

WASHINGTON COUNTY RESOLUTION & ORDER

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Pages



RESOLUTION & ORDER

2010-098

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NOV - 5 2010

Washington County
County Clerk

AGENDA

WASHINGTON COUNTY BOARD OF COMMISSIONERS

Agenda Category: Public Hearing - Tenth Public Hearing
Land Use & Transportation (CPO 7)

Agenda Title: ADOPT A TRANSPORTATION SYSTEM DEVELOPMENT
CHARGE FOR THE NORTH BETHANY SUBAREA

Presented by: Brent Curtis, Planning Manager

SUMMARY (Attach Supporting Documents if Necessary)

In concert with adopted A-Engrossed Ordinance 712 and pending A-Engrossed Ordinance 730, which proposes to adopt the implementing regulations for the North Bethany Subarea Concept Plan, county staff has worked with a growth management and funding workgroup to develop a proposed interim funding strategy. The proposed Transportation System Development Charge has been updated to reflect the proposed interim funding strategy.

The interim funding strategy establishes the project list and finance mechanisms necessary to support development within the North Bethany Subarea. A major component of the strategy is a Transportation System Development Charge (SDC). A SDC is a one-time fee, charged to new development at the issuance of a building permit, to help pay a portion of the costs associated with building capital facilities.

The Board conducted six public hearings on the Transportation SDC in 2009 on August 18 and 25, September 1 and 22, and October 20 and 27, 2009. Three additional hearings have been held in 2010 on March 16, September 7, and October 19, 2010. On October 19, the hearing was continued to October 26, 2010.

- **Staff report:** A staff report and additional materials will be provided to the Board prior to October 26. They will be available at the Clerk's desk and also available through a link posted on the county's land use ordinance web site below.

www.co.washington.or.us/LUT/Divisions/LongRangePlanning/2010-land-use-ordinances.cfm

- Continued -

DEPARTMENT'S REQUESTED ACTION:

Conduct the tenth public hearing on the proposed North Bethany Transportation System Development Charge. At the conclusion of public testimony, adopt the Transportation System Development Charge and authorize the Chair to sign the Resolution and Order to memorialize the action; or continue to November 23, 2010 for further consideration.

COUNTY ADMINISTRATOR'S RECOMMENDATION:

I concur with the requested action.

100-601000 *RO 10-98*

Agenda Item No.	<u>4.c.</u>
Date:	<u>10/26/10</u>

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Tenth Public Hearing - Land Use & Transportation
**ADOPT A TRANSPORTATION SYSTEM DEVELOPMENT CHARGE
FOR THE NORTH BETHANY SUBAREA**

October 26, 2010

Page 2

- **Public testimony:** Limited to two minutes for individuals and five minutes for a representative of a group.

Attachment: North Bethany Transportation System Development Charge Resolution and Order

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1 IN THE BOARD OF COUNTY COMMISSIONERS

2 FOR WASHINGTON COUNTY, OREGON

3 In the Matter of Adopting the North) RESOLUTION AND ORDER
4 Bethany Transportation System)
5 Development Charge) No. 10-98
6)

7 This matter came before the Board at its meetings of August 18 and 25, September 1 and 22,
8 October 20 and 27, 2009 and March 16, September 7, October 19 and October 26, 2010; and

9 It appearing to the Board that North Bethany Subarea ("North Bethany") is that area
10 shown on the map in Appendix D to Attachment A attached hereto; that North Bethany is
11 deficient in transportation facilities, and requires funding for these facilities; and

12 It appearing that the countywide Transportation Development Tax (TDT) provides
13 limited funding for facilities within North Bethany, and that a transportation System
14 Development Charge independent of the TDT, and dedicated solely to facilities within North
15 Bethany is necessary to provide funding for transportation facilities in the area; and

16 It appearing to the Board that adoption of a North Bethany Transportation System
17 Development Charge (NBTSDC) pursuant to ORS 223.297 to 223.314 creates a funding
18 mechanism for capacity-increasing transportation improvements necessary to support planned
19 urban development, and imposes the fee to the land developments that create the need for these
20 improvements; and

21 It appearing to the Board that A-Engrossed Ordinance No. 712 and A-Engrossed
22 Ordinance No. 730 amend the Bethany Community Plan, and that these provide a basis for
23 determining the level of urban land development and the transportation facilities necessary to
support development in North Bethany; and

