential and intensive commercial planning districts.

The site itself has been developed for child day care, a commercial use, via conditional use permit CUP-89-02 since 1990; prior to that the site was undeveloped. Designation of CO would allow child day care, professional offices, and athletic and fitness clubs as permitted uses as specified in TDC 50.020. Refer to Attachment G for a table showing permitted and conditional uses within both the RL and CO Planning Districts.

Granting the amendment is in the public interest. Criterion "A" is met.

2. The public interest is best protected by granting the amendment at this time.

Granting the amendment at this time would not hinder the public interest because of present site development. The City approved child day care for the site as a conditional use within the RL District in 1990 via application CUP-89-02 and Resolution No. 2423-90. At the time the property remained undeveloped, and ever since CUP approval and subsequent site development, the child day care provider La Petite Academy has occupied the site. Thus, the site has had commercial use for 19 years though its planning district designation is residential. Lastly, child day care is a permitted use within CO per TDC 50.020(5). The public interest is best protected by granting the amendment at this time. Criterion "B" is met.

3. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

The applicable objectives of the Tualatin Community Plan are presented below.

TDC 6.030(1) Encourage commercial development.

Granting the amendment fulfills this objective because it would allow for commercial development by right rather than by time-limited conditional use.

TDC 6.030(2) Provide increased employment opportunities.

While granting the amendment would not change site conditions, it does allow for commercial employment to persist beyond the business presently on site more easily than if commercial uses were subject to time-limited conditional use approvals. Preempting this procedural friction would allow the site to continue to provide employment opportunity easily.

Additionally, TriMet Bus Route 76 with service every 20 minutes runs along SW Sagert Street and SW 65th Avenue to the north entry road into Meridian Park Hospital. This stop is within 1,500 feet walking distance of the subject property. A CO designation within a reasonable walking distance of frequent public transit would permit development more conducive to more transit patronage than that allowed by RL designation. This is particularly so given that the maximum allowable density is 6.4 DUs per acre, and multiplied by the gross site acreage of approximately 0.9 acres yields a maximum possible 6 DUs per acre excluding environmental land constraints, a situation that is poorly suited for public transit at the conceptual level and would be so if the site was to be redeveloped with single-family houses.

The presence of Legacy Meridian Park Hospital, the largest employer in the city with 875 employees per the Tualatin Business and Community Directory 2008-2009 published by the Tualatin Chamber of Commerce, much explains the presence of three areas of CO designation along SW 65th Avenue and the presence of transit. Additional CO within easy travelling range of the hospital allows for commercial development and associated employment to strengthen this sector of Tualatin's economy.

The objective is met.

TDC 6.030(3) Provide shopping opportunities for surrounding communities.

The objective applies given a liberal interpretation that "shopping opportunities" includes the opportunity to purchase the provision of child day care or to obtain the services found in professional offices. Given the present distribution of land

uses throughout the city as a whole as depicted on the TDC Map 9-1 "Community Plan Map," the granting of the amendment provides more CO District in the eastern portion of the city that is mostly single-family residential (RL District). This allows for more professional offices, as well as gyms and child day care providers that are permitted uses, to serve the population residing there without having to drive into the town center along SW Nyberg Street and SW Sagert Street, the only two streets that bridge I-5 between the Tualatin River and the southern city limits. The location of the site allows easy access from single-family subdivisions to the east along SW Nyberg Lane without having to access a major thoroughfare, namely SW 65th Avenue. The objective is met.

The proposed amendment conforms with the objectives of the Tualatin Community Plan. Criterion "C" is met.

4. The following factors were consciously considered:

The various characteristics of the areas in the City.

As previously described, three factors related to the various characteristics of the areas in the City support the amendment. First, The requested CO Planning District designation introduces an appropriate transition between residential to the east-southeast – Fox Hills and vicinity – and commercial planning districts to the west-northwest – Nyberg Woods and vicinity.

The City approved child day care for the site as a conditional use within the RL District in 1990 via application CUP-89-02 and Resolution No. 2423-90. At the time the property remained undeveloped, and ever since CUP approval and subsequent site development, the child day care provider La Petite Academy has occupied the site. Thus, the site has had commercial use for 19 years though its planning district designation is residential.

Second, given the present distribution of land uses throughout the city as a whole as depicted on the TDC Map 9-1 "Community Plan Map," the granting of the amendment provides more CO District in the eastern portion of the city that is mostly single-family residential (RL District). This allows for professional offices, as well as gyms and child day care providers that are permitted uses, to serve the population residing there without having to drive into the town center along the only two roads that bridge I-5 between the Tualatin River and the southern city limits. The location of the site allows easy access from single-family subdivisions to the east along SW Nyberg Lane without having to access a major thoroughfare, namely SW 65th Avenue.

Third, CO designation in place of RL would allow better utilization of existing frequent bus service that is within walking distance of the site and thereby strengthen the employment opportunity of the site.

The suitability of the areas for particular land uses and improvements in the areas.

The aforementioned factors relating to the various characteristics of the areas in the City apply also to the suitability of the areas for particular land uses.

Additionally, while at the land use level illustrated on Map 9-1 a significant area of RL designation exists, actual site conditions belie the map. Much of the RL area bound by SW Nyberg Lane to the north, Fox Hills to the east, Legacy Meridian Park Hospital to the south, and SW 65th Avenue to the west is wetland associated with Nyberg Creek. The subject property is a parcel covering a small part of this RL area. Considering the subject property at the site development level, it is ill suited for single-family development. The expected application of wetland buffers required by the City and Clean Water Services, the sewer and stormwater agency for Washington County that has jurisdiction over that portion of the City lying with Clackamas County, would reduce the net 0.9 acres of the site. The maximum allowable gross density at the land use level of 6 DUs for the site would be reduced. Because the transportation component of the Tualatin Community Plan, the Transportation System Plan (TSP) incorporated by reference, designates SW Nyberg Lane as a minor collector (Cb) as illustrated by Figures 11-1 "Functional Classification Plan" and 75-2E. Because the TDC prevents direct driveway access from single-family houses onto collector roads, redevelopment of the subject property would require an entrance road. Lastly, as describe below for the criterion relating to "natural resources of the City and the protection and conservation of said resources," following redevelopment 64.1% of the lot would be wetland or wetland buffer, leaving 35.9% net developable area. At this point, it is clear that because the economics of the site will indefinitely preclude single-family housing, the reasons to approve CO designation become more compelling.

Trends in land improvement and development.

As previously discussed, CO designation of the site would be an appropriately located, timed, and sized transition between the commercial corridor along SW Nyberg Street (west of SW 65th Avenue) and residential land along SW Nyberg Lane (east of SW 65th Avenue). Timewise, the amendment would acknowledge that the site had been developed in 1990 for commercial use and always has been used as such. The continuation of commercial use along SW Nyberg Lane is not possible because of the extent of significant wetlands along Nyberg Creek to the south extending east and because of the existing Stonestrow Apartments and Brown's Ferry Park to the north extending east.

The needs of economic enterprises and the future development of the area.

As previously discussed, employment opportunity is a factor supporting the amendment. This is another facet of the needs of economic enterprises and the future development of the area, which center on the hospital and nearby existing areas of CO designation.

Needed right-of-way and access for and to particular sites in the area.

The amendment would not block or divert any future roadway corridors identified by TDC Figure 11-1.

