

Final Documents

For

Annexation to the
City of King City

WA4401
DOR 34-1546-2002
Ordinance #0-02-01
Sec. State: AN-2002-0030

Final to DOR: _____

Signature:

 _____

Date of
Mailing: 2/14/02

Final to Secretary of State: _____

Signature:

 _____

Date of
Mailing: 3/4/02

WA4401

Sent

Received

DOR:	2/14/02	2/27/02
Sec. State:	3/4/02	3/13/02
Assessor:	3/4/02	
Elections:	3/4/02	
Mapped:	Yes	
Posted to Web:	3/15/02	

Addresses: The following list of addresses is intended for the use of interested parties to identify properties included in this annexation and is not a part of the Ordinance passed by the City of King City.

2S116AC00100	16625 SW 131st Ave
2S116AC00200	16655 SW 131st Ave
2S116AC00300	16705 SW 131st Ave
2S116AC00400	No Site Address
2S116AC00601	16755 SW 131st Ave
2S116AC00700	16815 SW 131st Ave
2S116AC00800	16935 SW 131st Ave
2S116AC00801	No Site Address
2S116AC00900	13305 SW Fischer Rd
2S116AC01000	13345 SW Fischer Rd
2S116AC01100	No Site Address
2S116AC01200	13415 SW Fischer Rd
2S116B000101	No Site Address
2S116C000191	No Site Address
2S116DB01600	17445 SW 131st Ave
2S116DB01700	17435 SW 131st Ave
2S116DB01800	17425 SW 131st Ave
2S116DB01900	No Site Address
2S116DB02000	17325 SW 131st Ave
2S116DB02100	17275 SW 131st Ave
2S116DB02200	17235 SW 131st Ave
2S116DB02300	17215 SW 131st Ave
2S116DB02400	17175 SW 131st Ave
2S116DB02500	17145 SW 131st Ave
2S116DB02600	17075 SW 131st Ave
2S116DC01200	17555 SW 131st Ave

Proposal No. AN-0101

2S1W16

Annexation to the City of King City

Washington Co.



Area to be Included

R L I S
REGIONAL LAND INFORMATION SYSTEM



600 NE Grand Ave.
Portland, OR 97232-2736
Voice 503 797-1742
FAX 503 797-1909
Email dro@metro-region.org

METRO

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

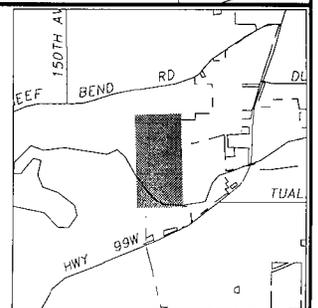
- County lines
- City
- Annexation boundary

Urban Growth Boundary

Proposal No. AN-0101
CITY OF KING CITY
Figure 1

Scale: 1" = 500'

0 500 1000



Office of the Secretary of State

Bill Bradbury
Secretary of State



Archives Division
ROY TURNBAUGH
Director

800 Summer Street NE
Salem, Oregon 97310
(503) 373-0701

Facsimile (503) 373-0953

March 13, 2002

Metro
600 NE Grand Ave
Portland, OR 97232-2736

Dear Mr. Martin:

Please be advised that we have received and filed on March 7, 2002 the following Annexation(s).

Ordinance(s):	City of:	Our File Number(s):
0-20-01	King City	AN 2002-0030
4191	Beaverton	AN 2002-0031
4192	Beaverton	AN 2002-0032
4193	Beaverton	AN 2002-0033
4194	Beaverton	AN 2002-0034
1099-02	Tualatin	AN 2002-0035

All the above Final Order(s) determination of the effective date is subject to ORS199.461 and/or ORS 222.180 and/or ORS 222.750

Our assigned file number(s) are included with the above information.

Sincerely,

Rita F. Mathews
Official Public Documents

cc: Washington County
ODOT/Highway Dept
PSU/Population ResearchCtr.
Revenue Cartography Section

Notice to Taxing Districts

ORS 308.225



Cartographic Unit
 PO Box 14380
 Salem, OR 97309-5075
 (503) 945-8297, fax 945-8737

Description and Map Approved
February 27, 2002
As Per ORS 308.225

City of King City
 Budget Officer
 15300 SW 116th Avenue
 King City, OR 97224-2693

Description Map received from: METRO
 On: 2/21/02

This is to notify you that your boundary change in Washington County for

ANNEX TO THE CITY OF KING CITY

ORD. #0-02-01

has been: Approved 2/27/02
 Disapproved

Notes:

Department of Revenue File Number: 34-1546-2002

Prepared by: Jennifer Dudley, 503-945-8666

Boundary: Change Proposed Change
 The change is for:

- Formation of a new district
- Annexation of a territory to a district
- Withdrawal of a territory from a district
- Dissolution of a district
- Transfer
- Merge

ORDINANCE NO. 0-02-01

AN ORDINANCE ANNEXING TERRITORY INCLUDING THE FORMER URBAN RESERVE AREA 47 AND TAX LOT 191 INTO THE CITY LIMITS OF THE CITY OF KING CITY AS APPROVED BY THE VOTERS OF THE CITY OF KING CITY AND CONSISTENT WITH ORS 222, CHAPTER 3.09 OF THE METRO CODE AND THE KING CITY COMPREHENSIVE PLAN.

WHEREAS, the Metro Council first established Urban Reserve Area 47 ("URA 47") in 1996 by way of Ordinance No. 96-655E. Subsequent to the designation of URA 47, the Metro Council expanded the urban growth boundary ("UGB") to include this area on December 17, 1998 by way of Ordinance No. 98-779D to provide for needed housing consistent with the acknowledged 2040 Growth Concept;

WHEREAS, a condition of approval of the UGB expansion required the City of King City to prepare a Concept Plan for URA 47 consistent with §3.01.012 and Title 11 of the Urban Growth Management Functional Plan;

WHEREAS, subsequent to the inclusion of URA 47 within the regional UGB, the Metro Council amended §3.01.012 (by way of Ordinance No. 98-772B, Sec. 2. Amended by Ordinance No. 99-818A, Sec. 3) eliminating the requirement to develop a Concept Plan prior to expanding the UGB. New provisions were added to the Urban Growth Management Functional Plan under Title 11 which require compliance with the same criteria under §3.01.012 at the time a local government adopts comprehensive plan amendments;

WHEREAS, despite the elimination of the requirement to prepare and approve a Concept Plan, the City continued to develop and prepare a plan to satisfy the condition of the UGB expansion. King City entered into a Memorandum of Understanding ("Concept Plan MOU") on February 2, 2002 with Washington County and adopted a final Concept Plan by way of Resolution No. 01-01. The preparation and adoption of the Concept Plan included notice and public hearings consistent with the City's process for a legislative decision. The Concept Plan was adopted on January 3, 2001;

WHEREAS, the City and the County began the process of amending the Urban Planning Area Agreement ("UPAA"). Washington County adopted the amended UPAA on April 25, 2000. The City Council for King City approved the amended UPAA on November 7, 2001 and directing staff to sign the new agreement. Both parties signed the amended UPAA on December 18, 2001;

WHEREAS, concomitant with the process for amending the UPAA, the City continued the necessary steps in providing for regional housing needs in URA 47 by adopting a resolution to submit the question of annexation to the registered voters within the City consistent with the King City Comprehensive Plan and City Charter. The annexation was approved on May 15,

2001;

WHEREAS, because the UGB boundary followed the natural contours of the flood plain boundary, Tax Lot 191 was bisected by the proposed annexation. To avoid the difficulties of surveying and partitioning the property prior to annexation, the property owners coordinated with Metro and the City agreed to submit the question of annexing the southern portion of Tax Lot 191 into the City of King City as authorized by Metro Code §3.09.050(g). The annexation of the southern portion of Tax Lot 191 outside of the UGB was approved by the voters on November 6, 2001. In addition King City and Washington County entered into a Memorandum of Understanding to provide a mutual plan for coordinating annexation of this area ("Annexation MOU");

WHEREAS, Metro received a petition including written consent from a majority of the electors in the territory proposed to be annexed and owners of more than half the land in the territory proposed to be annexed, before the date of the public hearing, as required by ORS 222.170 (2);

WHEREAS, the City provided notice of a public hearing before the City Council on January 2, 2002 consistent with the Metro Code Section 3.09.030 and the King City Community Development Code ("KC CDC"). The City further provided individual notice mailed to all property owners within 250' of the property consistent with ORS 197.763, 45 days prior to the hearing, posted notice within the vicinity of the affected territory and provided published notice in a newspaper of general circulation within the City;

WHEREAS, a staff report was prepared and available fifteen (15) days prior to the annexation hearing as required by Metro Code §3.09.050(b);

