Schwabe
WILLIAMSON & WYATT®

April 30, 2018

Michael C. Robinson
Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA E-MAIL

Ms. Denyse McGriff, Chair
Oregon City Planning Commission
698 Warner Parrott Road
Oregon City, OR 97045

RE: City of Oregon City File Nos. AN-17-0004/ZC-17-0005 (the "Application"); Type IV Application for Annexation and Zone Change Implementing the Park Place Concept Plan on Fourteen Tax Lots Containing Approximately 92.3 Acres

Dear Chair McGriff and Members of the Oregon City Planning Commission:

This office represents Hidden Falls Development, LLC, the Applicant (the "Applicant"). This letter is submitted while the record is open prior to the May 14, 2018 continued Planning Commission Hearing.

1. Introduction.

The Planning Commission held the initial evidentiary hearing on this Application on February 12, 2018. The Planning Commission continued that public hearing to April 9, 2018. The Staff proposed that the hearing be continued to April 23, 2018 but at the request of the Applicant, the Planning Commission continued the public hearing to May 14, 2018. The City has provided the required public hearing notices. No new notice is required for the continued public hearing because the Planning Commission continued the public hearing to a date and time certain, which it also did on February 12, 2018 and April 9, 2018.

The Applicant agrees with the Staff Report and the recommended conditions of approval, including the condition requiring a Master Plan prior to development.

This quasi-judicial Application is subject to the applicable approval criteria contained in ORS Chapter 222, Metro Code ("MC") Title 3.09 and Oregon City Municipal Code ("OCMC") Title 14 for the annexation and OCMC 17.68.020(A)-(B) for the zoning map amendment.

As the Applicant told the Planning Commission at both public hearings, it will do its best to answer questions from the public, even those that are unrelated to the approval criteria, and commits to working with the public throughout the development process. However, only testimony related to the relevant approval criteria should be considered by the Planning Commission when it makes its recommendation to the Oregon City City Commission.

One final procedural issue merits a comment.

Mr. Bob LaSalle asked the Planning Commission to grant him 15 minutes at the continued public hearing on May 14 instead of the usual 3 minutes granted all other witnesses. While the Applicant does not object to such a request if the Planning Commission wishes to do so, Mr. LaSalle neither explained why he needed five times as much time as other witnesses, or what information required 15 minutes to present. Mr. LaSalle justified his request by saying that the Staff and Applicant took 60 minutes to testify on April 9. The Applicant appreciated the comprehensive Staff Report but the Applicant's time in that hour was less than 15 minutes. While the Planning Commission is free to grant whatever times it wishes to do so to witnesses, Mr. LaSalle's request is not justified based on the amount of time granted to the Applicant and, in fact, even though the Applicant maintains the burden of proof which Mr. LaSalle does not, Mr. LaSalle's time would equal the Applicant's time.

2. The Application is Part of the Process that Brings Land into the City for Urban Development.

This Application is part of the planning process that brings land from outside of the Portland Metropolitan Urban Growth Boundary (the "PMUGB") into the PMUGB and eventually into the City for urban development. No development of urban uses or roads is proposed with this Application. The first step in the planning process is inclusion of the property into the PMUGB. This property was included in the PMUGB in 1979 and 2002.

After inclusion of this property in the PMUGB, the City prepared, adopted and obtained acknowledgement of the Park Place Concept Plan (the "PPCP") in 2008. The PPCP is the City's public facilities and land use guide for urban development and is part of the acknowledged Oregon City Comprehensive Plan (the "Plan"). The PPCP **(Exhibit 1)** implements both a land use program and the City's acknowledged public facilities plans, including the parks and trails plan, the sewer, water and stormwater plans, and the transportation system plan ("TSP").

If the City approves this annexation and zoning map amendment Application in conformance with the PPCP and the acknowledged Plan **(Exhibit 2)**, the Applicant must take two other steps to develop urban uses on the property. First, it must submit a Master Plan pursuant to OCMC Chapter 17.65 **(Exhibit 3)**. Second, it must satisfy OCMC Title 12 regarding transportation. Further, no urban development may occur on the site until the City has adopted the transportation Alternative Mobility Standards.