Natural resources of the City and the protection and conservation of said resources.

At the land use level, natural resources are not directly applicable. At the site development level, both the City and Clean Water Services (CWS) would require development to protect and conserve natural resources, including development of this site that has and also borders wetlands associated with Nyberg Creek. CO designation increases the opportunity that a developer will find it cost effective to redevelop the property profitably while still complying with environment regulations.

Taking a larger environmental perspective, the site is better suited with professional offices because it can lessen the number and length of vehicle trips in turn because of its location relative to eastern residential subdivisions and to Bus Route 76. It would make more intense use of the land than would a few houses. Comparing the vehicle trip generation rates in the table in Attachment H, the amendment would allow uses that generate fewer trips than does the approved conditional use of child day care within RL.

The site borders a Natural Resources Protection Overlay District (NRPO) district as illustrated by Map 72-1. However, Map 72-2 "Greenway Development Plan" (2005) shows no planned greenway intended for a pedestrian or bicycle path bordering the subject property; the "Nyberg Creek Greenway" is the closest greenway, yet does not extend east of SW 65th Avenue. Map 72-3 "Significant Natural Resources" identifies the wetlands as significant. The City and CWS are able to protect and conserve on-site natural resources regardless of planning district designation. CWS requires a 50-ft wetland buffer for development. Because the site developed prior to this requirement, redevelopment would require the developer to restore and vegetate the wetland buffer. The application booklet through the Developable Area Map and on p. 7 notes the effect on net developable area:

| Site | Sq Ft | Lot Percentage |
|-----------------|--------------|-----------------------|
| Wetland | 11,747 | 27.0 % |
| Wetland buffer | 16,155 | 37.1 % |
| Net developable | 15,630 | 35.9 % |
| Total lot | 43,532 | 100.0 % |

As part of redevelopment, the majority of the lot (64.1%) would be given to the protection and conservation of natural resources.

Prospective requirements for the development of natural resources in the City.

TDC 15.010(3) incorporates the Parks and Recreation Master Plan (1983) into the TDC by reference. Figure 3-4 "Recreation Resources" of the Parks and Recreation Master Plan (1983) indicates a "Creek Greenway" along Nyberg Creek just south of the subject property. However, Map 72-2 "Greenway Development Plan" (1995) shows no planned greenway intended for a pedestrian or bicycle path bordering the subject property or along Nyberg Creek east of SW 65th Avenue. TDC 15.010(4) clarifies that Ordinance No. 497-95, adopted 7/24/1995, incorporated the Greenway Development Plan into the Parks and Recreation Master Plan through reference within 15.010(4). Therefore, Map 72-2 takes supersedes Figure 3-4, and no greenway is proposed or required. Additionally, Resolution No. 2423-90 that approved child day care as a conditional use (CUP-89-02) stated no condition of approval relating to dedication of an easement or land for or construction of a greenway.

For these reasons, natural resources would remain protected and conserved rather than modified for public recreational use, so the criterion is not applicable.

The public need for healthful, safe, aesthetic surroundings and conditions.

Though not directly applicable, the amendment satisfies the criterion mostly for aforementioned reasons: likely reduction of daily vehicle trips and trip length and more patronage of existing public transit. The amendment promotes public health by reducing driving, which benefits those driving less and reduces emissions, and takes advantage of existing transit service by allowing employees to avoid driving. The advantages accrue to individuals and the public at large. The amendment does not affect the need for safe and aesthetic surroundings, which are maintained at the level of site development review.

Proof of change in a neighborhood or area

There is no proof of change in a neighborhood or area.

Mistake in the Plan Text or Plan Map.

There is no mistake in the Plan text or Plan Map.

5. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

At the land use level, commercial land use generates no schoolchildren compared to residential land use, particularly single-family housing. The amendment would preclude residential redevelopment that would consume its proportionate share of student capacity of public schools. From the perspective of the school district, this is a benefit and the criterion is met.

6. Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

Of the 19 statewide planning goals, staff determined that Goals 2, 10, 11 and 12 are applicable and must be addressed.

Goal 2: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The TCP, as part of the TDC, established a local land use planning process as a basis for all decision and actions related to use of land within the Tualatin planning area, and this review serves to complete that process. As shown in the above section, the amendment complies with the plan amendment criteria in TDC Section 1.032, a part of the Tualatin Community Plan (TCP), which reflects Metro Code provisions and has been acknowledged by the Oregon Department of Land Conservation and Development (DLCD). Therefore, compliance with the TCP by definition includes compliance with state and regional minimum planning requirements.

The amendment is consistent with statewide planning Goal 2.

Goal 10: To provide for the housing needs of citizens of the state.

The proposal will not jeopardize the City maintaining its regional housing density and housing mix standards that are a principal element of Goal 10 implementation (in the Metropolitan Housing Rule, OAR-660-007). Therefore, the proposed amendment complies with Goal 10. The Metropolitan Housing rule is a State of Oregon Administrative Rule that applies to the cities and counties within the metropolitan Portland urban growth boundary. While applying to the Portland region, it is not imposed by Metro, the Regional Government.

Staff has prepared information on the effect of changing the designation of the property and the adjacent public ROW from RL to CO on meeting the Metropolitan Housing Rule with updated analysis of planned housing density and housing mix to reflect the size of the RML properties as shown in Tables 2A & 2B below. The amendment increases the planned residential density by 0.003 DUs/acre from 8.164 to 8.167. Staff determined that changing the 0.93 acres of the lot and 0.48 acres of public street ROW from RL to CO will have no change to the existing residential density of 8.16 DUs/acre when rounded to the nearest hundredth and will comply with the Metropolitan Housing Rule requirement of a minimum of 8.0 DUs/acre planned residential density. The Metropolitan Housing Rule New Construction Mix (OAR-660-007-0035) requires cities to provide the opportunity for at least 50% of new residential units to be attached single-family housing or multiple family housing. As calculated by staff, changing 1.41 acres of RL residential land in the City's supply to CO will increase the attached/multi-family housing share by 0.05 percent from 52.04 to 52.09 percent, which would satisfy the requirement.

Table 2A
CITY OF TUALATIN-- METRO HOUSING RULE COMPLIANCE, PMA-09-02--
WITH PROPOSED REDUCTION OF 0.93 ACRES (+ 0.48 Acres ROW) FROM
RL and ADDING TO CO DISTRICT *

| | RL | RML | RMH | RH | RH/HR | Total | |
|--|----------------|--------------|--------------|--------------|-------------|----------------|--------------|
| Total acres in each residential district (current) | 2,211.1 | 265.0 | 188.2 | 166.0 | 18.2 | 2,848.5 | Acres |
| Acres proposed for removal from or added to residential district | -1.4 | | | | | -1.4 | |
| Total acres of ROW in each residential district (+/- 0.69 acres ROW) | -443.1 | -59.2 | -32.4 | -23.6 | -3.4 | -561.7 | |
| Total Gross Buildable Acres | 1,766.5 | 205.9 | 155.8 | 142.4 | 14.8 | 2,285.4 | Acres |
| Environmental restrictions (100 flood, NRPO, slopes > 25%) | -293.7 | -44.4 | -54.8 | -76.4 | -12.6 | -481.8 | |
| Total Acres Minus Environmental Restrictions | 1,472.9 | 161.5 | 101.0 | 66.0 | 2.2 | 1,803.6 | Acres |
| Non-buildable land (publicly owned, golf course, school, | -297.1 | -11.8 | -6.3 | -0.2 | -0.1 | -315.4 | |

