



MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
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Land Use & Transportation Planning Planning Commission Agenda

DATE/TIME: **January 4, 2010 @ 6:30 p.m.**

PLACE: **Multnomah County Building, Room 100
501 SE Hawthorne Blvd., Portland, OR**

1. Call to Order
2. Roll Call
3. Approval of Minutes from November 2, 2009 meeting.
4. Opportunity for Public Comment on Non-Agenda Items.
5. Work Session: Finalize 2010 Planning Commission Work Program
6. Work Session: Chapter 37 Amendments to Incorporate Conflict of Interest Rules for Planning Commissioners.
7. Briefing: Urban and Rural Reserves IGA Map for Public Outreach
8. Director's comments.

If bringing written materials to the meeting, please give the Commission staff twelve copies for the Commission members, staff and permanent record.

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The next Planning Commission meeting is scheduled for February 1, 2010
2010 Work Program Adoption

DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF NOVEMBER 2, 2009

- I. **Call to Order-** Chair John Ingle called the meeting to order at 6:30 p.m. on Monday, November 2, 2009, at the Multnomah Building, Room 101, located at 501 S.E. Hawthorne Blvd., Portland, OR.
- II. **Roll Call** - Present - Chair Ingle, Chris Foster, Greg Stebin, Kathrina Lorenz, Michelle Gregory, William Kabeiseman and Julie Cleveland
Absent - John Rettig, Patrick Brothers
- III. **Approval of Minutes of September 14, 2009**
Motion by Commissioner Strebin; seconded by Commissioner Foster.
Motion passed unanimously.

Approval of Minutes of October 5, 2009
Motion by Commissioner Gregory; seconded by Commissioner Cleveland.
Motion passed unanimously.
- IV. **Opportunity for Public Comment on Non-Agenda Items**
None.
- V. **Hearing: Recommendation on a Preferred Urban Growth Diagram for Bonny Slope West (Area 93) Pursuant to Metro Title 11 Planning Requirements: PC-08-006.**

Chair Ingle read into the record the Legislative Hearing Process for the Planning Commission for a public hearing and the process to present public testimony. Commissioners present were Gregory, Strebin, Rettig, Kabeiseman, Lorenz, Brothers and Cleveland, constituting a quorum for the purpose of conducting business. There were no financial or personal interests on the part of any of the Planning Commission members. There were no objections to the Planning Commission hearing the matter.

Adam Barber, Multnomah County Senior Planner, introduced **County Counsel, Sandra Duffy, Keith Liden with PB Placemaking**, and two members of **City of Portland Planning, Debra Stein and Bob Clay**, who would be available for questions. Barber began with a refresher on the project, and what is being asked of the Planning Commission tonight. This project began when Metro amended the Urban Growth Boundary (UGB) to include this study area in 2002. Area 93, also known as Bonny Slope West, is approximately one mile west of the City of Portland, with Washington County on the west and to the south, and includes 160 acres. Before urban development can start in an area that has been included in the UGB, Metro's code requires that a general land use concept plan be developed by the governing agency. This plan is the first step towards urban development, and is not intended to be a specific plat.

After drafting three plans that were presented to the Commission at a previous work session, we encompassed the stated preferences from all three draft plans, and are presenting a more detailed preferred urban concept plan this evening.

Since this is a rural area, there will be improvements required to the adjacent streets within the plan area and its vicinity with future development. The plan area is predominately rural residential, which limits the ability to divide and build additional homes. The site is currently served with onsite sewage disposal and other rural amenities, and we are proposing a scattered development pattern throughout the plan area. The urban development infrastructure does not currently exist within the concept plan area, but does exist within the immediate vicinity. There are two creeks that flow through the plan area, and these natural riparian corridors are what distinguish this neighborhood from some of the surrounding neighborhoods. This helps create a focal point for the development, but also presents some constraints that we have to work with. These include environmental constraints, which are defined in Metro's code as steep slopes, wetlands, floodplains, etc. typically associated with development that can create problems; as well as physical constraints. For instance, if there is existing development of high value, it could be an impediment for a developer to buy properties that may not be cost effective to raze. Previous reports and academic literature have researched those factors, and found that with the 160 acre plan area, there would be approximately 144 tax lot acres. With those 144 tax lot acres, there are about 89 acres of constrained land, which leaves approximately 54 acres of buildable land. This is a rough range since there are factors we cannot project, such as homeowners that decide to sell at a later date, or a developer who tears down an existing home.

When we started looking at service providers, *Tualatin Valley Water District* appears to be the most likely provider for water. From a cost standpoint, Washington County's *Clean Water Services* appears to be the likely, and preferred, service provider for sanitary sewer and storm water. The City of Portland had been considered, but it proved to be an expensive development constraint because sewage would need to be moved uphill. There are a number of options for police, fire and emergency services, which could be sorted out through Inter Governmental Agency agreements (IGA). The Tualatin Valley Fire & Rescue, Portland Fire & Rescue, and Multnomah County Sheriff could all service this area. The Beaverton School District indicated they could service the area; Northwest Natural can serve for gas and PGE could provide electricity. Although potential service providers are identified, the challenge remains the governance issue.

I would like to note that this urban concept plan is not a master plan, but rather a very general planning tool to be used as the first step towards development. If this concept plan is recommended for approval by the Planning Commission, we will go to the Board of County Commissioners. If they approve the plan, we would return to the Planning Commission with specific land use ordinances and comprehensive plan policy changes in order to implement a plan. Ultimately, it will be up to staff and a developer to work out more specific details, such as where to establish a park, what the alignment of a road should be, etc. Although some flexibility is built into this concept plan, there are a few central elements that cannot be changed, so it is not entirely malleable.

The preferred concept plan encompasses four main elements; circulation within the plan area; land use; parks and open space; and governance and service delivery. As far as circulation, this plan provides excellent pedestrian access through the site. The main artery into the plan area is a road that transitions into a pedestrian bridge. It is not clear yet how large that span would be. The streets are intended to be comfortable for pedestrians and bicyclists to use. The boulevard street entering the plan area is intended to be the focal point of the development, and would be surrounded by medium/high density residential, which is the highest density for this plan. The

community expressed they wanted to see connection between the developments, specifically to the west, so there are a number of connection points into the development to the west. This plan includes an optional auto connection over some part of the natural area to the Marcotte Bridge. There would also be a transit stop at the entrance to the site, which is required to be easily accessible and with appropriate sidewalks, etc. One of the required elements of the boulevard street is it must align with Hibbard Drive in Washington County. We believe this is the best alignment, so it is a required element in the plan. Although that could potentially be adjusted due to land ownership or traffic operational issues, it would need to be justified. The local streets must also connect with the western edge, and the streets need to be oriented within 30 degrees of true east and west to provide good solar access for sustainability.

This is a very rough outline of the grid system, but some of the flexible elements are the street intervals and block links, and the cul du sac street, which was thought to be a good solution in connecting to Thompson Road. There is a Washington County strip of land that is becoming difficult to deal with because it is not in the plan area. Although we are working with Washington County, we don't currently have the ability to incorporate it into this different density zoning, so we have only one connection into the plan area, with a number of smaller connections. Since this design could encounter a variety of obstacles, we have tried to build some flexibility within the plan. Some of the flexible elements of the boulevard would include a center landscape median strip with larger than normal planter strips and sidewalks. Green street storm water collection and treatment is also a flexible element, although we want to make it clear such sustainable elements should be utilized wherever possible.

The Parkway streets abut the natural areas, which is not flexible, because they have to provide safety and public visibility into the resource. However, the alignment of the streets and how you lay out them out, the length, and where they should be would all be flexible. Another required element is having development only on one side of the Parkway that is adjacent to the natural area, and the pedestrian crossing, which needs to allow for connection for a potential regional trail system. The Marcotte crossing is not required, but if constructed, it must have sidewalks and appropriate accommodations for bicycles to facilitate the north/south connection. The transit stop towards the entrance to the site is going to ultimately be designed by Trimet, so the design of the connection to the bus system will be a flexible element.

Since we don't expect much in the way of offsite improvements, they should be relatively modest. Water and sewer are adjacent to the plan area, and our initial investigation suggests it wouldn't cost much to upgrade those facilities. What has been a problem for other plan areas are the offsite transportation impacts, so we have had a traffic engineer with PB Placemaking evaluate this as the plans have evolved. The most recent assessment of October 20th suggests there could be potential improvements needed in the area, but they are not expected to be substantial.

The highest density proposed, in red, is medium-high, and is roughly 14-16 units per acre. The medium density is 10-13 units per acre, and lowest density is 7-9 units per acre. We are averaging over 10 units per acre, which is the floor for Metro's Title 11 requirements. Public feedback favored the lower density options, so we did our best to incorporate that development. We thought the western and northern edges would be the most appropriate locations to provide a transition into Washington County development, and a transition into the rural resource zoning in Multnomah County to the north and to the east. The higher density would be focused around the entrance of the boulevard and the public amenities.

Another requirement is the medium-high residential must be to the south side of the creek. There is some flexibility to move that density around a bit, but the majority of it should be located on either side of the boulevard street to help create a corridor feel as you enter, or within 800 feet of the southern neighborhood parks. We are trying to focus on keeping the density around the public amenities of the plan.

The medium residential, in orange, will be located to the south and west of Laidlaw Road, and the majority of that development needs to be located within 800 feet of a neighborhood park, for the same reasons. We believe the parkway streets should be bordered primarily by medium residential development. The low density residential should be located to the north of the creek and along the western edge to provide that transition. We want to ensure that the majority is within a quarter mile of a neighborhood park to provide park amenities to everyone in the plan area. It is possible that low density may be appropriate in some other areas, but we would need to consider the other required elements, because if you change one aspect, it would impact the others.

The neighborhood center, which would potentially be a coffee shop, a dry cleaner or perhaps a convenience store, is not a required element of the plan. But if it is developed, it should be at the entrance to the site. We have a number of different types of parks and open space, such as the Bronson Creek drainage, which extends into Ward Creek. In the southern neighborhood area, we envision a more structured park, with ball fields and such. This park would be approximately three acres, in a flexible location, but have a connection to the different densities. There would be a smaller park to the north, open to what is established in that area, and designed to meet the needs of the community.

