



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

☐ In person ☐ electronic ☐ mailed

DEPT OF

JUN 21 2013

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **Hillsboro**

Local file number: **ZC 1-13**

Date of Adoption: **6/4/2013**

Date Mailed: **6/19/2013**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 2/14/2013

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☒ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

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

APPLIED CITY ZONE R-10 SINGLE FAMILY RESIDENTIAL TO TWO PROPERTIES (1N233AC00400 & 1N233AC00401) THAT WERE ANNEXED INTO THE CITY OF HILLSBORO. REZONE ONE PROPERTY (1N233AC00100) FROM M-P INDUSTRIAL PARK TO R-10 SINGLE FAMILY RESIDENTIAL. ALL PROPERTIES HAVE A LOW DENSITY RESIDENTIAL COMPREHENSIVE PLAN DESIGNATION.

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

THE APPLICANT'S REQUEST WAS TO APPLY CITY ZONES R-7 SINGLE FAMILY RESIDENTIAL AND R-10 SINGLE FAMILY RESIDENTIAL TO THE THREE SUBJECT PROPERTIES (1N233AC00400, 401 & 100). THE DECISION WAS TO APPLY ONLY THE R-10 SINGLE FAMILY RESIDENTIAL ZONE TO ALL THREE PROPERTIES.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **ANX & M-P**

to: **R-10 SINGLE FAMILY RESIDENTIAL**

Location: **1N233AC 100, 400 & 401**

Acres Involved: **12**

Specify Density: Previous:

New:

Applicable statewide planning goals:

| | | | | | | | | | | | | | | | | | | |
|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

DLCD File No. 002-13 (19703) [17495]

35-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD file No. _____

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

WASHINGTON COUNTY

Local Contact: **RUTH KLEIN**

Phone: (503) 681-6465 Extension:

Address: **150 E MAIN STREET**

Fax Number: **503-681-6245**

City: **HILLSBORO**

Zip: **97123-**

E-mail Address: **ruth.klein@hillsboro-**

oregon.gov

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

ORDINANCE NO. 6050

ZONE CHANGE 1-13: HAWTHORN GLEN

AN ORDINANCE CHANGING THE ZONING FROM WASHINGTON COUNTY INDUSTRIAL AND HILLSBORO M-P INDUSTRIAL PARK ZONING TO R-10 SINGLE FAMILY RESIDENTIAL, FOR THREE PARCELS TOTALING 12.26 ACRES.

WHEREAS, the following three lots located in the City of Hillsboro all bear a City RL Low Density Residential Comprehensive Plan designation, and the owner of each lot has applied to rezone each parcel as indicated:

| | | | |
|--|---|----------------------------------|-------------------------------------|
| Washington County Assessor's Tax Map | Map 1N233AC Tax Lot 00100 | Map 1N233AC Tax Lot 00400 | Map 1N233AC Tax Lot 00401 |
| Acreage | 9.13 acres | 0.07 acres | 3.06 acres |
| Owner | Nupark Development LLC Profit Sharing Plan | Michael T. White | Michael T. White |
| Existing Comprehensive Plan Designation | RL Low Density Residential | RL Low Density Residential | RL Low Density Residential |
| Existing Zoning Designation | City Zone M-P Industrial Park | County Zone IND Industrial | County Zone IND Industrial |
| Proposed Zoning Designation | R-10 Single Family Residential and R-7 Single Family Residential | R-7 Single Family Residential | R-7 Single Family Residential |

WHEREAS, the larger lot (Tax Lot 100) has a single-family dwelling and associated out-buildings; Tax Lot 401 is also significantly encumbered with designated 100-year and 500-year floodplains, Significant Natural Resource Overlay and Clean Water Services sensitive area buffers associated with Dawson Creek; and

WHEREAS, all three properties bear an RL Low Density Residential Comprehensive Plan designation, which in this geographic area is implemented by the R-7, R-8.5 and R-10 Single Family Residential zones. Industrial zoning and industrial use for these parcels is inconsistent with the Comprehensive Plan designation; and

WHEREAS, the R-10 zone was selected for other properties and subdivisions to the south of the site and the application of the R-10 zone to all three properties would be compatible with the neighborhood pattern of development; and

