

NOTICE OF TYPE II DECISION
RED ROCK CENTER
SENSITIVE LANDS REVIEW (SLR) 2010-00002



120 DAYS = 12/22/2010

SECTION I. APPLICATION SUMMARY

FILE NAME: RED ROCK CENTER
CASE NOS.: Sensitive Lands Review (SLR) SLR2010-00002
Tree Removal (TRE) TRE2010-00022

PROPOSAL: The applicant is requesting Sensitive Lands Review approval for Red Rock Creek drainage and wetland enhancements conceptually approved under Red Rock Center Planned Development Concept Plan Approval, PDR2008-00003. The applicant proposes to replace the existing degraded portion of Red Rock Creek along the SW Dartmouth Street frontage with a 30-inch storm pipe, vegetated swale outfall and an enhanced wetland area on the 3.19-acre vacant property. The project has received CWS and Corp/DSL approvals for on and off-site mitigation. The project is scheduled to be constructed prior to the end of the 2010 in-water work window, September 30th, which may be extended to October 31st. The applicant has also requested tree removal permits for the removal of seven (7) trees within the project area, within sensitive lands.

APPLICANT: Commerical Tenant Advisors **APPLICANT'S** Anderson Dabrowski Architects, LLC
Attn: Brad Pihas **REP:** Attn: John Anderson
22151 SW 55th Avenue, #100 1430 SE 3rd Avenue, Suite 200
Tualatin, OR 97062 Portland, OR 97214

OWNER: Douglas Fry **APPLICANT'S** SFA Design Group
908 Deborah Road **REP:** Attn: Ben Altman
Newberg, OR 97032 9020 SW Washington Sq. Dr. #350
Portland, OR 97223

**COMPREHENSIVE
PLAN/ZONE**

DESIGNATION: C-G (PD): General Commercial District. The C-G zoning district is designed to accommodate a full range of retail, office and civic uses with a City-wide and even regional trade area. Except where non-conforming, residential uses are limited to single-family residences which are located on the same site as a permitted use. A wide range of uses, including but not limited to adult entertainment, automotive equipment repair and storage, mini-warehouses, utilities, heliports, medical centers, major event entertainment, and gasoline stations, are permitted conditionally.

(PD)The subject property has a planned development overlay on a portion of the site. The purposes of the planned development overlay zone are: 1) To provide a means for property development that is consistent with Tigard's Comprehensive Plan through the application of flexible standards which consider and mitigate for the potential impacts to the City; 2) To provide such added benefits as increased natural areas or open space in the City, alternative building designs, walkable communities, preservation of significant natural resources, aesthetic appeal, and other types of assets that contribute to the larger community in lieu of strict adherence to many of the rules of the Tigard Community Development Code; 3) To achieve unique neighborhoods (by varying the housing styles through architectural accents, use of

open space, innovative transportation facilities) which will retain their character and city benefits, while respecting the characteristics of existing neighborhoods through appropriate buffering and lot size transitioning; 4) To preserve to the greatest extent possible the existing landscape features and amenities (trees, water resources, ravines, etc.) through the use of a planning procedure (site design and analysis, presentation of alternatives, conceptual review, then detailed review) that can relate the type and design of a development to a particular site; 5) To consider an amount of development on a site, within the limits of density requirements, which will balance the interests of the owner, developer, neighbors, and the City; and 6) To provide a means to better relate the built environment to the natural environment through sustainable and innovative building and public facility construction methods and materials.

LOCATION: 12625 SW 70th Avenue; Washington County Tax Map 2S101AB, Tax Lot 00100. The property is located south of SW Dartmouth Street and east of SW 72nd Avenue, within the Tigard Triangle.

**APPLICABLE
REVIEW**

CRITERIA: Community Development Code Chapters 18.350, 18.390, 18.520, 18.745, 18.775, 18.790 and 18.810.

SECTION II. DECISION

Notice is hereby given that the Community Development Director's designee has **APPROVED** the above request subject to certain conditions of approval. The findings and conclusions on which the decision is based are noted in Section VI of this Decision.

CONDITIONS OF APPROVAL

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED
PRIOR TO COMMENCEMENT OF ANY WORK ON THE SITE:**

Submit to the Planning Department (Gary Pagenstecher, 503-718-2434) for review and approval:

1. Prior to site work, the applicant shall submit a revised arborist report and plan identifying the trees proposed for removal within the project area.

Submit to the Development Engineer (Gus Duenas, 639-4171, ext. 2470) for review and approval:

2. Prior to commencement of any work on the site, obtain a PFI (Public Facility Improvement) permit from the City. The PFI permit submittal shall include the following:
 - ◆ All storm drainage and wetland enhancement improvement plans plus the private water quality and detention facilities. This work shall include all work approved in the concept plan, except for the replacement of the culvert under 72nd Avenue.
 - ◆ A facility maintenance plan for the water quality and detention facilities.
 - ◆ An erosion control plan for approval as part of the Public Facility Improvement (PFI) permit drawings. The plan shall conform to Clean Water Services Design and Construction Standards (Resolution and Order No. 07-20, Chapter 2).
 - ◆ A construction vehicle access and parking plan for review and approval. The purpose of this plan is for parking and traffic control during the building construction work.
3. Updated plans shall be submitted for the PFI permit reflecting certification by a Registered Professional Engineer currently licensed to practice in the State of Oregon. Previous professional stamp has expired.
4. Six (6) sets of the updated improvement plans shall be submitted for review to the Development Engineer. NOTE: these plans should only include sheets relevant to work being performed.

5. The PFI permit plan submittal shall include the exact legal name, address and telephone number of the individual or corporate entity who will be designated as the "Permittee", and who will provide the financial assurance for the public improvements. For example, specify if the entity is a corporation, limited partnership, LLC, etc. Also specify the state within which the entity is incorporated and provide the name of the corporate contact person. Failure to provide accurate information to the Development Engineer will delay processing of project documents.
6. Construct the water quality and detention facilities in accordance with approved drawings.

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED
AFTER SUBSTANTIAL COMPLETION OF THE WORK,
BUT BEFORE FINAL INSPECTION OF THE IMPROVMENTS:**

Submit to the Development Engineer (Gus Duenas, 639-4171, ext. 2470) for review and approval:

7. After substantial completion of the work, the applicant shall enter into a formal agreement with the City using City forms for future maintenance of the facilities. The agreement will be recorded and the City will be monitoring the facilities in the future to ensure compliance with the terms of the agreement.

**THIS APPROVAL SHALL BE VALID FOR EIGHTEEN (18) MONTHS
FROM THE EFFECTIVE DATE OF THIS DECISION.**

SECTION III. BACKGROUND INFORMATION

Site History:

The subject property is vacant land bounded by public right-of-way on the north by SW Dartmouth, on the east by SW 70th Avenue, on the west by SW 72nd, and on the south by SW Elmhurst. Red Rock Creek, a tributary to Fanno Creek, runs along the site's extreme northern boundary. The site contains a mix of forest and grassland. The subject site slopes moderately from the southeast toward the northwest.

Background:

In 2007, anticipating developing the property, the owner delineated jurisdictional wetlands and obtained Corps/DSL and CWS approvals to mitigate for wetlands and vegetated corridor existing on the subject site. A plan for on-site and off-site mitigation was approved by those agencies. On-site mitigation includes the Red Rock Creek drainage and wetland enhancements proposed for this sensitive lands review. Off-site mitigation was arranged in 2007 with the Tigard Public Works Department for enhancement of Hiteon Creek. The off-site mitigation work has been completed under the City's direction. Annual monitoring reports will document the project progress to ensure its success.

On January 26, 2009, the Planning Commission approved the Red Rock Creek concept plan (PDR2008-00003), which included commercial development of three buildings totaling approximately 45,800 square feet for medical offices, bank, retail and food service uses. The proposal also included approximately an acre of open space with a quarter of that in enhanced wetlands. In addition, the proposal included substantial improvements to the streets abutting the property, surface parking of 178 spaces, landscaping, lighting, and access and utility infrastructure improvements.

In addition, the Planning Commission explicitly approved the storm drainage on the Dartmouth right-of-way and hydrology improvements for the wetlands, subject to sensitive lands review for those facilities. This application is limited to the proposed Red Rock Creek drainage and wetland enhancements and is being processed within the authority of the Planning Commission's Final Order No. 2009-01.