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cemetery)

| | | | | | | | |
|---|---------|---------|---------|---------|------|----------|-------|
| Total net Buildable Acres | 1,175.8 | 149.6 | 94.7 | 65.8 | 2.2 | 1,488.1 | Acres |
| Maximum Density Allowed by Residential District (dwelling units per acre) | 6.4 | 10.0 | 15.0 | 25.0 | 30.0 | 86.4 | |
| Total Dwelling Units Allowed | 7,525.1 | 1,496.2 | 1,421.0 | 1,646.0 | 64.8 | 12,153.1 | DUs |
| Dwelling units per acre | | | | | | 8.167 | |

Table 2B

PMA-09-02 Metro Housing Rule New Construction Mix

| | RL | RML | RMH | RH | RH/HR | Total | |
|--|---------|-------|-------|-------|-------|---------|-------|
| Total acres in each residential district (current) | 2,211.1 | 265.0 | 188.2 | 166.0 | 18.2 | 2,848.5 | Acres |
| Acres proposed for removal from or added to residential district | -1.4 | | | | | -1.4 | |
| Total acres of ROW in each residential district (+/- 0.69 acres ROW) | -443.1 | -59.2 | -32.4 | -23.6 | -3.4 | -561.7 | |
| Total Gross Buildable Acres | 1,766.5 | 205.9 | 155.8 | 142.4 | 14.8 | 2,285.4 | Acres |
| Environmental restrictions (100 flood, NRPO, slopes > 25%)(RL only, no shift in density as allowed in RML-RH/HR) | -293.7 | 0.0 | 0.0 | 0.0 | 0.0 | -293.7 | |
| Total Acres Minus Environmental Restrictions | 1,472.9 | 205.9 | 155.8 | 142.4 | 14.8 | 1,991.7 | Acres |
| Non-buildable land (publicly owned, golf course, school, cemetery) | -297.1 | -11.8 | -6.3 | -0.2 | -0.1 | -315.4 | |

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| | | | | | | | |
|---|----------------|----------------|----------------|----------------|--------------|----------------|------------------------------|
| Total net Buildable Acres | 1,175.8 | 194.0 | 149.5 | 142.2 | 14.7 | 1,676.3 | Acres |
| Maximum Density Allowed by Residential District (DUs per acre) | 6.4 | 10.0 | 15.0 | 25.0 | 30.0 | 86.4 | |
| Total Dwelling Units Allowed | 7,525.1 | 1,940.3 | 2,242.6 | 3,556.0 | 441.9 | 15,706 | DUs |
| Total Single Family Detached Units Allowed (RL) | 7525.1 | | | | | 7,525.1 | 47.91% of DUs Allowed |
| Total Attached/Multi-Family Units Allowed (RML, MRMH, RH, RH/HR) | | | | | | 8,180.8 | 52.09% of DUs Allowed |

9/9/2009

* Removes 1.41 acres (0.93 lot + 0.48 ROW) from RL Gross; Removes 0.16 acres from RL Non-buildable & 0.48 acres from RL ROW / Adds to CO.

Other provisions of the Metropolitan Housing Rule including calculations of the supply of buildable land and needed housing are evaluated at the time of Periodic Review. Tualatin was found in compliance in the 1994 Periodic Review by the Land Conservation and Development Commission and will be revisiting the residential land supply and needed housing issues in the next Periodic Review.

Staff agrees granting the PMA is consistent with Goal 10 because the City of Tualatin Comprehensive Plan will continue to exceed the minimum housing density and mix standards required by the Metropolitan Housing Rule.

The amendment is consistent with statewide planning Goal 10.

Goal 11: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Attachment H (Engineering Division Memorandum) states that sanitary sewer, stormwater, and water lines exist under SW Nyberg Lane adjacent to the subject property. Any required improvements would be determined through site development review if site redevelopment were to occur.

The amendment is consistent with statewide planning Goal 11.

Goal 12: To provide and encourage a safe, convenient and economic transportation system.

The applicant submitted a traffic study by Kittelson & Associates, Inc. as a memorandum dated 6/15/2009 analyzing the applicability of the Oregon Transportation Planning Rule (TPR), codified in OAR 660-012-0060, to the proposed amendment. Oregon Administrative Rules (OAR) 660-012 contains the administrative rules for implementing Goal 12.

The memo states that the present child day care as a conditional use within the RL Planning District is a reasonable worst case scenario in terms of vehicle trip generation as predicted by the Institute of Transportation Engineers (ITE) manual *Trip Generation, 8th Ed.* Comparing it with the reasonable worst case scenario for the permitted use within the CO Planning District that would generate the most vehicle trips, the amended land use would generate fewer vehicle trips during both the a.m. and p.m. peak periods. The TPR requires examining the effect of the amendment 20 years out, and the memo states that with assumed traffic conditions in the year 2028, the amendment will not generate enough vehicle trips to degrade the vehicular level of service (LOS) below an acceptable level.

In short, the site presently generates more vehicle trips with a conditional use in RL than it would with the most generative permitted use in CO.

Additionally, the amended land use takes advantage of and thereby increases the utility of existing public transit, specifically TriMet Bus Route 76 of which the closest stop to the subject property is within 1,500 ft along SW 65th Avenue and SW Nyberg Lane, a reasonable walking distance.

The amendment is consistent with statewide planning Goal 12.

7. Granting the amendment is consistent with the Metropolitan Service District's Urban Growth Management Functional Plan.

The analysis and findings related to Oregon Statewide Planning Goal 10 apply here as well. Apart from the Metropolitan Housing Rule, Metro has a requirement in the UGMFP reflected in Table 3.07-1 "Zoned Capacity for Housing and Employment Units – Year 1994 to 2017," which shows Tualatin having a housing capacity of 4,054 DUs based on the planning area of the city and that Metro and Tualatin last revised in 2002.

Within the City between 1997 and 2007, 2,517 were constructed towards the 4,054 target. Because the subject property was already developed with a commercial building in 1990, it was not factored in as available land in the target calculation.

PMA-09-02 ATTACHMENT F: ANALYSIS AND FINDINGS
September 28, 2009
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With the appeal of PTA-08-05 to the Land Use Board of Appeals (LUBA), Metro and the City continue discussion on the appropriate target number. The criterion is met.

8. Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

Refer to the earlier analysis relating to Statewide Planning Goal 12 and the attached Engineering Division Memorandum dated 8/07/2009 (Attachment H).

MEMORANDUM

DATE: September 2, 2009

TO: Colin Cortes
Assistant Planner

FROM: Tony Doran, EIT
Engineering Associate

SUBJECT: PMA 09-02—Waterman - To change the planning district designation of 0.93 acres property from RL (Low-Density Residential) to CO (Commercial Office) 6480 SW Nyberg Lane Tax Lot: 2S1E19C00700

TDC 1.032 Burden of Proof (6) Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

Because the proposed land use action will result in an amendment to the City of Tualatin's zoning map, Section 660-012-0060 of the State's Transportation Planning Rule applies. Division 12 of the State's Transportation Planning Rule (OAR 660-012) gives the Oregon Department of Land Conservation and Development (DLCD) and the City of Tualatin the power to interpret and implement Statewide Planning Goal 12 (Transportation). Section 660-012-0060 of the TPR provides specific language on how to deal with amendments to adopted plans and land use regulation.