WHEREAS, the properties are all located within ¼ mile of the Hawthorn Farm light rail station and its associated Station Community Planning Area (SCPA) Comprehensive Plan designations; however, none of these parcels are within a SCPA designated plan area or planning

zone, and there is currently no pedestrian or bicycle pathway connecting these properties with the Hawthorn Farm light rail station; and

WHEREAS, the properties are also located within ½ mile of the Hillsboro Airport, operated by the Port of Portland, and partly within the 55 decibel day-night noise level (DNL) and partly within the 60 decibel DNL. The Port of Portland has advocated for less residential development and less residential density in proximity to the airport; and

WHEREAS, the properties are generally bound on the north by the light rail line and vehicular access to the properties is limited to NE 47th Avenue and NE 49th Avenue, which stub to these properties on the south and provide the only outlet to NE Brookwood Parkway, almost ½ mile away; and

WHEREAS, prior to annexation, all three parcels were zoned and planned by Washington County for light industrial use, and it was assumed that the parcels would be integrated with and take access from NE Elam Young Parkway through the Pac West Industrial Park located directly to the east of these parcels. The current property owners of Pac West Industrial Park have declined requests for access which makes that access plan currently infeasible; and

WHEREAS, the proposal was scheduled and duly noticed for public hearing on April 3, 2013, at which time the Planning and Zoning Hearings Board, consisting of Daniel Kearns, Walter Hellman and Jim Maguire (the "Board"), convened the public hearing to take testimony and evidence and to consider the application; and

WHEREAS, the Board received the Planning Department's March 27, 2013 staff report and supplemental reports dated April 2nd and 3rd, respectively. The applicant and owner of Tax Lot 100 was represented at the hearing by Mimi Doukas of Venture Properties, Inc. Michael White, the owner of Tax Lots 400 and 401, appeared before the Board and represented himself in support of the proposal; and

WHEREAS, the Board received testimony in opposition to the proposed residential zoning from Robin Gray, Donald Cook, Eric Urstadt and Anthony Weissenburger, all of whom are residents of Brookwood Estates, the subdivision south of the subject properties. The Board also received testimony in opposition to residential zoning from Steve Nagy, representing the Port of Portland, operator of the Hillsboro Airport. Mr. Nagy and the other opponents argued first in favor of retaining industrial zoning for these parcels and, in the alternative, to use the lowest density residential zoning possible for the property; and

WHEREAS, at the conclusion of public testimony, the Board closed the record, deliberated and tentatively voted to recommend approval of the application, but to rezone all parts of all three parcels to the lowest density residential designation – R-10 Single Family Residential, subject to the conditions recommended in the March 27th staff report.

WHEREAS, the City Council has reviewed and concurs with the findings of the Planning and Zoning Hearings Board in regard to this matter; and,

WHEREAS, based on those findings, the City Council hereby determines that the zone change conforms to the Hillsboro Comprehensive Plan and Zoning Ordinance and all other applicable criteria, and the particular zone recommended is the best suited for the subject sites.

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

Section 1. The following property is hereby rezoned from Washington County Industrial and City M-P Industrial Park to City R-10 Single Family Residential:

Tax Lots 100, 400 and 401 on Washington County Assessor's Tax Map 1N2-33AC

Section 2. The property described above is located on the following Washington County Assessor's Tax Map attached as Exhibit C and hereby made a part of this Ordinance:

Washington County Tax Map 1N2-33AC, Section 33, Township 1 North, Range 2 West, Willamette Meridian, on record as of January 4, 2013; and

Section 3. The City Council decision in this matter is based on the findings attached as Exhibit A.

Section 4. Approval of this zone change is conditioned upon the applicant's satisfactory completion or compliance with the conditions set forth in Exhibit B.

Section 5. The City Planning Director is hereby instructed to cause the official zoning map, a part of Ordinance No. 1945, to be amended to include the zone change set forth in Section 1 hereof, upon the effective date of this ordinance.

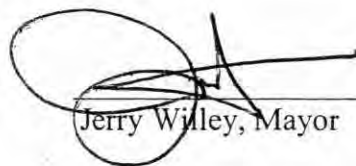
Section 6. Except as herein amended, Zoning Ordinance No. 1945, as amended, shall remain in full force and effect.