Expected Detailed Plan Proposal:

In the Final Order, the Planning Commission instructed the applicant to address five subject areas when preparing their detailed plan for the site:

1. Green street concept;
2. Canopy coverage within the parking lot, and meeting with the Tree Board;
3. Ingress and egress on SW Elmhurst;
4. Traffic impact analysis addressing ODOT and City concerns; and

5. Retaining wall design and detail.

The applicant intends on submitting a detailed plan this fall for review and approval by the Planning Commission.

SECTION IV. NEIGHBORHOOD/INTERESTED PARTIES COMMENTS

The Tigard Community Development Code requires that property owners within 500 feet of the subject site be notified of the proposal, and be given an opportunity for written comments and/or oral testimony prior to a decision being made. Notice of the Pending Decision was mailed to property owners and interested parties on August 26, 2010. In addition, on August 26, 2010, staff posted a notice on the SW Dartmouth and 72nd corner of the site. The City received the following three comments from neighbors and interested parties.

JOANNE NORDLING:

I'm writing in response to the recent notification re: the Red Rock Center. I've attended many of the meetings and am feeling positive about the plans except for my concern about moving traffic to and from the rear of the development onto Elmhurst street.

I would like to remind the city council and staff that Elmhurst is still a residential, dead end street. Under the NPO plan, which I took part in formulating, all residential, dead end streets are to remain that way until commercial development takes place on that street. I trust the city will keep that pledge.

RESPONSE

The applicant proposes to develop the site in phases. The development code requires that permanent public facilities be developed in conjunction with or prior to each phase and that the development and occupancy of any phase shall not be dependent on the use of temporary public facilities. Therefore, the proposed access onto SW Elmhurst must occur concurrently with the phase of development that will utilize the proposed parking for Tax Lot 300, consistent with NPO plan. According to the applicant's narrative, the phasing of the project will occur along with market demand and as governed by the planned development phasing standards.

JOHN FREWING:

(Response follows each comment)

1. The PD chapter of the TDC says that development is approved by a detailed plan; none has been submitted here, so approval of a detail like covering an existing natural drainage on this site is premature. Tigard consideration of this development should await a detailed development plan. The PD chapter of the TDC also says that alternative plans should show how impact to natural features can be minimized 'to the greatest degree possible' – this has not been done here. See TDC 18.350.070 A.4.a.(1).

The Planning Commission explicitly approved the storm drainage on the Dartmouth right-of-way and hydrology improvements for the wetlands, subject to sensitive lands review for those facilities. This application is limited to the proposed Red Rock Creek drainage and wetland enhancements on Tax Lot 100 and is being processed within the authority of the Planning Commission's Final Order No. 2009-01. The applicant's concept plan did include alternative development plans for Planning Commission consideration.

2. The PD chapter of the TDC says that one purpose of the PD is to provide benefits such as improved natural areas, and to do so, parking requirements of 18.765 can be modified. See TDC 18.350.070. A.3.e.(5). No proposal or alternative which takes advantage of this mitigation is part of this package. As a result, the purpose of the PD is not achieved with the current proposal and it should be denied at this time.

The requirements of TDC 18.765 will be applied during detailed plan review. At that time, the Commission may address this standard, for example, to increase the number of trees retained or reduce impervious surfaces. The Planning Commission explicitly approved the storm drainage on the Dartmouth right-of-way and hydrology improvements for the wetlands. This application is limited to the proposed Red Rock Creek drainage and wetland enhancements and removal of approximately seven trees located in those areas.

3. The PD chapter of the TDC says at 18.350.070.A.4.k that an applicant can propose alternatives to stormwater treatment to achieve better treatment or lower flows; this has not been done here to achieve

the purposes of the PD chapter. As a result, the purposes of the PD have not been met and the proposal should be denied at this time.

TDC 18.350.070.A.4 will be applied during detailed plan review. Opportunities for alternative stormwater conveyance on the basis that a reduction of stormwater runoff or an increase in the level of treatment will result from the use of such means as green streets, porous concrete, or eco roofs can still be incorporated into the development through detailed plan review without prejudice by a prior approved downstream conveyance.

4. The applicable review criteria of TDC 18.620, applicable for the Tigard Triangle should be evaluated and met; such criteria are not noted on the 'Notice of Pending Land Use Application' mailed to me.

The applicant requests approval for Red Rock Creek drainage and wetland enhancements and tree removal permits. The applicant's submittal addresses the relevant development code provisions for this proposal as reviewed below. Tigard Triangle Design Standards include Street Connectivity, Site Design Standards, Building Design Standards, Signs, Entry Portals, Landscaping and Screening, and Street and Accessway Standards. These standards are not applicable to the subject application but will be addressed later in the planned development detailed plan review when an application is submitted.

5. The 'Notice' states that construction is scheduled to be complete by September 30, 2010. Construction should not START until a detailed development plan for the site is submitted; the proposed action places the entire design of the site at jeopardy with relation to the natural features of the subject stream, floodway and associated drainageway.

Only the drainageway is subject to sensitive lands review. There is no floodplain on the site and the wetlands are jurisdictional. Of the total number of trees on site, only seven are proposed for removal with this application. The Planning Commission explicitly approved the storm drainage on the Dartmouth right-of-way and hydrology improvements for the wetlands. This application is limited to the proposed Red Rock Creek drainage and wetland enhancements and is being processed within the authority of the Planning Commission's Final Order No. 2009-01.

6. The subject stream, including its floodway, is immediately upstream of a segment of this stream which within the past couple years, had been evaluated for a Target Stores development. In that proposal, this stream was above ground and protected with buffer space and plantings of natural species. This stretch of stream should be similarly kept above ground and protected as a matter of continuity for stream habitat. The hardscape of the Tigard Triangle needs such 'softscape' wherever possible. Tigard, when evaluating the detailed development plan for this site, should balance the stated goals of PDs against the need for developed space, which cannot be mitigated by adding an extra level of indoor space or parking space.

Unlike the PacTrust property located downstream, the subject property does not include floodplain as described in the findings below. The Planning Commission has the discretion to balance competing goals of natural resource preservation and development. The Planning Commission explicitly approved the storm drainage on the Dartmouth right-of-way and hydrology improvements for the wetlands in their Final Order No. 2009-01.

7. Because this is a PD, the processing procedure of Type III PC should be followed by Tigard. This follows from the general procedure used when multiple types of actions come before the city.

Typically, multiple applications that are required for certain development projects are processed concurrently. In this case, due to expiring Corps/DSL and CWS approvals and the lag in market conditions, the applicant requested separate review to act on the permits in the interim. The Planning Commission understood these circumstances in explicitly approving the storm drainage on the Dartmouth right-of-way and hydrology improvements for the wetlands.

8. Upon reading the requirements of TDC 18.775.020, this proposal seems to require a Type III Review and approval (subpara G) because it involves ground disturbance in the floodway and floodway fringe and because it involves 'improvement' of the utility system on site by more than 50 percent of the preexisting system (namely, zero dollars).

The project area, at elevation 210 to 250, is approximately 1,250 feet east of the Red Rock Creek floodplain at elevation 185. The area of alteration is not within or adjacent to a floodplain. Therefore, TDC 18.775.020.G does not apply.

SUSAN BEILKE:

(Response follows each comment)

- I submitted comments in January, 2009, when a proposal was submitted for this project for a concept approval to the Tigard Planning Commission. As I stated then and will reiterate now, this proposal does not meet the standards as required by a planned development, including the need to retain and protect much more of the natural resources on the site (trees, wetlands, creek) than is currently proposed.

Your comments were made available to the Planning Commission for their review prior to their decision on the applicant's concept plan. The Planning Commission has the discretion to approve, condition, or deny applications for proposed development. Planning Commission Final Order No. 2009-01 approved a concept plan, with conditions, with respect to green street design, increased tree canopy for parking lot trees, and review by the Tree Board, among others.

- The current application for a SLR includes removal of a great deal of the natural features on the site, yet a final approval of development, which should include alternative plans that show how impacts to natural features would be minimized, has not been completed. It is premature for the applicant to be seeking a SLPermit and for the city to give approval for such a permit, when the applicant has not even submitted a detailed plan showing alternatives to minimize impacts to natural features, etc.

The applicant's submittal for planned development concept plan review included alternative development plans. The Planning Commission approved the preferred concept with conditions. The detailed plan will refine the approved concept plan with minor changes due to changing market demand. PC Final Order 2009-01 explicitly approved the storm drainage on the Dartmouth right-of-way and hydrology improvements for the wetlands, subject to sensitive lands review for those facilities. This application is limited to the proposed Red Rock Creek drainage and wetland enhancements and is being processed within the authority of the Planning Commission's Final Order No. 2009-01.