OAR 660-012-0060 Plan and Land Use Regulation Amendments

- (1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:**
- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);**
 - (b) Change standards implementing a functional classification system; or**
 - (c) As measured at the end of the planning period identified in the adopted transportation system plan:**

-
- (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;**
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or**
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.**

As demonstrated by the analyses and findings presented in the study, the proposed land use action is not expected to "significantly affect" any existing or planned transportation facility and is, therefore, expected to be in compliance with the State's Transportation Planning Rule.

TDC 1.032 Burden of Proof (8) Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

Transportation

The site is adjacent to and development will have access to SW Nyberg Lane and adjacent to SW 65th Avenue.

SW Nyberg Lane

SW Nyberg Lane is a City of Tualatin facility and designated as a Minor Collector (Cb), which has a right-of-way width of 60 to 64 feet that includes two 12-foot travel lanes, two 6-foot bike lanes, 6-foot planter strips, and 6-foot sidewalks. Currently there is 70 feet of constructed right-of-way, which is acceptable.

SW 65th Avenue

SW 65th Avenue is a Clackamas and Washington County facility maintained by Washington County and designated by the City of Tualatin as a Major Arterial (Eb&t), which would ultimately have a right-of-way width of 98 to 102 feet that includes four 12-foot travel lanes, one center turn lane, 6-foot bike lanes, 6-foot planter strips, and 6-foot sidewalks. Currently the right-of-way varies with a minimum width of 160 feet, which is acceptable.

The Plan Map Amendment as reviewed consists of 0.93 acres property from RL (Low-Density Residential) to CO (Commercial Office).

The 100-year floodplain covers the entire lot with a portion in the floodway. If a developer proposed to serve the areas using a public street, it would require a 50-foot width right-of-way that ended in a 45-foot radius cul-de-sac that was elevated 1-foot above the floodplain along with the requirement for a public water quality facility in a tract. The required right-of-way along with balanced cut and fill due to a public street could reduce or eliminate the possible developable area for residential homes. If a private tract was used instead of a public street a maximum of 6 lots could be served, provided balanced cut and fill proved possible for the homes to be constructed 1-foot above the floodplain.

The existing and currently allowed use is daycare, this PMA is for medical office, and the current zoning is residential.

The scenarios generate the following traffic:

| <u># of Lots</u> | <u>AM Peak</u> | <u>PM Peak</u> | <u>ADT</u> |
|------------------|----------------|----------------|------------|
| 6 Houses | 5 | 7 | 58 |
| PMA 09-02 | 30 | 45 | 450 |
| Daycare | 80 | 85 | 530 |

This plan map amendment will reduce the AM Peak, PM Peak, and ADT from the currently allowed daycare use by 50, 40, and 80, respectively.

ODOT submitted a review letter dated July 22, 2009 that states "determination that the proposed zoning will result in a trip generation equal to or less than the existing use and will have no significant effect on the State highway system." Clackamas County and Washington County have not submitted responses.

Sanitary Sewer, Stormwater, & Water

For the future Architectural Review, downstream sizing for all public utilities will need to be evaluated by the developer for the change from residential zoning with child day care as an approved conditional use and compared to the commercial rezoning with any associated future proposed redevelopment. Any upsizing will be a requirement in the Architectural Review decision.

Public sanitary sewer, stormwater, and water lines exist in the SW Nyberg Lane adjacent to the development. The applicant will need to determine the location of water treatment and connections to the public lines prior to obtaining a Water Quality and Public Works Permit associated with the development of the future Architectural Review.

Please let me know if you have questions, ext 3035.

PMA-09-02 ATTACHMENT H:

COMPARATIVE ZONING TABLE

| Planning District | Permitted Uses | | Conditional Uses | |
|-------------------|---|--|---|--|
| | Section | Use | Section | Use |
| RL | 40.020 | | 40.030 | |
| | (1) | Single-family dwellings, including manufactured homes. | (1) | Common-wall dwellings. |
| | (2) | Agricultural uses of land, such as truck gardening, horticulture, but excluding commercial buildings or structures and excluding the raising of animals other than normal household pets. | (2) | Condominium dwelling units provided they meet the following standards, notwithstanding other provisions of this Code, and meet the requirements of ORS 91.500. |
| | (3) | Home occupations as provided in TDC 34.030 to 34.050. | (3) | Small-lot subdivisions |
| | (4) | Public transit shelters. | 4(a) | Cemeteries |
| | (5) | Greenways and Natural Areas, including but not limited to bike and pedestrian paths and interpretive stations. | 4(b) | Churches and accessory uses |
| | (6) | Residential homes. | 4(c) | Colleges |
| | (7) | Residential facilities for up to 15 residents, not including staff. | 4(d) | Community buildings (public) |
| | (8) | Family day care provider, provided that all exterior walls and outdoor play areas shall be a minimum distance of 400 feet from the exterior walls and pump islands of any automobile service station, irrespective of any structures in between. | 4(e) | Child day care center |
| | (9) | Sewer and water pump stations and pressure reading stations. | 4(f) | Governmental structure or land use including public park, playground, recreation building, fire station, library or museum. |
| | (10) | Wireless communication facility attached, provided it is not on a single family dwelling or its accessory structures. | 4(g) | Retail nursery. |
| | (11) | Accessory dwelling units as provided in TDC 34.300 to 34.310. | 4(h) | Hospital or sanitarium. |
| (12) | Transportation facilities and improvements. | 4(i) | School. | |
| | | 4(j) | Water Reservoir. | |
| | | 4(k) | Any business, service, processing, storage or display essential or incidental to any permitted use in this zone and not conducted entirely within an enclosed building. | |
| | | 4(l) | Golf course, country club, private club. | |
| | | Section | Use | |
| | | 40.030 | | |

PMA-09-02 ATTACHMENT H: COMPARATIVE ZONING TABLE
Page 2 of 2

RL

| | |
|---------------|---|
| 4(m) | Agricultural animals, limited to cattle, horses and sheep, and agricultural structures such as barns, stables, sheds, but excluding feed lots, in areas designated on the Tualatin Community Plan Map. |
| 4(n) | Increased building height to a maximum of 75 feet, if all yards adjoining said building are not less than a distance equal to 1 1/2 times the height of the building. |
| 4(o) | Nursing or convalescent home. |
| 4(p) | Retirement housing conforming to the standards in TDC 34.160 - 34.170. |
| 4(q) | Electrical substation and above ground natural gas pump station. |
| CO | Section Use |
| 50.020 | 50.040 |
| (1) | (1) Offices, studios or clinics of accountants, architects, artists, attorneys, authors, dentists, designers, investment counselors, landscape architects, management consultants, and physicians or other practitioners of the healing arts. |
| (2) | (2) Offices of administrative, editorial, educational, financial, governmental, insurance, real estate, religious, research, scientific or statistical organizations. |
| (3) | (3) Health or fitness facility as defined in TDC 31.060, with indoor operation only. |
| (4) | (4) Greenways, including but not limited to bike and pedestrian paths and interpretive stations. |
| (5) | (5) Child day care center or family day care provider. |
| (6) | (6) Parking lot, parking structure or underground parking. |
| (7) | (7) Sewer and water pump stations and pressure reading stations. |
| (8) | (8) Wireless communication facility attached. |
| (9) | (9) Wireless communication facility located within 300 feet of the centerline of I-5. |
| (10) | (10) Organized team athletic practice facility. |
| (11) | (11) Other uses of similar character, found by the Planning Director to meet the purpose of this district, as provided by TDC 31.070. |
| (12) | (12) Transportation facilities and improvements. |
| (1) | (1) Restaurants, when designed as an integral part of a major office complex exceeding 250,000 square feet of gross floor area. |
| (2) | (2) Assembly of products, in conjunction with office and/or research and development activities. |
| (3) | (3) Pharmacy, when designed as an integral part of a medical office building, clinic or complex containing at |
| (4) | (4) Electrical substation. |
| (5) | (5) Natural gas pumping station. |
| (6) | (6) Water reservoir. |
| (7) | (7) Wireless communication facility. |