Section 7. This ordinance shall be effective from and after 30 days following its passage and approval by the Mayor.

First approval of the Council on this 21st day of May 2013.

Second approval and adoption by the Council on this 4th day of June 2013.

Approved by the Mayor this 4th day of June 2013.


Jerry Willey, Mayor

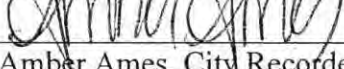
ATTEST: 
Amber Ames, City Recorder

EXHIBIT A

The City Council incorporates herein by this reference and adopts as its own, the summary and analysis of the approval criteria set forth in the Discussion section of the March 27, 2013 Staff Report, as augmented by Supplemental Staff Reports on April 2 and April 3, and adopts as its own the applicant's justification for residential zoning set forth in the application materials. In addition, the Council adopts the following findings which were initially adopted by the Planning and Zoning Hearings Board (the "Board"):

1. The city complied with all required notice and hearing procedures for the Board's April 3rd hearing in this matter. At the commencement of the hearing, the Hearings Officer made the disclosures and announcements required by ORS 197.763(5) and (6) and 197.796. No member of the Board had any ex parte contacts, conflicts of interest or biases to report. There were no procedural objections or objections to the participation of any member of the Board in this matter. One person (Robin Gray) requested that the matter be continued, but subsequently withdrew that request; accordingly, the Board closed the record at the conclusion of public testimony at the April 3rd hearing.
2. At the hearing, Urban Planner Ruth Klein provided a verbal summary of the March 27, April 2 and April 3, 2013 staff reports, described the proposal and the significant issues. Also present was Christina Fera-Thomas, Traffic Analyst for the City, who provided comments on the adequacy of the transportation system serving the site. The applicant and owner of Tax Lot 100 was represented at the hearing by Mimi Doukas of Venture Properties, Inc. and Mike White, the owner of Tax Lots 400 and 401 testified in support of the proposal. Ms Doukas explained the proposal and regulatory history of the three parcels and generally described possible residential development plans for the parcels. Taking into account the environmental overlay and floodplain designations that limit full development of these parcels, the application indicates that as many as 38 single-family lots are possible. The application seeks R-7 zoning for most of the property, and a band of R-10 (allowing approximately 7 lots) along the southern boundary abutting Brookwood Estates, which is also zoned R-10. Mr. White advocated R-7 zoning for all of his property (Tax Lots 400 and 401).
3. Staff provided a copy of Ordinance No. 5762 by which the City approved the current Low Density Residential Comprehensive Plan designation for Tax Lot 100 in 2007. The findings adopted by the City Council in support of that decision expressly state that it was premised on R-10 zoning being applied to the property. While that underlying rationale is not legally binding on the Board in this matter, it provides an indication of the assumptions and understanding that existed at the time. There was no evidence or testimony received in this matter to indicate that any of the underlying circumstances or land use planning context have changed since 2007.
4. Several residents of Brookwood Estates testified in opposition to the zone change and advocated for the retention of the current industrial zoning, which is not an option due to the Low Density Residential Comprehensive Plan designation. Several neighbors also submitted written letters in opposition to the proposal, voicing arguments including

consistency in lot size with Brookwood Estates, which is zoned R-10, extremely limited access and circulation potential to the property via NE 47th and NE 49th Avenues, both of which are extremely narrow, have limited sight distance at curves and intersections, and lead to NE Brookwood Parkway. The Board views these as legitimate concerns related to the mandatory approval criteria that help inform the Board's decision as to the most appropriate residential density and zone for these parcels.