There are approximately 60 acres of natural open space of Bronson Creek drainage, which includes the Ward Creek drainage. This estimate is based on a number of factors, one of the largest being the County's current Significant Environmental Concern (SEC) protection overlay zone for the creek, which is 600 feet wide. It is possible we won't need that large of a swath and still meet Metro's water quality standards, but this is a starting point, and can be refined as we go through the process.

For the low density development, we estimate about 31 acres, medium about 35 and the medium-high about 10 acres. If the neighborhood center is established, it would be about a half an acre. The total development would cover 78 acres, which would include 33 acres of land classified as developed. This is difficult to estimate, however, as we do not know how much of that developed land will be retained for the homes currently on the property, or be sold and redeveloped.

We have relayed the preliminary infrastructure costs to the Planning Commission, and those have not changed substantially. There is a table on page 40 of the Concept Plan that breaks down the costs. It is important to note that onsite costs would be borne by the developer, not by the governing body. It is the offsite improvements that could potentially be expensive for a governing agency. We are looking at about 9.5 million for onsite costs for the street system, with no offsite costs. To establish an urban water service to this area, the estimate is about \$4.8 million for onsite costs, and a little under \$500,000 for offsite improvements. Onsite sanitary sewer is approximately \$4.2 million; with \$151,000 for offsite. Storm sewer, which is stormwater run-off, would be about \$5.6 million for onsite, and no cost for offsite improvements. Parks & open space would be \$2.8 million for onsite; no cost to offsite. Adding that all together, we calculate about \$27.7 million for

on and offsite improvements for this plan area. If you translate that to how much more it will cost per residential unit to help pay for those costs, we are looking at about \$32,000 to \$57,000, which is quite a bit less than other concept plan areas. People who frequently work with these numbers say this is actually fairly reasonable.

At this point, I will ask County Counsel, Sandy Duffy, to talk about governance and who might best serve as the planning jurisdiction for this area. This would include the actual review of the plan to subdivide the property, to build the development, and the enforcement arm.

Sandy Duffy, Assistant County Attorney, said she would also touch on the governance options for provision of municipal services. The consultants obtained information from Multnomah County, the City of Portland, Metro Planning and their legal staffs, to come up with two governance and service models for the Bonny Slope West area. The first option was for governance by Multnomah County through service districts provided either by annexation or IGA. The second would be governance by the City of Portland, with services provided by the City of Portland bureaus, service districts, and in some instances, through an IGA.

The concept report indicates current municipal service policy, to which we are suggesting amendments. One of the issues for governance for Multnomah County is the existence of Resolution A, which was passed in 1983. This states that “County services generally described as municipal services at a level considered urban rather than rural, shall be proportionally reduced to establish a minimal and essentially rural level of municipal services throughout Multnomah County”. The resolution defines municipal services as including land use planning. The first paragraph under current policy says “this policy would not allow urban services to be provided to Bonny Slope West by multiple service districts”. However, because all of the proposed service districts are outside of Multnomah County, they can expand their boundaries. Multnomah County Commissioners do not make the decision about those expansions, rather all are entities (service districts) primarily outside of Multnomah County and the relevant county would make those expansion decisions. The suggested additional paragraph to the governance section of the concept plan would state, “arguably, this Resolution A policy might not allow urban services to be provided to Bonny Slope West by a service district that must be approved by Multnomah County Commissioners. The list of services which could provide urban services to Bonny Slope West, if their boundaries are expanded, would not require approval by Multnomah County Commissioners.”

Next is the discussion about the City of Portland having governance of the area. The City of Portland’s comprehensive plan policies contain an ambiguity as to whether planning and zoning would be defined as an urban service. Based on analyses of other policies, which do not list planning & zoning as an urban service, it could be interpreted that planning and zoning for these purposes is not an urban service, so that ambiguity is currently outstanding. The consultants state that the decision of providing planning and zoning services is not a legal question, but rather a policy and political matter for the Portland City Council. Currently, the City of Portland provides urban services through planning and zoning to the urban areas of Multnomah County through an IGA. The City of Portland, in its comprehensive plan in 2005, has an urban services policy that states “the City shall not provide new urban services, or expand the capacity of existing services to areas outside its boundaries of incorporation.” In this context, the new policy was referring to physical urban services, such as water, sewer and streets. The purpose of this policy was to clarify that when the City extends those urban services, those lands are next to Portland. Bonny Slope is

outside the City's urban services boundary, and its city limits. The most problematic issue is it is not contiguous to the City's boundary, however, there is an 80 acre connection proposed as an urban reserve connecting Area 93 to the City, so there would be contiguity for the purposes of allowing the City to do the planning and zoning if a connection from the plan area to the City of Portland can be established through the reserves process.

City Council would need to interpret plan policies to allow a contract for planning and zoning services only where an urban area is not contiguous. The City practice is also to require the county to adopt City planning and zoning designations, which is what we are doing under the IGA. It is important to recognize that the City Council would be deviating from existing practice of providing planning service for existing unincorporated pocket areas inside the urban service boundaries. There are two options set out by the consultant. For Multnomah County governance, they propose that Resolution A would have to be changed in order to allow the County to have governance. I am proposing the changes set out in the handout. Option two is the City of Portland governance, which is dependent upon the UGB expansion between the city edge and Area 93.

Barber added that the City would need to want to provide the planning service to this area. The office of Mayor Sam Adams submitted a letter to the Core 4 members dated October 16. The Core 4 members are related to the urban and rural reserves project, and include Metro and Multnomah, Washington and Clackamas counties. In this letter, the City of Portland states that the City's priority, from a resource standpoint, is to focus on the existing city boundaries, and not extend public investments to areas that could be more cost prohibitive. Specifically with respect to the unincorporated areas of the county in the Northwest Hills, this letter makes it clear that the priority is to focus close in. Although we are not asking for a recommendation on governance this evening, the Board of County Commissioners will make that determination, this information is relevant to the discussion and we wanted the Planning Commission to have all the information currently available.

I received two letters that relate to the transportation impacts perceived by this plan. The Forest Park Neighborhood Association encourages the County to retain the 600 foot wide environmental protection zone to protect the riparian area. They believe the cumulative effects of the added development on the roads and the watersheds of the West Hills have not been adequately considered. The concern is the roads are currently beyond capacity, specifically Thompson and Cornell, and there should be some mitigation measures considered.

The second letter is from the Cornell Roads Sustainability Coalition, which encompasses a number of groups such as the Audubon Society, the Bicycle Transportation Alliance, etc., and they voice concerns about the transportation capacity on Cornell Road as it goes through Forest Park. They claim that Cornell Road was never meant to function as an arterial over the West Hills and into the city, which they believe it has become, and think this will make that problem worse. They propose that the Planning Commission not take an action on this plan until transportation impacts have been assessed.

Barber states that transportation impacts have been assessed a number of times and the assessments by PB Placemaking have been included in the packet. The most recent transportation assessment, Exhibit D, finds that with the higher number of units within the potential range, there are expected to be minor impacts that can be mitigated with local transportation improvements. It

is their opinion that with some minor mitigation, the road system would provide an acceptable level of service.

Staff's recommendation is to approve the concept plan and forward a recommendation of approval to the Board of County Commissioners.

Chair Ingle recognized **Commissioner Kabeiseman**.

Kabeiseman asked County Counsel to assist him in determining if he has a conflict of interest. A letter submitted from Steve Bloomquist indicates that some of the land is under contract to Matrix, which as I understand, is a client of my firm. I get legislative and quasi-judicial confused, but I think because we represent Matrix, and they have an interest in the development, any action I take could be to the benefit of our client, which would present a conflict. So, I probably should not participate. Does Counsel agree?

Duffy stated that sounds right, however, this is not legislative action. But by approving the concept, it would be the step before possible legislative action could occur.

Kabeiseman said I believe there is a quorum without my participation, and my instinct is to excuse myself from the proceedings. Kabeiseman then departed from the hearing.

Commissioner Foster asked if the 60 acres of green space was currently mapped with the 600 foot swath.

Barber said yes, this is a combination of the County's SEC overlay and Metro's water quality requirements. We are trying to think ahead, so we overlaid those two protection zones.

Foster does not agree that the transportation analysis encompasses all the traffic impacts.

Barber invited **Keith Liden**, with **PB Placemaking** to the table. Since Liden worked closely with the traffic engineer, he could address those questions more adequately.

Liden said although you will have people come and go from this site in various directions, we expect they will go primarily toward Thompson and Salzman, which was the only location where the level of service was expected to be affected in a meaningful way. The analysis showed that the impact is not as great when you get out to more distant roads, such as Cornell Road. So although there will be additional traffic, the analysis showed that it will not be significant in and of itself in these locations. When you have rural development converting to urban, people think about what it was like ten years ago, and of course there are more cars now, so there is concern. But if you look at the urban context, and what one expects traffic to be in an urban area, it is very different than the expectation of a rural area. The analysis is showing that the only place that might need some improvement would be on Thompson, with perhaps some future improvement on Salzman.

Commissioner Gregory asked if the analysis for Thompson incorporates the proposed transit stop and its affect on the traffic.

Liden said, to clarify, we were doing a traffic analysis based on the proposed location and number of units and making assumptions about the traffic patterns. This is not a detailed analysis looking

at all types of traffic movement, so it is different from doing a traffic study for a specific development where you know what exactly you are dealing with. This study did not take it that far.

Foster asked if there was a point where that type of analysis would be done and Liden said it was not part of this scope; that would be addressed when proposals come in for development.

It was noted that some of the Commissioners had concerns about having a more detailed traffic analysis done at some point, and Barber stated that if this concept plan is approved by the Board, we would come back with specific zoning recommendations and changes to the comprehensive plan, so perhaps that would be an opportunity to build it into the comprehensive plan policies for this area.

Liden said that would be the place to do it; a traffic study could be something you would have as part of your code requirements for submitting an application.

Gregory asked if the current proposed concept plan, even at the minimum number of units, exceeds Metro's required density.