ORDINANCE NO. _____

AN ORDINANCE RELATING TO PLAN MAP AMENDMENT PMA-09-02; APPLYING OFFICE COMMERCIAL (CO) PLANNING DISTRICT DESIGNATION TO 6480 SW NYBERG LANE; AND AMENDING THE COMMUNITY PLAN MAP 9-1

WHEREAS upon the application of Group Mackenzie, a quasi-judicial public hearing was held before the City Council of the City of Tualatin on September 28, 2009, related to applying Office Commercial (CO) Planning District Designation to 6480 SW Nyberg Lane, and Amending the Community Plan Map 9-1 (PMA-09-02); and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication on September 10, 2009, in The Times, a newspaper of general circulation within the City, which is evidenced by the Affidavit of Publication marked "Exhibit A", attached and incorporated by this reference; and by posting a copy of the notice in two public and conspicuous places within the City on August 28, 2009, which is evidenced by the Affidavit of Posting marked "Exhibit B;" and by mailing a copy of this notice under the Tualatin Community Plan on September 2, 2009, which is evidenced by the Affidavit of Mailing marked "Exhibit C", attached and incorporated by this reference; and

WHEREAS the Council heard and considered the testimony and evidence presented on behalf of the applicant, the City staff, and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in approval of the application [Vote _-]; and

WHEREAS based upon the evidence and testimony heard and considered by the Council, and especially the City staff report dated September 28, 2009 the Council makes and adopts as its findings of fact the findings and analysis in the City staff report, marked "Exhibit D," which is attached and incorporated by reference; and

WHEREAS based upon the foregoing Findings of Fact, the Council finds that it is in the best interest of the residents and inhabitants of the city and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended.

THE CITY OF TUALATIN, OREGON ORDAINS AS FOLLOWS:

Section 1. The Community Plan Map 9-1 is amended to designate as an Office Commercial (CO) Planning District Tax Lot 2S 1E 19C 700 with the address of 6480 SW Nyberg Lane, the portion of right-of-way of SW Nyberg Lane north to the centerline of the right-of-way, and the portion of right-of-way of SW 65th Avenue west to the east boundary of the General Commercial (CG) Planning District.

INTRODUCED AND ADOPTED this 28th day of September, 2009.

CITY OF TUALATIN, OREGON

BY _____
Mayor

ATTEST:

BY _____
City Recorder



6805 SE Lake Road, Portland, OR 97222 • PO Box 22108 Portland OR 97289-2108
 Phone: 503-684-0360 Fax: 503-620-3433
 Email: legals@communitynewspapers.com

AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of *The Times* (serving Tigard, Tualatin & Sherwood), a newspaper of general circulation, published at Beaverton, in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

City of Tualatin
 Notice of Hearing/PMA 09-02
 TT11360

A copy of which is hereto annexed, was published in the entire issue of said newspaper for

1
 week in the following issue:
September 10, 2009

Charlotte Allsop
 Charlotte Allsop (Accounting Mahager)

Subscribed and sworn to before me this September 10, 2009.

Rebecca Buggan
 NOTARY PUBLIC FOR OREGON
 My commission expires

Acct #108462
 Attn: Stacy Crawford
 City of Tualatin
 18880 SW Martinazzi Ave
 Tualatin, OR 97062

Size: 2 x 7.75
 Amount Due \$140.28*
 *Please remit to the address above.

**NOTICE OF HEARING
 CITY OF TUALATIN, OREGON**

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, September 28, 2009, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN MAP AMENDMENT (PMA) CHANGING THE PLANNING DISTRICT DESIGNATION FROM LOW-DENSITY RESIDENTIAL (RL) TO OFFICE COMMERCIAL (CO) AT 6480 SW NYBERG LANE, TAX LOT 2S 1E 19C 700, AND AMENDING THE COMMUNITY PLAN MAP 9-1 (PMA-09-02)

Before granting the proposed Quasi-judicial amendments, the City Council must find that:

- (1) Granting the amendment is in the public interest;
- (2) The public interest is best protected by granting the amendment at this time;
- (3) The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan;
- (4) The factors listed in Section 1.032(4) were consciously considered;
- (5) The Tigard Tualatin School District Facility Plan is considered;
- (6) The amendment is consistent with Statewide Planning Goals;
- (7) The amendment is consistent with Metro's Urban Growth Management Functional Plan; and
- (8) granting the amendment is consistent with Level of Service E/E for the 2040 Design Type EA

Individuals wishing to comment may do so in writing to the Community Development Department prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings are commenced with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity for the decision maker to respond to the issue precludes an action for damages in circuit court.

Copies of the applications, all documents and evidence relied upon by the applicant (the City of Tualatin) and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff reports will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact Colin Cortes at 503-691-3024 or ccortes@ci.tualatin.or.us. This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON
 By: Sherilyn Lombos
 City Recorder

Publish 09/10/2009 TT11360

EXHIBIT A

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Stacy Crawford, being first duly sworn, depose and say:

That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted two copies of the Notice of Hearing on the 28th day of August, 2009, a copy of which Notice is attached hereto; and that I posted said copies in two public and conspicuous places within the City, to wit:

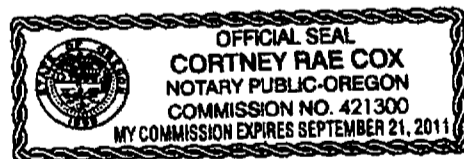
1. U.S. Post Office - Tualatin Branch
2. City of Tualatin City Center Building

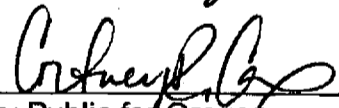
Dated this 28th day of August 2009.



Stacy Crawford

Subscribed and sworn to before me this 28th day of August, 2009.





Notary Public for Oregon
My Commission expires: 9/21/2011

RE: PMA-09-02—CHANGING THE PLANNING DISTRICT DESIGNATION FROM LOW-DENISTY RESIDENTIAL (RL) TO OFFICE COMMERCIAL (CO) AT 6480 SW NYBERG LANE, TAX LOT 21E19C 0700 AND AMENDING THE COMMUNITY PLAN MAP 9-1

EXHIBIT B



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, September 28, 2009, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN MAP AMENDMENT (PMA) CHANGING THE PLANNING DISTRICT DESIGNATION FROM LOW-DENSITY RESIDENTIAL (RL) TO OFFICE COMMERCIAL (CO) AT 6480 SW NYBERG LANE, TAX LOT 2S 1E 19C 700, AND AMENDING THE COMMUNITY PLAN MAP 9-1 (PMA-09-02)

Before granting the proposed Quasi-judicial amendments, the City Council must find that: (1) Granting the amendment is in the public interest; (2) The public interest is best protected by granting the amendment at this time; (3) The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan is considered; (6) The amendment is consistent with Statewide Planning Goals; (7) The amendment is consistent with Metro's Urban Growth Management Functional Plan; and (8) granting the amendment is consistent with Level of Service E/E for the 2040 Design Type EA.

