

RESOLUTION NO. 1859

A RESOLUTION AUTHORIZING PM PEAK HOUR VESTING AGREEMENTS PURSUANT TO ORDINANCE NO. 561, TO BE EXECUTED BY THE CITY MANAGER, WITH COSTA PACIFIC COMMUNITIES FOR VILLEBOIS VILLAGE URBAN MIXED-USE RESIDENTIAL DEVELOPMENT.

WHEREAS, Ordinance No. 561 provides for PM Peak Hour vehicle trip vesting for developments with Master Plan or Stage 1 approvals after June 2, 2003, through a vesting agreement satisfactory to the City which provides for payment or financing of a Supplemental Street System Development Charge of \$3,000 per trip; and

WHEREAS, there were 483 PM Peak Hour Vehicle Trips left of the 702 PM Peak Hour Vehicle Trips under the City's concurrency policy as provided for by a capital improvement project which has been planned, funded and scheduled to commence for the Wilsonville road/I-5 Interchange this spring, 2004; and

WHEREAS, the Honda development and the Villebois development have received Stage 1 approval (December 8, 2003) and Master Plan approval (August 19, 2003) after June 2, 2003, respectively; and

WHEREAS, on January 20, 2004, at 11:30 a.m., Go Ducks, LLC, the owner of the property and developer of the Honda dealership, delivered by mail sent January 16, 2004, to the office of the City Attorney an executed vesting agreement, which was approved as to form by the City Attorney, and on January 23, 2004, delivered to the office of the City Attorney a check payable to the City of Wilsonville for \$219,000 for the 73 PM Peak Hour Trips through the Wilsonville Road/I-5 Interchange intersections calculated to be generated by the development under its approval at \$3,000 per trip as and for their Supplemental Street Systems Development Charges; and

WHEREAS, Costa Pacific Communities delivered at approximately 10:00 a.m., January 20, 2004, a vesting agreement for 483 trips executed on behalf of Costa Pacific as the Master Planner and a developer of the Villebois Village and for the benefit of property owners within the Villebois Village area, which proposed options of payment or financing, but which contained amendments and changes to an earlier City proposed draft which was not acceptable to City staff, and thereafter further changes were made including identifying the properties and ownerships involved through adding an Exhibit A, and then a redrafted vesting agreement was

executed on behalf of Costa Pacific Communities for the benefit of property owners within the Village area identified in Exhibit A to the agreement and approved as to form by the City Attorney at approximately 1:00 p.m., January 20, 2004; and

WHEREAS, the City Council had previously directed that a vesting agreement with any option for financing, including a Local Improvement District, would need City Council approval and an agreement for payment that met Ordinance No. 561 could be administration approved.

WHEREAS, Resolution No. 1858 originally proposed the authorization of an Agreement For Vesting Of PM Peak Hour Traffic Trips with GO Ducks, LLC for 73 PM peak hour trips and an Agreement For Vesting Of PM Peak Hour Trips with Costa Pacific Communities for 410 PM Peak hour trips; and

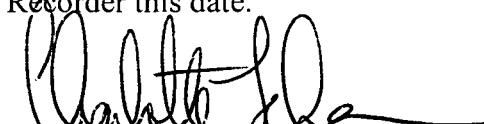
WHEREAS, on February 2, 2004, the City Council adopted Resolution No. 1858 authorizing the aforementioned GO Ducks LLC Vesting Agreement and determined to further review the Costa Pacific Communities Vesting Agreement and continued same to its February 19, 2004 specially scheduled Council meeting for final determination as Resolution No. 1859.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council finds that the "Agreement for Vesting of Peak PM Hour Traffic Trips" with Cost Pacific Communities meets Ordinance No. 561, is satisfactory including the financing option of a Local Improvement District, a copy of the Agreement is marked "Exhibit A", attached hereto and incorporated by reference as if fully set forth herein, and shall be for 410 PM Peak Hour traffic trips through the Wilsonville Road/I-5 Interchange intersections, being second in time to the aforementioned "Agreement for Vesting of Peak PM Hour Traffic Trips" with Go Ducks, LLC;

2. This resolution is effective upon the date of adoption.

ADOPTED by the Wilsonville City Council at a special meeting thereof this 19th day of February, 2004, and filed with the Wilsonville City Recorder this date.