Barber said that is my understanding. The range is 485 to 842 units, the biggest variable being if people want to sell and redevelop, which is difficult to forecast. I understand there is assurance that even at the lower density, there will be over ten units per acre.

Liden said the unit per acre would stay relatively consistent; if we have fewer units, we are developing fewer acres. Proposal by proposal may be higher or lower, depending on what the development is, but overall we would get to the ten.

Ingle opened testimony to the public.

Bill McMonagle, 8740 SW Scoffins St, Tigard OR 97223 - I am the president and owner of Harris-McMonagle Engineering, appearing in the stead of Steve Bloomquist, who could not be here this evening. We got involved with this project at the request of our client, Mr. Jim Crawford, who owns a fair amount of land in this area. Considering this process started in 2002, and based on Metro's Title 11 was supposed to have been completed in two years, it is obviously tardy, and needs to be ramped up. And I'd like to point out that the reference in this document simply points out that, at one time, Matrix Development and West Hills Development had land under contract to purchase. Because of the lack of planning and lack of process moving forward, they dropped their options, so Mr. Kabeiseman need not be concerned about a conflict.

The reason our company did this constrained lands report was that the original report done for Multnomah County had substantial errors and misinformation. The original constrained report contained 38 acres, while we came up with 81 acres of developable land, which is a substantial difference. They have since reworked their report and came up with 79 acres, which is much closer. The governance issue is another problem. In the beginning, the City of Portland wanted this project, but when Area 93 was divided into the East and West half, we lost the contiguousness with the City of Portland. Technically, that shouldn't make any difference with the IGA's the City of Portland has with Multnomah County to provide governance for areas that are similar to this. But the City of Portland has taken an obtuse stance that this area isn't as important as they think it

ought to be, and they have decided to just go sideways. Now we have the problem of who is going to provide the governance. I have suggested to Adam that if Multnomah County were of the mind to adopt the zoning code of the City of Portland, hire a consultant to administer preliminary plat review, construction plan review and final plat review; the project could move forward as an urban growth area. If Multnomah County does not do that and the City of Portland continues their present stance, I don't know how you have an urban area that can function.

The other thing I wanted to point out is the green area through the project site is not the 300 ft. buffer to the resource. In our plan, and in the constrained lands plan that was done by the other consultants, it was done along the line as if this was urbanized, which is much less than 300 feet. It would be closer to 150 from roughly the center line to the creek and/or the top of the bank, whichever is greater.

James Crawford, 24955 NW Oak Hill Rd, Yamhill OR 97148 - I used to farm much of the land in this area years ago. I would like to commend the Planning Commission, and especially Adam Barber, for doing some real good work. I am elated that the City of Portland's proposal for a pump sewage system has been laid to rest. I did a calculation a while ago and found out that if you put solar cells on every roof on every house that you think might be built here, you wouldn't be able to power the pump stations for that idiocy. I am appalled that it has taken the City of Portland six years to acknowledge that Clean Water Services has a sewer system already stubbed out along the western border. I would also like to reiterate to Mr. Kabeiseman that Matrix Development has long since lost its contract, so there is no conflict of interest. But I certainly applaud his integrity in recusing himself when he thought there might be.

I would also point out that the 300 foot SEC overlay setback regulation was formulated for rural areas, not urban areas. I think it would be unfair to the property owners to impose that kind of buffer on an area this small. There are many property owners that would have nothing left if you imposed a taking of that magnitude. Especially when there is no government agency willing to step up to the plate to purchase land for what has already been acknowledged as a regional, rather than a local, park.

There is a misconception in the Harris-McMonagle report that this area was split in half after it was brought into the urban growth boundary. This is incorrect and I did not properly communicate that to them. During the decision process by Metro in 2002, there were some arguments by staff that in the original Area 93, the eastern half included land that could not be responsibly developed due to steep slopes and the threat of landslides. So I suggested that we split the area in half and exclude the eastern half, which has the steeper slopes. In the process of splitting Area 93, I inadvertently created the problem with the continuity between the City of Portland and this area. However, if you look at how the City of Portland has governed the Balch Creek area, immediately to the east of Skyline Boulevard, I don't think they would have allowed development anyway. The City of Portland has wasted six years, and an opportunity to do an efficient refill development of the entire area. They've wasted an opportunity to have the creek canyon donated as a park, so I think it's time to tell the City of Portland good-bye. They are not going to be providing any of the physical urban services; the only thing they might provide would be development and plot plan review. I would love to see Adam Barber do that with a little help from consultants. I've been livid with some of the planners I've dealt with at the City of Portland, but Adam Barber has demonstrated a level of integrity and competence that I am elated with. Just turn it over to Adam, give him the legal tools and the consultant support and get it done.

Foster asked if Mr. Crawford wanted to comment on the plan.

Mr. Crawford said I am elated that you did away with the creek canyon for the parkway. I thought that putting a parkway across that segment of Bronson Creek was ecologically unsound and irresponsible. A bicycle pedestrian crossing would be far more appropriate. You have to have a crossing there of some type to provide sewer service to portions of the north side. There are opportunities for a couple of other creek crossings on my property, and I would be willing to sit down with the planners and show them where I think those ought to be. Another issue I have is, with the parkway so close to the creek canyon, if you do a cut and fill for the width of a parkway road like that, you start getting into a steep slope and you're looking at a cliff 20 feet tall on the downhill side and 20 feet tall on the uphill side. That is another environmental obscenity. I would like to see that portion of the plan amended to pull the parkway away from the creek and put some houses there, with frequent areas where people can access the creek. I would like to see it preserved as much as possible, and I think building a road too close to it is not environmentally responsible.

Robert Rowe, 12305 NW Thompson Rd, Portland OR 97229 - I think the parkway main entrance should be on the road that goes down to Hiller Lane, which would be more central to the whole area. There has to be an easement there now, and in order to put in that main road, you'd probably have to confiscate property or something. The other issue I'd like to discuss is the green area down in the lower left where the water tank is. Many years ago there was a petition by the surrounding people to get that road straightened out because of accidents. Now, with the potential for more traffic and increased speed, the chance for more accidents is prevalent, especially if that green area will be used by kids crossing that road. I think it would be smart to straighten the road out and put that green area within our boundary. I also question the traffic analysis, and think it is important to figure out what the traffic impacts will be.

Brian Nelson, 3214 NW Pennington Place, Portland OR 97229 - I own some property on the south Thompson park location. There are residences currently in that area, so I think it would be better if the park was located where there are no existing residences. Also, Matrix had 11 acres optioned to the west of this property, and West Hills had 26 acres, and those are the areas that are going to be developed first. So if those areas develop and they don't put a park in, and property owners don't sell, that would leave no area for a park. And if that area does develop first, what would it be zoned if it didn't get zoned for the park. Jim brought up a good point about the parkway that is bordering the creek. There would be quite a bit of steep slope and the road would have to be retained, which would not be environmentally friendly to the area. I also think the 300 foot buffer is excessive; it should be more in the 200 foot range.

Carol Chesarek, 13300 NW Germantown Rd, Portland OR 97231 - I think overall, this is a good plan, and Mr. Barber needs to be complimented on gracefully working his way through a very complex situation. Forest Park Neighborhood Association supports maintaining the County's existing significant stream corridor around the south fork of Bronson Creek in Area 93. The existing conditions report makes it clear that this stream is in good condition, with high quality wildlife habitat and important connections. I was pleased to hear other people convey that there isn't a full 600 feet represented on the exhibit. It is clear from the scale that it's closer to 400 feet on the west end. Since this is not a new restriction, in keeping the 600 feet, you're not taking anything away other than the loss of what a property owner may have hoped to develop.

Urbanization along the stream will add additional pressures above and beyond what exists today. There will be significant tree canopy loss, humans recreating on the trail in the creek canyon, loose dogs and cats, urban run-off, plus the two new proposed bridges, which all have negative impacts on wildlife and streams. These aren't bad things, but they will have impacts, and I think, on balance, maintaining the corridor is a good way to offset those. I also think green streets should be a requirement, not a flexible option.

We also need to consider the impacts this new urban area will have on adjacent rural areas. There have been problems with trespassing, etc., in other locations where there was development up to the urban edge that essentially left unfenced back yards abutting private rural properties.

As far as traffic concerns, according to the City of Portland, Cornell Road is one of the worst bottlenecks in the city. I have been in one mile back ups at 5:00 on a normal day on Cornell trying to get into town, and that's the counter commute direction. Residents of hillside neighborhoods have reported not being able to get out of their driveways in the morning, so this is a significant problem. I haven't been able to find a transportation analysis on the website, but it would be nice if that was available for a broader review. What I have seen in North Bethany's analysis, if a new development is increasing traffic on the road by 10% or less, they are allowed to ignore the traffic impacts they add to a road.

On the governance issue, I have been heavily involved in the urban and rural reserves process, and I favor resolving this issue by adding a small urban reserve to connect Area 93 to the City of Portland, who can then provide governance and services to this area. Washington County and Clackamas County currently struggle with governance issues in their unincorporated urban areas. Multnomah County has good policy in place now and I would like to see us keep that policy, so I think the right way to solve this is in urban reserve.

Phil Grillo, 111 SW 5th, Portland OR 97204 - I am with the law firm of Miller Nash, here on behalf of Mr. Crawford. I am providing you with a two page letter and attachment, which is already part of the concept plan. My focus is on the timeliness issue. I am proposing that you add some additional milestones to the concept plan. The recommendation I am making is some of these next steps can happen concurrently, rather than consecutively. We would like to have the intermediate steps occur quickly so we can be ready to work toward getting the urban zoning in place by the projected date of January 1, 2011.

In terms of the governance issue, I would look at it more as an issue of who is going to provide planning and zoning responsibilities. Multnomah County is the governing body on this, unless and until, the City of Portland annexes the property, which was the expectation in 2002 when this property came into the Urban Growth Boundary. Whether or not that happens does not excuse the partners from working together to get this area in a position to be urbanized as quickly as possible. Part of my job is to do what we can to help in terms of dealing with those urban service agreements, and working with staff to try to work out issues in providing planning and zoning in a timely manner.

