

RESOLUTION NO. 1609

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH MULTNOMAH COUNTY TO TRANSFER LAND USE PLANNING RESPONSIBILITIES WITHIN THE URBAN PLANNING AREA

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. On June 11, 1998 the City of Troutdale and Multnomah County entered into an urban planning area agreement regarding planning for urbanizable lands within Troutdale's urban planning areas; and,
2. The agreement stipulated that following the County's adoption and application of the City's comprehensive plan and implementing regulations to the unincorporated territory within the City's Urban Planning Area, the County would transfer the responsibility for implementing and administering these regulations to the City; and,
3. On January 31, 2002 the County adopted the City's comprehensive plan and implementing regulations for these unincorporated lands; and,
4. The City of Troutdale and Multnomah County now desire to transfer land use planning responsibility for these unincorporated lands from the County to the City.

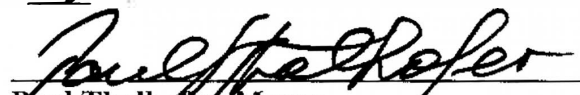
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. The Multnomah County - City of Troutdale Intergovernmental Agreement attached hereto is hereby approved; and,


Section 2. The Mayor of Troutdale is authorized to sign said agreement on behalf of the City Council; and,

Section 3. This resolution shall take effect immediately

YEA: 6
NAY: 0
ABSTAIN: 0



Paul Thalhofer, Mayor
Dated: 6-13-02



Debbie Stickney, City Recorder
Adopted: June 11, 2002

**INTERGOVERNMENTAL AGREEMENT TO TRANSFER LAND USE PLANNING
RESPONSIBILITIES**

BETWEEN

CITY OF TROUTDALE AND MULTNOMAH COUNTY

This is an Intergovernmental Agreement to Transfer Land Use Planning Responsibilities, hereinafter the "Agreement", between MULTNOMAH COUNTY, hereinafter "County", a home rule County and a political subdivision of the State of Oregon, and the CITY OF TROUTDALE, hereinafter "City", a home rule City and a political subdivision of the State of Oregon.

RECITALS:

- A. The City and County are authorized under the provisions of ORS 190.003 to 190.030 to enter into intergovernmental agreements for the performance of any or all functions that a party to the agreement has authority to perform. This Agreement is made pursuant to the authority granted by ORS Chapter 190;
- B. The City and County entered into an Urban Planning Area Agreement (hereinafter "UPAA") dated June 11, 1998. The UPAA provided for the coordination and orderly conversion of unincorporated urbanizable land in the County to urban uses and authorized the City to prepare applicable comprehensive plan and implementing ordinances for the County's urban areas. This planning work will be completed by the County's adoption of the City's applicable land use regulations, comprehensive plan and zoning through County Ordinance;
- C. The UPAA also directed the City to complete work required to enable the County to comply with the METRO Urban Growth Management Functional Plan; and
- D. Under Sections I .A and B of the UPAA, the County agreed to transfer to the City responsibility for implementing and administering comprehensive plan and zoning regulations for all County unincorporated areas within the City's Urban Services Boundary. The UPAA provided that the transfer of functions could be accomplished through a separate agreement between the County and City.

NOW, THEREFORE, THE CITY AND COUNTY DO MUTUALLY AGREE AS FOLLOWS:

I. INTENT OF AGREEMENT

- A. This Agreement implements Sections I.A and B of the UPAA by transferring responsibilities for implementing and administering comprehensive plan and zoning regulations from the County to the City for properties within unincorporated Multnomah County that are within the City's Urban Services Boundary, the METRO Urban Services Area and Urban Growth Boundary;
- B. The area that is subject to this Agreement is defined as depicted in Exhibit A of Ordinance No. 973, attached to this Agreement (hereinafter the "Affected Area").

The Affected Area, in general, includes all of the properties within unincorporated Multnomah County that are also within Troutdale's Urban Services Boundary.

