CITY OF
West Linn

Memorandum

Date: **September 24, 2010**

To: **John Kovash, Mayor**
Members, West Linn City Council

From: **Chris Jordan, City Manager**

Subject: **Swanson Noise Complaint**

Since the Council last discussed the complaint from the Swansons, and since the Oregonian's story on this issue, Police Chief Terry Timeus has received one e-mail and one letter (both attached) on this topic. (Although both are public records, I am not making putting this memo on our website as I don't want to embarrass anyone involved.)

I believe these two letters help to indicate that this appears to be a neighborhood dispute more than an actual noise issue that can be resolved by the police or by changes to the municipal code.

Please let me know if you have any questions.

Attachment

September 20, 2010

Terry Timeus, Chief of Police
West Linn Police Department
22825 Willamette Drive
West Linn, OR 97068

Chief Timeus:

Every once in a while, when we're getting the mail from the community box on our cul de sac, visiting with neighbors as the kids play on a warm afternoon or just kicking back at a neighborhood BBQ, the conversation turns to former neighbors who moved away years ago. We speculate where they might be and how they are getting along with their current neighbors. The KATU/ OregonLive news story featuring your department and the neighborhood battle over noise from a backyard basketball hoop last week answered our questions and confirmed our suspicions that Mary & Bruce Swanson are alive and well and harassing neighbors as they did so well on our cul de sac years ago. As we watched the story unfold, we could only be thankful that we were not the Swansons' current targets and sympathize with the Faheys and your department. We commend you on being so frank in your interview about the time, tax-payer money and energy that has been wasted dealing with the Swansons' complaints.

Sadly the Swansons have a similar history here in Tualatin. Neighbors on our cul de sac endured complaints about unsightly AC units visible from the Swansons' front windows, unsightly building materials delivered to driveways, tree branches hanging over the Swansons' fence, toys & balls touching the Swansons' property as kids played on shared front lawns, 'vicious' pet cats & dogs terrorizing the Swanson children and even garbage cans placed at the curb 'too soon' or left out 'too long' after collection. At one point, they even complained about a fence that had been installed 4" off the actual property line (long before the Swansons even moved to the cul de sac). They demanded that the neighbors remove the fence and reinstall it precisely on the property line. The list of complaints never seemed to end.

We can only hope that the Swansons will get a clue from the public outcry over their ridiculous complaints and cease and desist. On our cul de sac, after years of harassment, neighbors who lived next door to the Swansons finally gave up, sold their home and moved to get away from the Swansons' continuous complaints. Not long after, the Swansons moved and our neighborhood life quickly settled back into harmony. We appreciated your suggestion that the Swansons should be living in a rural area, though we wager to say that they would likely still find something to complain/argue about even with rural neighbors.

Feeling your pain & frustration,

Former Harassed Neighbors of the Swansons

P.S. Please feel free to forward this letter to the Faheys. They should know they are not alone and that we wish them the best of luck in their ongoing interactions with the Swansons!

Jordan, Chris

From: Timeus, Terry
Sent: Tuesday, September 14, 2010 8:44 AM
To: Wyatt, Kirsten; Jordan, Chris
Cc: Schwartz, Ron
Subject: FW: "Backyard Basketball"

FYI

Terry Timeus, Police Chief
Police, #4420

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: Val Rice [mailto:vrice91@comcast.net]
Sent: Monday, September 13, 2010 9:49 AM
To: Timeus, Terry
Cc: 'Andrew Rice'
Subject: "Backyard Basketball"

Dear Chief Timeus: Thank you for standing firm against the Swanson family with regards to the neighbors playing basketball. We had many negative experiences living next door to the Swanson's in Tualatin. In fact, we chose to move out of our ideal cul-de-sac, in large part due to the psychological toll they were putting on my husband, self and daughter. There were multiple incidences I would be happy to share with you to describe their pattern of harassment and needling.

I am choosing intentionally diplomatic terms here, but after distancing our family from theirs, I can honestly say, I think they are both "off" with regards to social behavior and personality issues. I would suggest that the current neighbors exercise caution and control in dealing with the Swansons by using a mediator going forward for all issues that come up.

I absolutely agree with you, that these people need to move to a rural area, as they breed misery to all those they live next to. It is unfortunate in such beautiful suburbs that a family like this can cause such contempt.

Please feel free to contact me if you need any information.

Valerie Rice
503.691.0253

CITY OF
West Linn

Memorandum

Date: **September 24, 2010**

To: **John Kovash, Mayor**
Members, West Linn City Council

From: **Chris Jordan, City Manager** CJ

Subject: **Street Trees in River Heights**

Prior to the City having a comprehensive street tree planting plan, different types of trees were planted in the beauty strips between the street and sidewalks in neighborhoods. As these trees have aged, some have not proven to be satisfactory for their locations. One of these areas is in River Heights.

Attached is a memorandum from Gene Green describing the issue. Staff believes that these trees need to be removed as soon as possible. I have agreed with the staff that the City should take steps to immediately remove these trees, and then work with the neighborhood to help fund the stump grinding and the replacement trees.

Please let me know if you have any questions.

Attachment

CITY OF
West Linn

Memorandum

Date: September 23, 2010

To: Chris Jordan, City Manager

From: Gene Green, Public Works Director

Subject: River Heights and Brandon Place Ornamental Pear Trees

Purpose:

To present cost information regarding the removal and replacement of the ornamental pear trees.

Background:

River Heights and Brandon Place were developed in the early 1990s. In conjunction with the development, approximately 200 ornamental pear street trees were installed. In the intervening years the ornamental pears have proven to be brittle and weak. Several have broken during the last few months and staff believes they now pose a hazard to residents and property in those areas.

Mike Perkins has obtained estimated costs from Ron Hopkins of I. Miller Tree Service, to remove, stump grind, and replace the trees.

$ 29,000 - Cut and remove 200 ornamental pear trees ($145/ea)
$ 10,000 - Grind stumps of 200 trees anticipating no shallow franchise utilities or irrigation conflicts ($50/ea)
$ 30,000 - Plant 200 replacement trees ($150/ea)
$ 69,000 - Total to remediate 200 ornamental pear trees

Staff's desire is to remove the hazardous trees before the late fall and winter storms arrive to eliminate risks these trees pose to personal injury and property damage in these areas. The most pressing part of the project is the Cut and Remove portion. Staff believes that in-house personnel could remove the smaller trees and get the quantity needed for contract reduced to approximately $20,000. The stump grinding and replacement could be postponed until later.

