



City Commission Agenda

for

January 6, 2009

Please Note: The City Commission agenda format allows citizens to speak on each issue prior to Commission action. We encourage your participation. Please keep your remarks concise and to the topic under consideration.

CALL TO ORDER: 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

NEIGHBORHOOD COUNCILS

1. Miscellaneous reports and announcements.

PUBLIC HEARINGS

2. Ord. 3026, Adopting 40 CFR Part 403 Supplementing Ordinance 2645 pertaining to Title 13, Chapters, 2, 12, 14, 18, 20, and 22 of the Official Code of the City of Great Falls. Updates the legal authority required by the Environmental Protection Agency. Action: Conduct public hearing and adopt or deny Ord.3026. **(Presented by: Jim Rearden)**
3. Tyndall Addition, Phase 1, located along the westerly extension of 37th Avenue Northeast consisting of 10 single-family lots. **(Presented by: Bill Walters)**
 - A. Res. 9788, Annexes said property. Action: Adopt or deny Res. 9788 and approve the Subdivision Plat and accompanying Annexation Agreement.
 - B. Ord. 3023, Assign zoning classification of R-3 Single-family high density district. Action: Adopt or deny Ord. 3023.
4. Res. 9802, Conditional Use Permit to allow a Worship Facility on Lot 8, Block 307, Original Townsite to Great Falls (525 1st Avenue North). Action: Conduct public hearing and adopt or deny Res. 9802. **(Presented by: Bill Walters)**
5. Res. 9803, Conditional use Permit to allow a Contractor Yard, Type I on Lot 3, Block 754, Great Falls Tenth Addition (1308 6th Avenue South). Action: Conduct public hearing and adopt to deny Res. 9803. **(Presented by: Bill Walters)**

OLD BUSINESS

NEW BUSINESS

ORDINANCES/RESOLUTIONS

6. Ord. 3029, Rezone Parcel Mark No. CC, Section 14, T20N, R3E (City-owned parcel along Overlook Drive). Rezone property from PLI Public lands and institutional district to M-2 Mixed-use transitional

district. Action: Accept Ord. 3029 on first reading and set public hearing for February 3, 2009. **(Presented by: Bill Walters)**

- 7.
8. Res. 9808, Recover costs incurred in removal and disposal of nuisance weeds located at 3425 4th Avenue North. Action: Adopt or deny Res. 9808. **(Presented by: Coleen Balzarini)**
- 9.

CONSENT AGENDA *The Consent Agenda is made up of routine day-to-day items that require Commission action. Items may be pulled from the Consent Agenda for separate discussion/vote by any Commissioner.*

10. Minutes, , 2008, Commission meeting.
11. Total Expenditures of \$ for the period of 2008, to include claims over \$5000, in the amount of \$
12. Contracts list.
- 13.
- 14.

Action: Approve Consent Agenda or remove items for further discussion and approve remaining items.

BOARDS & COMMISSIONS

15. Reappointments, Regional Airport Authority Board. Reappoint Jeff Mangan and Raymond Wahlert to three-year terms through December 31, 2011.
16. Miscellaneous reports and announcements.

CITY MANAGER

17. Miscellaneous reports and announcements.

PETITIONS AND COMMUNICATIONS *(Public comment on any matter that is not on the agenda of the meeting and that is within the jurisdiction of the City Commission. Please keep your remarks to a maximum of 5 minutes)*

18. Miscellaneous reports and announcements.

CITY COMMISSION

19. Miscellaneous reports and announcements.

MOTION TO ADJOURN



Item: Ordinance 3026 – Adopting 40 CFR Part 403 Supplementing Ordinance 2645 Pertaining to Title 13, Chapters 2, 12, 14, 18, 20 and 22 of the Official Code of the City of Great Falls, Montana

From: Chris Sorensen, Environmental Program Coordinator

Initiated By: Chris Sorensen, Environmental Program Coordinator

Presented By: Jim Rearden, Public Works Director

Action Requested: City Commission vacate public hearing for Ordinance 3026 pending EPA review

Suggested Motion:

1. Commissioner moves:

“I move the City Commission vacate the public hearing on Ordinance 3026, pending EPA review.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

Staff Recommendation: Staff recommends that the City Commission vacate the public hearing on Ordinance 3026, pending EPA review.