WHEREAS, the City has been advised in a memorandum from legal counsel dated December 20, 2001 that based on existing caselaw, the scope of the territory and the number of people impacted by the decision that the decision was legislative rather than quasi-judicial and, pursuant to KC Code §16.40.030(c), a public hearing before the Planning Commission was required in addition to the City Council hearing;

WHEREAS, consistent with that advice, the City provided a hearing before the Planning Commission as well as the City Council at the same time provided for in the mailed, posted and published notice as provided for the City Council hearing;

WHEREAS, the City conducted a hearing before the Planning Commission and City Council on January 2, 2002 and permitted the record to remain open for a period of seven (7) days subsequent to the Council hearing for additional evidence, and seven (7) days thereafter for rebuttal evidence. Further, that two (2) days after close of the hearing, parties could submit final arguments. The City Council continued the public meeting for further deliberations on January 23, 2002; and

WHEREAS, on January 18, 2002, the City Attorney submitted into the record a proposed draft comprehensive plan and community development code amendments that would apply to the subject property, and on January 23, 2002 the City Council directed that the parties could submit, by not later than January 28, 2002, any evidence in response to those proposed amendments; and

WHEREAS, on January 23, 2002 the City Council further allowed the parties to submit written comments on the proposed findings in support of the annexation by January 30, 2002, and the City Council further continued the public meeting for deliberation to the City Council meeting of February 6, 2002; and

WHEREAS, the City Council, at its February 6, 2002 meeting, considered all evidence and testimony previously provided, and deliberated; and

WHEREAS, the annexation is not contested by any necessary party under §3.09.050(e) of the Metro Code.

Now, therefore, KING CITY ORDAINS AS FOLLOWS:

Section 1. The tract of land, described in Exhibit B and depicted on the attached maps, is declared to be annexed to the City of King City.

Section 2. The findings and conclusions attached as Exhibit A are hereby adopted in support of the annexation decision. The final decision shall be reduced in writing and signed within five (5) days of the decision and mailed to Metro and other agencies as required by Metro Code §3.09.030(e). The annexation shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

Read for the first time at a regular meeting of the City Council held on the 23rd day of January 2002.

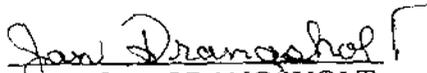
Read for the second time at a regular meeting of the City Council held on the 6th day of February, 2002

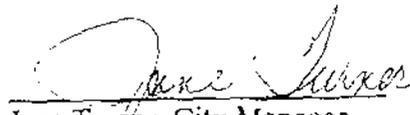
Vote: Ayes: 7
 Nays: 0

Signed and approved by the Mayor this 8th day of Feb., 2002.

CITY OF KING CITY

ATTESTED TO BY:


Mayor JAN DRANGSHOLT


Jane Turner, City Manager

FINDINGS

Based on the staff report and public hearings, and the evidence, testimony, objections and arguments presented therein, the City Council adopts the following findings in support of the decision to annex territory including URA 47 and the entire portion of Tax Lot 191. The findings are organized by based on subject areas and the directly applicable criteria. Directly applicable criteria are generally provided in bold. Where possible, specific objections raised during the public hearing are addressed with "Responsive Findings."

I. CHARACTERISTICS OF THE PROPOSED TERRITORY.

The territory to be annexed contains 113.1 acres, 23 single family dwellings, an estimated population of 57 and has an assessed value of \$8,340,770. The entire area slopes south towards the Tualatin River. There is one major drainage area running through the area to the River. The eastern portion contains acreage homesites .5 to 5 acres in size. The two largest parcels, located in the west part of the territory to be annexed, are undeveloped. The southern portion of the area lies within the 100 year flood plain.

II. PUBLIC SERVICES.

A detailed review of public services to the proposed territory was provided as a basis for developing the Concept Plan. (See Memorandum dated January 2, 2001 from Erik R. Coats, City Engineer to Keith Liden, City Planner) The conclusions and findings provided in the technical memorandum and the Concept Plan regarding public services are incorporated herein by this reference. A general review of the basic services is provided below.

Water service is provided to the City of King City via an intergovernmental agreement with the City of Tigard. There are adequately sized water lines throughout the existing City and to the east and north of the territory to be annexed. There is 3.0 million gallons of storage in the area with another 1.0 million gallon facility in the planning stage.

The City contracts with the Washington County's Clean Water Services District to provide collector sewers in the City. Clean Water Services provides treatment and major transmission lines to all of urbanized Washington County and provides collector service to some urbanized unincorporated areas. The boundary of Clean Water Services is mostly located within the regional Urban Growth Boundary since the County Comprehensive Plan prohibits sewer service outside the UGB. Until very recently URA 47 was outside the UGB, and it is not within the Clean Water Services boundary. It will be necessary to annex URA 47 into the Clean Water Services District before the District can provide service to the area. That portion of the annexed

territory outside the UGB will not be annexed into the Clean Water Services District. Adequate infrastructure exists to serve this area.

Clean Water Services has responsibility for surface water management within the Washington County urban growth boundary. Clean Water Services has entered into an intergovernmental agreement with King City for allocation of the City and the Clean Water Services responsibilities. The City owns the facilities but the District does the maintenance. As noted above, URA 47 will need to be annexed to the Clean Water Services District. That portion of the annexed territory outside the UGB will not be annexed into the Clean Water Services District. Storm drainage would generally flow to the existing drainageway through the territory. Detailed drainage plans would need to be approved as part of any future development proposals.

All recreational facilities in the City are owned, managed and operated by the homeowners associations. The territory includes one county road, SW 131st Avenue. This street is identified as a major collector north of Fischer Road. The territory is within the boundary of the Tualatin Valley Fire and Rescue District which also serves the City of King City. No change in service results from annexation to the City. The territory currently receives the basic County-wide level of police protection. Upon annexation police services will be provided by the City Police department which provides 24 hour/day protection. Planning and other services will be available from the City upon annexation.

III. PROCEDURAL ISSUES

The City provided notice of the annexation consistent with Metro Code and King City Community Development Code for quasi-judicial annexations. Individual notice was given 45 days prior to the initial evidentiary hearing to all property owners within 250 feet of the proposed territory as well as posting and publication in the local newspaper. The original notice was for a hearing before the City Council and provided a time, date and location.

Subsequent to the original notice of the City Council hearing, the City was advised by legal counsel that a reviewing body would in all likelihood find that the annexation was legislative not quasi-judicial. See Memorandum from Chris Gilmore, City Attorney to Jane Turner, City Manager dated December 20, 2001; the findings and interpretations in that memorandum are incorporated herein by reference. As a result the City chose to provide a hearing before the Planning Commission in addition to the City Council hearing to assure compliance with the legislative process provided in the King City CDC. The Planning Commission was duly convened and a Planning Commission hearing was held at the time, date and place provided for the City Council to assure the opportunity of all interested parties to present issues and discuss concerns at both hearings. The City Council hearing was conducted immediately following the Planning Commission hearing.

At the conclusion of the January 2, 2002 public hearing, the City Council closed the hearing and

opened the record to allow new evidence not later than January 9, 2002 and any rebuttal evidence to the new evidence not later than January 16, 2002. The City Council further allowed any party to submit final written argument not later than January 18, 2002. On January 23, 2002 the City Council met to consider the material presented and deliberate. Draft findings prepared by the City Attorney, in support of the annexation, were presented to the City Council. The City Council then allowed limited testimony on the sole issue of the draft findings.

A representative of opponents to the annexation attempted to introduce two letters from persons who had not appeared before. Upon review by the City Attorney, the City Council was advised the letters did not address the draft findings and were beyond the scope of the limited testimony being allowed. Therefore, the City Council instructed the City Attorney they would not review the letters. During the January 23, 2002 City Council meeting limited testimony, an opponent raised concerns with submission of the draft West King City Planning Area Comprehensive Plan and Community Development Code Amendments, having been submitted into the record of this proceeding by the City Attorney on January 18, 2002. Therefore, at the conclusion of the January 23, 2002 City Council meeting, City Council directed that parties could submit evidence into the record in response to the draft Plan and Code Amendments not later than January 28. Further, that parties could submit written comment on the draft findings by January 30, 2002. No party submitted any evidence in response to the draft Plan and Code Amendments.

On January 23, 2002, 1000 Friends of Oregon faxed a letter to the City. That letter has been reviewed by the City Attorney and the City Council has been advised that the letter does not provide any rebuttal evidence to the draft Plan and Code Amendments, nor does it provide comment on the draft findings.

The City Council finds that it has provided all interested persons opportunity to review and comment on the proposed annexation and evidence submitted. The City Council further finds that the two letters that were submitted but not accepted at the January 23, 2002 City Council meeting and the letter from 1000 Friends were not timely submitted nor offer new evidence in response to the draft Plan and Code Amendments or comment on the draft findings.