- C. The full costs to the City of transfer of land use planning and zoning responsibilities and performance of services under this Agreement shall be paid by fees for land use services.
- D. All actions specified by this Agreement shall be taken to assure that the County's comprehensive plan, comprehensive plan map, zoning map, zoning ordinances, and regulations for land divisions, signs, erosion control and stormwater disposal, grading and floodplain review remain consistent with the City's. The County has adopted the City comprehensive plan, comprehensive plan map, zoning ordinance zoning map and regulations for land divisions, signs, erosion control and stormwater disposal, grading and floodplain review (hereinafter "Land Use Regulations") as the County's for the Affected Area and intends to adopt future amendments to the City's Land Use Regulations. The City intends to administer the same codes and regulations for County properties in the Affected Area as it does for City properties.
- E. This Agreement does not expressly promote annexation of properties in the Affected Area to the City. However, the City and County recognize the City's intent to annex within its established urban services boundary according to City/County agreements such as the UPAA and as described in the City's urban services policy and comprehensive plan. Furthermore, the City and County understand that approval of requests for zone changes or comprehensive plan amendments that require new urban services, the extension of urban services or that increase density over allowed density under adopted zoning will be contingent on annexation.
- F. If any property in the Affected Area annexes to the City or is removed from the City's Urban Services Boundary, it will no longer be subject to this Agreement.

II. DELEGATION OF AUTHORITY

The County agrees to delegate to the City any and all authority that it possesses and which is needed by the City to carry out land use planning and zoning implementation for the Affected Area. The effective date and terms of the delegation of authority are as provided for in this Agreement and County Ordinance No. 973. Among the actions that the County authorizes the City to take in the Affected Area pursuant to this Agreement are those enumerated in Section III.C. below which are hereby incorporated into this Delegation of Authority by reference. This delegation of authority should be construed broadly.

III. RESPONSIBILITIES OF THE PARTIES

A. Fees and Costs.

1. General Provisions

It is the intention of the parties that costs and expenses incurred by the City in performing tasks described in Section III.C. of this Agreement shall be paid or reimbursed by City's collection and retention of application fees. For purposes of

this Agreement, "costs and expenses incurred by the City" include without limitation employee salaries, fringe benefits and City overhead attributed to such employees, expenses incurred for publication and mailing related to land use reviews and services, provided such costs, expenses and fees are attributed to applications which the City processes under this Agreement. Operational costs are to be covered by:

- a. the fees collected for development applications or other services according to the schedule adopted by the City for development review;
- b. payment of attorney fees by the County to the City for appeals of land use decisions to the Land Use Board of Appeals, the Court of Appeals and the Oregon Supreme Court.

2. The Fee Schedule

a. Establishment

Fees for land use applications and zoning services in the Affected Area have been established through the City's fee resolution.

b. Amending the Fee Schedule

The City, annually or as determined by need, amends its fee schedule to cover costs of services. The fees established for services and applications for properties in the Affected Area may also be amended at the same time.

3. Costs of Land Use Appeals

The City, through the City Attorney's Office, will represent the County in appeals to the Land Use Board of Appeals, Court of Appeals and Supreme Court for land use decisions made by the City for the Affected Area, as described in Section III.C.4 below. The County agrees to pay to the City all the costs that the City incurs, including attorneys fees, for its work in representing the County before the Land Use Board of Appeals, the Court of Appeals and the Oregon Supreme Court. The County shall make payment to the City within 30 days of billing.

B. County Responsibilities

The County agrees to perform the following activities for the Affected Area as part of this Agreement:

1. General Responsibilities

- a. Within 5 working days of the effective date of this Agreement, transfer all documents, files and computer data relevant to the land use history of the Affected Area and any particular services denoted in this Agreement. The data will be in the form of case files, 3"x5" card files and access databases.