1 It appearing to the Board that the North Bethany Transportation System Development
2 Charge set forth in Attachment A and its Appendices A through E contains a list of capital
3 improvements to be supported by the fee; a methodology for determination of the amount of the
4 fee; a list of land uses with the basis for calculation of the fee; administrative and credit
5 provisions; and a map of the area in which the fee is to be charged, all as prescribed by ORS
6 223.297-314; and

7 It appearing that the North Bethany Transportation System Development Charge imposes
8 an appropriate and equitable portion of the cost of capacity-increasing transportation facilities on
9 the land developments within the North Bethany that create the need for such facilities; and

10 It appearing to the Board that it has provided public notice of this hearing as required by
11 ORS 223.304(7), has received the recommendation of the Department of Land Use and
12 Transportation, conducted a public hearing on this resolution and order, considered public
13 testimony and being fully informed thereon; now, therefore, it is

14 **RESOLVED AND ORDERED** that the North Bethany Transportation System
15 Development Charge set forth the in Attachment A and its Appendices A through E is hereby
16 adopted; and it is further

17 **RESOLVED AND ORDERED** that the Department of Land Use and Transportation shall
18 take such actions as are necessary to effectuate this action, including prompt notification; and it
19 is further

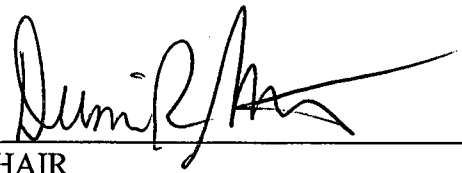
20 **RESOLVED AND ORDERED** that if any portion of this Resolution and Order, including
21 its Attachments and Appendices, shall for any reason be declared invalid or unconstitutional by
22 an authority or court of competent jurisdiction, the remainder shall not be affected thereby and
23 shall remain in full force and effect; and it is further

1 RESOLVED AND ORDERED that this Resolution and Order shall take effect at
2 12:01 A.M., 30 days after the date it is adopted.

3 DATED this 26th day of October, 2010.


4 BOARD OF COUNTY COMMISSIONERS
5 FOR WASHINGTON COUNTY, OREGON

	AYE	NAY	ABSENT
6 BRIAN	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7 SCHOUTEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 STRADER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9 ROGERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 DUYCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11 
12 _____
13 CHAIR

14 
15 _____
16 RECORDING SECRETARY

17 Approved as to form:

18 
19 _____
20 County Counsel
21 For Washington County, Oregon

22 Date: 10-24-10

23

Attachment A to Resolution and Order 10-XX

010 Short Title.

This resolution and order shall be known, and may be pleaded as, the North Bethany Transportation System Development Charge (NBTSDC).

020 Purpose and Scope.

- A. This charge is adopted to ensure that new development within the North Bethany Area contributes to extra capacity transportation improvements needed to accommodate additional vehicle traffic generated by development within the Area.
- B. This charge shall provide funds for extra capacity improvements to county roadways listed in the Capital Improvements Project List, attached hereto as Appendix C. The charge applies throughout the North Bethany Area as defined by the map shown as Appendix E.
- C. This resolution is intended to adopt a North Bethany Transportation System Development Charge that complies with the provisions of ORS 223.297-223-314. Any reference to SDCs or System Development Charges in this resolution, its exhibits or appendices, shall be deemed to refer to both the NBTSDC, and to the equivalent provision under the above-cited statutes, unless the context requires otherwise.
- D. The North Bethany Transportation System Development Charge is a fee imposed in addition to the Transportation Development Tax. New development within the North Bethany Area must pay both the NBTSDC imposed under this resolution and order, and the Transportation Development Tax charged under Washington County Code Chapter 3.17.

030 Definitions.

As used in this chapter unless the context requires otherwise:

- A. "Applicant" means the person seeking to obtain a building permit.
- B. "Application" means an application for a building permit.
- C. "Arterial" means a roadway or street that has the functional classification of "arterial" on the county's transportation system plan.
- D. "Board" means the Board of County Commissioners of Washington County, Oregon.
- E. "Building official" means that person, or his designee, licensed by the state and designated as such to administer the State Structural Specialty Code for the county.
- F. "Building permit" means that permit issued by the county building official pursuant to the International Building Code. In addition, "building permit" means the mobile home placement permit issued by the Director, or his representative, on a form approved by the Department of Commerce of the state and relating to the placement of mobile homes in the county. For those uses for which no building permit is provided, the final approval granted by the jurisdiction approving the use shall be deemed a building permit for purposes of this chapter.
- G. "Collector" means a roadway or street that has the functional classification of "collector" on the county's transportation system plan.
- H. "Comprehensive plan" means the comprehensive plan, transportation plan, capital improvements plan, public facilities plan or equivalent plan adopted by ordinance by the applicable jurisdiction.
- I. "Condition of Development Approval" means any requirement imposed on an applicant by a county or city land use or limited land use decision, or site plan approval.
- J. "Construction cost index" means the adjustment to the NBTSDC calculated as set forth in section 050F and Appendix D.
- K. "Contiguous" means that a property and an improvement or portion thereof share a common boundary line. Determination of what is contiguous shall include the area of all property subject to the development approval. The boundary lines and area of an improvement shall be determined by the right of way and easement areas for the improvement. In addition, multiple properties under common ownership separated by one or more of the following: common area, non-motorized vehicle or pedestrian way, creek, wetland, park, or similar areas; shall be deemed to include the boundary of such additional area in their boundary line, up to 100 feet between the properties at the boundary

