

RESOLUTION NO. 1778

A RESOLUTION APPROVING THE ANNEXATION OF APPROXIMATELY 14.08 ACRES OF REAL PROPERTY (CITY LAND USE FILE NO. 05-044) AND ADOPTING FINDINGS

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Centex Homes applied to annex approximately 14.08 acres of property that is described in Attachment A and mapped in Attachment B (the "Property"). The Property is adjacent to the City limits and within Multnomah County Rural Fire Protection District #10. Upon annexation, the Property will be withdrawn from Fire District #10.
2. The information that was submitted first to the Planning Commission and then to the City Council demonstrates that the annexation application complies with the applicable approval criteria. This conclusion is explained in Attachment C.
3. Testimony and information submitted by those opposing the annexation did not address the annexation criteria and instead focused on potential future development. Testimony and information regarding potential future development will be considered when a specific development application is filed, which occurs later in the development process.
4. During the public hearing on September 13, 2005 before the City Council, requests were made to continue the public hearing. The request was denied because: (a) there was no indication that new evidence that was relevant to the annexation application was going to be presented; (b) there was no indication that the applicant or others that were testifying had presented new evidence that another party needed an opportunity to respond to; and (c) the City Council public hearing was the second public hearing on the proposed annexation. This conclusion and the legal justification for denying the continuance are explained in Attachment C.
5. Attachment C and the documents referenced therein are approved and adopted by reference herein.

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

Section 1: Annexation. Based on the above findings, the Property, inclusive of the abutting right-of-way of SE Strebin Road, specifically described in Attachment A and mapped in Attachment B, is hereby annexed into the corporate limits of the City of Troutdale.

Section 2: Withdrawal from Rural Fire Protection District No. 10. The Property is also hereby withdrawn from Multnomah County Rural Fire Protection District #10 on the effective date of the annexation.

YEAS: 4

NAYS: 1 (Mayor Thalhofer)