John Orlando, 12735 NW Skyline Blvd, Portland OR 97229 - I am one of the contract holders with Matrix, and the contracts have indeed expired. I would also echo this current planning process has gone very nicely. I think Adam did a nice job, and I was pleased when I saw the results they were proposing. Another thing that may come into play is the road access that was

brought up earlier. We own one of the pieces that front Thompson Road in Washington County, and we specifically bought that so we could have a road access into this area from Thompson, if needed. Right now, the right of way is only 20 feet wide down 120th.

Andrew Erwin, 3660 NW Marcotte Rd, Portland OR 97229 - I'm the last house on Marcotte Road. If you travel Marcotte Road, where the bridge is going to go, you run into my driveway. I also own, with my father-in-law, a five acre parcel on Laidlaw, so I am both outside and inside this particular area. I appreciate the effort that is going on and commend where we are now. I would like to share with you the frustrations that I, and many of the homeowners, have had during this process. I have testified when this area was ultimately brought in and when it was split; I've been to every one of these meetings that I could get to. Part of the problem we've had is there are rules and procedures that we are all expected to follow. Although the landowners must follow the rules, we are left scratching our heads when the governing agencies don't, which has been utter frustration.

When we began to develop both the Laidlaw property and our property, we did not want to build a well because there is a substantial financial cost outlay, so we went to Washington County, who has extraterritorial water extensions throughout this area. I went before the Washington Board of Commissioners to ask permission to the extraterritorial line extensions. It cost me \$5,000, and I had two minutes to speak. The Board told me they had spoken with Multnomah County and Portland, and were told they would be bringing in this other half of Area 93, so therefore, you're denied. But thank you very much for the money. And go build a well.

So it heaps frustration upon frustration because it appears to have become a game. My hope is to present a face to the frustration we have experienced throughout this process. I have been in this process for almost ten years, and I have listened to comments about the tree line and the canopy and how wonderful it would be to save that canopy. History tells us that this once was all cedar forest, and around the turn of the century, the entire area was logged out as cedar logging. Cedars weren't planted in their place; what grew up were scrub trees. These same scrub trees now have a nice canopy until the wind starts to blow. These are weak trees, and when the wind starts to blow, the limbs fall every which way possible so the kids have to come inside. So when you say, gee it's wonderful and look at this tree canopy, understand that maybe there is more to it than simply trying to paint that particular picture.

Finally, I like the plan; it's a good plan. It's one where I bought three acres thinking I have a really nice wooded area, and I was happy with it. I thought through what I think about building a road right in front of my property with cars running by, and if this helps step up the effort, put a road through there. I ask you to think about the frustration I am describing to you, and understand the sacrifice I'm willing to make. I will deal with the cars if it means that somebody is going to step up and take responsibility and do what they promised to do in the first place.

Sarah Harris, 12020 NW Laidlaw Rd, Portland OR 97229 - We are the green park on the north side of the creek. I would like to speak to the point of the community center. There was some information put out that maybe there would be a cleaners there, which I don't consider a community center. In my opinion, a community center in this area would be a covered area where families could come for picnics and such. I don't see a commercial establishment being a community center. I think a community center services families and people who live in the area, not a commercial entity. I would be opposed to having any kind of commercial services there. I

would like to see something that is possibly run by Tualatin Hills Park & Rec, where there is a covered area, maybe some playground equipment for families; but not a commercial center. And I ask if we're going to have such a large area along the creek that is going to be used by people for hiking and viewing nature, do we really need another little park on the north side of the creek? I guess that's because that is our property, but I still question if you need a small park on the other side of the creek. I would put another pedestrian bridge across there and keep the road out.

Rick Beson, 3000 NW McDaniel Rd, Portland OR 97229 - I live in the far East county, bordering Thompson/McDaniel Rd, and I feel we have been forgotten about. We utilize the road structures we're speaking about, and the Area 93 proposal is going to affect us. We have been looking for years to be annexed into the city along the City of Portland's property line. It seems like we have been overlooked because we are possibly too steep, but the property along Thompson Road, which is the access next to the other part of Bonny Slope, is fairly flat. I'm up against Forest Park Heights and Mill Pond Road, which is now an access road into Forest Park Heights. I think the City of Portland should step up and either annex part of us in there, or agree that getting Bonny Slope into the urban growth area would be a good thing. But I wanted you to recognize that there are other people who live out here, we are interested in what's happening with Bonny Slope, because whatever happens to Bonny Slope should happen to us too. We shouldn't be forgotten about.

Terry O'Shea, 6055 NE Alder St, Hillsboro OR 97124 - I wanted to speak because of my interest in the plan proposed by Adam. We are now in escrow on some property on Marcotte Road, just outside of the development area in question, and until reviewing the plan, we were on the fence about whether to purchase the property or not. After seeing the plan, and seeing how it encompasses, in a very thoughtful way, both nature and the density, we decided this would be a good place to raise our children. A lot has been mentioned about the impact of the roads, and it is interesting to me that with the possibility of 800-1,000 units in this area, there has been no discussion of any services provided in terms of commercial interest. There is no shopping in the immediate area, so any purchases of food items requires one to get in their car and drive several miles to a store. So the walkability index of the property is extremely low. I propose that we also put in a commercial entity for selling food items, because the need to leave the area just to go to the grocery store will compound the traffic issues.

Kristin VandeZandschulp, 4106 NW 126th Ave, Portland OR 97229 - I am closing on a house on Hiller Lane in six days, and I have listened to a lot of rhetoric the last couple of months about protecting the green space and celebrating the green space area. I think a road along the green space area detracts from that. I think bike and pedestrian access and trails is the best way to let people get out and explore the area, but keep the automobile traffic away from the green space.

Tim Sim, 3900 NW North Rd, Portland OR 97229 - I have five acres bordering the City of Portland, to the east side of Area 93 that was annexed out a few years ago. I've come to several meetings and never spoke up, but I want to say I really like this plan. The issues I have is when you go through Forest Heights, which I think is very well developed, down Thompson to Salzman and the Bower Estates, there is such a difference in the quality of the properties. I feel that being able to preserve parks and greenways and development along there is fantastic, but I think we really need to reach up and touch Forest Heights in that area, particularly at McDaniel and Thompson. That intersection needs improvement. That whole area needs some control because there is so much inconsistency. I feel that bringing that east section into 93 would be a natural

piece, and if that helps get this developed, you could preserve a lot of property between Laidlaw and Thompson.

Mr. Sim was the last member of the public wanting to testify, so Chair Ingle called for deliberation on the concept plan and amendments that were presented. He kept the public record open in case there were some questions of the citizens who testified.

Foster said he would like to hear from the City of Portland, perhaps Bob Clay? Putting aside the governance issue, does the City have any comments on the concept plan?

Bob Clay, City of Portland, Bureau of Planning & Sustainability - We want to complement the County staff and the consultant who have worked on the project. The City has participated in the process all along and from our standpoint, as a concept plan, we are very satisfied with the product that we've seen. We want to reemphasize this is a concept plan, so there is a lot of potential refinement of the plan that could occur, and those are the next steps we will see.

Foster asked if the City sees the Skyline bound or Cornell and Germantown Road traffic in this concept plan as a concern.

Clay said I can only tell you overall, the City does have concerns about the amount of traffic that goes to NW Skyline and NW Cornell Road. We are aware of the amount of traffic, and the amount of congestion that occurs as a result of existing development in the NW Hills. You heard from the consultant about the relatively modest amount of potential traffic they project, and overall, we do have a concern about that. Some of our concerns regarding service liability in the future and service maintenance of those facilities is a significant one for the City. We have had a growing level of maintenance operations in the City, so that is one of the overriding concerns we have had with respect to development overall in the Northwest Hills.

I would like to add that I have been involved with concept planning in the Pleasant Valley area to the east, and the City of Gresham, and part of our look at this area is comparative with respect to East Multnomah County and the Pleasant Valley area. I have, hopefully, been able to bring some understanding of how you go from rural to urban, because it is a very difficult, challenging endeavor. In that process, it took us from the time Metro designated Pleasant Valley in 1998, until 2004 to actually realize changes in the City of Gresham's and Portland's comprehensive plans to accommodate that urban growth boundary expansion. This particular area is challenging for other geographic reasons as well. I know there has been a lot of frustration over the years in the area, but enacting the amendments and making the changes to convert it from rural to urban contributes to the lengthy process.

Ingle asked for a motion for the purpose of discussion.

Commissioner Cleveland moved to accept the Bonny Slope West concept plan and the amendments. Foster seconded.

Foster said first, we are not here to solve the governance issue, we are here to focus on the concept plan. I can appreciate the frustration people have felt on how long it has taken, but we are not here to address that either. By and large, I think there is pretty good agreement on the plan; most of the testimony I heard was pretty positive. Other things, I believe, can be addressed as we move into

the next phase and refine it a bit. But we are here to look at the concept plan, and I think it's a pretty good one.

Commissioner Strebin asked Adam if the green strip through the plan, 300 from the center of the creek out; is 600 foot clear across.

Barber said, it sounds like there was some confusion on that issue, which I may have caused. I have seen a lot of drafts of a lot of plans, and in the past, we have had the full 600 feet. I think this may be a slightly reduced version.

Liden said we could go back and check, but we looked at the background report, which had the GIS information that was provided. We took the overlay that showed the SEC zone, the Title 13 areas, etc, and electronically put it on this map, and used that as our outline for the green. Perhaps we are not depicting it graphically correct.

Barber said I roughly measure 600 feet wide through the center, and my memory is, the County's SEC overlay does not extend into all of the little finger tributaries that are coming off the main, so I suspect that this is a combination of Metro's Title 3 Water Quality Requirements overlain on top of the County's SEC to approximate a starting point.

Strebin asked if that area will be a resource going down to the creek and accessible by anyone who lives in the area.

Barber said the idea is this would be dedicated both for public use and for protection of the natural resources. There are other considerations and benefits to dedicating to open space besides recreation, such as water quality, wildlife and canopy.