with the improvement. Any portion of an improvement that is located beyond the frontage of a property, as determined by the extension of boundary lines perpendicular to the frontage of the property, shall not be contiguous to that property. An intersection improvement shall be deemed contiguous to all property with frontage on the intersection, or that touches the intersection at a point.

- L. "County" means Washington County, Oregon.
- M. "Credit" means the amount by which an applicant may be able to reduce the NBTSDC as provided in this Ordinance.
- N. "Department" means the County Department of Land Use and Transportation.
- O. "Development" means any man-made change to improved or unimproved real estate, including a building or other land construction, or making a physical change in the use of a structure or land, in a manner that increases the usage of transportation capital improvements or which may contribute to the need for additional or enlarged transportation capital facilities as determined in this chapter. "Development" includes "New Development".
- P. "Director" means the director of the Department of Land Use and Transportation.
- Q. "Extra capacity facilities or improvements" means those arterial and collector improvements that are necessary in the interest of public health, safety and welfare to increase traffic capacity to address new development. Such improvements include, but are not limited to, signalization, channelization, widening, drainage work, pedestrian safety, lighting, acquisition of right-of-way and necessary easements, street extensions, railroad crossing protective devices, bridges and bike paths.
- R. "Interim Improvement" means those facilities needed on an interim basis for access or otherwise, which are not built to ultimate alignment, line and grade, or do not include all elements needed for the full improvement on the project list, consistent with applicable road standards. Such facilities are expected to be discarded, replaced, or removed when construction of the improvement on the project list is complete. An improvement may include some elements that are interim, and some, such as right of way, that will be usable for the improvement on the project list.
- S. "Improvement Fee" means an SDC for costs associated with capital improvements to be constructed after the effective date of this Ordinance.
- T. "ITE Trip Generation Manual" means that publication entitled "Trip Generation, 7th Edition" (2001) published by the Institute of Transportation Engineers.
- U. "Minimum Standard Facility" for roads means facilities to meet the adopted standards for a local public street or road applicable in the location of the subject development.
- V. "New Development" means development for which a Building permit is required, and which occurs on or after the effective date of this Ordinance.
- W. "Occupancy permit" means the occupancy permit provided for in the International Building Code or other ordinance of the applicable jurisdiction. If no occupancy permit is provided for a particular use, the final inspection and approval shall serve as the occupancy permit.
- X. "Over-capacity" means that portion of an improvement that is built larger or with greater capacity than is necessary to serve the applicant's new development or mitigate for transportation system impacts attributable to the applicant's new development.
- Y. "Permit" means a Building Permit.
- Z. "Previous use" means the most intensive lawful, permitted use existing at a particular property within the past 36 months prior to the date of application for a building permit. Where the site was used simultaneously for several different uses (mixed use) then, for the purposes of this Chapter, all of the specific use categories shall be considered. Where the previous use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole use of the property.
- AA. "Proposed use," means the use proposed by the applicant for the new development. Where the applicant proposes several different uses (mixed use) for the new development then, for purposes of this Chapter, all of the specific use categories shall be considered. Where the proposed use is composed of a primary use with one or more ancillary uses that support the primary proposed use and are owned and operated in common, that primary use shall be deemed to be the sole proposed use of the property.