Background: The EPA conducted a Pretreatment Audit of the Industrial Pretreatment Program administered by the City of Great Falls in April, 2008. As a result of said audit, the EPA required the City to update the pretreatment legal authority found in Title 13, Chapters 2, 12, 14, 18, 20 and 22 of the Official Code of the City of Great Falls.

The Industrial Pretreatment Program is codified under 40 CFR 403. The EPA delegates the City of Great Falls Public Works Department to administer this program at the local level. Subsequent to the first reading, the EPA notified the City of Great Falls that they would like to review, incorporate any needed changes and approve the final draft prior to presentation to the City Commission for final adoption. Adoption of 40 CFR 403 fulfills the EPA requirement and ensures that the City of Great Falls is adequately implementing and enforcing its program.

Concurrences: City Attorney

Fiscal Impact: None.

Alternatives: None, due to EPA pending approval.

Attachments/Exhibits: Ordinance 3026

ORDINANCE 3026

**AN ORDINANCE ADOPTING 40 CFR PART 403 SUPPLEMENTING
ORDINANCE 2645 PERTAINING TO TITLE 13, CHAPTERS 2,
12, 14, 18, 20 AND 22 OF THE OFFICIAL CODE OF THE
CITY OF GREAT FALLS, MONTANA**

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

That Title 40 Protection of Environment, Code of Federal Regulations, Part 403, is hereby adopted, supplementing Ordinance 2645 passed and adopted by the Great Falls City Commission on August 17, 1993, pertaining to Title 13, Chapters 2, 12, 14, 18, 20 and 22 of the Official Code of the City of Great Falls pertaining to Water and Sewers. 40 CFR 403 is, by reference, attached hereto in its entirety as Exhibit "A."

**PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS,
MONTANA, this 6th day of January, 2009.**

Dona R. Stebbins, Mayor

ATTEST:

Lisa Kunz, City Clerk

(SEAL OF THE CITY)

APPROVED FOR LEGAL CONTENT:

David V. Gliko, City Attorney

State of Montana)
County of Cascade :ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 3026 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6th day of January, 2009, and approved by the Mayor of said City on the 6th day of January, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6th day of January, 2009.

Lisa Kunz, City Clerk

(SEAL OF CITY)

State of Montana)
County of Cascade : ss
City of Great Falls)

Lisa Kunz, being first duly sworn, deposes and says: That on the 6th day of January, 2009, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk she did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 3026 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

- On the Bulletin Board, first floor, Civic Center Building;
- On the Bulletin Board, first floor, Cascade County Court House;
- On the Bulletin Board, Great Falls Public Library

Lisa Kunz, City Clerk

(SEAL OF CITY)

Exhibit “A”

PART 403--GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

§ 403.1 Purpose and applicability.

(a) This part implements sections 204(b)(1)(C), 208(b)(2) (C)(iii), 301(b)(1)(A)(ii), 301(b)(2) (A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L. 95–217) or “The Act”. It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

(b) This regulation applies:

(1) To pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in §403.3;

(2) To POTWs which receive wastewater from sources subject to National Pretreatment Standards;

(3) To States which have or are applying for National Pollutant Discharge Elimination System (NPDES) programs approved in accordance with section 402 of the Act; and

(4) To any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which Discharge to a sewer which is not connected to a POTW Treatment Plant.

[46 FR 9439, Jan. 28, 1981, as amended at 48 FR 2776, Jan. 21, 1983; 60 FR 33932, June 29, 1995]

§ 403.2 Objectives of general pretreatment regulations.

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

§ 403.3 Definitions.

For the purposes of this part:

(a) Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR part 401 shall apply to this regulation.

(b) The term *Act* means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*

(c) The term *Approval Authority* means the Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program.

(d) The term *Approved POTW Pretreatment Program* or *Program* or *POTW Pretreatment Program* means a program administered by a POTW that meets the criteria established in this regulation (§§403.8 and 403.9) and which has been approved by a Regional Administrator or State Director in accordance with §403.11 of this regulation.

(e) The term *Best Management Practices* or *BMPs* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in §403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(f) The term *Control Authority* refers to:

(1) The POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of §403.11; or

(2) The Approval Authority if the Submission has not been approved.

(g) The term *Director* means the chief administrative officer of a State or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act and an approved State pretreatment program.

(h) The term *Water Management Division Director* means one of the Directors of the Water Management Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

(i) The term *Indirect Discharge* or *Discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.

(j) The term *Industrial User* or *User* means a source of Indirect Discharge.