Responsive Finding: Concerned citizens argue that the procedures provided by the City were in error and that they were prejudiced in the following manner: (1) no notice was provided for the Planning Commission hearing, and (2) no open record period was provided after the Planning Commission hearing, as required for quasi-judicial land use hearings pursuant to ORS 197.763.

Consistent with the memorandum of legal counsel, the City Council finds this annexation process is a legislative decision for the purposes of determining the notice and process to be provided to interested parties.

In a legislative process the requirements under ORS 197.763 for quasi-judicial land use hearings, including the right to keep the record open for a period of seven (7) days do not apply. As such, the objection regarding an open record period subsequent to the Planning Commission hearing is

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misplaced. In addition the City notes that despite the open record period that was provided as a precautionary matter after the City Council meeting, no new evidence was submitted by those parties in opposition to the annexation.

King City Community Development Code §16.40.030(B) sets forth the quasi-judicial applications to be considered by the Planning Commission. The City Council finds that list is the exclusive list of development applications that are subject to Planning Commission review. Annexations are not in that list and, therefore, do not require Planning Commission review when they are quasi-judicial.

The City Council further finds, however, that the Planning Commission hearing was provided at the same time scheduled for the City Council hearing. As such, all interested persons had an opportunity to develop their case and present issues to the Planning Commission and, subsequently, to the City Council. As such, failure to provide notice of the Planning Commission hearing was not prejudicial to any party.

Concerns were stated that the 15 minutes allocated for the Planning Commission hearing were inadequate. However, the Planning Commission hearing actually extended to more than 2 hours and everyone present who wished to testify was allowed to do so.

In addition to the memorandum from legal counsel, the City Council adopts the following findings of fact in support the determination that this annexation is legislative: (1) the area to be annexed is equivalent to approximately 41% of the City's existing land area (113 acres in the area to be annexed and 281 acres in the City) (2) there are 57 people in the area to be annexed and only 1949 people in the City.

IV. STATUTORY PROVISIONS.

1. Contiguous.

ORS 222.111 requires annexation of territory that is contiguous with the City boundaries. The proposed annexation is contiguous with the City boundaries.

2. Double Majority Rule.

In addition to submitting the question of annexation to the registered voters of the City of King City, the statutory provisions permit annexation without a vote of the registered voters in the territory if a majority of the registered voters and the owners of more than half of the land in the territory consent in writing to the annexation. ORS 222.170. In this case a majority of the electors in the territory and owners of the majority of the land in the territory consented in writing to the annexation.

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V. METRO CODE.

Chapter 3.09 of the Metro Code governs boundary changes within the jurisdictional boundary of Metro including King City. These provisions were established based on the authority provided for under ORS 268.354 (1)(d).

The Metro Code states that a final decision shall be based on substantial evidence in the record of the hearing and that the written decision must include findings of fact and conclusions from those findings.

In addition specific minimum criteria are set forth under Metro Code §3.09.050(d)(1) through (7). Findings for each of these individual criteria are provided below. Additional findings are required under Metro Code §3.09.050(e) when there is no urban service agreement adopted pursuant to ORS 195 and the decision is contested by a necessary party. There is no ORS ch 195 urban service agreement; however, these MC §3.09.050(a) provisions do not apply because no necessary party contested the proposed annexation.

A. Metro Code §3.09.050(d)(1).

“Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.”

ORS 195 agreements are agreements between Metro and special districts and/or local governments and special districts that provide for coordinating of planning and development within the urban growth boundary. This Chapter requires agreements between providers of urban services. Urban services are defined under ORS 195.065(4) as including sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements also include which governmental entity will provide which service to which area in the long term. The counties are generally responsible for facilitating the creation of these agreements. The statute was enacted in 1993 but no urban service agreements have yet been adopted that govern the provision of services within the proposed territory.

B. Metro Code §3.09.050(d)(2).

“Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party.”

King City and Washington County are party to an Urban Planning Area Agreement (“UPAA”) that was signed on December 18, 2001. The UPAA is a coordinating agreement for development and land use planning decisions made within the Urban Planning Area (“UPA”).

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(1) *Notice and Coordination Under Section II(C) of UPAA*

Section II(C) provides additional coordination requirements for decisions “which may affect the community” but are not subject to the notice requirements under Section II(A). Those coordination provisions require a copy of the public hearing notice and agendas be provided to the county within at least three (3) days of the proposed hearing to provide the County with an opportunity to address any concerns. Although no definition is provided for decisions “which may affect the community,” the notice and process provided by the City in this case far exceeds the requirements of Section II(C). The County received notice far in advance of the three (3) day requirement provided in this section (45 days prior) and no objections to the annexation were submitted.

(2) *Notice and Coordination Under Section II(D) of UPAA*

In addition to the coordination provisions in Section II(C), Section II(D) provides express provisions governing annexations. Section II(D) states:

“The CITY and the COUNTY agree that when annexation to the CITY takes place, the transition in land use designation from one jurisdiction to another should be orderly, logical and based on a mutually agreed upon plan.”

Section II(D)(1) and (2) then provide a “mutually agreed upon plan” for converting the existing rural County zoning to an urban zoning designation within the City.

(a) *Conversion of Other than FD-10 Districts*

Section II(D)(1) of the UPAA provides that “when annexation to the City takes place, the transition in land and designation from one jurisdiction to another should be orderly, logical and based upon a mutually agreed urban plan.” Section II(D)(2) provides for land with the FD-10 District designation.

That portion of Tax Lot 191 outside the UBG has the County Plan designation RR-5. In accordance with the UPAA, the County and City entered into an MOU, dated November 7, 2001, that provides for the orderly and logical planning of this area. That MOU provides the County’s land use planning designations and regulations shall continue to apply to the annexed territory outside the UBG until such time as the City may adopt its own land use designations and regulations.

Until such time as the property is rezoned by the City, ORS 215.130(2)(a) requires the City to apply the County designation.

In addition, the City and the County entered into a Memorandum of Understanding (“Annexation MOU”) on November 7, 2001 setting forth the process for coordinating the annexation of TL

Exhibit A
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191. As part of the Annexation MOU the County does not object to the inclusion of the southern portion of Tax Lot 191 in the annexation.

(b) Conversion of FD-10 Districts

Section II(D)(2) of the UPAA provides in full:

“For land which has COUNTY rural plan designations and which have been included inside the regional urban growth boundary (UGB) by Metro, or land with the FD-10 District designation, the CITY shall be responsible for comprehensive planning, including necessary work to comply with Statewide planning goals and associated administrative rules and the Metro requirements for lands within the UGB. The CITY and COUNTY will enter into an intergovernmental agreement pursuant to which the CITY will adopt urban plan and zone designations for the land. The parties will apply the coordination provisions of Paragraph II.A.2 of the UPAA. The urban designations will not become effective and development of the land pursuant to the designations will not occur until the land has been annexed to the CITY. As an interim measure, the COUNTY will adopt the FD-10 plan designation for lands which have been included inside the UGB by Metro.”

This second provision addresses the property within URA 47 which is zoned FD-10. The purpose of the FD-10 County designation is to “provide recognition of the desirability of encouraging and retaining limited interim uses until a need for more intensive urban land use activities develops and such lands are annexed to a city.” Article III, Section 309-1 of the Washington County Community Development Code (“WA CDC”). Section II(D)(2) specifically authorizes the City, in addition to the Concept Plan MOU, to provide the preliminary comprehensive planning work provided for in the Concept Plan. In addition, Section II(D)(2) requires the County and the City to enter into an IGA to adopt plan and zone designations for the territory. The Concept Plan MOU satisfies this requirement by expressly providing that “the CITY will adopt the [Concept Plan] into its comprehensive plan and community development ordinance.” No further coordination is required.

Responsive Finding: Concerned citizens object to the City’s entering into the Annexation MOU without doing so by way of a formal ordinance and that staff are without the authority to sign on behalf of the City. The City expressly approved by motion and authorized signature of the MOU at the regularly scheduled November 7, 2001 City Council meeting. The City is not required to, nor is it the City’s practice, to enter into an MOU by way of an ordinance. Finally, the UPAA itself authorizes the City and the County to enter into a “mutually agreed upon plan” for annexation. Both the City Council and the Board of Commissioners endorsed that plan and directed staff to enter into an MOU.

Exhibit A
AN-0101C. Metro Code §3.09.050(d)(3).**“Consistency with specific directly applicable standards or criteria for boundary changes contained in the comprehensive land use plans and public facility plans.”**

The Metro Code requires compliance with directly applicable comprehensive plans. The Washington County Comprehensive Plan does not apply to this annexation decision, only the King City Comprehensive Plan applies. As discussed above, approval of development applications within the annexed area must, however, comply with the Washington County Code and Comprehensive Plan until the City rezones this area. The following findings discuss the planning provisions in the Washington County Comprehensive Plans as additional evidence of a coordinated effort to transfer jurisdiction and to provide an orderly transition for development of this area.