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Copies of the applications, all documents and evidence relied upon by the applicant (the City of Tualatin) and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff reports will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. **For information contact Colin Cortes at 503-691-3024 or ccortes@ci.tualatin.or.us.** This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on
(September 10, 2009)

Mailed: 8/28/2009

18880 SW Martinazzi Avenue | Tualatin, Oregon 97062-7092 | 503.692.2000

AFFIDAVIT OF MAILING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Stacy Crawford, being first duly sworn, depose and say:

That on the 28th day of August, 2009, I served upon the persons shown on Exhibit "A," attached hereto and by this reference incorporated herein, a copy of a Notice of Hearing marked Exhibit "B," attached hereto and by this reference incorporated herein, by mailing to them a true and correct copy of the original hereof. I further certify that the addresses shown on said Exhibit "A" are their regular addresses as determined from the books and records of the Washington County and/or Clackamas County Departments of Assessment and Taxation Tax Rolls, and that said envelopes were placed in the United States Mail at Tualatin, Oregon, with postage fully prepared thereon.

Stacy Crawford
Stacy Crawford

SUBSCRIBED AND SWORN to before me this 28th day of August, 2009.



Cortney Rae Cox
Notary Public for Oregon
My commission expires: 9/21/2011

RE: PMA-09-02—CHANGING THE PLANNING DISTRICT DESIGNATION FROM LOW-DENISTY RESIDENTIAL (RL) TO OFFICE COMMERCIAL (CO) AT 6480 SW NYBERG LANE, TAX LOT 21E19C 0700 AND AMENDING THE COMMUNITY PLAN MAP 9-1

EXHIBIT C

Impression antibouillage et à séchage rapide
Utilisez le gabarit 5960^{MC}

Exhibit "A"



21E19C 00300
WILLIAM WILSON III MANAGEMENT CO
INC
4 EMBARCADERO CENTER STE 3330
SAN FRANCISCO, CA 94111

21E19C 00700
WATERMAN DONALD L
18342 NW GILLIHAN LOOP RD
PORTLAND, OR 97231

21E19C 00900
KOZLOWSKI JOSEPH P & ANITA L
5916 SW NYBERG LN
TUALATIN, OR 97062

21E19C 01200
TUALATIN SENIOR CARE LLC
PO BOX 3006
SALEM, OR 97302

2S124A002601
TRV PROPERTIES LLC
ATTN: TIM MCCARTHY
770 TAMALPAIS DR #401-B
CORTE MADERA, CA 94925

2S124A002600
TRV PROPERTIES LLC
ATTN: TIM MCCARTHY
770 TAMALPAIS DR #401-B
CORTE MADERA, CA 94925

2S124DA00100
REEVES RICHARD A
15174 NW TROON WAY
PORTLAND, OR 97229

2S124DA00900
WETLANDS CONSERVANCY INC THE
PO BOX 1195
TUALATIN, OR 97062

2S124DA01000
MERIDIAN MEDICAL OFFICE LLC
BY KRISTEN ROGERS
6711 SW AMBER LN
PORTLAND, OR 97225

Mr. Doug Rux
Tualatin Community Development Director
18876 SW Martinazzi Ave
Tualatin, OR 97062

Mr. Mike McKillip
City Engineer
18876 SW Martinazzi Ave
Tualatin, OR 97062



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Exhibit "B"

City of Tualatin
www.ci.tualatin.or.us

**NOTICE OF HEARING
CITY OF TUALATIN, OREGON**

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, September 28, 2009, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN MAP AMENDMENT (PMA) CHANGING THE PLANNING DISTRICT DESIGNATION FROM LOW-DENSITY RESIDENTIAL (RL) TO OFFICE COMMERCIAL (CO) AT 6480 SW NYBERG LANE, TAX LOT 2S 1E 19C 700, AND AMENDING THE COMMUNITY PLAN MAP 9-1 (PMA-09-02)

Before granting the proposed Quasi-judicial amendments, the City Council must find that: (1) Granting the amendment is in the public interest; (2) The public interest is best protected by granting the amendment at this time; (3) The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan is considered; (6) The amendment is consistent with Statewide Planning Goals; (7) The amendment is consistent with Metro's Urban Growth Management Functional Plan; and (8) granting the amendment is consistent with Level of Service E/E for the 2040 Design Type EA.

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CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on
(September 10, 2009)

Mailed: 8/28/2009

18880 SW Martinazzi Avenue | Tualatin, Oregon 97062-7092 | 503.692.2000

**PMA-09-02 Attachment F:
Analysis and Findings**

The approval criteria of the Tualatin Development Code (TDC), Section 1.032, must be met if the proposed PMA is to be granted. The plan amendment criteria are addressed below:

A. Granting the amendment is in the public interest.

The amendment is in the public interest because it fulfills the objective of the requested Office Commercial (CO) Planning District stated in TDC 6.040(1), which is "to provide areas suitable for professional office uses adjacent to or across from residential areas." The subject property and the adjacent parcel to the east and south are presently within the Low Density Residential (RL) Planning District. Most of this adjacent parcel is undeveloped wetlands associated with Nyberg Creek. Across SW Nyberg Lane to the north is a garden apartment complex within a Medium-High Density (RMH) Planning District. To the west across SW 65th Avenue is the General Commercial (CG) Planning District. The requested planning district designation introduces an appropriate transition between residential and intensive commercial planning districts.

The site itself has been developed for child day care, a commercial use, via conditional use permit CUP-89-02 since 1990; prior to that the site was undeveloped. Designation of CO would allow child day care, professional offices, and athletic and fitness clubs as permitted uses as specified in TDC 50.020.

Granting the amendment is in the public interest. Criterion "A" is met.

B. The public interest is best protected by granting the amendment at this time.

Granting the amendment at this time would not hinder the public interest because of present site development. The City approved child day care for the site as a conditional use within the RL District in 1990 via application CUP-89-02 and Resolution No. 2423-90. At the time the property remained undeveloped, and ever since CUP approval and subsequent site development, the child day care provider La Petite Academy has occupied the site. Thus, the site has had commercial use for 19 years though its planning district designation is residential. Lastly, child day care is a permitted use within CO per TDC 50.020(5). The public interest is best protected by granting the amendment at this time. Criterion "B" is met.

C. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

The applicable objectives of the Tualatin Community Plan are presented below.

Attachment F
Analysis and Findings
EXHIBIT D

TDC 6.030(1) Encourage commercial development.

Granting the amendment fulfills this objective because it would allow for commercial development by right rather than by time-limited conditional use.

TDC 6.030(2) Provide increased employment opportunities.

While granting the amendment would not change site conditions, it does allow for commercial employment to persist beyond the business presently on site more easily than if commercial uses were subject to time-limited conditional use approvals. Preempting this procedural friction would allow the site to continue to provide employment opportunity easily.