- b. Promptly notify City Planning Department of changes to County's list of recognized associations and of other staff or organizational changes affecting notice or review of land use cases or development permits.
- c. Pursuant to County Ordinance 973, and in accordance with ORS 215.427(3), this Agreement does not apply to any land use decision or services for an application that was submitted to the County before July 1, 2002 and that was made complete prior to July 1, 2002 or within 180 days of the initial submission of the application. In these instances, the County will provide land use services and review based on the land use regulations in effect at the time of the application. However, an applicant may choose to apply under the regulations adopted under County Ordinance 973 (as amended at the time of application) for development approved by a pre-July 1, 2002 land use decision.
- d. Pursuant to County Ordinance 973, and in accordance with ORS 92.040(2), for any subdivisions for which the initial application was submitted before July 1, 2002, the subdivision application and any subsequent application for construction approved by the subdivision shall be governed by the County land use regulations in effect as of the date the subdivision application was first submitted. The County retains land use service and review responsibility in these cases. However, an applicant may choose to apply the regulations adopted under County Ordinance 973.
- e. Provide, as needed, technical assistance to the City to help in interpreting County land use history, regulations or other land use related services requiring County expertise. This assistance shall be delivered to the City at no charge and in a timely manner.
- f. All other actions reasonably necessary to carry out the authority given to the City as provided for in this Agreement.

2. Continuing Review Obligations

- a. Maintain responsibility for land use reviews and services including review of building permits in the Affected Area when the County land use regulations prior to July 1, 2002 are applicable to such reviews, permits or services.
- b. Maintain the responsibility for review and comment on all land uses cases with regard to transportation concerns, standards and requirements for roads under County jurisdiction.
- c. Respond to requests for responses to land use reviews within the time identified in the requests. The County's failure to respond in a timely manner to requests for responses shall mean no comment regarding the proposal.

- d. Retain responsibility of the County Surveyor's Office for engineering and ownership review of plats and coordinate review with City staff.
 - e. For quasi-judicial applications for comprehensive plan amendments and statewide goal exceptions, the City Council will first review the application. The City would then make a recommendation to the County Board of Commissioners for final action.
3. Amendments to City and County Regulations
- a. The County will refer property owners and residents in the Affected Area to the City, as the provider of the appropriate public process, for their input on City legislative proposals that will be considered by the County.
 - b. The County will ensure that the County Planning Commission and the County Board of Commissioners are notified of all proposed amendments to the City's Land Use Regulations. The County Planning Director will notify County Planning Commissioners and County Commissioners that any concerns they may have about the City's proposed amendments should be addressed through oral or written testimony as part of the City's legislative process.
 - c. The County will ensure that any City Council adopted amendments to the City's Land Use Regulations adopted by the County Board of Commissioners will be considered by the County Board of Commissioners at the earliest possible meeting. The County Board of Commissioners shall enact all Land Use Regulation amendments so that they take effect on the same date specified by the City's enacting ordinance, generally 30 days after adoption by the City, except as provided in d. below.
 - d. In the event the City Council adopts amendments to the Land Use Regulations adopted by the County Board of Commissioners by emergency ordinance to be effective immediately, the County Board of Commissioners will consider the amendments at their next regularly scheduled meeting. The County Board of Commissioners will also consider adoption of the amendments as an emergency ordinance with an immediate effective date. Any and all immediately effective amendments adopted by the City Council by emergency ordinance will not apply to properties within the unincorporated areas until the County Board of Commissioners adopts the same immediately effective amendments by emergency ordinance.
 - e. In the event the County Board of Commissioners chooses not to adopt amendments to the City's Land Use Regulations, the City may terminate this Agreement as provided in Section V.B. In this

event, the County will resume planning and zoning administration within the Affected Area.

C. City Responsibilities

The City is authorized by the County and agrees to perform the following activities for the Affected Area as part of this Agreement:

1. General Provisions
 - a. Notify the County of proposed fee increases related to the land use activities covered in this Agreement.
 - b. Notify the County Planning Director of land use cases in the Affected Area for comment.
 - c. Assign addresses to properties in the Affected Area.