CHARLOTTE LEHAN, MAYOR

ATTEST:

Sandra C. King
Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan Yes

Councilor Kirk Yes

Councilor Holt Yes

Councilor Scott-Tabb Yes

Councilor Knapp Yes

Attachment: Exhibit A - Agreement for vesting of Peak PM hour traffic trips with Costa Pacific Communities

AGREEMENT FOR VESTING OF
PEAK PM HOUR TRAFFIC TRIPS

THIS AGREEMENT ("Agreement") is entered into this 19TH day of ~~January~~ ^{FEBRUARY}, 2004, by and between the City of Wilsonville ("City"), a municipal corporation in the State of Oregon, and Costa Pacific Communities ("Developer"), on behalf of property owners in the Villebois Master Plan Area.

RECITALS

- A. The City has budgeted \$3,500,000 to complete the first phases of the I-5/Wilsonville Road Interchange improvements. These improvements will create an opportunity for additional development in the City to occur by increasing the number of Peak PM Trips through the I-5/Wilsonville Road Interchange (Trips). Trips will be allocated to each new development through a process called "vesting," until all of the new Trips have been allocated.
- B. Under Ordinance 561, adopted by the City Council on December 15, 2003, Trips may be vested when Master Plan or Stage I Plan approvals are given after June 2, 2003 and a vesting agreement satisfactory to the City is executed by the City and a developer.
- C. Developer obtained approval of the Villebois Village Master Plan, August 18, 2003, a description of which property is within the plan and eligible for trip vesting is attached as Exhibit A, and wishes to vest Trips required for the development of the property in accordance with Ordinance 561.
- D. Developer owns or has rights in portions and has provided master planning services on behalf of itself and other property owners for Villebois Village.
- E. The development is expected to generate 568 peak PM trips through I-5 Wilsonville Road Interchange with Boeckman Road's anticipated start date of 2006.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

1. Payment Obligation. Developer shall arrange for its proportional share of payment for the required road improvements by any one of the following three Options.

A. Payment of Supplemental Street SDCs. Developer shall deposit \$3,000 per vested Trip to the City in anticipated payment of Supplemental Street SDCs, within 30 days of this Agreement. Under an SDC methodology to be adopted by the City, the amount per Trip may be reduced or increased from the estimated amount. The deposit shall be applied to the amount adopted. Any shortage between the estimated \$3,000 per Trip paid and the adopted fee shall be paid by Developer within 30 days of demand by the City, and any excess between the estimated \$3,000 fee and the adopted fee shall be refunded to Developer by the City, without interest, within 30 days of the effective date of the new SDC amount.

B. Formation of LID. In lieu of payment of the Supplemental Street SDCs, Developer and other property owners may submit waivers of remonstrance in lieu of payment to the formation of a Local Improvement District to finance \$1.7 million of the Supplemental Street SDCs and \$3 million in street SDC for the Boeckman Road Improvement Project, for a total of \$4.7 million. The City is willing to go forward with this alternative source of funding for property owners who execute a Restrictive Covenant Waiving Right of Remonstrance for Formation of LID ("Waiver of Remonstrance"), a copy of which is attached as "Exhibit B". Within 30 days of execution of this Agreement, Developer shall advise in writing which owners shall seek the LID financing option and shall thereafter as the Developer and City shall agree provide the applicable Waivers of Remonstrance within 90 days of execution of this Agreement.

2. Phasing Plan. Developer's proposed Phasing Plan is as shown in the Master Plan and all subsequent applications submitted to the City.

3. Developer's Final Plan. Developer's final plan shall conform in all major respects with the Master Plan, the Stage 1 Preliminary Plan approval received on December 8, 2003, and all subsequent approvals, and shall satisfy the requirements of Wilsonville Code (WC) § 4.140.

4. Number of Trips Vested. The execution of this Agreement by the City and Developer shall act to vest 483 Trips for the Villebois Village Master Plan Area, provided however, if the City Council determines that a Vesting Agreement with Honda

Development for 73 Trips predates this Agreement, then this Agreement shall vest 410 Trips.

5. Available trips less than that generated by full build out. Because available Trips for vesting are currently less than that generated by the full build out as proposed, but the Trips generated by full build out would be financed through the aforementioned L.I.D., the city shall assign the Trips as they become available on a first in time basis as of the date of the vesting agreement in any future queuing for Trips based on the funding received or anticipated in the LID.

