



STAFF REPORT

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Sean Brady, City Attorney

DATE: 01/28/2019

SUBJECT: Consideration of **Resolution No. 5422-19** Authorizing the City Manager to Execute an Intergovernmental Agreement with the Cities of Lake Oswego and West Linn Relating to Stafford Concept Planning

ISSUE BEFORE THE COUNCIL:

Council will consider a resolution authorizing the City Manager to execute an Intergovernmental Agreement with the Cities of Lake Oswego and West Linn relating to planning for the Stafford Urban Reserve area.

RECOMMENDATION:

Staff recommends that the City Council consider the resolution for adoption.

EXECUTIVE SUMMARY:

At the December 10, 2018 City Council meeting, the City Council discussed the Intergovernmental Agreement, heard from a number of speakers, and ultimately voted three in favor of adopting the resolution (Bubenik, Grimes, Kellogg) and three opposed (Ogden, Davis, Morrison). There were two primary concerns expressed: 1) the 10-year moratorium on planning in the area north of the Tualatin River, and 2) wanting to ensure coordination with ODOT's projects on I-205 and timely transportation and infrastructure planning for the area. On January 16, 2019, representatives of the three cities met. Both Lake Oswego and West Linn have adopted the IGA; however, they both agreed that while the 10-year moratorium is firm, they acknowledge and agree that there is work that can get underway well before then. In addition, they fully agreed that the transportation planning work needs to move forward and that we all must be engaged and coordinated on the I-205 planning and projects. They reiterated that the IGA does not prevent either of those things from taking place.

The premise behind the IGA before the City Council is that the three cities recognize that uncoordinated decisions by one City could have severe, negative impacts on the other Cities. The purpose of the Agreement is to identify the prerequisites for concept planning, to provide for coordination of concept planning, and to adopt a method for dispute resolution in order to ensure the orderly and coordinated process for any urbanization of Stafford, concurrent with the provision of required urban services, to provide for community involvement, and to ensure preservation of community character and important natural resources.

If adopted, the Resolution would authorize the City Manager to execute the 3-City IGA as adopted by the Cities of Lake Oswego and West Linn.

Attachments: Reso 5422-19 Stafford 3-City IGA
 Exhibit A Reso 5416-18 - Three-City IGA

RESOLUTION NO. 5422-19

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF LAKE OSWEGO AND CITY OF WEST LINN RELATING TO STAFFORD CONCEPT PLANNING

WHEREAS, on or about June 28, 2017, the City of Tualatin, City of Lake Oswego, City of West Linn (collectively "Cities"), Clackamas County, and Metro entered into an intergovernmental agreement (the "Five-Party IGA"), in which the Cities agreed to end their long-standing opposition to designation of Metro study areas 4A, 4B, 4C, and 4D ("Stafford") as urban reserve in return for recognition by the County and Metro that the Cities will be responsible for and have control over the planning and timing of urbanization of Stafford.

WHEREAS, Section 2 of the Five-Party IGA and Section 3.07.1110 of the Metro Code require the Cities to adopt a concept plan or plans for Stafford, and Section 2.a of the Five-Party IGA states that the timing for commencement and completion of a concept plan is up to the affected city.

WHEREAS, the purpose of the Intergovernmental Agreement ("IGA") between the Cities is for the Cities to identify the prerequisites for concept planning, provide for coordination of concept planning, and adopt a method for dispute resolution in order to ensure the orderly and coordinated urbanization of Stafford, concurrent with the provision of required urban services, to provide for citizen involvement, and to ensure preservation of community character and important natural resources.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. This City Manager is authorized to execute an IGA with the City of Lake Oswego and City of West Linn related to Stafford, in a form substantially similar to that which is attached as Exhibit A and incorporated by reference.

Section 2. This resolution is effective upon adoption.

ADOPTED by the City Council this 28th day of January, 2019.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

Exhibit A

Resolution No. 5416-18

THREE CITY INTERGOVERNMENTAL AGREEMENT PLANNING FOR THE STAFFORD URBAN RESERVE

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this ____ day of _____, 2018, by the City of Lake Oswego ("Lake Oswego"), the City of Tualatin ("Tualatin"), and the City of West Linn ("West Linn") (together, the "Cities" or the "Parties"). This Agreement is entered into pursuant to ORS 190.010 to 190.110.