Additionally, TriMet Bus Route 76 with service every 20 minutes runs along SW Sagert Street and SW 65th Avenue to the north entry road into Meridian Park Hospital. This stop is within 1,500 feet walking distance of the subject property. A CO designation within a reasonable walking distance of frequent public transit would permit development more conducive to more transit patronage than that allowed by RL designation. This is particularly so given that the maximum allowable density is 6.4 DUs per acre, and multiplied by the gross site acreage of approximately 0.9 acres yields a maximum possible 6 DUs per acre, a situation that is poorly suited for public transit at the conceptual level and would be so if the site was to be developed with single-family houses.

The presence of Legacy Meridian Park Hospital, the largest employer in the city with 875 employees per the Tualatin Business and Community Directory 2008-2009 published by the Tualatin Chamber of Commerce, much explains the presence of three areas of CO designation along SW 65th Avenue and the presence of transit. Additional CO within easy travelling range of the hospital allows for more commercial development and associated employment to strengthen this sector of Tualatin's economy.

The objective is met.

TDC 6.030(3) Provide shopping opportunities for surrounding communities.

The objective applies given a liberal interpretation that "shopping opportunities" includes the opportunity to purchase the provision of child day care or to obtain the services found in professional offices. Given the present distribution of land uses throughout the city as a whole as depicted on the TDC Map 9-1 "Community Plan Map," the granting of the amendment provides more CO District in the eastern portion of the city that is mostly single-family residential (RL District). This allows for more professional offices, as well as gyms and child day

care providers that are permitted uses, to serve the population residing there without having to drive into the town center along SW Nyberg Lane and SW Sagert Street, the only two roads that bridge I-5 between the Tualatin River and the southern city limits. The location of the site allows easy access from single-family subdivisions to the east along SW Nyberg Lane without having to access a major thoroughfare, namely SW 65th Avenue. The objective is met.

The proposed amendment conforms with the objectives of the Tualatin Community Plan. Criterion "C" is met.

D. The following factors were consciously considered:

The various characteristics of the areas in the City.

As previously described, three factors related to the various characteristics of the areas in the City support the amendment. First, The requested CO Planning District designation introduces an appropriate transition between residential to the east-southeast – Fox Hills and vicinity – and intense commercial planning districts to the west-northwest – Nyberg Woods and vicinity.

The City approved child day care for the site as a conditional use within the RL District in 1990 via application CUP-89-02 and Resolution No. 2423-90. At the time the property remained undeveloped, and ever since CUP approval and subsequent site development, the child day care provider La Petite Academy has occupied the site. Thus, the site has had commercial use for 19 years though its planning district designation is residential.

Second, given the present distribution of land uses throughout the city as a whole as depicted on the TDC Map 9-1 "Community Plan Map," the granting of the amendment provides more CO District in the eastern portion of the city that is mostly single-family residential (RL District). This allows for more professional offices, as well as gyms and child day care providers that are permitted uses, to serve the population residing there without having to drive into the town center along the only two roads that bridge I-5 between the Tualatin River and the southern city limits. The location of the site allows easy access from single-family subdivisions to the east along SW Nyberg Lane without having to access a major thoroughfare, namely SW 65th Avenue.

Third, CO designation in place of RL would allow better utilization of existing frequent bus service that is within walking distance of the site and thereby strengthen the employment opportunity of the site.

The suitability of the areas for particular land uses and improvements in the areas.

The aforementioned factors relating to the various characteristics of the areas in the City apply also to the suitability of the areas for particular land uses.

Additionally, while at the land use level illustrated on Map 9-1 a significant area of RL designation exists, actual site conditions belie the map. Much of the RL area bound by SW Nyberg Lane to the north, Fox Hills to the east, Legacy Meridian Park Hospital to the south, and SW 65th Avenue to the west is wetland associated with Nyberg Creek. The subject property is a parcel covering a small part of this RL area. Considering the subject property at the site development level, it is ill suited for single-family development. The expected application of wetland buffers required by the City and Clean Water Services, the sewer and stormwater agency for Washington County that has jurisdiction over that portion of the City lying with Clackamas County, would reduce the net 0.9 acres of the site. The maximum allowable gross density at the land use level of 6 DUs for the site would likely be reduced. Because the transportation component of the Tualatin Community Plan, the Transportation System Plan (TSP) incorporated by reference, designates SW Nyberg Lane as a minor collector (Cb) as illustrated by Figures 11-1 "Functional Classification Plan" and 75-2E. Because the TDC prevents direct driveway access from single-family houses unto collector roads, redevelopment of the subject property would require an entrance road. Lastly, as describe below for the criterion relating to "natural resources of the City and the protection and conservation of said resources," following redevelopment 64.1% of the lot would be wetland or wetland buffer, leaving 35.9% net developable area. At this point, it is clear that because the economics of the site will indefinitely preclude single-family housing, the reasons to approve CO designation become more compelling.

Trends in land improvement and development.

As previously discussed, CO designation of the site would be an appropriately located, timed, and sized transition between the commercial corridor along SW Nyberg Road (west of SW 65th Avenue) and residential land along SW Nyberg Lane (east of SW 65th Avenue). Timewise, the amendment would acknowledge that the site had been developed in 1990 for commercial use and always has been used as such. The continuation of commercial use along SW Nyberg Lane is not possible because of the extent of significant wetlands along Nyberg Creek to the south extending east and because of the existing Stonestrow Apartments and Brown's Ferry Park to the north extending east.

The needs of economic enterprises and the future development of the area.

As previously discussed, employment opportunity is a factor supporting the amendment. This is another facet of the needs of economic enterprises and the future development of the area, which center on the hospital and nearby existing areas of CO designation.

Needed right-of-way and access for and to particular sites in the area.

The amendment would not block or divert any future roadway corridors identified by Figure 11-1. As mentioned earlier, the TDC would not permit single-family houses to have direct access to the ROW of SW Nyberg Lane, lessening the probability of site redevelopment into houses because of the likely prohibitive cost of providing an entry road. Given commercial development allowed by CO designation, the TDC would facilitate access to SW Nyberg Lane.

Natural resources of the City and the protection and conservation of said resources.

At the land use level, natural resources are not directly applicable. At the site development level, both the City and Clean Water Services (CWS) would require development to protect and conserve natural resources, including development of this site that has and also borders wetlands associated with Nyberg Creek. CO designation increases the opportunity that a developer will find it cost effective to develop the property profitably while still complying with environment regulations.

Taking a larger environmental perspective, the site is better suited with professional offices because it can lessen the number and length of vehicle trips in turn because of its location relative to eastern residential subdivisions and to Bus Route 76. It and would make more intense use of the land than would a few houses. Single-family houses generate more frequent daily vehicle trips than either child day care or professional office, and the submitted traffic report confirms that this is so.

The site borders a Natural Resources Protection Overlay District (NRPO) district as illustrated by Map 72-1. However, Map 72-2 "Greenway Development Plan" (2005) shows no planned greenway intended for a pedestrian or bicycle path bordering the subject property; the "Nyberg Creek Greenway" is the closest greenway, yet does not extend east of SW 65th Avenue. Map 72-3 "Significant Natural Resources" identifies the wetlands as significant. The City and CWS are able to protect and conserve on-site natural resources regardless of planning district designation. CWS requires a 50-ft wetland buffer for development. Because the site developed prior to this requirement, redevelopment would

require the developer to restore and vegetate the wetland buffer. The application booklet through the Developable Area Map and on p. 7 notes the effect on net developable area:

| <i>Site</i> | <i>Sq Ft</i> | <i>Lot Percentage</i> |
|-----------------|--------------|-----------------------|
| Wetland | 11,747 | 27.0 % |
| Wetland buffer | 16,155 | 37.1 % |
| Net developable | 15,630 | 35.9 % |
| Total lot | 43,532 | 100.0 % |

As part of redevelopment, the majority of the lot (64.1%) would be given to the protection and conservation of natural resources.