6. Downward Adjustment of Vested Trips and Refund of Surplus SDCs. If the payment for vested Trips has been paid in cash under Option A, and should the City determine that the number of Trips generated by the Development will be fewer than the 483 Trips presently anticipated, the City shall refund to Developer, within 30 days of the date the determination is made, without interest, the amount of Supplemental Street SDCs, attributable to the unneeded, paid-for Trips.

7. Upward Adjustment of Vested Trips. If the payment for vested trips has been paid in cash under Option A, and should the City determine that additional Trips are or will become available, such additional Trips shall be vested, provided Developer pays additional amounts as specified in Option A within 30 days of being advised that the additional trips are available.

8. Termination of Agreement. This Agreement shall terminate if the City Community Development Director, with the concurrence of the City Council, determines that the vested right to use the Trips is lost or terminated for one or more of the following reasons:

- a. If Developer fails to pay within 30 days of final approval by the City the Supplemental Street SDCs attributable to the vested Trips, or upward adjustment thereto, after being informed by City of any amounts due; or
- b. If Developer fails to timely notify the City and/or fails to obtain the Waiver of Remonstrance set forth in paragraph 1B above; or
- c. Developer fails to obtain required approvals in a timely fashion; or
- d. Developer's approvals expire as provided by city code.

9. Vesting to Run with Property. Vesting of Trips shall remain valid and shall run with each property within the Villebois Village Master Plan Area in proportion to trips generated by each property with Waiver of Remonstrance within the Villebois Village Master Plan Area, unless an approval that is necessary for vesting to occur is terminated or this Agreement is terminated.

10. Reimbursement Upon Termination. If the payment for vested trips has been paid in cash under Option A, and should this Agreement be terminated for any reason, the City shall repay, within 30 days and without interest, all amounts paid by Developer for Trip vesting fees, including any paid Supplemental Street SDCs. If the vesting under this Agreement is lost or terminated, the Trips allocated by this Agreement shall be made available to other development upon City repayment, without interest, of any Trip vesting fees paid by Developer.

11. Dispute Resolution. Controversies among the parties to this agreement shall be resolved, to the extent possible, (e.g., a controversy governed by the jurisdiction of the Land Use Board of Appeals is not involved) by informal meetings and discussions in good faith between them. If a dispute cannot be resolved in that manner within five (5) business days of the first such meeting, any party may elect to exercise its right to require mediation of the dispute.

During mediation, the parties agree to negotiate in good faith as to the matter submitted to mediation. In such event, the party requesting mediation shall appoint a recognized mediator. No mediator shall be an employee, officer, board member, consultant, supplier or customer, or otherwise be affiliated with any of the parties. The mediator shall be reasonably qualified to act as a mediator with respect to construction contracts. Each party shall share equally in the out-of-pocket costs for mediation; provided that the mediator shall be empowered to require one party to pay more than its pro rata share of the expenses if the mediator determines that such party is not negotiating in good faith in the mediation process. In no instance, however, shall any party be required to pay attorneys' fees incurred in the mediation by the other party. The location of the mediation and specific procedures relating to the mediation shall be determined by the mediator, and each party agrees to comply with all decisions, directions, instructions and procedures made or established in good faith by the mediator.

If the parties are unable to resolve a controversy using mediation within fifteen (15) days after commencement thereof, the dispute shall be settled by binding arbitration, and a corresponding judgment may be entered in a court of competent jurisdiction. Arbitration of any dispute may be initiated by any party sending a written

demand for arbitration to the other party. This demand will specify the matter in dispute and request the appointment of an arbitrator. The mailing of the demand to the parties at the address set forth herein will be deemed personal service and accepted by the parties for any arbitration or proceeding with respect to this Agreement. The arbitrator will be selected from a list provided by the arbitration service selected by the party initiating arbitration. The arbitration hearing will be conducted in accordance with the procedural rules set forth in the arbitration rules of the arbitration service selected. The sites of the arbitration will be in the Portland-Metropolitan Area or such other place as the parties agree. The arbitrator shall not be empowered to award punitive or exemplary.-damages to any party. The decision of the arbitrator shall be binding on the parties and may be enforced by any court of competent jurisdiction.