- BB. "Qualified Public Improvement" means any transportation system capital facility or conveyance of an interest in real property that increases the capacity of the county or city transportation system, and is:
- (1) Required as a condition of development approval;
 - (2) Identified in the Washington County Transportation NBTSDC Capital Improvement Projects List; and
 - (3) (i) Not located on or contiguous to property that is the subject of development approval, or
(ii) Located on or contiguous to property that is the subject of development approval and, in the opinion of the Director, is required to be built larger or with greater capacity (overcapacity) than is necessary for the applicant's new development or to mitigate for transportation system impacts attributable to the applicant's new development.
- BB. "Reimbursement charge" means an SDC for costs associated with capital facilities that have already been constructed which have been determined to have capacity available to serve new development.
- CC. "Road" means a county road, city street, or state highway.
- DD. "North Bethany Transportation System Development Charge Capital Improvement Projects List" or "Project List" means the program set forth in the Appendix C attached hereto that identifies facility improvements projected to be funded with NBTSDC revenues, and includes the estimated cost, timing, and percentage of costs eligible for funding from NBTSDC revenues for each project.
- EE. "NBTSDC Methodology Report" means the report entitled "North Bethany Transportation System Development Charge Methodology Report", dated June 2009, attached hereto as Appendix A.
- FF. "Temporary construction facility" means those facilities needed on an interim basis for construction of specific uses, structures or road improvements, and which are intended to be discontinued when construction is complete. Such facilities include, but are not limited to, accessory construction structures, staging areas, parking, and park-and-ride lots in conjunction with construction of a facility.
- GG. "Temporary use" means a use or structure on improved or unimproved real estate which is of impermanent nature, and is used for less than ninety days in a calendar year.
- HH. "North Bethany Transportation System Development Charge" or "NBTSDC" means a reimbursement charge, an improvement charge or a combination thereof assessed or collected at the time of increased usage of transportation capital facilities or issuance of a development permit or building permit. "NBTSDC" also means the charge imposed under this chapter.

040 Imposition and Exceptions.

- A. A North Bethany Transportation System Development Charge (NBTSDC) is imposed on all development throughout the North Bethany Area as defined by the map shown as Appendix E as provided for herein. The amount of the charge shall be calculated according to section 050 of this resolution.
1. Except as otherwise provided in this Chapter, a NBTSDC shall be imposed upon all Development within the North Bethany Subarea for which an Application is filed, or was required to be filed, after the effective date of this resolution, and for which a building permit is issued.
 2. The Applicant shall at the time of Application provide the information requested on a NBTSDC application form regarding the proposed use(s) and the previous use (if any), of the property, including the following:
 - a. A description of each of the previous and proposed uses for the property for which the Permit is being sought with sufficient detail to allow calculation of trip generation for the entire property under the previous use and for the proposed use(s) of the Development.
 - b. For residential uses, the number of residential dwellings, including type (i.e., single family, multi-family, manufactured housing, etc.).
 - c. For non-residential uses, the number of units (i.e., number of square feet, students, movie screens, vehicle fueling positions, beds, etc.) for the land use as listed in Appendix B (i.e., office, shopping center, etc.) included in the Development.
- B. The uses listed and described in this subsection are exempt, either partially or fully, from payment of

the NBTSDC. Any Applicant seeking an exemption under this Section shall request that exemption, in writing, no later than the time of application for the Building Permit. Where Development consists of only part of one or more of the uses described in this Section, only that/those portion(s) of the Development that qualify under this Section are eligible for an exemption. The balance of the Development that does not qualify for any exemption under this Section shall be subject to the full NBTSDC.

1. Remodeling or replacement of existing structures (including mobile homes) except to the extent that the remodeling or replacement creates demands on the transportation system greater than those of the existing use of the property;
2. Temporary uses which do not exceed ninety days in a calendar year;
3. Temporary construction facilities as determined by the Director;
4. A transit improvement which has the impact of removing vehicle trips or reducing vehicle miles of travel on the county's major roadway system, as approved by the Director;
5. Construction, remodeling or expansion of federal or state facilities and uses otherwise exempt from taxation by counties;
6. Relocation due to government acquisition of the entire previous use as part of a project listed in Appendix C, to the extent the use at the new site does not exceed the size or impact of the previous use. Any additional size or impact shall be subject to the charge.