Strebin said I think the concept is great, I think you did a great job. I'd like to move this forward and get this going.

Foster said there was some controversy about whether the parkway boulevard would require cut slopes, can you clarify that? My understanding is that is at the top of the bluff.

Barber said the details of where and how far a setback from the bluff that street should be will come as we move through the process. Liden said it was never the design intent that we do cutting and filling. Barber said I also heard comment that the road being adjacent to the creek should be designed so there are homes on both sides. That desire was voiced throughout the public process, and that's why the road moves away from the creek along certain portions, so some homes would be close to the creek.

Ingle said I was wondering why green streets is a flexible element and not required, given the overall general feel that "green street storm water collection and treatment features should be utilized where possible".

Liden said that would be addressed in the next steps, where you decide exactly what your street standards would look like, and how you want to handle stormwater. I think it is supported in this plan, but you will need to decide if, and how, you want to do it. Also, some of the elements we have identified as either mandatory or optional can be changed, if you like. If you want to

recommend to the Board to strengthen the idea of green streets and that kind of water treatment facility, that would be appropriate.

Barber said I recall it was noted in the existing conditions report that the silt loam soils that make up the study area have potentially slow permeability rates. The soil units in the study area are known to have fragipan, which is a slightly cemented layer that can impede the ability to infiltrate water onsite. I recall the discussion that should be investigated further before there is a requirement to infiltrate onsite, because you could have problems and associated costs. Figure 3 of the existing conditions report shows the soil units as predominately cascade silt loam through a portion of the study area, as well as Cornelius and Helvetia silt loams.

Ingle said I wanted to touch on the confusion regarding the community center. My feeling is, it's either a neighborhood shopping center, or it's a community center. The name implies one thing that in reality may be something totally different.

Liden said maybe we could take a look at how we are describing it in the concept. When we had the charette and the meetings, some people were interested in some kind of commercial services, such as convenience establishments. At the same time, there seemed to be some interest in a community center of some sort, so we are leaving that open for the community to decide what is most appropriate when we get into the next level of planning detail. So we put that in as a place holder. If people decide there is no need for commercial and because we have the parks, we don't need a community center, it could be residential. We left that flexible.

Commissioner Cleveland said Mr. Rowe mentioned the blind curve in the southwest corner and the placement of the boulevard. Are those flexible points in this concept plan?

Barber said there was talk throughout the public process about straightening Thompson. I haven't heard much about that lately, so I don't know if that has been looked into any further. Liden said that Thompson being straightened is certainly a possibility. That would be something that Washington and Multnomah counties would have to decide. So that is flexible. Also, we designated that as a green area because it is an awkward piece. You can't do much with it residentially, and we didn't designate it as a park because it didn't seem to be appropriate for active use. That would also need some more refinement as to what you want to do with Thompson, and that piece of property. One solution might be, if you straightened Thompson, that green space should go away and be more residential development on the north side of Thompson. As far as the boulevard is concerned, we do say in the plan that is flexible. We are suggesting that it come in so it aligns with Hibbard to make a four way intersection, but we are leaving that up to further review of the traffic. This is also contingent upon which property owners want to develop and which do not. There were some comments where people seem to be concerned that their property is going to be condemned so they can put roads through, but we are presuming that people are willing to sell for development. If they are not, the implementation of this concept could be changed. This kind of development is always tricky, because you don't know who is going to want to develop now and who will want to develop in the future; so that's why it needs to stay flexible. We are just trying to express, conceptually, what the important elements are that you want to try and do. We have shown it one way, but there is flexibility so it can be done it a variety of ways.

Gregory said I want to congratulate everybody who has gotten this concept plan this far. I think the biggest hurdle was finding a way to meet the density requirements, and that is there, with a lot of flexibility so there is room for refinement. Having not participated in the community based process, I see areas where refinement makes sense, especially given the testimony tonight. One of the concerns I had, before tonight's hearing, was there appeared to be some disjointed pieces of green that might be better served if there was another green finger in the southwest area, where there is a lot of built environment. The low density, medium density and high density are all crammed in that corner. In prior work sessions, I recall that property owners in this area did not want to become like the neighborhood further west. My thought coming into the meeting tonight is, perhaps there should be another green "finger" coming down from Bronson Creek in that area. Also, I think the idea of moving the boulevard deserves further consideration, as it makes some sense to be more centered in the plan area.

And although I know this is not something we want to get into here, I wanted to make a comment on the governance issue. I think we heard from folks in a very important area tonight, and that is the piece of Area 93 that was nixed. There are some pieces of the functionality of this concept plan that are heavily contingent upon what happens between Portland and this area. It is important to acknowledge that, as well as the importance of making that contiguous urbanization connection. There is a lot of talk, whether that's a commercial retail community center or more of a community activity center. The critical mass that is going to help make the determination about a community center is going to be how that area between Portland and this area come together.

Ingle concluded with reiterating that there was a motion to accept the concept plan as presented, with additional amendments from County Counsel, and it was seconded. Ingle then asked for a vote.

The motion was passed unanimously.

Ingle closed the public testimony.

VI. Director's Comments

Karen Schilling, Land Use Planning & Transportation Director, stated that since we are not prepared to bring new work items to the December 2009 Planning Commission meeting, that meeting will be cancelled. She asked if January 4th would work for the next meeting and there was no opposition to that date.

Meeting adjourned at 9:20 p.m.

The next Planning Commission meeting will be January 4, 2010.

Recording Secretary,

Kathy Fisher



Department of Business and Community Services
MULTNOMAH COUNTY OREGON

Land Use and Transportation Program
1600 SE 190th Avenue
Portland, Oregon 97233-5910
(503) 988-5050

December 18, 2009

To: Multnomah County Planning Commission

From: Chuck Beasley, Senior Planner *CB*

Subject: Finalize Work Program for 2010

Attached is the 2010 Work Program for discussion and approval at our January 4, 2010 meeting. The plan has been refined following the October 5, 2009 work session by including priorities of planning staff and by removing projects that are either complete or no longer needed. The result is a shorter list that allows resources to focus on relatively large planning efforts, Springdale and Burlington Rural Centers, Bonny Slope West, and Urban and Rural Reserves.

Changes to the work program from the October 5, 2009 draft include:

- Removed Goal 5 Nature in Neighborhoods since this program is in the BOCC hearings process.
- Removed Historic Structures work item after PC review of the existing inventory. The P.C did not direct staff to continue this on the work program for 2010.
- Removed Home Occupation code evaluation after staff implementation update to the Planning Commission in February of 2009.
- Added work tasks to the housekeeping section based on input from staff.
- Added rules for alternative energy projects at the request of Commissioner Cogen's office and planning staff.
- Added formulating rules that would provide an alternative Type I application for SEC-h permits to the second tier work task list.

Potential work program tasks for discussion:

Planning staff raised several areas where their implementation work suggests further discussion of changes. Much of the proposed housekeeping part of the work program comes from staff recommendations. Below are two areas staff requests the Planning Commission to consider. Should the Commission decide to add these to the work plan, my recommendation is to add them for work in 2011 since I believe we have a full program for 2010.

Guest Houses

Many property owners want to construct a "guest house" or other improvements on their rural property that contain bathrooms, bedrooms, wet bars, upstairs recreation rooms. State law and county ordinances allow just one dwelling on a parcel. Staff is regularly faced with interpreting unclear code language so as to allow appropriate accessory uses

while not facilitating second dwellings. Currently, the base zones do not allow “guest houses,” and it would be beneficial to define and consider authorizing this kind of structure.

Proposal: Consider whether we should allow “guest house” as a use, and develop standards to ensure such structures do not become unauthorized second dwellings. Examine existing definitions for related terms like “cooking facilities,” and “dwelling” to clarify intent and facilitate permitting.

Type B Home Occupation, Cottage Industries, Limited Rural Service Commercial Uses, and Tourist Commercial Uses:

Staff has concerns that the Type B Home Occupation use may provide opportunity for business uses that might not be allowed within the other categories intended for more intensive uses. Another issue noted is the extent to which home occupations result in use of rural residential areas to serve urban markets. Regarding site improvement requirements, parking and loading requirements should be evaluated in any code amendment process to ensure that improvement requirements are necessary given the scale of the use.

Proposal: Consider better defining these uses and examine the applicable standards for each to determine the appropriate improvements and limitations for the different uses.

attachments: Proposed 2010 Work Program

2010 WORK PROGRAM

LONG RANGE LAND USE PLANNING PROJECTS

January 4, 2010

Multnomah County Land Use and Transportation Planning Program

Projects

	Project Name & Date Added to Work Program	Description	Project Status	Type	Location
1	Housekeeping Amendments	Suggestions from staff are gathered until there are sufficient number to fill an ordinance. Priority projects that will be brought to the PC as workload allows are listed.	On-going	C&S	County - wide
		Amend Chapter 29 for Consistency with Oregon Fire Code	Not Begun	C&S	County - wide
		CFU Implementation Refinement Project: - Table 1 nonconforming setback provisions for non-residential buildings. - Add lot of exception to CFU 3. - Reconcile access road standards w Chapter 29 fire access. - Reconcile review and allowed uses and CFU permit Form A.	Not Begun		County - wide
		General Revisions to Definitions and Consistency Improvements Development defined, refine expiration of permit to apply to unimplemented development, define initiation of action-start of construction, clarify level of review for emergency/disaster. Consider easements on subdivision plats related to floodplain/high water mark requirement in 34.8020(C).	Not Begun	C&S	
		Variances/adjustments. Revise 33.7606 to clarify relationship between variance/adjustment remedies and resource protection setbacks and buffers in SEC and WRG areas. Vision clearance areas added to zoning code.	Not Begun	C&S	
		Chapter 37 amendments to incorporate conflict of interest rules for Planning Commissioners.	PC Worksession 1/4/10	M	
2	Legislative Updates 2009	Update code for changes to statutes from 2009 legislative session.	Not Begun		County - wide
		HB 3099: Amend EFU Provisions related to schools, greyhound kennels, model aircraft, golf courses. Waives M56 notice and legislative hearing requirement.		M	
3	Mitigation approach to flood and landslide hazards codes. 2009	Evaluate zoning codes for potential to incorporate mitigation principles for flood and landslide hazard areas. Qualify county for FEMA Community Rating System CRS program. This project incorporates two risk reduction action items in the county Hazard Mitigation Plan.	Not Begun	P	County - wide