RECITALS

1. By intergovernmental agreement dated June 28, 2017, among the Cities, Clackamas County (the "County"), and Metro (the "Five-Party IGA"), the Cities agreed to end their long-standing opposition to designation of Metro study areas 4A, 4B, 4C, and 4D ("Stafford") as urban reserve in return for recognition by the County and Metro that the Cities will be responsible for and have control over the planning and timing of any urbanization of Stafford. Consequently, the Cities did not file an objection or appeal of Metro's submittal to the State of Oregon Land Conservation and Development Commission ("LCDC"). LCDC acknowledged Metro's designation of urban reserves (including Stafford) and Clackamas County's and Multnomah County's designation of rural reserves on May 16, 2018.
2. The Cities had long opposed the designation of Stafford as urban reserve because of concerns with regard to the high cost of providing the necessary public infrastructure, including the feasibility of providing functional transportation infrastructure, and the potential for severe negative impacts on community character and livability, if urbanization were to occur in an uncoordinated manner before the necessary infrastructure is planned for and funded.
3. The purpose of Metro's urban reserves designation is to provide for a 20- to 30-year supply of land for employment and residential land needs beyond the 20-year supply of those lands provided for in the Metropolitan Urban Growth Boundary ("UGB"). Given the infrastructure challenges, any urbanization of Stafford is not likely to occur until the latter part of this period.
4. Section 2 of the Five-Party IGA and Section 3.07.1110 of the Metro Code require that the Cities must have adopted a concept plan or plans for Stafford, or any portion thereof, before it can be considered for addition to the UGB. Section 2.a of the Five-Party IGA states that the timing for commencement and completion of a concept plan is up to the affected city.
5. The Parties recognize that uncoordinated decisions by one Party could have severe, negative impacts on the other Parties. The purpose of this Agreement is to identify the prerequisites for concept planning, to provide for coordination of concept planning, and to adopt a method for dispute resolution in order to ensure the orderly and coordinated process for any urbanization of Stafford, concurrent with the provision of required urban services, to provide for citizen involvement, and to ensure preservation of community character and important natural resources.

6. The Parties also recognize that this Agreement is consistent with and implements the Five-Party IGA and, therefore, is necessary to support the determination by Metro and Clackamas County that the designation of Stafford as an urban reserve is supportable under the urban reserve factors contained in ORS 195.145(5) and OAR 660-027-0050.

NOW, THEREFORE, the Parties agree as follows:

1. **Timing of Concept Planning**

- 1.1 The Parties agree that a very significant challenge for urbanization of Stafford in terms of cost and the potential for severe, negative community impacts is providing for adequate transportation infrastructure and transit service.

- 1.2 The Parties further agree that a key piece of infrastructure that must be planned for and funded before the Parties can complete meaningful concept planning is the widening of Interstate 205 to three lanes in each direction from Oregon City to Stafford Road and the replacement or reconstruction of the Abernethy Bridge ("I-205 Widening Project"). Given the jurisdiction over and the cost of this project, it will have to be a regional project funded by state and federal funds.

- 1.3 The Parties, therefore, agree that no Party will complete or adopt any concept plan for any part of Stafford under Title 11 of the Metro Urban Growth Management Functional Plan (Metro Code Section 3.07), or that otherwise constitutes a concept plan under the terms of the Five-Party Agreement, or that otherwise constitutes a criterion for UGB expansion, nor will any Party apply for, promote or support any expansion of the UGB into any part of Stafford, until:

- 1.3.1 **South of Tualatin River.** For any concept plan proposal involving a portion of Stafford that is south of the Tualatin River:

- (a) The I-205 Widening Project has received preliminary design approval; and
- (b) Funds to construct the I-205 Widening Project have been identified and appropriated; and
- (c) Construction of the I-205 Widening Project is scheduled to begin in two years or less.

- 1.3.2. **North of the Tualatin River.** For any concept plan proposal involving any portion of Stafford that is north of the Tualatin River, the later of:

- (a) December 31, 2028; or
- (b) until all the conditions in subsections 1.3.1 (a), (b) and (c) are met.