Prospective requirements for the development of natural resources in the City.

TDC 15.010(3) incorporates the Parks and Recreation Master Plan (1983) into the TDC by reference. Figure 3-4 "Recreation Resources" of the Parks and Recreation Master Plan (1983) indicates a "Creek Greenway" along Nyberg Creek just south of the subject property. However, Map 72-2 "Greenway Development Plan" (1995) shows no planned greenway intended for a pedestrian or bicycle path bordering the subject property or along Nyberg Creek east of SW 65th Avenue. TDC 15.010(4) clarifies that Ordinance No. 497-95, adopted 7/24/1995, incorporated the Greenway Development Plan into the Parks and Recreation Master Plan through reference within 15.010(4). Therefore, Map 72-2 takes supersedes Figure 3-4, and no greenway is proposed or required. Additionally, Resolution No. 2423-90 that approved child day care as a conditional use (CUP-89-02) stated no condition of approval relating to dedication of an easement or land for or construction of a greenway.

For these reasons, natural resources would remain protected and conserved rather than modified for public recreational use, so the criterion is not applicable.

And the public need for healthful, safe, aesthetic surroundings and conditions.

Though not directly applicable, the amendment satisfies the criterion mostly for aforementioned reasons: likely reduction of daily vehicle trips and trip length and more patronage of existing public transit. The amendment promotes public health by reducing driving, which benefits those driving less and reduces emissions, and takes advantage of existing transit service by allowing employees to avoid driving. The advantages accrue to individuals and the public at large. The amendment does not affect the need for safe and aesthetic surroundings, which are maintained at the level of site development review.

Proof of change in a neighborhood or area

There is no proof of change in a neighborhood or area.

Mistake in the Plan Text or Plan Map.

There is no mistake in the Plan text or Plan Map.

E. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

At the land use level, commercial land use generates no schoolchildren compared to residential land use, particularly single-family housing. The amendment would preclude residential redevelopment that would consume its proportionate share of student capacity of public schools. From the perspective of the school district, this is a benefit and the criterion is met.

F. Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

Of the 19 statewide planning goals, staff determined that Goals 2, 10, 11 and 12 are applicable and must be addressed.

Goal 2: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The TCP, as part of the TDC, established a local land use planning process as a basis for all decision and actions related to use of land within the Tualatin planning area, and this review serves to complete that process. As shown in the above section, the amendment complies with the plan amendment criteria in TDC Section 1.032, a part of the Tualatin Community Plan (TCP), which reflects Metro Code provisions and has been acknowledged by the Oregon Department of Land Conservation and Development (DLCD). Therefore, compliance with the TCP by definition includes compliance with state and regional minimum planning requirements.

The amendment is consistent with statewide planning Goal 2.

Goal 10: To provide for the housing needs of citizens of the state.

The maximum density allowed by the RL Planning District of 6.4 DUs per acre combined with the subject property size of approximately 0.9 acres equates to a maximum of 6 DUs. Given the City's total housing stock, the removal of the

possibility of six single-family houses mathematically and practically has no effect on compliance with state and regional housing requirements regarding housing type mix and density. The City would continue to have an average residential net density of 8.16 DUs per acre, which complies with the Metropolitan Housing Rule, OAR 660-007-0035(2), which requires that Tualatin build a minimum of 8 DUs per net buildable acre. Examining the amendment at the level of site redevelopment, as described earlier for the criterion related to "natural resources of the City and the protection and conservation of said resources," 64.1% of the lot would be given to wetland or wetland buffer. When applying the RL minimum lot size for, the remaining 35.9%, constituting 15,360 sq ft, could reasonably produce two lots, reducing the theoretical maximum of six houses to a possible two houses.

The amendment is consistent with statewide planning Goal 10.

Goal 11: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The applicant notes on p. 5 of the application booklet that regarding potable water, sanitary sewer, and stormwater management, City Engineering Division staff confirmed that the site already receives these services and that a permitted use in CO would demand less of this infrastructure than the existing child day care provider that is a conditional use within RL,

The amendment is consistent with statewide planning Goal 11.

Goal 12: To provide and encourage a safe, convenient and economic transportation system.

The applicant submitted a traffic study by Kittelson & Associates, Inc. as a memorandum dated 6/15/2009 analyzing the applicability of the Oregon Transportation Planning Rule (TPR), codified in OAR 660-012-0060, to the proposed amendment. Oregon Administrative Rules (OAR) 660-012 contains the administrative rules for implementing Goal 12.

The memo states that the present child day care as a conditional use within the RL Planning District is a reasonable worst case scenario in terms of vehicle trip generation as predicted by the Institute of Transportation Engineers (ITE) manual *Trip Generation, 8th Ed.* Comparing it with the reasonable worst case scenario for the permitted use within the CO Planning District that would generate the most vehicle trips, the amended land use would generate fewer vehicle trips during both the a.m. and p.m. peak periods. The TPR requires examining the effect of the amendment 20 years out, and the memo states that with assumed

traffic conditions in the year 2028, the amendment will not generate enough vehicle trips to degrade the vehicular level of service (LOS) below an acceptable level.

In short, the site presently generates more vehicle trips with a conditional use in RL than it would with the most generative permitted use in CO.

Additionally, the amended land use takes advantage of and thereby increases the utility of existing public transit, specifically TriMet Bus Route 76 of which the closest stop to the subject property is within 1,500 ft along SW 65th Avenue and SW Nyberg Lane, a reasonable walking distance.

The amendment is consistent with statewide planning Goal 12.

G. Granting the amendment is consistent with the Metropolitan Service District's Urban Growth Management Functional Plan.

The analysis and findings related to Oregon Statewide Planning Goal 10 apply here as well. Apart from the Metropolitan Housing Rule, Metro has a requirement in the UGMFP reflected in Table 3.07-1 "Zoned Capacity for Housing and Employment Units – Year 1994 to 2017," which shows Tualatin having a housing capacity of 4,054 DUs based on the planning area of the city and that Metro and Tualatin last revised in 2002.

Within the City between 1997 and 2007, 2,517 were constructed towards the 4,054 target. Because the subject property was already developed with a commercial building in 1990, it was not factored in as available land in the target calculation.

With the appeal of PTA-08-05 to the Land Use Board of Appeals (LUBA), Metro and the City continue discussion on the appropriate target number. The criterion is met.

(8) Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

Refer to the earlier analysis relating to Statewide Planning Goal 12 and the attached Engineering Division Memorandum dated 8/07/2009 (Attachment H).

049J82043608

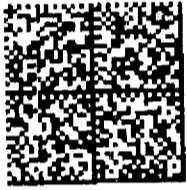
\$04.95

10/02/2009

Mailed From 97062

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City of Tualatin

18880 SW Martinazzi Avenue
Tualatin, Oregon 97062-7092

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



[Faint, illegible text, possibly bleed-through from the reverse side of the page.]