(A) *Washington County Comprehensive Plan*

The Washington County Bull Mountain Community Plan designates the area to be annexed as FD-10 except the portion of Tax Lot 191 which lies below the FEMA 100 Year Flood Plain elevation of 129 feet. The portion of TL 191 lying below elevation 129 is designated RR-5. FD-10 stands for Future Development, 10-acre minimum lots size. As cited above, the purpose of this District is to serve as a holding plan and zone designation to prevent premature development prior to annexation to the City and development at densities anticipated for urban lands. The RR-5 designation is Rural Residential, 5 acre minimum lot size.

Except for the portion of TL 191 below elevation 129 feet, the territory to be annexed lies within an area labeled the *Southern Lowlands* on the Washington County Plan. According to the Plan:

“The Southern Lowlands subarea is south of S.W. Beef Bend Road, west of Pacific Highway and King City, north of the Tualatin River and east of the Urban Growth Boundary. This area is characterized by gently rolling lowlands and several existing medium density developments including a mobile home park south of Fischer Road and condominiums just north of the river. Adjacent King City has an average housing density of approximately 9.6 units per acre.

South of Beef Bend Road, between SW 131st Avenue and the BPA powerline right of way, is an area of approximately 90 acres that is designated FD-10. This area, known as Urban Reserve Area 47, was brought inside the UGB by Metro in December, 1998. The FD-10 designation reflects provisions in the Washington County-King City Urban Planning Area Agreement (UPAA), which assigns responsibility for

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comprehensive planning and ultimate urban development of this area to King City.

In addition, the Plan provides:

"The approximately 89 acres of land that comprise Urban Reserve Area 47, located south of Beef Bend Road and west of SW 131st Avenue, is Area of Special Concern 9. This area was added to the UGB by Metro in December, 1998 by Metro Ordinance No. 98-779D. Accordingly, the Washington County-King City Urban Planning Area Agreement (UPAA) was amended to assign comprehensive planning and development responsibilities for this area to King City. In accordance with the provisions of the UPAA, King City will be responsible for adopting urban plan and zoning designations for the area. The urban designations will not become effective and development of the land in the area pursuant to the designations will not occur until the land has been annexed to King City. Because King City is responsible for comprehensive planning and subsequent development for the area, the FD-10 designation was applied to this area so that development to ultimate urban densities will occur when the land is annexed to the City. In accordance with the provisions of Metro Ordinance No. 98-779-D, the southern boundary of Area of Special Concern 9 is the FEMA 100 year flood plain elevation of 129 feet."

The area lying below the FEMA 100-year flood line and a small amount of territory just above that line is designated as Water Areas and Wetlands & Fish and Wildlife Habitat by the County Plan. The stream corridor which runs north to south within the area to be annexed is designated Water Areas and Wetlands on the County Plan.

Washington County reviewed its role in service provision in its County 2000 program, the County's financial management plan. The County established a policy of supporting a service delivery system which distinguishes between municipal and county-wide services. To achieve tax fairness and expenditure equity in the provision of public services the County's policy is to provide only county-wide services with general fund revenues. The County policy favors municipal services being provided either by cities or special districts.

No "specific directly applicable provisions" are found in the Washington County Comprehensive Plan. The available provisions in the Plan indicate that inclusion within the City to provide for urban services is an appropriate and logical step for this area.

B. *King City Comprehensive Plan.*

The URBANIZATION – GOAL 14 Section of the King City Comprehensive Plan from pages 21 through 23 provide for policies that apply to annexations. The language in the

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Comprehensive Plan is coordinated with the provisions in the UPAA. Both the UPAA and the policies in the Comprehensive Plan apply only to annexations within the Urban Planning Area or UPA as designated in the UPAA. See p.22 of the King City Comprehensive Plan which states "... any annexation *within the UPA* would be required to meet the following criteria: * * *." [emphasis supplied]. A map of the UPA is provided in the UPAA and generally includes the area located within URA 47. Because the southern portion of Tax Lot 191 is not in the UPA, findings on compliance with the Comprehensive Plan policies are not required for that area. However, to assure orderly transition during the annexation process, the City addressed this area. Findings are provided below.

(1) King City Comprehensive Plan Policy Annexation Policy #1

"The City may consider annexation proposals for the developed and undeveloped property within the City's UPA.

The proposed territory for annexation is generally located within the UPA. More specifically, the entire area within URA 47 is within the UPA. Because all of the annexation policies are expressly limited to annexation of areas within the UPA, this policy does not apply to the southern portion of Tax Lot 191.

Responsive Finding: Several Concerned citizens to the annexation expressed concern that inclusion of all of Tax Lot 191 within the proposed territory directly conflicts with this provisions. Based on the findings and interpretation presented below, the City Council finds this criterion does not limit the City Council's authority to annex property outside of the UPA.

First, the plain language of this provision is not a mandatory requirement that limits where annexations may take place. Instead the language in Policy #1 is permissive; the City "may" consider annexations within the City's UPA rather than "shall" or "will" consider annexations within the UPA or the City "may consider annexation proposals for the developed and undeveloped property [only] within the City's UPA." [language added]. Because this policy is permissive, the City is not limited to annexation within the UPA.

The suggested interpretation that Policy #1 is a mandatory limitation adds language to the provision that does not exist. Basic principles of statutory construction prohibit the City from adding or deleting language from the text of the Comprehensive Plan. ORS 174.010. The City's interpretation and application of this provision is not clearly contrary to the language of Policy #1.

This permissive approach to annexations within the UPA is consistent with the purpose of the UPAA and the Comprehensive Plan provisions under URBANIZATION – GOAL 14. As provided on p.21, the introductory language states:

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“By identifying the UPA outside the city limits, King City has *expressed a desire* to be apprised of planning and development actions in the area, and Washington County is obligated, by the Agreement, to notify the City of impending land use actions in sufficient time for the City to provide comments prior to land use approval by the County.

* * *

By taking an *active role in the planning of areas which are developed and within the City's UPA*, the City can influence the type and quality of developments that occur nearby in Washington County.” [emphasis supplied]

The Comprehensive Plan language is clear that the intent of the annexation policies is to provide a mechanism for taking active control over planning within the UPA. Nowhere in the comprehensive plan is there a clear expression of the City's intent to limit the authority to annex outside of the UPA. The language of Policy #1 and its context within the **URBANIZATION – GOAL 14** Section is to provide policies for “actively” planning within the UPA.

The UPAA is consistent with the distinction between planning and coordination within the UPA and outside of the UPA. Where roles and obligations of the City and County are within the UPA, language to that effect is expressly provided. For example under II(B)(2), III(A) & (B) development actions and public facilities planning responsibilities and coordination are expressly provided for “within the urban planning area.” In contrast, Section II(D) governing annexations is not limited to “within the urban planning area.” The process provided in Section II(D) requires only that the City and County provide a mutually agreeable plan to annex and follow an orderly transition in zoning. Nothing in the UPAA limits the City's authority to annex outside of the UPA.

Probably the most telling evidence of this relationship is the Annexation MOU between the two parties to the UPAA. In that document the City and County expressly agree to a process for annexing the southern portion of Tax Lot 191. See letter from Brent Curtis dated January 9, 2001.

(2) *King City Comprehensive Plan Policy #2*

“The citizens of King City shall vote on any extensions of the City's boundaries.”

The annexation of URA 47 was submitted to the voters on May 15, 2001 and approved. Annexation of the southern portion of the southern portion of Tax Lot 191 was submitted to the

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voters and approved on November 7, 2001. The results of both votes favored annexation into the City. As such, the City Council finds this criterion is met.

(3) *King City Comprehensive Plan Policy #3*

“A preplanning proposal shall be developed by the property owners and submitted to the City. The proposal shall have the following components:

- **A commitment to the future development activity to take place on the property;**
- **A method to facilitate the transition from county zoning; and**
- **The ability of future development on annexed properties to comply with the provisions of the King City Development Code.”**

The City Council finds that this provision applies only where a property owner initiates an annexation. In addition, even if this provision applies it has been met in this case because: (1) the Concept Plan and the proposed amendments to the West King City Planning Area are adequate “preplanning proposals,” (2) the Concept Plan and proposed amendments to the West King City Planning Area are evidence of the City’s “commitment” to future development on site, (3) the UPAA, Annexation MOU, Concept Plan MOU and Concept Plan provide a “sufficient method to facilitate the transition from county zoning,” and (4) the Concept Plan and the proposed amendments to the West King City Planning Area assure that future development will comply with the provisions of the King City Development Code.