The source of funds to accomplish this work has been uncertain. You have previously mentioned utilizing the fine (from the illegal tree cutting on Bland) to fund the ornamental pear tree removal. The assignment of responsibility in the City's Municipal Code indicates that it is not at all unreasonable for the abutting property owners to participate in the funding of the mitigation of the street trees. Staff believes that the residents may be more willing to participate in the replacement cost instead of the removal cost.

CITY OF
West Linn

Memorandum

Date: **September 24, 2010**

To: **John Kovash, Mayor**
Members, West Linn City Council

From: **Chris Jordan, City Manager** CJ

Subject: **September 27 Agenda**

This memorandum follows-up on issues or questions from the September 20 work session:

- Letter regarding High Speed Rail. The Council requested that this item (attached) be placed on the agenda under Business from the Council for the Council to authorize the Mayor signing the letter.

- The Council pulled item Number 3 – Letter of Concurrence to Tri Met from the Consent Agenda and will now consider it first during the Business Meeting.

- Final Order and Findings for the Bundy's Appeal of the Denial for a Water Resource Area Permit. The Final Order is attached.

- Juvenile Diversion Intergovernmental Agreement. I've decided to pull this from the agenda so that staff can have additional time to review it. We'll place it on the next available agenda.

Please let me know if you have any questions.

Attachment

High Speed Rail
for Sept. 21 meeting?

copy BOS COUNCIL

Dear Chair Achterman,

Clackamas County commends ODOT for its work in developing the recently published Rail Study and the work that has been underway over the past year regarding setting the foundation for High Speed Rail in the state of Oregon. As you know, existing passenger rail service travels through Clackamas County, with a stop in Oregon City and on through Milwaukie to Portland. The High Speed Rail discussions have also focused on a second existing line that traverses Clackamas County through the communities of Lake Oswego, Tualatin and Milwaukie. The impact of high speed rail is likely to be significant in Clackamas County regardless of the route, and we are asking that the following three items be incorporated into the next steps or the high speed rail discussion-

- A decision making process be developed that highlights transparency and accountability; and
- Counties that will likely be significantly impacted by new rail projects, such as Clackamas County, be included in the decision making body; and
- The project be managed by an experienced third party to bring specific proficiency to the project that may not currently exist within ODOT

Clackamas County has been working with the region to grow the grid of frequent bus lines and high capacity light rail lines for 30 years. Oregon City's Amtrak Station that opened 6 years ago was a great start to passenger rail access in the county. And with the recent opening of the Green Line MAX last September we have started connecting our citizens to the region with higher speed, higher capacity service. Within the next 5 years, we are looking forward to opening day of the Portland Milwaukie Light Rail route, the opening of a streetcar to Lake Oswego and construction starting on a high capacity transit option in the Barbur Boulevard area. Beyond five years we are eager for another cross-region connection between Tualatin and Milwaukie for both rail and trail and high capacity transit extending to Oregon City.

We can envision a future where the state grows an efficient passenger rail system which allows our citizens:

- an easier commute to Salem,
- more options for travelling south to Eugene and north to Seattle, and
- in the long term, potential for connection further south and even possibly to a nation-wide network.

But the transportation issues we face today in Clackamas County include these realities:

- longer commutes, both in miles and in minutes,

- high levels of congestion for both passenger cars and freight on the I-5 and I-205 corridors, with particular bottlenecks at the Boone Bridge, I-5/I-205 interchange, and the Abernethy bridge,
- blockages due to heavily used industrial areas in Tualatin, Wilsonville and the Clackamas, and
- increasingly difficult travel to and from the airport along I-205.

These issues negatively impact our economic development, our quality of life and our environment. It seems we have too many different demands on our limited resource of interstate highway space. These competing needs include interchange hopping for local trips, regional trips, statewide trips and freight movement.

Clackamas County is not alone in facing these issues, they are state wide and we need to make sure as we are making decisions related to our collective future that we all agree on the vision and we are all involved in and invested in the process.

Clackamas County and its cities, staff and elected, met on September 2nd, 2010 to discuss why higher speed commuter connections are important and what a long-term high speed rail system would look like in the future for our state and county. It is evident from this conversation there are strong feelings that economic development could result if a well designed project is implemented. However, it seems at this time that there are many questions about not only the vision, but the process and that a consensus on our vision and our future has not yet been reached.

We feel strongly that the state should not begin investing in the existing rail lines with the idea that these will be the corridor for high speed rail in the future. While a slight increase in passenger rail traffic on either of these lines may be tolerable to the surrounding communities as a short term fix, the cost of these gains, $2 billion for a small increase in reliability and speed, would be better spent on formulating and working toward a long term vision. Other states have shown that the attempt to put passenger rail on existing freight lines has turned out to be much more costly and difficult than ever imagined. We should learn from their experiences.

In order to achieve a vision and address our collective mobility and reliability issues we need to establish the RIGHT decision making process.

The outcomes of this process will be with us for generations to come, and Clackamas County and its cities will be dramatically impacted. Because of this we feel strongly that we should have a representative from the county intimately involved in the decision and policy making.

We would recommend the Tri-Met model of project decision-making which highlights accountability and transparency as a great process for this type of work. The California High Speed Rail Authority works in a similar method and their peer-reviewed studies and transparent procedures are no small part of their success in gaining national funding. According to their website they have been working with "local and regional

agencies, transportation agencies and providers, counties and regional governments, organizations, and the general public as well as with other state and federal agencies" for over a decade.

In addition an external, trusted, experienced third party manager is crucial not only to a transparent process, but also to bring needed expertise into the state. We may need a third party project manager who can effectively help us get from visioning to prioritization to financing to construction.

- Beyond process for decision-making and representation, there were specific questions and issues that came to the forefront. They are not questions that affect Clackamas County alone, and though we have unique issues, so do all jurisdictions. We are hopeful that they will be reflected in the development of a state-wide decision making process. These are included attached to this letter.

As we move towards a future with new rail options made possible our state legislature's long term interest and recent national investment into solving mobility and reliability problems, we are excited to join the conversation.