The Application before the Planning Commission does not allow or propose development as that term is defined in OCMC 17.04.300 and ORS 227.215(1). The Application sets the stage for future urban development, which will provide future lots, parks, trails, open space, roads and other public improvements to serve the new neighborhoods. Finally, the Applicant will submit phased subdivision plans.

At the end of all of these approvals, the City will have a complete plan for urban development showing all proposed lots, public roads, and public facilities. All of the City's acknowledged

Plans will be implemented through the Master Plan and subsequent land division approvals. The Master Plan will include a phasing plan showing how lots will be developed in phases and the implementation of public facilities, including public roads, in those phases.

3. The Application Contains Substantial Evidence Which Satisfies the Approval Criteria.

The record contains substantial evidence demonstrating that the Application satisfies the applicable approval criteria. The Application contains the information required for an annexation narrative by OCMC 14.04.050.E.7 and satisfies the annexation factors in OCMC 14.04.060. The annexation factors are satisfied because the Application demonstrates by substantial evidence that there is, or will be, adequate access to the site; that the Application conforms to the acknowledged Plan; that public facilities and services are, or will be, available to the site; that ORS Chapter 222 and MC Title 3.09 are satisfied (ORS Chapter 222 does not prohibit the creation of islands, as noted in the City Attorney's memorandum dated April 5, 2018); that no significant adverse effects on resources will be created because the Application is required to follow acknowledged Plans that protect resources; and that there is no significant adverse effects on economic, social and physical environment or community by the overall impact of the annexation.

The annexation will add new land uses to the City which will generate System Development Charges ("SDC") at the time of building permit issuance for public infrastructure improvements and will also generate real property taxes that go not only to the City and to special districts but to other governmental districts, such as Oregon City School District No. 62. The social impacts are positive because development of the proposed area will add new residents and neighbors to the City. The physical environment will be maintained because future development is required to adhere to acknowledged Plans, including the protection of identified Goal 5 resources.

The Application also satisfies OCMC's 17.68.020.A-D. The Application narrative explains how the Application is consistent with the acknowledged Plan and the PPCP. The Application explains how public facilities and services will made available to serve urban development. Finally, substantial evidence in the whole record demonstrates that the planned uses will be consistent with the City's TSP.

Issues such as vehicle speeding are irrelevant to the approval criteria for the annexation and the zoning map amendment. But, in any event, the Staff Report addresses these issues. **Exhibit 4** addresses speeding by explaining that this pre-existing issue is outside of the annexation area and speeding is controlled through law enforcement.

4. Relevant Transportation Requirements are Satisfied.

Witnesses at both public hearings raised issues concerning transportation.

A. The Planning Commission can find that the three transportation entities reviewing the Application have all found transportation approval criteria have been satisfied, or have identified how they can be satisfied **(Exhibit 5)**.

The Oregon Department of Transportation ("ODOT") has jurisdiction over state highway facilities. The Oregon Transportation Planning Rule (the "TPR"), OAR 660-012-0060(1)-(3) **(Exhibit 6)** applies to zoning map amendments. The Applicant's transportation engineer, the City and ODOT collaborated on analyzing the Application's evidence to demonstrate that the TPR was satisfied. ODOT's April 2, 2018 letter concluded that the TPR is satisfied.

The City's Transportation Engineer submitted a letter dated March 29, 2018 in which he concluded that he was satisfied with the Applicant's transportation analysis and recommended a number of conditions of approval, including a "trip cap" (allowed by OAR 660-012-0060(2)(e)) as suggested by the Applicant, the requirement for a Master Plan and various conditions of approval implementing the City's acknowledged TSP. The City's Transportation Engineer also found that the TPR was satisfied.

Finally, Clackamas County reviewed the Application's transportation analysis. With one exception, the County found the analysis to be acceptable. The single exception requested additional analysis for the intersection of Anchor and Redland. The City's transportation engineer said that the lack of an analysis of that intersection by the Applicant was "not a serious deficiency" because, in part, the City's TSP includes improvements for that intersection.

Subsequent to the County's April 6, 2018 comment, the Applicant submitted an analysis of the intersection at Anchor and Redland dated April 9, 2018 concluding that the intersection would be improved pursuant to improvements included in the City's acknowledged TSP. The County submitted a memorandum dated April 23, 2018 in which it concurred with the Applicant's April 9 analysis.