(k) The term *Interference* means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

(l) The term *National Pretreatment Standard*, *Pretreatment Standard*, or *Standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to §403.5.

(m)(1) The term *New Source* means any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, *provided that*:

(i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs

(m)(1)(ii) or (m)(1)(iii) of this section, but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous onsite construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(n) The terms *NPDES Permit* or *Permit* means a permit issued to a POTW pursuant to section 402 of the Act.

(o) The term *NPDES State* means a State (as defined in 40 CFR 122.2) or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act.

(p) The term *Pass Through* means a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

(q) The term *Publicly Owned Treatment Works* or *POTW* means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(r) The term *POTW Treatment Plant* means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(s) The term *Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by §403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with §403.6(e).

(t) The term *Pretreatment requirements* means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

(u) The term *Regional Administrator* means the appropriate EPA Regional Administrator.

(v) *Significant Industrial User*. (1) Except as provided in paragraphs (v)(2) and (v)(3) of this section, the term Significant Industrial User means:

(i) All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

(ii) Any other Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority on the basis that the Industrial User has a

reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(2) The Control Authority may determine that an Industrial User subject to categorical Pretreatment Standards under §403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(i) The Industrial User, prior to the Control Authority's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(ii) The Industrial User annually submits the certification statement required in §403.12(q) together with any additional information necessary to support the certification statement; and

(iii) The Industrial User never discharges any untreated concentrated wastewater.

(3) Upon a finding that an Industrial User meeting the criteria in paragraph (v)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an Industrial User or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such Industrial User is not a Significant Industrial User.

(w) The term *Submission* means:

(1) A request by a POTW for approval of a Pretreatment Program to the EPA or a Director;

(2) A request by a POTW to the EPA or a Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or

(3) A request to the EPA by an NPDES State for approval of its State pretreatment program.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 5132, Feb. 10, 1984; 49 FR 28059, July 10, 1984; 51 FR 20430, June 4, 1986; 51 FR 23760, July 1, 1986; 52 FR 1600, Jan. 14, 1987; 53 FR 40610, Oct. 17, 1988; 55 FR 30129, July 24, 1990; 70 FR 60191, Oct. 14, 2005]

§ 403.4 State or local law.

Nothing in this regulation is intended to affect any Pretreatment Requirements, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Act or this regulation. States with an NPDES permit program approved in accordance with section 402 (b) and (c) of the Act, or States requesting NPDES programs, are responsible for developing a State pretreatment program in accordance with §403.10 of this regulation.

§ 403.5 National pretreatment standards: Prohibited discharges.

(a)(1) *General prohibitions.* A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

(2) *Affirmative Defenses.* A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this section where the User can demonstrate that:

(i) It did not know or have reason to know that its Discharge, alone or in conjunction with a discharge or discharges from other sources, would cause Pass Through or Interference; and

(ii)(A) A local limit designed to prevent Pass Through and/or Interference, as the case may be, was developed in accordance with paragraph (c) of this section for each pollutant in the User's Discharge that caused Pass Through or

Interference, and the User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or

(B) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed in accordance with paragraph (c) of this section for the pollutant(s) that caused the Pass Through or Interference, the User's Discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

(b) *Specific prohibitions.* In addition, the following pollutants shall not be introduced into a POTW:

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21;

(2) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40 °C (104 °F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(c) *When specific limits must be developed by POTW.* (1) Each POTW developing a POTW Pretreatment Program pursuant to §403.8 shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

(2) All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW Treatment Plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's NPDES permit or sludge use or disposal practices.

(3) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(4) POTW's may develop Best Management Practices (BMPs) to implement paragraphs (c)(1) and (c)(2) of this section. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and section 307(d) of the Act.

(d) *Local limits.* Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c) above, such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act.

(e) EPA enforcement actions under section 309(f) of the Clean Water Act.

If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to

correct the violation, EPA may take appropriate enforcement action under the authority provided in section 309(f) of the Clean Water Act.

[46 FR 9439, Jan. 28, 1981, as amended at 51 FR 20430, June 4, 1986; 52 FR 1600, Jan. 14, 1987; 55 FR 30129, July 24, 1990; 60 FR 33932, June 29, 1995; 70 FR 60192, Oct. 14, 2005]

§ 403.6 National pretreatment standards: Categorical standards.

National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR chapter I, subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part.