ABSTAINED: 0



Paul Thalhofer, Mayor

Dated: September 29, 2005



Debbie Stickney, City Recorder

Adopted: September 27, 2005

ATTACHMENT A
RESOLUTION NO. 1778

ANNEXATION AREA

DESCRIPTION

January 24, 2005

Revised May 03, 2005

Revised July 25, 2005

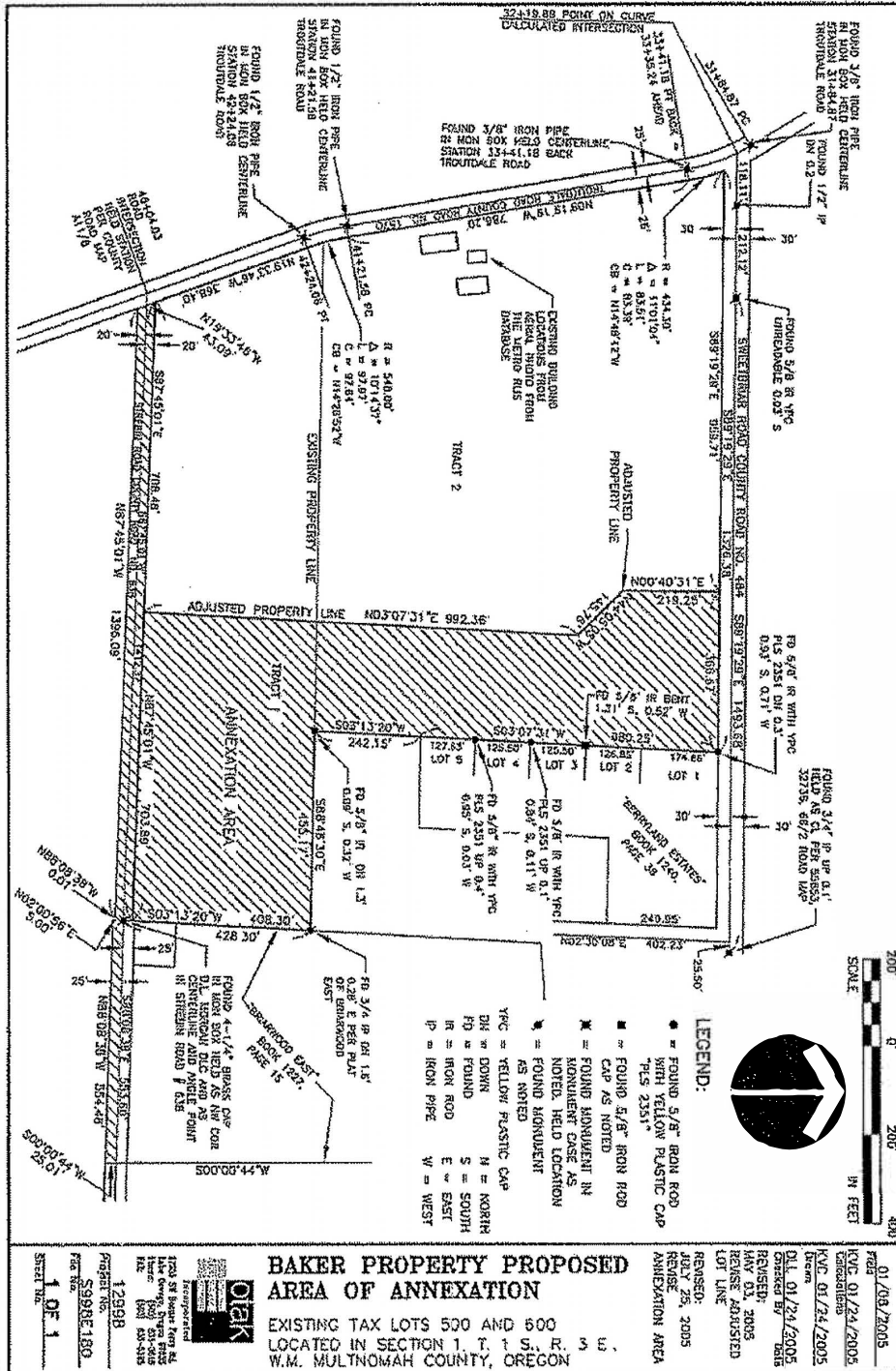
A tract of land located in the south one-half of Section 1, Township 1 South, Range 3 East, Willamette Meridian, Multnomah County Oregon, described as follows:

Beginning at a 4 1/4" Brass Disk located at the Northwest corner of the D.L. Morgan D.L.C. No. 49 said point being the centerline angle point of Strebin Road (County Road No. 638); thence S.88°08'38"E., along the centerline of Strebin Road (County Road No. 638), 553.60 feet to a point at the intersection of the extension of the east line of the Plat of Briarwood East as recorded in Book 122, at Page 15, Multnomah County Plat Records and the centerline of said Strebin Road; thence leaving said centerline S.00°00'45"W., 25.01 feet to the southerly right of way line of said Strebin Road; thence along said southerly right of way line on the following courses; N.88°08'38"W., 554.48 feet; thence N.02°00'56"E., 5.00 feet; thence N.88°08'38"W., 0.01 feet; thence N.87°45'01"W., 1396.09 feet to a point on the easterly right of way line of Troutdale Road (County Road No. 1570); thence tracing said easterly right of way line N.19°33'46"W., 43.09 feet to a point on the northerly right of way line of Strebin Road (County Road No. 638); thence S.87°45'01"E., along the northerly right of way line of Strebin Road a distance of 708.48 feet; thence leaving said right of way line N.03°07'31"E., 992.36 feet; thence N.44°05'05"W., 145.76 feet; thence N.00°40'31"E., 219.25 feet to the southerly right of way line of Sweetbriar Road (County Road No. 484); thence S.89°19'29"E., along said southerly right of way line of Sweetbriar Road, 366.67 feet to the westerly line of the Plat of Berryland Estates as recorded in Book 1240, Page 38, Multnomah County Plat Records; thence leaving said right of way line S.03°07'31"W., along the west line of the Plat of Berryland Estates, 680.25 feet; thence leaving said west line S.03°13'20"W., 242.15 feet; thence S.88°48'30"E., 455.17 feet to a point on the west line of the Plat of Briarwood East as recorded in Book 1227 at Page 15 Multnomah County Plat Records. Thence S.03°13'20"W., along the west line of said plat extended to the centerline of Strebin Road, 428.30 feet to the Point of Beginning.

Contains 14.08 acres, more or less.

