AGENDA
Aurora Planning Commission Meeting
Tuesday, July 5, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

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1. **CALL TO ORDER OF THE AURORA PLANNING COMMISSION MEETING**

2. **CITY RECORDER DOES ROLL CALL**

3. **CONSENT AGENDA**
   a) Planning Commission – June, 2016
   b) City Council Minutes – May, 2016
   c) Historic Review Board Meeting Minutes – May, 2016

4. **CORRESPONDENCE –**

5. **VISITORS**

   Anyone wishing to address the Aurora Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora Planning Commission could look into the matter and provide some response in the future.

6. **PUBLIC HEARING**
   a) **Discussion and or Action CUP-2016-01**
7. **NEW BUSINESS**

   a) None

8. **OLD BUSINESS**

   a) Discussion Regarding additional information from FEMA Notice of Federal Land Use Change for Biological Opinion.

9. **Commission Action/Discussion**

   a) City Planning Activity (In Your Packets) Status of Development Projects within the City.

10. **ADJOURN**

Minutes
Aurora Planning Commission Meeting
Tuesday, June 7, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

STAFF PRESENT Kelly Richardson, City Recorder

STAFF ABSENT: Renata Wakeley, City Planner

VISITORS PRESENT: None

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1. **CALL TO ORDER OF THE CITY COUNCIL MEETING**

   Meeting was called to order by Chairman Schaefer at 7:05 pm

2. **CITY RECORDER DOES ROLL CALL**
   Chair Joseph Schaefer - Present
   Commissioner Craig McNamara- Present
   Commissioner Bud Fawcett - Present
   Commissioner Jonathan Gibson - Present
   Commissioner Mercedes Rhoden-Feely - Present
   Commissioner Tara Weidman - Absent
   Commissioner - Open Position

3. **CONSENT AGENDA**
   a) Planning Commission Minutes – May, 2016
   b) City Council Meeting Minutes – April, 2016
   c) Historic Review Board Minutes – April, 2016

   Motion to approve the consent agenda as presented was made by Commissioner Gibson and is seconded by Commissioner McNamara. Motion approved by all.

4. **CORRESPONDENCE –**
   a) NA

5. **VISITORS**
   Anyone wishing to address the Aurora Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora Planning Commission could look into the matter and provide some response in the future.

John Marvin, 21825 Airport Rd Aurora and Mary Hellake, (did not sign in)Aurora came to ask a few questions regarding the notices they received in the mail regarding salmon habitat however they discover it doesn't impact their properties and have no more questions.

6. NEW BUSINESS

a) None

7. OLD BUSINESS

a) Discussion and or Action on Notice of Federal Land Use Change for Biological Opinion. Chair Schaefer informs the group that the opinion ventures away a bit from biology and states that projects started by September 1 are exempt from future rules as we are not in the habit of interpreting these types of notices the city felt it was best to inform property owners of potential rule changes headed our way. The City doesn't have an agenda we just wanted to get information out to property owners who could potentially be affected.

NOTICE OF FEDERAL LAND USE CHANGE FOR BIOLOGICAL OPINION IN OREGON

This is to notify you that on April 14, 2016 the National Marine Fisheries Service (NMFS) published a Biological Opinion ("BiOp") regarding endangered salmon and steelhead which will be implemented through state and local land use regulations that may affect the permissible uses of your property and other properties. Based on the BiOp, FEMA will be setting new minimum setback requirements from rivers and streams, and other new restrictions on development in flood plains to protect endangered species.

According to the BiOp, development projects permitted by September 15, 2016 may be grandfathered.

For additional information concerning these amendments and new rules, please visit: http://www.oregon.gov/LCD/Pages/NFIP_BiOp.aspx

or come to the Aurora Planning Commission meeting on June 7, 2016 at 7 pm at Aurora City Hall.

The City of Aurora is taking no action at this time, and is not proposing to amend the Aurora Municipal Code or local development ordinances at this time. We are sending this notice as a courtesy to property owners who may be impacted by the new federal regulations.

Mr. Marvin 21825 Airport Rd, main concern is for potential buildings in the future and as Chair Schaefer explains this notice is for properties in the flood zone and since you're not currently in the flood zone it won't affect you yet. However since you are close they could require something in writing.

The Notice above went out to all citizens.

8. COMMISSION/DISCUSSION

a) City Planning Activity (in your packets) Status of Development Projects within the City.

9. ADJOURN

Chair Schaefer adjourned the June 7, 2016 Aurora Planning Commission Meeting at 7:37 P.M.

_____
Chair Schaefer

ATTEST:

_____
Kelly Richardson, CMC
City Recorder

Minutes
Aurora City Council Meeting
Tuesday, May 10, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

STAFF PRESENT: Kelly Richardson, City Recorder
Mary Lambert, Finance Officer
Darrel Lockard, Public Works Superintendent
Officer Huitt, Marion County
Linda Kendrick, Koho Law

STAFF ABSENT: Dennis Koho, City Attorney

VISITORS PRESENT: Don Thwing, 14740 Orchard
Greg Taylor, Aurora
SGT. Sherburn, Marion County Sheriffs
Tara Weidman, 21331 Main

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1. **CALL TO ORDER OF THE CITY COUNCIL MEETING**

   Meeting was called to order by Mayor Bill Graupp at 7:03 pm

2. **CITY RECORDER DOES ROLL CALL**
   Mayor William Graupp- Present
   Councilor Jason Sahlin – Present came in late after roll call.
   Councilor Kris Sallee-Present
   Councilor Robert Southard-Present
   Councilor Tom Heitmanek - Present

3. **CONSENT AGENDA**
   a) City Council Meeting Minutes –April, 2016,
   Councilor Sallee points out a typo on the bottom of pg 2 encoring and on pg 13 item C, refers to photos are incorrectly identified.
   b) Planning Commission – April, 2016
   c) Historic Review Board Meeting – NA

   ACTION ITEM: NA

   Motion to approve the consent agenda as amended was made by Councilor Heitmanek and is seconded by Councilor Sallee. Motion approved by all.

a) **CORRESPONDENCE**

- **FEMA Notice Regarding Biological Opinion,** Graupp informs them this will be discussed during Planning Report.

4. **VISITORS**

Anyone wishing to address the Aurora City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora City Council could look into the matter and provide some response in the future.

Don Thwing, 14740 Orchard Street, has concerns regarding the Orchard View retention pond and what is the status on the city's part. Because Don is claiming that he has not received anything from the city and Mayor Graupp informs him that various notices have gone out and various meetings have taken place. Don informs Council that a group of homeowners are beginning to clear out the area however they are in need of direction to make sure they clear out enough. **Mayor Graupp** informs Mr. Thwing that the city was unaware that they had decided to clean up the area and that the city was researching the costs involved and along with various scenarios of how to bill for it with that said as of now no letters have gone out. Graupp asks Thwing to keep city up to date on the cleanup efforts.

Action Item: Public Works go down and inform them of what needs to be done. Graupp asks Thwing to email city staff to inform us of who is in charge of the cleanup efforts and a list of property owners involved.

5. **REPORTS**

a) Mayor Bill Graupp

- Speaks to the recent Biological Opinion Released by National Marine Fisheries Service and the recommended flyer that the Aurora Planning Commission wanted to send out to the entire citizen population of Aurora. This would explain the opinion and inform citizens of any upcoming changes that could possibly affect their property. Councilor Sallee suggests that the City Recorders Office not be listed as contact but instead attend the next Planning Commission meeting. Staff agrees with Councilor Sallee regarding her comment.
  It is the consensus of the Council to send out the postcard to all citizens within the city limits.

  Council discussed. NA

  ACTION ITEM: NA

b) Planning,

- Planning Commissioner Weidman adds the discussion regarding the possibility of updating the city charter to show the recent change in annexation processes mandated by the State of Oregon.

Council discuss briefly and decide to wait until there are more changes to make it more cost effective not to say we won't follow the State mandate.

No more questions
ACTION ITEM: None

c) Public Safety,
- Deputy Huitt reports that most of the calls are standard with one exception as to frequency of calls on the weekends. The schedule will be changed to reflect the trend.
- There have also been more ORS violations along with increased parking citations and various other items. Councilor Sallee asks for clarity on who generated these and Deputy Huitt states they are generated by myself as I see them occurring.
- Mayor Graupp ask Huitt if Marion County will be participating in the June 10th Shakeout and Huitt states yes we will in conjunction with the Marion County Emergency Management.
- Hazard Mitigation meeting was a fact finding mission regarding the processes to see if there were any holes in the processes.
- Councilor Salllee asks Deputy Huitt if he can speak to the recent ORS violations and SGT Shurburn intercedes and states no we cannot it is an ongoing situation and citations have been issued and gone to court.

d) Finance, Good
- Good news is the Budget Committee approved the budget.
- Were in good standing right now I don't foresee any issues. I have asked Public Works to keep in touch since it is near year end.
- Councilor Sallee brings up the charter section chapter 10 section 5 regarding single purchase items over a set amount needs a resolution. In regards to Finance Officer Lamberts comment regarding the new truck purchase for Public Works. Mayor Graupps comments were not if it was budgeted for and Sallee disagrees as she stated she read it in the charter. They agree to research and make it right.
- Mayor Graupp thanks all of the budget members involved they did a great job and thank you for your service.

e) Public Works

Waste Water
- Continuing with the permit process with DEQ
- 2 lift stations pumps replaced
- New irrigation pump replaced and installed

Water
- Wells running 10 hours a day producing and average 190,000 gal per day.
- Well 5 is off until summer
- Councilor Sahlin asks if the drinking fountain in the park has been fixed yet and Lockard states no we are waiting on nicer weather.

Streets
- Routine operations and maintenance
- Catch basin cleaning
- Street sweeping

- Council Discussion,
- Councilor Sallee ask if the quotes for the street striping have been concluded, Lockard informs her that it is scheduled for today and start tomorrow. We received one quote and came in at just under $10,000. Including park items as well.
- Councilor Sahlin asks if City Recorder Richardson can reach out to George Cam regarding the paving of Keil Park II. Richardson will reach out to them and get a time frame of when.
- Councilor Sallee at what point can we insist it be done Southard as soon as he pulls permit for the last home. So if he doesn't pull a permit for 5 years we are stuck yes that is correct. (Southard)

ACTION ITEM: NA

f) Parks Committee
- **Mayor Graupp**
- The park is looking good and looks ready to go, Lockard states we are beginning to pressure wash to makes sure shelters are clean.
- Councilor Sahlin states since he didn't make it to budget I hesitate but can I request funds so we can purchase soccer nets. Mayor Graupp hesitates and Lambert says we can look into it.
- Concert series is in process, and will be on Wednesday nights from 7-9 and 7-10 on Colony Days. There will be a Farmers Market at Colony Days as well.
- Chalk contest as well.
- Parade is the same route however the run will have a different route.

Council discussed, NA

ACTION ITEM:

g) City Recorder
- Recorder report as attached, if you have any questions regarding it.
- Also attached is a copy of my job description as requested.
- Along with the Administrative process for Ordinance violations.
- List of contracts and dates.
- Councilor Sallee states two different sections of the code and doesn't feel that the City Recorder should be the code enforcement officer and serve people with violations. She feels it is much better suited for the police. The City Recorder should be issuing letters verses walking around. Mayor Gruapp is fine with the combined effort of staff regarding code enforcement and feels it is the only way it will work as a team effort.
- Councilor Sallee asks about council procedures I guess you will provide that for next month? City Recorder Richardson states yes I ran late and from here on out I would request that council items requested would need a consensus of the council before staff is directed to produce the material or job performed. Because we are receiving so many requests from Councilor Sallee of items she wants to see on the agenda.
- Councilor Sallee so I think it does state that councilors have the right to make requests of items to be placed on agenda, Richardson you can make the request but it doesn't

mean that it will happen because I take direction from the City Administrator. Mayor **Graupp** mostly because of the research involved from staff regarding the various request. **Graupp** for example the Council procedures that takes a lot of research and since we got bogged down with other items it just didn't happen. **Mayor Graupp** suggest an agenda item same as the school board called future topics and Sallee likes that idea and for that to be added. Richardson explains that is simply what she meant that it be a group request not just one person at a time.

- Councilor Sallee, so can we see a more complete list next month because I notice we don't have on the Marion County contract. Richardson states because those are more like a IGA an Inter Governmental Agreement. Sallee well then I think it would be helpful to know the difference and see those as well. Richardson yes Webber should be on there. My point is to review them and know when there up for renewal and so forth. I would like to see or have comments regarding that. Southard agrees it's a good idea to review them. Councilor Sahlin little off topic but I think also knowing the requirements of what were required to be doing relative to state requirements concerning Public Works. List of contracts oldest first. Consensus is to move forward on this tract.

ACTION ITEM: Add future topics as an agenda item
Contract Review Gustafson Insurance and Valley Credit.

h) City Attorney

- City Attorney report Eleanor Beatty in conjunction with Linda Kendrick present while Dennis is doing better however is not in attendance at this time and until I (Eleanor) feel as though he is up to the task I will be supervising. They presented a draft contract for FY 2016/2017 for Council to review for next month.
- There are a number of city codes that are in conflict with State statues and Federal changes will need to be made in the near future.
- Mayor Graupp just wanted to inform the group that at the last budget meeting we allowed Councilor Sallee to call in for the meeting because I had done it once last year. However we now know we cannot do that unless we can make the same accommodation for the public which we are not set up to do so we will not be doing that again in the future.
- Channels of communication between council members and our office as I understand the communication goes from City Councilors to the City Recorders office to the Mayor and then onto our office if necessary. The City Councilors do not contact our office directly there are channels that need to be followed.
- Resolution issue and how resolutions should be presented, I have found some conflicting information the charter says they can be presented by council members however it also says in the code that salary administration that propose for their dept that the Mayor causes them to be prepared for the city. How that would look is discussion then Mayor would present the issue to council and then the council as a whole would decide if a resolution or ordinance needs done staff would then prepare and bring back to council for vote. Councilor Sallee so if a councilor wants to bring that up for a topic we are now going to have during future topics. Correct.
- Councilor Sallee so I have a question regarding when State Statue trumps because I went to League of Oregon Cities to educate myself and they said State Statue doesn't always trump. They had said if we don't have it in our code then State statue takes

over. Kendrick as long as you have a code that doesn't conflict with State statue. If the code is silent on that issue then local government can take steps to create code but it must line up with State statue.

- Recreational immunity, I did speak with Beatty on this issue and Beatty states that most likely the legislation is going to be doing something about this issue moving forward because it is a bad decision. CIS will be working hard on this issue. Mayor Graupp to add to this Public Works and I have begun reviewing LOC sign regulations to make sure we are up-to-date and meeting the new laws.
- Ross Tort Claim notice that was sent to CIS as the claims are unfounded and no merit they are going to deny all liability and request for funds. CIS is handling it. Mayor Graupp explains the situation in brief Ross RV Food Carts claims that we the city are not allowing him to conduct business the way he wants and in truth he has not applied and followed the processes and he claims we are not handling water late fees correctly. There have been a variety of code violations and he is asking for dollars because he claims we have cost him. Councilor Sallee is there a reason we were not involved Mayor Graupp because we were waiting on legal that is a staff matter to get legal involved and working on these types of situations.

Council discussed, Councilor Sallee comments regarding our current legal coverage since Dennis is out sick wants to discuss our alternatives. My concern is if we were to be in a true law suit. We have the ability to do a pro-tem lawyer who has government knowledge and can handle these things. **Mayor Graupp** these guys have insurance to cover this type of thing they can get a specialist if they need to. **Beatty**, your contract is with the firm and even when Dennis is working many of these things are worked out together as a team and the firm is fine but any time you're not satisfied with our service by all means you can go out for bid. **Sallee** but how does the city select the attorney if the need were to arise well you really don't need to since we are the firm that represents the city. **Sallee** questions there specialty and **Beatty** reiterates I am licensed in the State of Oregon. Like I **(Beatty)** said previously we work as a team at the firm and I have been advising and working with Dennis all along the way so I am fairly familiar with most of the City concerns and issues. **Sallee** well I just know that most attorneys have a specialty, **Beatty** no actually there are no specific specialties most attorney just pick and choose what they want to work on.

ACTION ITEM: None Council is fine with how everything is working during Dennis absence.

6. ORDINANCES, RESOLUTIONS AND PROCLAMATIONS

a) **NA**

7. NEW BUSINESS

a) Discussion regarding City Contracts, Councilor Sallee the reason **I** brought this up was to simply review our contracts because many of them don't have end dates and just want to make updates relative to what we're doing.

It is the consensus of the council as future topics review Gustafson and Valley Credit Services at the next council meeting and also to include a IGA list.

8. OLD BUSINESS

a) Discussion and or Action on A Resolution Regarding Employee Merit Increases, It was the consensus of the council to have a resolution prepared to address this matter.

9. ADJOURN,

Mayor Graupp adjourned the May 10, 2016 Council Meeting at 8:30 PM.

Bill Graupp, Mayor

ATTEST:

Kelly Richardson, CMC
City Recorder

Minutes
Aurora Historic Review Board Meeting
Thursday, May 26, 2016, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

STAFF PRESENT Kelly Richardson, CMC City Recorder

STAFF ABSENT: None

VISITORS PRESENT:

1. **CALL TO ORDER OF THE HISTORIC REVIEW BOARD MEETING**

   The meeting of May 26, 2016 was called to order by Chair Abernathy at 7:02 pm

2. **CITY RECORDER DOES ROLL CALL**
   Chair Gayle Abernathy – Present
   Member John Berard - Present
   Member Mera Frochen – Present
   Member Mella Dee Fraser – Present
   Member Karen Townsend - Present

3. **CONSENT AGENDA**
   a) Historic Review Board Meeting Minutes – April 28, 2016 .
   b) City Council Minutes – August, 2015
   c) Planning Commission – August, 2015

   A motion to approve the Historic Review Board minutes of April 28, 2016 as presented was made by Member Townsend and is seconded by Member Frochen.
   Passed by all.

4. **CORRESPONDENCE – NA**

5. **VISITORS**

   Anyone wishing to address the Historic Review Board concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Historic Review Board could look into the matter and provide some response in the future.
   No comments were made during this section.

   There were no visitors that spoke during this time.

6. **NEW BUSINESS**
   a) Discussion and or Action on Sign application for Susan Black and Black Star Water Color at 21680 Main Street.

Motion to approve sign application as presented was made by Member Townsend as meeting code as being stylistically similar in font and meeting sign code 17.24.100 and General sign code 17.24.070 section A and D;C and is seconded by Member Frochen. Motion passes 4 ayes and 1 abstention by Member Berard.

Discussion and or Action on Project Application for David Hoerner at 21361 Main Street replacement of roof.

Motion to approve the roof per code section 17.40.150 number 5 as presented is made by Member Townsend and is seconded by Member Berard. Passed by All.

b) Discussion and or Action on Project Application to remove trees located at 21317 Hwy 99E by Warren Bean.

Motion to approve the application as presented and to remove the 1-10 trees over 24 inches around is made by Member Berard and is seconded by Member Townsend. Motion passed by all.

7. OLD BUSINESS

a) Discussion and or Action on Historic Inventory, Member Townsend regarding the small SHPO inventory this inventory now has the individual columns as discussed previously and it show much of the same data that the large inventory does but in a more condensed quick reference guide type. Since the legend has been removed we will need to have one of our own. Also let's add a footer for revision dates and I think the architectural date needs to be larger. They also briefly discuss the possibility of the small thumbnail photograph and staff is completely against this because it simply isn't needed since you have the larger inventory to cross reference. These are mainly for staff for quick reference. The larger inventory is ready to go except for staff edits.

b) Discussion and or Action regarding the Design Guidelines, Member Townsend explains to the group that she had asked staff to print out 3 examples using different fonts and sizes so we can choose which style we like and is easier to read. The board discusses a couple of different options and they all agree that they like the Ariel headers 11and bolded and Times New Roman body in 12. They also reference the previous printing options they want the Design Guide on yellow paper and Title 17 on blue paper. They discuss the fact that attachment A is missing and Karen will look for it.

They discuss printing options and the timeline of it all.

Action: make edits and finish printing.

Member Townsend is upset at the council for deciding that staff could trim the trees along Main Street because those are city trees that were obtained from a grant received by the city and I believe they should be professionally trimmed.

The board also discusses an alternative of hand delivering the guide instead of mailing it.

8. ADJOURN

Chairman Abernathy adjourned the meeting of May 26, 2016 at 8:15 pm.

_____
Gayle Abernathy, Vice Chairman

ATTEST:

_____
Kelly Richardson, CMC
City Recorder

CITY OF AURORA
PLANNING COMMISSION

STAFF REPORT:	Conditional Use Permit 2016-01 [CUP-16-01]
DATE:	June 28, 2016 (for the July 5th Planning Commission meeting)

APPLICANT:	Fortune Farms, Inc., c/o Todd Boren 220 NW 8th Ave. 1st Floor, Portland OR 97209
OWNER:	Stems Property LLC, c/o Bob Smets P.O. Box 560, Aurora OR 97002
REQUEST:	Conditional Use Permit approval for a marijuana grow site and processing site on the subject property for 'Building B' only, measuring approx. 6,000 square feet in size.
SITE LOCATION:	Map 041.W.13B Tax Lot 1700, commonly known as 14633 Ottaway Road NE, Aurora, OR 97002
SITE SIZE:	72,310 square feet, or approx. 1.66 acres
DESIGNATION:	Zoning: Industrial (I)
CRITERIA:	Aurora Municipal Code (AMC) Chapters 16.16 Industrial and 16.60 Conditional Uses
ENCLOSURES:	Exhibit A: Assessor Map Exhibit B: Applicant's Variance Application Exhibit C: Request for Comments Responses Exhibit D: Structural permit approval for storage facility only

I. REQUEST

Conditional Use Permit approval for a marijuana grow site and processing site on the subject property for 'Building B' only, measuring approx. 6,000 square feet in size.

II. PROCEDURE

Conditional Uses are processed as Quasi-Judicial Decisions. Quasi-Judicial Decisions are conducted as stated in Chapter 16.76 of the AMC. Section 16.60 provides the criteria for processing Conditional Uses.

The application was received and fees paid on March 31, 2016. The application was initially determined incomplete by staff but the applicant submitted the additional information required on May 11, 2016 and the application was determined complete. Notice was mailed to property owners within 200 feet of the subject property on June 8, 2016. Notice of the Planning Commission hearing was published in the Canby Herald on June 15, 2016 (at least 10 days prior) in compliance with AMC 16.76. The City has until **September 8, 2016**, or 120 days from acceptance of the application to approve, modify and approve, or deny this proposal.

III. APPEAL

Appeals are governed by AMC 16.76.260. An appeal of the Commission's decision shall be made, in writing, to the City Council within 15 days of the Planning Commission's final written decision.

IV. CRITERIA AND FINDINGS

The applicable review criteria for Conditional Use Permits are found in AMC Chapter 16.60-Conditional Uses.

16.60 Conditional Uses

A. The planning commission may approve a conditional use permit only when the applicant has shown that all of the following conditions exist:

1. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;

FINDING: The subject property is a flat site measuring approx. 72,310 square feet. The site has an existing flag pole connection to Ottaway Road NE on the southern property line. The subject property is zoned Industrial with Industrial zoned property to the north and west and a mix of Industrial and Commercially zoned property to the south and east. The site includes three storage buildings (see Exhibit D) which were approved for use as storage facilities related to the property/business to the west under the same ownership. No other structural, electrical, or plumbing permits have been approved or issued by the City of Aurora for the storage buildings. Staff finds the site meets the size, shape, and topography for Industrial uses as zoned in the AMC.

2. All required public facilities have adequate capacity to serve the proposal and are improved to the standards in Chapter 16.34;

FINDING: Request for Comments were submitted to and are included under Exhibit C. AMC section 16.34 addresses the following criteria:

Where public improvements are required, all public works facilities shall be designed to the City of Aurora Public Works Construction Standards (PWCS) plus the requirements of the Aurora Municipal Code (AMC). Where the PWCS are silent, the Marion County Public Works Standards shall apply, followed by the Oregon APWA/ODOT Standards.

<u>Streets (16.34.030-060)</u>
The subject property fronts/accesses Ottaway Rd NE via the southern property line and has 49 feet of frontage along Ottaway. According to the applicant, vehicular access to "Building B' will be via Lot 1702 of Map 041W13B. There is currently no access easement recorded across Lot 1702 to benefit Lot 1700. The existing access on Lot 1702 is not constructed to city standards and must be redeveloped to those standards prior to approval of future development or occupancy permits for the subject 'Building B'. The applicant shall show a recorded reciprocal access and maintenance easement from Lot 1702 to benefit Lot 1700 prior to any future development permit or occupancy permit approvals for 'Building B'. Prior to

recording, the easement shall be reviewed and approved by the City of Aurora. These access requirements are included as recommended conditions of approval.

Ottaway Road has a right-of-way width of 60 feet along the frontage of the subject property. According to the Aurora TSP (2009), Ottaway is designated as a Collector Street west of Highway 99E. Collector Streets require 65 feet of right-of-way, 6 foot sidewalks on both sides of the street, 7.5 feet planter strips, and 36 feet of pavement width. Staff has determined that the proposed change of use/conditional use permit is subject to a Site Development Review (SDR) application and this is included as a condition of approval. Frontage improvements will be reviewed as part of the SDR application. The applicant requested that the Conditional Use Permit application and Site Development Review application be processed as separate applications. An SDR application has yet to be submitted to the City.

The Aurora TSP also identifies a new Collector Street to be located between Lots 1700 and 1702 of Map 041W13B traveling to the north and back east toward highway 99E (see Aurora TSP, Figure 3). At the time of future development or division of these lands, additional right-of-way dedication may be required, or the applicant shall obtain approval for an amendment to the Aurora Transportation System Plan to eliminate the planned new street.

As the subject conditional use permit application applies to a new development/change of use and occupancy of 'Building B', staff has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. This is included as a condition of approval. Strcutural permit applications shall not be accepted until the requirements of the Site Development Review application and approval and the requirements of AMC 16.58 are met for the subject property- such as additional right-of-way dedication, frontage improvements, etc. Based upon Site Development Review criteria, the applicant will likely be required to improve the Ottaway Road frontage and right-of-way to city standards prior to future development permit application or approval.

<u>Sewer (16.34.080)</u>
According to the Aurora Public Works, the sewer line is not correctly placed (see Exhibit C). Engineered drawings for the connection/provision of sewer service to 'Building B' from existing mains in accordance with the provisions set forth by the City's public works design standards shall be submitted for review and approval by the City. In accordance with 16.34.080.B., the applicant shall submit to the City an engineered sanitary sewer plan conforming to the public works design standards prior to issuance of development permits.

<u>Storm Water (16.34.090)</u>
The Aurora Public Works has concerns with the lack of pervious surface. However, the applicant has shown that landscaping will be installed on site in their application which meets the minimum landscaping requirement for the zone. Landscaping shall be installed prior to occupancy permit approvals in order to bring the subject property into compliance with the zone and the conditional use permit. Public Works also expressed concern regarding maintaining storm water from flowing off site. In compliance with AMC section 16.34.090.A., the Planning Director, City Engineer and Public Works Director shall issue permits only where adequate provisions for storm water and floodwater runoff have been made. Prior to approval of any future development permits related to "Building B', applicant shall submit to City for review and approval a storm water management and drainage study.