The Concept Plan addresses: (1) future land uses and zoning, (2) housing types and densities, (3) commercial and retail opportunities, (4) urban facilities and services (e.g. streets, transit, pedestrian and bicycle travel), (5) transportation needs (e.g. streets, transit, pedestrian and bicycle travel), (6) parks, greenspaces, and habitat protection, and (7) school facility needs. Specific mechanisms for addressing these issues including proposed zoning are provided. These provisions are now incorporated with greater detail in the proposed West King City Area amendments. Among other things, the proposed amendments provide: (1) a new land use map including proposed zoning for the area, (2) new provisions within the King City Community Development Code governing flood plain and drainage hazards, (3) access and circulation standards and requirements for transportation, and (4) standards for residential density including new provisions for planned unit developments. Two new zones are created (R-12 and R-15) as well as a Recreational Open Space (ROS) zone. New dimensional and design requirements are also proposed. The Council finds that the planning analysis adopted by the City in the Concept Plan and the more detailed provisions proposed in the West King City Plan Area amendments provide an adequate “preplanning proposal” for the entire area. The adoption of the Concept

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Plan is evidence of the City's "commitment" to future uses in this area. The coordination in providing a transition from the existing county zoning is clearly spelled out in the UPAA and Annexation MOU as discussed under Finding III(B) above. Those findings are incorporated under this criterion as well. Finally, the new proposed amendments provide mechanisms that will assure compliance with the King City CDC. The City Council finds that Annexation Policy #3 is met.

Responsive Finding: Several Concerned citizens expressed concerns during the public hearing that no "preplanning proposal" was prepared by the property owners in compliance with annexation Policy #3.

With regard to the City's interpretation that Policy #3 applies only to property owner initiated annexations, the Concerned citizens cite to the language preceding the list of annexation policies which states that "any annexation within the UPA would be required to meet the following criteria:" Because there is no distinction based on who initiates the annexation, Concerned citizens argue that this criterion applies to the present annexation.

The City Council finds that Policy #3 assumes that a property owner submitted the proposed annexation. Any interpretation to the contrary would impose a "preplanning proposal" onto a property owner without their consent. Such a burden would further subject the City's annexation process to the discretion of a property owner. Where the City initiates the annexation, the City finds that the obligation provided in Policy #3: (1) does not apply, and (2) if it does apply it may be satisfied by the City.

As indicated above the Concept Plan for the entire area within URA 47 and the proposed amendments to the West King City Planning Area provide a "preplanning proposal" for the entire area including proposed zones, the provision of adequate public facilities, and additional regulations necessary to plan for the unique features of this area. See Concept Plan. The Concept Plan was adopted by Resolution No R-01-01

Responsive Finding: Several Concerned citizens objected to the adoption of the Concept Plan by resolution rather than by ordinance.

The requirement of adopting a concept plan for URA 47 was first imposed on the City by Metro during the UGB expansion process. Ordinance No. 98-7789D provides:

"Prior to conversion of the new urbanizable land in this ordinance to urban land available for development, an urban reserve plan shall be completed for the lands added to the Urban Growth Boundary by this ordinance consistent with Metro Code 3.01.012, as amended by Ordinance No. 98-772B, including Title 11 of the Urban Growth Management Functional Plan."

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At that time, Section 11.07.11.030 required adoption of concepts plan as part of the City's Comprehensive Plan. The former language under this provisions read:

**"3.07.11.030 Implementation of Urban Growth Boundary
Amendment Urban Reserve Plan Requirements**

Urban Growth Boundary urban reserve plans *shall be adopted as components of city or county comprehensive plans*. The adopted plan shall be a conceptual plan and concept map that shall govern comprehensive plan, land use regulation and map amendments that implement the Urban Growth Boundary amendment urban reserve plan after the territory is included in the Urban Growth Boundary." [emphasis added].

This language was deleted prior to the City's adoption of the Concept Plan on January 3, 2001. The new language under this provision reads:

**"3.07.1130 Implementation of Urban Growth Boundary Amendment
Urban Reserve Plan Requirements**

- A. On or before 60 days prior to the adoption of any comprehensive plan amendment subject to this Title 11, the local government shall transmit to Metro the following:
1. A copy of the comprehensive plan amendment proposed for adoption;
 2. An evaluation of the comprehensive plan amendment for compliance with the Functional Plan and 2040 Growth Concept design types requirements and any additional conditions of approval of the urban growth boundary amendment. This evaluation shall include an explanation of how the plan implements the 2040 Growth Concept;
 3. Copies of all applicable comprehensive plan provisions and implementing ordinances as proposed to be amended.
- B. The Council may grant an extension of time for adoption of the required Comprehensive Plan Amendment if the local government has demonstrated substantial progress or good cause for failing to adopt the amendment on time. Requests for extensions of time may accompany the transmittal under subsection A of this section.

(Ordinance No. 98-772B, Sec. 2. Amended by Ordinance No. 99-818A, Sec.

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3.)”

The proposed changes did the following: (1) eliminated the requirement to prepare a concept plan, and (2) created new requirements that apply at the time a comprehensive plan amendment is prepared. These changes eliminate the City’s obligation to adopt the Concept Plan as part of the Comprehensive Plan.

In addition to eliminating the Concept Plan requirement, Metro amended the Code by providing a new section 3.07.1120 which requires comprehensive plan amendments to comply with the exact same criteria that were required in approving the Concept Plan under the *former* Section 3.01.012(e).

Because the condition of approval to the UGB expansion required the City to prepare a plan consistent with the former requirements the City did so despite the fact that such requirements were expressly eliminated from the Metro Code. With regard to Concept Planning requirements, the current Section 3.01.012(c) states that such plans are permissive not mandatory.

In the matter of Dickert, et al. v. City of Wilsonville, LUBA No. 98-101 (Aug. 1998) LUBA considered the significance of a Concept Plan submitted by the City of Wilsonville to Metro for purposes of proceeding with amending UR 42. In that matter, LUBA, citing Central Eastside Industrial Council v. City of Portland, 128 Or App 148 (1994), found that the concept plan was not a final land use decision, nor did it satisfy the “significant impact” test set out in Billington v. Polk County, 299 Or 471 (1985) and, therefore, was not subject to an appeal. Although not a final land use decision, the City Council finds that the Concept Plan applicable to UR 47 and the Annexation MOU satisfy the “pre-planning proposal” requirements of the City Annexation Policy #3.

Responsive Finding: Several Concerned citizens argued that a “preplanning proposal” must be provided for the southern portion of Tax Lot 191. As stated above, the annexation policies apply only within the UPA and not to the southern portion of Tax Lot 191. Even if Policy #3 applies to Tax Lot 191, the City Council finds the Annexation MOU and the proposed West King City Planning Area amendments adequately address this criterion.

(4) *King City Comprehensive Plan Policy #4*

“Any extension of public services should be financed by the property owner or developer.”

As with Policy #3, the City Council finds this criterion applies only to annexations initiated by a property owner. In support of that interpretation the City finds that a City initiated annexation would unfairly impose the cost of public services on the existing property owners. In addition, the use of the singular “owner” rather than the plural indicates that this criterion applies only to a single-tract annexation not to a legislative annexation that affects a larger group of people. In

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addition, the City finds that use of the term "should" is permissive and as such, strict compliance with this criterion is not required.

Even if this criterion applies, the City finds that it is met in this case. Numerous criteria in the King City CDC assure that public services are financed as the property develops. See KC CDC §16.196.020(F) [all subdivisions shall have public facilities and services]; KC CDC §16.196.040(B) [public facilities shall be scheduled and constructed in conjunction with phased development prior to occupancy]; KC CDC §16.196.060 [partitions must provide adequate roads and streets and comply with the comprehensive plan; etc.]. In addition, Clean Water Services performs the facility planning and permitting that requires any development to provide adequate facilities with regard to sewer and stormwater control. No evidence was presented that public services will not be provided as the property develops or that existing services are incapable of providing for expansion into this area. The detailed planning analysis provided in the West King City Comprehensive Plan amendments and the technical memorandum on public services clearly show that public services can accommodate this area as it is developed. See for example p.7 of the proposed amendments which states under Urban Facilities and Services: Water that "It is anticipated that the cost of these improvements will be borne by developers on a proportional basis." Regardless of whether these amendments are adopted, they are evidence in the record that Policy #4 will be met.

Responsive Finding: Concerned citizens suggest that this Policy applies to "any annexation" including City initiated annexations and that the City has not addressed Policy #4. The findings above address Policy #4 and the City's position on it's applicability to City initiated annexations.

(5) *King City Comprehensive Plan Policy #5*

"The property owner or developer shall agree to pay all applicable City fees upon development."

As with Policy #3 and #4, the City finds that a City initiated annexation does not require compliance with Policy #5 for the same reasons provided above. It is wholly unfair to impose on the property owner and was not intended to subject the City's annexation to the discretion of a private property owner. The use of the singular "owner" as discussed under Policy #4 indicates that this Policy was not intended to apply to territories that include more than one owner.