- TDC 18.775.070.D.1 – Sensitive Lands Permits – For drainageways, the code states that “the extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use”. In this case, this part of the code is not being met, as this proposal creates a very great site disturbance, namely the culverting of part of the creek, removal of over 100 trees, and filling in of the wetlands on the east portion of the site. There could be less disturbance if the applicant saved more trees on the site and protected the entire creek and all wetlands on the site; this would still allow for some development in the drier portions of the site. As an example, the site across the street and to the west, where a Target store was proposed, would have left the entire stretch of the creek open and then enhanced along the creek, while still allowing for development of a portion of the site.

The proposed drainageway and wetland enhancements will occur in the areas of the site immediately adjacent to SW Dartmouth and SW 72nd. The Red Rock Creek tributary has already been displaced from its original course by the construction of SW Dartmouth Street. The alignment of the proposed replacement culvert will be located within the expanded Dartmouth right-of-way upon dedication of an 11-foot reserve strip along Dartmouth's south side as a result of the planned development detailed plan approval. Wetland fill and tree removal on the eastern and southern portions of the site will occur after detailed plan review by the Planning Commission.

- TDC 18.775.070.D.6 – This part of the code states that the necessary U.S. Army Corps of Engineers, DSL, etc permits must be obtained. We note that according to the copy of the Corp/DSL permit in the file for this SLR, this permit expired on April 25, 2009, hence this section of the code has not been met.

Although the applicant did not submit the Corp/DSL Permit Renewal for this project, the City does have a copy of the permit renewal in the land use file for PDR2008-00003. The new expiration date for CORP/DSL Permit No. 37247-FP, is April 25, 2011.

- TDC 18.775.070.E.1 – This section of the code states that a sensitive lands permit cannot be issued for areas that fall within the “vegetated corridor established....” The applicant is proposing to remove

trees within this “vegetated corridor” This application should be denied since the criteria in this section of the development code have not been met.

Pursuant to TDC 18.775.020.D, jurisdictional wetlands do not require sensitive lands review (see findings under Sensitive Lands, below).

- TDC 18.775.070.E.2 – Similar to what is required under the code for drainageways under 18.775.070.D.1, the code states that within “wetlands”, the “extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than the minimum required for the use.” In this case again, two wetland areas on the site will be completely eliminated including the removal of a number of native Oregon ash and willow trees; this is not the “minimum” required for the use of the site. Rather, we would rather see development restricted to the upland portions of the site in order to meet this section of Tigard’s development code and sensitive lands section. This would be more in keeping with the spirit of the code and sensitive lands requirements.

Pursuant to TDC 18.775.020.D, jurisdictional wetlands do not require sensitive lands review (see findings under Sensitive Lands, below).

- TDC 18.775.070.E.7 – Tree Removal – This application states that the applicant is requesting tree removal permits for the removal of “7” trees within the sensitive lands on site, yet, in the application file under discussion of tree removal, the applicant states there will be “122 trees 6”> caliper” to be removed within the Sensitive lands areas on site. This discrepancy should be corrected and until that is done, this application should be denied. In addition, there is also a statement in the file that there were trees removed between 1999 and 2008; this also needs to be clarified before the SLR can be completed.

The application is for drainage way and wetland enhancement activities located on Tax Lot 100 only. The applicant’s narrative states the area of disturbance on Tax Lot 100 will only affect seven trees. This concurrent tree removal permit will account for those trees proposed to be removed within the project area. Other trees on site but outside of the area of disturbance on Tax Lot 100 and those on Tax Lot 300 will be addressed at the time of detailed planned development review.

- TDC 18.775.070.E.8 – Natural Areas, open space, etc. policies of the Comprehensive Plan must be satisfied according to this section of the code. We did not find anywhere in this application, any reference to this part of the code or any material that shows that an attempt was made to address the CP policies as required. Tigard recently revised/updated their CP, which included considerable citizen input into the revisions for the Natural Resources section; I was on that committee for two years. A great deal of time and sweat by a number of citizens and staff went into rewriting the CP goals and policies in order to have a product that afforded greater protection for our natural resources here in Tigard, including our creeks, wetlands, trees, etc. It is simply disgraceful that a site with this many trees, a creek, and several wetlands is not afforded better protection of these natural and wonderful resources.

For example, Policies 7 and 8 of the Natural Resource section of the CP were designed to protect and conserve Tigard’s remaining natural resources and restore their ecological functions. Filling of wetlands, putting a large portion of the creek in a pipe and removal of over 100 trees on the site violates both of these policies since more than 80% of the project site would be impacted and the ecological functions that currently exist would essentially disappear on a majority of the site. The site also contains many songbirds, amphibians etc. and these species would be severely impacted (killed) by the loss of trees, wetlands, grading activities, etc.

TDC 18.775.070.E is applicable when development involves significant wetlands as shown on the Tigard “Wetland and Streams Corridors Map.” TDC 18.775.020.D exempts jurisdictional wetlands from sensitive lands review. Wetlands on the subject property are all jurisdictional wetlands and are therefore exempt from sensitive lands review.

- Upon review of the site plans, maps, etc. included in the file for this project, as well as the material submitted to the Planning Commission in early 2009, we have found that the project site boundary is not the same on every drawing, map, etc. For example, the notice mailed out to interested parties on August 26, 2010, for the SLR, 2010-00002, shows only tax lot “100”, as does the Washington County tax lot map included in the file for this project. In contrast, for example, the notice mailed out in 2009 for the Planned Development review shows both tax lots “100” and “300” as included in the project boundary. This glaring discrepancy makes it impossible for citizens to adequately comment on the

project when the project boundaries are not consistent throughout, and severely prejudices my right to adequately comment on this project. I therefore request that this e applicant be denied a SL permit.

The approved concept plan (Planning Commission Final Order No. 2009-01) was for both Tax Lot 100 and 300. This sensitive lands review is for activities located only on Tax Lot 100.

- Since the site contains Goal 5 habitats and the applicant is proposing to not only remove trees from the site in the Goal 5 habitats but to essentially eliminate all of the Goal 5 habitats, an ESEE analysis needs to be done along with a request by the applicant to remove those Goal 5 protections. This has not been done. Therefore, this application should be denied.

The subject site does not contain any wetlands designated as significant wetlands on the City of Tigard "Wetland and Streams Corridors Map." The existing wetlands are jurisdictional wetlands and are subject to the U.S. Army Corps of Engineers (CORP), Division of State Lands (DSL), and Clean Water Services (CWS) permit criteria. The applicant's submittal included copies of permits from CORP/DSL (Permit No. 37247-FP, expiration date April 25, 2011) and CWS (SPL No. 08-00669, expiration date September 26, 2010). In addition, the on-site mitigation plan was prepared with comment and approval from the Oregon Department of Fish and Wildlife (ODF&W) as shown in the applicant's submittal (September 13, 2006 email from Devin Simmons, Habitat Biologist with ODF&W).

This sensitive lands review addresses the applicable substantive criteria for the Red Rock Creek tributary drainageway located on the subject site.

- TDC 18.775.020 - The application and overall project proposal should require a Type III Review as required by this section of the development code, since it involves ground disturbance of the floodway and floodway fringe as well as changes or improvements of the utility system by more than 50% of the preexisting system.

The project area, at elevation 210 to 250, is approximately 1,250 feet east of the Red Rock Creek floodplain at elevation 185. The area of alteration is not within or adjacent to a floodplain; therefore this standard does not apply.

- Since this project is a PD, the processing procedure of Type III PC should be followed by the city of Tigard.

The proposed Red Rock Creek drainage and wetland enhancements were reviewed by the Planning Commission and received explicit Planning Commission approval under Final Order No. 2009-01.

- The Concept Plan Approval (PDR 2008-00003) was issued 2/13/09 and under provisions of Section 18.350.030.A, the current approval has expired as of 9/03/10. We therefore request that the city of Tigard deny the applicant's request for a SLR/permit. It would be better if the SLR be conducted after the city has received the applicant's final plans for the site, not before.

The City received an application for permit extension for PDR2008-00003 on August 31, 2001. The City received an application for detailed plan review on September 3, 2010. Since the application for detailed plan review was timely submitted within the 18-month validity period for the Concept Plan approval, the permit extension is unnecessary and the validity of the Concept Plan is preserved.