Respectfully,

Chair and Mayors

Enclosure: Questions

Questions from the Clackamas County Cities group

- What is the vision for high or higher speed rail in the state? What is the market demand/need? Who are we serving? What issues are we trying to address?
- If we have a goal of true High Speed Rail in the future, does it make sense to invest in infrastructure that will not meet those standards in the short term?
- The region and state are working on a Salem to Beaverton extension of WES Commuter Rail. Is this to be considered separately or should it be considered as part of a coordinated ramp up of service for the entire valley?
- Why were only the two existing rail lines evaluated in the recent ODOT study? How do we add the I-5 and I-205 right of way corridors to the study of potential paths for rail?
- What are we trying to connect? Downtown Portland may be one option. The airport may be another. Depending on speed and number of stops, we would like to look at the economic benefits that can be achieved in the southern part of the region through access to the system – specifically from Wilsonville up the I-205 corridor.
- How do we use this to achieve compact development in the Willamette Valley at the rail stops but not adversely impact the very communities we are serving with infrastructure that could bisect communities and decrease quality of life for those living in the affected areas?
- How does this plan help move more freight? How is the ownership of the rails affecting and influencing the conversation related to coordinated future passenger rail and increased demand for freight rail?
- Are considerations being made for buying local infrastructure?
- How do we add capacity, frequency, and ideally speed?
- Are we designing to a national system standard so that we can connect with a potential future network?
- Are we looking at public/private partnership? Where is Amtrak in this discussion? Are they our provider? If so, should they be convening the discussion?
- Will there be an EIS process? Who is the owner of the EIS? What is the timeline? What are the costs and benefits of various alignment options? How will the public involvement process be conducted? Who will be responsible for creating the approval criteria and how will it be created? And then, who are the ultimate decision makers?
- Will there be the opportunity to have a rail with trails discussion?
- When we look at costs, will "Quiet Cities" and "Quiet Zone" costs be included?

BEFORE THE WEST LINN CITY COUNCIL

AP-10-01

Findings and Conclusions

IN THE MATTER OF AN APPEAL OF THE PLANNING DIRECTOR'S DECISION TO DENY THE WATER RESOURCE AREA PERMIT (WAP-09-03) UNDER THE PROVISIONS OF WEST LINN COMMUNITY DEVELOPMENT CODE CHAPTER 32 SUBMITTED BY MR. AND MRS. BUNDY OF 1215 NINTH STREET. THE REQUESTED PERMIT WAS TO ALLOW A POOL, PATIO AND LANDSCAPING IN A WATER RESOURCE AREA AFTER CONSTRUCTION HAD BEEN COMPLETED

PROCEDURAL POSTURE

On the 31st day of October, 2009, Troy and Gina Bundy applied for a Water Resource Area (WRA) Protection Permit application (file number WAP-09-03) to legalize structures, landscaping and other development in a water resource area, transition area and setback, the riparian corridor and an open space easement, located at 1215 Ninth Street in West Linn, Oregon. The specific structures, landscaping and other development consisted of a swimming pool, a patio area around the pool, grading of the rear yard, removal of native vegetation, filling and grading of wetlands and transition area, modification of an existing drainageway by deepening it then lining it with rock, installation of (non-native) rolled grass sod, bark mulch and non-native trees and plants, construction of a brick wall on the south side, or at the front, of the house in the open space conservation easement area, and installation of two footbridges across the drainageway from the Appellants' property to the property to the north. The application was for an after-the-fact permit, meaning that the work had already been done without prior approval. No application was submitted for modification of conditions of approval applicable to the property due to previous land use decisions.

The Planning Director denied the application on the 9th day of February, 2010. On the 5th day of March, 2010, the Bundys appealed the decision of the Planning Director pursuant to CDC 99.240A. On July 19, 2010, the West Linn City Council held a public hearing to hear the appeal of the Planning Director's denial of the Water Resource Area (WRA) Protection Permit application (file number WAP-09-03) pursuant to the hearing requirements of Community Development Code Chapter 99.

The hearing began with a staff report by Peter Spir, Associate Planner. Attorney Michael Robinson represented the appellants. Testimony was heard from Mr. and Mrs. Bundy. Additional public testimony was heard. City Council closed the hearing. At the request of the appellants, the Record was left open as follows:

Until July 26, 2010 at 5:00 PM for all parties to submit agreement and evidence;
Until August 2, 2010 at 5:00 PM for all parties to rebut first open Record period submittals with argument and evidence; and
Until August 10, 2010 at 5:00 PM for Applicants to submit final written argument only.

RECORD ISSUES

On September 13, 2010, the City Council met in public session to deliberate. Prior to deliberations, attorney Steve Pfeifer, representing the appellants, challenged four elements of the official Record. The objections and the decision of Council regarding that objection (in italics after the objection) are set forth below:

a. Some of the pages of the Record received by the appellant and their attorney were out of order. Appellants objected to the Record due to their assertions that City Council may not have a clear understanding of the Record. *After reviewing the copies of the Record to be used by City Council members, the appellants' attorney agreed that they were correctly paginated and the challenge was withdrawn.*

b. A report entitled "The Science and Effectiveness of Wetland Management Tools" and the contents of West Linn Planning Department File No. MISC 00-10; LLA 00-10 were submitted into the Record by staff prior to 5:00 PM on August 2, 2010. Appellants objected to the inclusion of the report and the file contents on the basis that they constitute evidence and not argument, claiming that only argument should have been accepted into the Record from City staff after 5:00 p.m. on July 26th. *City Council found that the schedule proffered verbally by Appellants and adopted by Council left the Record open for staff submittal of argument and evidence until 5:00 p.m. on August 2, 2010. Appellants set forth a different deadline for submission of arguments and evidence in the letter from Michael Robinson dated July 26, 2010, in which he stated that the deadline was August 3, 2010 at 5:00 p.m. Council adopted the verbal schedule. Since Appellants specified the schedule, they waived objection based on lack of ability to rebut new evidence entered into the Record by City staff before the deadline. Moreover, since Council did not rely in this report for its findings in this matter, no prejudice will accrue to Appellants. Finally, in order to assure that Appellants suffer no prejudice, the Council will include in the Record Appellants' August 9, 2010 submission which has been offered as rebuttle to staff submissions.*

c. The document at page 252 of the City Council Record dated July 26, 2010, from Michael Robinson of Perkins Coie stating "This is part of the Bundy's

initial submittal" was objected to on the basis that Appellants questioned the origin of the document. Appellants also objected to an unspecified number of pages following page 252 for the same reason. *City Council found that the apparent origin of the document was the Appellants but, hearing no objection to the exclusion of page 252 from any other party, Council voted to withdraw that page from the Record as requested. However, Council did not remove further pages from the Record as the objection was not specific enough to determine what should or should not be withdrawn from the Record.*

d. Four photographs offered by Appellants were present in the Record at pages 114 and 115 but captions for the photographs were not legible. Appellants argued that the captions had been part of the submittal and that they should be included in the Record. *City Council voted to include legible captions with the photographs.*

Council deliberated on the appeal and decided to uphold the Planning Director's decision to deny the Water Resource Area (WRA) Protection Permit application. In doing so, the Council makes the following

COUNCIL FINDINGS

This is an appeal of a decision by the Planning Director to deny an application for a Water Resource Area (WRA) Protection Permit to allow structures, landscaping and other development in a water resource area, transition area and setback, the riparian corridor and an open space easement, located at 1215 Ninth Street in West Linn, Oregon. The criteria applicable to this permit are found in West Linn Community Development Code (CDC) in Chapter 32 and are set forth below:

1. Chapter 32 Applicability

CDC 32.020. CDC 32.020 provides as follows:

" 32.020 APPLICABILITY

A. This section applies to properties upon which a natural drainageway, wetland, riparian corridor, and/or associated transition and setback area, is located. For example, the subject property may be defined as one property that contains a wetland or creek plus an adjacent property of different ownership that includes the transition area or setback area.