050 Amount.

- A. Except as otherwise provided in this Chapter, the amount of the NBTSDC due shall be calculated by: 1) determining the category of the proposed use from the list in Appendix B; 2) determining the NBTSDC rate per unit for that use in Appendix B; and 3) determining the number of units for the proposed use. The NBTSDC rate per unit, multiplied by the number of units for the use, shall be the NBTSDC charge.
- B. For new development for which a previous use existed on the property, the amount of the NBTSDC due shall be determined by calculating the NBTSDC of the previous use(s) on the property and subtracting that sum from the NBTSDC for all of the proposed use(s) as provided in Paragraph A above. Except as provided for in subsection C of this section, the proposed use and the previous use shall be determined based on the rates listed in Appendix B.
- C. In the event the Director determines that a particular use does not have a basis for NBTSDC calculation stated in Appendix B the Director shall either:
 1. Determine the NBTSDC based on the use listed in Appendix B most similar in trip generation; or
 2. At the election (and expense) of the applicant, consider an alternate NBTSDC based on a traffic study to estimate the weekday average person trip generation of a same or similar use verified by a registered traffic engineer. In the event an alternate NBTSDC is utilized, the Director may make such adjustments as deemed applicable in consideration of location, size and other appropriate factors.
 - a. The applicant's traffic study methodology must be consistent with Appendix A and follow standard professional traffic engineering practice.
 - b. The applicant's study must provide complete and detailed documentation, including verifiable data. Supporting documentation must rely upon generally accepted sampling methods, sources of information, demographics, growth projections, and techniques of analysis.
 - c. The NBTSDC shall be determined according to the methodology set forth in Appendix A, applied to the trip generation determined by the traffic study.
 3. If all of the above criteria are not met, the Director shall provide the Applicant a written decision explaining the basis for rejecting the proposed study, and shall determine the NBTSDC according to subsection C.1 above.
- D. It is recognized that single structures may include more than one use. In such event the Director for purposes of establishing the NBTSDC shall proportion the uses accordingly.
- E. Beginning on the effective date and notwithstanding any other provision, the rates per unit for each land use set forth in Appendix B shall on July 1 of each succeeding year be adjusted based on the annual review as described in section 140 below.

060 Payment.

- A. Unless deferred, the charge imposed is due and payable at the time of issuance of a building permit by the county. Except as otherwise provided in this chapter, no building permit shall be issued for a development subject to this charge unless the charge is first paid in full.
- B. Notwithstanding subsection A of this section, in those cases where the amount due exceeds the amount of NBTSDC on a single family detached residence (ITE Code 210), the applicant may request a payment deferral. The request must be made in writing to the Director no later than the time of application for a building permit. The Director shall grant deferral of the North Bethany Transportation System Development Charge, however, any deferred charge shall be paid in full prior to the issuance of an occupancy permit. The amount of NBTSDC due on deferred obligations shall be the amount in effect at the time of issuance of the occupancy permit. Deferred NBTSDC obligations shall not be eligible for internal financing or bancrofting as provided in subsection C unless so requested at the time of application for deferral.
- C. Any NBTSDC may be eligible for internal financing or a bancrofting agreement pursuant to ORS 223.205 through 223.785, the Bancroft Bonding Act. Any installment or bancroft agreement provided by this section shall have an interest rate as determined, at the time of the application, by the chief county financial officer and in recognition of the then current market rates and costs associated with the administration of such agreements. Applications for an agreement, as provided in this chapter, must be made at the time of building permit application, or occupancy permit if permitted pursuant to subsection B of this section. No applications made subsequent to issuance of the building permit, or occupancy permit if allowed by subsection B of this section, shall be considered. Any NBTSDC using a financing agreement may be filed as a lien pursuant to ORS 223.230.

070 Credit.

An applicant for a building permit, or occupancy permit if deferral has been granted, shall be entitled to a credit against the charge for constructing eligible capital improvements as defined in this section. Credit eligibility shall be determined by the Director.

- A. A transportation capital improvement constructed on a public road, and accepted by the county, is eligible for credit provided it meets all the following criteria, and the requirements 070(B):
 - 1. The Director determines that the timing, location, design and scope of the improvement is consistent with and furthers the objectives of the NBTSDC.
 - 2. The improvement is required to fulfill a condition of development approval issued by the County.
 - 3. The improvement must provide an improvement or part of an improvement listed on the NBTSDC project list.
 - 4. The applicant shall have the burden of demonstrating in its application for credit that a particular improvement qualifies for credit.
 - 5. Improvements, including travel lanes and bike lanes, must be at ultimate alignment, line and grade. No credit shall be granted for interim improvements.
 - 6. No credit shall be granted for minor realignments not designated on the comprehensive plan.
 - 7. No more than 13.5 percent of the total eligible construction cost shall be creditable for survey, engineering, and inspection.
 - 8. No credits shall be granted for storm sewer improvements that are also eligible for stormwater SDC credits.
- B. The Director shall provide credit for the documented, reasonable cost of construction of all or part of a qualified public improvement listed in Appendix C. Road right-of-way required to be dedicated pursuant to the applicable comprehensive plan or development conditions is eligible as follows:
 - 1. To the extent an improvement is located neither on nor contiguous to the property that is the subject of development approval, the reasonable market value of land purchased by the applicant from a third party and necessary to complete that improvement is creditable.