Basis of Bearings is the Oregon Coordinate System of 1983, North Zone

**ATTACHMENT B
RESOLUTION NO. 1778**



**TROUTDALE CITY COUNCIL
FINDINGS AND CONCLUSIONS IN SUPPORT OF THE DECISION
TO APPROVE THE ANNEXATION OF 14.08 ACRES OF PROPERTY**

I. REQUEST

Centex Homes, Inc. (the "applicant") applied to annex approximately 14.08 acres of property into the City of Troutdale. The affected territory is located on the south side of SE Sweetbrier Road, just west of the Berryland Estates and Briarwood East subdivisions, extends southward 1,315 feet to SE Strebin Road (approximately 12.47 acres) and includes the entire width of the right-of-way of SE Strebin Road (approximately 1.61 acres). Florence Baker and the William Baker Testamentary Trust own the approximately 12.47 acres, identified as tax lot 600 of Multnomah County Assessors Map T13SEA.

The territory proposed for annexation is within Metro's Urban Growth Boundary and the City's Urban Planning Area. The County adopted the City's Comprehensive Plan designation of Low Density Residential ("LDR") and zoning of R-10 Single Family Residential for the territory in 2002, so a concurrent Plan and Zoning District Map amendment is not required with the annexation application. The National Wetland Inventory and Metro's Title 3 and Goal 5 Regionally Significant Habitat map identify areas of wetlands on the territory. An onsite determination of the wetlands on the territory was conducted by Martin Schott, Ph.D, which confirmed the presence of wetlands on a portion of the territory proposed for annexation. Due to the presence of wetlands on the territory, the City of Troutdale's Vegetation Corridor and Slope Overlay District ("VECO"), also applies to the territory.

II. PROCEDURAL STATUS

Centex Homes submitted the application for annexation on May 20, 2005. The application was deemed complete on June 10, 2005. No extensions to the 120-day time limit within which the City must adopt its final written decision have been provided so the 120-day clock expires on October 10, 2005.

Following notice of a public hearing as required by applicable City of Troutdale Development Code ("TDC") and ORS Chapter 197 provisions, the Planning Commission held the first evidentiary hearing regarding the proposed annexation on July 27, 2005. At that hearing, the Planning Commission received testimony in support and opposition of the annexation. Opposition testimony raised issues about the potential of future development on lots smaller than 10,000 square feet, concerns about stormwater and a request for the Planning

Commission to either exclude the wetland area from the territory to be annexed or rezone the wetlands to Open Space (OS). No requests for a continuance or to have the record held open were made at the first evidentiary hearing. After closing the public hearing and deliberating, the Planning Commission voted unanimously to recommend approval of the annexation as proposed by the application and to deny the opponents' request to modify the property that is the subject of the annexation.

The City Council considered the annexation at a public hearing held on September 13, 2005. The City Council considered the staff presentation, the Planning Commission recommendation and received testimony in support and opposition of the annexation. Opposition testimony raised the same issues that were raised before the Planning Commission. Comments were also made about concerns with traffic, school district boundaries and the existing lack of green space and parks in the vicinity of the territory. The opposition testimony was directed at the potential future development of the territory, not on the inappropriateness of the annexation proposal. However, no application for development has been submitted.

Some opponents requested a continuance so that the *applicant* could provide more information about the subsequent development of the territory. Opponents did not request an opportunity to present additional evidence that was relevant to the annexation or to present evidence to rebut new evidence that the applicant presented (new evidence was not presented by the applicant).

As discussed in more detail in section V below, following the public hearing the Council declined to continue the hearing or hold the record open. The public hearing was not continued and the record was not left open because the request was not made at the initial evidentiary hearing, there was no new evidence to rebut and it appeared unnecessary and irrelevant to continue the hearing so the applicant could present additional information regarding its potential future development plans. The applicant did not request an opportunity to provide such information and the City could not compel the applicant to do so. None of the participants' substantial rights were prejudiced by limiting the consideration of the annexation request to the information that was presented at the two public hearings. After closing the public hearing and deliberating, the City Council voted 4-3 to approve the annexation of the entire 14.08 acre territory.