SECTION V. SUMMARY OF APPLICABLE REVIEW CRITERIA

18.390 Decision Making Procedures Impact Study
18.520 (Commercial Zoning Districts)
18.350 (Planned Development)
18.745 (Landscaping and Screening)
18.775 (Sensitive Lands Review)
18.790 (Tree Removal)
18.810 (Street and Utility Improvement Standards)

SECTION VI. APPLICABLE REVIEW CRITERIA AND FINDINGS

COMPLIANCE WITH COMMUNITY DEVELOPMENT CODE SECTIONS:

Decision Making Procedures/Impact Study (18.390)

Type II Procedure. Type II procedures apply to quasi-judicial permits and actions that contain some discretionary criteria. Type II actions are decided by the Director with public notice and an opportunity for a hearing. If any party with standing appeals a Director's Type II decision, the appeal of such decision will be heard by the Hearings Officer.

Sensitive Lands Permits within drainage ways are processed as a Type II permit (18.775.020.F). Jurisdictional wetlands which are not identified as significant wetlands on the Tigard "Wetland and Stream Corridors Map" do not require a sensitive lands permit (18.775.020.D).

Section 18.390.040.B.2.e states that the applicant shall provide an impact study to quantify the effect of development on public facilities and services. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standard, and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users.

As shown in the applicant's narrative and plan set, the project's impacts on the public storm system has been demonstrated.

FINDING: The Planning Commission approved, in concept, the storm drainage on the Dartmouth right-of-way and hydrology improvements for the wetlands, subject to sensitive lands review of detailed plans for those facilities. This application is limited to the proposed Red Rock Creek drainage and wetland enhancements and is being processed within the authority of the Planning Commission's Final Order No. 2009-01. The proposed Red Rock Creek drainage and wetland enhancements require a type II Sensitive Lands Review.

Commercial Zoning Districts (18.520):

Uses:

The C-G zoning district is designed to accommodate a full range of retail, office and civic uses with a City-wide and even regional trade area. Except where nonconforming, residential uses are limited to single-family residences which are located on the same site as a permitted use. A wide range of uses, including but not limited to adult entertainment, automotive equipment repair and storage, mini-warehouses, utilities, heliports, medical centers, major event entertainment, and gasoline stations, are permitted conditionally.

The proposed Red Rock Creek drainage and wetland enhancements are classified as utility corridor uses and are permitted uses in the General Commercial zone, pursuant to Table 18.520.1.

Development Standards:

All development must comply with:

All of the applicable development standards contained in the underlying zoning district, except where the applicant has obtained variances or adjustments in accordance with Chapters 18.370.

The proposed Red Rock Creek drainage and wetland enhancements do not involve construction of any structures to which the underlying development standards could apply. However, as reviewed below, the proposed drainage and wetland enhancements are consistent with the applicable standards in the Sensitive Lands (18.775) and Tree Removal (18.790) chapters.

All other applicable standards and requirements contained in this title.

All other applicable standards and requirements contained in this title are reviewed for consistency below and are met or can be met with the required conditions of approval.

FINDING The proposed Red Rock Creek drainage and wetland enhancements are allowed in the CG zone. The underlying zoning district development standards are not applicable. The applicable standards in this title are met or can be met with the conditions of approval required in this decision.

Planned Developments (18.350)

18.350.010 Purpose:

The six purposes of the planned development overlay zone in Section 18.350.040.A.1.c, were addressed in the applicant's Concept Plan and approved by the Planning Commission in Final Order No. 2009-01.

18.350.020 Process:

A. Applicable in all zones.

The planned development designation is an overlay zone applicable to all zones. An applicant may elect to develop the project as a planned development, in compliance with the requirements of this chapter, or in the case of a commercial or industrial project an approval authority may apply the provisions of this chapter as a condition of approving any application for the development.

The subject development site for the proposed draingeway and wetland enhancement is located on TL 100, which currently has a PD overlay and is zoned CG(PD). Therefore, the applicant is required to address the provisions of the Planned Development chapter through a Type III review process. However, the Planned Development Concept Plan (PDR2008-00003) has been approved by the Planning Commission under Final Order No. 2009-01 with explicit approval "permitting the storm drainage on the Dartmouth Right-of-Way and hydrology improvements for the wetlands." Therefore, this sensitive lands review, as a Type II review which addresses the substantive standards for review, is applicable in this case.

FINDING The proposed Red Rock Creek drainage and wetland enhancements were reviewed under PDR2008-00003 and received explicit Planning Commission approval under Final Order No. 2009-01.

Landscaping and Screening (18.745)

18.745.060 Re-vegetation

A. When re-vegetation is required. Where natural vegetation has been removed through grading in areas not affected by the landscaping requirements and that are not to be occupied by structures, such areas are to be replanted as set forth in this section to prevent erosion after construction activities are completed.

The proposed Red Rock Creek drainage and wetland enhancements will involve grading in areas that will later be affected by landscape requirements under the detailed plan review approval. The applicant intends on utilizing the in-water work window this fall in advance of the detailed plan review and approval. Therefore, a revegetation plan to ensure revegetation in the interim to prevent erosion after construction activities are completed is necessary. The applicants 1200 C Cover Sheet, Erosion and Sediment Control Plan (Sheet C2.0), Preconstruction erosion control and Demo Plan (C2.1), Grading & Erosion Control Plan (C2.2), and Erosion Control Details (C2.3) are provided, consistent with this standard.

B. Preparation for re-vegetation. Topsoil removed from the surface in preparation for grading and construction is to be stored on or near the sites and protected from erosion while grading operations are underway; and

- 1. Such storage may not be located where it would cause suffocation of root systems of trees intended to be preserved; and**
- 2. After completion of such grading, the topsoil is to be restored to exposed cut and fill embankments or building pads to provide a suitable base for seeding and planting.**

The applicant's Grading and Erosion Control Plan (Sheet C2.2) shows areas for topsoil, rock and pipe stockpiles and staging and equipment storage. These areas appear to not include any trees intended to be preserved. According to the applicants 1200 C Cover Sheet, Erosion and Sediment Control Plan (Sheet C2.0) the disturbed areas will be seeded, consistent with this standard.

C. Methods of re-vegetation.

- 1. Acceptable methods of re-vegetation include hydro-mulching or the planting of rye grass, barley, or other seed with equivalent germination rates, and:**
 - a. Where lawn or turf grass is to be established, lawn grass seed or other appropriate landscape cover is to be sown at not less than four pounds to each 1,000 square feet of land area;**
 - b. Other re-vegetation methods offering equivalent protection may be approved by the approval authority;**
 - c. Plant materials are to be watered at intervals sufficient to ensure survival and growth; and**
 - d. The use of native plant materials is encouraged to reduce irrigation and maintenance demands.**

The applicant's Grading and Erosion Control Plan (Sheet C2.2) specifies the re-vegetation method, consistent with this standard.

FINDING: Based on the analysis above, the applicant's submittal meets the applicable landscape and screening standards.

Sensitive Lands (Section 18.775):

18.775.020.D. Jurisdictional wetlands. Landform alterations or developments which are only within wetland areas that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers, Division of State Lands, CWS, and/or other federal, state, or regional agencies, and are not designated as significant wetlands on the City of Tigard "Wetland and Streams Corridors Map", do not require a sensitive lands permit. The City shall require that all necessary permits from other agencies are obtained. All other applicable City requirements must be satisfied, including sensitive land permits for areas within the 100-year floodplain, slopes of 25% or greater or unstable ground, drainageways, and wetlands which are not under state or federal jurisdiction.

The subject development site does not contain any wetlands designated as significant wetlands on the City of Tigard "Wetland and Streams Corridors Map." The existing wetlands are jurisdictional wetlands and are subject to the U.S. Army Corps of Engineers (CORP), Division of State Lands (DSL), and Clean Water Services (CWS) permit criteria. The applicant's submittal included copies of permits from CORP/DSL (Permit No. 37247-FP, expiration date April 25, 2011) and CWS (SPL No. 08-00669, expiration date September 26, 2010). In addition, the on-site mitigation plan was prepared with comment and approval from the Oregon Department of Fish and Wildlife (ODF&W) as shown in the applicant's submittal (September 13, 2006 email from Devin Simmons, Habitat Biologist with ODF&W). Further comment by ODF&W was submitted on September 9, 2010 for this application and is included in its entirety at the end of this decision.

This sensitive lands review will address the applicable substantive criteria for the Red Rock Creek tributary drainageway located on the subject site.