2. Road right-of-way located on or contiguous to the property that is the subject of development approval shall be eligible for credit to the extent necessary to construct the facility. Credit for such right of way shall be allowed based on market value as determined by the county tax records.
- C. For an improvement that is eligible for both TDT and NBTSDC credits, the TDT credits shall be calculated first. Total credits, including NBTSDC credits, together with TDT credits, shall not be issued in an amount that exceeds the eligible capital improvement cost for which the credits were issued.

080 Credit Application and Administration.

- A. All requests for credit vouchers must be in writing and filed with the Director not more than ninety days after acceptance of the improvement. Improvement acceptance shall be in accordance with the practices, procedures and standards of the county. The amount of any credit shall be determined by the Director and based upon the subject improvement contract documents, and other appropriate information, provided by the applicant for the credit. In the request, the Applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements of this section. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the Director's opinion, the improvement(s) meets the requirements of this section and the Director concurs with the proposed value of the improvement(s), a NBTSDC Credit shall be granted for the eligible amount. The value of the NBTSDC Credits under this Section shall be determined by the Director based on the actual cost of construction and right of way, as applicable, as verified by receipts and other credible evidence submitted by the Applicant. Upon a finding by the Director that the contract amounts, including payments for right of way, exceed prevailing market rates for a similar project, the credit shall be based upon market rates.
- B. The Director shall respond to the Applicant's request in writing within 30 days of receipt of a technically complete request. The Director shall provide a written explanation of the decision on the NBTSDC Credit request.
- C. Upon approval, the Director shall provide the applicant with a credit voucher, on a form provided by the department. The original of the credit voucher shall be retained by the department. The credit voucher shall state a dollar amount that may be applied against any NBTSDC imposed against the subject property. In no event shall a subject property be entitled to redeem credit vouchers in excess of the NBTSDC imposed. Credits are limited to the amount of the charge attributable to the development of the specific lot or parcel for which the credit is sought and shall not be a basis for any refund.
- D. A credit shall have no cash or monetary value. A credit shall only apply against the NBTSDC and its only value is to be used to reduce the NBTSDC otherwise due, subject to all conditions, limitations, and requirements of this chapter.
- E. North Bethany Transportation System Development Charge credits may not be used for Transportation Development Tax obligations or for payment of other system development charges.
- F. Transportation Development Tax credits may not be used for payment of North Bethany Transportation System Development Charge obligations.
- G. When issued by the Director, a credit shall be the personal property of the applicant. Credits shall remain the personal property of the applicant unless transferred by the applicant or its authorized agent as transferor. Any person claiming the right to redeem a credit shall have the burden of demonstrating that any credit issued to another person has been transferred to him or her.
- H. Credits shall be apportioned against the property that was subject to the requirement to construct an improvement eligible for credit. Unless otherwise requested by the applicant, apportionment against lots or parcels constituting the property shall be proportional to anticipated average weekday trips generated by the respective lots or parcels. Upon written application to the Director, however, credits shall be reapportioned from any lot or parcel to any other lot or parcel within the confines of the property originally eligible for the credit. In the case of multi-phase development, excess credit generated in one phase may be applied to reduce the NBTSDC in subsequent phases of the original development project. Reapportionment shall be noted on the original credit voucher retained by the department.
- I. Credits originally apportioned against property within the North Bethany Sub-area may be transferred to

any other property within the North Bethany Sub-area provided that:

1. A request for the transfer of a credit voucher must be made in writing to the Director signed by the person who owns the credit. The request for transfer of a credit voucher shall contain all the information necessary to establish that such a transfer is allowable under this subsection. The burden of proof that a transfer is allowable is on the applicant. The Director shall respond in writing to the applicant's request for transfer within 30 days of receipt of the request.
2. A credit voucher may not be transferred to a property outside the identified North Bethany Transportation System Development Charge district as identified by the map in Appendix E.
3. When a credit voucher or portion of a credit voucher is transferred a notation shall be placed on the initial credit voucher that a transfer has been made. The amount transferred shall be deducted from the credit voucher.
4. When a transfer occurs a new credit voucher shall be issued for the transferred credit amount.
 - a. The new credit voucher shall note the property to which the initial credit was assigned, subsequent transfers shall also note the property to which the initial credit was assigned.
 - b. The new credit voucher shall note the credit voucher number from which it was transferred, if multiple transfers occur each credit voucher number shall be noted.
 - c. The new credit voucher shall have the same expiration date as the initial credit voucher.
 - d. Apportionment against lots or parcels constituting the property to which a transfer has been made is allowed as described in subsection H of this section.
5. A transferred credit voucher shall follow all rules regarding redemption of credits.
6. The County may charge a fee for administering the transfer of credits.
- J. Any credit must be redeemed not later than the issuance of the building permit or, if deferral was permitted pursuant to Section 060, issuance of the occupancy permit. The applicant is responsible for presentation of any credit prior to issuance of the building or occupancy permit. Except as provided in Section 110, under no circumstances shall any credit redemption be considered after issuance of a building permit or, if deferral was granted, issuance of an occupancy permit.
- K. Credit vouchers shall expire on the date ten years after the acceptance of the applicable improvement. No extension of this deadline shall be granted.