12. Notices. All notices under this Agreement shall be in writing and delivered in person, by facsimile, or by first-class mail to the following:

If to Developer:
Mike Ragsdale
Costa Pacific Communities
28801 SW 110th Avenue
Wilsonville, OR 97070-9520

If to City:
Michael E. Kohlhoff, City Attorney
City of Wilsonville
30000 SW Town Center Loop E
Wilsonville, OR 97070

Copy to:

Timothy V. Ramis
1727 NW Hoyt Street
Portland, OR 97209

13. The parties agree that this Agreement shall run with the land and shall be binding upon and inure to the benefit of all heirs, successors and assigns.

COSTA PACIFIC COMMUNITIES
BY ITS ATTORNEYS, RAMIS CREW CORRIGAN
BACHA
By: [Signature]
Its: [Signature]

CITY OF WILSONVILLE

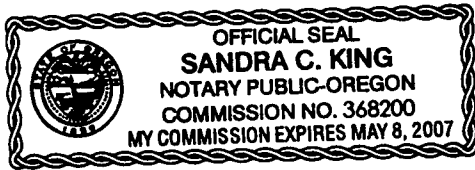
By: [Signature]
Its: Mayor

Approved as to Form:

By: Michael E. Kohloff
Michael E. Kohloff
Wilsonville City Attorney

STATE OF OREGON)
)
County of CLACKAMAS) SS.

This instrument was acknowledged before me this 19th day of FEBRUARY, 2003, by CHARLOTTE LEHAN, on behalf of the City of Wilsonville, MAYOR



Sandra C. King
NOTARY PUBLIC FOR OREGON
My Commission Expires: 5/8/07

STATE OF OREGON)
)
County of Clackamas) SS.

D.M.P.

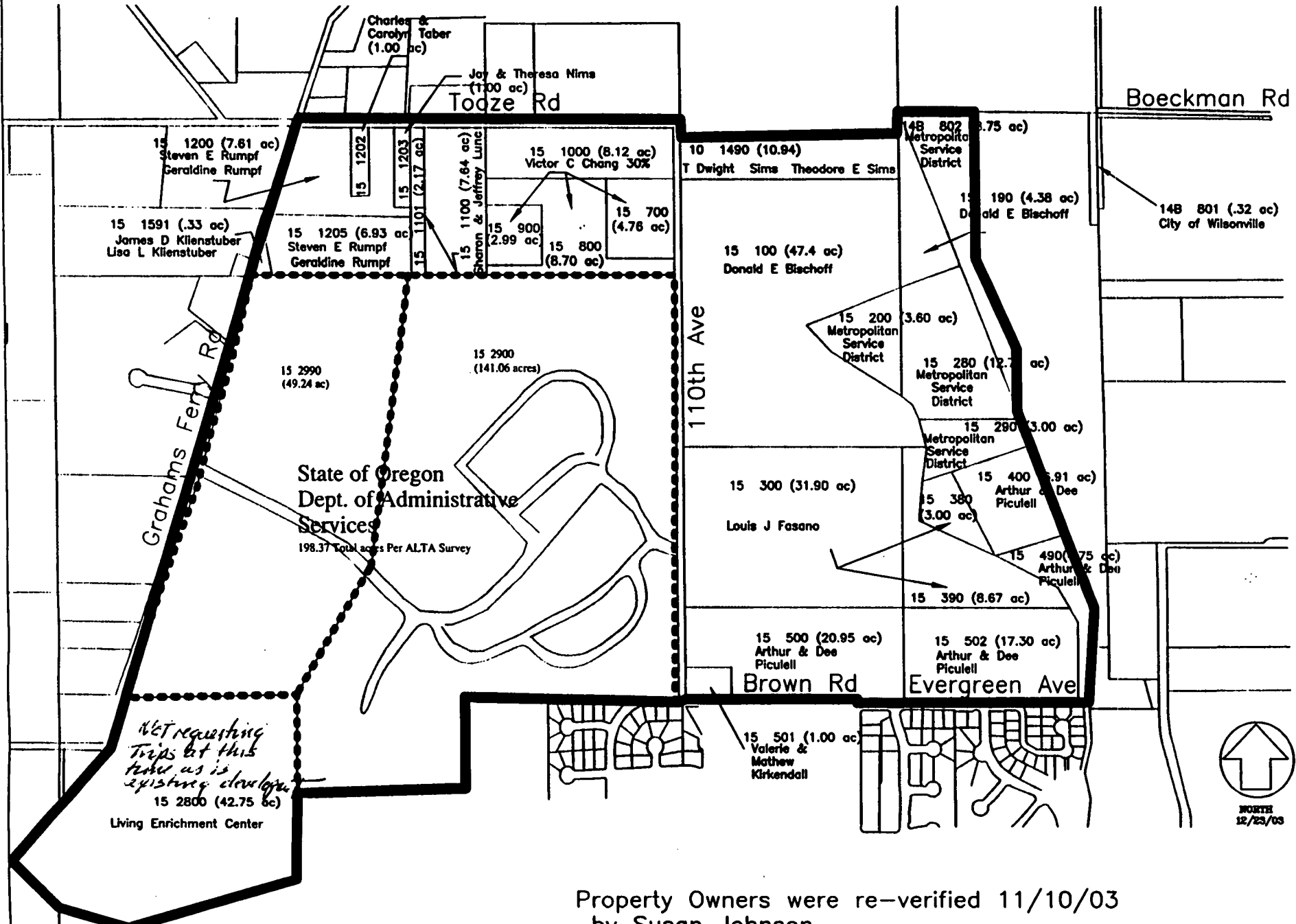
2004 This instrument was acknowledged before me this 20th day of January, 2003, by Gary Firestone, on behalf of Costa Pacific Communities.