4	Urban and Rural Reserves 2007	Work in 2010 entails selection of urban and rural reserves, adoption of IGAs, and comprehensive plan and zoning code amendments followed by hearing at LCDC.	Suitability map approved by BOCC 9/10/09 Reserves designations for public outreach approved by BOCC 12/10/09.	P	County - wide
5	Springdale and Burlington Rural Centers. 1998	OAR Div 22, requires certain inventory and code requirements for "Unincorporated Communities." Include: - "Pedestrian Areas" Planning in Rural Centers and near "CS" land uses such as schools. 2003 - Rural design review, parking, paving, and sign code standards. 2002	Not Begun	M	West side and east side
6	Alternative Energy Standards 2010	Consider need for solar and wind energy zoning code amendments, and develop needed amendments.	Not Begun		
7	"Bonny Slope West" Area Urban Planning. 2003	Develop a Title 11 plan for this 2002 UGB expansion, "Area 93." Area is the westerly half of Bonny Slope subdivision and is bordered on the west and south by Washington County. Planning work is underway in partnership with the City of Portland under an IGA. The adoption process of PC worksessions and hearings begins in April of '09, with Board adoption scheduled for September of '09.	PC Hearing re urban growth diagrams and service options 11/09. BOCC hearing early 2010, followed by PC and BOCC hearings re plan amendments in spring 2010.	M	Westside

Projects Not Scheduled for Work in 2010

9	Potential plan amendment to complete Metro Title 11 planning requirements for Springwater Area. 2006	The exact format and method of complying with Metro's requirements are under discussion with Metro.	Awaiting reply from Metro regarding latest letter with questions.	M	County-wide
10	Alternative Standards for SEC-h 2010	Provide a set of alternative non-discretionary standards for SEC-h permits to allow projects that do not require mitigation plans to be processed as Type 1 permits.	Not begun	C&S	
11	Rural Area Plan task: Update Chapter 34 Sauvie Island/Multnomah Channel to implement RAP policies. 2007	Include adding definitions of "houseboat," "boathouse" and "combination" to Zoning Code for consistency with tax assessor (S.I> Policy 12). 1997 Planning Commission directed project to be completed with other unfinished tasks in the Sauvie Island and Multnomah Channel RAP. This would involve a look at all "live aboards," (and evaluate if there are any advantages to changing "houseboats" to "floating homes.") Also consider "Special Plan Area Provisions specific to houseboat areas (S.I. Policy 13). Deed restriction to protect agricultural practices in MUA-20 zone in MCC Chapter 34 (S. I. Policy 3). Consider using West of Sandy approach. 1997	Definitions work went to Planning Commission in February, 2000. No further progress.	P	Westside

12	"Dark Skies" Code Amendments of Policy 26 West of Sandy River Plan applied to other areas. 2004	This Policy was implemented by a code requirement that new and replacement exterior lighting fixtures shall be of the "fully shielded type so that no light is emitted above the horizontal. Now the standard only applies to the West of Sandy River Plan Area.	Not begun.	C&S	Westside
13	Water supply standards. 2002	There are requirements in some dwelling approval criteria that there be an adequate water supply. For properties that will be drilling a well, at what point in that review should the private well be drilled? Should the drilling take place before zoning approval or is there some other type of assurance of water availability before drilling?	Not begun.	C&S	County - wide
14	Rural Area Plan task: Significant Environmental Concern (SEC) zoning map designation for certain streams (East of Sandy River Policy 21). 1997	SEC overlay now being applied by plan policy map, should also amend zoning map to reflect the same. East of Sandy River Rural Area Plan.	Not begun.	C&S	Eastside
15	Rural Area Plan task: Farm stand code provisions in the EFU, MUA-20, RR, and RC zones in the East of Sandy River Zoning Code. 1997	Plan Policies 16 and 17 of the East of Sandy River Rural Area Plan directs that farm stands be allowed in some zones that they are not listed in now and be allowed to sell some additional products. Some related changes were included in the 2003 EFU Code updates (only to the EFU district).	Not begun.	C&S	Eastside
16	Rural Area Plan task: Water quality related regulations added to certain West Hills streams. 2004	Certain stream water quality strategies are yet to be completed to address West Hills Rural Area Plan Policy 19. The streams are only those draining into Burlington Bottoms on the Multnomah Channel (across from Sauvie Island).	Not begun.	C&S	Westside
17	"Damascus" Urban Planning: Determine who/how Title 11 planning will be done for the Multnomah County portion of UGB expansion "Area 13." 2004	Area was added to the UGB in December 2002 and is east of Pleasant Valley and west of the City of Gresham. Planning is directed by Metro to be done as part of the Damascus area in Clackamas County.	Not begun.	M	Eastside
*C&S = consistency and streamlining. P = planning. M = mandated.					



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STAFF REPORT TO THE PLANNING COMMISSION

PROPOSED AMENDMENTS TO CHAPTER 37 CONSISTENCY WITH STATE STATUTES REGARDING CONFLICT OF INTEREST

WORK SESSION ON JANUARY 4, 2010 CASE FILE # PC 10-001

I. INTRODUCTION

The script template that is used by the Chair of the Planning Commission for a Legislative Hearing includes this language:

“At this time I would ask any commission members to disclose any actual or potential financial or other interest which could lead to a member’s bias or partiality.”

The question has been raised as to the source of the legal requirement for disclosure of “bias.”

A search of ORS Chapters 197 and 215 reveal only two statutes that use the word “bias.” The first is ORS 197.835 regarding the scope of review for LUBA. The relevant portion of that statute is subsection (12), which provides:

“The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, only if the member of the decision-making body did not comply with ORS 215.422(3) or 227.180(3) [relating to cities], whichever is applicable.”

ORS 215.422(3) relates to the review of land use decisions of a hearings officer or other county decision-making authority. The relevant portion of the statute provides:

“(3) No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

- (a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
- (b) Has a public announcement of the content of the communication and of the parties’ right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.”

Both of these statutes related to quasi-judicial hearings, not legislative actions, and are, therefore, not applicable to legislative actions.

MCC 37.07.0710(B)(3)(d) is the legal authority for requiring disclosure of “bias” by Planning Commission members. The relevant portion of the code is:

“(3) At the beginning of the initial public hearing authorized under these procedures, a statement describing the following shall be announced to those in attendance: ... (d) That the decision maker shall call for any ex parte contacts, conflicts of interest or **bias** before the beginning of each item.”

Ex parte contacts are only relevant to quasi-judicial matters. State land use statutes, by their terms, limit the requirement to disclose bias to quasi-judicial matters. For example, ORS 215.422(3) (quoted above) relates to review of a Hearings Officer decision or other decision-making authority. “Decisions” are limited to quasi-judicial matters. Legislative matters are referred to as legislation or an adoption of a law or code.

However, government ethics statutes apply to both quasi-judicial and legislative actions. ORS 244.120 requires all public officials (defined in ORS 244.020(13)) to disclose actual conflicts of interest or potential conflicts of interest when they make either quasi-judicial decisions or take legislative actions. ORS 244.020 (1) defines an “actual conflict of interest” and ORS 244.020(11) defines a “potential conflict of interest.” The county code should be amended to conform to state law, but not impose additional requirements. The proposed zoning code amendments are set out in Section II, below.

II. PROPOSED ZONING CODE LANGUAGE

Staff: The code is structured such that amendment of both legislative and quasi-judicial procedures is needed to effect this change. The legislative provisions are grouped into what the reviewing body does at hearing (37.0710), definitions and rules of procedure (37.0780), and the process to challenge procedures followed at hearings (37.0790). A minor change to incorporate the definitions and rules of procedure is recommended for quasi-judicial proceedings.

The section below describes what the Planning Commission does at hearing. The provisions for Board hearings follow in subsection (C). Recommend a change to (3)(d) to incorporate the definitions and rules of procedure in 37.0780 Ex Parte Contact, Conflict of Interest, and Bias, and a change in (C) to incorporate the procedures for Board of County Commission hearings.

§ 37.0710 (PC) Legislative Hearing Process.

(A) Purpose. Legislative actions involve the adoption or amendment of the County's land use regulations, comprehensive plan, map inventories and other policy documents that affect the entire County or large portions of it. Legislative actions which affect land use must begin with a public hearing before the Planning Commission.

(B) Planning Commission Review:

(1) Hearing required. The Planning Commission shall hold at least one public hearing before recommending action on a legislative proposal. Recommendations by the Planning Commission shall be by majority vote of the entire Planning Commission.

(2) Planning Director's report. Once the Planning Commission's hearing has been scheduled and notice provided under MCC 37.0720, the Planning Director shall prepare and make available a staff report on the legislative proposal at least 7 days prior to the hearing.

(3) At the beginning of the initial public hearing authorized under these procedures, a statement describing the following shall be announced to those in attendance:

(a) That the hearing will proceed in the following general order: staff report, public testimony, record closes, deliberation and decision;

(b) That all testimony and evidence submitted, orally or in writing, must be directed toward the relevant issues. If any person believes that other issues apply in addition to those addressed in the staff report, those issues must be listed and discussed on the record. The decision maker may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;

(c) That failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue, may preclude appeal on that issue to the Land Use Board of Appeals;

(d) That the decision maker shall call for any ~~ex parte contacts~~, conflicts of interest ~~or bias~~ before the beginning of each hearing item pursuant to the applicable provisions of MCC 37.0780 Ex Parte Contact, Conflict of Interest, and Bias.

