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**TO:** Planning Commission

**FROM:** Evan Boone, Deputy City Attorney

**SUBJECT:** LU 17-0028, Proposed Amendments to Lake Grove Village Center Overlay  
Boones Ferry Road Nonconformities  
Response to Issues Raised by Michael Robinson Letter dated June 19, 2017 [Exhibit G-1]

**DATE:** August 2, 2017

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This memorandum responds to the legal issues raised by attorney Michael Robinson, on behalf of Cain Petroleum.

**1. The PRD’s amendment of LOC 50.05.007.6.c.vi. should explicitly apply to parking the BFR Project directly and indirectly “eliminates.”**

This concern is addressed in a proposed text revision to the section, where this Ordinance’s exhibit will identify the parking spaces specifically lost by the Project.

vi. For the portion of property purchased or condemned by City after October 4, 2012, for the purpose of improvements to Boones Ferry Road right-of-way that are consistent with the Lake Grove Village Center Plan: If the loss of property eliminates parking, **as set forth in Attachment D of Ordinance No. \_\_\_\_\_**, the amount of parking lost may be counted toward meeting the parking standard ~~for building expansions if applied for within five years of the purchase or condemnation.~~

**2. The City should amend Policy 9.4 of the Lake Grove Village Center Plan.**

These code amendments can be adopted without necessarily amending Policy 9.4.

The Boones Ferry Road Realignment Project includes street frontage changes. The “no net loss in parking facilities” in Policy 9.4 refers to loss due to “access modifications”:

9.4 Ensure no net loss of parking facilities within the Lake Grove Village Center when making access modifications to Boones Ferry Road.

The Boones Ferry Road Realignment Plan<sup>1</sup>, although not a land use plan, does state a policy for the project that there be no net loss of parking from the realignment project:

### Off-street Parking Impacts

The City of Lake Oswego has endorsed a policy that calls for “no net loss” in parking within the Boones Ferry Road corridor after construction of the Boones Ferry Road refinements. The preliminary construction plans indicate that the most significant off-street parking impacts are expected for the following businesses: Wells Fargo bank (across from the Lake Grove Shopping Center), Bank of American (in the Lake Grove Shopping Center); Lake Grove Garden Center, Naomi’s Lampshades; and the new Sherwin Williams paint store (near Lake Grove Elementary school). There may also be additional parking impacts with some businesses losing 1-2 parking spaces. Future planning and design phases for this project should consider appropriate locations for additional on- and off-street public parking areas that help mitigate these and other potential off-street parking dislocations.

BFR Realignment Plan, pg. 2

### H. Parking Mitigation

The widening of Boones Ferry Road will have variable impacts to properties fronting on the corridor. Final engineering design will need to address on-site parking areas and access reconfiguration in order to mitigate loss of parking and help meet the Plan goal of no net loss of parking in the district.

BFR Realignment Plan, pg. 35

The question is whether the proposed amendments comply with the Comprehensive Plan. No Comprehensive Plan policy has been identified by Planning staff or Mr. Robinson to which the code amendments were contrary. In other words, the question isn’t whether the code amendments are mandated by a Comprehensive Plan policy but whether adoption of the code amendments would conflict with a Comprehensive Plan policy. Doing more than required by Comp Plan policies -- by enacting code amendments to achieve no net loss of parking facilities due to Boones Ferry Road realignment -- is permissible.

**3. The PRD does not include drafts of the “frontage plans” referenced by LOC 50.05.007.6.e.i., and therefore it is not possible to make informed comment on the PRD amendment of LOC 50.05.007.6.e.i.**

This comment is now superseded by the public hearing version of the code amendments. Cain Petroleum may make additional comments at or prior to the public hearing.

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<sup>1</sup> [http://www.ci.oswego.or.us/sites/default/files/archives/projects/planningprojects/PP09-0019\\_LGVC\\_Financing\\_Strategy-CEG/Boones\\_Ferry\\_Phase-2\\_Report\\_07-12-2011.pdf?t=1498006584530](http://www.ci.oswego.or.us/sites/default/files/archives/projects/planningprojects/PP09-0019_LGVC_Financing_Strategy-CEG/Boones_Ferry_Phase-2_Report_07-12-2011.pdf?t=1498006584530)

**4. The PRD amendment of LOC 50.07.003.13.a.ii.(8). should include a corresponding amendment of LOC 50.07.003.13.a.i.**

Mr. Robinson is concerned that an internal inconsistency could arise: a defined ministerial development under LOC 50.07.003.13.a.ii(8) would not be within the initial scope of LOC 50.07.003.13.a.i(3).

I do not find the proposed amendment to LOC 50.07.003.13.a.ii(8) to be inconsistent with LOC 50.07.003.13.a.i(3):

### **13. MINISTERIAL DEVELOPMENT DECISIONS**

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#### **a. Ministerial Development Classification**

##### **i. Requirements of Ministerial Decisions**

A ministerial development is a development which requires a permit or review from the City where the decision:

- (1) Is made pursuant to land use standards which do not require interpretation or the exercise of policy or legal judgment;
- (2) Approves or denies a building permit issued under clear and objective land use standards; or
- (3) Determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the Comprehensive Plan and land use regulations.**

Rather, I would be more concerned about adding suggested subsection (4). The addition of subsection 4 would suggest that review of applications under LOC 50.07.003.13.a.ii.(8) was not within the scope of subsection 3, and that would also suggest that the review falls outside the exception to the definition of a "land use decision" in ORS 197.015(10)(b)(D), below. The ministerial development categories stated in LOC 50.07.003.13.a.i parrot the statutory exclusion of certain types of decisions from "land use decision" under ORS 197.015(10).

#### **ORS 197.015 Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325.**

\*\* (10) "Land use decision":

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##### **(b) Does not include a decision of a local government:**

- (A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;
- (B) That approves or denies a building permit issued under clear and objective land use standards;
- (C) That is a limited land use decision;
- (D) That determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with the comprehensive plan and land use regulations;**
- (E) That is an expedited land division as described in ORS 197.360;

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Land use decisions are statutorily required by ORS 227.175 to provide notice and an opportunity for a public hearing, i.e., minor development procedures under LOC 50.07.003. See ORS 227.160(2)(c):

**ORS 227.160 Definitions for ORS 227.160 to 227.186.** As used in ORS 227.160 to 227.186:

(1) "Hearings officer" means a planning and zoning hearings officer appointed or designated by a city council under ORS 227.165.

(2) "Permit" means discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation. "Permit" does not include:

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(c) A decision which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or

(d) An expedited land division, as described in ORS 197.360.

Accordingly, I do not recommend a proposed code amendment to LOC 50.07.003.13.a.i by adding a subsection 4, given that I do not find an internal inconsistency and a concern that in doing so would raise unnecessary questions regarding ORS 197.015(10)(b)(D).