Even if this Policy applies, the King City Community Development Code §16.44.030(B)(6) and .040(B) assure that the appropriate development fee is included with all development applications. The City finds that because this provision is mandatory that Policy #5 is met in all annexations. No separate "agreement" is required by Policy #5. Even assuming that a separate "agreement" to actually pay what is required by law is required (an interpretation that would clearly elevate form over substance), the consent of property owners in this case to become part of the City in light of the express provisions of the code satisfies this criterion.

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Responsive Finding: Concerned citizens raise similar arguments under this Policy that the City's interpretation does an injustice to the language of the Comprehensive Plan that requires application to "any annexation." The City disagrees as provided above.

Responsive Finding: Concerned citizens also object to the City initiating the annexation as being in conflict with the Comprehensive Plan which requires the City to be "neutral" on annexation.

The King City Comprehensive Plan states:

"The City policy is neutral on annexation, and all proposed actions for annexation or transfer of territory which would extend the boundaries of the City shall first be submitted to a vote of the electors, when such actions originate within the City."

The City Council finds that the City is not precluded from initiating an annexation. Neutrality in the context of this provision is achieved by submitting the issue of annexation to the voters first. Once a vote is cast, the Council is bound by the result. In this case the entire territory was voted on and approved by the Council. As such the City is "neutral" in that the Council is carrying out the wishes of the voters. To apply "neutrality" as claimed by the applicants would result in no annexations.

In addition the City finds that the expansion of the UGB in this area to meet regional needs for housing places an obligation on local governments to assure that the next step necessary for development of this area, annexation, occurs within the twenty year planning horizon. As a result the City Council finds that annexation of property within the UGB, and ancillary parcels consistent with Metro Code 3.09.050(g), is a neutral step in the planning process.

D. Metro Code §3.09.050(d)(4).

"Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan."

There are no "specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan." As such the City Council finds this criterion is met.

E. Metro Code §3.09.050(d)(5).

"Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services."

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As discussed under Finding II above there are adequate public facilities and services to accommodate development in this area. The expansion of the Metro UGB to include this area addressed the issue of providing public facilities and services to this area. See Metro Ordinance No. 98-779D. Findings for then existing Metro Code §3.01.020(b)(3) were adopted addressing the "Orderly and economic provision of public facilities and services." Those findings for URA 47 are incorporated herein by reference. In addition the public facilities and services analysis provided in the Concept Plan, the West King City Planning Area amendments and the technical memorandum are also incorporated herein by reference.

That exhaustive analysis provides the following general conclusions:

1. Water. Water services can be provided by King City through the Intergovernmental Agreement with City of Tigard and surrounding communities generally referred to as the Tigard Water District. Specific improvements to the water system infrastructure are contemplated in the water master plan that will assure adequate facilities;
2. Stormwater. Clean Water Services ("CWS") provides planning, standards and permitting review for stormwater protection. Specific policies are proposed as part of the comprehensive plan amendments to address any potential problems with runoff including new provisions on flood plain and drainage hazards. The technical memorandum provides shows the existing drainage system. New development must meet the standards required by CWS.
3. Sewer. Sanitary sewer is also provided by CWS. The technical memorandum provides specific recommendations for improving the sanitary sewer system. As discussed, any developer will be required to meet CWS standards and to provide for necessary off-site improvements where necessary to assure adequate infrastructure is in place.
4. Streets. A transportation analysis was conducted concomitant with development of the Concept Plan. Based on that analysis the City developed a classification system for transportation facilities and standards to assure that adequate infrastructure is in place and to mitigate impacts from development. In particular, a new Chapter 16.212 provides for neighborhood circulation. The Oregon Department of Transportation was notified regarding the proposed annexation and no objections were received. The transportation analysis indicates that full build-out will have no significant impact on 99W. Any additional concerns regarding access and circulation will be addressed by the development code and the proposed amendments. Specific impacts may be addressed when development applications are submitted to the City for review.

Responsive Finding: Concerned citizens main substantive objection to the annexation is the concern regarding access as the property develops. The City finds that the specific issue regarding whether adequate access will be provided will be addressed through the development review process. In addition the proposed transportation circulation in the Concept Plan and the

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new amendments will address this issue and assure that projects mitigate for any impacts that create an unacceptable level of service on the local street system. The City Council finds that because there is no change in use resulting from the proposed annexation, that the concerns regarding access to and from any future development and their potential impacts on property owners outside of the area is speculative and premature. Issues of access would be addressed after annexation and during the planning and development of the territory.

F. Metro Code §3.09.050(d)(6).

“If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval.”

No annexation to Metro is proposed. This criterion does not apply.

G. Metro Code §3.09.050(d)(7).

“Consistency with other applicable criteria for the boundary change in question under state and local law.”

Other applicable criteria for state and local law are addressed elsewhere in these findings and are incorporated herein. King City CDC §16.80.050(A) & (B) discusses zoning of annexation areas and annexation agreements. Subsection (A) applies at the time of the comprehensive plan and zone amendment. Subsection (B) is permissive and does not apply to this particular annexation, no agreement is proposed

OAR 660-012-0055 (3) requires all cities and counties that have not adopted land use and subdivision ordinances required for the implementation of a Transportation System Plan (OAR 660-012-0045) to apply certain provisions of that rule (OAR 660-012-0045(3), (4)(a)-(f) and (5)(d)) directly to all land use decisions. These provisions appear to be imposed for purposes of assuring, during the land use planning process, consideration of safe and convenient pedestrian, bicycle and vehicular circulation; support of public transit and reducing reliance on the automobile. Although such considerations are more appropriate during application of land use designation or development of the property, annexations have been deemed land use decisions, Peterson v. Mayor and Council of City of Klamath Falls, 279 Or. 249 (1977), and although these provisions may not be applicable to an annexation decision they are considered below.

OAR 660-0012-0045(3) requires local governments to consider certain facilities, standards and criteria for purposes of providing safe and convenient pedestrian, bicycle and vehicular circulation. OAR 660-012-0045(4)(a)-(f) requires local governments to consider certain facilities, networking, systems and connections supportive of transit. The annexation of territory by a city merely changes the jurisdictional authority over territory and does not provide for

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consideration of land use or subdivision regulations that address these matters. However, in developing the Concept Plan for UR #47, goals were developed for the area, consistent with Metro Code and state planning requirements. Those goals, including Transportation, are being addressed in the West King City Planning Area Comprehensive Plan and Community Development Code Amendments. The proposed comprehensive plan amendments, among other things, address street networking that provides for pedestrian and bicycle circulation and transit services. Adoption of the West King City Planning Area comprehensive plan and development code amendments, and any subsequent land use development processes will satisfy consideration of OAR 660-0012-0045(3) and (4)(a)-(f).

OAR 660-012-0045(5)(d) provides for local governments, in the alternative to implementing a parking plan pursuant to OAR 660-0012-0045(5)(c), to provide revised parking ordinances, including reducing off street parking for non-residential uses, leased and shared parking and parking structures and lots. As stated above, the annexation of territory merely changes the jurisdictional authority over the territory. Further, in the matter of the area to be annexed it will be planned, in accordance with the West King City Planning Area comp plan as residential and therefore, this rule is not applicable.

H. Metro Code §3.09.050(g).

“Only territory already within the defined Metro Urban Growth Boundary at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and without the Urban Growth Boundary.”

The proposed annexation territory includes a portion of Tax Lot 191 that is “within and without” the UGB consistent with this section.

Responsive Finding: Concerned citizens object to inclusion of the southern portion of Tax Lot 191 as inconsistent with the statewide planning goals. A summary of arguments supporting this assertion include: (1) the annexation is not “controlled” as is required under OAR 660-061-0310 because it is in violation of the City’s Comprehensive Plan, and (2) the annexation will permit use of Tax Lot 191 for density credits thereby permitting an urban use in violation of goals.

There are no statutory provisions or state administrative rules prohibiting the extension of a city boundary outside an urban growth boundary. Metro Code 3.09.050(g) specifically allows for annexation of such territory and is an adopted acknowledged land use regulation. Metro was expressly authorized to adopt boundary change criteria as provided under ORS 268. Under ORS 197.175(d) and OAR 660-061-0310, the statewide planning goals do not apply to this annexation. The mere fact that the City rather than the County will be applying the existing regulatory framework adopted by the County does not raise a goal compliance issue.

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The only case the City Council is aware of holding that an annexation must comply with the goals is Petersen v. City of Klamath Falls, 279 Or 249, 566 P2d 1193 (1977 ("*Petersen*"). However, *Petersen* is no longer of precedential value because the statutory provisions relied on in that case were subsequently amended by House Bill 2225 during the 1981 legislative session. The amendments now codified at ORS 197.175(2)(c) & (d) include the concept of acknowledgment.