Water (16.34.100)

According to the Aurora Public Works, new water line connections from Ottaway Road and each building will need to have their own water meters (see Exhibit C). The City Engineer notes that City utility mapping indicate an 8" water line runs through the property and a public water easement for the water main and hydrant are required, if not already in place. This will be reviewed as part of the SDR application.

Prior to any future development permit approvals related to 'Building B', the applicant shall submit for Public Works Director and City Engineer review and approval engineered plans for water extension/connections in compliance with the public works design standards. As part of SDR, the applicant will be required to provide the City with a site utility map that reflects all existing utilities on site and needed system improvements. Prior to structural permit approvals, applicant shall submit to City for review and approval engineer water system plans conforming to public works design standards, as well as backflow prevention devices in compliance with Oregon Health Authority- Drinking Water Program (OHA-DWP) requirements.

3. The requirements of the zoning district are met;

FINDING: The property is zoned Industrial (I). Medical marijuana grow sites and processing sites are listed as a permitted use under AMC 16.16.030.F, contingent upon conditional use permit approval. Conditional use permit approval is contingent upon the Planning Commission determining the following zone code criteria are met:

AMC 16.16.040 Development standards.

A. There is no minimum size for lots or parcels served by municipal sewer. Minimum sizes for lots or parcels without municipal sewer shall be as determined by the county sanitarian.

B. There is no minimum lot width or depth.

C. Unless otherwise specified, the minimum setback requirements are as follows:

1. There is no minimum front yard setback except as required for buffering of off street parking in accordance with Section 16.38.050.

2. On corner lots, the minimum setback for the side facing the street shall be ten (10) feet.

3. No additional side or rear yard setback shall be required except fifty (50) feet screened and buffered in accordance with Chapter 16.38 shall be required where abutting a residential zoning district.

D. No building shall exceed fifty (50) feet in height. Within one hundred (100) feet of a residential zone, no building shall exceed thirty-five (35) feet in height. All buildings greater than thirty-five (35) feet in height are subject to Chapter 16.24.

E. Landscaping shall be in accordance with Chapter 16.38. All outside storage areas require buffering and screening as defined in Chapter 16.38.

F. Parking shall be in accordance with Chapter 16.42.

AMC 16.16.030.F.

1. Buffers which shall only be measured at the initial land use application and not subsequent annual renewals:

a. Elementary, middle or high school, public or private: 1000 feet

b. Day care: 1000 feet
c. Other marijuana businesses: 1000 feet
d. May not be adjacent to a residential zone, a public park, or a church.

2. The use must be located within a permanent, enclosed structure.
3. The use may not be allowed as a home occupation.
4. Applicant and all employees must pass a criminal background check.
5. The term of a conditional use approval may not exceed one year.
6. Waste materials containing any amount of marijuana or by products must be locked in a secure container on-site.
7. Hours of operation are limited to 10 am to 5 pm.
8. Drive through windows are prohibited.

FINDING: The use is proposed to be within a permanent enclosed structure. However, previous structural permit approvals for the structure were for an ST-2 type (storage) building based upon previous information submitted by the applicant/property owner (see Exhibit D). City of Aurora structural permit reviews for the proposed change of use shall be required after all site plan approval conditions are satisfied and prior to occupancy permit approval. This is included as a recommended condition of approval.

Staff finds the application meets the minimum lot size, width of depth of the zone. No minimum front, side or rear yard setbacks apply as the subject property does not abut a residential zone and staff finds setback requirements are met. Landscaping and parking requirements are addressed in criteria 16.60.A.5 and 16.60.A.6 below. The existing structure is less than 50 feet in height and staff finds this criterion is met.

If approved, conditional use permit approval shall start the one-year timeline from the date of mailing of final decision of the conditional use permit approval. Suggested conditions of approval include limitations on hours of operation in conformance with zone code requirements and submission of background check approvals at the time of business license application for all on-site employees are included below.

The applicant has stated that the proposed site and use meet all criteria under 16.16.030.F. Staff finds the application/subject property meet the buffering requirements outlined under 16.16.030.F.1 for schools; daycares; residential zones, parks or churches; or any known/other marijuana businesses approved/licensed by the City of Aurora.

Evidence of applicant and employee background checks shall be submitted to the City of Aurora at the time of business license application.

Hours of operation shall be limited to 10 am to 5 pm and drive through windows are prohibited. The applicant confirmed in their application that hours of operation shall be limited to between 10 am and 5 pm. Retail sales of marijuana and marijuana products are prohibited in the Industrial zone.

Staff finds this criteria can be met, with conditions.

4. The use is compatible with surrounding properties or will be made compatible by imposing conditions;

FINDING: Property to the north and east are zoned Industrial. Properties to the south and west are a mix of Industrial and Commercial. Staff finds the proposed use is compatible with surrounding property zones and uses, pending conditional use permit approval and the recommended conditions of approval.

5. All parking and loading areas are designed and improved in accordance with the requirements set forth in Chapter 16.42;

FINDING: The application shows ten (10) parking spaces along the northern structural wall of 'Building B', one of which is an ADA parking space. For 'Building B', measuring 6,000 square feet (120' x 50'), In compliance with AMC 16.42.030.D, one (1) space per employee on two largest shifts is required for industrial manufacturing and warehousing. According to the applicant, page SP1.1, 1 shift with a maximum of ten (10) employees is proposed. Loading areas for industrial uses less than 25,000 square feet in size are not required. Staff finds this criteria is met.

16.42.050 requires all parking to have a durable hard surface, with bumper rails or curbing at least four (4) inches in height. The applicant has provided measurements and curbing on page A.1.1 of the application. These shall be installed prior to occupancy permit approval. Any exterior lighting shall conform to AMC 16.42 and shall be submitted to the City for review and approval.

6. All landscaping is designed and improved in accordance with the requirements set forth in Chapter 16.38;

FINDING: AMC 16.38.020.C.2, requires properties larger than twenty thousand (20,000) square feet to have at least ten (10) percent of the total area landscaped. The applicant shows 30% landscaping on site on application page SP1.1. Landscaping shall be installed prior to occupancy permit approvals. Additional buffering or screening is not required as the property does not abut residential zones. The applicant proposes a 5' chain link fence along the east property line. Staff finds chain link fencing up to 6' in height is permitted on Industrial zoned properties. Staff finds this criteria is met.

7. All public improvements are designed and constructed in accordance with the requirements set forth in Chapter 16.34;

FINDING: This criterion is addressed under section 16.60.AS.2, above.

8. All facilities for the handicapped are designed in accordance with the requirements set forth in the ADA requirements;

FINDING: The applicant shows the provision of one (1) ADA parking space on page A1.1 of the application. Structural permit review and approval by the City of Aurora shall be required prior to occupancy of "Building B'. This is included as a recommended condition of approval. Staff finds this criterion can be met, with conditions.

9. The provisions of all applicable chapters of this title are satisfied; and

FINDING: The applicant is able to meet the setback requirements of the base zone as submitted. The criteria for 16.13-Accessory Buildings are discussed below.

10. Properties located in the historic commercial or historic residential overlay comply with the requirements set forth in Title 17 of the Aurora Municipal Code. A certificate of appropriateness approved by the historic review board shall satisfy this requirement.

FINDING: The subject property is not located within the historic commercial or historic residential overlay zone. Staff finds this criterion does not apply.

B. In reviewing an application for a conditional use, the commission shall consider the most appropriate use of the land and the general welfare of the people residing or working in the neighborhood. In addition to the general requirements of this title, the commission may impose any other reasonable conditions deemed necessary. Such conditions may include, but are not limited to:

1. Limiting the manner in which the use is to be conducted, including restrictions on the hours of operation;

2. Establishing additional setbacks or open areas;

3. Designating the size, number, location and nature of vehicle access points;

4. Limiting or otherwise designating the number, size, location, height and lighting of signs;

5. Requiring fences, sight-obscuring hedges or other screening and landscaping to protect adjacent properties;

6. Protecting and preserving existing soils, vegetation, wildlife habitat or other natural resources.

FINDING: As included in the subject application, hours of operation shall be limited to between the hours of 10 am and 5 pm. In addition, the applicant has stated a limitation of ten (10) employees on site at any one time.

A business license application and fee shall be required prior to approval of occupancy permits. In addition, there are a number of documented structural and plumbing permit violations that have not been resolved on site at the time of processing of this application. Due to the documented violations on site, Staff recommends the Planning Commission condition approval of the conditional use permit as follows:

Occupancy permit cannot be issued until the business license fees and approval have been issued.

A certificate of occupancy cannot be issued until structural, electric, mechanical and plumbing permit applications, fees, inspections and final approvals have been issued for 'Building B'.

Structural permit applications cannot be accepted for review or issued until review and approval of a Site Development Review application for 'Building B', and/or the entire Lot 1700 of Map 041W13B, in compliance with AMC 16.58, and satisfaction of all conditions of approval for same.

V. CONCLUSIONS AND RECOMMENDATIONS

Based on the findings in the staff report, staff recommends that the Planning Commission **approve** the application for a Conditional Use Permit (file no. CUP-16-01) based upon the following:

1) Develop the subject property in accordance with plans approved by the city.

2) Comply with all City of Aurora and State of Oregon development, building and fire codes. Where public improvements are required, all public works facilities shall be designed to the City of Aurora Public Works Construction Standards (PWCS) plus the requirements of the Aurora Municipal Code (AMC). Where the PWCS are silent, the Marion County Public Works Standards shall apply, followed by the Oregon APWA/ODOT Standards.

3) In compliance with AMC 16.16.030.F., all uses must be located within a permanent, enclosed structure; applicant and all employees must pass a criminal background check; waste materials containing any amount of marijuana or by products must be locked in a secure container on-site; hours of operation are limited to 10 am to 5 pm; and drive through windows are prohibited.

   Evidence of applicant and employee background checks shall be submitted to the City with the application for a business license. Retail sales are prohibited in the Industrial zone.

   As the subject conditional use permit application applies to a new development/change of use and occupancy of 'Building B', staff has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. Structural permit or other development permit applications shall not be accepted until the requirements of the Site Development Review application and approval and the requirements of AMC 16.58 are met for the subject property, including satisfaction of all conditions of approval.

4) Parking as shown in the application and in compliance with AMC 16.42.050 shall be installed prior to acceptance of structural permit applications. Any exterior lighting shall conform to AMC 16.42 and shall be submitted to the City for review and approval.

5) The applicant shall improve the existing drive access to City standards and show a recorded reciprocal access and maintenance easement from Lot 1702 to benefit Lot 1700 prior to any future development permit or occupancy permit approvals for 'Building B'. Prior to recording, the easement shall be reviewed and approved by the City of Aurora.

6) Engineered drawings for the connection/provision of sewer service to 'Building B' from existing sewer mains in accordance with the provisions set forth by the City's public works design standards shall be submitted for review and approval by the City. In accordance with 16.34.080.B., the applicant shall submit to the City an engineered sanitary sewer plan conforming to the public works design standards prior to issuance of development permits.

7) Prior to approval of any future development permits related to 'Building B', applicant shall submit to City for review and approval a storm water management and drainage study. Landscaping shall be installed prior to occupancy permit approvals in order to bring the subject property into compliance with the zone and the conditional use permit.

8) Prior to any future development permit approvals related to 'Building B', the applicant shall submit for City review and approval engineered plans for water extension/connection in compliance with the City public works design standards. Prior to structural permit approvals,

applicant shall submit to City for review and approval engineer water system plans conforming to public works design standards, as well as backflow prevention devices in compliance with Oregon Health Authority- Drinking Water Program (OHA-DWP) requirements.

9) In compliance with 16.16.030.F. and 16.76.360 for expirations, the term of a conditional use approval may not exceed one year. The expiration of the CUP-2016-01 shall be one year from the date of mailing of the final decision (if approved). The applicant should apply for renewal of the conditional use approval at least 90 days prior to expiration of the one year period in order to allow for notification requirements for hearings.

VI. PLANNING COMMISSION ACTION

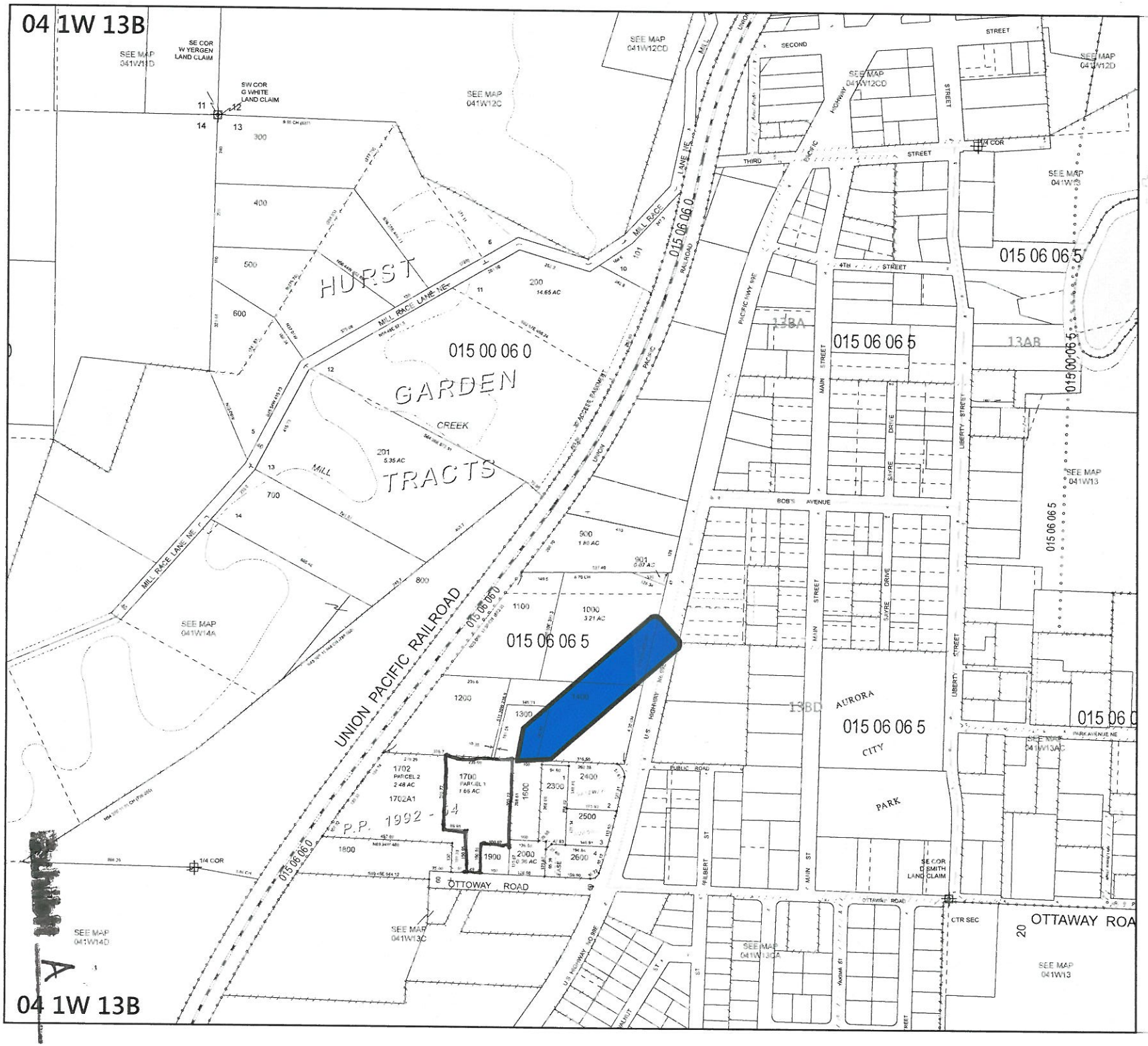
A. Approve the conditional use permit for a marijuana grow site and marijuana processing site on the subject property (CUP-2016-01):

1. As recommended by staff, or

2. As determined by the Planning Commission stating how the application satisfies all the required criteria, and any revisions to the recommended conditions of approval, or

B. Deny the request for a conditional use permit for a marijuana grow site and processing site on the subject property (CUP-2016-01) stating how the application does not meet the applicable approval criteria.

C. Continue the hearing to a time certain or indefinitely (considering the 120-day limit on applications).



04 1W 13B
AURORA

MARION COUNTY, OREGON

NW1/4 SEC13 T4S R1W W.M.

SCALE 1" = 200'

LEGEND

LINE TYPES

Taxlot Boundary	Historical Boundary
Road Right-of-Way	Easement
Railroad Right-of-Way	Railroad Centerline
Private Road ROW	Taxcode Line
Subdivision/Plat Bndry	Map Boundary
Waterline - Taxlot Bndry	Waterline - Non Bndry

SYMBOL TYPES

- Survey Monument
- Road Station
- DLC Corner
- 1/16TH Section Cor
- 1/4 Section Cor
- 16 15 / 21 22 Section Corner

NUMBERS

Tax Code Number

000 00 00 0

Acreage

0.20 AC

All acres listed are Net Acres, excluding any portions of the taxlot within public ROWs

NOTES

Tick Marks If a tick mark is indicated on the end of a line, then the dimension goes to the tick mark. This is used when dimensions extend into public right-of-ways

CANCELLED NUMBERS

1001
1500
1701
1801
1901
2001
2002

DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY

Assessors Office Cartography Dept

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 10/7/2015

AURORA
04 1W 13B

City of Aurora
Planning/Development Application

(Check appropriate box)

- ☐ SITE DEVELOPMENT REVIEW (AMC 16.58)
- ☐ FLOOD PLAN DEV. PERMIT (AMC 16.18)
- ☐ HISTORIC OVERLAY DISTRICT (AMC 16.20-16.22)
  - ☐ Certificate of Appropriateness
  - ☐ Demolition Permit
  - ☐ Sign Review
- ☐ MANUFACTURED HOME PARK (AMC 16.36)
- ☐ COMPREHENSIVE PLAN AMENDMENT (AMC 16.80)
  - ☐ Text ☐ Map
- ☐ ZONING ORDINANCE AMENDMENT (AMC 16.80)
  - ☐ Text ☐ Map
- ☒ CONDITIONAL USE (AMC 16.60)
- ☐ VARIANCE (AMC 16.64)
- ☐ HOME OCCUPATION (AMC 16.46)
  - ☐ Type I ☐ Type II
- ☐ NON-CONFORMING USE (AMC 16.62)
- ☐ LAND DIVISION
  - ☐ Subdivision (AMC 16.72)
  - ☐ Partition (AMC 16.70)
  - ☐ Property Line Adjustment (AMC 16.68)
- ☐ APPEAL TO _____ (AMC 16.74-16.78)
- ☐ OTHER _____

APPLICANT GENERAL INFORMATION

Applicant Fortune Farms, Inc., c/o Todd Boren Phone 407-467-2367

Mailing Address 220 NW 8th Ave, 1st Floor, Portland, OR 97209

Property Owner Stems Property LLC, c/o Bob Smets Phone 503-702-2713

Mailing Address PO Box 560, Aurora, OR 97002

Contact person if different than applicant Alex Tinker Phone 503-802-5734

Mailing Address 1600 Pioneer Tower, 888 SW Fifth Ave., Portland, OR 97204

PROPERTY DESCRIPTION

Address 14633 Ottaway Rd. Northeast, Aurora, OR 97002 Tax Map # 04 1W 13B Tax Lot # 01700

Legal Description (attach add'l sheet if necessary) P.P. 1992-064, PARCEL 1, ACRES 1.66

Total Acres or Sq. Ft. 1.66 Acres Existing Land Use _____

Existing Zoning Industrial Proposed Zoning (if applicable) _____

Proposed use Marijuana Grow Site and Marijuana Processing Site

ACTION REQUESTED: (use additional sheets as needed)

Applicant requests approval of conditional use pursuant to Municipal Code 16.16.030 F.

ATTACHMENTS:

A. Plot plan of subject property- show scale, north arrow, location of all existing and proposed structures, road access to property, names of owners of each property, etc. Plot plans can be submitted on tax assessor maps which can be obtained from the tax assessor's office in the Marion County Courthouse, Salem OR.

B. Legal description of the property as it appears on the deed (metes and bounds). This can be obtained at the Marion County Clerk's office in the Marion County Courthouse, Salem OR.

ADDITIONAL INFORMATION

In order to expedite and complete the processing of this application, the City of Aurora requires that all pertinent material required for review of this application be submitted at the time application is made. If the application is found to be incomplete, review and processing of the application will not begin until the application is made complete. The submittal requirement relative to this application may be obtained from the specific sections of the Aurora Municipal Code pertaining to this application. If there are any questions as to submittal requirements, contact the City Hall prior to formal submission of the application.

In submitting this application, the applicant should be prepared to give evidence and information which will justify the request and satisfy all the required applicable criteria. The filing fee deposit must be paid at the time of submission. This fee in no way assures approval of the application and is refundable to the extent that the fee is not used to cover all actual costs of processing the application.

I certify that the statements made in this application are complete and true to the best of my knowledge. I understand that any false statements may result in denial of this application. I understand that the original fee paid is only a deposit and I agree to pay all additional actual costs of processing this application, including, but not limited to, all planning, engineering, City attorney and City administration fees & costs. I understand that no final development approval shall be given and/or building permit shall be issued until all actual costs for processing this application are paid in full.

Signature of Applicant Stems Properties LLC, Robert D Smets Date 5/5/16

Signature of Property Owner Robert D Smets Date

Office Use Only: Received By: _____ Date: _____ Fee Paid $_____

Receipt # _____ Case File # _____ Planning Director Review _____ Date: _____

Last updated 6-14-2010

Exhibit B1

City of Aurora
Planning/Development Application
(Check appropriate box)

- ☐ SITE DEVELOPMENT REVIEW (AMC 16.58)
- ☐ FLOOD PLAN DEV. PERMIT (AMC 16.19)
- ☐ HISTORIC OVERLAY DISTRICT (AMC 16.20-16.22)
  - ☐ Certificate of Appropriateness
  - ☐ Demolition Permit
  - ☐ Sign Review
- ☐ MANUFACTURED HOME PARK (AMC 16.36)
- ☐ COMPREHENSIVE PLAN AMENDMENT (AMC 16.80)
  ☐ Text ☐ Map
- ☐ ZONING ORDINANCE AMENDMENT (AMC 16.80)
  ☐ Text ☐ Map
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  - ☐ Subdivision (AMC 16.72)
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- ☐ APPEAL TO _____ (AMC 16.74-16.78)
- ☐ OTHER _____

APPLICANT GENERAL INFORMATION

Applicant Fortune Farms, Inc. c/o Todd Boren **Phone** 407-467-2387

Mailing Address 220 NW 8th Ave, 1st Floor, Portland, OR 97209

Property Owner Stone Property LLC, c/o Bob Smets **Phone** 503-702-2713

Mailing Address PO Box 866, Aurora, OR 97002

Contact person if different than applicant Alex Tinker **Phone** 503-802-5734

Mailing Address 1500 Pioneer Tower, 888 SW Fifth Ave., Portland, OR 97204

PROPERTY DESCRIPTION

Address 14633 Ottaway Rd. Northeast, Aurora, OR 97002 **Tax Map #** 04 1W 133 **Tax Lot #** 01700

Legal Description (attach add'l sheet if necessary) P.P. 1997-054, PARCEL 1, ACRES 1.66

Total Acres or Sq. Ft. 1.66 Acres **Existing Land Use** _____

Existing Zoning Industrial **Proposed Zoning (if applicable)** _____

Proposed use Marijuana Grow Site and Marijuana Processing Site

ACTION REQUESTED: (use additional sheets as needed)

Applicant requests approval of conditional use pursuant to Municipal Code 16.16.030 F.

ATTACHMENTS:

A. Plot plan of subject property- show scale, north arrow, location of all existing and proposed structures, road access to property, names of owners of each property, etc. Plot plans can be submitted on tax assessor maps which can be obtained from the tax assessor's office in the Marion County Courthouse, Salem OR.

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In submitting this application, the applicant should be prepared to give evidence and information which will justify the request and satisfy all the required applicable criteria. The filing fee deposit must be paid at the time of submission. This fee in no way assures approval of the application and is refundable to the extent that the fee is not used to cover all actual costs of processing the application.

I certify that the statements made in this application are complete and true to the best of my knowledge. I understand that any false statements may result in denial of this application. I understand that the original fee paid is only a deposit and I agree to pay all additional actual costs of processing this application, including, but not limited to, all planning, engineering, City attorney and City administration fees & costs. I understand that no final development approval shall be given and/or building permit shall be issued until all actual costs for processing this application are paid in full.

Signature of Applicant _____ Date _____

Signature of Property Owner _____ Date 3/25/16

Office Use Only Received By: _____ Date: _____ Fee Paid $_____

Receipt # _____ Case File # _____ Planning Director Review _____ Date: _____

Last updated 6-14-2010

Exhibit B2

Business Registry Business Name Search

New Search

Business Entity Data

05-11-2016
13:19

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
417231-98	DLLC	ACT	OREGON	03-01-2007	03-01-2017	
Entity Name	STEMS PROPERTIES, LLC					
Foreign Name						

New Search

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	14633 OTTAWAY RD NE					
Addr 2						
CSZ	AURORA	OR	97002		Country	UNITED STATES OF AMERICA

Please click here for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT		Start Date	03-01-2007	Resign Date
Name	MARK	A	GORDON			
Addr 1	1677 ST HELENS ST					
Addr 2						
CSZ	SAINT HELENS	OR	97051		Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS				
Addr 1	C/O JOHN S SMETS					
Addr 2	PO BOX 560					
CSZ	AURORA	OR	97002		Country	UNITED STATES OF AMERICA

Type	MEM	MEMBER				Resign Date
Name	ROBERT	D	SMETS			
Addr 1	PO BOX 560					
Addr 2						
CSZ	AURORA	OR	97002		Country	UNITED STATES OF AMERICA

Type	MEM	MEMBER				Resign Date
Name	JOHN	S	SMETS			
Addr 1	PO BOX 560					
Addr 2						
CSZ	AURORA	OR	97002		Country	UNITED STATES OF AMERICA

New Search

Exhibit B3

Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
STEMS PROPERTIES, LLC	EN	CUR	03-01-2007	

Please read before ordering Copies.