5. Also testifying in opposition was the Port of Portland, which submitted several letters opposing residential zoning, development and density of this property. In particular, the Port, which operates the Hillsboro Airport, seeks to limit residents within the noise impact area around the airport, so as to minimize impacts and conflicts with aircraft operations. There is also a safety concern associated with aircraft crashing on take-off or landing in a densely developed residential zone. The Port clearly prefers industrial zoning and uses in these areas as a way to limit such conflicts and potential hazards.
6. This zone change shall be allowed if there is credible evidence in the record demonstrating that the following criteria in Section 114(2) of Zoning Ordinance No. 1945 are or can be met:
 - a) The request must conform with the Hillsboro Comprehensive Plan and this Ordinance; and
 - b) Where more than one designation is available to implement the Comprehensive Plan designation, the applicant must justify the particular zoning being sought and show that it is best suited for the specific site, based upon specific policies of the Hillsboro Comprehensive Plan.
7. Staff concluded, and no party to this proceeding disputes, that the following Comprehensive Plan provisions apply to this request, in addition to the Comprehensive Plan Maps:
 - a) Section 2, Urbanization Implementation Measures A, C, D, G, I, J and M
 - b) Section 2, Urbanization Policies A and B
 - c) Section 3, Housing Policies A, B, C, D, E, G, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y
 - d) Section 3, Housing Implementation Measures A, C, D, E, G, J, K, Land M
 - e) Section 7, Air, Water and Land Resource Quality Policy A, B, C, F, G and K
 - f) Section 7, Air, Water and Land Resource Quality Implementation Measure 19
 - g) Section 12, Public Facilities and Services Policies D and E
 - h) Section 13, Transportation Policies A, C, F and H
8. While the applicant has a particular development proposal for the property, that plan is irrelevant in the context of this zone change application because nothing about the zone change will necessarily bind the applicant to any particular development proposal. Instead, the evaluation of these criteria must consider the most intense and worst case scenario to evaluate possible impacts, and in that context, the maximum density development allowed under the three alternative zone designations informs the Board about the magnitude of those impacts. All of the following zones implement the City's Low Density Residential (RL) Comprehensive Plan designation in this location:

- R-7 Single Family Residential
- R-8.5 Single Family Residential
- R-10 Single Family Residential

9. With regard to each of the above-mentioned approval criteria, the Board specifically finds as follows:

- a) Consistency with the Comprehensive Plan Designation: The applicant proposes predominantly R-7 zoning for the three lots that comprise this 12.26-acre property. Given that Tax Lot 401 has significant environmental limitations to development, the maximum net density that is possible will be substantially less than what would be allowed on property without such limitations. The applicable Urbanization Implementation Measures allow, in fact call for, the maximum density that can be served by available public services and facilities. The Housing Policies, on balance, also call for maximum residential densities consistent with the level of available and needed urban services. The Air, Water and Land Resource Quality Policies call for the protection of sensitive natural resource areas and buffers and designated floodplain. These resources are already mapped and designated on these parcels, and therefore will be protected in accordance with the development regulations adopted to protect these resources. The Implementation Measures applicable to land surrounding the Hillsboro Airport reflect protection zones that are not currently in place and do not apply to these parcels. There are no zoning designations or overlays in place to limit the size, type or density of development close to the airport.

The Board received testimony, however, from residents in the Brookwood Estates subdivision indicating that the transportation system serving these properties is not adequate to serve much density, mostly due to the narrowness of NE 47th and NE 49th Avenues, the curves in NE 47th Avenue and lack of sufficient sight distance at intersections and curves along NE 47th Avenue. In theory, these factors affect the ability of this street system to handle safely new trips generated by new development and could impede emergency access to homes on the site. However, there is no credible or compelling evidence demonstrating that the street system, in fact, is inadequate or that emergency service providers will have difficulty serving the site. Instead, the applicant's Traffic Impact Study, as corroborated by the City's Traffic Analyst, concludes that the surrounding transportation system is safe and adequate to serve this site if developed at maximum (R-7) density. The transportation system clearly is not optimal, but no intersection is projected to fail, and system's deficiencies are preexisting and not caused by this zone change proposal or the eventual development of this land. The transportation system is projected to operate at acceptable (albeit not optimal) levels of service under the zoning proposed by the applicant. In that light, the applicable Comprehensive Plan provisions do not provide a basis for denying the applicant's proposed zoning for the site. Therefore, the Board finds that the mix of zoning proposed by the applicant is consistent with the applicable Comprehensive Plan provisions and designation for the property. This criterion is met.