III. INCORPORATION OF APPLICATION AND STAFF REPORTS

The May 20, 2005 application, staff reports in preparation of the hearings on July 27, 2005 and September 13, 2005, the memorandum from staff to Planning Commission dated July 27, 2005 and the Planning Commission's Findings and Recommendation address each of the applicable approval criteria. There was no testimony specifically challenging the approval criteria and findings in the above described documents. These documents, and the minutes of the Planning Commission and City Council hearings are hereby incorporated by reference in their

entirety, including any attachments or exhibits. If there are any conflicts between the incorporated documents and these findings, these findings shall control.

V. FINDINGS ADDRESSING PROCEDURE OF ANNEXATION DECISION

Almost all of the opposition testimony at the September 13, 2005 City Council hearing was directed at the specifics of what a development on the territory may look like, not at the annexation proposal or criteria. Neighbors of the territory had been provided with schematic drawings from Centex Homes depicting how a future subdivision may be configured, and an opponent of the annexation submitted the draft lot configuration into the record of the annexation request. No application for a land division for the territory has been submitted, and none could be accepted until the territory is annexed into the City. Nonetheless, the possible layout of the future subdivision of the territory, especially the potential lot sizes and how the existing VECO zone allows the reduction in lot sizes, received a great deal of attention at the City Council annexation hearing. Other concerns related to the future development were also raised, including the impact on traffic and schools. Some opponents testified that they were frustrated that Centex Homes had not given definite responses to questions about the plans for the future subdivision, and requested that the hearing be continued so that Centex Homes could provide more information about how Centex Homes may plan to subdivide the territory under the existing zoning.

The City Council declined a request to continue the public hearing at the September 13, 2005 City Council hearing. The City Council also decided to not hold the record open for additional information. The City Council finds that neither the Troutdale Development Code nor state law requires that the hearing be continued or the record to be held open because the continuance request was not made at the initial evidentiary hearing. ORS 197.763(6) applies only to the initial evidentiary hearing, which was held before the Planning Commission on July 27, 2005. The subsequent evidentiary hearing before the City Council is not bound by the mandatory continuance requirement in ORS 197.763(6). Instead, the City Council hearing was a subsequent evidentiary hearing in which the City Council has the discretion to grant the continuance, or not. Despite the strong desire of some Councilors to continue the hearing, the majority of the Council exercised its discretion and declined the request for a continuance. LUBA has upheld this interpretation of ORS 197.763(6) and the hearing authority's discretion to decline to continue a hearing a number of times, including in *Frewing v. City of Tigard*, ___ Or LUBA ___ (LUBA No. 2003-194, August 20, 2004), *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292, 300, *rev'd on other grounds* 148 Or App 217 (1997) and *State of Oregon v. City of Tigard*, ___ Or LUBA ___ (LUBA No. 1996-052, October 2, 1996).

In addition to not being requested at the initial evidentiary hearing, the request for a continuance was not based upon the need to rebut new evidence. The applicant did not submit written or verbal evidence at the City Council hearing on September 13, 2005 that was not already in the record. The request for a continuance did not allege that new evidence had been submitted or allege that there was evidence that the requestor wanted to rebut. As explained

above, the opponents did not request the continuance so that they could submit additional evidence, they wanted the Council to obtain additional information from the applicant and to postpone the decision until after the applicant held a neighborhood meeting to discuss future potential development. The City Council finds that neither state law nor the Troutdale Development Code require that the requested continuance be granted.

The City Council also finds that declining the request was appropriate and did not prejudice the substantial rights of any of the participants because the evidence that opponents sought to have submitted at the continued hearing by the applicant is irrelevant to the annexation approval criteria. Specifically, the request for the continuance was based upon the opponents' desire to receive more evidence from Centex Homes about the future subdivision of the territory. As mentioned above and discussed below, the only application that is pending before the City Council is an annexation application. No application has been filed for the subdivision of the territory, nor could one be filed until the territory is annexed into the City. Further, the existing zoning of the territory remains unchanged by the annexation. Therefore, had the City granted the continuance so that Centex Homes could provide more evidence about the potential layout of the future development, the City Council could not have based its annexation decision on that hypothetical subdivision because that evidence does not address any of the annexation approval criteria. The appropriate time to question the uses allowed by the R-10 was in 2002, when the territory was zoned R-10 or in the future when the City is considering the specific development proposal. Denying the opponents' request to continue the hearing so that the applicant could submit evidence that would not address the annexation approval criteria does not prejudice the substantial rights of the opponents or any participant in the proceeding.