The recommended conditions of approval assure the City that all intersections and roads will meet, maintain or improve the level of service.

B. One witness testified that she believed that Annexation Factor 6 was not satisfied and that the Application adversely impacted the community because it adds "too many additional vehicle trips" to the transportation system. She also asked that Holly Lane be completed prior to annexation. She noted that none of the developments considered by the City, including this Application, included a "cumulative analysis" for transportation impacts.

The Planning Commission can reject her arguments for two reasons. First, because the Application satisfies relevant Plan policies regarding transportation and the TPR, the Planning Commission can find that this Application does not add "too many" additional vehicle trips to the system. Moreover, the recommended conditions of approval, including the requirement for a Master Plan showing phasing, conditions of approval requiring transportation improvements and deferral of urban development until the Alternative Mobility Standards are adopted, assure adequate transportation facilities for the annexation area. There is only a single Transportation

Impact Analysis (the "TIA"), prepared by the Applicant, and the three reviewing agencies found it to be adequate and demonstrate compliance with the TPR.

Second, the witness' assertion that cumulative impacts are not analyzed is inaccurate. The Applicant's TIA, just like every other TIA, includes an analysis of background conditions and vehicle trips from in-process developments (those developments in the City already approved). The Applicant's TIA at page 19 states:

> **"Background conditions analysis volumes include all City-approved development through 2035."**

In other words, the Planning Commission can find that the Applicant's TIA ***does*** account for cumulative traffic impact.

5. Relevant Approval Criteria Do Not Prohibit Development in Areas With Landslides.

Several persons testified about landslides. The Applicant and the City are concerned about landslides, as well. This is why the City will require the Applicant to demonstrate compliance with both OCMC Chapter 17.44, "US-Geologic Hazards", and 17.49 "Natural Resource Overlay District".

Furthermore, none of the annexation approval criteria require consideration of landslides. *See* Plan Policy 7.1.1, which provides for the City to regulate, not just deny, ***development*** in areas of known or potential hazards. This Plan Policy is applied at the development stage.

The annexation criteria do not require the Applicant to analyze site characteristics. However, the zoning map amendment approval criterion at 17.68.02.A requires demonstration of compliance with the Plan. The Application narrative addresses Planning Goal 7, "Natural Hazards" and concludes that future development is capable of satisfying and implementing OCMC Chapter 17.44 and 17.49. The Oregon Department of Geology and Mineral Industries ("DOGMI") map submitted into the record is neither an approval criterion nor substantial evidence directed toward approval criteria for either the annexation or the zoning map amendment.

Neither the Applicant nor staff are ignoring site conditions but those considerations apply at the development stage and not at this stage. It is clear that this property would not be inside the PMUGB and the City would not have adopted the PPCP if this area were not capable of being safely developed.

The Planning Commission can find that landslide hazard is not a relevant approval criteria for this Application.

6. Public Road Improvements on Other Private Property.

Neither the Applicant's oral nor its written testimony suggested that future public road construction will occur, or will be required to occur, on private property that it does not control. The Applicant can legally obtain rights over private property owned by others only through an "arms-length" transaction with the private property owner and obtaining their consent to a purchase and sale agreement. No evidence in the record before the Planning Commission suggests or requires that property not controlled by the Applicant will be required for public road construction.

Several people suggested the possibility of the use of eminent domain by the City of Oregon City. There is no evidence that the City would use this power when it has not been requested by anyone to do so.

The Planning Commission can find that this issue is not an applicable approval criterion. It is important for the public to know that the Applicant has not proposed nor suggested obtaining property it does not own for any kind of improvement.