Section 18.775.020.F.1 states that the Director shall have the authority to issue a sensitive lands permit in the following areas by means of a Type II procedure, as governed in Section 18.390.040, using approval criteria contained in Section 18.775.070 C-E:

- a) **Drainageways;**
- b) **Slopes that are 25% or greater or unstable ground; and**
- c) **Wetland areas which are not regulated by other local, state, or federal agencies and are designated as significant wetlands on the Comprehensive Plan Floodplain and Wetland Map.**

Approximately 619 lineal feet of a tributary of Red Rock Creek, tributary of Fanno Creek exists on the subject site. This drainageway is subject to sensitive lands review.

Sensitive lands permits shall be required for the areas in Section 18.775.020.F.1 above when any of the following circumstances apply:

- a. **Ground disturbance(s) or land form alterations involving more than 50 cubic yards of material;**
- b. **Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction;**
- c. **Residential and nonresidential structures intended for human habitation; and**
- d. **Accessory structures which are greater than 528 square feet in size, outside floodway areas.**

According to the DSL permit No. 37247-FP for the project, "the permit authorizes up to 496 cubic yards of compacted fill material in wetlands and 92 cubic yards of compacted fill material in waters in T 2S, R 1W, Section 1, Tax Lots 100 and 300, Washington County, as outlined in the attached permit application, map and drawings, dated May 12, 2008." Therefore, since the ground disturbance is greater than 50 cubic yards, a sensitive lands permit is required.

As mitigation for the permitted fill, the applicant was required to provide compensatory mitigation for the loss of 571 lineal feet of waters consisting of 38 linear feet of on-site channel restoration and 533 linear feet of off-site channel restoration on Hiteon Creek.

18.775.070.D, Drainageways. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:

The extent and nature of the proposed land form alteration or development will not create site disturbances to the extent greater than that required for the use;

As shown in the applicant's concept plan for the site (Sheet A2.1), the proposed development extends along the Dartmouth frontage from SW 70th to the wetland reserve on the west. The wetland reserve is approximately 70 feet wide along the SW Dartmouth Street frontage and 160 feet long along SW 72nd Avenue frontage. The proposed extent was reviewed and approved by the Planning Commission in Final Order No. 2009-01. Therefore, the site disturbances are the minimum necessary to accomplish the proposed development. In addition, on and off-site mitigation required to off-set the impacts to these resources is documented in the Corp/DSL and CWS permits.

The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;

The applicant has submitted an erosion control plan that shows erosion control measures will be employed during the construction period. The proposed Red Rock Creek drainage and wetland enhancements will involve grading for the pipe alignment and filling of the trench and incised creek bed. The wetland enhancement will involve grading for the enhanced wetland and stream outfalls. The applicant's 1200 C Cover Sheet, Erosion and Sediment Control Plan (Sheet C2.0), Preconstruction erosion control and Demo Plan (C2.1), Grading & Erosion Control Plan (C2.2), and Erosion Control Details (C2.3) are provided, consistent with this standard.

The water flow capacity of the drainageway is not decreased;

According to the applicant's narrative, the proposed project has been designed by PACE engineers to ensure the water flow capacity of the drainageway is not decreased. A condition of approval will require the applicant to obtain a Public Facilities Improvement permit from the City's Development Review Engineer prior to site work, which will ensure the flow capacity is not decreased and is sized appropriately, consistent with this standard.

Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;

The applicant's narrative and plan set adequately address erosion as reviewed above under the landscaping and screening standards.

The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;

The Plan set (Sheet C4.1) shows a proposed 30-inch concrete culvert to replace the Red Rock Creek tributary. The Hydrology report submitted by the applicant, Hydrology Report- Red Rock Business Center, July 31, 2007, shows that a 30-inch storm line is adequate to pass the 25-year storm event. Further computations show that the proposed line is likewise adequate to pass the 100-year storm event. This complies with and meets or exceeds the requirements of the 1981 Master Drainage Plan.

The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands (DSL) approvals shall be obtained;

The applicant's submittal included copies of permits from CORP/DSL (Permit No. 37247-FP, expiration date April 25, 2011) and CWS (SPL No. 08-00669, expiration date September 26, 2010).

Where landform alterations and/or development are allowed within and adjacent to the 100-year floodplain, the City shall require the consideration of dedication of sufficient open land area within and adjacent to the floodplain in accordance with the Comprehensive Plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the adopted pedestrian bicycle pathway plan.

The project area, at elevation 210 to 250, is approximately 1,250 feet east of the Red Rock Creek floodplain at elevation 185. The area of alteration is not within or adjacent to a floodplain; therefore this standard does not apply.

FINDING: Based on the analysis above, the applicant's plan is consistent with the Sensitive Lands standards for alterations in drainageways.

Tree Removal (18.790.050):

Tree removal permits shall be required only for the removal of any tree which is located on or in a sensitive land area as defined by Chapter 18.775. The permit for removal of a tree shall be processed as a Type I procedure, as governed by Section 18.390.030, using the following approval criteria:

The subject site includes the following sensitive lands: drainageways and significant habitat areas as shown on the City of Tigard's Significant Habitat Areas Map. Within the project area for the proposed drainageway and wetland enhancements, the applicant's narrative identifies the removal of seven trees greater than 6-inches dbh. The applicant's tree inventory and spreadsheet are not consistent and the applicant's assertions that only seven trees will be removed and cannot be verified. It appears that nine trees within the wetland area and two within the vegetated corridor will be removed. Therefore, the applicant shall submit a revised arborist report reconciling the matter.

Removal of the tree must not have a measurable negative impact on erosion, soil stability, flow of surface waters or water quality as evidenced by an erosion control plan which precludes:

- a. **Deposits of mud, dirt, sediment or similar material exceeding 1/2 cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge or as a result of the action of erosion;**
- b. **Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes where the flow of water is not filtered or captured on site using the techniques of Chapter 5 of the Washington County Unified Sewerage Agency Environmental Protection and Erosion Control rules.**

The applicant has submitted an erosion control plan that shows erosion control measures will be employed during the construction period. The proposed Red Rock Creek drainage and wetland enhancements will involve grading for the pipe alignment and filling of the trench and incised creek bed. The wetland enhancement will involve grading for the enhanced wetland and stream outfalls. The applicant's 1200 C Cover Sheet, Erosion and Sediment Control Plan (Sheet C2.0), Preconstruction erosion control and Demo Plan (C2.1), Grading & Erosion Control Plan (C2.2), and Erosion Control Details (C2.3) are provided, consistent with this standard.

Within stream or wetland corridors, as defined as 50 feet from the boundary of the stream or wetland, tree removal must maintain no less than a 75% canopy cover or no less than the existing canopy cover if the existing canopy cover is less than 75%.

According to the CWS approved mitigation plan, 48,524 square feet of vegetated corridor exist on site associated with the creek and wetlands. According to the applicant's narrative, 30,950 square feet of vegetated corridor relate to the areas subject to this review. Four trees accounting for 1,439 square feet of canopy (4.6%) exist with the subject vegetated corridors. Mitigation for these trees has been addressed through the applicant's CWS Provider Letter (SPL 08-00669) to provide on and off-site corridor enhancement to meet or exceed good corridor condition as defined in R&0 07-20, Section 3.14.2, Table 3-3, consistent with this standard. In addition, the detailed development plan approval will require the applicant to plant street and landscape trees along Dartmouth frontage estimated to provide 8,674 square feet of canopy or 28% of the corridor.

FINDING: Based on the analysis above, the applicant's plan is consistent with the applicable Tree Removal standards for any trees that will be removed. However, a revised submittal shall confirm which trees are subject to tree removal permits, as conditioned below.

CONDITION: Prior to site work, the applicant shall submit a revised arborist report and plan identifying the trees proposed for removal within the project area.

Street And Utility Improvements Standards (Section 18.810):

Chapter 18.810 provides construction standards for the implementation of public and private facilities and utilities such as streets, sewers, and drainage. The applicable standards are addressed below:

Streets Improvements:

Section 18.810.030.A.1 states that streets within a development and streets adjacent shall be improved in accordance with the TDC standards.

Dedication of needed right-of-way will be addressed under the detailed plan development application. It is not applicable for this application.