For all of the above reasons, the City Council declined the request to continue the hearing.

An individual testified at the City Council hearing that he failed to receive notice of the annexation proposal. As discussed in the findings in the incorporated documents, public notice of the annexation proposal was provided in accordance with the requirements in the Troutdale Development Code and ORS 197, including mailed notice to property owners within 250-feet of the affected territory, mailed notice to interested parties (such as counties, state agencies and public utilities), two notices posted on the affected territory, notice posted in four public places within City administration buildings and published notice in a newspaper of general circulation. The City Council finds that notice for the annexation hearings complied with the requirements in the Code. There was not any evidence submitted that demonstrated that an individual that was entitled to mailed notice did not receive mailed notice. In addition, because the individual that raised concerns regarding the lack of mailed notice testified at a public hearing, his rights were not prejudiced by the lack of notice. The City Council finds that no procedural errors were made and it is appropriate to take final action on the annexation request.

V. APPLICABLE APPROVAL CRITERIA

The applicable approval criteria are found in TDC Chapter 6.000 (Annexation), which incorporates the applicable provisions of the Troutdale Comprehensive Plan and related documents, and Metro Code Chapter 3.09. The July 27, 2005 staff report at pages 4-14 and the application at pages 4-11 contain the relevant approval criteria. For the reasons explained in the application, staff reports, and the findings discussed below, the City Council hereby finds that the proposed annexation complies with the relevant applicable approval criteria.

From the outset of the findings, it is important to clarify precisely what application is before the City and which approval criteria apply. The only application before the City Council is a request to annex an approximately 14.08 acre territory. The existing R-10 zoning (with the VECO overlay) of the territory is wholly unaffected by the annexation. The zoning of the territory was determined in 2002 when the County adopted the City's Plan designation of Low Density Residential and R-10 zoning as part of the City and County's Urban Planning Area Agreement ("UPAA"). The City adopted the VECO overlay zone in 2000 in response to Metro's Title 3 requirements. Among the standards in the VECO overlay is the option for density to be transferred from undeveloped buffer areas around natural resources (i.e., wetlands) to the developable portions of a site. Given the presence of wetlands on the territory, the VECO overlay applied to the territory upon adoption by the City. Any opposition to the development that is permissible under the R-10 zone with the VECO overlay, including the reduction of the minimum lot size, should have been made in 2000 when the VECO overlay standards were adopted into the Troutdale Development Code, or in 2002 when the City's R-10 zoning was applied to the territory. In the alternative, concerns regarding the lot sizes, lot configuration, application of the VECO overlay and similar development specific concerns will be considered when the City reviews the specific development application for the annexed territory.

Given the limited scope of the application before the City (annexation only), the only criteria that apply are those in TDC 6.000 (which require compliance with the Comprehensive Plan and consistency with the purposes of the City) and Metro Code, Chapter 3.09. The City Council finds that configuration of the subsequent development of the territory under the existing R-10 zoning is not relevant to the annexation approval criteria unless there is evidence that demonstrates the City cannot provide service to the subsequent development or the subsequent development will be inconsistent with the purposes of the City. Issues related to the subsequent development of the territory, including but not limited to the density, size or configuration of the lots, the application of wetland density transfers or other provisions of the VECO overlay, the City's acquisition of parks or open space, existing speeding on Sweetbriar Road and the options to convey stormwater, are irrelevant to the annexation criteria. These concerns are relevant and will be considered and addressed once a land division (specific development) application is submitted. At that time, the City and the public will participate in a public review process that will evaluate every component of the subdivision to ensure it complies with all City development standards.

In addition to the findings incorporated by reference, the following supplemental findings address a few of the approval criteria. The City Council received testimony asserting that the

vicinity of the territory is deficient in public parks. Goal 8 describes the City's aspirations for public recreation, including parks. Goal 8 states that the City will acquire parks "through dedication by subdivision developers or through local improvement districts." The City will review the needs and appropriateness of requiring park dedications during the development of the territory and not during the annexation review. Additionally, the City Council recognizes that the System Development Charges ("SDCs") that are paid in association with the subsequent development of the territory will facilitate the acquisition of park land. Finally, under the VECO standard the wetland on the territory is required to be preserved as open space and the applicant testified that it was interested in dedicating that open space to the City, if the City so requests during the evaluation of the subsequent land division.