2. Land Use Reviews and Services
 - a. Perform land use, zoning and planning services (pre-application conferences, information, case review, building permit review, long range planning) for the Affected Area using the City's Land Use Regulations as adopted by the County.
 - b. Process land use cases as provided in City codes adopted by the County, including but not limited to required notifications, preparation of staff reports, site visits, presentation at public hearings, preparation of findings and maintaining records.
 - c. Collect fees for development applications, land use reviews and services and appeals.
 - d. Conduct public hearings before the land use authority as provided in City codes adopted by the County.
 - e. Make land use decisions.
 - f. Interpret the applicable comprehensive plan and implementing regulations.
 - g. Assume land division authority and responsibility, except as provided in Section III.B.1.c. and d.
 - h. Enforce land use regulations, code violations and permit violations and perform code enforcement services, including inspections, under the City codes adopted by the County for land use and related activities, including zoning, conditions of approval, signs, erosion control, stormwater disposal, floodplain and grading review.

- i. Provide zoning information to the general public and applicants in the Affected Area.
 - j. Review building and development permits for compliance with City zoning, sign, erosion control, floodplain review, grading and stormwater disposal regulations and requirements adopted by the County.
 - k. Regulate home occupations according to City codes adopted by the County.
 - l. Review OLCC, DMV and other land use compatibility statements for land use compliance.
 - m. Notify County Transportation and Engineering of land use cases and building permits for comment and approval in a timely manner to ensure meeting required and desired deadlines.
 - n. Land use planning review and services shall be provided in a manner consistent with applicable best management practices as set forth in the City of Troutdale National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit. The level of review and services shall be provided at the same level provided by the City to other areas within the City limits.
3. Amendments to City and County Regulations
- a. Include the Affected Area in appropriate planning projects.
 - b. For all legislative amendments to the City's Land Use Regulations that will also be adopted by the County, the City will provide notice of proposed amendments to the Land Conservation and Development Commission on the County's behalf as required by state law.
 - c. The City will include all residents and property owners in the Affected Area in any City legislative public process that may result in changes to the Land Use Regulations adopted by the County Board of Commissioners. It is to be understood that the public process for the Affected Area is one and the same as the process held by the City. All residents and property owners in the Affected Area will be noticed on City legislative processes as required by State law as interpreted by the City, and the City Code. Residents and property owners in the Affected Area who come forward with concerns or comments regarding proposed City amendments to Land Use Regulations will be considered by the City's various review bodies. The City's review bodies will consider testimony from Affected Area residents and property owners regarding the City's proposed amendments to Land Use Regulations just as they consider testimony from City residents.

- d. The City will notify County decision-making bodies in any legislative public process that may result in changes to the Land Use Regulations adopted by the County Board of Commissioners. The City will include the County by notifying the County Planning Director prior to the first evidentiary public hearing on any proposed amendments to the City's Land Use Regulations. County decision-makers and staff will be encouraged to participate in the City's public process.
- e. After the City Council has taken final action on any ordinance amending the Land Use Regulations adopted by the County Board of Commissioners, the City will forward the final decision to the County Board of Commissioners for adoption.

4. Legal Representation

- a. Represent the County at the Land Use Board of Appeals, Court of Appeals and Oregon Supreme Court for any appeal of a land use decision made by the City for property in the Affected Area at the expense of the County, as provided in Section III.A.3.
- b. Represent the County at no County expense for Writs of Mandamus based on the City's failure to issue a final decision within the time limits set by statute, unless the City's failure is the result of the County's failure to perform one or more of its responsibilities under this Agreement.

IV. OPERATING PROCEDURES AND RELATIONSHIPS

A. Dispute Resolution

In the case of a dispute under this Agreement, the County Planning Director and City Planning Director shall attempt to resolve the dispute informally. If the dispute cannot be resolved informally, the parties may utilize any dispute resolution tool that is available and agreeable to both parties.

B. Amendment

This Agreement may be amended by mutual written agreement of the parties. Amendment shall be valid only when reduced to writing, approved as required and signed.

To the extent that an amendment has no budgetary impact, the City Council and County Board of Commissioners grant authority to the County Planning Director and the City Planning Director to make changes to this Agreement needed to carry out the intent and provisions of the Agreement. Amendments that will result in a budgetary impact need to be made by the City Council and the Board of County Commissioners.

V. TERM OF AGREEMENT AND TERMINATION

A. General Term

This Agreement shall be effective July 1, 2002 and shall remain in effect until terminated by mutual agreement of both parties, or as determined by dispute resolution.