090 Dedicated fund.

The county shall create a dedicated fund entitled "North Bethany Transportation System Development Charge Fund," herein "fund." All moneys derived from this charge shall be placed in the fund. NBTSDC revenue, including interest on the fund, shall be used for no purpose other than those activities described as, or for the benefit of, extra capacity facilities as defined herein.

100 Use of Revenues.

- A. Any capital improvement being funded wholly or in part with revenues from this North Bethany Transportation System Development Charge shall be included in the NBTSDC Capital Improvement Projects List, adopted as Appendix C to this Ordinance, and shall include, for each project, the estimated cost, timing and percentage of costs eligible to be funded with revenues from the NBTSDC. The NBTSDC Capital Improvement Projects List may be modified at any time by resolution and order of the Board of County Commissioners.
- B. NBTSDC revenues may be used for purposes that include, but are not limited to, the following, for any project on the Projects List:
 1. design and construction plan preparation;
 2. permitting;
 3. land and materials acquisition, including any costs of acquisition or condemnation;
 4. construction of transportation capital improvements;
 5. design and construction of new streets, transit facilities, sanitary sewers, drainage facilities, or other public improvements required by the construction of transportation capital improvements;
 6. relocating utilities required by the construction of improvements, for which the county is legally obligated to pay under easement, franchise or law;

7. landscaping required or designed as part of the project;
 8. construction management and inspection;
 9. surveying, soils and material testing;
 10. acquisition of capital equipment that is an intrinsic part of a facility;
 11. demolition that is part of the construction of any of the improvements on this list;
 12. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the county to provide money to construct or acquire transportation facilities.
- C. NBTSDC revenue may be spent for direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodologies and capital improvement project list, and the costs of collecting and accounting for system development charges expenditures.
- D. Money on deposit in the NBTSDC fund shall not be used for:
1. any expenditure that would be classified as a maintenance or repair expense; or
 2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- E. NBTSDC revenues shall be spent on improvements identified in the project list (Appendix C).

110 Refunds.

Refunds of the NBTSDC may be made upon initiation of the Director or upon written application filed with the Director. Refunds shall be allowed upon a finding by the Director that there was clerical error in the calculation of the NBTSDC. Refunds shall be allowed for failure to redeem a credit voucher or offset provided the claim for refund is in writing and actually received by the appropriate jurisdiction within thirty days of the date of issuance of the building permit or occupancy permit if deferral was granted. No refund shall be granted for any reason other than those expressly provided for herein.

130 Collection.

- A. Notwithstanding issuance of a building or occupancy permit without payment, the NBTSDC liability shall survive and be a personal obligation of the permittee.
- B. Intentional failure to pay the charge within sixty days of the due date shall result in a penalty equal to fifty percent of the charge. Interest shall accrue from the sixty-day point at the legal rate established by statute.
- C. In addition to an action at law and any statutory rights, the county may:
1. Refuse to issue any permits of any kind to the delinquent party for any development;
 2. Refuse to honor any credits held by the delinquent party for any development;
 3. Condition any development approval of the delinquent party on payment in full, including penalties and interest;
 4. Revoke any previous deferrals issued to the delinquent party, in which case the amount immediately shall be due, and refuse to issue any new deferrals.
- D. For purposes of this section, delinquent party shall include any person controlling a delinquent corporate permittee, including but not limited to any partnership, limited liability company or joint venture and, conversely, any corporation or entity controlled by a delinquent individual permittee.

140 Annual review.

- A. The county shall provide an annual accounting of the North Bethany Transportation System Development Charge. This shall be completed by January 1 of each year, and account for the previous fiscal year. The annual accounting shall include:
1. A list of the amount spent on each project funded, in whole or in part, with NBTSDC revenues; and
 2. The gross revenue collected from the NBTSDC, the amount of outstanding credits and net NBTSDC revenue; and
 3. The costs of complying with the System Development Charge provisions (ORS 223.297 to 223.314, as described in ORS 223.307) and other administrative expenses.