New Search

Summary History

Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	ANNUAL REPORT PAYMENT	02-23-2016		SYS		
	ANNUAL REPORT PAYMENT	03-18-2015		SYS		
	NOTICE LATE ANNUAL	03-06-2015		SYS		
	ANNUAL REPORT PAYMENT	02-25-2014		SYS		
	ANNUAL REPORT PAYMENT	02-28-2013		SYS		
	ANNUAL REPORT PAYMENT	03-12-2012		SYS		
	NOTICE LATE ANNUAL	03-02-2012		SYS		
	ANNUAL REPORT PAYMENT	03-11-2011		SYS		
	NOTICE LATE ANNUAL	03-04-2011		SYS		
	CHANGE OF MAILING ADDRESS	01-21-2010		FI		
	ANNUAL REPORT PAYMENT	01-21-2010		SYS		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	02-06-2009		FI		
	ANNUAL REPORT PAYMENT	02-05-2009		SYS		
	AMENDED ANNUAL REPORT	03-17-2008		FI		
	NOTICE LATE ANNUAL	03-07-2008		SYS		
	CHANGE OF MAILING ADDRESS	03-09-2007		FI		
	ARTICLES OF ORGANIZATION	03-01-2007		FI	Agent	

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Exhibit B4

Oregon Health Authority
Oregon Medical Marijuana Program
800 NE Oregon Street
Portland, OR 97232-2162

OMMP Mailing Address:
OHA/OMMP
PO Box 14450
Portland, OR 97232-0450
Phone: (971) 673-1234

Oregon Medical Marijuana Program

Registration Information

Grower Name : RYAN D CHRISTENSEN
Grower Card No : 1145844
DOB : 5/22/1976
Address : 14633 OTTAWAY RD NE BLDG B
AURORA, OR
97002-9247

Record No : 238312/399693
Grower Card Issued : 2/25/2016
Patient Card Effective : 5/20/2015
Card Expires : 5/20/2016

Patient Name : RYAN D CHRISTENSEN
Patient Card No : 1014166
DOB : 5/22/1976
Address : 5102 N HARVARD ST
PORTLAND, OR
97203-4429

Growsite Location : 14633 OTTAWAY RD NE BLDG B
AURORA,OR
97002-9247

This Card must be posted at Growsite.

The Oregon Medical Marijuana Program protects medical marijuana users who comply with its requirements from state and criminal prosecution for production, possession or delivery of a controlled substance.

"The (State) Act neither protects marijuana users from seizures nor individuals from prosecution if the federal government chooses to take action against patients, caregivers, or growers under the federal Controlled Substance Act."

"Driving under the influence of marijuana is not allowed under the Oregon Medical Marijuana Act."

OHA OMMP

Grower Identification Card

RYAN D CHRISTENSEN
Grower Card No: 1145844
DOB: 5/22/1976
Id: 8919656

Grower Card Issue Date: 2/25/2016
Patient Card Effective Date: 5/20/2015
Card Expiration Date: 5/20/2016

Replacement

872786

OHA 8500 (09/11)

Exhibit B5

TONKON TORP LLP
ATTORNEYS

1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503.221.1440

March 31, 2016

DELIVERED VIA PERSONAL DELIVERY
Renata Wakeley, City Planner
Aurora City Hall
21420 Main Street
Aurora, OR 97002

Re: City of Aurora – Planning/Development Conditional Use Application

Dear Ms. Wakeley:

Enclosed please find for your review and approval the following documents relating to the application for conditional use by Fortune Farms, Inc. ("Applicant") for the property located at 14633 Ottaway Road NE, Aurora, Oregon 97002 (the "Property"):

1. City of Aurora Planning/Development Application
2. Plot Plan of the Property
3. Legal Description of the Property
4. Site Development Plan (3 copies)
5. Narrative Description of the Property and Operations
6. A Copy of State of Oregon OMMP Grow Site Designation
7. Check in the amount of $5,000 for the application fee

We hereby request on behalf of the Applicant confidential treatment for the application materials submitted. This request is made to address personal and business confidentiality concerns.

The Applicant is the tenant of the Property and authorized under the terms of a lease agreement with the owner of the Property to apply for this conditional use permit. Please let me know if you need additional documentation as evidence of authority.

By way of this letter, we hereby waive the requirement under §16.76.020(B) of the City of Aurora Land Development rules to meet with the planning director for a pre-application conference. However, if you'd like to schedule this meeting please contact me to make arrangements with the Applicant.

Please contact me if you have any questions or need additional information about this application.

Best Regards,

Tatiana A. Logan

cc: Fortune Farms, Inc.

Enclosures.

Exhibit B6

21332

TONKON TORP LLP • PORTLAND, OREGON

VENDOR # 10393

DATE: 03-31-16 PAYEE: City of Aurora

CHECK # 21332

INVOICE DATE	INVOICE #	DESCRIPTION	AMOUNT
03/31/16	03/31/16		$5,000.00

TONKON TORP LLP
ATTORNEYS

1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
(503) 221-1440

WELLS FARGO BANK, N.A.
1300 SW 5th AVENUE
PORTLAND, OR 97201

24-680
1230

21332

FIVE THOUSAND AND 00/100 Dollar(s)

DATE	CHECK NO.	AMOUNT
03-31-16	21332	$5,000.00

PAY TO THE ORDER OF

City of Aurora
Aurora City Hall
21420 Main Street
Aurora, OR 97002

TWO SIGNATURES REQUIRED FOR AMOUNTS OVER $2,000.00
VOID AFTER SIX MONTHS

⑈021332⑈ ⑆123006800⑆ 2934150232⑈

Exhibit 87

EXHIBIT "A"

The following property and all improvements thereon located in the City of Aurora, Marion Co., OR, comprised of two tax lots, Ref. Parcel #041W13B01702, Parcel #R10656 (including Ref. Parcel 0702A1, Parcel #R333923), consisting of 2.48 acres, more or less, and Ref. Parcel No. 041W13B01700, Parcel #R10655, comprised of 1.66 acres more or less, and commonly known as 14633 Ottaway Rd., NE, Aurora, OR, 97002, subject to encumbrances and restrictions of record.

Beginning at an iron rod driven on the East line of the Southern Pacific Railroad right of way where said line intersects the East-West centerline of Section 13, Township 4 South, Range 1 West of the Willamette meridian in the City of Aurora, Marion County, Oregon, said rod being 358.57 feet South 89°45' East of the Quarter Section corner common to sections 13 and 14; running thence along said centerline, 644.12 feet South 89°45' East to an iron rod; thence 130 feet North to an iron rod, passing a rod at 30 feet; thence 100 feet South 89°45' East to an iron rod; thence 311.88 feet North to an iron rod, passing a rod 25 feet back; thence 457.65 feet North 89°45' West to an iron rod on said East right of way line; thence 124.74 feet South 35° West, 133.32 feet South 34°30' West, 128.70 feet South 32°45' West, 139.50 feet South 32°30' West to the place of beginning.

SAVE AND EXCEPT therefrom that certain parcel of real property conveyed to Robert A. Weik and Marilyn E. Weik, by document recorded in Reel 70, Page 1984 Deed Records for Marion County, Oregon.

ALSO SAVE AND EXCEPT that portion conveyed to the City of Aurora, by deed recorded October 17, 1991, in Reel 983, Page 62, Microfilm Records, Marion County, Oregon.

TOGETHER WITH an easement for ingress and egress over the following described property:
Beginning at an iron pipe marking the intersection of the line dividing Section 13, Township 4 South, Range 1 West of the Willamette Meridian, in Marion County, Oregon, into North and South halves with the West property boundary of Pacific Highway U.S.99-E; and running thence North 89°45' West, a distance of 1040.46 feet to the Easterly boundary of the Southern Pacific Company Railroad right of way; thence North 32°45' East to a point which is 30 feet Northerly of (when measured at right angles from) the South line of a tract conveyed to John W. Maher, et us, by deed recorded in Volume 305, Page 401; thence South 89° 45' East, a distance of 1040 feet, more or less, to the Westerly boundary of said Pacific Highway; thence Southerly along the Westerly boundary of said Highway 30 feet, more or less, to the place of beginning.

Exhibit BB

ALSO TOGETHER WITH an easement for ingress and egress over the following described property:
Beginning at the Southeast corner of a tract of land conveyed to Walter E. Witham by Deed recorded in Volume 556, Page 676, Deed Records for Marion County, Oregon, said point being 22.11 chains South 89°45' East and 6.71 chains North 11°15' East and North 89°45 West to an Iron pipe on the West line of the Pacific Highway from the quarter section corner between Sections 13 and 14 in Township 4 South, Range 1 West of the Willamette Meridian, in Marion County, Oregon, thence North 10°50' East along the Easterly line of said Witham Tract to a point which is 15 feet from the South line of said Witham Tract as measured perpendicular thereto, thence North 89°45' West a distance of 666.0 feet, more or less to a point, thence South 11°30' West to the South line of said Witham Tract, thence East along the South line of said Witham Tract to the Southeast corner thereof and the true point of beginning of the easement herein described

ALSO TOGETHER WITH an easement for ingress and egress over the following described property:
Beginning at the Northeast corner of a tract of land conveyed to John W. Maher, et ux, by deed recorded in Volume 305, Page 401, Deed Records for Marion County, Oregon, said point being 22.11 chains South 89°45' East and 6.71 chains North 11°15' East from the quarter section corner between Section 13 and 14 in Township 4 South, Range 1 West of the Willamette Meridian in Marion County, Oregon; thence North 89°45' West 395.05 feet, more or less, to the Northeast corner of a tract of land conveyed to Marshal Flagg, et ux, by deed recorded in Volume 630, page 705, Deed Records for Marion County, Oregon; thence South along the East line of said Flagg tract, a distance of 15 feet; thence South 89°45' East 395.03 feet, more or less to a point on the East line of said Maher Tract; thence North 11°15' East 15 feet to the point of beginning.

Exhibit 89

Fortune Farms, Inc.

City of Aurora Conditional Use Application

Narrative Description

The site is suitable for the proposed use

- The site's existing warehouses have adequate electrical and water supply infrastructure for the proposed use
- All activities associated with the proposed use can be accommodated within the site's existing warehouses
- The Oregon Health Authority and Oregon Medical Marijuana Program have approved the site for use as a medical marijuana grow site. A copy of the OMMP grow site registration cards associated with the site are attached.

The site meets all §16.16.030(F) requirements.

- The site satisfies all required buffers. It is not within 1,000' of a school, daycare, or other marijuana business, and is not adjacent to a residential zone, public park, or church.
- All proposed Marijuana Business activity would take place within existing enclosed, permanent structures at the site.
- The site will not be used as a home occupation.
- All of the Applicant's employees will submit to criminal background checks.
- Any waste materials containing any amount of marijuana or marijuana byproducts will be locked in secure on-site containers.
- The site's hours of operation will be limited to 10 am to 5 pm.
- The site will not have any drive through windows.

The site meets all other §16.16.040(A) approval standards.

- Adequacy of public facilities to serve the proposal
- Zoning requirements are met
- Compatible use with surrounding properties
- Parking and loading areas comply with Chapter 16.42
- Facilities for handicapped comply with ADA requirements

EXHIBIT B10

TONKON TORP LLP
ATTORNEYS

1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503.221.1440

David J. Petersen
Admitted to practice in Oregon and California

Direct Dial: 503.802.2054
Direct Fax: 503.972.3754
david.petersen@tonkon.com

May 11, 2016

VIA E-MAIL AND U.S. MAIL

Ms. Renata Wakeley
City Planner
City of Aurora
100 High Street SE, Suite 200
Salem, OR 97301-3667

Re: Fortune Farms, Inc. - Conditional Use Permit (CUP) Application

Dear Ms. Wakeley:

We are in receipt of your memorandum dated April 18, 2016 identifying information needed by the City of Aurora to deem complete the CUP application filed by Fortune Farms, Inc. on March 31, 2016. We respond to each of the four items in your memorandum in the order presented.

1. The application was signed on behalf of the property owner, Stems Properties, LLC, by Robert D. Smets in his capacity as member of the LLC. Enclosed is a revised application showing the name and capacity of Mr. Smets and a printout of the Oregon Secretary of State's business registry indicating that Mr. Smets is a member of Stems Properties, LLC.

2. Two updated site plans are enclosed. All site plan elements required by Aurora Municipal Code (AMC) 16.42.070 are shown, including the number and location of parking spaces associated with the proposed use. Vehicular access from a public street is also shown. Vehicular access crosses the parcel to the west, which is owned by the same owner as the subject parcel.

3. The proposed project has adequate public facilities available as required by AMC 16.60.040(A)(2) and Chapter 16.34. As requested, a floor plan showing the interior layout of Building B is enclosed as sheet 2 of the site plan. The proposed use expects to have no more than 10 employees. No modifications are proposed to the footprint of the building or the exterior of the property, other than parking; consequently the adequacy of existing public facilities is unchanged. Drainage, sewer and power facilities are shown on the site plan submitted with the original application. With respect to water and electrical facilities, the existing infrastructure was adequate to serve the prior tenant which was engaged in the same use

Exhibit B11

as proposed by this application. Consequently, water and electrical facilities should be adequate for the proposed use as well. Also, the applicant and the landowner are presently working with contractors to confirm that the water and electrical facilities are up to code and will take any steps necessary to correct any deficiencies, but those efforts do not bear on the City's ability to deem the CUP application complete.

4. The proposed use includes a handicapped-accessible unisex restroom installed by the landlord, which to the applicant's knowledge meets all applicable ADA requirements. The building is handicapped-accessible as the property is flat and the entrance is at grade. The floor plan shows restriping of the parking lot to provide one handicapped-accessible parking space.

Further, in response to your e-mail to Alex Tinker on April 15, 2016, the applicant contends that Site Development Review (SDR) is not applicable here. Your e-mail suggesting that SDR might apply relies on AMC 16.48.060.A.4, which requires SDR if there is "a change in the type or location of access ways or parking areas where off-site traffic would be affected." The proposed use does not involve any change to the type or location of access ways, and the changes to the parking areas will not impact off-site traffic. Alternatively, if SDR is required, the applicant elects not to pursue Site Development Review concurrently with this application.

Thank you for the opportunity to submit this supplemental information. We look forward to receiving your notice that the application is complete.

Best regards,

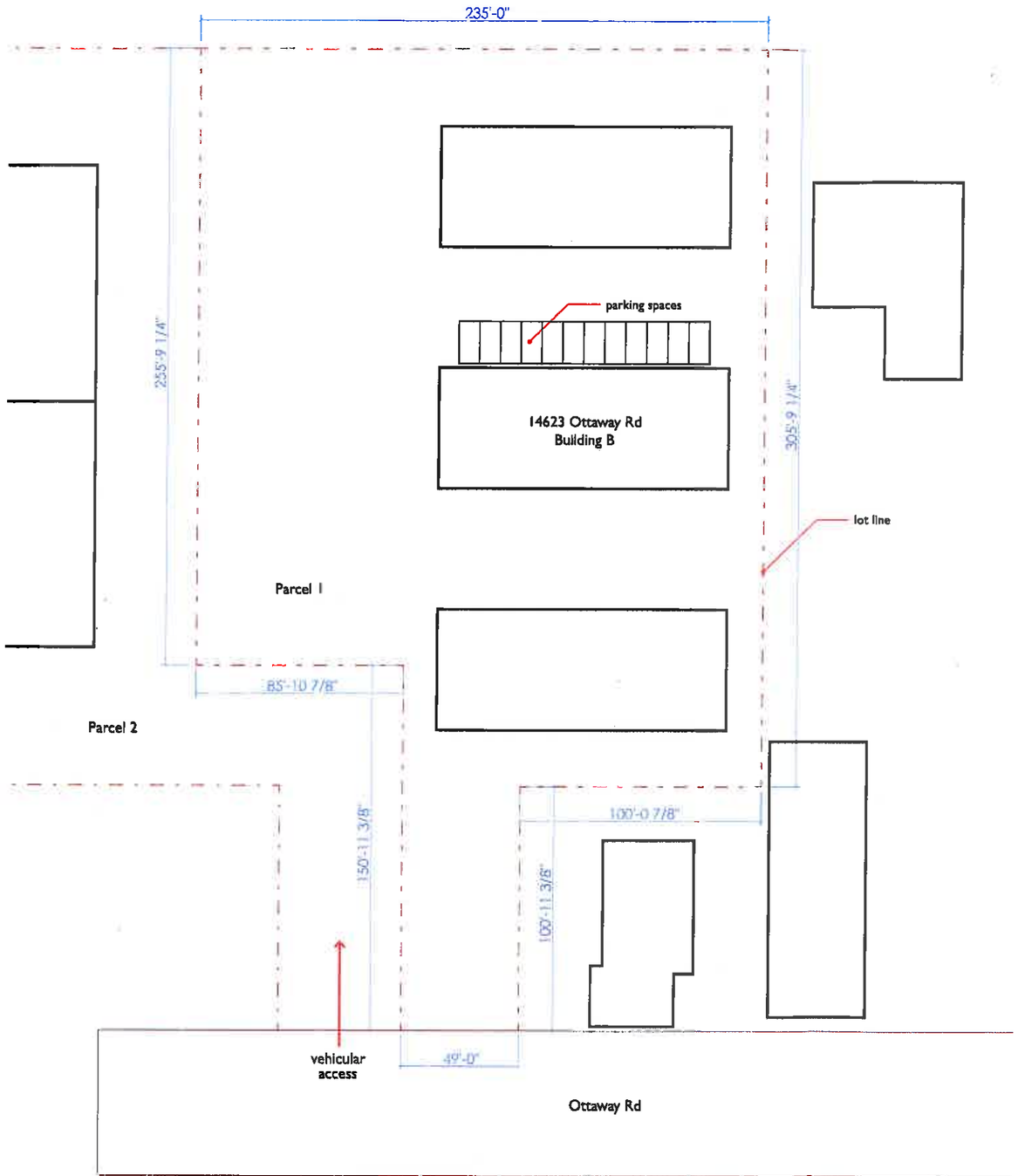
David J. Petersen

DJP/djp
Enclosures
cc (w/enc. via e-mail): Ms. Jessica A. Morgan
Mr. Alex M. Tinker

037935/00003/7206169v2

Exhibit B12

FORTUNE FARMS INC



PLOT PLAN

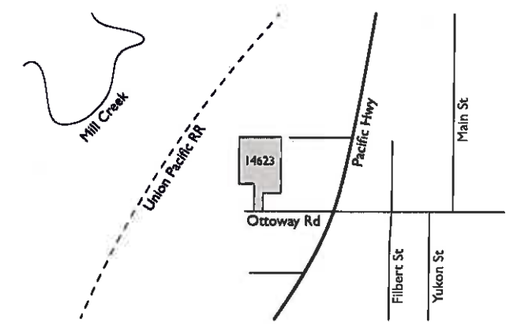
SCALE: 1/32" = 1'

INDEX TO DRAWINGS

A0 INDEX, MAP, NOTES, PLOT PLAN
A1 SITE PLAN

VICINITY MAP

SCALE: 1" = 500'



GENERAL NOTES

1. PROPERTY 14623 OTTAWAY RD IS OWNED BY STEMS PROPERTIES LLC
2. NO IMPROVEMENS ARE PROPOSED
3. VEHICULAR ACCESS IS PROVIDED VIA ADJACENT PARCEL
4. LANDSCAPE IS PAVED OR VEGETATED
5. CONTOUR LINES SHOWN AT 2' INTERVALS

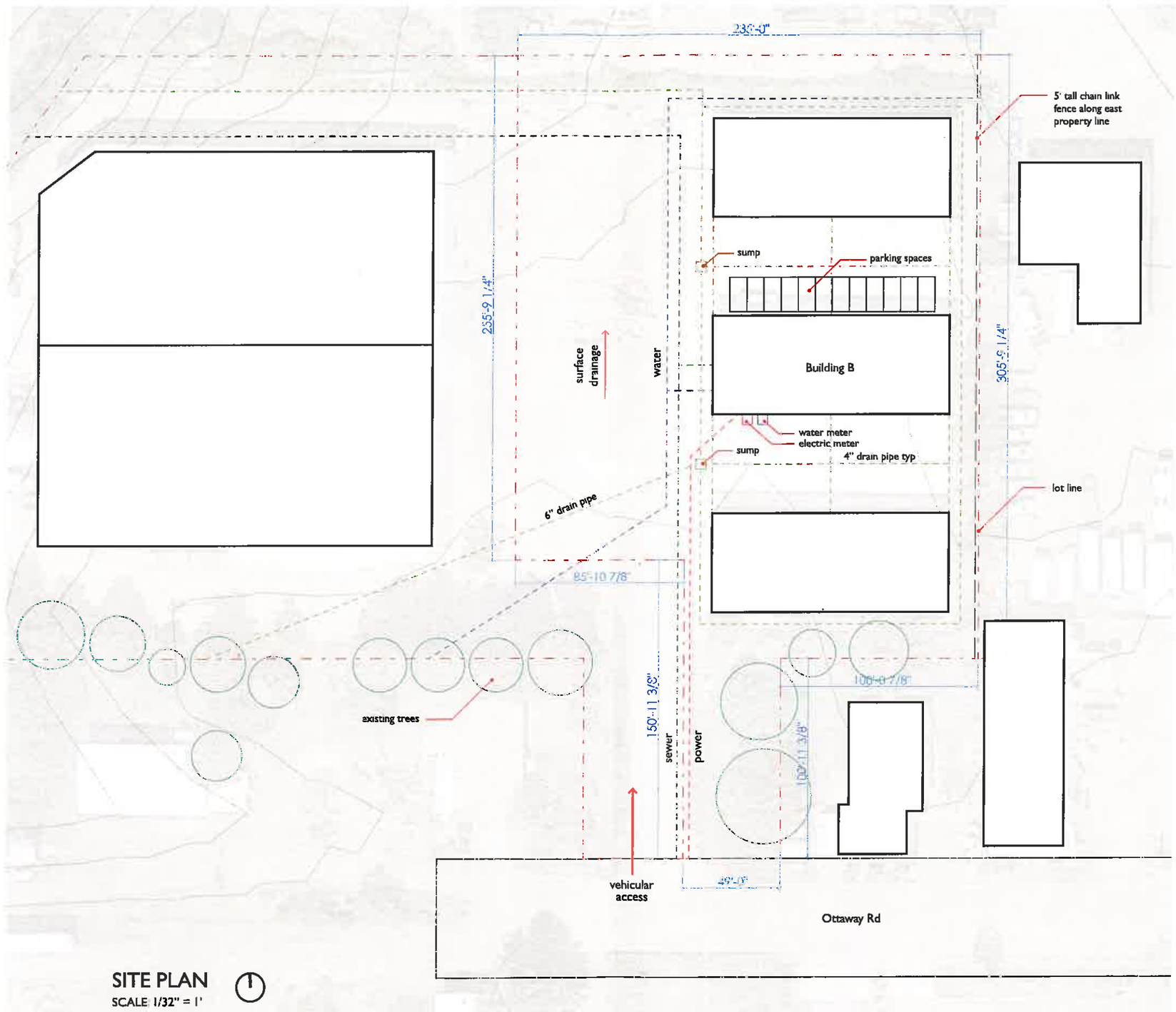
A0

Date: 3/29/2016
Scale: As indicated
Drawn: BD
Revision: 4/19/2016

FORTUNE FAMRS INC.
14623 Ottaway Rd. NE
Aurora, OR

OXALIS DESIGN STUDIO
ben@oxalislandscapes.com
541.554.9813

Exhibit B13



SITE PLAN 1
SCALE 1/32" = 1'

A1

Date: 3/29/2016
Scale: 1/32" = 1'
Drawn: BD
Revision: 4/19/2016

FORTUNE FAMRS INC.
14623 Ottaway Rd. NE
Aurora, OR

OXALIS DESIGN STUDIO
ben@oxalislandscapes.com
541.554.9813

Exhibit B14

SITE DATA & INFO:

ADDRESS:	14643 Ottaway Rd. NE Aurora, OR 97002
OWNER:	Stems Properties LLC 14633 Ottaway Rd. NE Aurora, OR 97002
TENANT:	Fortune Farms 14643 Ottaway Rd. NE Aurora, OR 97002
ZONE:	I - Industrial
AREA:	1.66 Acres (72,310 sf)
EXISTING LANDSCAPING:	21,695 sf (30%)
WATER/SEWER:	City of Aurora
POWER:	PGE
EMPLOYEES:	1 to 10
EXISTING RESTROOM:	(1) Unisex Restroom See Analysis below

AURORA MUNICIPAL CODE

CHAPTER 16 - LAND DEVELOPMENT
16.16 I - Industrial Zone

Current Use:
16.16.020 Permitted Uses:
B. Parking structure or lot or storage garage - OK

16.16.030 Conditional Uses:
F. Marijuana grow site and/or marijuana processing site subject to the following standards:
1. Buffer of 1,000' to the following:
Schools public or private - OK
Daycare - OK
Other Marijuana business - OK
May not be adjacent to Residential zone, public park or church - OK
2. The use must be located within a permanent, enclosed structure - OK
3. The use may not be allowed as a home occupation - OK
4. Applicant and all employees must pass a criminal background check - OK
5. The term of a conditional use approval may not exceed one year - OK
6. Waste material containing any amount of marijuana or by-products must be locked in a secure container on site - OK
7. Hours of operation are limited to 10 am to 5 pm - NOT A RETAIL OUTLET
8. Drive through windows are prohibited - NOT A RETAIL OUTLET

16.16.040 Development Standards:
A. There is no minimum size for lots or parcels served by municipal sewer - Served by City Sewer - OK
B. There is no minimum lot width or depth - OK
C. Unless otherwise specified, the minimum setback requirements are as follows:
1. Front Yard - No Minimum, except required for buffering of off-street parking - OK
2. Corner lots - 15' facing street - OK
3. Abutting Residential Zone - 50' - OK
D. No building shall exceed 50' in height, within 100' of Residential zone 25', all buildings greater than 35' are subject to Chapter 16.24 - Existing = 23' - OK
E. Landscaping per 16.38 - OK
F. Parking per 16.42 - OK
G. All properties located ... property is not located adjacent to 99E or Ehlen Rd. - OK.
H. Additional requirements shall include any applicable sections of this title - OK

Chapter 16.38 - Landscaping, Screening & Fencing

16.38.020 Applicability and Approval Process:
A. Section 16.38.040 shall apply to all properties in the city.
B. Residential zones - NA
C. Commercial and Industrial zones, landscaping shall be as follows:
1. Up to 10,000 sf lot - 8% Landscaping - NA
2. Over 20,000 sf lot - 15% Landscaping required - Existing 30% - OK

16.38.030 General Provisions:
A. ... Landscaping shall be maintained and kept free of debris - OK
B. All plant growth in landscape areas of dove lagoons shall be controlled by pruning, trimming or otherwise so that:
1. Public utilities can be maintained or repaired - OK
2. Pedestrian or vehicular access is unrestricted - OK
3. Visual clearance provisions are met - OK
C. Certificate of Occupancy shall not be issued unless landscaping requirements have been met or a bond has been posted... - OK
D. Existing plant material may be used if not cutting or filling taken place within the drip line of the plantings - OK.
E. Plant materials are to be watered at intervals sufficient to ensure survival and growth - OK.
F. The use of native plant materials is encouraged to reduce irrigation and maintenance demands - OK.

16.38.040 Buffering and Screening Requirements:
A. Site does not abut a residential zone - NA

16.38.050 Screening - Special Provisions:
A. Off street parking is not located adjacent to a public street - N.A.
C. Screening of loading areas and outside storage is required according to section 16.38.040(B) - Screening is not required - OK.

Section 16.38.040(D) - provide one of the following:
E. Site screening is required, the following improvements are required:
1. A 4' High hedge of dense, broadleaf evergreen shrubs shall be planted to form a continuous screen within 2 years, or
2. An earthen berm planted with evergreen plant material to form a continuous screen 6' in height within 2 years, or
3. A 6' high fence or wall - OK.