(C) Board of Commissioners review:

(1) Board of Commissioners action. Upon a recommendation from the Planning Commission on a legislative action, the Board of Commissioners shall hold at least one public hearing on the proposal. The provisions for staff report availability and opening statement applicable to Planning Commission proceedings under (B)(2) and (3) are also applicable to Board proceedings, as are the provisions for conflict of interest and objections in MCC 37.0780 and 37.0790. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the Board of Commissioners may adopt, modify or reject the legislative proposal, or it may remand the matter to the Planning Commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the County's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the Board of Commissioners decision shall be enacted as an ordinance and final upon signing. The Board of Commissioner's decision is appealable to LUBA in accordance with OAR Chapter 661, Division 10 and ORS 197.830 or current applicable state statutes.

(2) Notice of final decision. Not later than 5 days following the Board of Commissioner's final decision, the Planning Director shall mail notice of the decision to DLCD in accordance with ORS 197.615 or current applicable state statutes.

* * *

The definitions and rules of procedure section below is changed at subsection (B) to incorporate requirements updated to conform to current statute. In addition, the "challenges" concept is deleted in this section because it is the topic of the procedural objections section that follows it in 37.0790.

§ 37.0780 Ex Parte Contact, Conflict Of Interest And Bias.

The following rules shall govern ~~any challenges to~~ a decision maker's participation in a quasi-judicial or legislative action:

(A) Ex parte contacts. Any factual information obtained by a decision maker by anyone other than staff outside the context of a quasi-judicial hearing shall be deemed an ex parte contact. Prior to the close of the record in any particular matter, any decision maker that has obtained any material factual information through an ex parte contact shall declare the content of that contact and allow any interested party to rebut the substance of that contact. This rule does not apply to legislative proceedings or contacts between county staff and the decision maker.

(B) Conflict of interest. ~~Whenever a decision maker, or any member of a decision maker's immediate family or household, has a financial interest in the outcome of a particular quasi-judicial or legislative matter, that decision maker shall not participate in the deliberation or decision on that matter.~~ All provisions for conflict of interest on the part of a decision maker apply to both quasi-judicial and legislative proceedings.

(1) In compliance with ORS 244.135(1), a member of the Planning Commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest:

- a. The Planning Commission member or the spouse, brother, sister, child parent, father-in-law, mother-in-law of the member;
- b. Any business in which the member is then serving or has served within the previous two years; or
- c. Any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

(2) In compliance with ORS 244.135(2), any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken.

(C) Bias. All decisions in quasi-judicial matters shall be fair, impartial and based on the applicable approval standards and the evidence in the record. Any decision maker who is unable to render a decision on this basis in any particular matter shall refrain from participating in the deliberation or decision on that matter. This rule does not apply to legislative proceedings.

* * *

The provisions for challenging hearings procedure are amended as shown below to incorporate requirements to conform to state statute.

§ 37.0790 Procedural Objections.

(1) Any party who objects to the procedure followed in any particular matter, including bias, conflict of interest and undisclosed ex parte contacts, must make a procedural objection prior to the County's rendering a final decision. Procedural objections may be raised at any time prior to a final decision, after which they are deemed waived. ~~In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights.~~

(2) The Planning Commissioners are appointed public officials subject to ORS 244.010 et. seq., and are required to notify, in writing, the Chair of the Board of County Commissioners, as the person who appointed the public official to the Planning Commission, of the nature of the actual or potential conflict of interest and request that the appointing authority dispose of the matter giving rise to the conflict. (ORS 244.120(1)(c)) In compliance with that statutory provision, upon receipt of the request, the appointing authority shall designate, within a reasonable time, an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.¹

(3) In making a procedural objection, the objecting party must identify the procedural requirement that was not properly followed and identify how the alleged procedural error harmed that person's substantial rights. No decision or action of the Planning Commission or county governing body shall be invalid solely by reason of the failure of a public official to disclose an actual or potential conflict of interest. (ORS 244.130(2))

* * *

The quasi-judicial provisions are amended at (6) to incorporate the rules governing decision maker participation.

§ 37.0610 Hearings Process - Type II Appeals, Type III Or Type IV Applications.

All public hearings on Type II, Type III, or Type IV applications shall be quasi-judicial and comply with the procedures of this section.

* * *

¹ (There is an argument to be made that section 3 does not apply to County Planning Commissioners because of the specific statute (ORS 244.135) that specifically applies to Planning Commissioners. However, there is a tenet of statutory construction that requires application of both statutes unless there is a conflict and then the specific overrules the general statute. The safest thing to do is to incorporate both into the county code and then not apply section 3 if, in practice, it conflicts with 4 and/or 5.)

(E) At the beginning of the initial public hearing authorized under these procedures, a statement shall be announced to those in attendance, that:

- (1) Lists the applicable substantive criteria;
- (2) The hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation and decision;
- (3) That all testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The decision maker may reasonably limit oral presentations in length or content depending upon time constraints. Any party may submit written materials of any length while the public record is open;
- (4) Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue, may preclude appeal on that issue to the Land Use Board of Appeals;
- (5) Any party wishing a continuance or to keep open the record must make that request while the record is still open;
- (6) That the decision maker shall disclose any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item and provide an opportunity for challenge. Advised parties must raise challenges to the procedures of the hearing at the hearing and raise any issue relative to ex parte contacts, conflicts of interest or bias, prior to the start of the hearing. [Also see the provisions of MCC 37.0780 Exparte Contact, Conflict of Interest, and Bias.](#)

Recommendations and Rationale for Reserve Designations

The Multnomah County Board of Commissioners recommends these general rationales and attached maps for reserves designations in the County to Core 4 for use in conjunction with reserves recommendations from Clackamas and Washington Counties, and Metro. The recommendations of the four governments will complete the regional reserves map for public comment prior to finalizing Intergovernmental Agreements between the parties.

Government Islands - Map Area 1: No reserve designation.

The islands are ranked as low suitability for urbanization and for farm/forest resources. Landscape features are adequately protected by long term lease between Oregon Parks and Recreation District and by the designated Jewett Lake mitigation site.

East of Sandy River and Sandy River Canyon – Map Areas 2 and 3: Designate the Sandy River Canyon within 3 miles of the UGB rural reserve.

The Sandy River canyon is a high value landscape feature and is made up of either foundation or important agricultural land. The canyon has low suitability for urbanization, and forms a landscape scale edge between urban areas on the west and rural land to the east. The East of Sandy River area is ranked low for urbanization potential due to the difficulty of extending urban services across the canyon, difficult accessibility, and urban form considerations such as development capacity and walkability.

West of Sandy River North of Lusted Rd. – Map Area 4a: Designate approximately 187 acres adjacent to the City of Troutdale as urban reserve. Designate the remaining areas within 3 miles of the UGB rural reserve.

The area north of Lusted Road is foundation agricultural land and contains landscape features along stream tributaries of the Sandy River. It ranked low on key urban suitability factors including the edge effects of Beaver Creek canyon that limit good integration with existing urban areas adjacent to Troutdale, the lack of nearby employment areas, and walkable community/range of housing types. Troutdale has indicated their ability and desire to serve additional land in this area. A narrowly defined urban reserve improves integration, including transportation suitability, with the existing urban area.

West of Sandy River South of Lusted Rd. – Map Area 4b: Designate approximately 900 acres west of SE 302nd between Lusted Rd. and Johnson Creek area as urban reserve. Designate a corridor along Johnson Creek rural reserve.

The area south of Lusted Road is foundation agricultural land and contains landscape features along streams including Johnson Creek and tributaries of the Sandy River. The area is suitable for urbanization with areas adjacent to Springwater employment land and planned transportation improvements in that area. Gresham has indicated their ability and desire to serve this area primarily for employment.

Johnson Creek, together with an adjacent hillside that extends south into Clackamas County, form a localized edge/buffer to proposed rural reserve areas to the south.

NW Hills – Map Area 5: Designate areas within 2 miles of the City of Scappoose UGB and within 3 miles of the Portland Metro UGB as rural reserve.

All of the NW Hills area is foundation land – primarily in forest use. The southern portion contains landscape features in all areas. Potential for urbanization from Scappoose or US Highway 30 has been noted, although topographic constraints exist and the city indicates expansion south is not the most efficient direction.

The rural reserve area between the Portland Metro UGB and 3 mile line in area 5 (and into area 6) protects the landscape scale “edge” and visual backdrop that contributes to the sense of place this area provides the region. It also protects the high priority wildlife connection between Forest Park and the Tualatin Mountains and Coast Range.

West Hills South – Map Areas 6a and 6b: Designate this area as rural reserve.

The area north of Skyline (6a) is important agricultural (forest) land, continues the landscape feature/wildlife corridor from area 5 into Forest Park, and ranks high on the sense of place factor. The area from Skyline Blvd. south to Germantown Rd., is also important agricultural land, and includes landscape features that form urban – rural edges along the south, east, and northwest borders of this area. These are the Abbey Creek drainage, the Powerlines right-of-way, and the Rock Creek drainage. While this area contains approximately 800 acres of land with moderately low suitability for urban use, the area also qualifies for rural reserve designation as important agricultural land within 3 miles of the UGB. The urban deficiencies in this area are important – lack of governance, transportation system costs, etc., indicating that rural reserve is the better designation.

Powerline/Germantown Rd. – South – Map Areas 7a and 7b: No reserve designation.

The area is conflicted agricultural land and not in a priority area for long-term commercial forestry, leaving landscape features as the key resource. Much of the area ranks low for urban reserve due to significant limitations of an efficient transportation system, and uncertainty about when a city might be able to provide services to this area. A concept that would leverage revenue from more intensive development east of N. Bethany to support lower density development in targeted areas to the east and acquire other land for public ownership has been proposed for this area. This approach could both protect landscape features by sensitive use of development and open space together with public ownership, while contributing to urban capacity. Not designating this area allows further consideration of the viability of this unique development concept and time for potential governance of this area to become clearer.

There is also a small area at the south end of Skyline surrounded by the City of Portland that has not been included in the concept above. This area contains larger parcels, some of which are in public ownership, is within a priority Metro Acquisition area, and is primarily zoned as large lot forest land. The low urban suitability of the area, together with existing resource protections and adjacency to the City of Portland supports a no designation decision at this time.

Sauvie Island – Map Area 8: Designate rural reserve.