- B. Beginning July 1, 2013 and notwithstanding any other provision, the NBTSDC rates per unit for each land use set forth in Appendix B shall on July 1 of each succeeding year be adjusted automatically based on a five-year moving average of the NBTSDC index described in Appendix E. A final product ending in \$0.49 or less shall be rounded down to the nearest dollar, \$0.50 or more up to the next dollar. The NBTSDC index shall be calculated based on a combination of the following indices:
1. The Oregon Composite Construction Cost Index reflecting the cost of materials (weighted 50%),
 2. The U.S. Bureau of Labor Statistics Employment Cost Index for Private Industry Workers, by Occupational Group and Industry, Construction Group reflecting the cost of labor (weighted 30%), and;
 3. The average annual change in total real market value of Washington County real property as estimated from data published by the Washington County Department of Assessment and Taxation reflecting the cost of right-of-way (weighted 20%). In the event the above index factors use a different base year (i.e., calendar year or fiscal year), the most recent year with complete data shall be used.
- C. Beginning no later than the 2015-2016 fiscal year, and at intervals no longer than every five years thereafter, the annual review shall include a more comprehensive review of the North Bethany transportation funding plan. The 5-year comprehensive review shall consider whether additional revenues are need to fund the extra capacity improvements described in the NBTSDC project list, and ensure that revenues do not significantly exceed projected identified project needs. In so doing, the county shall consider:
1. The anticipated construction costs of facilities, based on most recent construction cost estimates and bids for similar improvements;
 2. Additional or further engineering of the projects on the project list;
 3. Receipt of funds from other sources for construction of NBTSDC facilities;
 4. Any new information about anticipated development;
 5. The impact of facilities already completed, or expected to be completed;
 6. TDT credits issued with the North Bethany area; and
 7. NBTSDC credits issued.
 8. The type and density of residential and other development that is built, approved, and planned.

Upon completion of this 5-year comprehensive review the county shall consider such amendments, including adjustment to the charge imposed herein, as are necessary to address changing conditions.

150 Review of Decisions; Appeals.

- A. Review of Expenditures.
1. Any citizen or other interested person may challenge an expenditure of NBTSDC revenues as being in violation of the provisions of the NBTSDC provided a written petition for review is filed with the Board of Commissioners of the County within two years of the expenditure. The petition shall identify with reasonable certainty the expenditure, the relevant facts and the specific provision alleged to have been violated.
 2. The Board shall order an investigation and direct that within sixty days of receipt of the petition a written report be filed recommending appropriate action. Within thirty days of receipt of the report, the Board shall conduct a hearing to determine whether the expenditure was proper. At least ten days notice of the hearing, including a copy of the report, shall be mailed to the petitioner. Petitioner shall have a reasonable opportunity to present his or her position at the hearing.
 3. The Board may adopt rules of procedure governing the hearing including that the hearing may be continued if necessary to further address the issues.
 4. The petitioner shall have the burden of proof. Evidence and argument shall be limited to grounds specified in the petition. The Board shall issue a written decision stating the basis for its conclusion and directing appropriate action be taken.
 5. Review of the Board decision shall be as provided in ORS 34.010 to 34.100.
- B. Review of decisions of the Director:

1. Discretionary decisions of the Director shall be in writing and mailed by regular mail to the last known address of the applicant.
 2. Any person aggrieved by a discretionary decision of the Director may appeal the decision to the county hearings officer. The appeal shall be in writing and must be filed with the Director within fourteen days of the date the Director's decision was mailed.
 3. The appeal shall state the relevant facts, applicable ordinance provisions and relief sought. The appeal shall be heard by the county hearings officer in the same manner as provided for development permit applications. The county may by resolution establish a reasonable appeal fee.
 4. The appellant shall have the burden of proving that an error was committed resulting in substantial prejudice.
 5. In an appeal of a decision to deny a credit, the applicant shall have the burden of demonstrating that the particular improvement qualified for the credit. The Director may deny the credit requested, in whole or in part, if it is determined that the credit application does not meet the credit eligibility requirements or that the improvement for which the credit is requested is not on the Project List in Appendix C. An appeal from the Director's decision shall be heard by the county hearings officer in the manner provided in this section.
- C. The decision of the hearings officer shall be reviewable solely under ORS 34.010 through 34.100 in the Circuit Court of the county.

WASHINGTON COUNTY

North Bethany Transportation System Development Charge Methodology Report