16.38.060 Fence or Walls:
A. Fences or walls up to 42" in height may be constructed in required front yards and 6' max. for rear and side yards - OK

CHAPTER 16.42 - Off-Street Parking & Loading Requirements:
16.42.040 Off-Street Loading:
A. 6,000 gsf = 1 Loading Space - 3 Existing, 2 to remain active - OK

16.42.050 Off-Street Parking:
D. Industrial Use:
1. Manufacturing = 1 space/employee on two largest shifts - 1 Shift w/ 10 employees
10 Spaces have been arranged on site including a Van Accessible space - OK

16.42.040 General Provisions:
D. Unless otherwise provided, required parking and loading spaces for industrial use shall not be located in a required front yard -
Per 16.16.040 Development Standards - No required front yard - OK
Proposed parking is located in a side yard between existing buildings - OK

16.42.070 Plan Required:
A plot plan showing dimensions, legal description, access, and circulation layout for vehicular and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in regard to the off-street parking ... are required - OK

16.42.120 Bicycle Parking:
At least one secured bicycle rack space shall be provided for each 15 parking spaces or portion thereof - OK.

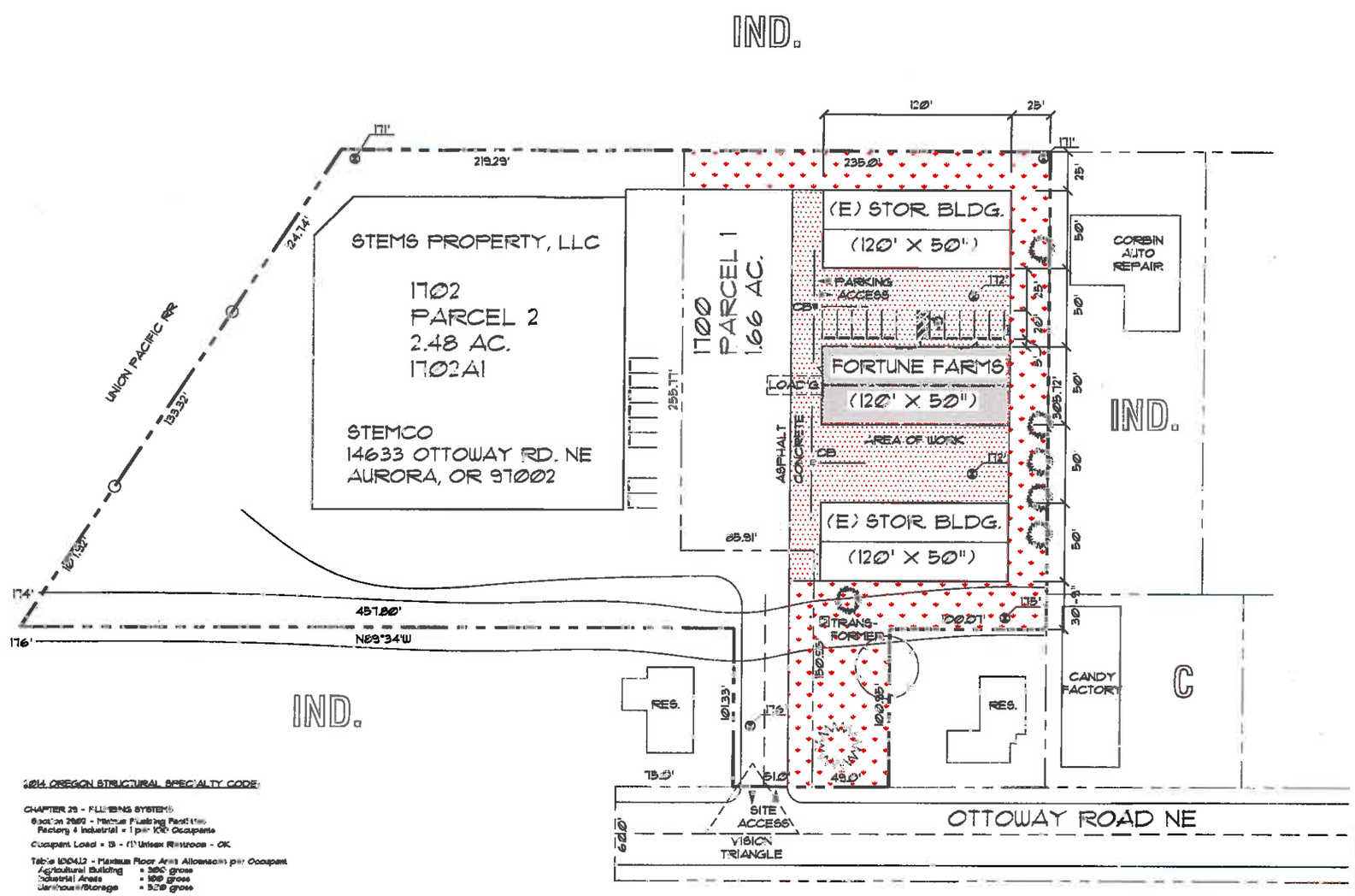
2014 OREGON STRUCTURAL SPECIALTY CODE:

CHAPTER 29 - PLUMBING SYSTEMS
Section 2902 - Minimum Plumbing Facilities
Factory & Industrial = 1 per 100 Occupants

Occupant Load = 13 - (1) Unisex Restroom - OK

Table 1004.1.2 - Maximum Floor Area Allowances per Occupant
Agricultural Building = 300 gross
Industrial Areas = 100 gross
Warehouse/Storage = 500 gross

OCCUPANCY CALCULATION: 6,000 sf Building		
AREA	SF/OCCUPANCY USE	OCCUPANTS
Laboratory	1183 gross / 100	11.83 = 2
Support Area	1281 gross / 100	12.81 = 2
Meeting Area	248 gross / 100	2.48 = 2
Flowering	2,363 gross / 500	4.73 = 5
Juvenile	365 gross / 500	0.73 = 1
Drying	128 gross / 500	0.24 = 1
	TOTAL OCCUPANTS	= 13



FRITZIE ARCHITECTS
14706 Albers Way NE
Aurora, OR 97002
503-655-3040 • lffarch@gmail.com

REGISTERED ARCHITECT LARRY F. FRITZIE PORTLAND, OREGON STATE OF OREGON

DESIGNED BY: LFF
DRAWN BY:
CHECKED BY:
REVIEWED BY:
DATE: 8-11-16
SCALE: 1" = 40'-0"

NUMBER	REVISIONS/ISSUANCES	DATE

DRAWING LEGEND

PROPERTY LINE
ADJ. PROP. LINE
SETBACK LINE
(E) CATCHBASIN & FLOW LINE — CB
ZONING — IND.
SPOT ELEVATIONS — 171'
(E) EVERGREEN SHRUBS
(E) CONIFER TREES
(E) DECIDUOUS TREES
(E) GROUNDCOVER

FORTUNE FARMS GREENHOUSE

14643 OTTAWAY RD. NE
AURORA, OREGON 97002

MARIJUANA PRODUCTION FACILITY

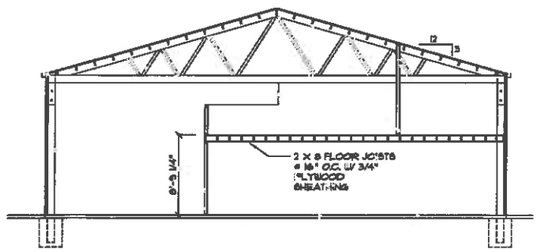
SITE PLAN Conditional Use Supplemental Information

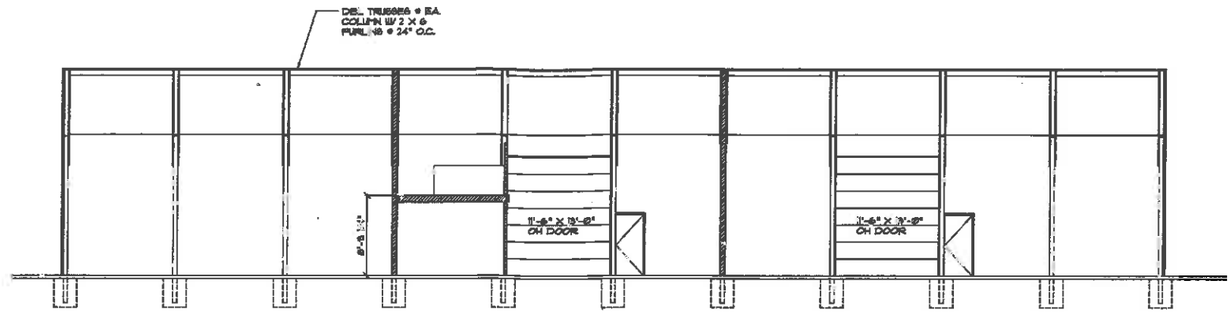
SHEET NUMBER:

SP1.1

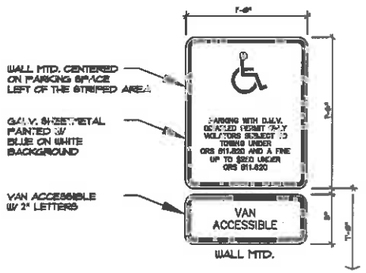
Exhibit B15

A-1	SITE DATA & AURORA MUNICIPLE CODE REVIEW	A-6	SITE PLAN - EXISTING
		1" = 40'-0"	

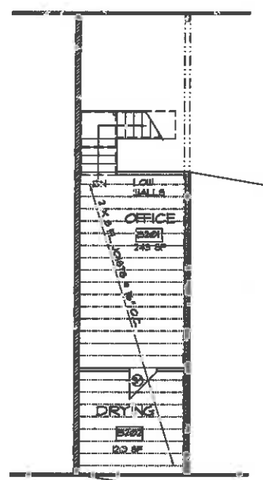




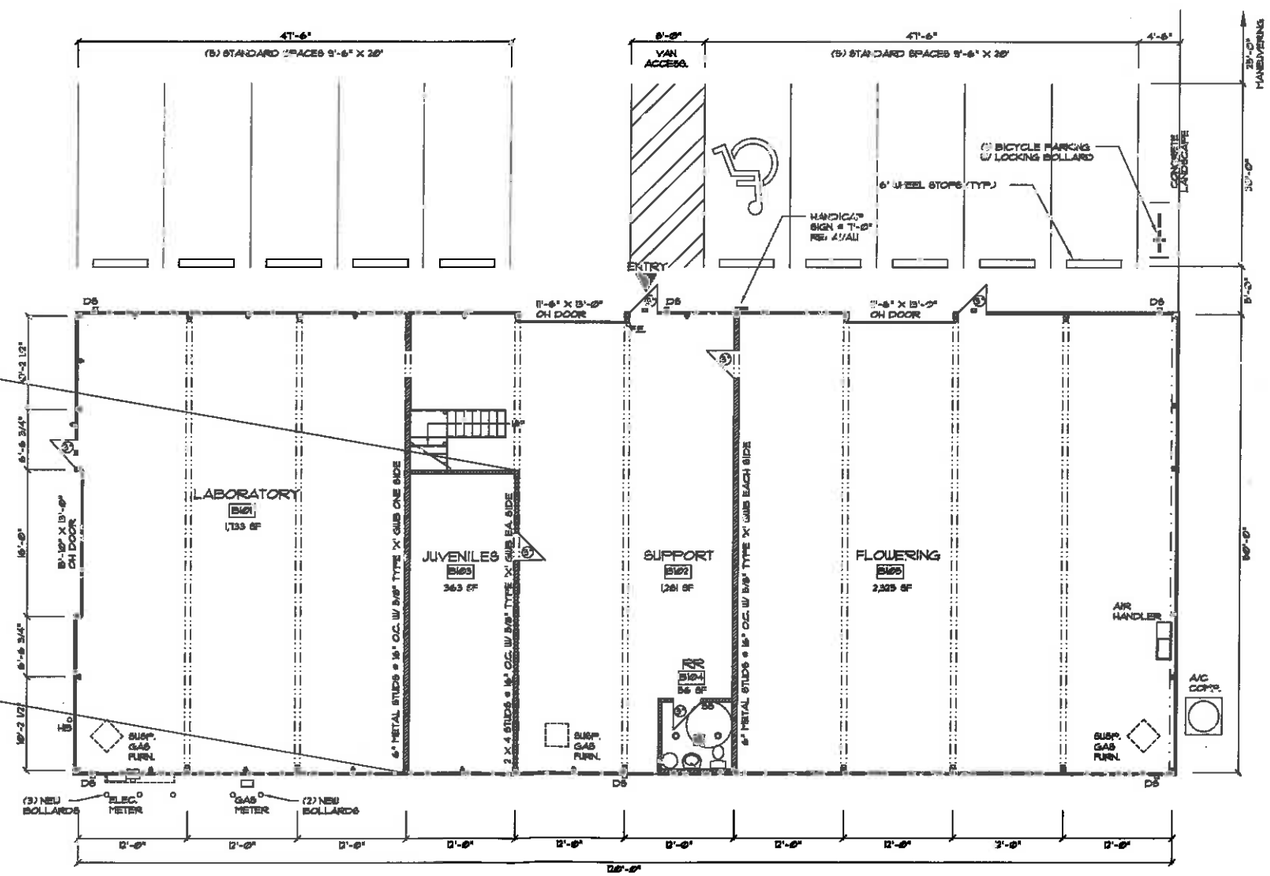
J-1	BUILDING CROSS SECTION - EXISTING	J-6	BUILDING LONGITUDINAL SECTION - EXISTING
1/8" = 1'-0"		1/8" = 1'-0"	



PHYSICALLY HANDICAPPED PARKING TO BE IDENTIFIED WITH A SIGN AT LEAST 7'-0" ABOVE GRADE, NEAR THE SPACE. SIGN TO BE MARKED WITH INTERNATIONAL SYMBOL OF ACCESS AND HAVE THE FOLLOWING PHRASE IN AT LEAST ONE INCH HIGH LETTERS.



MEZZANINE PLAN



A-1	ADA SIGNAGE	A-6	FLOOR PLAN & MEZZANINE PLAN - EXISTING
NTS		1/8" = 1'-0"	

FRITZIE ARCHITECTS
14706 Albers Way NE
Aurora, OR 97002
503-655-3040 • lffarch@gmail.com

REGISTERED ARCHITECT LARRY F. FRITZIE PORTLAND, OREGON EXP. 12-31-17 STATE OF OREGON

DESIGNED BY	LFF
DRAWN BY	
CHECKED BY	
REVIEWED BY	
DATE	8-11-16
SCALE	1/8" = 1'-0"

NUMBER	REVISIONS/SUBMISSIONS	DATE

SHEET NOTES:

FORTUNE FARMS GREENHOUSE

14643 OTTAWAY RD. NE
AURORA, OREGON 97002

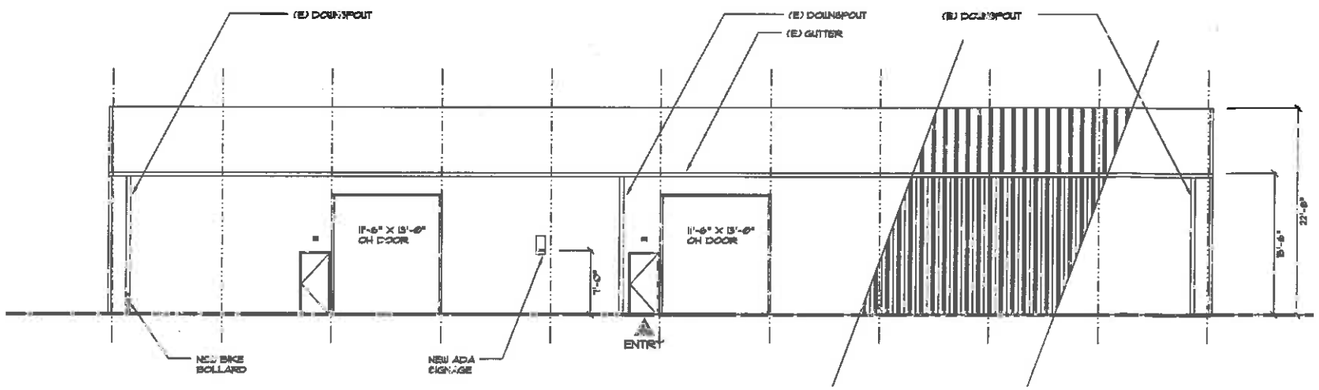
MARIJUANA PRODUCTION FACILITY

FLOOR PLAN & BLDG. SECTIONS
Conditional Use Supplemental Information

SHEET NUMBER:

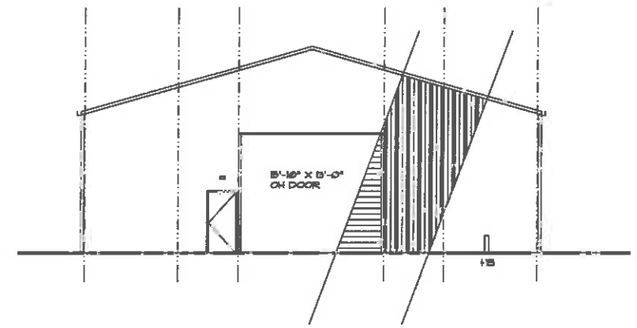
A1.1

Exhibit B16



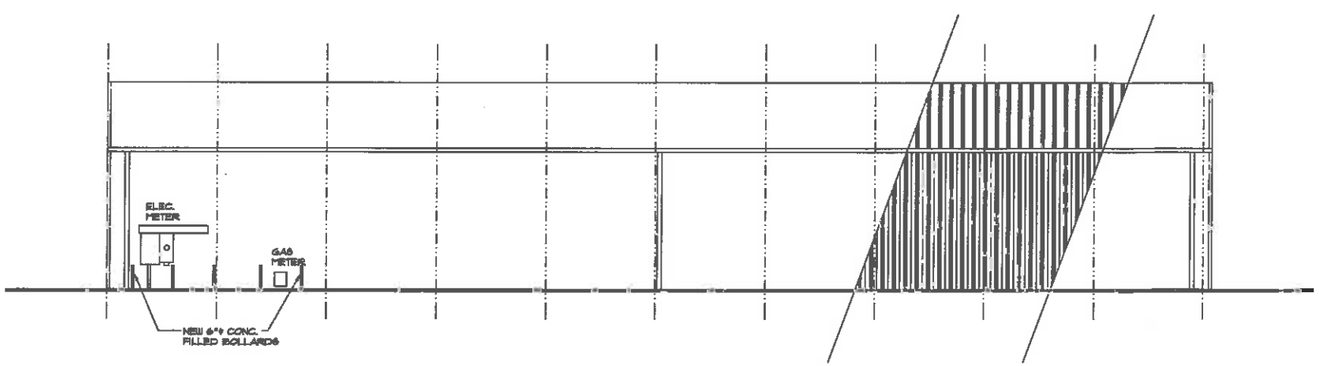
G-1 NORTH ELEVATION - EXISTING

1/8" = 1'-0"



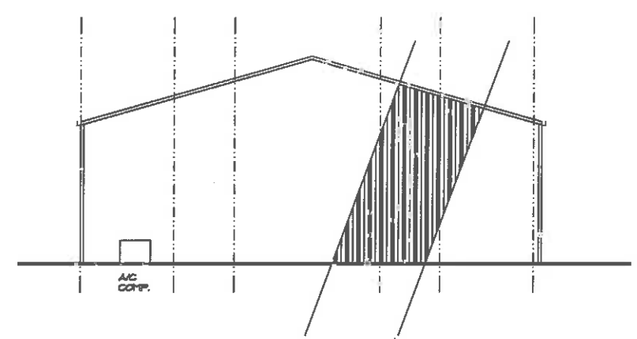
G-11 WEST ELEVATION - EXISTING

1/8" = 1'-0"



A-1 SOUTH ELEVATION - EXISTING

1/8" = 1'-0"



A-11 EAST ELEVATION - EXISTING

1/8" = 1'-0"

0 4 8 16

FRITZIE ARCHITECTS
14706 Albers Way NE
Aurora, OR 97002
503-655-3040 • lffarch@gmail.com

REGISTERED ARCHITECT
LARRY F. FRITZIE
PORTLAND, OREGON
EXP. 12-31-17
STATE OF OREGON

DESIGNED BY LFF
DRAWN BY
CHECKED BY
REVIEWED BY
DATE 8-7-19
SCALE 1/8" = 1'-0"

NUMBER	REVISIONS/SUBMISSIONS	DATE

SHEET NOTES:

FORTUNE FARMS GREENHOUSE

14643 OTTAWAY RD. NE
AURORA, OREGON 97002

MARIJUANA PRODUCTION FACILITY

ELEVATIONS
Conditional Use
Supplemental Information

SHEET NUMBER:

A2.1

Exhibit B7

Wakeley, Renata

From: Kelly Richardson
Sent: Monday, June 27, 2016 9:52 AM
To: Wakeley, Renata; John Ashley, P.E.; PWS
Cc: Rod Yoder; george.crosiar@state.or.us
Subject: RE: request for comments form attached

Importance: High

Renata,

The City of Aurora Public Works Department has the following comments on the plot plan provided;

1. Sewer line is not in the correct spot and doesn't show direction of flow.
2. Water lines cannot be accessed from the adjacent lot, they will need to come off of Ottaway rd and each building will need their own water meter.
3. Concerns regarding impervious surface as the entire lot has been concreted in and doesn't appear to have its own landscaping if needed.
4. Concerned about storm water and if there will be a need for a retention pond or not.

If you have any questions please contact Darrell at 503-444-0670

Thank you,

Kelly Richardson, CMC
City Recorder
City of Aurora
21420 Main Street NE
Aurora, OR 97002
503-678-1283
Fax 503-678-2758

PUBLIC RECORDS LAW DISCLOSURE
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From: Wakeley, Renata [mailto:renatac@mwvcog.org]
Sent: Thursday, June 23, 2016 2:37 PM
To: Recorder; John Ashley, P.E.; PWS
Cc: Rod Yoder; george.crosiar@state.or.us
Subject: FW: request for comments form attached

All,

Exhibit C1

ASHLEY
ENGINEERING DESIGN

MEMORANDUM

Application – Stems Properties, LLC., Building B Conditional Use Review

City of Aurora – File No. CUP-2016-01

TO:	Renata Wakeley/*City Planner*
FROM:	John Ashley, P.E./*City Engineer*
COPIES:	Kelly Richardson/*City Recorder*
	Darrel Lockard/*Public Works Superintendent*
PROJECT:	**Conditional Use Review – Stems Properties, LLC., Building B at 14633 Ottaway Road NE.**
DATE:	June 27, 2016

Background

I received a copy of the application for conditional use review provided by applicant Fortune Farms, Inc., for Owner/Developer Stems Properties, LLC., with a request by the City of Aurora to review and respond. The application is for proposed tenant building improvements to the Stems Properties, LLC., Building B, located at 14633 Ottaway Road NE.

This application was reviewed for general conformance with the applicable public works portions of the City of Aurora Municipal Code (AMC) and the City of Aurora Public Works Standards (PWS). Where the PWS are silent, the Marion County Public Works Standards followed by the Oregon APWA/ODOT Standards were reviewed. It is recommended that City Staff, Fire Department and Planning Commission review this memorandum in conjunction with their review of this application.

Project Overview

Project Site and Access

The application shows the location of the existing property to be within Township 4 South, Range 1 West, Section 13B, Tax Lot 01700. Vehicular access to the existing property is from the existing access located along Ottaway Road. There are no modifications being proposed in the application to the existing access.

Existing Site Topography

Existing site topography was provided with the application. The application site plan shows that the site is relatively flat with contours generally sloping north and westerly.

Exhibit C2

Existing Utilities

Available City utility mapping indicates that there are existing utilities within Ottaway Road that currently serve the development. There are no modifications being proposed in the application to the existing utilities.

Findings

Transportation

- **Right-of-Way (R/W)** – Right-of-way dedication is not required for this conditional use application, unless the City Planner has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. If so, additional right-of-way dedication may be required at that time.
- **Street Improvements** – Street improvements are not required for this conditional use application, unless the City Planner has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. If so, additional street improvements may be required at that time.
- **Shared Driveway Access** – Driveway access to the existing property is from the existing access located along Ottaway Road. There are no modifications being proposed in the application to the existing access. However, it appears that driveway access and proposed utilities for the existing building on Parcel 1 (Tax Lot 01700) is from Parcel 2 (Tax Lot 01702). It is not clear whether or not a reciprocal access and utility easement currently exists between these two parcels. As such, prior to building permit approval, the Developer shall provide evidence that one currently exists, or shall provide a reciprocal access and utility easement for City review and approval. The easement shall be submitted to the City for review and approval prior to final signatures and recording with Marion County.
- **Clear Vision Areas** – Adequate sight distances shall be provided in accordance with the AMC and AASHTO guidelines. Any proposed landscaping shall be designed to prevent future obstruction of the clear vision areas.
- **Parking Lot** – The proposed parking lot striping shall minimize congestion and take into account both vehicle traffic and pedestrian traffic. The parking lot stalls and access shall comply with standard engineering practice and the AMC. All traffic circulation patterns shall be designed to accommodate emergency vehicles as necessary. Parking lot lighting shall comply with the AMC.
- **Engineered Plans** – If modifications to the site are necessary, then prior to building permit approval the Developer shall submit to the City for review a site improvement plan conforming to Public Works Standards.

Exhibit C3

Water

- **Existing Public Water Main** – Available City utility mapping indicates that there is an existing 8" public water main that currently runs through the property. It is not clear whether or not a public water easement currently exists for this water main and fire hydrant. As such, it is recommended that the City work with the property owner to obtain an easement if one does not currently exist. If a public water easement cannot be obtained by the City as part of this conditional use review, then at minimum a Right of Access Agreement (or similar document as approved by the City) is recommended to be required for the existing public utilities that are located outside the public right-of-way. A Right of Access Agreement or similar document is executed between the City and the Developer that authorizes the City to access the premises to perform maintenance, repairs, and upgrades as necessary to the public utilities located on private property. If the City Planner has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58, then a public water easement for this system will be required at that time. The easement or Right of Access Agreement shall be submitted to the City for review and approval prior to final signatures and recording with Marion County.
- **Domestic Water Service** –
    - The application site plan shows where the existing water system is approximately located, but does not show the existing water main, meter, or if any improvements are needed. In addition, the application site utility plan does not coincide with the City's utility mapping. As such, it is recommended that the Developer provide the City with a site utility plan as part of the building permit plans that reflects all the existing utilities located on site for this property and any needed system improvements.
    - It is understood from discussions with City Staff that this site currently has a 2" water meter that serves both properties (Parcels 1 and 2). Typically, each separate parcel is required to have separate water and sewer service connections, with water meters required at each separate building that the City is serving. Unless otherwise approved by the City, it is recommended that separate water service connections and water meters be required to be installed for each building on the site that the City is serving in accordance with Public Works Standards (AMC 16.34.100).
- **Backflow Prevention System** – It is understood from discussions with City Staff that this private water system does not currently have a backflow prevention system in place. Given the proposed change in use and information provided with the application (a Lab is being proposed), and with the possible backflow concerns from this site in general, appropriate backflow prevention devices are recommended to be provided by the Developer on the private system(s). All backflow prevention details will need to be reviewed and approved by the Marion County Building Department and the Fire

Marshall, as applicable. Only Oregon Health Authority – Drinking Water Program (OHA-DWP) approved backflow prevention devices shall be used.