Diane M. Pankonin
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/29/07

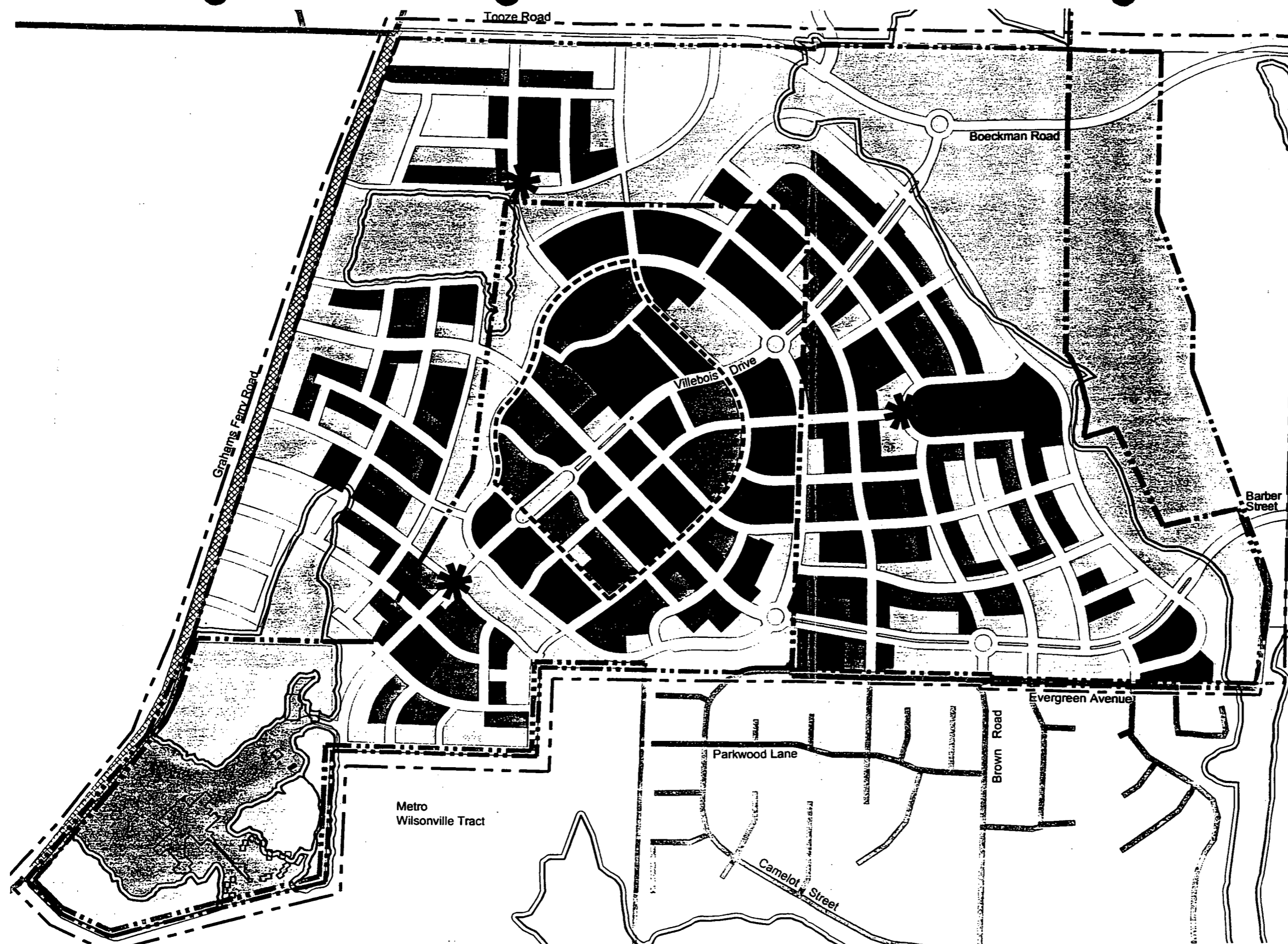
Name	Address	Description
Sharon L. Lund & Jeffrey Lund		Section 15 3S 1W Tax Lots 1100 and 1101
Metropolitan Service District	600 NE Grand Avenue Portland OR 97232	Section 15 3S 1W Lot 200
Jay R. & Theresa C. Nims	11700 SW Tooze Rd Wilsonville OR 97070	Section 15 3S 1W Lot 1203
Charles E. Taber and Carolyn J. Taber	11800 SW Tooze Road Wilsonville OR 97070	Section 15 3S 1W Lot 1202
Valerie I. Kirkendall and Matthew R. Kirkendall	10951 SW Brown Road Wilsonville OR 97070	Section 15 3S 1W Lot 501
State of Oregon Dept of Admin Services	1225 Ferry Street SE Salem OR 97310	Section 15 3S 1W Lot 2990
Arthur C. Jr. and Dee W. Piculell	3236 SW Kelly Avenue Portland OR 97239	Section 15 3S 1W Lots 490, 500, 502
Donald E. Bischof	16300 SW 192 nd Av Sherwood OR 97140	Section 15 3S 1W Lot 100, 190
Steven and Geraldine Rumpf, Trustees	28100 SW Grahams Ferry Road, Wilsonville OR 97070	Section 15 3S 1W Lots 1200, 1205
Victor C. Chang 30% interest	3181 Wembley Park Road Lake Oswego OR 97034	Section 15 3S 1W Lots 700, 800, 900, 1000
Ju-Tsun Chang 30% interest		Section 15 3S 1W Lots 700, 80, 900, 1000
Allen Y. Chang and Roger Chang 20% interest		Section 15 3S 1W Lots 700, 800, 900, 1000
Fredic Tseng 20% interest		Section 15 3S 1W Lots 700, 800, 900, 1000
Louis J. Fasano		Section 15 3S1W Lots 300, 380, 390