B. The provisions of this chapter apply to all zones and uses within the City limits. No person, unless excepted by Section 32.020(C) or (D), may clear, fill, build in, or alter

existing water resource areas without having obtained a permit from the decision-making authority.

C. The provisions of this chapter shall apply to development proposals that have water resource areas within their project boundary. Therefore, the actual wetland, creek, open channel, or stream does not have to be on the subject property under review. This chapter shall not apply to designated enclosed storm drains that appear in the most recently adopted West Linn Surface Water Management Plan, unless the enclosed storm drain is opened as a result of the proposed development. The provisions shall also not apply to small man-made open roadside drainage swales in residential areas, even if such roadside swales are identified as open channels by the most recently adopted West Linn Surface Water Management Plan. The provisions of this chapter also do not apply to drainage ditches and open channel improvements created in the interior of individual residential lots that are not identified on the Surface Water Management Plan Map.

Appellants concede that CDC Chapter 32 applies to the application. See, Letter to Mayor Kovash and Members of Council from Michael Robinson, dated July 26, 2010, at last paragraph of page 2, top of page 3.

In addition, the Council finds that the requirements of CDC 32.050(A) are satisfied, thus making Chapter 32 applicable to the subject property. Under that section, the presence on the property of transition areas associated with wetlands or drainageways is sufficient to make the chapter applicable. We have been presented with conflicting claims regarding the exact location of drainageways in relation to the boundary of the subject property, but we conclude that those differences are not SO extreme that they would undermine the conclusion that, at a minimum, the transition area is located in the backyard of the property. The transition area is 50 feet in width (CDC 32.070) and therefore would extend onto the Bundy property whether or not the drainageway pictured in the July 19, 2010 staff report Powerpoint presentation to Council, (pages 16 and 21,) is on the Bundy property or a few feet onto the PGE property.

Council further finds that, consistent with CDC 32.020(A), neither the wetland nor the drainageway must be located on the subject property for the provisions of 32.050 to apply to development of the subject property. The associated transition areas for the drainageway affects the subject property and are also protected water resource areas. A "water resource area" is defined in CDC 02.030 as "[a]ny area that consists of a wetland identified in the West Linn Local Wetlands Inventory and the required transition and setback area around the wetland pursuant to CDC Chapter 32, or any major or minor open channel drainageway identified by the most recently adopted West Linn Surface Water Management Plan (see page CC-8 of the Record) and the required transition and setback area around the major or minor open channel pursuant to CDC Chapter 32, except for small man-made open roadside drainage swales in

residential areas, or any riparian corridor (not including lands adjacent to the Willamette or Tualatin Rivers) and the required transition and setback area for the riparian corridor pursuant to CDC Chapter 32." (Emphasis added.) The Council therefore finds that **Chapter** 32 applies to transition areas.

2. Chapter 32 Requirements

CDC 32.050. CDC 32.050 states that '[N]o application for development on property containing a water resource area shall be approved unless the decision-making authority finds that the following standards [A through P] have been satisfied, or can be satisfied by conditions of approval.

A. Proposed development submittals shall identify all water resource areas on the project site. The most currently adopted Surface Water Management Plan shall be used as the basis for determining existence of drainageways. The exact location of drainageways identified in the Surface Water Management Plan, and drainageway classification (e.g., open channel vs. enclosed storm drains), may have to be verified in the field by the City Engineer. The Local Wetlands Inventory shall be used as the basis for determining existence of wetlands. The exact location of wetlands identified in the Local Wetlands Inventory on the subject property shall be verified in a wetlands delineation analysis prepared for the applicant by a certified wetlands specialist. The Riparian Corridor inventory shall be used as the basis for determining existence of riparian corridors.

As a starting point for an application, this code section requires locating certain water resource areas. This includes natural drainageways, wetlands and riparian corridors.

Drainageways:

The location of the drainageway is depicted in photographs from pages 16 and 21 of the June 19, 2010 staff Powerpoint presentation. From that evidence, we can see the location of the drainageway in relation to the improvements and the existing house. The drainageway is located on or near the Bundy/PGE property line. The location is sufficiently identified that the starting point for measurement of the transition area can be seen on the photograph. Because we do not interpret the criteria to require a surveyed location of the drainageway, the photographic and other evidence in the Record is sufficient to meet the code requirement.

Wetlands:

The City's Local Wetland Inventory is the starting point for locating wetlands. "The exact location of the wetlands identified in the Local Wetlands Inventory on the subject property shall be verified in a wetlands delineation analysis prepared for the

applicant by a certified wetlands specialist." CDC 32.050(A). Our interpretation of the code language is that the "wetlands delineation analysis" must include a map locating the wetlands and a description of the methodology employed to establish the wetlands boundary.

The applicant has not satisfied this requirement. Jason Clinch, a wetlands consultant for Terra Science, submitted two reports dated June 7, 2010 and July 23, 2010, on behalf of the applicant. See pages 212 and 231 of the Record. These reports do not constitute a wetlands delineation analysis as required by the criteria. They do not identify the location of the wetland boundary with any reasonable level of specificity and do not contain maps of the wetland. The June 7, 2010, report makes clear at page 2 that Terra Science has not conducted a wetlands delineation.

The evidence submitted by the applicant does not satisfy the requirement of this code section.

The lack of a wetland delineation has sparked conflicting claims regarding the wetland boundary. Appellants claim it is confined to the adjoining PGE property while City staff point to evidence that it is partially located on the subject property. Having determined that: 1) the drainageway is sufficiently located to allow determination of the location of the transition area; and 2) the failure to submit a wetland delineation prevents applicant from satisfying mandatory submittal requirements, it is not necessary that we resolve the conflicting claims regarding wetland location.