7. Plan Policy 14.4.3 Does Not Prohibit the Creation of an "Island" by this Application.

Plan Policy 14.4.3 states, in relevant part:

> **"*Evaluate and in some instances*, require that parcels adjacent to proposed annexations be included to:**
> **• Avoid unincorporated islands within the City."**
> **(Emphasis added).**

Plan Policy 14.4.3 is not a mandatory policy. The Policy does not use the words "shall prohibit", which would be a mandatory direction to prohibit the creation of islands. Like ORS Chapter 222, the Plan Policy does not prohibit the creation of islands through annexations. Instead, the Plan Policy "evaluate and in some instances, require" means that the Planning Commission and the City Commission analyze the creation of islands on a case-by-case basis. In fact, compare the language in Plan Policy 14.4.3 to that in Plan Policy 14.4.1 which states "do not consider" long linear extensions of the City. This language is an example of mandatory language prohibiting an action.

This Plan Policy is intended to allow the Planning Commission and City Commission to determine if the creation of islands has an adverse effect on future development. In this case, the Staff has told the City that transportation facilities and other public facilities and services can be provided to the annexed area without the island being annexed. Further, the island has transportation and other public facilities available to them in the County.

If the Planning Commission were to prohibit the creation of an island in this case and other annexations, it would effectively stop annexations consistent with acknowledged concept plans,

as is the case here. The Plan Policy instead should be applied in a way that Plan Policy 14.3 requires: a case-by-case analysis of the creation of an island and the consideration of whether its creation will impact the provision of public facilities and services.

In this case, the Planning Commission can find based on substantial evidence in the whole record that the annexation should not be denied because the creation of an island consisting of three lots will not preclude the future provision of public facilities and services.

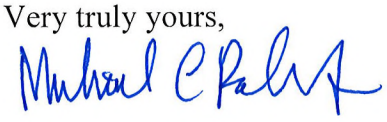
8. Conclusion.

The Applicant respectfully requests that the Planning Commission consider all of the evidence and argument before it and, after doing so, follow the Staff Report's recommendation that it recommend approval of the Application to the Oregon City City Commission.

The Applicant appreciates the opportunity to continue its discussion with the Planning Commission and the public. If the Planning Commission has additional questions or proposes new conditions of approval, the Applicant appreciates the opportunity to answer those questions and consider those conditions of approval.

Finally, the May 14, 2018 public hearing is the third hearing on the Application. The Applicant asks that the Planning Commission close the hearing and record and make a recommendation to the Oregon City City Commission on the Application, following the conclusion of the May 14, 2018 public hearing.

Very truly yours,



Michael C. Robinson

MCR/jmh
Enclosures

Cc Mr. Mark Handris *(via email) (w/encls.)*
Mr. Darren Gusdorff *(via email) (w/encls.)*
Mr. Todd Mobley *(via email) (w/encls.)*
Mr. Rick Givens *(via email) (w/encls.)*
Ms. Laura Terway *(via email) (w/encls.)*
Mr. Pete Walter *(via email) (w/encls.)*
Ms. Christina Robertson-Gardner *(via email) (w/encls.)*
Mr. Dale Kabeiseman *(via email) (w/encls.)*
Mr. John Replinger *(via email) (w/encls.)*