Access to Arterials and Major Collectors: Section 18.810.030.Q states that where a development abuts or is traversed by an existing or proposed arterial or major collector street, the development design shall provide adequate protection for residential properties and shall separate residential access and through traffic, or if separation is not feasible, the design shall minimize the traffic conflicts. The design shall include any of the following:

- ◆ A parallel access street along the arterial or major collector;
- ◆ Lots of suitable depth abutting the arterial or major collector to provide adequate buffering with frontage along another street;
- ◆ Screen planting at the rear or side property line to be contained in a non-access reservation along the arterial or major collector; or
- ◆ Other treatment suitable to meet the objectives of this subsection;
- ◆ If a lot has access to two streets with different classifications, primary access should be from the lower classification street.

The primary access for the subject property will be from SW 70th Avenue, with secondary access from SW Dartmouth Street and SW Elmhurst. SW 70th Avenue will have to be constructed and SW Elmhurst and SW Dartmouth improved as part of the detailed development plan, but the improvements are not required with this application.

Storm Drainage:

General Provisions: Section 18.810.100.A requires developers to make adequate provisions for storm water and flood water runoff.

Accommodation of Upstream Drainage: Section 18.810.100.C states that a culvert or other drainage facility shall be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the development. The City Engineer shall approve the necessary size of the facility, based on the provisions of Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 2000 and including any future revisions or amendments).

Construction under the sensitive lands approval shall include all drainage and wetland enhancement work on-site along the Dartmouth Street frontage as approved in the plans, except for the replacement of the culvert under 72nd Avenue. That culvert will be installed as part of the Detailed Plan approval, which includes right-of-way dedication and improvements to the 72nd Avenue and Dartmouth Street frontages.

Effect on Downstream Drainage: Section 18.810.100.D states that where it is anticipated by the City Engineer that the additional runoff resulting from the development will overload an existing drainage facility, the Director and Engineer shall withhold approval of the development until provisions have been made for improvement of the potential condition or until provisions have been made for storage of additional runoff caused by the development in accordance with the Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 2000 and including any future revisions or amendments).

In 1997, Clean Water Services (CWS) completed a basin study of Fanno Creek and adopted the Fanno Creek Watershed Management Plan. Section V of that plan includes a recommendation that local governments institute a stormwater detention/effective impervious area reduction program resulting in no net increase in storm peak flows up to the 25-year event. The City will require that all new developments resulting in an increase of impervious surfaces provide onsite detention facilities, unless the development is located adjacent to Fanno Creek. For those developments adjacent to Fanno Creek, the storm water runoff will be permitted to discharge

without detention.

Replacement of the culvert under 72nd Avenue will be included in the detailed development plan.

Utilities:

ADDITIONAL CITY AND/OR AGENCY CONCERNS WITH STREET AND UTILITY IMPROVEMENT STANDARDS:

Traffic Study Findings:

The traffic study will be required under the detailed development plan. ODOT has agreed that the previous study performed for the concept plan approval and numbers resulting from that study can continue to be the basis for a revised study to conform to the changes proposed for the site.

Fire and Life Safety:

Tualatin Valley Fire and Rescue (TVF&R) is the service provider for fire and emergency services. Comments from TVF&R, if any, need to be incorporated into the project, but at the detailed development plan phase and not under this application.

Public Water System:

The City of Tigard is the service provider for water in this area. The proposed facility is already served by an existing line and water meter at the frontage of the property. No additional water service is proposed.

Storm Water Quality:

The City has agreed to enforce Surface Water Management (SWM) regulations established by Clean Water Services (CWS) Design and Construction Standards (adopted by Resolution and Order No. 00-7) which require the construction of on-site water quality facilities. The facilities shall be designed to remove 65 percent of the phosphorus contained in 100 percent of the storm water runoff generated from newly created impervious surfaces. In addition, a maintenance plan shall be submitted indicating the frequency and method to be used in keeping the facility maintained through the year.

(For Private Facilities)

To ensure compliance with Clean Water Services design and construction standards, the applicant shall employ the design engineer responsible for the design and specifications of the private water quality facility to perform construction and visual observation of the water quality facility for compliance with the design and specifications. These inspections shall be made at significant stages throughout the project and at completion of the construction. Prior to final building inspection, the design engineer shall provide the City of Tigard (Inspection Supervisor) with written confirmation that the water quality facility is in compliance with the design and specifications.

(For privately maintained Stormwater Management Units)

On-site water quality and detention facilities are proposed. Prior to commencement of any work on-site, the applicant shall obtain a Public Facility Improvement (PFI) permit for the storm drainage improvements and for the private water quality and detention facility. Updated plans shall be submitted reflecting certification by a Registered Professional Engineer currently licensed to practice in the State of Oregon. Previous professional stamp has expired.

The PFI permit plan submittal shall include the exact legal name, address and telephone number of the individual or corporate entity who will be designated as the "Permittee", and who will provide the financial assurance for the public improvements. For example, specify if the entity is a corporation, limited partnership, LLC, etc. Also specify the state within which the entity is incorporated and provide the name of the corporate contact person. Failure to provide accurate information to the Development Engineer will delay processing of project documents.

Grading and Erosion Control:

CWS Design and Construction Standards also regulate erosion control to reduce the amount of sediment and other pollutants reaching the public storm and surface water system resulting from development, construction, grading, excavating, clearing, and any other activity which accelerates erosion. Per CWS regulations, the applicant is required to submit an erosion control plan for City review and approval prior to issuance of City permits.

The Federal Clean Water Act requires that a National Pollutant Discharge Elimination System (NPDES) erosion control permit be issued for any development that will disturb one or more acre of land. Since this site is over four acres, the developer will be required to obtain an NPDES permit from the City prior to construction. This permit will be issued along with the site and/or building permit.

(Grading plan for subdivisions)

A final grading plan shall be submitted showing the existing and proposed contours. The plan shall detail the provisions for surface drainage of all lots, and show that they will be graded to insure that surface drainage is directed to the street or a public storm drainage system approved by the Engineering Department. For situations where the back portions of lots drain away from a street and toward adjacent lots, appropriate private storm drainage lines shall be provided to sufficiently contain and convey runoff from each lot.

The applicant will also be required to provide a geotechnical report, per Appendix Chapter 33 of the UBC, for the proposed grading slope construction. The recommendations of the report will need to be incorporated into the final grading plan and a final construction supervision report must be filed with the Engineering Department prior to issuance of building permits.

The design engineer shall also indicate, on the grading plan, which lots will have natural slopes between 10% and 20%, as well as lots that will have natural slopes in excess of 20%. This information will be necessary in determining if special grading inspections and/or permits will be necessary when the lots develop.

An erosion control plan shall be provided as part of the Public Facility Improvement (PFI) permit drawings. The plan shall conform to Clean Water Services Design and Construction Standards (Resolution and Order No. 07-20, Chapter 2).

A maintenance plan for the water quality and detention facilities shall be submitted as part of the PFI submittal.

SECTION VII. OTHER STAFF COMMENTS

The City of Tigard Development Review Engineer provided comments that are included above under the Streets and Utilities section of this decision and in the Conditions of Approval.

City of Tigard Arborist commented with no objections to the proposal.

SECTION VIII. AGENCY COMMENTS

Tualatin Valley Water District serves the subject property and commented that they have no objection to the project.

Clean Water Services issued a Service Provider Letter No. 08-000669, dated September 26, 2008 (September 26, 2010 expiration) with conditions regarding erosion control and vegetated corridor and wetland enhancement, among others.

The Oregon Division of State Lands has approved the proposed drainageway and wetland enhancements through DSL Permit No. 37247-FP, expiration date April 25, 2011.

The US Army Corps of Engineers has approved the proposed drainageway and wetland enhancements under Corps/DSL Permit Renewal No. 37247-FP, expiration date April 25, 2011.

Oregon Department of Fish and Wildlife reviewed the proposal and offered the following comments by Elizabeth J. Ruther, District Habitat Biologist, North Willamette Watershed District:

This correspondence is in response to the opportunity for comments received by the Oregon Department of Fish and Wildlife (ODFW) from the City of Tigard Planning Division (City). The applicant is requesting a sensitive lands review in order to place Red Rock Creek within a storm pipe, and is seeking a tree removal permit associated with the pipe work. Overall, ODFW is concerned with the natural resource

impact of the project. Currently, ODFW does not support piping any stream, regardless of stream health. An impacted stream provides many more functions than a stream in a pipe. ODFW is aware that the previous habitat biologist concentrated on maintaining water quality for downstream fish habitat and overlooked the importance of other functions of the stream for habitat as well as the number of large, mature oak trees on the property that, for this project, are just as valuable as Red Rock Creek. Other municipalities of Washington County are funding projects to daylight streams that have been piped because natural stream beds maintain water quality, reduce flashiness of precipitation events, reduce the magnitude of flooding downstream during storm events and provide habitat for fish and wildlife. ODFW understands that the project has current DSL and Corps permits, but encourages the applicant to seek a more stream and habitat-friendly design to preserve the natural resources that Tigard has remaining. If it is impossible to maintain the stream channel, ODFW highly supports alternatives that preserve more mature trees that exist on the property than what is currently proposed.