- **Fire Protection** – Fire hydrant(s) are generally required to be installed within 250' of any new structure, unless otherwise approved by the Fire District. It is understood that there is an existing fire hydrant currently located on site to serve this property. Prior to building permit approval, the Developer shall provide documentation that the Fire District has reviewed and approved any and all required fire protection devices, systems, and access routes.
- **Engineered Plans** – Prior to building permit approval, the Developer shall submit to the City for review and approval an engineered water system plan conforming to Public Works Standards and meeting the requirements of the Building Official.

Sanitary Sewer

- **Existing Sanitary Sewer System** – The application site plan shows where the existing sanitary sewer service system is approximately located; however, this site plan does not coincide with the City's utility mapping. As such, it is recommended that the Developer provide the City with a site utility plan as part of the building permit plan set that reflects all the existing utilities located on site for this property and any needed system improvements.
- **Sanitary Sewer Lateral Connection** – Sanitary sewer system improvements will be necessary for the proposed building revisions and will need to comply with applicable plumbing and building codes. It is not clear as to the location or size of the existing sanitary sewer lateral, but a 6" min lateral connection is generally needed for commercial and industrial facilities. In any case, an engineering review of the existing and proposed private sanitary sewer system will be required to be performed by the Developer. Given the proposed change in use, it is recommended that a monitoring manhole be required in the sanitary sewer lateral at the property line so that the City can access and monitor the sanitary sewer discharge coming from this property.
- **Engineered Plans** – Prior to building permit approval, the Developer shall submit to the City for review and approval an engineered sanitary sewer system plan conforming to Public Works Standards and meeting the requirements of the Building Official.

Stormwater

- **Stormwater Quality and Quantity** – Stormwater quality and quantity provisions are not required for this application unless the City Planner has determined that the proposed use is subject to Site Development Review approval in compliance with AMC 16.58. If so, stormwater quality and quantity provisions and a stormwater maintenance agreement will be required at that time. Although no modifications are being proposed in the application to the site or existing storm drainage system, the development shall

Exhibit C5

use best management practices to minimize any degradation of stormwater quality coming from this development.

- **Engineered Plans** – If modifications to the existing site or storm drain system are necessary, then prior to building permit approval the Developer shall submit to the City for review and approval engineered stormwater plans and drainage study conforming to the Public Works Standards and meeting the requirements of the Building Official.

Erosion and Sediment Control

- **Erosion Control** – If modifications to the existing site are necessary, then an erosion and sediment control plan shall be submitted for review and approval prior to any site grading or earth disturbing activities.

Franchise Utilities

- **Franchise Utility Improvements** – All franchise utility improvements, including but not limited to, telephone, electrical power, gas and cable TV shall meet the current standards of the appropriate agency as well as the Public Works Standards.

Recommended Public Works Conditions of Approval

1. All easements, agreements, and other documentation required by the Planning Conditions of Approval, AMC, PWS and other agencies having jurisdiction over the work shall be provided to the City for review and approval prior to any City permit issuance.
2. Prior to building permit approval, the following engineered plans and supporting documentation shall be submitted to the City for review and approval.
    a. Site improvement plans conforming to Public Works Standards, if modifications to the existing site are necessary.
    b. Water system plan conforming to Public Works Standards and meeting the requirements of the Building Official for the recommended separate water meters and backflow prevention devices. The Developer shall also provide the City with a site utility plan that reflects all the existing utilities located on site for the property (both Parcels 1 and 2) and any needed system improvements. Provide documentation that the Fire District has reviewed and approved any and all required fire protection devices, systems, and access routes.
    c. Sanitary sewer system plan conforming to Public Works Standards and meeting the requirements of the Building Official for the building sanitary sewer lateral and the recommended monitoring manhole at the property line for the monitoring of the sanitary sewer discharge.
    d. Stormwater plans conforming to the Public Works Standards and meeting the requirements of the Building Official, if modifications to the existing site or storm drainage system are necessary.

Exhibit C6

3. Prior to building permit approval, the Developer shall provide evidence that a reciprocal access and utility easement currently exists between Parcels 1 and 2, or shall provide one for City review and approval. The easement shall be submitted to the City for review and approval prior to final signatures and recording with Marion County.
4. Prior to building permit approval, the Developer shall provide a Public Water Easement for the public water main and fire hydrant or a Right of Access Agreement (or similar document as approved by the City) to be executed between the City and the Developer that authorizes the City to access the premises to perform maintenance, repairs, and upgrades as necessary to the public utilities located on private property.

Exhibit C7

#2 City of Aurora

BUILDING PERMIT APPLICATION

DEPARTMENT USE ONLY

Permit No:

Application Date: 2/03/2014

Date Issued & Paid:

Job Address:

Assessor's Map No. | Tax Lot(s)

Lot | Block | Subdivision | Acres

☐ New Structure ☐ Addition ☐ Alteration ☐ Storage Garage ☑ Accessory Bldg. ☐ Mfg. Home ☐ Other

Property Owner (print): SMITCO NORTHWEST Phone: 503-393-0017

Mailing Address: PO BOX 33 CITY OF AURORA AVE City: AURORA State: OR Zip: 97002

Contractor (print): RAIN WATTER CONTRACTING Phone: 503-393-0017

Mailing Address: P.O. BOX 0142 City: BEAVER State: OR Zip: 97305

Contractor Lic. No 200593 Contractor E-Mail:

Engineer, Architect or Designer (print): Phone: 503-393-0017

Description of Work: POLE BUILDING FOR STORAGE

ESTIMATED PROJECT VALUE: 40,000.00

NOTICE

This permit is void unless work is started within 180 days, and if work is not completed within 180 days, or if construction or work is suspended for a period of 180 days.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

Property Owner Signature: Date:

Contractor Signature: Date: 02-3-2014

FOR PLANNING DEPARTMENT USE

Zone: Plan Review No. Required Yard Setbacks: Front Side Front/Side Rear

Flood Hazard: ☐ Yes ☐ No Flood Zone Number of Off-street Parking Spaces Required

Special Conditions: Approved By: Date

FOR PUBLIC WORKS DEPARTMENT USE

Comments/Fees

Wtr. Mt. Size Tap Stub/Meter

Sewer Special Private/Monitoring Tap

Sewer/Stormwater Conn.

Storm Drainage

Comments:

Plans Reviewed By: Date:

FOR FIRE DEPARTMENT USE

Review:

Fire Protection Equip.

Comments:

Plans Approved By: Date:

FOR BUILDING DEPARTMENT USE

Const. Type: Sq. Ft: Occ. Group: Max. Occ. Load: # of Units: # of Stories: Height:

Other Information:

Plan Checked By: Date: Plans Approved By: Date:

BUILDING		PLUMBING		MECHANICAL		TOTAL	
FEES	-	FEES	-	FEES	-	FEES	-
PLAN ✓	-	PLAN ✓	-	PLAN ✓	-	PLAN ✓	-
SURCHARGE	-	SURCHARGE	-	SURCHARGE	-	SURCHARGE	-
TOTAL	-	TOTAL	-	TOTAL	-	TOTAL	-
						North Marion School District Excise Tax	-
						GRAND TOTAL	-

Exhibit D1

City of Aurora

BUILDING PERMIT APPLICATION

DEPARTMENT USE ONLY

Permit No.:

Application Date:

Date Issued & Paid:

Job Address: 14633 OTTAWAY RD

Assessor's Map No. | Tax Lot(s)

Lot | Block | Subdivision | Name

☑ New Structure ☐ Addition ☐ Alteration ☐ Garage/Carport ☐ Accessory Bldg. ☐ Mfg. Home ☐ Other

Property Owner (print): [illegible] Phone:

Mailing Address: 14633 OTTAWAY City: AURORA State: OR [illegible]

Contractor (print): RAINWATER CONTRACTING Phone:

Mailing Address: [illegible] City: [illegible] State: OR [illegible]

Contractor Lic. No 200593 Contractor E-Mail:

Engineer, Architect or Designer (print): Phone: 503 [illegible]

DESCRIPTION OF WORK: POLE BUILDING FOR STORAGE

ESTIMATED FINISHED VALUE:

NOTICE

This permit is valid under Oregon Law [illegible] This permit expires each and every of work is not commenced within 180 days, or if construction or work is suspended for a period of 180 days.

I hereby verify that I have read and examined this application and know the same to be true and correct. All provisions of law and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

Property Owner Signature: _____ Date:

Contractor Signature: [illegible] Date: [illegible]

FOR PLANNING DEPARTMENT USE

Zone: Plot Plan/Site Plan: Required Yard Setbacks: Front: Side: Front/Side: Rear:

Flood Hazard: ☐ Yes ☐ No Flood Zone: Number of Off-street Parking Spaces Required:

Special Conditions: Approved By: Date:

FOR PUBLIC WORKS DEPARTMENT USE

Easements Row:

Wtr. Mtr.: Size: Tap: Phone/Loop:

Sewer: Special Permit/Monitoring: Tap:

Streets/Sidewalks/Curbs:

Storm Drainage:

Comments:

Plans Reviewed By: Date:

FOR FIRE DEPARTMENT USE

Access:

Fire Protection Equip:

Comments:

Plans Approved By: Date:

FOR BUILDING DEPARTMENT USE

Const. Type: Sq. Ft.: Occ. Group: Max. Occ. Load: # of Units: # of Stories: Height:

Other Information:

Plan Checked By: Date: Plans Approved By: Date:

BUILDING		PLUMBING		MECHANICAL		TOTAL	
FEES	-	FEES	-	FEES	-	FEES	-
PLAN ✓	-	PLAN ✓	-	PLAN ✓	-	PLAN ✓	-
SURCHARGE	-	SURCHARGE	-	SURCHARGE	-	SURCHARGE	-
TOTAL	-	TOTAL	-	TOTAL	-	TOTAL	-
						North Marion School District Excise Tax	-
						GRAND TOTAL	-

Exhibit D2

BLDG. DEPT. COPY

City of Aurora

BUILDING PERMIT APPLICATION

DEPARTMENT USE ONLY

Permit No:

Application Date:

Date Issued & Paid: RECEIVED MAR 24 THE BUILDING DEPARTMENT

Job Address: 14633 OTTAWAY RD

Assessor's Map No. | Tax Lot(s)

Lot | Block | Subdivision | Area

✓ New Structure | Addition | Alteration | Garage/Carport | Accessory Bldg. | Mfr. Home | Other

Property Owner (print): [illegible] Phone:

Mailing Address: 14633 OTTAWAY City: Aurora State: OR Zip: 97002

Contractor (print): RAINWATER CONTRACTING Phone:

Mailing Address: [illegible] City: [illegible] State: OR Zip: [illegible]

Contractor Lic. No 200693 Contractor E-Mail:

Engineer, Architect or Designer (print): Phone: 503-[illegible]

Description of Work: POLE BUILDING FOR STORAGE

ESTIMATED FINISHED VALUE: 32,720.00

NOTICE

[illegible]

I hereby certify that I have read and examined this application and know the same to be true and correct. [illegible]

Property Owner Signature:

This installation is being made on residential or farm property owned by me or a member of my immediate family on [illegible]

Contractor Signature: [illegible]

MUST BE PUT INTO AREA Just waiting for Aurora to input Permit. 3/26/14 Need CCB License?

FOR PLANNING DEPARTMENT USE

Zone: | Plan Review No. | Required Yard Setbacks: Front | Side

Flood Hazard: Yes / No | Flood Zone | Number of Off-street Pa[illegible]

Special Conditions: | Approved [illegible]

FOR PUBLIC WORKS DEPARTMENT USE

Easements/Dev. | Access:

Wa. Mtr. Size Tap 8"Cut/X-conn | Fire Protection Eq[illegible]

Sewer Special Permit/Monitoring Tap | Comments:

Streets/Sidewalks/Curbs:

Storm Drainage:

Comments:

Plans Reviewed by: Date: | Plans Approved By: Date:

FOR BUILDING DEPARTMENT USE

Const. Type: VB Sq. Ft.: 6,000 Occ. Group: S-2 Max. Occ. Load: / # of Units: / # of Stories: Height: 16

Other Information: Storage Not Habit. Bldg - Car, Tractor Parts

Plan Checked By: [illegible] Date: 3/25/14 Plans Approved By: [illegible] Date: 3/25/14

BUILDING		PLUMBING		MECHANICAL		TOTAL	
FEES	-	FEES	-	FEES	-	FEES	-
PLAN ✓	-	PLAN ✓	-	PLAN ✓	-	PLAN ✓	-
SURCHARGE	-	SURCHARGE	-	SURCHARGE	-	SURCHARGE	-
TOTAL	-	TOTAL	-	TOTAL	-	TOTAL	-
						North Marion School District Excise Tax	-
						GRAND TOTAL	-

Exhibit D3

Inspector:
Verify "Group S1", Pallet Company

- No High-Storage of more than 12'
  or Fire Sprinkler System is Required
- Deferra: rack / Storage: Engineer Doc
  and assembly / Concrete details.
- No Permits For: Electrical
  Plumbing
  Mechanical

REVIEWED FOR
CODE COMPLIANCE

- Is only "Shell only" "Pole Barn"
  If stack over 12', new Permit must
  take place.
- Attached is "Sprinkler System" Sec. 903.2.9
  and "High-Piled Combustible"
  Chp 23, Oregon Fire Code.

PLAN REVIEWED
Reviewed plans and specifications shall not be changed, modified or altered without authorization from the building official, and all work regulated by the code shall be in reviewed plans. The issuance or granting of a permit or review of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the code or any other ordinance of the jurisdiction. Date 10 29 17
City of Aurora Permit #
OR

Exhibit D4

U.S. Department of Homeland Security
Region X
130 228th Street SW
Bothell, WA 98021-9796

FEMA

June 10, 2016

FAQ: How can I elevate my new structure without fill?

National Marine Fisheries Service's (NMFS) Biological Opinion (BiOp) on the NFIP implementation in Oregon requires FEMA to issue guidance on a variety of issues. Element 1 of the Reasonable and Prudent Alternative (RPA) requires FEMA to issue a letter to all communities that provides notice of the findings in the BiOp, interim measures, and guidance regarding elevating new structures in a manner that minimizes adverse effects of fill as an elevation technique to natural floodplain functions. This Frequently Asked Question (FAQ) document provides resources to find more detailed guidance on elevating new structures. There will be additional guidance documents provided as FEMA implements the BiOp, however this specific guidance is required by element 1 of the RPA.

FEMA has the following web-based and publications available to help understand some of the available options:

- FEMA 54-Elevated Residential Structures
  - This document contains design characteristics and recommendations for pilings, posts, piers, and other open foundation systems; several case studies are provided.
- FEMA P-259-Engineering Principles and Practices of Retrofitting Floodprone Residential Structures
  - Section 5E offers some elevation techniques for retrofitting a home.
- FEMA 15- Design Guidelines for Flood Damage Reduction
  - This document offers various pre-construction design considerations.
- FEMA P-347-Above the Flood: Elevating Your Flood Prone House
  - This document is largely targeted to existing structures and does not include post or pier elevating, but still offers alternatives to using fill.
- FEMA P-312-Homeowner's Guide to Retrofitting 3rd Edition
  - This document is also mainly targeted to existing structures and the example method 2 in Chapter 3 shows an open foundation.
- FEMA P-499-Home Builder's Guide to Coastal Construction
- FEMA P-55-Coastal Construction Manual
- Technical Bulletin 5-Free-of-Obstruction Requirements

RECEIVED
JUN 16 2016
CITY OF AURORA

2.8 Reasonable and Prudent Alternative

"Reasonable and prudent alternatives" refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat (50 CFR 402.02).

This opinion has concluded that FEMA's proposed action for implementation of the NFIP in Oregon is likely to jeopardize the continued existence of ESA-listed species under the jurisdiction of NMFS and is likely to result in the destruction or adverse modification of critical habitat that has been designated or proposed for these species. The phrase "jeopardize the continued existence of" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02).

2.8.1 Reasonable and Prudent Alternative Overview

Our analysis indicates that FEMA has not structured its proposed implementation of the NFIP in Oregon so that FEMA is positioned to know or reliably estimate the general and particular effects of the program on ESA-listed species or their designated critical habitat.

To satisfy its obligation pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended, FEMA must place itself in a position to: (1) monitor the direct, indirect, and cumulative impacts of the activities implemented under the NFIP in Oregon, (2) effectively determine program compliance, (3) take timely and effective corrective actions when the consequences of NFIP activities exceed measurable standards and criteria, and (4) structure the program in a manner that allows assurances that floodplain activities will not jeopardize ESA-listed species or their designated critical habitat.

The reasonable and prudent alternative that follows contains six elements that are designed to achieve these outcomes.

1. **Notice, Education, and Outreach.** The first element of the reasonable and prudent alternative requires FEMA to develop an education andoutreach strategy for RPA implementation and to provide notice to all NFIP participating communities in Oregon regarding the outcome of the agency's consultation and the substance of the RPA.

2. **Interim Measures.** Given that most of the RPA elements will take a period of years to fully implement, the second element of the reasonable and prudent alternative includes measures for more immediate implementation that FEMA should promptly carry out to reduce the loss of floodplain habitat features and functions as the long-term measures are phased in.

These measures are intended to slow the rate at which development permanently alters habitat conditions that are otherwise necessary for species survival and recovery, but by themselves these measures are inadequate to avoid jeopardy and adverse modification over the long term.

3. **Mapping Flood and Flood-Related Hazard Areas.** The third element of the reasonable and prudent alternative requires FEMA to implement specific program standards to identify and map more comprehensively, accurately, and timely, both flood hazard areas, and flood-related erosion hazard areas.

4. **Floodplain Management Criteria.** The fourth element of the reasonable and prudent alternative includes revisions to FEMA's regulatory floodplain management criteria so as to avoid, minimize, and mitigate the adverse effects of floodplain development on remaining habitat functions and processes.

5. **Data Collection and Reporting.** The fifth element of the reasonable and prudent alternative requires FEMA to systematically monitor all participating communities and collect and report floodplain development information.

6. **Compliance and Enforcement.** The sixth element of the reasonable and prudent alternative requires FEMA to ensure that participating communities are compliant with the floodplain management criteria as revised by this RPA.

2.8.2 Reasonable and Prudent Alternative Specific Elements

This RPA applies to all river sub-basins (HUC 4) in Oregon that contain ESA-listed anadromous fish[146] determined in this opinion to be jeopardized by the implementation of the NFIP, or containing critical habitat determined to be destroyed or adversely modified by the implementation of the NFIP. The statutory authorities under which this RPA may proceed include: 42 U.S.C. 4001(e); 42 U.S.C. 4002(b)(3); 42 U.S.C. 4011(a)-(b); 42 U.S.C. 4022(a)(1); 42 U.S.C. 4024; 42 U.S.C. 4101;42 U.S.C. 4101a; 42 U.S.C. 4101b; 42 U.S.C. 4102(c); 42 U.S.C. 4104; 42 U.S.C. 4121(c); 42 U.S.C. 4128; and 16 U.S.C. 1536(a)(1)-(2).

When NMFS determines that a proposed Federal action is likely to violate the standards of ESA section 7(a)(2), NMFS is required to devise a Reasonable and Prudent Alternative (RPA) to the proposed action. An RPA is intended to provide an alternative to the proposed action that can be implemented consistent with the intended purpose of the proposed action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that will avoid jeopardy and adverse modification. Given that throughout the action area, some floodplains retain much of their natural condition, while others have been altered through extensive development, the RPA includes provisions to protect to existing habitat conditions and features. As explained in this opinion,

[146] We define the geographical scope of this RPA as HUC 4 river sub-basins in order to ensure that this RPA applies both to sub-basins containing listed salmonids and to sub-basins where listed salmonids are not present but where floodplain development results in downstream effects to natural floodplain functions and, consequently, to listed salmonids.

protection and restoration of floodplain habitat and functions are necessary in order for the listed salmonids, and Southern Resident killer whales, to survive and recover. FEMA's current implementation of the NFIP has contributed to and continues to exacerbate the existing existing degraded conditions.

This RPA recommends revisions to FEMA's implementation of the NFIP in Oregon intended to provide protections for floodplain functions and features that support listed salmonids. NMFS has framed these recommendations based upon lessons derived from extensive efforts by FEMA, NMFS, and local governments in western Washington to reshape the implementation of the NFIP in that region based upon NMFS' 2008 jeopardy opinion and RPA for Puget Sound, Washington. This RPA focuses on the same basic improvements as were recommended in the 2008 opinion, specifically: (1) updated maps to more accurately depict the floodplain; (2) updated development and mitigation standards to guide development away from the most sensitive habitat areas and to reduce the impacts of new development or redevelopment in floodplains; and (3) strengthened systems of accountability to track and report on RPA implementation.

FEMA's implementation of the Puget Sound RPA evolved into heavy reliance on local compliance, resting largely on the discretion of the enrolled communities to choose their preferred method of compliance, often on a permit-by-permit basis, and upon the ability of FEMA staff to provide significant technical assistance to those communities to support and track implementation. The results to date are mixed, with ongoing efforts by FEMA and NMFS to improve outreach and technical assistance to local communities and to improve reporting and tracking. However, the lack of local technical expertise in floodplain hydrology and function in some communities, highly mixed and ultimately unreliable reporting, and the inability of a small FEMA staff to track implementation across a wide geography, means that, despite FEMA's best efforts, NMFS remains concerned with the Puget Sound approach. The Puget Sound approach's reliance on local communities to discern effects to salmonid resources places a scientific burden upon many with limited capacity to implement such a standard successfully, making it uncertain that FEMA can ensure that NFIP implementation is, in fact, avoiding jeopardy.

The major difference in this RPA relative to the 2008 RPA is to clarify that the locus of accountability for these ESA duties rests upon FEMA to programmatically ensure that the NFIP in Oregon avoids jeopardy through strengthened NFIP standards, enhanced use of jointly developed guidance and technical support to assist local jurisdictions in complying with the revised standards, and strengthened partnership between FEMA and NMFS and with Oregon communities to protect important floodplain functions over the long term. Accordingly, this RPA articulates a set of specific recommendations on mapping, development, and mitigation standards to achieve the goal identified in FEMA's proposed action of "no net loss or a net beneficial gain" of floodplain functions through avoidance, minimization, and mitigation requirements.

Because NMFS anticipates that several years will be needed to incorporate and implement these programmatic revisions to the NFIP, this RPA recommends a phased approach to implementation. The first (interim) phase calls for FEMA and participating communities to implement improvements using existing guidance and administrative tools with substantially enhanced technical support from both FEMA and NMFS. The second phase calls for FEMA to

revise its floodplain management regulations and/or associated guidance and technical documents as needed to implement the RPA's mapping, development, mitigation, and reporting standards. NMFS notes that FEMA's Federal Register notice of May 16, 2012 (77 FR 28891), indicated that FEMA was preparing an EIS on the NFIP and stated that FEMA intends to "[m]odify the NFIP based upon changes identified through the evaluation process to enhance floodplain management standards including provisions to address endangered species and habitat concerns," providing an opportunity for FEMA to refine its regulations if needed to assure successful implementation of this RPA.

NMFS therefore strongly advises that FEMA revise its regulations, policies, procedures, and/or guidance to ensure that the mapping, floodplain management, reporting, and enforcement protocols identified in this RPA are effectively implemented for the state of Oregon at the programmatic level. These measures are identified as necessary to ensure that the NFIP avoids jeopardy to listed species and avoids destruction and adverse modification of critical habitat for those species.

Timeline: In order to meet the expected outcomes of this RPA, except as otherwise provided below, all changes to regulations, policies, procedures, and/or guidance as needed to implement this RPA must be in place by:

- **September 15, 2016**, for Element 1.
- **March 15, 2018**, for Element 2, Elements 3.A and 3.E, and Element 5.
- **January 1, 2019**, for any components of Element 4 that FEMA determines can be implemented without regulatory revisions.
- **September 15, 2019**, for any components of Elements 3.B, 3.C, 3.D, 3.F, 3.G, and 6 that FEMA determines can be implemented without regulatory revisions.
- **January 1, 2021**, for any components of this RPA that FEMA determines require regulatory revisions.

RPA Element 1: Notice, Education, and Outreach

FEMA will develop, with NMFS's assistance, an education and outreach strategy to assist the Oregon DLCD and Oregon NFIP communities in implementing both the interim and long-term measures contained in this RPA. As a first step in this strategy, FEMA and NMFS will prepare a notice for all Oregon NFIP participating communities subject to this RPA informing them of the results of the consultation and the objectives and contents of the RPA. The notice shall be provided to NFIP communities within 60 days of the issuance of this opinion and should include, at a minimum, the following information:

A. A summary of the opinion's conclusions and a description of the types of floodplain development activities that have been found to harm listed species (see RPA Element 4.F). The notice should inform communities that these activities impair *natural*

floodplain functions,*[147] and thereby negatively impact the survival and recovery of the ESA-listed species.

B. The list of interim measures for prompt implementation found at RPA Element 2 and FEMA and NMFS's joint recommendation that communities implement these measures at the earliest possible time.

C. FEMA and NMFS' joint recommendation that new *structures** placed in the SFHA should be elevated by methods other than fill, and that proponents of projects that involve adding fill exceeding 50 cubic yards should pursue CLOMR-Fs prior to LOMR-Fs to ensure ESA compliance. FEMA shall include appropriate guidance on how to elevate structures in a manner that minimizes adverse effects to natural floodplain functions.

D. Notice to the communities of a pending requirement to report to FEMA information on all new development occurring in floodplains (see RPA Element 5.A).

E. A recommendation that participating communities provide to FEMA within 120 days of the notice their available information, if any, on locally identified flood-related hazards due to erosion or inundation, including data on anticipated flooding patterns influenced by build-out, climate change, or sea level rise, which are not currently reflected on maps adopted by FEMA, per 44 CFR 65.1.

FEMA and NMFS will commence development of the education and outreach strategy as soon as possible upon the issuance of this opinion, utilizing the expertise of DLCD and other state and local partners as appropriate, with the objective of providing clear, concise, and timely information to Oregon NFIP participants on the need for and objectives of this RPA and how they may achieve and document compliance with both the interim and long-term measures.

RPA Element 2: Interim Measures

Given that FEMA's implementation of RPA Elements 3-6 may take several years, this RPA includes the following steps for interim implementation. These measures are intended to ensure that existing natural floodplain functions are maintained pending full RPA implementation. FEMA's PBA states that FEMA has already notified communities of their responsibility to comply with the ESA, including the requirement that they either: (1) prohibit all NFIP-related actions in the SFHA during the implementation phase, or (2) determine the presence of fish or critical habitat, assess permit applications for potential impacts to species and habitat, and require that any actions with potential adverse effects be fully mitigated with no net loss of habitat function. Accordingly, NMFS anticipates that FEMA and NFIP communities, with NMFS' support and assistance, will begin implementing the following measures as soon as possible, and that all communities will be implementing these measures within 2 years of the date of this opinion.

[147] Italicized terms that are noted with an asterisk are defined in a glossary at part for their specific meaning as used in this document. The glossary is found at part 2.8.3.