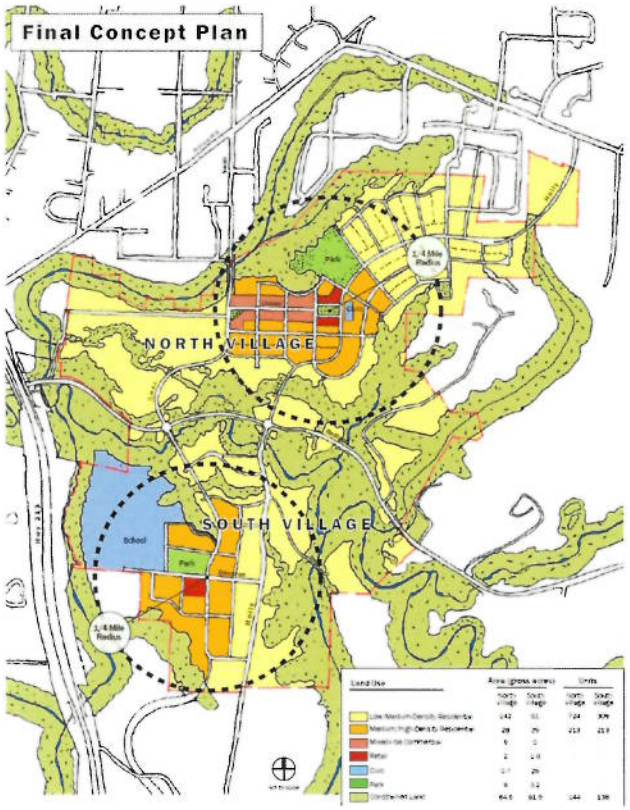
PDX\132873\238782\MCR\22850611.1

EXHIBITS

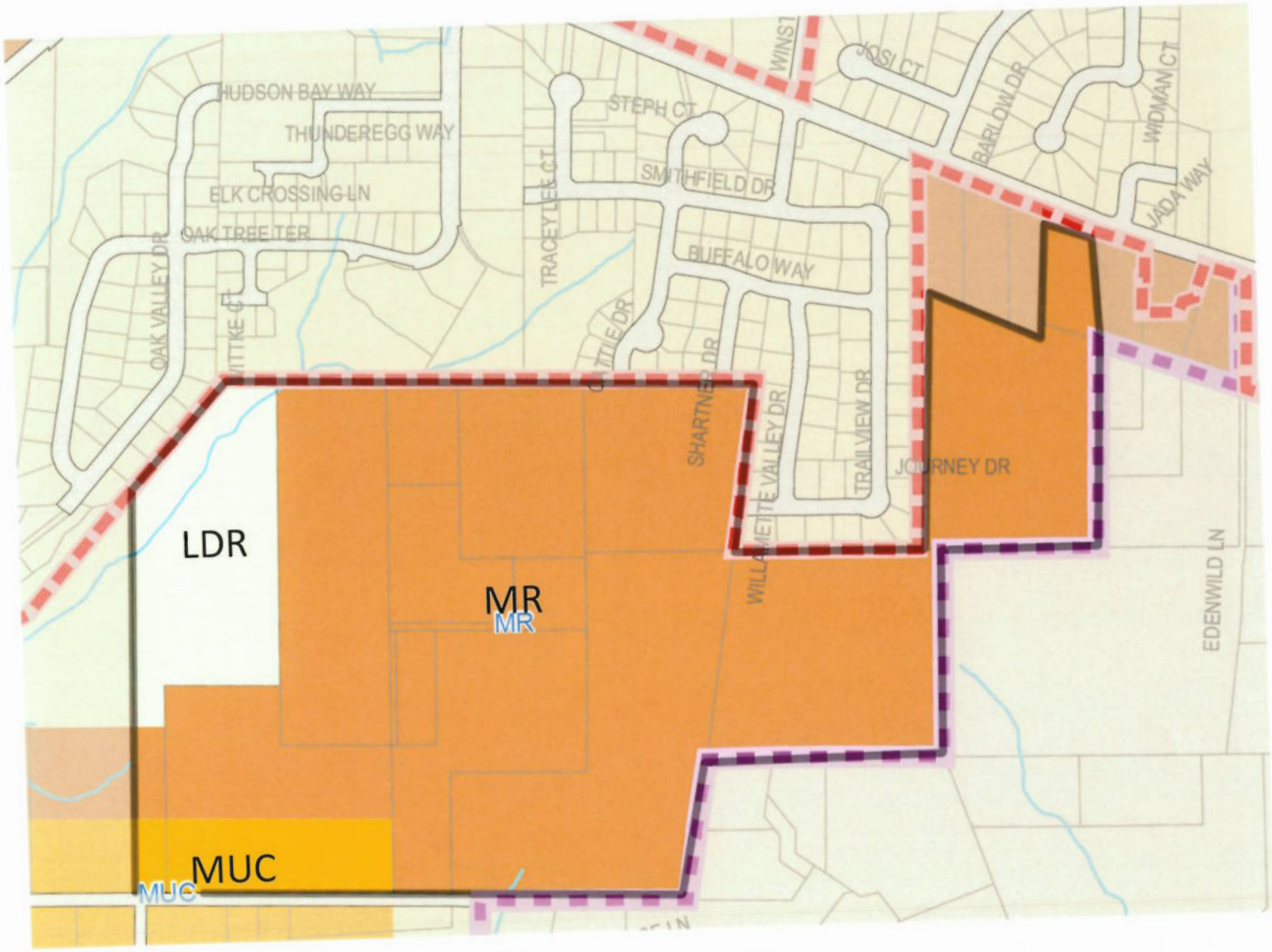
Exhibit 1	Park Place Concept Plan ("PPCP")
Exhibit 2	Comprehensive Plan Designations
Exhibit 3	Master Plan Required Prior to Development
Exhibit 4	Traffic Safety and Speeding
Exhibit 5	Transportation Conditions of Approval
Exhibit 6	Transportation Planning Rule, OAR 660-012-0060(1)-(3)