The island is foundation agricultural land and is a key landscape feature in the region, ranking high for sense of place, wildlife habitat, and recreation access. The island defines the northern extent of the Portland-Metro region at a broad landscape scale. These characteristics support a rural reserves designation for the all of the island within the study area, even though urban potential is low.

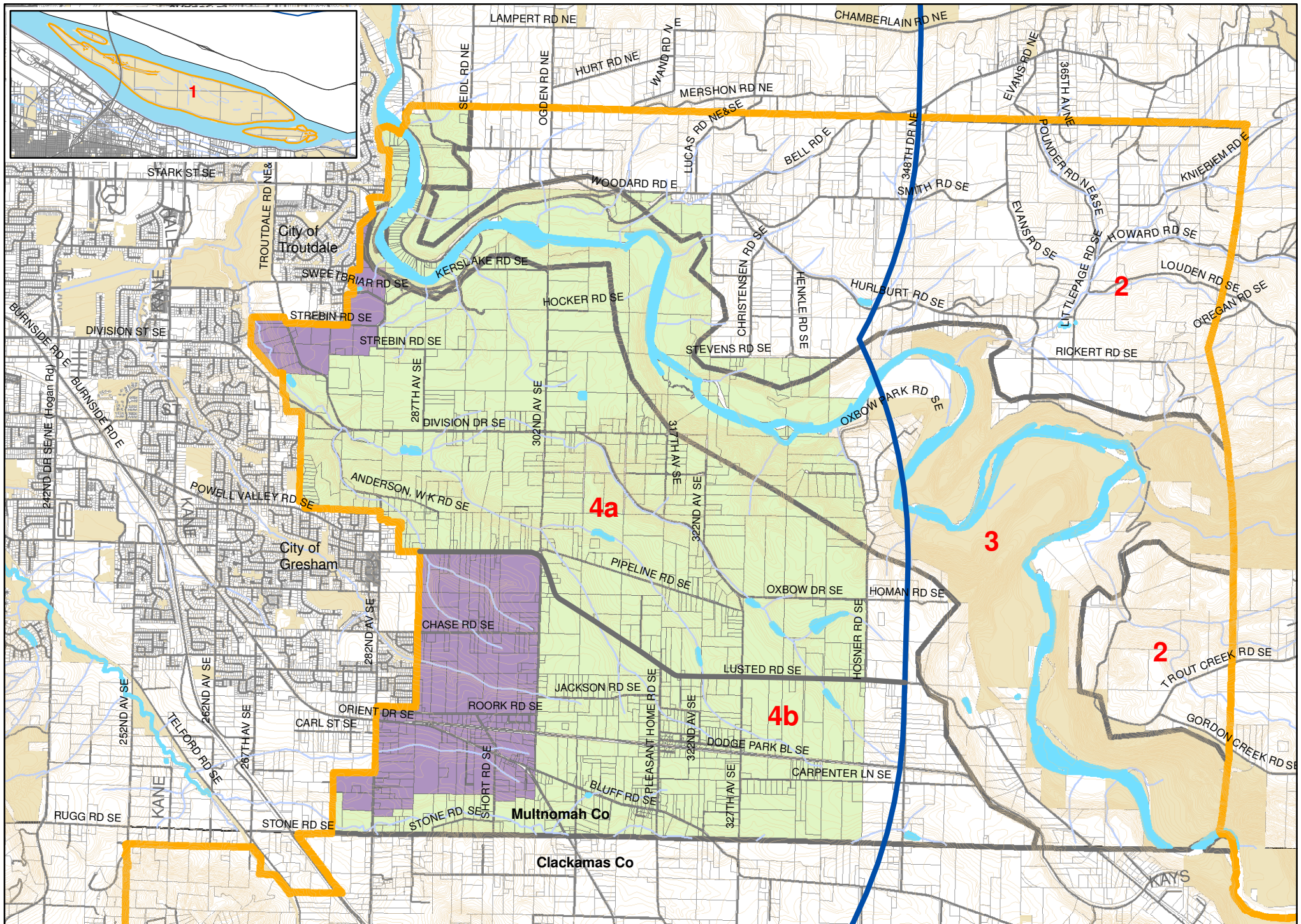
Multnomah Channel – Map Area 9: Designate areas within 2 miles of the City of Scappoose UGB and within 3 miles of the Portland Metro UGB as rural reserve.

The channel strip is mapped as foundation land and as important landscape features. Potential for urbanization from Scappoose or US Highway 30 has been noted, although topographic constraints exist and the city indicates expansion south is not the most efficient direction.

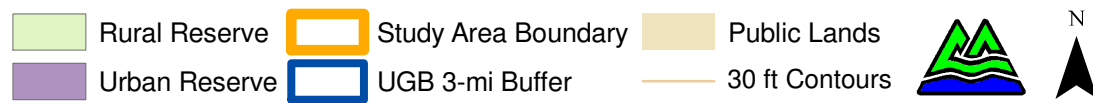
At the south end of the channel adjacent to Portland, while urban suitability is low, US Highway 30 indicates similar potential for urbanization as at the north end. Continuing the 3 mile rural reserve area in Area 5 to include the adjacent Multnomah Channel area addresses this concern.

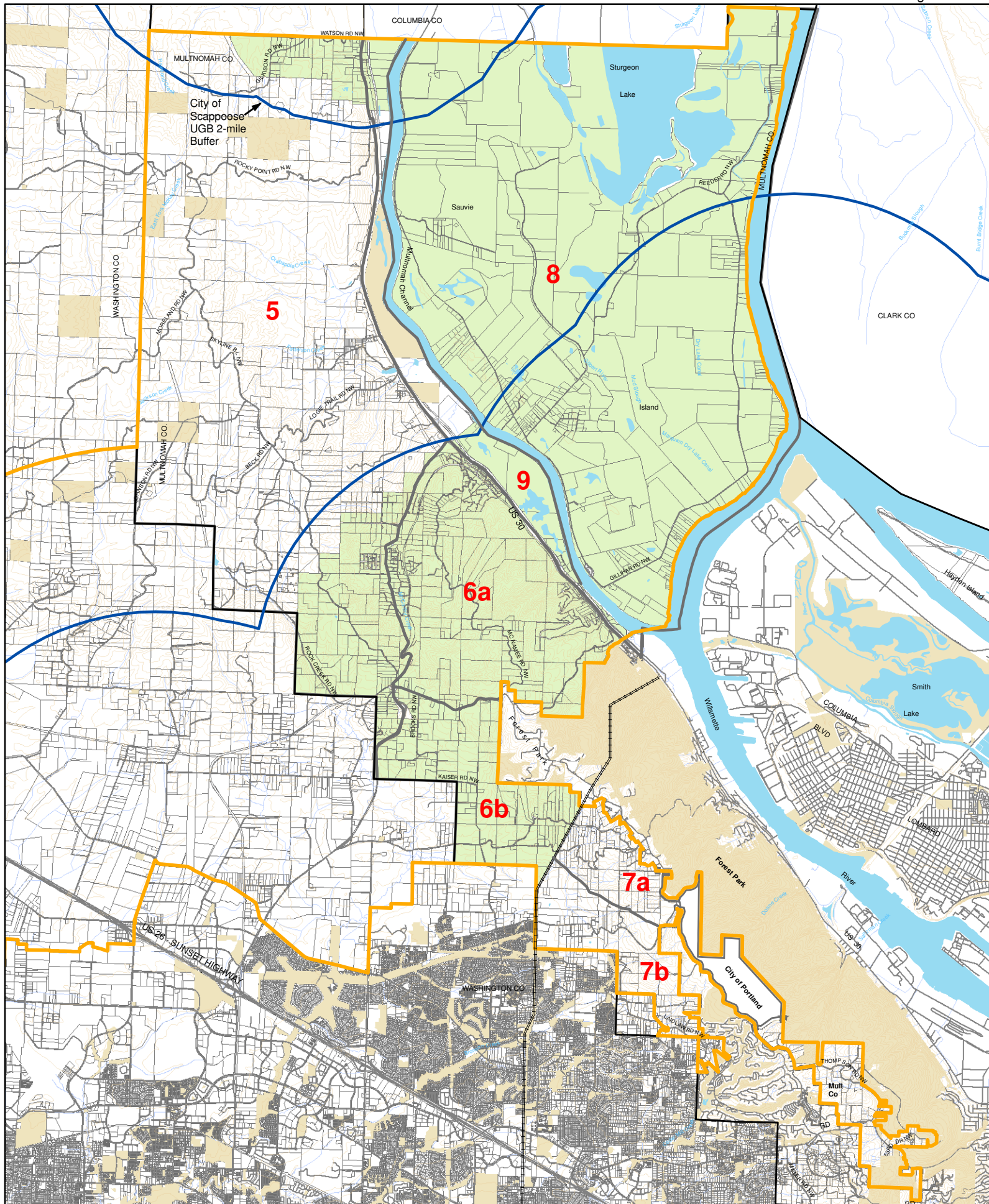
Acreage of Multnomah County Reserve Recommendations

Area		Rural Reserve Acres	Urban Reserve Acres	No Designation Acres
1	Government Islands	0	0	2,238
2	East of Sandy River	290	0	4,128
3	Sandy River Canyon	1,328	0	2,970
4a	West of Sandy River (north of Lusted Rd)	3,223	187	201
4b	West of Sandy River (south of Lusted Rd)	1,606	830	441
5	NW Hills North	2,155	0	11,448
6a/6b	NW Hills South	5,350	0	0
7a/7b	Powerline/Germantown Rd South	0	0	2,548
8	Sauvie Island	17,018	0	0
9	Multnomah Channel	734	0	748
Total:		31,704	1,017	24,722









Multnomah County Reserves Recommendations:
 Areas 1, 2, 3 & 4 - Government Island, East of Sandy River,
 Sandy River Canyon & West of Sandy River
 11/18/09





Multnomah County Reserves Recommendations:
 Areas 5, 6, 7, 8 & 9 - NW Hills North, NW Hills South,
 Powerline/Germantown, Sauvie Island, Multnomah Channel
 11/18/09

 Rural Reserve	 UGB 3-mi Buffer	 50 ft Contours	
 Study Area Boundary	 Public Lands	