Goal 10 relates to housing. Goal 10 is not affected by the annexation, which does not amend the territory's existing Comprehensive Plan designation (Low Density Residential) or R-10 zoning district, other than the annexation is the necessary first step in making the territory available for housing. Annexation is a prerequisite to development in the City, pursuant to the UPAA with the County. The express language of the Low Density Residential Comprehensive Plan Designation ("LDR") in Goal 2 states that in the LDR "...lot sizes [are] generally 7,000 square feet and larger." Goal 10, Policy 7.a. requires the City to consider compatibility issues, such as lot configuration and relationships to surrounding land uses, during the subdivision review process, not while reviewing an annexation application that does not amend the existing zoning district. The evidence that was presented demonstrated that the annexation application was consistent with Goal 10.

Goal 12 relates to transportation, but does not include any provisions that are directly related to the proposed annexation. The City Council finds that because the zoning of the territory is unchanged by the proposed annexation, the transportation system is unaffected by the annexation approval. Further, the Transportation Planning Rule is not triggered by the annexation. The City Council is persuaded by the City Chief Engineer's conclusion that the transportation facilities are adequate and any transportation improvements that are subsequently determined to be needed to improve the transportation system can be constructed. The City Council finds that any needed improvements will be identified and constructed in conjunction with the development of the territory because review of the adequacy of the transportation system is a prerequisite to land division.

An opponent to the proposed annexation suggested that the City Council exclude the wetland from the territory to be annexed. The opponent alleged that the applicant intentionally included the wetland in the annexation territory as a means to reduce the size of the lots in the future development. The City Council finds that under the VECO overlay it is the buffer area, not the wetland itself, that provides the flexibility in lot sizes. Further, the territory is and has been owned by the Baker family for many years and is comprised of an existing tax lot (plus a right-of-way). The City Council rejects the allegation that the territory is the result of gerrymandering in an attempt to reduce lot sizes. The City Council also finds that carving out portions of the territory proposed for annexation is contrary to the UPAA and is not beneficial

From a public policy perspective because it would lead to a jurisdictional checkerboard, create an unbuildable portion of a tax lot in Multnomah County and would be very difficult to administer. The City Council finds it is inappropriate to alter the boundaries of the territory that was proposed for annexation when the sole purpose is to eliminate wetlands and the wetland buffer so that a developer cannot make use of the density transfer in the existing VECO regulations. If annexing the wetland is inconsistent with the annexation approval criteria the Council would deny the annexation.

**The Complete
Annexation File is
located in the
Community
Development
Department**

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

November 8, 2005

Metro
Robert Knight
600 NE Grand Ave
Portland, Oregon 97232-2736

RECEIVED

11-10-05

RECORDER'S OFFICE
CITY OF TROUTDALE

*COPY - orig. to Planning
to put in Annex File*

Dear Mr. Knight:

Please be advised that we have received and filed, as of November 2, 2005, the following records annexing territory to the following:

Ordinance/Resolution Number(s)	Our File Number
OR NO 2811 (Gresham)	AN 2005-0245
OR NO 5551 (Hillsboro)	AN 2005-0246
OR NO 4370 (Beaverton)	AN 2005-0247
OR NO 1199-05 (Tualatin)	AN 2005-0248
OR NO 1778 (Troutdale)	AN 2005-0250

For your records please verify the effective date through the application of ORS 199.519.