- 1.4 By mutual written amendment to this Agreement, the Parties may substitute an alternative I-205 improvement project in place of the I-205 Widening Project as used in Section 1.3, if all the Parties determine in the discretion of each that the alternative project includes high-

capacity transit or other features that enhance capacity and mitigate impacts in a substantially equivalent or superior manner to the I-205 Widening Project.

2. **Coordination of Concept Planning**

2.1 **Notice of Intent to Initiate Concept Plan.** Before initiating concept planning for any portion of Stafford, the planning Party will provide not less than 90 days' written notice to the other Parties. Representatives of all three Parties will meet simultaneously at least twice before the end of the 90-day period to discuss the process, including an approach to addressing any concerns. If one or more Parties refuse to meet during the 90-day period, the initiating Party may begin concept planning, but must still meet the other obligations of coordination under this Agreement.

2.2 **Coordination among the Cities.** The planning Party will coordinate with the other Parties in developing the concept plan, and will provide ample opportunities for the other Parties to evaluate and meaningfully participate and comment on the proposed plan. Further, if a Party (the "objecting Party") presents to the planning Party substantial evidence that a proposed concept plan or concept plan element will materially impair or degrade the functionality of a transportation or utility facility or any other system of the objecting Party or of a service provider providing service within the objecting Party's planning and service area as determined under Section 3 of this Agreement, the planning Party will, in good faith, address the alleged impacts and revise its concept plan or include mitigation measures or requirements that specifically and effectively address the impacts.. For the purposes of this section, substantial evidence includes without limitation evidence that the objecting Party's standards for transportation level of service, operations and safety will be impaired or degraded.

2.3 **Citizen Involvement.** Each Party's consideration and approval of its concept plan will follow the citizen involvement procedures and requirements for comprehensive plan amendments contained in that Party's comprehensive plan and land use regulations. Each Party will coordinate with the Stafford Hamlet and other Clackamas County citizen participation organizations within Stafford in the same manner as a city neighborhood association or other city-recognized citizen involvement organization with relation to providing involvement opportunities during the concept plan adoption process, but shall not be required to provide fee waivers or any other financial or in-kind support.

2.4 **Concept Planning Criteria in Addition to Metro Code.** In addition to concept planning criteria under Metro Code Section 3.07.1100 that is consistent with the Five-Party IGA, the Parties agree that the following criteria will apply to Stafford area concept plans:

- (a) Consider community character;
- (b) Provide separation between communities and understandable borders;
- (c) Preserve natural features;
- (d) Maintain functionality of transportation and other systems. Unless mitigated and addressed as provided in Section 2.2, no material impairment or degradation of the functionality of a transportation or utility facility or system of another Party.

3. **Determination of Concept Planning and Urban Services Areas.** Commencing no earlier than the year 2020, the Parties will develop and enter into an amendment to this Agreement establishing boundaries for each Party's concept planning and Urban Services Area in Stafford. The boundaries will be based upon the considerations listed in Section 2.4 and in Exhibit A. The Parties agree to work with each other to develop and employ a coordinated public review and involvement process in each City before approving the boundaries and the amendment.

4. **Adjustments for Certain Public Facilities or Services.**

4.1 Notwithstanding the timing requirements of Section 1 of this Agreement, provided that all three Parties agree in writing in advance, a Party may approve a concept plan and apply for or support a UGB expansion at any time to include an area of less than 120 acres in Stafford, provided that the area is publicly-owned, and use of the area is limited to parks, recreation, open space, or agricultural uses. Concept plans under this Section 4 are subject to the noticing, coordination and citizen involvement provisions in Sections 2.1, 2.2, and 2.3 of this Agreement. Nothing shall prohibit a Party from including an area that has been concept planned or brought into the UGB under this Section 4 in subsequent concept planning for a larger area in compliance with the terms of this Agreement.