Any argument that Metro Code 3.09.050(g) itself is inconsistent with the goals is a collateral attack on the original adoption of that provision. The time for contesting Metro Code goal compliance was the time of adoption. That time period has since passed.

Although caselaw suggests that a "conversion" of land from rural to urban uses generally requires an amendment to the urban growth boundary or an exception to the statewide planning goals under Goal 2, an annexation does no such thing. Under ORS 215.130 and the Annexation MOU, the county plan designations will continue to apply to Tax Lot 191. As a result no urban uses will be permitted on site and no "conversion" will take place. Therefore Metro Code 3.09.050(g) does not in and of itself implicate Goal 14. The County, in designating the territory outside the UGB, took an exception to Goal 3; the City will address whether an exception to Goal 14 is required at the time the property outside the UGB may be rezoned.

The City is fully capable of supervising land use planning and development in this area. The City finds that it can and will comply with the goals once the city assumes primary responsibility for comprehensive planning in the area to be annexed. 1000 Friends of Oregon v. LCDC, 301 Or 447, at 471, 724 P2d 268 (1986). The requirements of OAR 660-061-310 that the annexation will be "controlled" is met in this case given the proposal is in compliance with the City's Comprehensive Plan, the Metro Code, ORS 222 and properly coordinated under the UPAA and MOU with the County. Finally, the Concept Plan provides substantial evidence in the record that it is feasible for the City to assume responsibility for goal compliance and to assure the same at the next stage of the proceeding where comprehensive plan amendments would apply.

EXHIBIT B

LEGAL DESCRIPTION FOR ANNEXATION TO THE CITY OF KING CITY OF METRO PLANNING AREA 47 INTO THE URBAN GROWTH BOUNDARY

August 23, 2001

THE FOLLOWING DESCRIBED LAND BEING A PORTION OF THE DULY RECORDED PLAT OF "PEACHVALE AS WELL AS OTHER LANDS, SITUATED IN THE NORTHEAST, NORTHWEST, SOUTHEAST, AND SOUTHWEST QUARTERS OF SECTION 16, TOWNSHIP 2-SOUTH, RANGE 1-WEST OF THE WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON.

BEGINNING AT THE SOUTHEAST CORNER OF THAT LAND AS DESCRIBED IN DEED RECORDING No. 88-018012, BEING ON THE WEST LINE OF THE DULY RECORDED PLAT OF "PEACHVALE", LOCATED S 89°16'20" W 2450.23 FEET ALONG THE NORTH LINE OF SECTION 16, AND S 00°22'17" E 1630.30 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 16; THENCE DESCRIBING THE PROPERTY TO BE ANNEXED, ALONG THE WEST LINE OF THE PLAT OF "PEACHVALE" N 00°22'17" W 134.78 FEET TO A 5/8-INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF THAT LAND AS DESCRIBED IN DEED RECORDING No. 98-145665; THENCE EASTERLY ALONG THE SOUTH LINE OF LAST SAID DEED AND THE EASTERLY EXTENSION THEREOF, AND PARALLEL WITH THE NORTH LINE OF LOT 12, "PEACHVALE", 848.00 FEET MORE OR LESS TO THE EASTERLY RIGHT OF WAY LINE OF S.W. 131st. AVE. (CR. 1201); THENCE SOUTHERLY ALONG THE MEANDERING EASTERLY RIGHT OF WAY LINE OF S.E. 131st. AVE. 2722.00 FEET MORE OR LESS TO AN INTERSECTION WITH THE EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 32 "PEACHVALE", AS DESCRIBED IN DEED RECORDING No. 88-029661; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID LOT 32, AND THE EASTERLY EXTENSION THEREOF 850.00 FEET TO THE SOUTHWEST CORNER OF LOT 32, "PEACHVALE"; THENCE ALONG THE WEST LINE OF THE PLAT OF "PEACHVALE, S 00°22'17" E 1070.00 FEET MORE OR LESS TO THE THREAD OF THE TUALATIN RIVER, BEING THE SOUTHEAST CORNER OF THAT LAND AS DESCRIBED IN DEED RECORDING No. 93-086910; THENCE NORTHWESTERLY, UP STREAM ALONG THE THREAD OF THE TUALATIN RIVER 1100.00 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF LAST SAID DEED; THENCE N 00°35'03" W 2910.00 FEET MORE OR LESS ALONG THE WEST LINE OF LAST SAID DEED TO THE SOUTHWEST CORNER OF THAT LAND AS DESCRIBED IN DEED RECORDING No. 88-018012; THENCE ALONG THE SOUTH LINE OF LAST SAID DEED N 89°37'43" E 786.94 FEET TO THE POINT OF BEGINNING.

CONTAINING: 113.1 ACRES, MORE OR LESS.

Proposal No. AN-0101



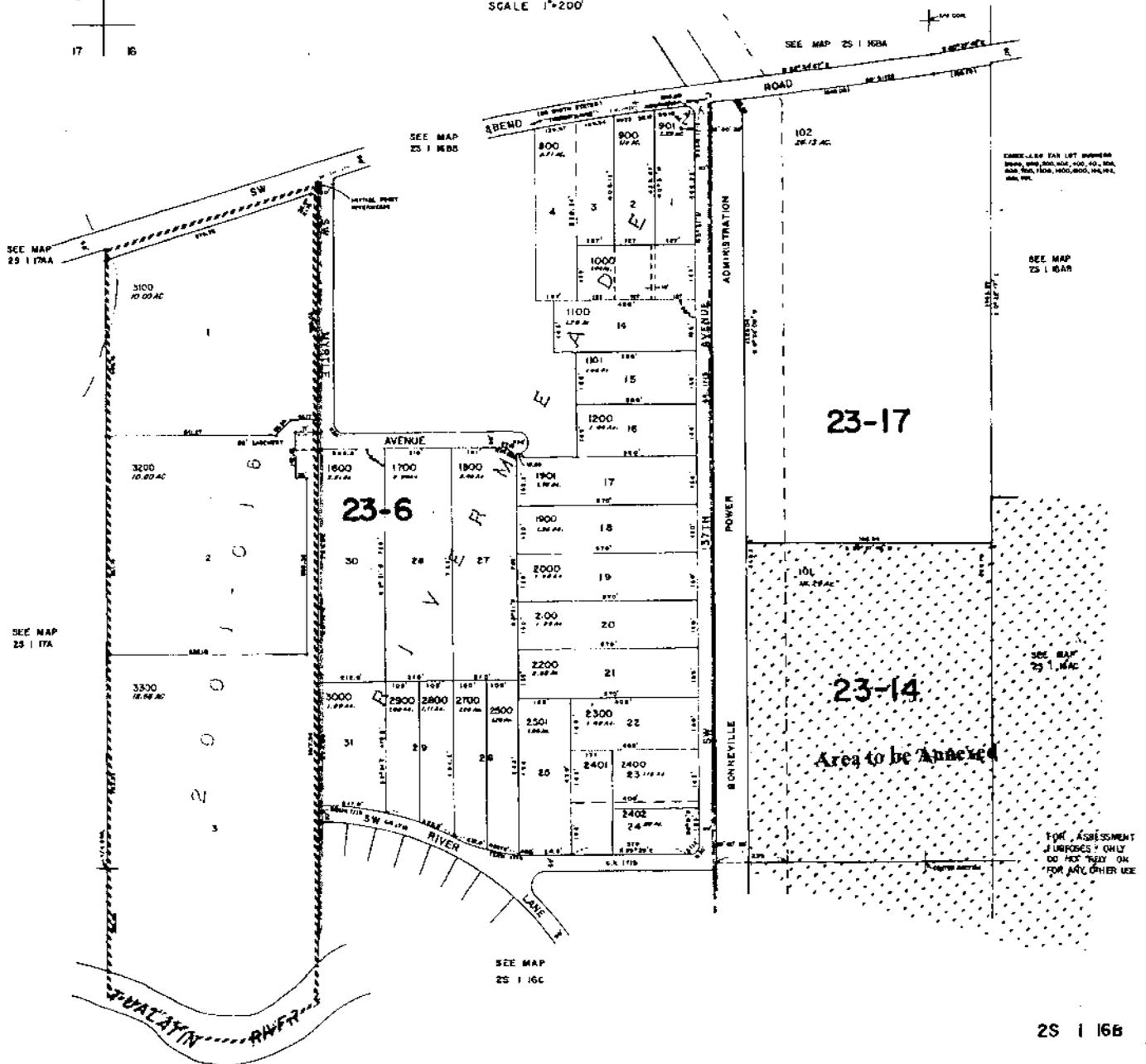
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Annexation to the City of King City
Washington Co.
Map 2S1W16B

NW1/4 SECTION 16 T2S R1W W.M.
WASHINGTON COUNTY OREGON
SCALE 1"=200'