A. Require that all development in the SFHA be mitigated to achieve no net loss of natural floodplain functions. Pending FEMA's completion of a long-term mitigation strategy (see RPA Element 4.F below), FEMA will require, through guidance or otherwise, mitigation per the ratios below[148]:

   i. In the larger of: the 25 year floodplain (where an FIS has been performed), the floodway (if designated), the *channel migration zone (CMZ)**(if designated); or, in FEMA's proposed *riparian buffer zone (RBZ)**; mitigate for lost flood storage and vegetation removal at the following ratios:
      a. 2 to 1 for lost flood storage (located and designed consistent with Element 4.F, below),
      b. 3 to 1 for trees of or exceeding 6 inch dbh.
   ii. In the remainder of the floodplain at the following ratios:
      a. 1.5 to 1 for lost flood storage (located and designed consistent with Element 4.F, below),
      b. 2 to 1 for trees of or exceeding 6 inch dbh.
   iii. Use pervious pavement where possible. Mitigate for the placement of new impervious surface (*e.g.*, roofs, driveways, sidewalks, roads, patios, etc.) in order of preferred method as follows:
      a. By removing an equal amount of impervious surface, and/or
      b. By infiltration of stormwater using *low impact development (LID)** or *green infrastructure** practices (*e.g.*, rain gardens, bioswales), or, where not possible because of impermeable soils or high water table, then
      c. Stormwater detention is required to ensure no increase in peak volume or flow, and treatment is required to minimize pollutant loading.
   iv. <u>Exception</u>. Where implementation of the mitigation standards set forth above is impracticable, a community may propose alternative mitigation standards, which will be acceptable if both FEMA and NMFS agree that the alternative standards provide resource protection equivalent to that provided by the measures above.

B. As described in FEMA's proposed action for this consultation, identify a riparian buffer zone (RBZ) measured 170 feet horizontally from the ordinary high water mark of perennial or intermittent streams, and limit the types of development allowed in the RBZ to: (1) *water-dependent uses**; (2) *habitat restoration activities**; (3) activities that result in a beneficial gain for the species or habitat; and (4) activities that will have no adverse effects on listed species or habitat, *i.e.*, activities that will not degrade or limit natural floodplain functions in any way[149] (FEMA PBA 2-41). Require mitigation per Element 2.A for development types (1) and (3) above.

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[148] These ratios were identified per the best available science concerning the use of mitigation to achieve "no net loss" of aquatic habitat resources, which indicates that in the United States and Canada, mitigation practices over the last 30 years have often been insufficient to replace the amount and function of the impaired resources (*e.g.* Harper and Quigley 2005).

[149] During consultation, FEMA provided a list of activities that would be considered to have "no adverse effect," as follows: (A) repairs or remodels of an existing structure provided that the repair/remodel are not a substantial improvement or a repair of substantial damage; (B) expansion of an existing structure that is no greater than 10% beyond its existing footprint provided the pairs or remodeling are not a substantial improvement or repair of substantial damage; also, if the structure is in the floodway, there shall be no change in the dimensions perpendicular to flow without a floodway analysis; (C) activities the sole purpose of which is to create, restore, or

C. For all SFHA development occurring 90 days or more after the issuance of this Biological Opinion, FEMA shall deny or decline to process requests for LOMR-Fs that fail to demonstrate to FEMA that all impacts of development to natural floodplain functions were avoided or mitigated,[150] *e.g.*, by restoration of flood storage, vegetation, and hydrologic processes, consistent with the ratios identified in Element 2.A above. Alternatively the applicant may demonstrate to FEMA that the ESA was otherwise satisfied separately via section 7, 10, or 4(d).

D. FEMA shall review all requests for CLOMRs and CLOMR-Fs and determine whether the proposed project will adversely affect natural floodplain functions. FEMA may seek NMFS' assistance in making this determination. If FEMA makes a positive determination, FEMA shall seek NMFS' assistance in identifying appropriate mitigation measures to ensure that the project does not adversely affect natural floodplain functions and require that such measures be carried out as a condition of CLOMR and future LOMR issuance.[151]

E. Track all permitted development activities and associated mitigation and report to FEMA per RPA Element 5 as soon as practicable. Reporting during the interim period may rely on FEMA Region X's newly revised reporting tool.

F. Where multiple repeat-damage buyout opportunities exist, FEMA, with NMFS's technical assistance, shall recommend that the State prioritize floodplain development buyouts based on presence of high priority salmonid populations.

These measures, while protective of habitat and listed species as interim measures, are a subset of, and less protective of important habitat features and processes than, the full RPA and are insufficient by themselves to avoid jeopardy or adverse modification over time. These requirements will sunset when Elements 3-6 are fully implemented and supersede these requirements to provide more permanent protections for the natural floodplain functions that serve ESA-listed species.

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enhance natural floodplain functions, provided the activities do not include structures, grading, fill, or impervious surfaces; (D) development of open space and recreational facilities, such as parks, trails, and hunting grounds, that do not include structures, fill impervious surfaces, or removal of more than 5% of native vegetation on that portion of the property within the SFHA; and (E) repair to on-site septic systems, so long as ground disturbance is kept to the minimum necessary. NMFS agrees with FEMA's description of activities that qualify as "no adverse effect" with one exception. For categories A and B, any expansion of the structure's existing footprint should be considered an adverse effect that requires mitigation, for the reasons discussed earlier in this opinion.

[150] "Given the nationwide trend in urbanization and higher peak flows, a true 1 percent floodplain is likely larger than a mapped effective floodplain. The LOMC standards and guidance should acknowledge this condition and at least scrutinize in more detail requests that lower floodplains, while continuing land development leads to increased runoff, higher flood flows, and increased flood damages, as well as loss of floodplain habitat." (Galloway *et al.* 2006.)

[151] See Galloway *et al.* 2006, pp. 122-127.

RPA Element 3: Mapping Special Hazard Areas to Fully Identify Floodplain Resources

As was noted in the hearings on HR 6525, the Flood Disaster Protection Act of 1973, which expanded the NFIP, "local officials in many flood-prone communities…like to think that a major flood is unlikely to happen to them, and thus they defer coming into the program until local developers have had a chance to build on the community's remaining undeveloped lands without land use controls."[152] FEMA noted in its 2001 report, that "[f]lood hazards may change significantly in areas experiencing urban growth or changes in physical conditions caused by such geologic processes as subsidence and erosion" (FEMA 2001a). FEMA's 2013 CRS Coordinator's Manual (p. 410-2) further explains that "[d]evelopment regulations need thorough and accurate mapping of Special Flood Hazard Areas (SFHAs) and related flood hazard data." FEMA's CRS Coordinator's Manual (p. 220-9) also notes that "[t]he faster an area grows, the more important it is to regulate development to prevent flood losses."

As noted by FEMA, adoption of maps is prerequisite to effective management of flood-related hazard areas. "Outdated mapping hinders sound floodplain management. The map a community uses for floodplain management can and should be updated frequently to account for annexations, new divisions, site-by-site analyses, better ground elevation data, and incorporation of new hazard data. To make the map more useful and easier to use, it should include detailed topography, building footprints, natural features, and other data that can help relate the floodplain information to conditions on the ground and to other programs." 2013 CRS Coordinator's Manual at 440-2. NOAA Fisheries strongly concurs with these observations.

NMFS is in agreement with FEMA that incomplete, out of date, and/or inaccurate mapping of flood hazard prone areas prevents local government officials from understanding how severe flood risk is and thus from implementing restrictive zoning and land use regulations and comprehensive planning. Thus, this Element of the RPA provides program-level revisions to ensure that all *special hazard areas** (defined for this RPA to include the SFHA, *area of future conditions flood hazard* (AFCFH)*, and E Zones) are fully and accurately reflected on FEMA's maps, as these dictate where floodplain development restrictions and construction standards apply.

Accurate mapping of those areas likely to experience flood hazards, such as flood inundation and flood-related erosion, will provide valuable co-incidental information on, and protections for, floodplain functions and processes associated with important habitat features that support listed species. Accurate knowledge of important habitat features is essential to avoid jeopardy and to enable recovery. Thus flood hazard mapping must occur in both developed areas and areas of possible population growth, and should not be overly limited by the size of the watershed drainage area.

Therefore, in order to avoid the likelihood of jeopardy and the likelihood of adverse modification of designated critical habitat, this RPA calls for FEMA to ensure that all Oregon NFIP

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[152] Expansion of the National Flood Insurance Program, House of Representatives, Subcommittee on Housing, of the Committee on Banking and Currency, Tuesday May 8, 1973. 93rd Congress, 1st Session. Statement of George K. Bernstein, Federal Insurance Administrator, Department of Housing and Urban Development.

participating communities adopt FIRMs in accordance with the criteria below and meet the mapping benchmarks described in RPA Element 6.A(ii), Compliance Benchmarks. This is compatible with authorities at 42 U.S.C. 4101 (a)(1) ("to identify and publish information with respect to all floodplain areas within 5 years of August 1, 1968"), and (b) ("to accelerate the identification of risk zones within flood-prone and mudslide-prone areas…in order to make know the degree of hazard within each such zone at the earliest possible date"). Regulations which are applicable or pertinent to this RPA Element include: 44 CFR 59.1, 59.23, 60.1, 60.2(c), 60.3(d)(2), 60.5, 60.24-26, 64.1, 64.3(a)(2), 65.1-3, 65.6(a)(3), and 65.7.

NMFS provides these specific mapping recommendations in full recognition of the work of FEMA's Technical Mapping Advisory Committee (TMAC), which has fashioned a broader suite of recommended improvements to FEMA's mapping program. NMFS representatives to the TMAC have reviewed the recommendations below, and have indicate that they are more detailed than but consistent with the broader TMAC recommendations.

A. Modify Flood Hazard Mapping Protocols

FEMA's maps are intended to, based on the best available science, indicate the likelihood of exposure of certain lands to inundation in order to evaluate flood-related risks to life and property and thereby provide insurance for structures that are located in flood-prone areas, and discourage new construction in flood-prone areas. Therefore, consistent with 42 U.S.C. 4101(a)-(d) and with recommendations developed under 42 U.S.C. 4101a(d)(1)(A) and (d)(2), and obligations under the Biggert-Waters Act to identify, update, and maintain maps of all areas of possible population growth within both the 100- and 500-year floodplain, FEMA will incorporate when mapping, the best available data that indicates both current risk and reasonably anticipated future risk (see 42 U.S.C. 4101b(a), 4101b(b)(3)(C), and 4101b(c)(1)(ii)). To accomplish this, FEMA will implement the following measures:

i. Ensure that the models and methods used for mapping are based on the best available science and appropriate for the area being mapped, including:[153]
   a. Calibrate flood maps to historic flood events by using stage-discharge relationship at USGS gaging stations; or, where gage data is unavailable, to historic high water marks. This is an economical and efficient method to correct older maps.
   b. Use maximum probable roughness coefficient (e.g., Manning's n) during flood modeling that corresponds to the anticipated riparian vegetation condition, consistent with the land use zoning for the area, and the season of highest roughness. This is intended to ensure maps reflect vegetation maturation over the duration of the map, as mature riparian vegetation provides important habitat functions for listed species.
   c. Use unsteady-state hydraulic models, or an equally accurate modeling method, for conditions of significant floodplain storage and/or tidal flow. Areas of significant flood storage, and areas affected by tidal flooding both provide important areas for juvenile salmonid refuge/survival.

[153] NAS 2009; Galloway *et al.* 2006.

d. Use multi-dimensional hydraulic models, or an equally accurate modeling method, where site conditions have uncertain or changeable flow paths or complex overbank flow, and for locations where flows have significant lateral flow compression (e.g., bridges).

ii. To reduce the risk of reliance on BFE estimates that are too low and therefore underestimate likely flood levels, and consistent with the recommendation in Rosenbaum and Boulware (2006),[154] present the range of modeled BFE values in the FIS and use the 90th percentile value of the modeled 100 year flow as the BFE (see also 2013 CRS Coordinator's Manual at 410-18).

iii. When mapping or remapping, include all watersheds of 160 acres and larger, as small watersheds may have areas of largely intact floodplain function which provide important features for listed species.

iv. Depicting a larger floodway would reduce the amount and type of development that can be placed within the special flood hazard area near the river channel, and thus preserve natural floodplain functions upon which listed species depend. To better protect the important habitat functions and features adjacent to the waterway and to minimize channelization, scour, and erosion, define and depict the regulatory floodway as

a. The 1 foot rise floodway, expanded to include all locations where depths of flood water reach or exceed 3 feet, and all locations where the velocity of floodwater reaches or exceeds 3 feet per second (see 2013 CRS Coordinator's Manual at 410-21[155]), or

b. A 6-inch rise floodway.

B. Map Riverine Erosion Zones

The NFIA requires FEMA to depict flood hazards, and includes flood-related erosion within the definition of flood, and also requires that map updates include any relevant information on land subsidence and other flood-related hazards. Flood-related erosion areas pose high risk to human life and property and also provide important habitat forming processes that support listed salmonids. Thus, consistent with authorities at 42 U.S.C. 4101(a)-(f), 4101b, 4121(c); 44 CFR 9.7(b)(v)(B), 59.1, 60.2(a), 60.5, 64.3 (a)(2) and (b), 65.1; FEMA's 1999 Riverine Erosion Hazard Areas Mapping Feasibility Study; and the TMAC's 2015 Future Conditions Risk Assessment and Modeling Report Recommendation 4, FEMA will:

i. Identify the full range of flood-related erosion hazards on FIRMs, including CMZs, per Appendix 2.8-B, CMZ Mapping Priorities and Protocols, and designate as E Zones, using one of the following methods:

a. The mapping methodology identified by Rapp and Abbe 2003 (outlined in Appendix 2.8-B), or

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[154] Rosenbaum and Boulware (2006) recommend "using the upper limit of a 95-5 or 90-10 confidence interval in calculating the BFE" "to ensure that 1 percent chance protection is provided to most properties" (Recommendation DEI-5, pp. 24-25, 74).

[155] The Coordinator's Manual explains: "Because the entire SFHA benefits from the implementation of a more restrictive floodway surcharge, a FWS [floodway standard] includes the entire width of that reach of the SFHA, not just the area of the floodway. A higher floodway standard helps prevent development within the SFHA, thereby reducing increases in flood elevations on existing structures." 2013 Coordinator's Manual at 410-21.

b. Another methodology of comparable value (*e.g.*, Olson *et al.* 2014), or
c. A proxy using the method described in Appendix 2.8-B (based on Sikder 2012), or
d. Use the entire SFHA as the E Zone.

ii. Where the CMZ is disconnected by existing infrastructure and development in floodplains, as determined pursuant to a CMZ delineation methodology consistent with Rapp and Abbe (2003), or another methodology of comparable value (*e.g*, Olson *et al.* 2104), the disconnected area may be excluded from the CMZ/Zone E.

C. Depict the High Hazard Area on FIRMS

Per "Guidelines for Implementing EO 11988, Floodplain Management, and EO 13690, Establishing a Federal Flood Risk Management Standard," issued October 8, 2015:

> High-hazard areas are those portions of riverine and coastal floodplains nearest the source of flooding. These are the frequently flooded areas that become arenas of major flood dynamics during large floods. Here, floodwaters exert their maximum pressures, erosion is greatly accelerated, and the potential loss to lives and property is increased. Additionally, these are the areas of coastal and riverine floodplains within which many of the most critical floodplain values are concentrated. In riverine situations, the high-hazard area is that portion of the floodplain where impedance to flood flow resulting from human activity can increase flood heights and consequently the area subject to flooding. In coastal floodplains, the high-hazard area is usually confined to the beach area in front of high bluffs or the crest of primary or foredunes, where wave impact is the most significant inducing factor.

In light of the high potential for flood damages and the high likelihood of significant adverse effects to natural floodplain functions associated with development in areas closest to the flood source and at greatest risk of flood-related erosion, FEMA shall depict on FIRMs a subset of the floodplain referred to herein as the *high hazard area.** This will ensure that that local land use decisions are fully informed of risk and will aid in guiding development away from flood hazards, as provided in Element 4 of this RPA.

For this RPA, the high hazard area (HHA) is defined and measured by the furthest landward extent of:

i. Floodway (as defined by this RPA), and
ii. E Zones (as identified per Element 3.B., above).

D. Depict the Area of Future Conditions Flood Hazard

A report provided by AECOM (2013) indicates that in the Pacific Northwest the combination of shifting rainfall and snowfall patterns due to climate change, when coupled with future land use changes associated with increasing human population

growth, will significantly increase the BFEs of riverine areas in the next 85 years.[156] Thus FIRMs shall depict the AFCFH.

i. As required by the Biggert-Waters Act at section 100215(d)(2) and to meet the intended outcomes of this RPA, FEMA shall incorporate future conditions risk assessments in map revisions or updates, consistent with the TMAC report's recommendations on mapping future conditions, within 36 months of receiving the report. Consistent with the Biggert-Waters Act 2012, future conditions mapping shall be based upon the best available science, including projections for the year 2050 and to be updated to incorporate new data every 10 years thereafter, and shall include:
   a. Climate change in both coastal and riverine areas, and sea level rise in coastal areas (42 U.S.C. 4101b(b)(3)(D) and EO 13653; 42 U.S.C. 4101a(d)), and
   b. Build out/land cover change (42 U.S.C. 4101a(d)).

ii. If available data are inadequate to estimate future conditions, or if needed to address uncertainty, a 2-foot freeboard, or the 0.2 percent chance floodplain are acceptable proxies for the AFCFH, as identified by the Federal Flood Risk Management Standard. See also 42 U.S.C. 4101b(b)(1)(A)(ii).

E. Revise Map Adoption Procedures

Replacing outdated maps with more accurate maps is beneficial only if the updated maps are expeditiously adopted by communities and used as a basis for implementing the NFIP's requirements. Frequently, communities continue to rely on outdated maps long after new maps have been prepared, due to the lengthy process for appeals and general time lag between FEMA's issuance of a preliminary map and a letter of final determination (LFD). To ensure that floodplain management and concomitant habitat protections are applied based on the best information available, FEMA must ensure that all timelines provided in 42 U.S.C. 4104, 4104-1, and 44 CFR part 67 are adhered to, and:

i. Issue an LFD within 90 days of the date that any appeals process is resolved in favor of FEMA.

ii. When a new map is not appealed, issue an LFD within 45 days of the date upon which the appeal period expired.

F. Map Residual Flood Hazards and Risks Behind Levees

Consistent with FEMA's obligations under the Biggert-Waters Act to identify, update, and maintain maps of areas of residual risk that are protected by levees, dams, and other flood control structures, FEMA will apply the following criteria:

i. Do not omit any areas from the SFHA based on the presence of a non-accredited levee, as residual risk persists despite the presence of levees; and, do not delay the finalization of flood insurance rate maps, irrespective of the presence of non-accredited levees. Provisional accreditation of shall be limited to a single term of 18 months.

ii. Depict the level of residual risk behind accredited levees via methods selected by FEMA.

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[156] See opinion at Section 2.2 and section 2.4.3.2

iii. Ensure that there is coordination or consultation with NMFS prior to levee accreditation or approving map changes based on the construction of new levees or improvements to existing levees. Joint consultation with another federal entity such as the Corps of Engineers at the time of levee construction or levee improvements is preferred.

G. Provide Accurate Maps Based on the Best Available Data for All Oregon NFIP Communities

FEMA shall work with NMFS and the State of Oregon to develop a schedule for producing updated maps consistent with this Element for all Oregon NFIP communities subject to this RPA. The schedule shall be completed within one year of the issuance of this opinion, and FEMA will thereafter implement this RPA Element consistent with the agreed schedule. In addition to FEMA's existing prioritization factors to be considered in developing the schedule, FEMA shall include the prioritization factors for mapping/remapping provided in Appendix 2.8-A, ESA Mapping Priority, and Appendix 2.8-B, CMZ Mapping Priorities and Protocols. At a minimum, the schedule will provide for 10 new or updated maps completed per year until all requisite mapping has been completed.

RPA Element 4: Floodplain Management Criteria for Special Hazard Areas that Avoid, Minimize, and Mitigate Program Level Impacts

Once flood risks are mapped, restrictive land use and development standards are appropriate. Such restrictions achieve two positive outcomes: they reduce exposure of life and property to flood risk and preserve natural floodplain functions, as described in the CRS Coordinator's Manual at 120-6 and at 42 U.S.C. 4121(a)(12)(A)-(B), 44 CFR 9.4, and 44 CFR 9.10(d)(2).

The purpose of the NFIA is to "require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plan [sic] ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses" (42 U.S.C. 4002(b)(3)). As no flood insurance coverage is to be provided unless jurisdictions "have adopted adequate land use and control measures" (42 U.S.C. 4022(a)(1)), FEMA is authorized to establish comprehensive criteria for land management and use that states or local communities must adopt in order to participate in the NFIP. The criteria are intended to encourage communities to constrict the development of land exposed to flood damage, guide development away from flood hazard areas, reduce flood-related damage, and improve long-range land management and use of flood-prone areas. 42 U.S.C. 4102.

As stated by Congress, "A most important public purpose which the [NFIP] will serve will be to encourage State and local governments to adopt and enforce appropriate land use provisions to restrict future development of land which is exposed to flood hazard." H.R. Rep. No. 1585, reprinted in 1968 U.S.C.C.A.N. 2873, 2966. The NFIP's goal of reducing future damage to life and property and minimizing disaster costs co-incidentally preserves floodplain resources needed for the survival and recovery of listed fish. Conversely, standards that allow unmitigated

development throughout floodplains impair natural floodplain functions and are at odds with the goals of the Unified National Program for Floodplain Management and the ESA.

For this consultation, FEMA proposed to modify the NFIP floodplain management criteria for Oregon to better preserve floodplain habitat for listed species. FEMA's proposal consists of dividing the floodplain into two components: (1) a riparian buffer zone, measured 170-feet laterally from either side of a water course, and (2) the remainder of the floodplain. FEMA proposes that within the riparian buffer zone (RBZ) only certain types of development would be allowed, specifically: development that will not adversely affect listed species or critical habitat; functionally dependent uses; habitat restoration activities; and, activities that result in a beneficial gain for species or habitat. FEMA would require mitigation for any short-term adverse effects associated with these uses. FEMA proposes that in the remainder of the floodplain, mitigation would be required for all adverse effects to floodplain functions so that no net loss or a beneficial gain is achieved. Further, based on discussions with FEMA during this consultation, FEMA intends that the mitigation requirement include, sequentially, avoidance, minimization, and compensation for unavoidable impacts.

NMFS understands the underlying intent of FEMA's proposed measures to be "no adverse effects" to or "beneficial gain" of habitat functions within the riparian buffer zone and "no net loss" of functions within the remainder of the floodplain; NMFS strongly supports these objectives. NMFS also agrees with and supports FEMA's proposal for more stringent development limitations, including limits on acceptable types of development, within the RBZ. However, based on experience in Puget Sound, Washington and for the reasons explained previously and in Appendix 2.4-A of this opinion, NMFS has concerns regarding the ability of local communities to effectively implement these technically complex concepts absent greater specificity regarding acceptable uses, likely impacts on floodplain function, and appropriate mitigation requirements. Also, the state of Oregon DLCD has expressed its preference for clear and specific mitigation requirements to facilitate local implementation.

NMFS has developed the following modifications to FEMA's proposed action in order to ensure that development impacts will be avoided, minimized, and compensated for, as intended by FEMA. These criteria are similar to the standards that FEMA has been implementing in Puget Sound, Washington since September 2008, and to the higher regulatory standards advocated by FEMA in the 2013 CRS Coordinator's Manual. This RPA element is designed with the understanding that development in urbanized floodplains will incur less degradation and likely require less mitigation than development in floodplains with more rural characteristics, because fewer natural functions remain in previously developed locations.

In order for FEMA to meet the ESA's requirement that its program avoid jeopardy to listed species and adverse modification of critical habitat, FEMA must require that communities adopt the criteria outlined below as a condition of continued participation in the program, and FEMA must enforce community compliance, *i.e.*, by initiating probation/suspension for communities that fail to timely adopt and implement the criteria. Compliance with this RPA element will better guide the development of proposed future construction away from locations which are

threatened by flood and flood-related hazards,[157] and will protect and may reestablish some degree of natural and beneficial floodplain functions as defined by statute (42 U.S.C. 1421(12)), and by regulation (44 CFR 9.4), *e.g.*, "Natural values of floodplains…include but are not limited to (b) living resource values."

A. Regulatory Revisions to Enhance ESA Compliance
FEMA shall revise its regulations at 44 CFR part 60 to incorporate an ESA performance standard into the regulatory floodplain management criteria required as a condition of NFIP eligibility. NMFS understands that FEMA intends to initially implement an ESA performance standard through guidance, but ultimately will codify it as part of the regulatory floodplain management criteria (*e.g.*, see the proposed regulatory revision provided in Section 2.10, Conservation Recommendations). The ESA performance standard must be sufficiently detailed to allow FEMA to ensure community compliance with the floodplain management criteria set forth in this RPA Element through the issuance of additional guidance or otherwise. FEMA shall also craft guidance and provide technical support as needed for successful implementation of the ESA performance standard and this RPA Element.

B. Avoid Impacts by Guiding Development Away from Land Which is Exposed to High Hazards[158]
Due to the importance of protecting riparian habitat and functions within the high hazard area,[159] apply the following criteria within the HHA:
   i. Except as provided in paragraph (iv) below, allow no new development or substantial improvements (as defined by this RPA) in the high hazard area (see *e.g.*, 44 CFR 9.11(d)(1)).
   ii. A designated floodway may not be redrawn for the purposes of accommodating new structures.[160]
   iii. Designate the E-Zone setback "to create a safety buffer consisting of a natural vegetative or contour strip" as provided in 44 CFR 60.5(b)(2) as the greater of:
      a. The 60-year erosion setback (44 CFR 59.1) or,
      b. One-half again the distance of the depicted "high" or "severe" erosion risk.

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[157] Compliance with this RPA will co-incidentally satisfy the GAO recommendation in its climate change report that FEMA should consider amending the NFIP minimum standards to incorporate forward looking standards (GAO 2014).

[158] "Within the 1 percent floodplain, natural and beneficial functions are generally more prevalent closer to the stream where overbank flooding is frequent and complex habitat exists along the aquatic-terrestrial boundary. Disturbances to habitat are typically much greater from activities that occur closer to the stream channel than along the outer limits mapped for the 1 percent flood" (Galloway *et al.* 2006).

[159] "The preservation strategy focuses on the immediate impacts of the proposed floodplain actions. This strategy involves prevention of alteration to the natural and beneficial floodplain values or maintenance of the floodplain environment as close to its natural state as possible using all practicable means. This strategy is most effectively applied to floodplains showing little or no previous disruption by man, but may be appropriate for other floodplains. The best strategy for preserving and protecting the remaining natural values of floodplains is avoidance..." (FEMA 1986).