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

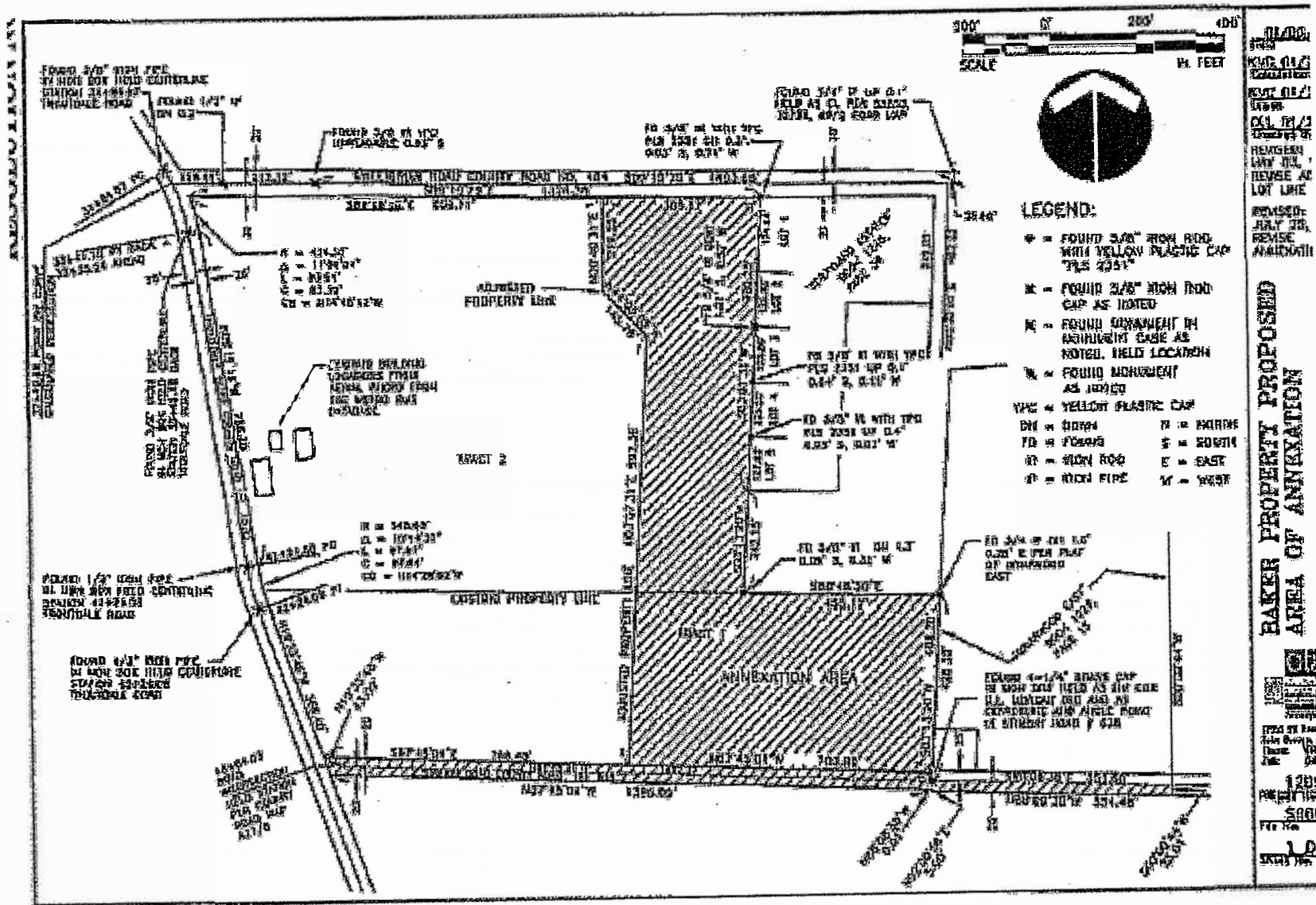
Sincerely,

Linda Bjornstad

Linda Bjornstad
Official Public Documents

cc: County Clerk(s)
Department of Revenue
ODOT
Population Research Center

AN 2005-0250 / OR NO 1778 / MULTNOMAH COUNTY TAX ASSESSOR'S TAX MAP 1S3E01 TAX LOT 600
 "BAKER ANNEXATION" CITY OF TROUTDALE LAND USE FILE 05-044



Notice to Taxing Districts

ORS 308.225



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

RECEIVED NOV - 4 2005

City of Troutdale
Finance Director
104 SE Kibling St.
Troutdale, OR 97060

Description and Map Approved
November 1, 2005
As Per ORS 308.225

Description Map received from: METRO
On: 10/28/2005

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

ANNEX TO CITY OF TROUTDALE; WITHDRAW FROM MULTNOMAH CO. RFPD #10

RES. #1778 (MU0405)

has been: Approved 11/1/2005
 Disapproved

Notes:

Department of Revenue File Number: 26-657-2005

Prepared by: Carolyn Sunderman, 503-945-8882

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
- Establishment of Tax Zone