Oak woodland is an Oregon Conservation Strategy (2006) priority habitat. It has decreased by 99 percent in the Willamette Valley. Mature oak trees provide specific services to a number of species including many migratory birds that are protected by the Migratory Bird Treaty Act. Additionally, oak trees grow slowly and the services provided by a mature tree are not immediately replaced by new plantings. Because oaks grow slowly, habitat and function for species that depend on the trees are virtually lost for 100-200 years. One hundred years is much longer than the lifespan of any one species that depends on that habitat to meet life requirements (i.e. food, shelter), so retaining mature oak trees where possible is vital to maintain bird populations within the City.

ODFW understands that the project will be built in three phases and tree removal permits will be sought as each phase begins. ODFW has provided recommendations for this project below that will decrease impact to habitat if this project goes forward:

- Consider natural resources present at the site while designing the detailed plan that will be submitted to the planning commission. Removing some parking spaces may retain mature trees present in the southwest corner of the property. It appears possible to retain the red oak clump next to the wetland.
- In creation of the wetland, don't remove all mature vegetation present. Allow it to remain and if it dies naturally because of water inundation, let it become a snag (dead wood habitat) for wildlife. Snags are important habitat components of wetlands. If the snag is hazardous, trim the offending limbs only. If all limbs become hazardous leave as much as the trunk as possible.
- If a specific tree can be easily retained in an alternative design, but are less desirable because of tree health or are a hazard to safety, trim the offending limbs and keep as much of the tree as possible for wildlife. Do not disregard its utility because it is not in prime condition.
- The in-water work period for Red Rock Creek is July 15th to September 30th. Without an extension from ODFW, this project will be constructed during the 2011 in-water work period. Precipitation events and other factors determine whether an extension will be granted.
- Remove vegetation outside of the nesting period for migratory birds. Ideally, vegetation removal would occur after September 1st and before February 1st. Absolutely no vegetation should be disturbed after April 15th. Disturbance of an active nest is unlawful.

ODFW works hard to maintain and increase populations of native and identified sensitive species, as well as strategy habitats identified in the Oregon Conservation Strategy. As such, piping Red Rock Creek is highly undesirable and does not support ODFW's future desired conditions for the occurring species, potentially occurring species, watershed health, or habitat present. Additionally, removing trees that are greater than six inches DBH is also highly undesirable and will impact the survival of bird species currently in the area. ODFW encourages the City of Tigard to work with the applicant to lessen habitat impact to this area.

ODFW appreciates the opportunity to provide recommendations to support the best stewardship of the state's fish and wildlife resources as possible. In many instances, changes in design, operation, sequence, or technique makes a substantial difference to species populations, breeding success rate, and overall survival. Please address any questions you may have regarding these comments to Elizabeth Ruther at 503.621-3488 x228.

SECTION VIII. PROCEDURE AND APPEAL INFORMATION

Notice:

Notice mailed to:

- The applicant and owners
- Owner of record within the required distance
- Affected government agencies

Final Decision:

**THIS DECISION IS FINAL ON SEPTEMBER 13, 2010 AND
EFFECTIVE ON SEPTEMBER 28, 2010 UNLESS AN APPEAL IS FILED.**

Appeal:

The Director's Decision is on a Type II review final on the date that it is mailed. Any party with standing as provided in Section 18.390.040.G.1. may appeal this decision in accordance with Section 18.390.040.G.2. of the Tigard Community Development Code which provides that a written appeal together with the required fee shall be filed with the Director within ten (10) business days of the date the Notice of Decision was mailed. The appeal fee schedule and forms are available from the Planning Division of Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon 97223.

THE DEADLINE FOR FILING AN APPEAL IS 5:00 PM ON SEPTEMBER 27, 2010.

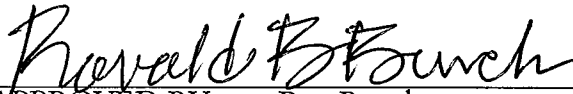
Questions:

If you have any questions, please call the City of Tigard Planning Division, Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon at (503) 639-4171.



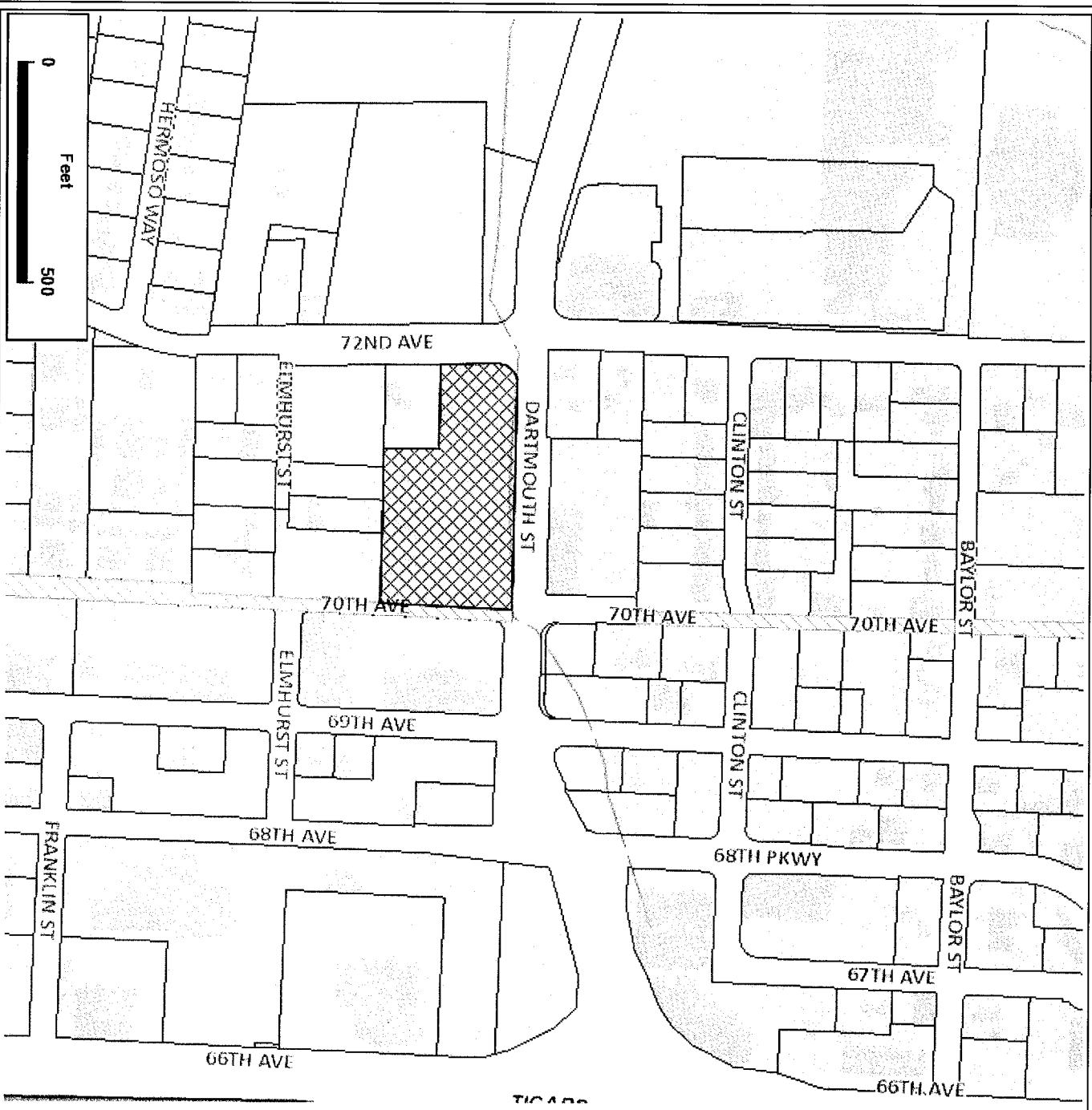
PREPARED BY: Gary Pagenstecher
Associate Planner