Property Owners Within Villebois


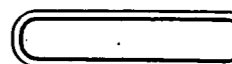

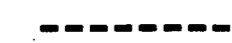






Property Owners were re-verified 11/10/03
by Susan Johnson

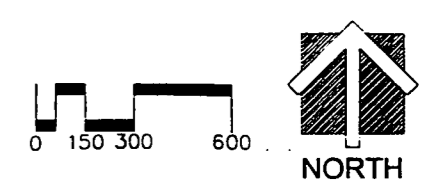
Figure 1



LAND USE	DENSITY	UNITS	ACRES
Specialty Condos	50.9 du/ac	178	3.5
Mixed Use Condos	31.8	191	6.0
Urban Apartments	30.1	214	7.1
Condos	28.5	154	5.4
Village Apartments	23.6	203	8.6
Neighborhood Apartments	20.0	98	4.9
Rowhouses	16.3	316	19.4
Small Detached (50 x 80)	10.3	364	35.3
Medium Detached (40 x 45 x 80)	8.6	350	40.5
Standard Detached (55 x 80 x 100)	5.7	194	33.7
Large (65 x 110 - 120 +)	4.8	65	13.5
Estate (70 x 140 or 80 x 120)	3.2	63	19.7
RESIDENTIAL UNITS TOTAL	12.1	2,390	197.6
School Site (Includes 3 ac of playfields)			10.0*
Openspace (Total does not include 3 ac of school playfields)			150.1
Living Enrichment Center			19.6
Area in R.O.W.			104.3
PLANNING AREA TOTAL			481.6