- b) The proposed zone is the best suited for the property. The majority of the opposition testimony the Board received, both written and verbal, pertains to this criterion. In particular, the Board is persuaded that predominantly R-7 zoning is not the most appropriate Low Density Residential designation for this site given that it effectively is a cul-de-sac served by exceedingly narrow, curvy streets (NE 47th and NE 49th Avenues) with inadequate sight distance at intersections and corners. The Board received sufficient testimony to convince it that the transportation system serving the property is far from optimal; although, it is legally sufficient given the City's adopted level of service and transportation safety standards. The existing transportation system deficiencies are off-site relative to this property and not caused by this development; therefore, the Board lacks the legal ability to require this developer to remedy these deficiencies as a condition of zone change approval. Moreover, the City cannot require any such off-site improvements as part of a zone change decision because no particular development is proposed. Nonetheless, the transportation system deficiencies are apparent from the record and, in the Board's view, limit the best suited Low Density Residential zone for this property to the lowest density, *i.e.*, R-10. The Board rejects any suggestion that industrial zoning can be applied or approved for this site due to its Low Density Residential Comprehensive Plan designation.

On this basis, the Board concludes that the applicant's predominantly R-7 proposal is not the zone best suited to this property, but that R-10 Single Family Residential zoning for the entire site is. In other words, the Board concludes that R-10 zoning for the entire site is the best suited to the property given its configuration, context and location, and we have imposed a condition to that effect. R-10 zoning is most consistent with the currently inadequate transportation system serving the site and most consistent with the Brookwood Estates subdivision through which traffic will flow to and from this site. The Board recognizes that, in light of the foregoing, outright denial is an option. However, given the Board's conclusions: (1) that the proposal is not approvable as submitted and (2) that R-10 zoning for the entire site would meet the approval criteria, it is more efficient and equitable to forward an affirmative recommendation to the City Council for its review of these issues and the parties' arguments.

EXHIBIT B

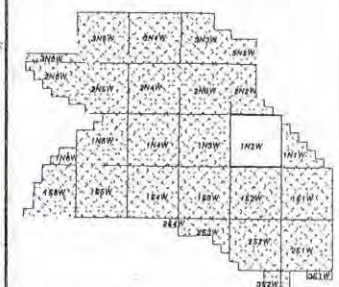
The City Council's decision is expressly based upon the applicant/owner (the "applicant") of the subject property fully complying with all material representations made about the proposed use and the following conditions of approval:

1. The base zone on all parcels subject to this decision (Tax Lots 100, 400 and 401 on Washington County Assessor's Tax Map 1N2-33AC, attached as Exhibit C) shall be R-10 Single Family Residential.
2. Future land use approvals for development on all parcels subject to this decision shall include a condition requiring an Airport Noise Disclosure Statement, and if there is an associated plat, that the statement is recorded in conjunction with the final plat. The Airport Noise Disclosure Statement shall acknowledge the property's location within or near the 55 decibel day-night noise level (DNL) noise contour and notify future property owners of the airport operation noise associated with that designation.
3. Future land use approvals for development on all parcels subject to this decision shall include a condition requiring that the Airport Noise Disclosure Statement be referenced and explained within any declaration, Covenants, Conditions and Restrictions (CC&Rs) recorded with title to the property.



1N 2 33AC

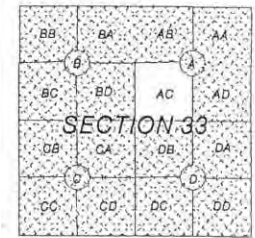
1N 2 33AC



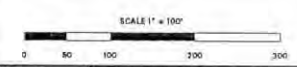
WASHINGTON COUNTY OREGON
SW 1/4 NE 1/4 SECTION 33 T1N R2W W.M.
SCALE 1" = 100'

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| 1 | 6 | 8 | 4 | 3 | 7 | 1 | 6 |

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us



Cancelled Taxlots For: 1N233AC
202,200,204,201,203,301,300,800,1000,1003,900.



PLOT DATE: January 04, 2013
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE

Map areas delineated by either gray shading or a cross-hatched pattern are for reference only and may not indicate the most current property boundaries. Please consult the appropriate map for the most current information.

1N 2 33AC

HILLSBORO
1N 2 33AC

CITY OF HILLSBORO



150 E. Main Street, Hillsboro, OR 97123-4028

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06/20/2013

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DEPT OF

JUN 21 2013

U.S. MAIL
HILLSBORO, OR 97123

Attn: Plan Amendment Specialist
Dept. of Land Conservation &
Development
635 Capitol Street NE, Suite 150
Salem, Or 97301-2540

97301-2540 0007