September 13, 2010
DATE



APPROVED BY: Ron Bunch
Community Development Director

September 13, 2010
DATE



VICINITY MAP

SLR2010-00002
 TRE2010-00022

RED ROCK CENTER

 Subject Site

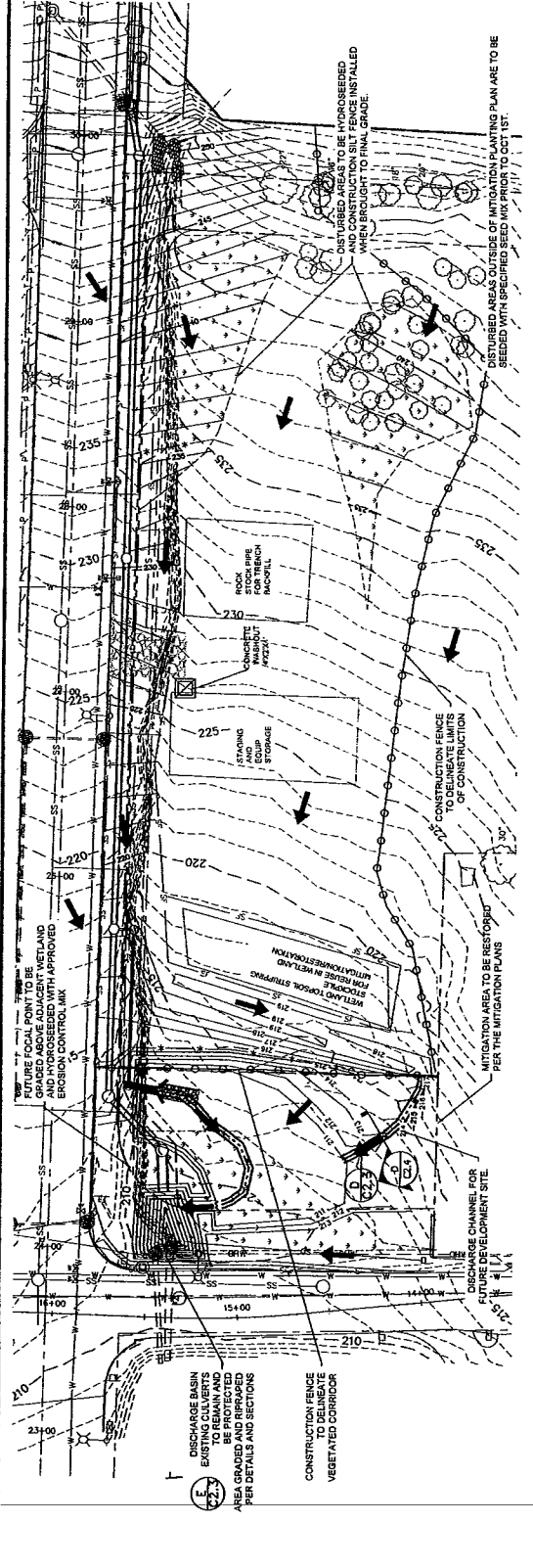
Information on this map is for general location only and should be verified with the Development Services Division.

Scale 1:4,000 - 1 in = 333 ft
 Map printed at 08:49 AM on 25-Aug-10

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TIGARD MAPS
 City of Tigard
 13128 SW Hill Blvd
 Tigard, OR 97223
 503.636.4171
 www.tigard-or.gov





GRADING AND EROSION CONTROL PLAN
 SCALE: 1" = 30'

GRADING AND EROSION CONTROL LEGEND

- 1. ALL BASE EIC MEASURES (INLET PROTECTION, PERIMETER SEDIMENT CONTROL, GRAVEL CONSTRUCTION ENTRANCES, ETC.) MUST BE IN PLACE, FUNCTIONAL, AND APPROVED IN AN INITIAL INSPECTION, PRIOR TO COMMENCEMENT OF CONSTRUCTION ACTIVITIES.
- 2. STOPPING STOCKPILE AREAS SHALL BE RESTORED TO ORIGINAL GROUND AS THE LOCATION OF MITIGATION AREA GROWS. EXCESS STRIPPINGS TO BE DISPOSED OF OFF-SITE AT APPROVED DISPOSAL SITE.
- 3. THE "STAGING AND EQUIPMENT STORAGE AREA SHALL BE RESTORED TO ORIGINAL GROUND AFTER COMPLETION OF WORK.
- 4. ALL "SEDIMENT BARRIERS TO BE INSTALLED AFTER GRADUATION" SHALL BE IN PLACE OVER ALL EXPOSED SOILS BY OCTOBER 1.
- 5. LONG TERM SLOPE STABILIZATION MEASURES "INCLUDING MATING" SHALL BE IN PLACE OVER ALL EXPOSED SOILS BY OCTOBER 1.
- 6. THE DISCHARGE BASIN SHALL BE CONSTRUCTED AND LANDSCAPED PRIOR TO THE STORM WATER SYSTEM FUNCTIONING AND SITE PAVING.
- 7. CONSTRUCTION ENTRANCES TO REMAIN IN PLACE AFTER CONSTRUCTION FOR FUTURE DEVELOPMENT.
- 8. CONSTRUCTION FENCES TO BE REMOVED AFTER CONSTRUCTION. SET FENCE TO BE REMOVED AFTER ALL VEGETATION IS SUCCESSFULLY ESTABLISHED. DITCH PROTECTION TO REMAIN IN PLACE FOR FUTURE DEVELOPMENT.

- 8. CONSTRUCTION ENTRANCES SHALL BE INSTALLED AT THE BEGINNING OF CONSTRUCTION AND MAINTAINED THROUGHOUT CONSTRUCTION. ADDITIONAL MEASURES INCLUDING, BUT NOT LIMITED TO, THE USE OF MATING, SEDIMENT AND WASHING MAY BE REQUIRED TO INSURE THAT ALL PAVED AREAS ARE KEPT CLEAN FOR THE DURATION OF THE PROJECT.
- 9. ACTIVE INLETS TO STORM WATER SYSTEMS SHALL BE PROTECTED THROUGH THE USE OF APPROVED INLET PROTECTION MEASURES. ALL INLET PROTECTION MEASURES ARE TO BE REGULARLY INSPECTED AND MAINTAINED AS NEEDED.
- 10. SATURATED MATERIALS THAT ARE Hauled OFF-SITE MUST BE TRANSPORTED IN WHEEL-LOAD TRUCKS TO ELIMINATE SPILLAGE OF SEDIMENT AND SEDIMENT-COATED WHEELS.
- 11. AN AREA SHALL BE PROVIDED FOR THE WASHING OUT OF CONCRETE TRUCKS AND EQUIPMENT. THIS AREA SHALL BE LOCATED IN AN AREA THAT IS NOT IN THE WATER SYSTEM. IF THE CONCRETE WASH-OUT AREA CAN NOT BE CONSTRUCTED GREATER THAN 50 YARDS FROM ANY DISCHARGE POINT, SECONDARY MEASURES SUCH AS COVERED TRUCKS OR WASHING STATIONS MUST BE PROVIDED. THE WASH-OUT SHALL BE LOCATED WITHIN THE SITE AND SHALL BE CAPABLE OF HOLDING ALL WASH-OFF MATERIALS TO THE CAPACITY OF THE TRUCK ACCESS AND BE CLEANED WHEN IT REACHES THE SITE OF THE TRUCK.
- 12. DISCHARGES FROM EXPOSED AGGREGATE CONCRETE SHALL NOT BE TRANSPORTED TO THE STORM WATER SYSTEM. SWEEPS SHALL BE PICKED UP AND DEPOSITED IN THE TRUCK.
- 13. WIND PAVES IN WET WEATHER WHEN PAVING CHEMICALS CAN RUN-OFF INTO THE STORM WATER SYSTEM.
- 14. USE BUMP SUCH AS CHECK-DAMS, BORDERS AND INLET PROTECTION TO PREVENT RUN-OFF FROM REACHING DISCHARGE POINTS.
- 15. COVER CATCH BASINS, WASHES, AND DITCHES BECAUSE PAVES WHEN APPLICABLE SEAL COAT, TACK COAT, ETC. TO PREVENT INTRODUCING THESE MATERIALS TO THE STORM WATER SYSTEM.

CITY OF TIGARD

Approved _____
 Conditionally Approved _____
 For only the work as described in: _____
 PERMIT NO. SR2010-00002
 See Letter to: Follow _____
 Attach 12025 SW 70th Ave
 Job Address: _____
 Date: 7/13/10

PERMIT SET