-  Neighborhood Commons/Mixed Use
-  Significant Resource Overlay Zone (SROZ) with 25' buffer
-  Access Management Needed
-  Commercial/Employment Overlay Area
-  Urban Growth Boundary
-  City Limits
-  Village Area Boundary
-  Dammasch Study Boundary

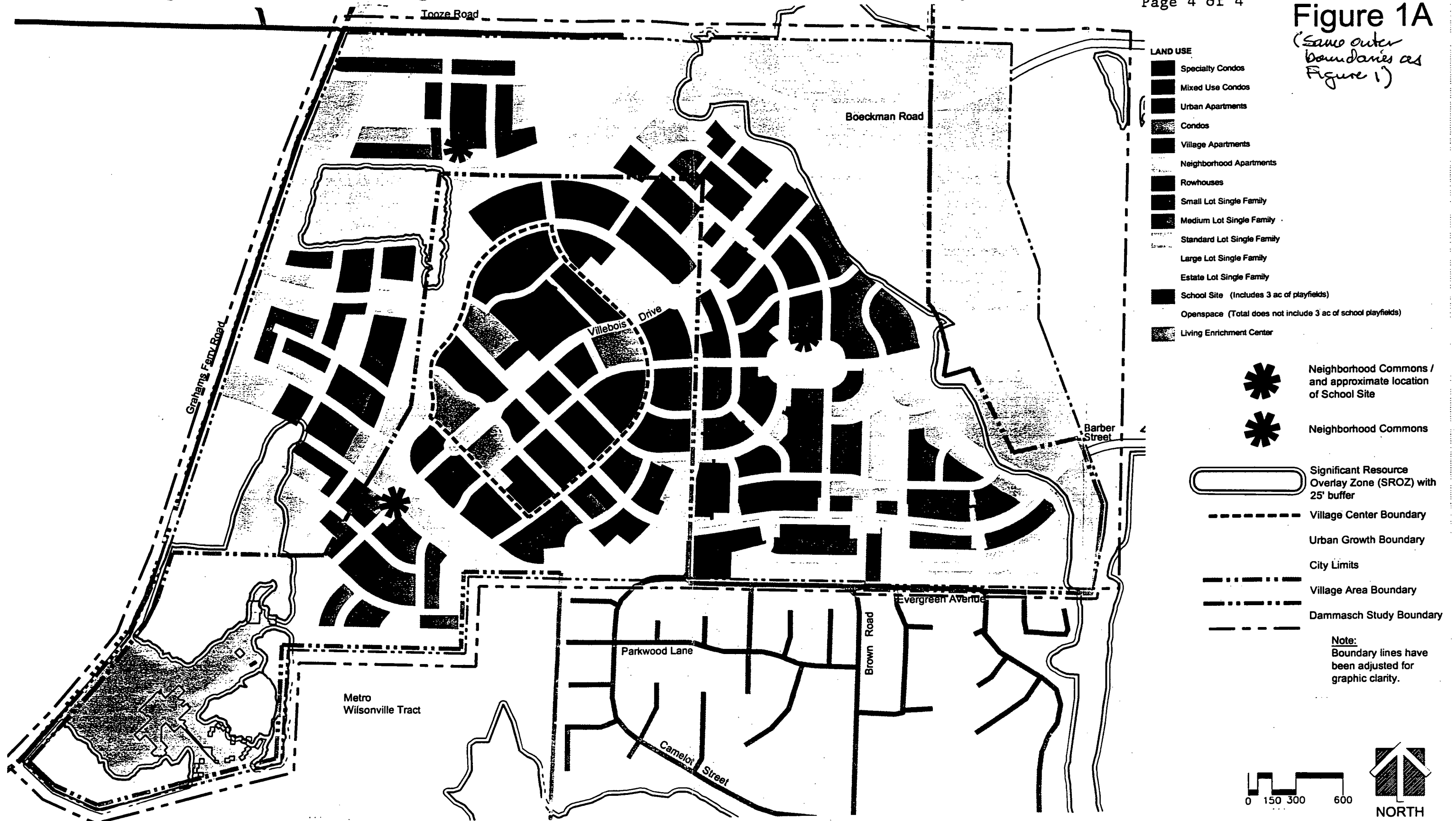
Note:
Boundary lines have been adjusted for graphic clarity.