[160] "Disruption of natural floodplain terrain and vegetation within a floodway adjacent to the stream channel can affect some of the highest quality habitat and represents a significant impact to the natural and beneficial functions of floodplains" (Galloway *et al.* 2006).

c. Allowed uses within the safety buffer are those identified at 44 CFR 60.5(b)(2), *i.e.*," agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only."

iv. Exceptions

a. The following uses may be allowed in the high hazard area: (1) *open space** uses (see CRS Coordinator's Manual at 420-6 to -7); (2) habitat restoration activities; (3) *low intensity recreational uses**; (4) *water-dependent uses*,* and (5) *bioengineered bank protection.** In that portion of the HHA outside of the 10 year floodplain, agriculture and forestry are additional uses that may be allowed.

b. Development that qualifies for grandfathering per Element 4.G may proceed despite being located in the high hazard area.

c. Any development allowed as an exception must meet the mitigation requirements of Elements 4.F, except for habitat restoration activities, which are considered self-mitigating and therefore do not require additional mitigation.

C. Minimize Impacts by Constricting the Development of Land Which Is Exposed to Flood Damage[161] – Division of Lots and Lot Coverage

FEMA shall, in consultation with the Oregon Department of Land Conservation and Development:

i. For properties that are located partially within special hazard areas, develop clear and measurable spatial standards,[162] governing the creation of new development parcels to ensure that newly created lots reserve sufficient land outside of special hazard areas to accommodate future construction and disallow partitioning that will create new parcels fully within special hazard areas.

ii. Develop clear and measurable spatial standards governing the minimum permissible size of new development parcels to minimize densification and preserve natural floodplain functions.

iii. Limit the footprint of new structures to 10% or less of total lot size for both residential and commercial development in order to reduce impervious surfaces in floodplains and minimize impacts to natural floodplain functions.

iv. Ensure that any lots or parcels created by division are able to accommodate development consistent with the applicable zoning and this RPA, including any necessary mitigation, without requiring any variance from local or state land-use requirements.

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[161] This language found at FEMA's legislative authorities 42 USC 4102(c)(2), and is part of the larger section, 4102, entitled "Criteria for land management and use." Section 4012 calls for the Administrator of FEMA to develop comprehensive criteria, which, to the maximum extent feasible, will constrict development of land, and guide development of proposed construction away from locations threatened by flood hazards.

[162] To avoid problems associated with the Puget Sound RPA's "lack of clarity, and…development standards [that] were not tailored to help communities understand their NFIP and ESA compliance obligations" (*NWF v FEMA*, 10/24/14), NMFS refers FEMA to the standards identified in the 2013 CRS Coordinator's Manual at 420-26 to -27 as an example of a clear and measurable standard. FEMA shall work in concert with DLCD and local authorities to develop a clear, measurable standard appropriate for Oregon.

v. Within urban growth boundaries in effect on January 1, 2019, the protective measures in paragraphs (i)-(iii) above may be met by employing alternative methods that preserve hyporheic function, riparian vegetation, and flood refugia for listed fish, such as or using *cluster development/open space zoning** that places development landward of the 50 year flood interval. A conservation easement or deed restriction shall be utilized to preserve unimpaired flood processes in the undeveloped area (see *e.g.*, 2014 CRS Manual at 420-21).

vi. Partitioning for the purpose of habitat restoration activities in special hazard areas is excluded from provisions (i)-(iii) above.

D. Minimize Impacts by Requiring Encroachment Analyses Prior to Floodway Development
An equal degree of encroachment analysis must occur prior to approval of floodplain development in any participating jurisdiction that lacks a mapped floodway,[163] to ensure that the de facto floodway that would be identified consistent with RPA Element 3.A(iv) is not encroached in a manner detrimental to natural floodplain values or functions.

E. Minimize Stormwater and Hyporheic Impacts from Impervious Surfaces
Minimize the impacts of new impervious surface in floodplains by requiring the use of pervious surface to the maximum extent feasible. Where use of pervious surface is not feasible, minimize impacts by requiring the removal of existing impervious surface up to an amount equal to the new impervious surface to the maximum extent feasible. Require mitigation per Element 4.F below for any remaining impacts.

F. Compensatory Mitigation for Adverse Impacts Associated with Floodplain Development
NMFS fully supports FEMA's objective for implementation of the NFIP in Oregon, that all development impacts to natural floodplain functions be fully mitigated. Accordingly, FEMA, with NMFS' technical assistance, will develop detailed mitigation standards, with the objective of achieving "no net loss or beneficial gain"[164] of natural floodplain functions, which take into consideration the following factors: the likelihood of underperformance; the timing of mitigation performance relative to the accrual of impacts and compensation for delayed realization; the value of on-site versus off-site mitigation; the value of in-kind versus out-of-kind mitigation; and, the need for assurances and performance monitoring to ensure that the mitigation will function in perpetuity.

i. The mitigation standards shall identify the specific development activities that require mitigation, including, at a minimum:

a. The addition of fill, structures, levees, and dikes, which reduces flood storage and fish refugia, impedes habitat forming processes, increases flow volume and velocity thereby eroding stream banks and beds, and alters peak flow timing thereby increasing risk of injury to redds, fry, and alevin;

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[163] FEMA 1979. Community Assistance Series No. 4: "The Floodway: A Guide for Community Permit Officials." See also 44 CFR 60.3(c)(10).

[164] See also Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, November 3, 2015. "Agencies' mitigation policies should establish a net benefit goal or, at a minimum, a no net loss goal for natural resources the agency manages that are important, scarce, or sensitive, or wherever doing so is consistent with agency mission and established natural resource objectives."

b. The addition of impervious surfaces, which reduces hyporheic function and stream recharge, increases storm water, pollutant loading, water temperature, velocity, and scour, and modifies peak and base flows;
c. Vegetation removal, which reduces shade, detrital input, velocity refuge, and habitat complexity and increases storm water and erosion; and
d. Bank armoring, which reduces instream habitat values and impedes habitat forming processes.

ii. If FEMA wishes to provide a variance process that allows communities to adopt alternative mitigation standards that differ from the standards developed by FEMA under Element 4.F(i), FEMA will ensure that such alternative standards are consistent with the intent of this RPA sub-element through one of the following procedures:
   a. Require that the community proposing the alternative obtain an ESA section 10 permit from NMFS; or
   b. Require that the community proposing the alternative provide its proposal to FEMA for a preliminary finding of adequacy. If FEMA finds that the proposal is adequate, FEMA shall seek NMFS' agreement that the alternative provides resource protection comparable with that provided by RPA Element 4.F(i), and determine whether additional steps are required for ESA compliance.

iii. Alternatively, or pending FEMA's completion of mitigation standards per Element 4.F(i), FEMA may utilize the criteria set forth below, as supplemented by Appendix 2.8-C, which NMFS considers adequate to offset development impacts.
   a. Location. Locate all mitigation on site, except when precluded by geomorphic or spatial constraints or when off-site mitigation will clearly provide a greater benefit to listed species; financial cost is not a basis for allowing required mitigation to occur at an off-site location.
   b. Assurances. Require the mitigation proponent to provide appropriate assurances that the mitigation will function in perpetuity, as provided in Appendix 2.8-C.
   c. Timing. Where delayed realization is anticipated, increase the required mitigation ratios, as provided in Appendix 2.8-C.
   d. Displaced flood volume. Provide compensatory storage for displacement of flood storage volume/loss of accessible floodplain refugia for listed fish due to fill or structural displacement. This balanced cut and fill requirement applies to all floodplain development except habitat restoration activities. When mitigating lost storage by creating compensatory storage, the compensatory storage must be:
      1. Hydrologically connected to the waterbody which is the flooding source,
      2. Designed so that there is no increase in velocity,
      3. Designed to fill and drain in a manner that does not trap fish,
      4. Within the same *hydraulic reach** as the proposed development to minimize impact to affected fish populations,
      5. Measured in one foot elevation increments relative to the amount and location of fill placed, and
      6. Provided at a 1.5 to one ratio laterally, or greater, in order to guarantee no loss of beneficial floodplain functions, including conveyance.

e. Increased impervious surface. Where minimization per Element 4.E above does not fully compensate for lost functions, mitigate any remaining impacts to natural floodplain functions from the increase of impervious surface by requiring the following measures:
   1. Incorporate low impact development (LID) features or methods in new structures,
   2. Incorporate green infrastructure development standards at the community planning scale,[165] and
   3. Require treatment for any storm water generated despite use of the above measures.

f. Decreased riparian vegetation. Mitigative planting must replace the lost vegetation in a manner that provides equivalent area, diversity, and function and must be located to benefit the same fish population(s) affected by the development.

G. Grandfathering

Development for which the *start of construction** occurs on or before September 15, 2016 is grandfathered. However, when a grandfathered structure is substantially damaged or substantially improved, the structure must come into compliance with Elements 4.B-4.F as applicable, *e.g.*, mitigation is required for any adverse impacts to natural floodplain functions associated with the substantial improvement (expanded footprint, vegetation removal, placement of fill, etc.). Substantial damage and substantial improvement shall be calculated at 50% of the value of the structure, measured cumulatively over a 10 year time frame. Also, improvements that increase the footprint of the structure 10% or more (based on the square feet of the lowest floor) measured cumulatively over 10 years shall constitute "substantial improvement" (See 2013 CRS Coordinator's Manual at 430-1).

H. Alternative Compliance for Special Circumstances

If a community demonstrates to FEMA that full compliance with Element 4 is impracticable due to exceptional circumstances (*e.g.*, geomorphic constraints, wildfire risk, or community located fully within the floodplain), a community may propose an alternative scheme (through regulations or enforceable procedures) for complying with the intended outcomes of Element 4 through one of the procedures described below. NMFS expects that such situations will be extremely limited and that alternative compliance will only be approved by FEMA where the community clearly demonstrates that the intended protective outcomes of Element 4 will be achieved through the proposed alternative.

i. A community may propose an alternative scheme to FEMA; FEMA will make an initial determination whether the alternative is consistent with Element 4, and if FEMA makes a positive determination, FEMA will seek NMFS' agreement that the alternative provides comparable resource protection prior to approving the alternative.

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[165] "Green stormwater infrastructure or similar pollution prevention methods should be incorporated to the maximal extent practicable, at the watershed scale, for all future development and redevelopment projects, particularly those involving transportation infrastructure" (Spromberg *et al.* 2016).

ii. A community may seek an incidental take permit from NMFS under ESA section 10; if NMFS grants the permit, FEMA may accept the associated habitat conservation plan as the alternative method of compliance.
iii. A community may pursue authorization under ESA section 4(d), Limit 12 (50 CFR 223.203(b)(12)).

RPA Element 5: Data Collection and Reporting

"Water and the adjacent floodplain exist in nature in a state of dynamic equilibrium; when coastal or riverine systems are disturbed, the environmental effects may affect areas far from the original site of the disturbance and can last for decades. Thus, floodplain actions must be viewed with caution and a careful assessment made of their impact on natural and beneficial floodplain values."[166]

In order to document that FEMA is carrying out the NFIP, and NFIP participating communities complying with NFIP minimum standards are managing floodplain development in a manner that preserves natural floodplain functions to meet the objectives of this RPA, FEMA must systematically collect and analyze information from all participating communities in Oregon so as to document impacts, including: (a) how many floodplain development activities are permitted by participating communities subject to this RPA; (b) where and when the development occurs; (c) a basic description of the development, including mitigation; (d) the impact of the development on natural floodplain functions,[167] and (e) information that allows an evaluation of community compliance with the NFIP requirements as modified by this RPA. NMFS is aware of the difficulties in tracking implementation of the Puget Sound RPA reliably and is therefore seeking to strengthen the tracking and accountability mechanisms in this RPA. NMFS desires a speedy and efficient system of tracking and reporting and will work with FEMA, Oregon's DLCD, and local authorities towards this end.

A. Permit Reporting
FEMA shall require that participating communities report to FEMA on each permit issued for development in special hazard areas, including the following information:
i. The amount of fill or structural displacement of flood storage, and the amount of compensatory storage measured by volume and area (both surface area and cross sectional area). This reporting element effectively describes loss of refugia for rearing fish, and indicates factors that increase the BFE and flood velocities.
ii. The amount of new impervious surface (indicates loss of hyporheic function) and any projected change in the timing, velocity, or peak flows of storm water runoff and the types and amounts (if applicable) of mitigation provided.
iii. The area in which clearing and/or grading occurred (*e.g.*, within the HHA, SFHA, or AFCFH)

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[166] FEMA 2015. Guidelines for implementing EO 11988 Floodplain Management, and EO 13690 Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. 80 FR 64008; Oct. 22, 2015.

[167] "Where location in the floodplain is the only practicable alternative, care must be taken to identify both the beneficial and the adverse impacts to existing natural and beneficial floodplain values and to design or modify the action to avoid or minimize potential harm to or within the floodplain." FEMA 1986.

iv. The number of trees equal to or greater than 6" dbh removed (indicates loss of riparian function and reduction of source of large wood recruitment) and the number and timing of trees planted to meet mitigation requirement (indicative of the duration of lost functions).

v. If a project disconnects land from the floodplain (*e.g.*, by accreditation of levees or recognition of non-accredited levees), identify the type of project and the amount of land disconnected from the floodplain. This reporting element effectively describes loss of refugia for rearing fish, and indicates factors that increase the BFE and flood velocities.

vi. If a project reconnects land to the floodplain (*e.g.*, by the removal or setback of a levee) identify the type of project and amount of land reconnected to the floodplain. This reporting element is indicative of effectiveness of mitigation or of beneficial habitat restoration actions.

vii. The location of the project and of the corresponding mitigation (*e.g.*, within the high hazard area, the SFHA, or AFCFH); for projects in the HHA identify which exception from Element 4.B(iv) applies. This reporting element indicates the quality of mitigation based on the relative role the mitigation area performs in terms of inundation frequency.

FEMA, with NMFS' assistance, will finalize a reporting form or electronic reporting system incorporating the requirements above by March 15, 2018, so that reporting by NFIP communities may commence by July 1, 2018. Thereafter, FEMA will require that communities submit a quarterly report to FEMA indicating issuance of each floodplain development permit in the reporting period. FEMA may develop its own standardized reporting form, or NMFS has prepared a Google Form that could be used for reporting as required by this component of the RPA. NMFS estimates that communities could complete the form in fewer than 10 minutes for each permit issued.

B. Annual Reporting

FEMA will prepare and submit a report to NMFS annually, based on the calendar year, on RPA implementation status. NMFS recommends that these annual reports be publically available so that the public can track efforts to protect public health and safety and important floodplain functions and other indicators of the successful implementation of this RPA. FEMA will:

i. Confer with NMFS to mutually agree upon a due date for submission of the annual report, but no later than September 1 of each year. The first report shall be prepared for calendar year 2017.

ii. Annually meet with NMFS to review the most recent report and program performance. The interagency meeting purpose will be to discuss program compliance, identify what additional actions by FEMA are warranted, and determine whether re-initiation of this consultation is warranted.

iii. Include in the report, at a minimum, the following:

   a. A list of communities that have adopted ordinances or enforceable procedures that implement the revised floodplain management criteria required by this RPA.

   b. A list of completed maps that comply with RPA Element 2.

c. The mapping status of each Oregon NFIP participating community (*i.e.*, dates of effective maps, status of preliminary maps including status of any appeals, and anticipated dates for Letters of Final Determination).
d. The number of CLOMCs (specify how many are CLOMR-Fs) and LOMCs (specify how many are LOMR-Fs) issued by FEMA.
e. Sum by participating community: fill area and volume values based on the community reported fill placed within special hazard areas excluding fill associated with habitat restoration activities.
f. Sum by participating community: the number of times and amount of mitigation required for loss of riparian vegetation.
g. Sum by participating community: increase in impervious surface.
h. Sum by participating community: the amount of floodplain disconnected and/or reconnected to the floodplain.
i. A summary of items (e)-(h) aggregated by county.
j. A summary of the CAVs initiated and completed that year, including the community progress toward compliance benchmarks (below).
k. A brief description of any compliance problems or issues and resulting FEMA enforcement actions.

RPA Element 6: Compliance and Enforcement

In order for this RPA to function as intended, it is critical that FEMA effectively monitor community implementation of and compliance with these amended criteria and promptly undertake appropriate enforcement actions if needed to ensure community compliance. FEMA must ensure both that communities adopt the required ordinances and/or enforceable procedures and that communities enforce their ordinances/procedures so as to achieve the intended outcomes of this RPA, *i.e.*, preservation of all remaining natural floodplain functions.

A. Community Implementation
   i. Early Implementation Incentive. Because compliance with this RPA will prevent destruction and adverse modification of critical habitat by reducing or avoiding degradation and loss of floodplains and natural floodplain functions; and because the preservation of floodplains and natural floodplain functions will avoid the likelihood of jeopardy to listed species; in order to encourage jurisdictions to independently pursue compliance with the RPA in advance of stated timelines, which would confer an early and permanent benefit to the listed species and their habitat, this RPA directs FEMA, as authorized by 42 U.S.C. 4022(b), to modify the CRS so that when, prior to FEMA's own compliance with the provisions of this RPA, a community:
      a. Adopts a regulatory floodway per RPA Element 3.A(iv), it receives 200 points under CRS part 410.
      b. Adopts a map depicting flood related erosion zones or uses an accepted scientific method to confirm no CMZ is present per RPA Element 3.B, it receives 100 points under CRS part 410.
      c. Adopts a map depicting the HHA per RPA Element 3.C, it receives 100 points under CRS part 410.

d. Adopts a map depicting the AFCFH per RPA Element 3.D, it receives 100 points under CRS part 410.
e. Regulates to a preliminary map even though the letter of final determination has not yet been issued, it receives 100 points under CRS parts 430 and 510.
f. Adopts a zero rise/zero increase in velocity standard for development receives 100 points under CRS parts 430.
g. Restricts division of lots per RPA Element 4.C, it receives 150 points under CRS parts 420 and 430.
h. Requires use of LID and/or green infrastructure for all new development per RPA Element 4.F, it receives 200 points under CRS part 450.
i. Limits new development in the HHA per RPA Element 4.B, it receives 300 points under CRS parts 420 and 430.

ii. Compliance Benchmarks. To demonstrate that it is achieving the expected outcomes of this RPA, FEMA must ensure that participating communities adopt maps and regulate development corollary to those maps. Thus, FEMA may demonstrate that this RPA is being successfully implemented by showing that:
a. Within 18 months of the date of this opinion, FEMA shall demonstrate substantial progress on any guidance materials needed to implement this RPA.
b. For any regulatory revisions that FEMA determines are necessary to implement this RPA, FEMA shall provide proposed rule for public comment within 2 years of the date of this opinion.
c. Within 18 months of a LFD indicating a community's revised FIRM, the jurisdiction shall have revised its code to meet all minimum criteria consistent with hazards identified on that FIRM.
d. By September 1, 2024, FEMA must demonstrate that all NFIP participating jurisdictions in Oregon subject to this consultation have adopted and implemented all requirements from Elements 3 and 4 of this RPA. This deadline also applies to any jurisdiction pursuing alternative compliance per RPA Element 4.G.

B. Enforcement. In order to meet the requirements of this RPA, by September 1, 2024, FEMA will demonstrate full program compliance by those communities subject to this RPA, based on the data from local permits reported to FEMA and from CAVs or comparable means of auditing community compliance. FEMA must conduct CAVs or otherwise audit compliance with this RPA in 25 communities each year beginning in 2023. NMFS further recommends that FEMA prioritize for CAVs for or otherwise audits those communities which:
i. FEMA is aware or has reason to believe (*e.g.*, based on permit reporting data) are not fully implementing the RPA requirements.
ii. Have mapped floodplains that retain low density characteristics and are subject to possible population growth.
iii. Show an increasing number of floodplain development permits.
iv. Have growth boundaries, comprehensive plans, or zoning that allow development in special hazard areas.

FEMA shall implement appropriate compliance efforts directed at those communities that do not achieve and maintain compliance with the above benchmarks. For example, when development reporting reveals that a jurisdiction has permitted development within special hazard areas without mitigation, then FEMA will put that jurisdiction on notice for probation within 12 months of the date of the violation unless corrective action has been taken. Communities automatically out of compliance are those that fail to have in place ordinances and other enforceable procedures that comply with the revised floodplain management criteria in this RPA. Should a participating community placed on probation fail to come into substantial compliance within 24 months of being placed on probation, FEMA will suspend the community from the NFIP, and the community's take coverage shall lapse.

2.8.3 Glossary of Terms as Used in this RPA

Area of future conditions flood hazard (AFCFH) – The land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future conditions hydrology (44 CFR 59.1), inclusive changes due to climate change.

Avulsion – "Described by Allen (1965 5:119) as 'the sudden abandonment of a part or the whole of a meander belt by a stream for some new course.' Channels may avulse into an abandoned channel or create a new channel depending on the pre-existing boundary conditions that initiate the avulsion" (Rapp and Abbe 2003).

Avulsion hazard zone (AHZ) – "The area not included in the Historic Migration Zone that is at risk of avulsion over the timeline of the channel migration zone" (refer to Section 4.2 of Rapp and Abbe 2003).

Bioengineered bank protection – Methods of stream bank or shoreline protection, other than rip-rap bank armoring, which incorporate fish habitat design elements or fish habitat features. See, *e.g. http://www.fema.gov/pdf/about/regions/regionx/Engineering_With_Nature_Web.pdf*, and *http://www.fs.fed.us/publications/soil-bio-guide/guide/chapter5.pdf*.

Channel migration zone (CMZ) – "The area where a stream or river is susceptible to channel erosion" (refer to Rapp and Abbe 2003). The CMZ may extend beyond the 100-year floodplain. Where the delineated CMZ extends beyond artificial revetments, bulkheads, and levees, all such areas are included within the CMZ unless they are designated as disconnected migration areas, as these structures have a high risk of failure.

Cluster development/open space zoning – An alternative site planning technique that concentrates dwelling units in a compact area to reserve undeveloped space elsewhere on the site. In this technique, lot sizes, setbacks, and frontage distances are minimized to allow for open space. The basic principle of cluster development is to group new homes onto part of the development parcel, so that the remainder can be preserved as unbuilt open space. See http://water.epa.gov/polwaste/nps/openspace.cfm.

Development – Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or

drilling operations, storage of equipment or materials (44 CFR 59.1), and expanded for the purpose of this RPA to include removal of vegetation or other alteration of natural site characteristics (including any remnant natural characteristics existing in a degraded site). For this RPA, development does not include the maintenance, repair, or remodel of existing buildings, facilities, and utilities within their existing footprints (except for substantial repairs and improvements); resurfacing of roads; lawn care, gardening, removal of noxious weeds, replacement of non-native vegetation with native vegetation, or removal of hazard trees; or, plowing and similar agricultural practices that do not involve filling, grading, or construction of levees or structures.

Erosion hazard area (EHA) – "The area, not included in the HMZ, or the AHZ, that is at risk of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The EHA has two components: the Erosion Setback (ES) and the Geotechnical Setback (GS). The ES is the area at risk of future bank erosion by stream flow; the GS is defined by channel and terrace banks that are at risk of mass wasting (due to erosion of the toe). The GS projects from the ES at a side slope angle that forms a stable bank configuration, thereby accounting for mass wasting processes that will promote a stable angle of repose" (refer to Sections 4.3 and 4.5 of Rapp and Abbe 2003). At a minimum, that portion of the Coastal and Riverine Erosion Zones posing "high" and "severe" risk of subsidence, avulsion, or channel migration – identified using protocols from Rapp and Abbe (2003) Section 4.5, must be included in the EHA.

Extreme high tide – The elevation of the highest predicted astronomical tide expected to occur at a specific tide station over the National Tidal Datum Epoch.

Future-conditions hydrology – The flood discharges associated with projected land-use conditions based on a community's zoning maps and/or comprehensive land-use plans and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill, and excavation (44 CFR 59.1), and expanded for the purpose of this RPA to include projected changes in future riverine hydrology associated with climate change and changes in sea level, storm surge, and wave heights due to climate change as of 2100.

Green Infrastructure – Use of natural hydrologic features to manage water, and provide environmental and community benefits. Green infrastructure uses management approaches and technologies that utilize, enhance, and/or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration, and reuse. At a large scale, green infrastructure is an "interconnected network of green space that conserves natural systems and provides assorted benefits to human populations" (See McMahon and Benedict, 2006). At a local scale, green infrastructure manages stormwater by infiltrating it in the ground where it is generated using vegetation or porous surfaces, or by capturing it for later reuse. See additional information available at *http://www.epa.gov/smartgrowth/green-infrastructure.html*; Benedict, Mark A. and McMahon, Edward T. Green Infrastructure: Linking Landscapes and Communities. Benedict, Mark A. and McMahon. Washington, D.C., Island Press, 2006; see also McIntyre *et al.* (2014) re biological improvements from use of green infrastructure.

Habitat – All habitat used by or that supports listed species, not only habitat designated as critical habitat.

Habitat restoration activities – Includes those actions that re-establish or improve natural conditions and functions of aquatic and floodplain areas, including, but not limited to, side channels, oxbows, and adjacent wetlands. Restoration does not include those activities the primary purpose of which is to provide, or repair, flood or erosion protection structures, even when those activities include habitat enhancement features. See Fish-Habitat Relationships and the Effectiveness of Habitat Restoration (Roni et al 2014). Available at: http://www.nwfsc.noaa.gov/assets/25/7422_08122014_141405_FishHabRelationshipsTM127WebFinal.pdf.

High hazard area (HHA) – The area comprised of and measured to the furthest landward extent of: (1) V zones; (2) LiMWA; (3) floodway (as revised by this RPA); and (4) E Zones (as revised by this RPA).

Historical migration zone – The collective area the channel occupied in the historical record (refer to Section 4.1 of Rapp and Abbe 2003).

Hydraulic reach – The reach of a stream between the nearest features controlling the flood water elevations upstream and downstream from the proposed development site. In the absence of determining the flood elevation controlling features, a default length equivalent to 14 times the bankfull channel width of the stream or river at the project site may be used.

Limit of moderate wave action (LiMWA) – The inland limit of the area affected by waves greater than 1.5 feet (covered by Procedure Memorandum 50).

Low impact development (LID) – LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. LID refers to designing and implementing practices that can be employed at the site-level to control stormwater and strive to replicate the pre-development hydrology of the site. See http://water.epa.gov/polwaste/green/; see also EPA 841-R-13-004 (2013).

Low intensity recreational use – Includes pedestrian trails, natural turf ball fields, tent camping, temporary/transient structures such as campers/trailers.

Mitigation – All steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values (44 CFR 9.4). Mitigation requires sequential implementation of measures that first avoid effects to the degree possibile, then minimize remaining effects, then replace and/or otherwise compensate for, offset, or rectify the residual adverse effects to natural floodplain functions.

Natural floodplain functions – All natural floodplain functions which support fish and wildlife, including the listed species subject to this consultation. Natural floodplain functions include all functions associated with the natural undisturbed floodplain that moderate flooding; retain flood waters; reduce erosion and sedimentation; mitigate the effect of waves and storm surges; maintain water quality and recharge of ground water; and provide fish and wildlife habitat. Natural floodplain functions include large wood recruitment and other habitat forming processes. See, *e.g.*, 42 U.S.C. 4121(a)(12).

Open space – Used as a descriptive term; includes areas legally designated and encumbered as open space, but may also include other land use designations or zoning districts or overlays that restrict development and maintain areas in a condition that is largely devoid of structures or infrastructure regardless of ownership or access (private or public). For example, open space may include the follow provided development is indefinitely set aside:

1. A natural area containing only minor improvements.
2. A park that was "reclaimed" from a previously developed area.
3. A playground or playfields with natural turf.
4. An agricultural field or pasture.