B. Proposed developments shall be so designed as to maintain the existing natural drainageways and utilize them as the primary method of stormwater conveyance through the project site unless the most recently adopted West Linn Surface Water Management Plan calls for alternate configurations (culverts, piping, etc.). Proposed development shall, particularly in the case of subdivisions, facilitate reasonable access to the drainageway for maintenance purposes.

Council finds that this criterion has not been satisfied. The development was not designed to maintain the existing natural drainageways. Council interprets this criterion to require that the drainageway be kept in its natural state. Appellants argue that the drainageway had been altered prior to their purchase of the subject property. Appellants admit, however, that they have further altered the drainageway. Appellants admit that they employed Mr. Zimmerman to line the channel with river rock. They also admit that they employed Mr. Rojas to further excavate the drainageway. Instead of correcting the channelized drainageway on the north property line and restoring it to a natural state, the Appellants rocked the drainageway then installed a pipe at the northeast edge of the property to redirect water to the south of their property. The Appellants also installed bark mulch along the edge of the rocked channel to stop the growth of native vegetation. By piping the water, Appellants changed the functioning of

the drainageway east of the site. Because the alterations cited above do not maintain the existing natural drainageways, City Council finds that the criterion is not met.

C. Development shall be conducted in a manner that will minimize adverse impact on water resource areas. Alternatives which avoid all adverse environmental impacts associated with the proposed action shall be considered first. For unavoidable adverse environmental impacts, alternatives that reduce or minimize these impacts shall be selected. If any portion of the water quality resource area is proposed to be permanently disturbed, the applicant shall prepare a mitigation plan as specified in CDC 32.070 designed to restore disturbed areas, either existing prior to development or disturbed as a result of the development project, to a healthy natural state.

The City Council interprets this criterion to require the Applicant to identify alternatives and to identify the adverse environmental impacts of each alternative, if any, and document consideration of the alternatives that avoid all adverse environmental impacts. Where an alternative is proposed that has adverse environmental impacts, the applicant must demonstrate that the alternative better reduces or minimizes impacts than alternatives that are not selected.

Council finds that the application submitted to the Planning Director does not meet this criteria. There is no evidence in the Record that any alternatives were considered in light of their environmental impacts. There is evidence in the Record that, at one time, consideration was given to an alternative which located the pool in the side yard, outside of the water resource area. See Record, page 176. However, that plan was abandoned at some point without explanation. There is no evidence that any other alternatives that would minimize adverse environmental impacts were considered.

City Council finds that the appellant's pool and patio covers about half of the rear yard and extends from within five feet of the north property line up to the footprint of the residence. See Record, pages CC-16 and 17. Alternatives that could have been evaluated include planting the rear yard with native vegetation or choosing other forms of recreation that do not require hardscape and loss of WRA resource.

The adverse impacts of the chosen alternative were substantial. Jason Clinch of Terra Science, on page 1 paragraph 2 of his June 7, 2010 letter states: "*Several soil samples taken near the patio and in the PGE Right-Of-Way indicated varying depths of fill (2 to 6 inches) over the native soil.*" Appellants confirm that fill was placed in the wetland, see Record, page CC-54 when they state that they cleaned the debris from the PGE property and turned the sod while they were there. Also, the receipt from Anderson Pool Works includes a large amount of fill being placed on the property, apparently as the native sod was being removed to make way for the pool and patio. See Record, page 226. Other adverse impacts to the wetlands are found in the Record. Both the Appellants and their neighbors cite a reduction in the water table as evidenced by the fact that their basements are drier and a reduction in the "puddling" in the

backyard. See Record, pages CC-46, page 33 and page 94. Also, Mr. Clinch said in his June 7, 2010, letter (page 1, paragraph 4, quoting DSL in the first sentence): *"'The damage to the natural resource value is significant and/or the resource is not expected to naturally self restore within one year'(DSL). . . . this statement is true for the portion of the property that includes the swimming pool and patio. . . .",* and on page 3, paragraph 1, *"In summary, it appears that the wetlands on the properties identified have been impacted through construction of the swimming pool, patio, landscaping, and improvement of a drainage ditch."* See Record, page CC-75.

Finally, Council finds evidence of adverse effects on the wetlands in the fact that the Appellants have, by signing the consent agreement with DSL in 2010, agreed to mitigate the loss of wetlands and pay a monetary penalty for the damage to wetlands on the appellant's property and on the adjacent Portland General Electric property.

The application fails to provide the information required to address this criteria. It does not include identification of alternatives, or evaluation of environmental impacts. It presents only one alternative which has been demonstrated to have substantial environmental impacts and does not explain why that alternative was selected over others. We disagree with Appellants apparent interpretation of the Code that the identification of alternatives, identification of impacts and evaluation of alternatives is not required. The text of the criteria requires more information than was provided in this application and supplemental submissions.

D. Water resource areas shall be protected from development or encroachment by dedicating the land title deed to the City for public open space purposes if either: 1) a finding can be made that the dedication is roughly proportional to the impact of the development; or, 2) the applicant chooses to dedicate these areas. Otherwise, these areas shall be preserved through a protective easement. Protective or conservation easements are not preferred because water resource areas protected by easements have shown to be harder to manage and, thus, more susceptible to disturbance and damage. Required 15-foot wide structural setback areas do not require preservation by easement or dedication.

This subsection sets forth a mechanism to protect water resource areas from future or additional development or encroachment. Appellants argue that this section is inapplicable to these facts. The Council disagrees. If Appellants had applied for a development permit prior to embarking on construction, this section would have been applied to the application. The fact that the improvements predated the application does not change that requirement.

The permit which has been applied for would allow structures such as a swimming pool and impervious surfaces such as a patio to be placed within the area to be protected. No adequate explanation of why the encroachment is consistent with this Code provision has been provided. The application proposes no significant

protection of the water resource area. The water resource area is proposed for continued encroachment without the protection of a conservation easement. In fact, the Appellant argues that the existing easement should be considered invalid and of no effect. The failure of the application to provide any of the protections called for in the code section requires the Council to conclude that this criteria is not met.

Appellants argue that the existing conservation easement was imposed pursuant to ORS 271 and, since the procedures in Chapter 271 were not followed, the Appellants were within their rights to ignore the terms of the easement. We disagree. In 2001, an Open Space Conservation Easement was conveyed to the City of West Linn pursuant to CDC 30.100(C), not pursuant to ORS Chapter 271. Council finds that the easement is not an ORS 271 easement but rather an easement required by the Wetland and Riparian Area Approval Criteria in effect at the time of the lot line adjustment. See pages 383-388 of the Record. The easement was required in order to provide protection for the water resource features located on the property and the transition areas associated with those features and is relevant to this application because the lot line adjustment and the subsequent development of the house at 1215 9th Street would not have met the criteria for approval without the easement. See Approval Criteria and Staff Findings, pp 383-388. The easement prohibits, among other things, any site disturbance, removal of native vegetation, fill, grading, alteration of natural water courses and development within the easement boundaries. See Record, pp 105-116. The easement boundary extends southerly an average 36 feet from the rear property line and may only be modified by written agreement from the City. No such modification has been granted.