NOTES:
The Villebois Village Master Plan shall comply with the City of Wilsonville SROZ regulations. Encroachments within the SROZ are shown for illustrative purposes only, and will be reviewed for compliance or exemption as more detailed information is provided that will affect the SROZ areas. Adjustments in plan, street alignments, and intersections as well as rainwater facilities and pathways will be made to comply with SROZ regulations.
* The SAP process will address an increase in size of the school site to 10 acres or a size otherwise agreed upon with the city and school district.

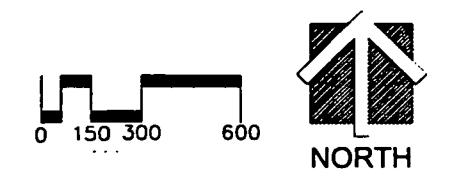
Land Use Plan
June 4, 2003

Figure 1A
(Same outer boundaries as Figure 1)



- LAND USE**
- Specialty Condos
 - Mixed Use Condos
 - Urban Apartments
 - Condos
 - Village Apartments
 - Neighborhood Apartments
 - Rowhouses
 - Small Lot Single Family
 - Medium Lot Single Family
 - Standard Lot Single Family
 - Large Lot Single Family
 - Estate Lot Single Family
 - School Site (Includes 3 ac of playfields)
 - Openspace (Total does not include 3 ac of school playfields)
 - Living Enrichment Center
-
- Neighborhood Commons / and approximate location of School Site
 - Neighborhood Commons
 - Significant Resource Overlay Zone (SROZ) with 25' buffer
 - Village Center Boundary
 - Urban Growth Boundary
 - City Limits
 - Village Area Boundary
 - Dammasch Study Boundary

Note:
Boundary lines have been adjusted for graphic clarity.



NOTES:
The Villebois Village Master Plan shall comply with the City of Wilsonville SROZ regulations. Encroachments within the SROZ are shown for illustrative purposes only, and will be reviewed for compliance or exemption as more detailed information is provided that will affect the SROZ areas. Adjustments in plan, street alignments, and intersections as well as rainwater facilities and pathways will be made to comply with SROZ regulations.
• The SAP process will address an increase in size of the school site to 10 acres or a size otherwise agreed upon with the city and school district.

**Replacement
Land Use Plan**
JULY 23, 2003

EXHIBIT B

**RESTRICTIVE COVENANT WAIVING
RIGHT OF REMONSTRANCE FOR
FORMATION OF LID**

After recording, return to:
City of Wilsonville
30000 SW Town Center Loop E.
Wilsonville, OR 97070

_____, legal owner(s) of the real property described in Exhibit A, attached, give my consent to the formation of LOCAL IMPROVEMENT DISTRICTS affecting said property. I expressly waive any and all right to remonstrate against the formation of a LOCAL IMPROVEMENT DISTRICT in accordance with the City of Wilsonville's applicable development standards in effect at the time of such improvement. I irrevocably consent to the formation of a LOCAL IMPROVEMENT DISTRICT by the City of Wilsonville or the inclusion of the property into a zone of benefit, for the purpose of assessing the cost of such improvement to the said property and to any other property benefited by the improvement, such assessment to be made in accordance with applicable laws and ordinances existing at the time of the improvement. It is understood that "local improvements", as the term is used in this agreement, includes street, sewer, waterline, traffic, signal, sidewalk, parking, curbing, drain, or other local improvement defined in ORS 310.140 and paid for in whole or in part by special assessment according to benefits conferred. No provision of this agreement deprives the undersigned of any existing right to dispute assessment methodology.

The signature(s) appearing on this document is to be construed as equivalent to a signature(s) appearing on a petition to form a LOCAL IMPROVEMENT DISTRICT for any of the aforesaid purposes.

The covenants herein contained shall be binding upon the undersigned and his/her/their successors in interest as covenants running with the land, effective for twenty years from this date; provided, however, that the City of Wilsonville shall have

the right to extend the covenants for an additional twenty years by recording a notice of such extension in the deed records of the County in which said property is situated prior to the expiration of the first twenty-year period.

The following information is for reference purposes only:

Tax Map:

Tax Lot(s):

Site Address:

City of Wilsonville Public Works and Planning file # _____.

Signature

Date

(Print Name)

Signature

Date

(Print Name)

STATE OF OREGON)
) ss
County of _____)

On this ____ day of _____, 20____, before me, a notary public in and for said County and State, personally appeared _____ known to me to be the person(s) whose name _____ subscribed to the within instrument and acknowledged that _____ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

Notary Public for Oregon
My Commission Expires: _____