Riparian buffer zone (RBZ) – As defined in FEMA's proposed action for this consultation, the outer boundary of the RBZ is measured from the ordinary high water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream[168]) or mean higher-high water line of a marine shoreline or tidally influenced river reach to 170 feet horizontally on each side of the stream. The RBZ includes the area between these outer boundaries on each side of the stream, including the stream channel.

Riparian vegetation – Native vegetation, especially trees, within 200 feet of the ordinary high water mark.

Special hazard area – An area having special flood, mudslide (*i.e.*, mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E (44 CFR 59.1), and expanded for the purpose of this RPA to include the AFCFH.

Start of construction – Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for

[168] Perennial Stream: A stream that flows year round, even during periods of no rainfall. Intermittent Stream: A stream that flows only during certain times of the year, including ephemeral streams.

a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building (44 CFR 59.1).

Structure – A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home (44 CFR 59.1).

Water-dependent uses – As defined in FEMA's proposed action, a use that cannot perform its intended purpose unless located or carried out in proximity to water (*e.g.*, pier, bridges). For NFIP insurable structures, "[t]he term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship-building and ship repair facilities, but does not include long-term storage or related manufacturing facilities" (44 CFR Part 59.1). For structures other than NFIP insurable buildings (*e.g.*, utility crossings, bridges), the locational dependence is determined by two tests (Interagency Task Force on Floodplain Management, 1984). First, is the purpose of the activity involved directly in the business of inserting and extracting goods into and out of waterborne vessels or inserting and extracting the vehicles themselves to and from the water, or to provide public access and use of the shoreline for recreation? Second, for an industry classified as functionally-dependent under the first question, is an individual structure vital to day-to-day production?

2.8.4 Findings on the Reasonable and Prudent Alternative

As stated in the introduction of Section 2.8 above, a reasonable and prudent alternative to the proposed action is one that avoids jeopardy by ensuring that the action is undertaken in a manner so that its effects do not appreciably reduce the species' likelihood of survival or the species' potential for recovery (50 CFR 402.02). It also must avoid destruction or adverse modification of designated critical habitat.

This RPA is designed to address the deficiencies of the NFIP as implemented in Oregon and identified in this opinion – these deficiencies contribute to the degradation of critical habitat for listed species, reduce the likelihood of survival, and increase the likelihood of extinction of listed species. By addressing deficiencies in FEMA's mapping protocols and development standards, the RPA will significantly reduce the effects of future floodplain development and thus avoid adverse effects on anadromous fish and their habitat in the action area. Compliance with the NFIP revisions proposed by the RPA will also ensure that any adverse impacts to relevant habitat features are mitigated. By doing so, the RPA would prevent the exacerbation of identified limiting factors for listed anadromous fish and avoid the future loss of population abundance and productivity caused by the direct, indirect, and cumulative effects of floodplain development. Similarly, the RPA will prevent additional loss of critical habitat quality and function resulting from floodplain development. Implementation of the RPA will avoid jeopardy to SRKW because, for those listed fish species that are prey for SRKW and the subject of this opinion, the RPA will ensure that the impacts of the proposed action are minimized and mitigated so as not to increase the salmonid species' risk of extinction.

U.S. Department of Homeland Security
FEMA Region 10
130 – 228th Street, SW
Bothell, Washington 98021

FEMA

June 13, 2016

Honorable Mayor Bill Graupp
21421 Main St. NE
Aurora , OR 97002

Dear Honorable Mayor Graupp,

In 2009, the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) was sued by the Audubon Society of Portland, the National Wildlife Federation, the Northwest Environmental Defense Center, and the Association of Northwest Steelheaders for failure to consult under Section 7 of the Endangered Species Act (ESA) with respect to the effects of the implementation of the National Flood Insurance Program (NFIP) on certain ESA-listed species in the state of Oregon. On July 12, 2010, the United States District Court, District of Oregon at Salem, required FEMA to consult with the National Marine Fisheries Service (NMFS) on impacts the NFIP was having on ESA listed species. FEMA complied by submitting a Biological Assessment in July of 2011 to NMFS, which concluded the NFIP may affect, but does not adversely affect, the ESA-listed species considered in the assessment.

On April 14, 2016, NMFS provided a Biological Opinion in which they concluded that the implementation of the NFIP in Oregon jeopardizes the continued existence of 18 ESA listed species and adversely modifies their critical habitat. Federal agencies are prohibited by the ESA from causing jeopardy to ESA-listed species or adversely modifying the designated critical habitat of such species. Although the NMFS Biological Opinion's determination is written for FEMA, the Endangered Species Act (ESA) applies to everyone, whether a federal agency, state agency, local jurisdiction, or individual. We all have a legal responsibility to ensure our actions do not cause a take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) to threatened or endangered species. Under Section 9 of the ESA, actions or decisions enacted by you and your officials are subject to this take prohibition regardless of federal involvement. Additionally, any person can be subject to criminal or civil penalties for causing a take of threatened or endangered species. NMFS considers the issuance of floodplain development permits that do not avoid or compensate for detrimental impacts on ESA-listed species or their critical habitat as noncompliant with the Endangered Species Act. NMFS identifies certain private floodplain development activities as harmful to listed species, including the addition of fill, structures, levees and dikes, the addition of impervious surfaces, removal of vegetation, and bank armoring. NMFS has determined that these activities impair natural floodplain functions and thereby negatively impact the survival and recovery of ESA-listed species.

With a jeopardy determination, NMFS is obligated to provide a Reasonable and Prudent Alternative (RPA), which are program changes to the NFIP that will allow the program to be implemented in a manner that avoids jeopardy to ESA-listed species and adverse modification

of their critical habitat. For details on these program changes, please see the RPA attached to this letter or the complete NMFS Biological Opinion at http://www.westcoast.fisheries.noaa.gov/habitat/conservation/index.html.

As envisioned by NMFS, the RPA is intended to be implemented in stages, with two different sets of program changes that will need to be implemented by FEMA and the NFIP participating communities. The first set of program changes are interim measures found in Element 2 of the RPA, which must be implemented within 2 years of the issuance of the Biological Opinion (April 14, 2018). These measures will remain in place until FEMA and the participating communities implement the second set of program changes (Elements 3-6 of the RPA), which are the permanent program changes to the NFIP required by the RPA. NMFS requires the interim measures in Element 2 to be superseded by the permanent floodplain management criteria in RPA Element 4 that do not require regulatory revisions (such as revising the Code of Federal Regulations) by January 1, 2019. All elements of the RPA that do not necessitate regulatory revisions are to be implemented by September 15, 2019 and complete implementation, including regulatory revisions, is required to occur by January 1, 2021.

The NMFS Biological Opinion authorizes a certain amount of jeopardy or adverse modification to ESA-listed species or their habitat during the time necessary for FEMA and participating NFIP communities to implement the complete RPA. During this interim time and until all permanent RPA elements are in place, your community may either choose to voluntarily impose a temporary moratorium on all floodplain development that adversely impacts ESA listed species or their habitat, or voluntarily implement the interim measures found in RPA Element 2. Oregon DLCD and FEMA will develop guidance to help your community implement these interim requirements.

FEMA and Oregon DLCD will be inviting you and other interested stakeholders to participate in workgroups to identify options and methods that communities can implement, with respect to the RPA. These implementation options may include guidance, training, and technical assistance. One example is the development of a model ordinance that would meet FEMA's minimum criteria while also incorporating the requirements of the RPA. Once this model ordinance is finalized, it will be shared with all interested communities.

The RPA comprises six elements or sections, and a full copy of the RPA is provided as an attachment to this letter. Element 1 involves notice, education, and outreach regarding the outcome of FEMA's consultation with NMFS on the implementation of the NFIP in Oregon. This letter is part of that requirement for FEMA to provide Notice of the Biological Opinion and RPA. RPA Element 1encourages communities to send data or information on locally identified flood-related hazards due to erosion or inundation, including anticipated flooding patterns influenced by build-out, climate change or sea level rise, which are not currently reflected on effective Flood Insurance Rates maps (FIRMs) to the FEMA Region X office by August 12, 2016. In addition, the RPA recommends that substantially improved and new structures (as defined in the RPA) placed in the Special Flood Hazard Area should be elevated by methods other than fill, and that proponents of projects that involve adding fill exceeding 50 cubic yards should pursue CLOMR-Fs prior to LOMR-Fs to ensure ESA compliance is obtained prior to undertaking floodplain development. This element also requires FEMA to

provide guidance to communities regarding elevating structures in a manner that minimizes the adverse effects to natural floodplain functions. For information on elevating structures, please see the attached Frequently Asked Question document - Elevating Structures Without Fill.

In Element 2 of the RPA, NMFS has laid out a set of Interim Measures expected to be implemented within 2 years and requires that all development in the SFHA be mitigated to achieve no net loss of natural floodplain functions. Element 2 includes requirements for mitigation ratios, impervious surfaces, stormwater, floodplain management standards, riparian buffers, LOMCs and CLOMCs, and floodplain development permit reporting. FEMA will be working to provide you with guidance regarding how to achieve the requirements listed in RPA Element 2.

Additionally, to help minimize the time and effort imposed upon your staff resulting from the floodplain development permit reporting requirement, FEMA intends to use a Microsoft Excel based reporting tool that will be sent to each community to track all new development occurring in floodplains. Once the interim RPA requirements are in place, if communities issue floodplain development permits without reporting said development or without mitigating for adverse effects on ESA listed species or their habitat, FEMA will be required, in coordination with NMFS acting under their own authority, to initiate appropriate enforcement action.

Element 3 requires use of revised mapping protocols and methodologies for the stated purpose of improving the identification of special hazard areas. The RPA also requires several additions to the Flood Insurance Rate Maps, including the future conditions floodplain, erosion zones, and channel migration zones.

Element 4 requires revisions to the floodplain management criteria to, among other things:

- Include a generally applicable ESA performance standard;
- Prohibit almost all development in an area known as the High Hazard Area (floodway, V-Zone, LiMWA, erosion zone);
- Prohibit re-drawing of the floodway to accommodate floodplain development;
- Require a 60 year erosion setback area with very limited uses (agricultural, open space, temporary structures); and
- Significantly restrict subdivisions of lots.

Element 4 also requires extensive compensatory mitigation requirements in the areas where floodplain development is not otherwise prohibited. FEMA will be working to provide you with guidance regarding how to achieve the requirements listed in RPA Element 4.

Element 5 requires data collection and describes reporting requirements needed to accurately track floodplain development impacts and RPA implementation. Element 6 speaks to compliance and enforcement requirements of the RPA and the associated timelines for compliance.

FEMA recognizes that many of you have already been implementing measures that compensate/mitigate floodplain development actions affecting ESA-listed species and their habitat. However, for others, these requirements may pose an additional workload on your

community. We will work diligently with you, State resource agencies, and NMFS to offer guidance and resources that will help facilitate this transition. We will keep you advised and look forward to working with interested stakeholders to develop our strategy for implementation. If you have any questions, please email FEMA-R10-ESAcomments@fema.dhs.gov or contact Scott Van Hoff, Senior NFIP-ESA Specialist at 425-487- 4677.

Sincerely,

Mark Carey,
FEMA Region X Mitigation Division Director

cc: FPA
State NFIP Coordinator
Kim Kratz, NMFS

Attachments: Oregon NFIP Reasonable and Prudent Alternative (RPA)
FAQ- Elevating Without Fill

SVH: jg

Oregon
Kate Brown, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 373-0050
Fax: (503) 378-5518
www.oregon.gov/LCD

Oregon Seeks Common-Sense Approach to New Floodplain Development Expectations

New Guidelines Should Support Healthy Salmon and Steelhead Populations, Promote Resilient Communities, and Advance the Goals of Oregon's Land Use Program.

Managing development in flood prone areas protects people, property, and communities, and protects fish and wildlife habitat. This will become even more important as Oregon faces extreme weather events and other challenges that a changing climate brings.

On April 14th, 2016 the National Marine Fisheries Service (NMFS) delivered a Biological Opinion (BiOp) to the Federal Emergency Management Agency (FEMA). Based on the BiOp, FEMA will be setting new minimum requirements for local floodplain development ordinances based on federal requirements to protect endangered species. These changes will be incorporated into the National Flood Insurance Program (NFIP).

The federal NFIP provides flood insurance for homeowners and property owners generally. In Oregon, 260 cities and counties and three Indian tribes[1] participate in the NFIP.

The NFIP is administered by FEMA, which sets standards for local governments that participate in the NFIP, including requirements for local floodplain development regulations. DLCD assists local governments with implementation of those regulations.

How will the state assist local communities?
The state has a strong interest in how FEMA implements the NFIP. Oregon is working with FEMA to identify a common-sense approach to new floodplain development expectations, ones that support healthy salmon and steelhead populations, promote resilient communities, and advance the goals of Oregon's land use program.

Our activities will include:

- Workshops and presentations
- Guidance
- Model local ordinances
- Grants
- Technical assistance

For more information from the Department of Land Conservation and Development, please contact Amanda Punton, Natural Resource Specialist, at (971) 673-0961 or Chris Shirley, NFIP Coordinator, at (503) 934-0027.

For more information from the Federal Emergency Management Agency, please contact John Graves, at (425) 487-4737.

[1] http://www.fema.gov/media-library-data/20130726-1915-25045-9744/or_nfip_pba_final_version_march_2013.txt

LOC Bulletin

LEAGUE of Oregon CITIES

June 24, 2016

IN THIS ISSUE

- FEMA's Notification Letter Concerns LOC and Oregon Leaders
- City Input Needed on 2017 Legislative Priorities
- Deadline Monday for SDC Survey
- LOC Conference Registration Opens July 1
- Update on LOC Conference Lodging
- Scholarship Applications Available for LOC Conference
- There's an LOC-TV for That!
- July *Local Focus* Now Online
- Cities Encouraged to Share Their News in *Local Focus*
- New LOC Resource Connects Residents to City Data
- FEMA Offers Free Online Training
- Transportation Safety Action Plan Available for Comment
- City Action Needed to Receive State Shared Revenues
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- DAS Offering Project Management Certification Program
- Community Tree Management Institute Filling Fast

FEMA's Notification Letter Concerns LOC and Oregon Leaders

Last week, the Federal Emergency Management Agency (FEMA) sent a letter to impacted communities about the implementation of the Reasonable Prudent Alternatives (RPAs) set forth in FEMA's April Biological Opinion (BiOp), part of the National Flood Insurance Program. The letter raises significant concerns about FEMA's plan for implementing RPAs. Prior to the letter, the Oregon Department of Land Conservation and Development (DLCD) had conducted webinars, in which FEMA participated, that discussed FEMA's intent to work with local governments and other stakeholders on outreach and implementation options. FEMA's letter presents a very different message and increases concerns about the BiOp's impacts on local governments' development plans.

The League has been following the BiOp development process and has raised concerns with a number of other stakeholders about the potential of FEMA's over-reaching with difficult floodplain regulations. The League has been in contact with the DLCD, Governor Kate Brown, Senator Ron Wyden, and Representative Peter DeFazio. In response to the FEMA letter, Governor Brown quickly replied to FEMA, expressing concerns about the burden FEMA is placing on local governments and the inconsistent message regarding the RPAs. Her letter is available *here*. In addition, the League is working with Representative DeFazio to determine options for federal legislation to ensure that FEMA does not exceed its authority and protect Oregon's local process of development planning. The League will continue working with Rep. DeFazio, Governor Brown, and other stakeholders to protect local processes and balance development needs with floodplain management.

Contact: Erin Doyle, Intergovernmental Relations Associate – *edoyle@orcities.org*

KATE BROWN
Governor

June 17, 2016

W. Craig Fugate
Administrator
U.S. Department of Homeland Security/FEMA
500 C Street, SW
Washington D.C. 20472

Subject: Response to Federal Emergency Management Agency (FEMA) June 13, 2016, notice to local governments regarding FEMA's implementation of the Reasonable and Prudent Alternative arising from National Marine Fisheries Service (NMFS) Biological Opinion

Dear Mr. Fugate:

On June 15, 2016, FEMA forwarded to the Department of Land Conservation and Development (DLCD) a copy of FEMA's June 13, 2016, letter to National Flood Insurance Program (NFIP) communities in Oregon. The letter is required by the NMFS Biological Opinion and Reasonable and Prudent Alternative (RPA) to provide notice of the outcome of the Endangered Species Act (ESA) consultation between FEMA and NMFS.

The State was taken aback by the letter's poor attempt to communicate with local governments on what is required of them at this time, and what is not required. I request that FEMA avoid undue burdens and premature punitive actions on local governments and Oregon communities by providing clear information to local governments and greater procedural input into the guidelines and standards to be developed by FEMA over the course of the coming years.

I was also disappointed in the tone of the letter and its inconsistent, confusing and erroneous messages. For example, I am deeply concerned that the letter implies local governments are required to take actions in direct response to the RPA. The RPA does not apply directly to NFIP communities. The RPA states that "... the locus of accountability for these ESA duties rests upon FEMA." The letter also inappropriately threatens enforcement actions before FEMA has even developed an implementation plan.

The letter indicates an alarming abdication of FEMA's responsibilities as the implementing agency for the NFIP. FEMA determines how to interpret and implement the RPA. Oregon expects the federal government to be a partner with the State, local and tribal governments in implementing federal programs. I call on FEMA to work closely with local communities, tribal

254 STATE CAPITOL, SALEM OR 97301-4047 (503) 378-3111 FAX (503) 378-8970
WWW.GOVERNOR.OREGON.GOV

governments, state agencies and stakeholders in FEMA's development of standards and guidelines that protect endangered salmon and steelhead, and the economic vitality of our communities.

The Department of Land Conservation and Development has scheduled several meetings around the State at FEMA's request. FEMA Region X previously indicated the intent of these meetings is to gather local community input to inform FEMA's development of an RPA implementation plan. It is critical that FEMA engage local communities, tribal governments and the State to inform FEMA's implementation of the RPA.

Oregon will continue to advocate strongly for local communities, and for actions that benefit healthy salmon and steelhead habitat consistent with Oregon's land use program. Oregon looks forward to working with FEMA on a collaborative process to ensure that revised floodplain management standards meet multiple social, economic and environmental needs.

Sincerely,

Governor Kate Brown

KB:la

cc:

Roy Wright, Associate Administrator
Michael Grimm, Assistant Administrator Mitigation
Kenneth Murphy, Region X Administrator
Will Stelle, NOAA West Coast Regional Administrator
Mark Carey, FEMA Region X Mitigation Division Director
Kim Kratz, National Marine Fisheries Service
Oregon Congressional Delegation
Senate President Peter Courtney
House Speaker Tina Kotek
Senate Republican Leader Ted Ferrioli
House Republican Leader Mike McLane
Richard Whitman, Natural Resource Policy Director
Jim Rue, Department of Land Conservation and Development
Mike McArthur, Association of Oregon Counties
Mike McCauley, League of Oregon Cities

From: Vandyke, Denise [DVandyke@mwvcog.org]
Sent: Tuesday, June 28, 2016 11:36 AM
To: Angela Speier; Bob Willoughby; Chad Olsen; Eppley, Chris; Christy Wurster; City of Aumsville; Recorder; Pavoni, Christine; City of Donald; Archer, Traci; Ammon, Wenonah; Cook, Sarah; Amie Kennison; COGContact, St. Paul; City of Sublimity; COGContact, Yamhill; Clyne, David; David Sawyer; Debbie Bernard; Domenica Protheroe; Sheridan, Frank; Hansen, Greg; Jim Row; Joe Hannan; Lattimer, John; Justin Hogue; Keith Campbell; Layton, Larry; Tschabold, Laura; Martha Meeker; Mike Healy; Polasek, Preston; Rob Daykin; Roger Jordan; Ronald Foggin; Derickson, Scott; McClure, Scott; Scott Pingel; Stacie Cook; Steve Powers; Susie Marston; Tami Carpenter; Nogle, Vickie; Allen Pollock; Christy, Perry; !Superintendent; Don Clements; Julie Huckestein; Stacia Martin; Andrew Otte; Peterson, Anna; Beth Wytoski; mayor; Andrews, Bob; Brian Dalton - home; Cathy Clark; Chris Pagella; Daroll Nicholson; David Russ; Gary Tiffin; Harry Cooley; Henry Porter ; Ila Skyberg; Jim Yonally; McArdle, John; Oberst, John; Oriet, Kathie; Figley, Kathy; Kim Wallis; Mayor of Scotts Mills; Cape, Michael; Patrick McKenzie; Terp, Paula; Ray Heuberger; Rick Lewis; Rick Olson; Shanti Platt ; Terry Ungricht
Cc: Messmer, Jennie; Wakeley, Renata
Subject: FW: DLCD and FEMA training opportunity on new rules to the National Flood Insurance Program (NFIP)
Attachments: DLCD_BiOp_One-pager_041416_FINAL (1).pdf

Training Opportunity

DLCD and **FEMA** will be holding outreach meetings around the state this summer to discuss new rules related to the National Flood Insurance Program (NFIP) Reasonable and Prudent Alternatives (RPA) and FEMA's development of an implementation plan and interim measures for floodplain development permitting aimed at reducing negative impacts on salmon, steelhead and other species listed as threatened under the Endangered Species Act. See schedule below along with a local training session scheduled to occur from 9:00 am to noon on July 26th at the **Marion County Public Works** facility: 5155 Silverton Road NE, Salem.

Albany	June 27, 1:00 - 4:00 p.m.	Albany City Hall, 333 Broadalbin St SW
North Bend	June 28, 1:00 - 4:00 p.m.	North Bend Library, 1800 Sherman Ave
White City	June 29, 1:30 - 4:30 p.m.	Jackson County Roads, 200 Antelope Rd
Tillamook	July 14, 1:00 - 4:00 p.m.	Oregon Department of Forestry, 5005 Third St
Clackamas County	July 15, morning	Location to be determined
Portland	July 25, 1:00 - 4:00 p.m.	Bureau of Planning and Sustainability, 1900 SW 4th Ave
Salem	July 26, 9:00 a.m. - noon	Marion County Public Works, 5155 Silverton Rd NE
Redmond	July 27, 8:30 - 11:00 a.m.	Redmond City Hall, 716 SW Evergreen Ave
The Dalles	July 27, 2:00 - 4:30 p.m.	Location to be determined
La Grande	July 28, 9:00 a.m. - noon	Eastern Oregon University, One University Boulevard

COG will be sending staff to the training in Salem but local elected officials and staff are also encouraged to attend as the new rules will have future impacts upon local floodplain development ordinances. A statement from DLCD to local governments is also attached for your review.

To register, please visit: http://www.oregon.gov/LCD/Pages/NFIP_BiOp.aspx

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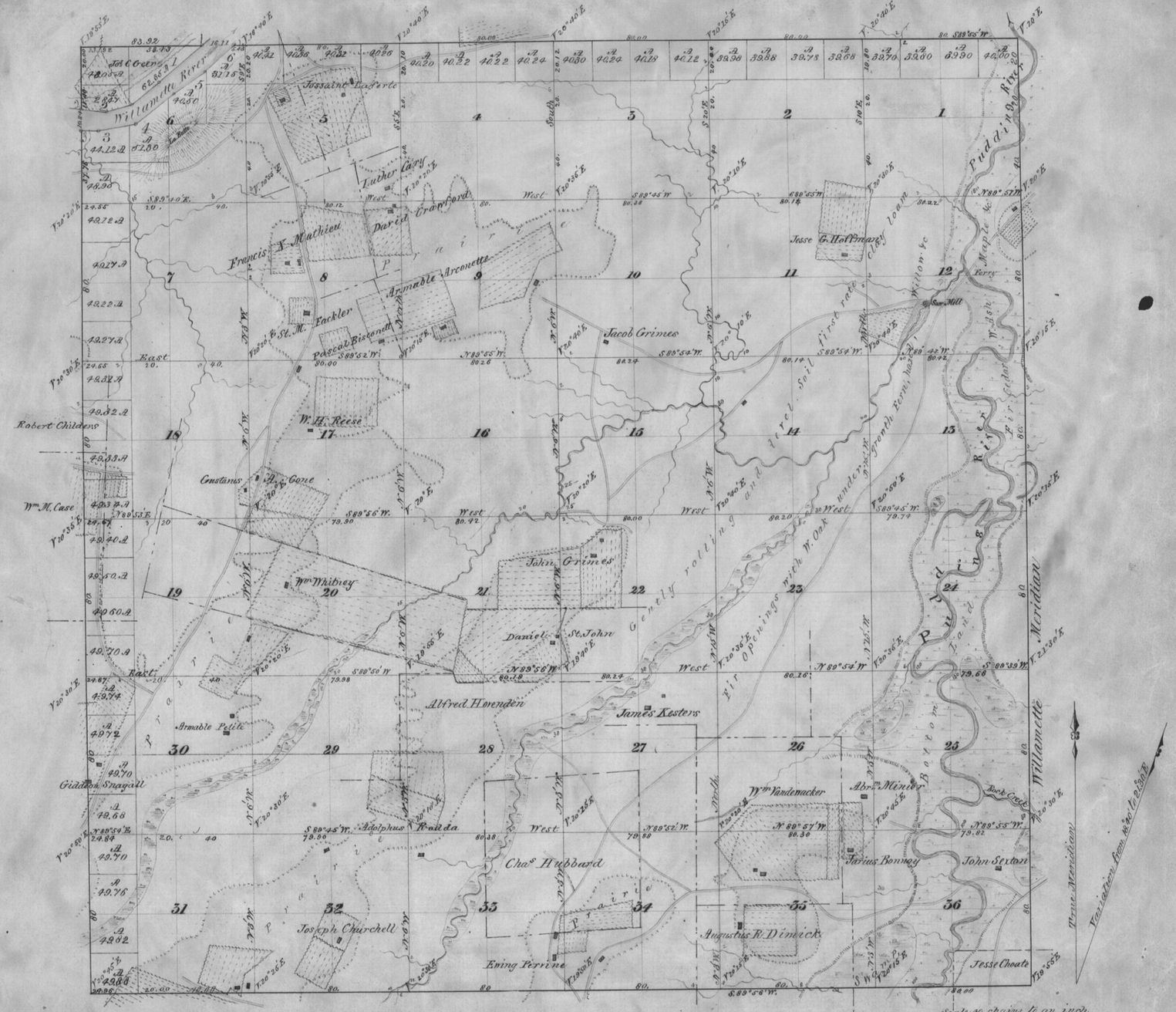
Township No. 4 South Range No. 1 West Willamette Mer.



Surveys Designated	By Whom Surveyed	Contract No.	Contract Date	Amount of Surveys Miles	Chains	Links	When Surveyed	When charged in the Sur. Gen'l's Acc't
Township Lines	Wm. Ives	12	March 25th 1852	12	4	96	May 20th 1852	2d Quarter 1852
Subdivisions	Wm. Ives	18	May 21st 1852	62	33	05	Augt. 12th 1852	3d Quarter 1852

The above map of Township No. 4 South Range No. 1 West of the Willamette Meridian Territory of Oregon is strictly conformable to the field notes of the Survey thereof, on file in this office which have been examined & approved

Surveyor Generals Office
Oregon City Augt. 19th 1852

W. P. Preston
Surv. Genl.