B. Termination by City

This Agreement may be terminated by the City if the County fails to adopt changes to the City's Land Use Regulations in a timely manner as provided in Section III.B.3. above. - The City shall notify the County in writing 90 days prior to such termination. In the event of such termination, the City will continue land use reviews in process prior to the date of termination and will continue to accept applications up until the date of termination, but only to the extent that development fee payments reimburse the City for its costs and expenses.

C. Non-appropriation

In the event of nonappropriation of funds or staff resources by the City or County, either party may terminate or reduce the scope of services to be provided and contract funding accordingly, but such party must provide notification of termination or reduction in scope of services to the other party as soon as practicable.

VI. INDEMNIFICATION

A. General Provisions

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless City from and against all liability, loss and costs arising out of or resulting from the acts of County, its officers, employees and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the monetary limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and subject to Section VI.B below, City shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of City, its officers, employees and agents in the performance of this agreement.

B. Indemnity for Takings and Tort Claims

For constitutional takings claims, tort claims, alternative writs of mandamus and inverse condemnation claims, including without limitation civil rights actions alleging a taking, the County shall indemnify the City for City's acts or omissions, including defense costs, attorney fees and any settlements or judgments. In no event shall either party be responsible for any punitive damages awarded against the other party, its officers, employees or agents. The intent of the parties is that the County would be financially responsible for takings claims arising out of the application of the County zoning code, as applied by the City, including conditions of approval. It is not the intent of the parties to hold the County financially liable for negligent or intentional "bad" acts of City employees.

VII. INSURANCE

County and City shall each be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.

VIII. ADHERENCE TO LAW

Each party shall comply with all federal, state and local laws and ordinances applicable to this Agreement.

IX. NONDISCRIMINATION

Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local nondiscrimination ordinances.

X. ACCESS TO RECORDS

Each party shall have access to the books, documents and other records of the other which are related to this Agreement for the purpose of examination, copying and audit, unless otherwise limited by law.

XI. SUBCONTRACTS AND ASSIGNMENT

Neither party will subcontract or assign any part of this Agreement without the written consent of the other party, except that the City may subcontract or assign services under this Agreement if the subcontract or assignment applies generally to City land use services and not only to the Affected Area.

XII. PROPERTY OF COUNTY

In the event of termination of this Contract, all files and documents of any kind related to the scope of work set forth in this Contract shall be transferred back to the County. The County shall only pay the actual costs of the transfer.

XIII. CONTRACT ADMINISTRATION

County designates the Planning Director, 1600 SE 190th, Portland, OR 97233 to represent County in all matters pertaining to the administration of this Agreement. The City designates the Community Development Director, to represent the City in all matters pertaining to the administration of this Agreement.

XIV. ENTIRETY OF AGREEMENT

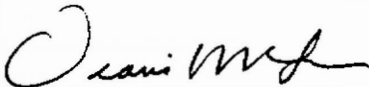
This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of the terms of this Agreement shall bind either party unless made in writing and signed by both parties.

XV. SEVERABILITY

County and City agree that if any terms or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

MULTNOMAH COUNTY

CITY OF TROUTDALE

By: 
Diane M. Linn, Chair

By: 
Paul Thathofer, Mayor

Date: 6.20.02

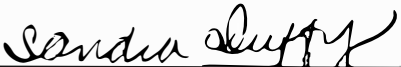
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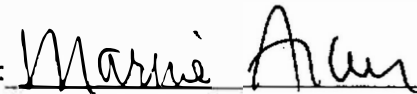
Reviewed:

Approved as to Form:

Thomas Sponsler, County Attorney
For Multnomah County

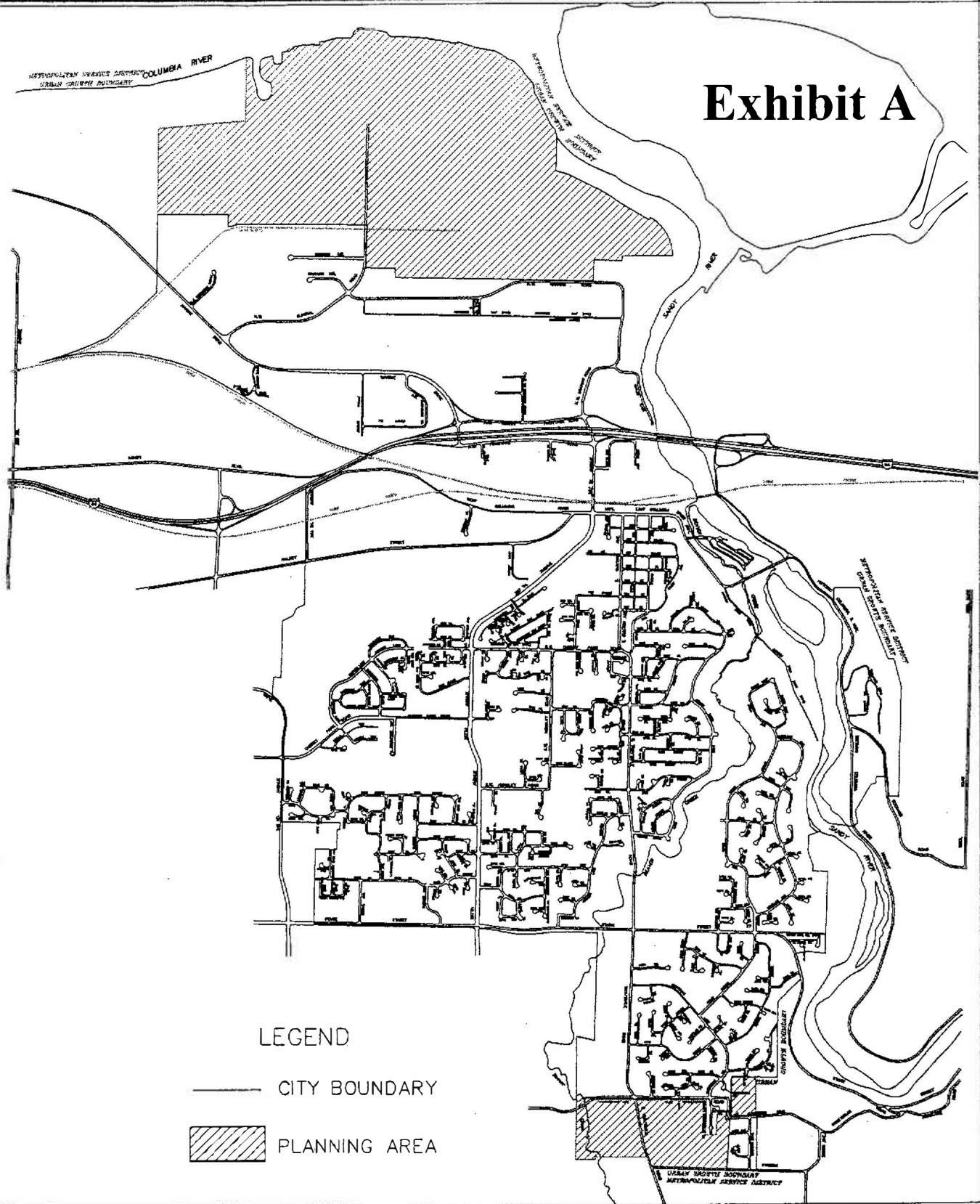
Marnie Allen, City Attorney
For City of Troutdale

By: 
Sandra N. Duffy, Deputy

By: 

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-5 DATE 06.20.02
DEB BOGSTAD, BOARD CLERK

Exhibit A



FILE NAME: TROUTBAS
TITLE BLOCK: TB8X11
EXTERNAL REFERENCES: NONE
PLOT DATE: 05-29-2002
BY: W.H.
PREVIOUS REVISION DATE:



DEPARTMENT OF PUBLIC WORKS
CITY OF TROUTDALE
URBAN PLANNING AREA

MULTNOMAH COUNTY, OREGON
MAY 2002