2S 1 16B

8 9
17 16



PROPOSAL NO. AN-0101
CITY OF KING CITY
Figure 2b

2S 1 16B

Proposal No. AN-0101

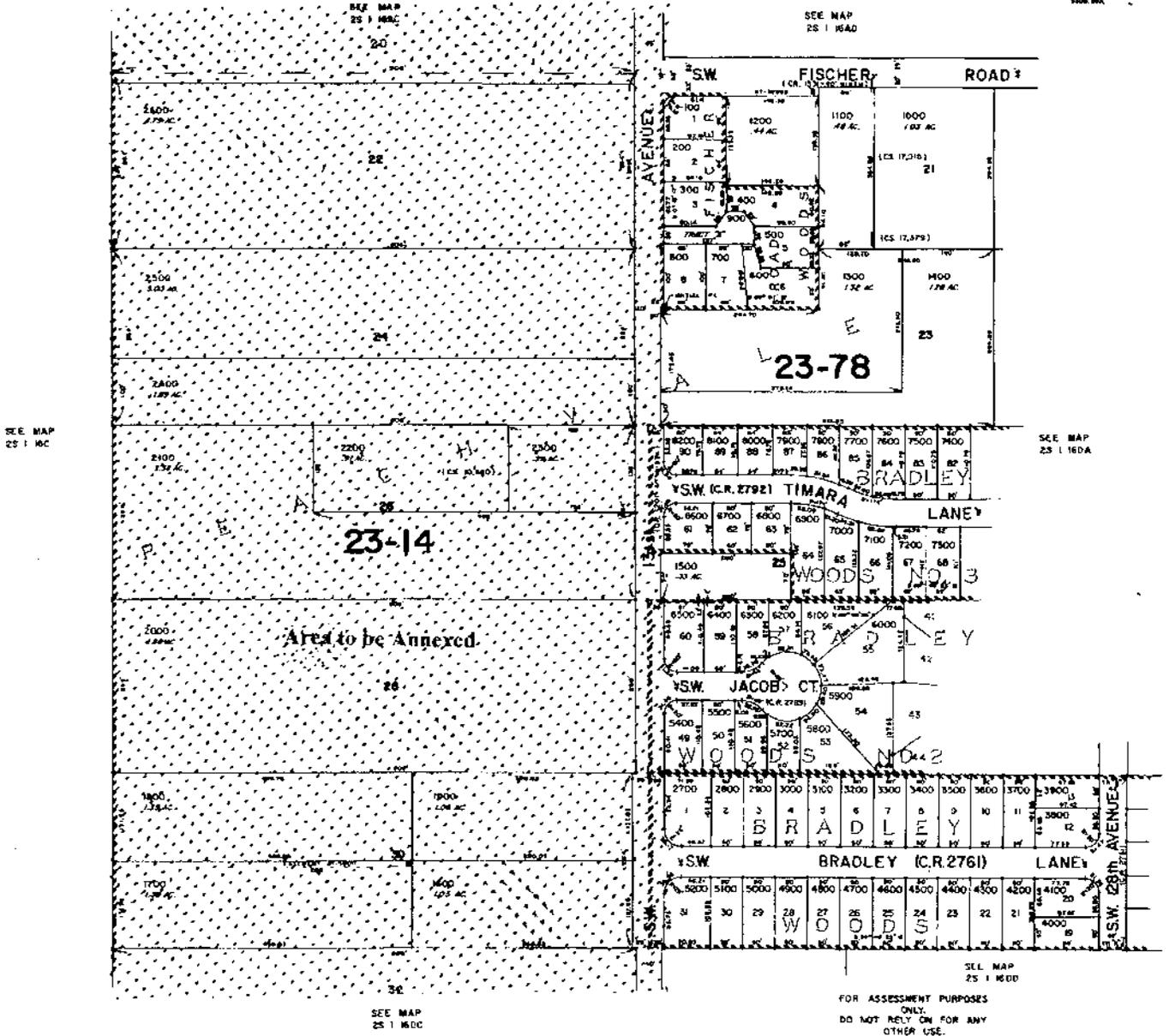


600 NE Grand Ave.
 Portland, OR 97232-2736
 Voice 503 797-1742
 FAX 503 797-1909
 Email drc@metro-region.org

Annexation to the City of King City
 Washington Co.
 Map 2S1W16DB

NW 1/4 SE 1/4 SECTION 16 T2S R1W W.M.
 WASHINGTON COUNTY OREGON
 SCALE 1"=100'

2S 1 16DB



2S 1 16DB

PROPOSAL NO. AN-0101
 CITY OF KING CITY
 Figure 2d

Proposal No. AN-0101



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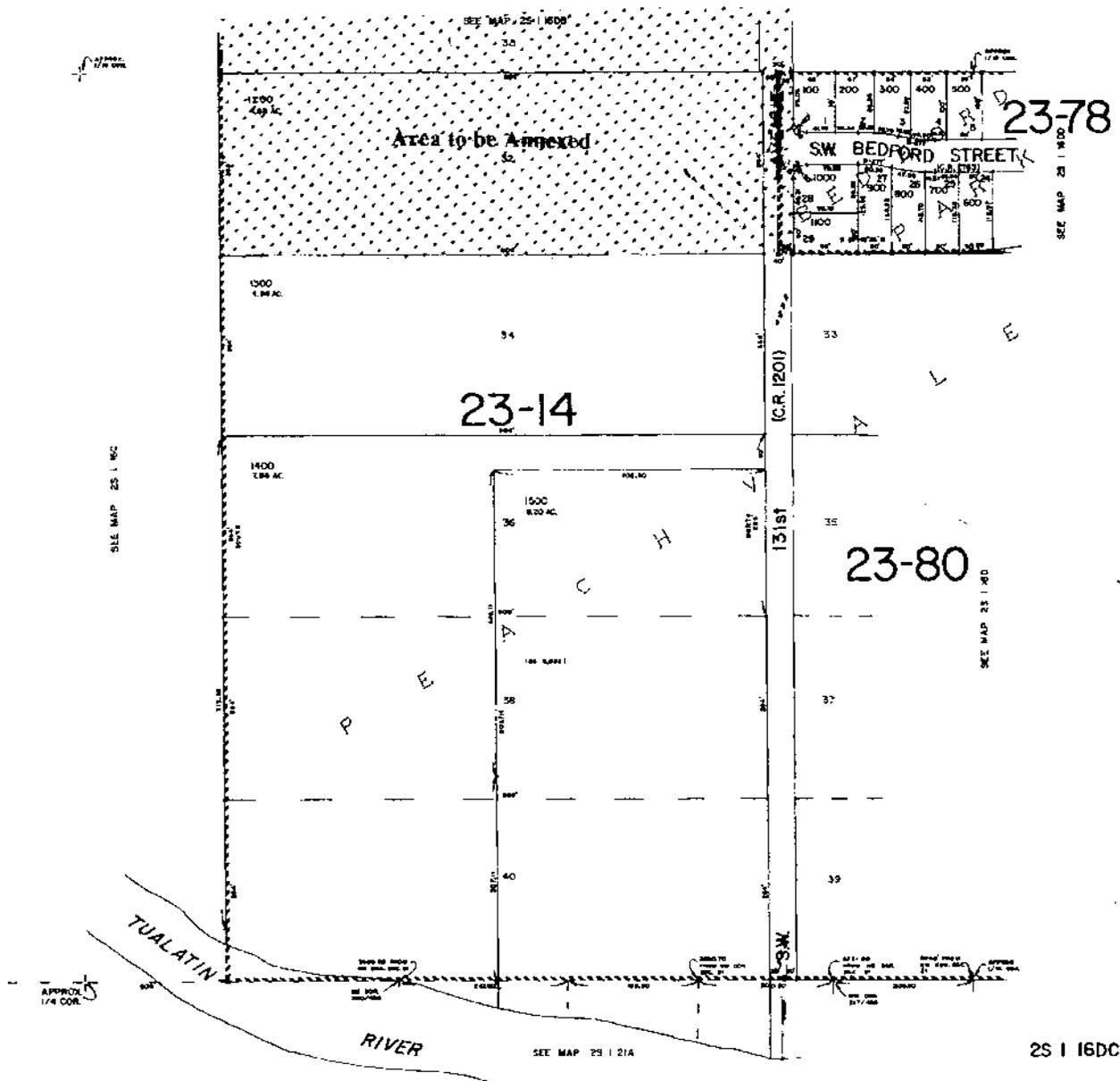
Annexation to the City of King City
Washington Co.
Map 2S1W16DC

FOR ASSESSMENT PURPOSES
ONLY. DO NOT RELY ON
FOR ANY OTHER USE

SW 1/4 SE 1/4 SECTION 16 T2S R1W W.M.
WASHINGTON COUNTY

2S 1 16DC

SCALE 1"=100'



PROPOSAL NO. AN-0101
CITY OF KING CITY
Figure 2c