Park Place Concept Plan

- Adopted in April 2008 by Ord. 07-1007 and acknowledged by DLCD
- Complies with Metro Title 11 for the 2002 UGB Expansion Area
- Provides framework for sustainable development
- Extensive Public Process
- Part of the Oregon City Comprehensive Plan and all Subsequent Public Facilities Master Plans
- Adoption of PPCP cannot be revisited as part of this review.

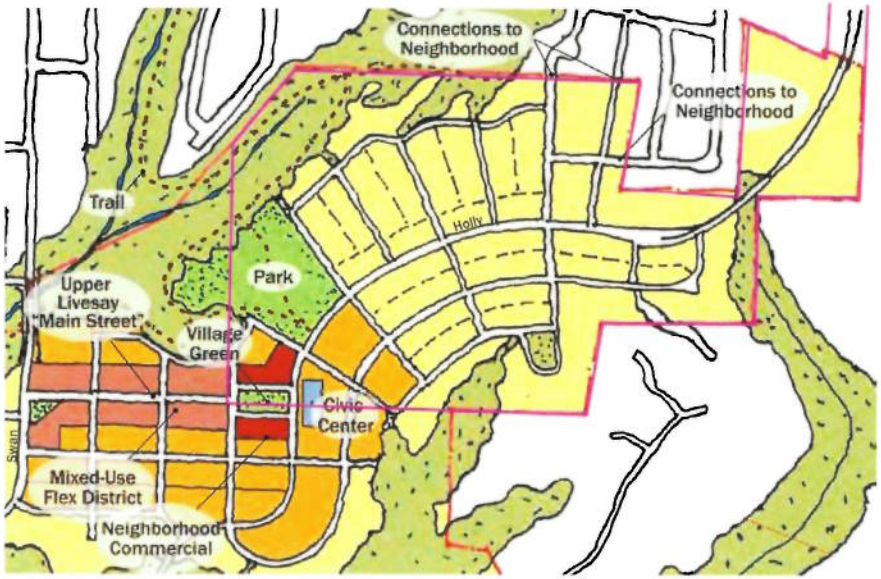


Comprehensive Plan Designations



Master Plan Prior to Development

- **Condition of Approval**
- General Development Plan for entire 92 acres
- Will address Phasing and Adequacy of Public Facilities
- Phases submitted as Detailed Development Plans
- Needs to Implement the Park Place Concept Plan



Traffic Safety and Speeding

- Speeders = Enforcement issue for OCPD / Clackamas Sheriff
- Traffic engineers analyze crash data, safety issues and speed zones, identify needed improvements in TIA
- Clackamas County Traffic Safety Committee
- Oregon City Transportation Advisory Committee

Conditions for Approval

- At the time that a Master Plan is approved, and prior to development, the developer shall participate in the proportional funding for the following transportation improvements – including:
  - I-205/OR-99E ramp terminal projects (TSP Projects D75 and D76)
  - Main Street/14th Street improvements (TSP Projects D7 and D8)
  - Abernethy/Holcomb/Redland intersection
  - OR213/Redland Road (TSP Project D79)
  - Holly Lane/Holcomb Boulevard intersection (TSP Project D43)
  - Holly Lane/Redland Road intersection (TSP Project D36)
  - Highway 213/Beavercreek Road- right-turn lane on westbound Beavercreek Road and a merge lane on northbound Highway 213 (*Alternative Mobility Study*)

Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.

(e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if:

(A) The provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards;

(B) The providers of facilities being improved at other locations provide written statements of approval; and

(C) The local jurisdictions where facilities are being improved provide written statements of approval.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity

and performance standards of the facility where:

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.