4.2 The Parties hereby agree to Lake Oswego concept planning and requesting UGB expansion under this Section 4 to include all or part of the Luscher Farm/Rosemont Open Space properties consisting of approximately 110.5 acres at 125-385 S. Rosemont Road in Stafford, depicted in Exhibit B with tax lot numbers 21E16AD 03000, 03001; 21D16D 00100, 00300; 21D6E 00200; 21E15C00700, 00300, provided that the Luscher Farm/Rosemont Open Space properties are publicly-owned, and use of the Luscher Farm/Rosemont Open Space properties is limited to parks, recreation, open space, or agricultural uses. In the event Lake Oswego acquires the private parcels north of Rosemont Road surrounded on three sides by the listed properties, or the parcels north of Rosemont Road that lie between 21E15C 00700 and 00300, as shown on Exhibit B, Lake Oswego may include those additional parcels as part of the concept planning and proposed UGB expansion together with the other properties approved under this subsection, provided that the parcels are publicly-owned, and use is limited to parks, recreation, open space or agricultural uses.

5. **Enforcement/Dispute Resolution.** If any dispute arising out of or relating to this Agreement, including the alleged breach, validity, interpretation and performance thereof ("Dispute"), is not resolved through negotiation within 30 days of written notice of a Dispute sent by one of the Parties to the others, the Parties agree to then use their best efforts in good faith to settle the Dispute by mediation before resorting to litigation or some other dispute resolution procedure. The mediator will be an individual acceptable to all three Parties, but in the absence of agreement each Party will select a temporary mediator and the temporary mediators will jointly select the permanent mediator. Each Party will pay its own costs for the time and effort involved in mediation. The cost of the mediator will be shared equally among the Parties. The mediation session will be held within 45 days of the retention of the mediator, and last for at least one full day before any Party has the option to terminate the process. The process will continue until a Party or the mediator states there is no reason to continue because of an impasse that cannot be overcome and sends a "notice of termination of mediation" to the (other)

Parties. Upon termination of mediation, each Party will have the right to exercise all legal remedies available at law or equity. If the Parties reach agreement in mediation, the agreement will be reduced to writing and signed by all Parties.

6. Miscellaneous Provisions.

6.1 **Governing Law.** The laws of the State of Oregon will govern this Agreement and the Parties will submit to the jurisdiction of the courts of the State of Oregon.

6.2 **Amendments.** This Agreement may be amended at any time with the written consent of all Parties.

6.3 **Severability.** If any covenant or provision of this Agreement is adjudged void, such adjudication will not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

6.4 **Term.** This Agreement shall be effective upon execution by all Parties identified herein. This Agreement will terminate on the same date as the Reserves IGA, December 31, 2060, unless terminated earlier by agreement of the Parties. If during the term of this Agreement there is a change in applicable law or other circumstance that materially affects compliance with one or more provisions of this Agreement, the Parties agree to negotiate in good faith a revision to this Agreement to address such law or circumstance in manner consistent with the intent of this Agreement.

IN WITNESS WHEREOF, each Party has caused this Intergovernmental Agreement to be executed by its duly authorized representative on the date first mentioned above.

City of Lake Oswego

Dated: _____, 2018

City of Tualatin

Dated: _____, 2018

City of West Linn

Dated: _____, 2018

EXHIBIT A- Three City Intergovernmental Agreement

Considerations in drawing boundaries

1. Efficient and effective use of existing and planned public investments
 - Transportation
 - Sanitary and Storm Sewer
 - Water
 - Open space
 - Emergency response
 - Schools
2. Existing parcelization and committed land uses
3. Separation of cities and understandable boundaries

Although it is too early to consider land use and urban design, boundaries should support each city in maintaining its distinct identity and sense of place.

Avoid splitting properties between cities and support efficient operations and maintenance of city infrastructure

4. Natural areas
 - Promote efficient management of natural resources, e.g., avoid fragmentation of major stream corridors.
 - Use natural areas and natural features as buffers/greenbelt for separation between cities.
 - Provide equitable distribution of regional open spaces among cities.
5. Development costs and fiscal impact
 - Equitable distribution of buildable land for housing and employment
 - Consider relative cost of serving areas; avoid creating areas that are isolated or not fiscally feasible to serve (topography, transportation access, parcelization)

EXHIBIT B – Three City Intergovernmental Agreement
“Luscher Farm” Parcels