Even if we were persuaded that the existing conservation easement was not validly enacted, we would not conclude that CDC 32.050(D) is satisfied. This code section imposes a protection requirement which is independent of the existing conservation easement. Proof that the existing easement was not violated does nothing to satisfy Appellant's burden to show compliance with CDC 32.050(D).

E. The protected water resource area shall include the drainage channel, creek, wetlands, and the required setback and transition area. The setback and transition area shall be determined using the following table: [See Appendix A for Table]

At least three slope measurements along the water feature, at no more than 100-foot increments, shall be made for each property for which development is proposed. Depending upon the width of the property, the width of the protected corridor will vary. [See Appendix B for Illustrations].

Appellants argue that only the drainageways and the wetlands are to be considered when determining the water resource area, ignoring the setback area and the associated transition areas. This section makes it clear that the protected water resource area includes the setback area and the associated transition areas.

Council finds that the record is sufficient to demonstrate that the transition area and setback area cover the property's backyard. For example, the planting plan attached the Appellant's August 9th submittal shows a scaled depiction of the backyard of the subject property and the PGE property. See Record, pp 577 and 578. Based on the scale on the drawing, the entire back yard of the subject property, from rear property line to footprint of the residence, is no more than 50 feet deep. The approximate location of the wetland restoration area and the drainage ditch water quality improvements is approximately 50 feet from the footprint of the residence. Since the transition area itself is 50 feet deep and the structural setback is 15 feet deep, or 65 feet total, the entire backyard is within the protected resource area. The improvements proposed for approval would therefore be within the protected resource area. This conclusion is consistent with the pictures contained in the staff Powerpoint presentation to Council at the meeting of July 19, 2010. Those pictures show that the area between the rear property line and the back of the house is overlain by the transition area. Council therefore finds that the pool, patio, and brick wall are all located within the required setback area and the associated transition areas from the edge of the drainage channel, creek, and wetlands.

The Appellants argue that the structural setbacks of the water resource area do not apply to the swimming pool since it is not a structure. CDC Chapter 2 defines structure as *"Something constructed or built and having a fixed base on, or fixed connection to, the ground or another structure, and platforms, walks, and driveways more than 30 inches above grade and not over any basement or story below."* City Council finds that the in-ground 15 X 30 foot concrete and steel rebar construction swimming pool has a fixed connection to the ground and is therefore a structure. City Council drew additional support for this interpretation that the pool is a structure from the Oregon Residential Specialties Code as adopted by the West Linn Municipal Code. That code defines a swimming pool as *"Any structure intended for swimming or recreational bathing that contains water over 24 inches (610 mm) deep. This includes in-ground, aboveground and on-ground swimming pools, hot tubs and spas." Emphasis added.*

The Council interprets the reference to "30 inches above grade" to modify the term "driveways." We do not interpret this code section to exempt from the definition of structure all patios that are less than 30 inches above grade.

F. Roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC Section 32.070 and a revegetation plan pursuant to CDC Section 32.080. The maximum disturbance width for utility corridors is as follows:

a. For utility facility connections to utility facilities, no greater than 10 feet wide.

b. For upgrade of existing utility facilities, no greater than 15 feet wide.

c. For new underground utility facilities, no greater than 25 feet wide, and disturbance of no more than 200 linear feet of Water Quality Resource Area, or 20% of the total linear feet of Water Quality Resource Area, whichever is greater.

Appellants argue that the swimming pool and the patio are passive use recreation facilities that may be built in and across water resource areas when no other practical alternative exists. City Council interprets the passive recreation language was to accommodate public nature parks and associated footpaths/trails in water resource areas. Additional support for City Council's interpretation came from Metro's Greenspaces Master Plan (Adopted 1992), Definitions p. 131 & 133, and OAR 141-120-0080, the DSL's Wetland Conservation Plan, Wetland Resource Designations and Analysis of Alternatives. Metro's Greenspace Master Plan defines passive recreation as *"recreation not requiring developed facilities that can be accommodated without change to the area or resource (sometimes called low-density recreation)."* The fact that swimming on the subject property would require a developed facility, which could not be accommodated without a change to the area or resource, takes this activity out of the definition for "passive recreation." In addition, OAR *141-120-0080, Uses Allowed in the Protection Category"* defines "passive recreational activities as *"activities that require no structures, such as bird watching, canoeing or nature walks."* This definition does not include swimming in a backyard swimming pool.

Council also finds that passive recreation activities are allowed in the WRA only when "no other practical alternative exists." So even if the Appellant's pool was deemed passive recreation, the applicant has not provided a study of all practical and less obtrusive alternatives to a swimming pool in the WRA. For example, the appellants should have considered alternatives such as other locations on the property, other pool dimensions, and other types of recreational activities. There is no evidence that such consideration of alternatives was undertaken.

This criteria is not met.

G. Prior to construction, the water resource area shall be protected with an anchored chain link fence (or approved equivalent) at its perimeter and shall remain undisturbed except as specifically allowed by an approved water resource area permit. Such fencing shall be maintained until construction is complete. The water resource area shall be identified with City-approved permanent markers at all boundary direction changes and at 30- to 50-foot intervals that clearly delineate the extent of the protected area.

Council finds that this criterion has not been met. There is no evidence in the Record that the water resource area was protected by an anchored chain link fence. Nor is there any evidence in the Record to suggest that the area has been identified with

city-approved permanent markers to delineate the extent of the protected area. If the application had proposed compliant protection of the water resources area, this requirement could have been satisfied through a condition.

H. Paved trails, walkways, or bike paths shall be located at least 15 feet from the edge of a protected water feature except for approved crossings. All trails, walkways, and bike paths shall be constructed so as to minimize disturbance to existing native vegetation. All trails, walkways, and bike paths shall be constructed with a permeable material and utilize Low Impact Development (LID) construction practices.

Council finds this criterion to be inapplicable because there are no paved trails, walkways or bike paths included in the proposal.

I. Sound engineering principles regarding downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from its natural watercourse. Inter-basin transfers of storm drainage shall not be permitted.

Council finds that there is no evidence in the Record to show that any of the development relied upon accepted engineering principles regarding downstream impacts, soil stabilization, erosion control, and adequacy of improvements to accommodate the intended drainage through the drainage basin were even considered. There is no evidence in the Record to show that any engineer was employed by Appellants to consider the downstream impacts when Mr. Zimmerman and Mr. Rojas altered the drainageway by filling it with river rock and the later excavating the river rock, deepening the channel and filling it with crushed rock. There is also no evidence that an engineer was consulted when the drain was placed in the back of the property to siphon water away from the wetland identified by Terra Science. Storm drainage has been diverted from its natural watercourse and there is no evidence of appropriate erosion control measures based on CDC Chapter 31 requirements having been established throughout all phases of construction.

J. Appropriate erosion control measures based on CDC Chapter 31 requirements shall be established throughout all phases of construction.

Council can find no evidence in the Record that erosion control measures based on CDC Chapter 31 requirements were established during any phase of the construction. Therefore, Council finds that this criterion is not met.

K. Vegetative improvements to areas within the water resource area may be required if the site is found to be in an unhealthy or disturbed state, or if portions of the site within the water resource area are disturbed during the development process. "Unhealthy or disturbed" includes those sites that have a combination of native trees,

shrubs, and groundcover on less than 80% of the water resource area and less than 50% tree canopy coverage in the water resource area. "Vegetative improvements" will be documented by submitting a revegetation plan meeting CDC Section 32.080 criteria that will result in the water resource area having a combination of native trees, shrubs, and groundcover on more than 80% of its area, and more than 50% tree canopy coverage in its area. Where any existing vegetation is proposed to be permanently removed, or the original land contours disturbed, a mitigation plan meeting CDC Section 32.070 criteria shall also be submitted. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Upon approval of the mitigation plan, the applicant is responsible for implementing the plan during the next available planting season.

The Council finds that areas within the resource protection area were disturbed during the development of the swimming pool and related improvements. The improvements are located within the transition area and required excavation and substantial construction activity.

The application contains no plan for revegetation and therefore does not comply with this criteria. While Appellant plans substantial revegetation of the adjoining PGE property, the disturbed parts of the transition area pm the subject property are unaddressed.

L. Structural Setback area: where a structural setback area is specifically required, development projects shall keep all foundation walls and footings at least 15 feet from the edge of the water resource area transition and setback area if this area is located in the front or rear yard of the lot, and 7 ¾ feet from the edge of the water resource area transition and setback area if this area is located in the side yard of the lot. Structural elements may not be built on or cantilever over the setback area. Roof overhangs of up to three feet are permitted in the setback. Decks are permitted within the structural setback area.

Council finds that the Appellants' structures and hardscapes (e.g., pool, patio, brick wall, etc) all encroach within the 65-foot wide WRA transition and setback as measured from the drainageway edge. Therefore, Council finds that this criterion is not met.

M. Stormwater Treatment Facilities may only encroach a maximum of 25 feet into the outside boundary of the water resource area; and the area of encroachment must be replaced by adding an equal area to the water quality resource area on the subject property. Facilities that infiltrate storm water onsite, including the associated piping, may be placed at any point within the water resource area outside of the actual drainage course so long as the forest canopy and the areas within ten feet of the driplines of significant trees are not disturbed. Only native vegetation may be planted in these facilities.

Council finds this criterion to be inapplicable to this application as there are no storm water treatment facilities proposed.

N. As part of any proposed land division or Class II Design Review application, any covered or piped drainageways identified on the Surface Water Quality Management Plan Map shall be opened, unless the City Engineer determines that such opening would negatively impact the affected storm drainage system and the water quality within that affected storm drainage system in a manner that could not be reasonably mitigated by the project's site design. The design of the reopened channel and associated transition area shall be considered on an individualized basis, based upon the following factors:

1. **The ability of the reopened storm channel to safely carry storm drainage through the area.**

2. **Continuity with natural contours on adjacent properties**

3. **Continuity of vegetation and habitat values on adjacent properties.**

4. **Erosion control**

5. **Creation of filters to enhance water quality**

6. **Provision of water temperature conducive to fish habitat**

7. **Consideration of habitat and water quality goals of the most recently adopted West Linn Surface Water Management Plan.**

8. **Consistency with required site Mitigation Plans, if such plans are needed.**

The maximum required setback under any circumstance shall be the setback required as if the drainageway were already open.

Council finds that the WRA applied for by Appellants is not part of any proposed land division or Class II Design Review application. Therefore, this criterion is inapplicable to this application.

O. The decision-making authority may approve a reduction in applicable front yard setbacks abutting a public street to a minimum of fifteen feet and a reduction in applicable side yard setbacks abutting a public street to 7 ¾ feet if the applicant demonstrates that the reduction is necessary to create a building envelope on an existing or proposed lot of at least 5,000 square feet.

Council finds this criterion to be inapplicable to this application because the building envelope has already been determined and fully developed for the subject property.

P. Storm Drainage Channels not identified on the Surface Water Management Plan Map, but identified through the development review process, shall be subject to the same setbacks as equivalent mapped storm drainage channels.

Council finds this criterion to be inapplicable to this application. Council finds that the drainageway located along the northern property line of the subject property is identified on the Surface Water Management Plan. See Record, page CC-8

3. Standards Reduction

CDC 32.090. Appellants argued that Council should consider reducing the standards of CDC Chapter 32 as they apply to the appellants. CDC 32.090 provides as follows: "The purpose of CDC Section 32.090 is to ensure that compliance with CDC Chapter 32 does not cause unreasonable hardship. To avoid such instances, the requirements of CDC Chapter 32 may be reduced. Reductions are also allowed when strict application of CDC Chapter 32 would deprive an owner of all economically viable use of land. The decision making authority may impose such conditions as are deemed necessary to limit any adverse impacts that may result from granting relief.

"A. Lots located completely inside the water resource area. Development may occur on lots located completely within the water resource area that are Recorded with the County Assessor's Office on or before the effective date of this ordinance. Development shall disturb the minimum necessary area to allow the proposed use or activity, and in any situation no more than 5,000 square feet of the water resource area, including access roads and driveways, subject to the erosion and sediment control standards in CDC Chapter 31, and subject to a finding that the proposed development does not increase danger to life and property due to flooding and erosion."

Council finds that CDC 32.090(A) does not apply to this application because the subject lot is not completely within the water resource area. The northern and the southern portions of the property are affected by protected water resources but the area to the east and the west of the residence are not within the WRA. See Record, June 14, 2010, staff Powerpoint presentation, pages 7, 18, and 19. In addition, Council finds that the maximum 5,000 square foot allowance for disturbance to construct a home has already been exceeded since the appellant's existing driveways, front sidewalk and the existing house footprint total 7,175 square feet. The appellants already exceeded the maximum allowed under these provisions before the pool and patio were built. Adding the pool and other hardscapes would exceed the allowable amount by even greater measure.

"B. Lots located partially inside the water resource area. A reduction to avoid the loss of all economically viable use of a vacant lot Recorded with the County Assessor's Office on or before the effective date of this ordinance that is partially inside the water resource area is permitted. Development on such lots shall not disturb more than 5,000 square feet of the water resource area, including access roads and driveways, subject to the erosion and sediment control standards of CDC Chapter 31. Applicants must demonstrate the following:

"1. Without the proposed reduction, the applicant would be denied economically viable use of the subject property. To meet this criterion, the applicant must show that no other application could result in permission for an economically viable use of the subject property. Evidence to meet this criterion shall include a list of uses allowed on the subject property.

"2. The proposed intrusion is the minimum necessary to allow economically viable use of the subject property.

"3. The proposed reduction will comply with CDC Chapter 31, Erosion Control;

Council finds that this section only applies to vacant lots. The subject property is not vacant. Even before the development that is at issue in this appeal, the house on the property had a 7,500 square foot footprint. Council finds that failure to sell a piece of property does not mean that the owner has been denied economically viable use of the property. Council finds that a residence the size of the one located on the subject property is a very viable economic use.

"4. Other Issues Raised

Appellants have argued that they had a valid reason for not obtaining the required water resource area permits prior to development. This claim is not related to any of the approval criteria. The Council has not considered the circumstances of the construction in ruling on this case.

Appellants have argued that various other entities involved with wetlands permitting, specifically DSL and the USACE, are not pursuing the Appellants for remediation. Council finds that this argument is irrelevant. While the Appellants have entered into a consent order with DSL whereby Appellants admit that they have violated state wetland requirements, this is not a factor in the Councils' decision making under the City CDC.

Appellants argue that it would be poor public policy to regulate a property so that a family cannot do the same thing that any other family in the City could do in their back

yard. Council finds that this legislative policy argument is not applicable to the issues in this quasi judicial proceeding.

The Council has considered whether the application can be made compliant by the imposition of reasonable conditions and has concluded that it cannot. The conflict between protection of the transition area and using it as a location for extensive construction of structures cannot be resolved through conditions.

Based upon these findings the Council denies the appeal and upholds the decision of the Planning Director.

This decision may be appealed to the Land Used Board of Appeals under the applicable rules and statutes.

_____

JOHN KOVASH, MAYOR

_____

DATE

This decision was mailed on _____, 2010.

Therefore, this decision becomes final at 5:00 p.m., _____, 2010.

Approved as to Form:

Peter Walter for Timothy V. Ramis

City Attorney

9/24/10

Date

City of West Linn

Memorandum

Date: September 23, 2010

To: West Linn City Council

From: John Sonnen, Planning Director

Subject: Proposed bridge in Portland to enable extension of light rail to Milwaukie and an associated, potential increase in the Willamette River 100-year flood elevation in West Linn.

Purpose

At the work session on September 20, 2010 regarding the proposed TriMet bridge in Portland across the Willamette River, Councilors asked for additional information. The following lists the Council's questions and the responses. I indicated at the work session that I would attempt to get a TriMet representative to attend the Council meeting on September 27. Unfortunately, the TriMet consultant is not available that evening.

Background

TriMet is pursuing construction of a 7.3 mile light rail line extending from the Portland State University campus in Portland to Milwaukie. As part of this project, TriMet proposes to construct a bridge across the Willamette River in Portland, between the Marquam and Ross Island bridges. As proposed, the bridge would result in increased flood levels upstream. The Federal Emergency Management Administration (FEMA) requires TriMet to seek the support of affected jurisdictions prior to taking action regarding the proposed increase of the base flood elevations. Consequently, TriMet has requested a "letter of concurrence," from the City of West Linn and other jurisdictions along the Willamette River that would be impacted by higher flood elevations resulting from a proposed bridge.

Questions and Responses

Question 1: How far upstream did TriMet look for possible mitigation sites to provide flood storage capacity displaced by the proposed bridge? Are there viable, environmentally acceptable, potentially beneficial, places upstream to remove sediment that would offset the potential rise in flood elevations?

***Response*:** TriMet representatives: The only way to eliminate the rise in flood levels would involve dredging the main channel of the Willamette River. This option was not considered because of the potential impacts on the environment. Options for the re-grading of the banks were limited for the reach immediately upstream of the proposed bridge (about 0.5 miles in length). The option considered slightly reduced the upstream water surface elevations, but the general conclusion was that it was cost prohibitive. It was expensive with little reduction in the upstream water surface profile.

Question 2: If the project proceeds as proposed, how confident are we that FEMA will not alter the Flood Insurance Study or Flood Insurance Rate Maps given the projected 0.24 inch (average) and 0.36 inch (maximum) permanent rise in flood elevations in West Linn?

***Response*:** TriMet representatives: The Conditional Letter of Map Revision (CLOMR) package submitted to FEMA needs to include the revised base flood elevations (BFEs), flood profiles, and Flood Insurance Rate Maps (FIRMs). FEMA utilizes the information in the CLOMR submittal package to determine is changes to Flood Insurance Study are warranted. TriMet, FEMA, and STARR (FEMA's contractor) met to discuss the project and concluded that the changes associated with the proposed project are insignificant and will not change any of the information in the Flood Insurance Study (BFEs, flood profiles, and FIRMs).

Question 3: If the project proceeds as proposed, and for some reason FEMA revises of the Flood Insurance Study or Flood Insurance Rate Maps to reflect the projected 0.24 inch (average) or 0.36 inch (maximum) permanent rise in flood elevations in West Linn, what would be the effect on existing structures that were built based on the existing flood elevation?

Response: FEMA staff: In general, when 100-year base flood elevations are increased, only new construction and remodels/replacements worth 50% or more of the cost of the existing structure must be in conformance with the new elevations.

Question 4: Would the ability of owners of existing structures to get flood insurance or the rates for insurance be affected as a result of the proposed project?

Response: TriMet representatives: There will be no changes to Flood Insurance Rate Maps, so there will be no changes to the flood insurance rates.

FEMA staff: When FEMA flood elevations change, insurance rates for existing homeowners do not change.

Question 5. How would new development be affected by increased flood elevations?

Response: TriMet representatives: There will be no impacts to new development related to TriMet's CLOMR submittal.

Question 6: How many properties would potentially be affected in West Linn?

Response: TriMet representatives: There will be no changes to Flood Insurance Rate Maps, so no properties will be impacted.