(a) *Category Determination Request* —(1) *Application Deadline*. Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, the Industrial User or POTW may request that the Water Management Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. If an existing Industrial User adds or changes a process or operation which may be included in a subcategory, the existing Industrial User must request this certification prior to commencing discharge from the added or changed processes or operation. A New Source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Water Management Division Director or Director, as appropriate, within 30 days of notification.

(2) *Contents of Application*. Each request shall contain a statement:

(i) Describing which subcategories might be applicable; and

(ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(3) *Deficient requests*. The Water Management Division Director or Director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or Director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the Director, the request for a determination shall be denied.

(4) *Final decision*. (i) When the Water Management Division Director or Director receives a submittal he or she will, after determining that it contains all of the information required by paragraph (2) of this section, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or Director will then make a written determination of the applicable subcategory and state the reasons for the determination.

(ii) Where the request is submitted to the Director, the Director shall forward the determination described in this paragraph to the Water Management Division Director who may make a final determination. The Water Management Division Director may waive receipt of these determinations. If the Water Management Division Director does not modify the Director's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the Director's decision is final.

(iii) Where the request is submitted by the Industrial User or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the Director's decision, the Water Management Division Director's decision will be final.

(iv) The Water Management Division Director or Director, as appropriate, shall send a copy of the determination to the affected Industrial User and the POTW. Where the final determination is made by the Water Management Division Director, he or she shall send a copy of the determination to the Director.

(5) *Requests for hearing and/or legal decision.* Within 30 days following the date of receipt of notice of the final determination as provided for by paragraph (a)(4)(iv) of this section, the Requester may submit a petition to reconsider or contest the decision to the Regional Administrator who shall act on such petition expeditiously and state the reasons for his or her determination in writing.

(b) *Deadline for compliance with categorical standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N. Direct dischargers with NPDES Permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in §403.3(m). New Sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

(c)(1) *Concentration and mass limits.* Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the standard.

(2) When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

(3) A Control Authority calculating equivalent mass-per-day limitations under paragraph (c)(2) of this section shall calculate such limitations by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(4) A Control Authority calculating equivalent concentration limitations under paragraph (c)(2) of this section shall calculate such limitations by dividing the mass limitations derived under paragraph (c)(3) of this section by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.

(5) When the limits in a categorical Pretreatment Standard are expressed only in terms of pollutant concentrations, an Industrial User may request that the Control Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Control Authority. The Control Authority may establish equivalent mass limits only if the Industrial User meets all the following conditions in paragraph (c)(5)(i)(A) through (c)(5)(i)(E) of this section.

(i) To be eligible for equivalent mass limits, the Industrial User must:

(A) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(B) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;

(C) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and long-term average production rate must be representative of current operating conditions;

(D) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and

(E) Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

(ii) An Industrial User subject to equivalent mass limits must:

(A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

(B) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

(C) Continue to record the facility's production rates and notify the Control Authority whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in paragraph (c)(5)(i)(C) of this section. Upon notification of a revised production rate, the Control Authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

(D) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraph (c)(5)(i)(A) of this section so long as it discharges under an equivalent mass limit.

(iii) A Control Authority which chooses to establish equivalent mass limits:

(A) Must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;

(B) Upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(C) May retain the same equivalent mass limit in subsequent control mechanism terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to paragraph (d) of this section. The Industrial User must also be in compliance with §403.17 (regarding the prohibition of bypass).

(iv) The Control Authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

(6) The Control Authority may convert the mass limits of the categorical Pretreatment Standards at 40 CFR parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users under the following conditions. When converting such limits to concentration limits, the Control Authority must use the concentrations listed in the applicable subparts of 40 CFR parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by paragraph (d) of this section.

(7) Equivalent limitations calculated in accordance with paragraphs (c)(3), (c)(4), (c)(5) and (c)(6) of this section are deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. The Control Authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the Industrial User must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(8) Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

(9) Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

(d) *Dilution prohibited as substitute for treatment.* Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a Discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

(e) *Combined wastestream formula.* Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the monthly average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and monthly average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

(1) *Alternative limit calculation.* For purposes of these formulas, the “average daily flow” means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

(i) *Alternative concentration limit.*

$$C_T = \left(\frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where

C_T =the alternative concentration limit for the combined wastestream.

C_i =the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i.

F_i =the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D =the average daily flow (at least a 30-day average) from: (a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a Categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC v. Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see appendix D of this part):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T =The average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N =The total number of regulated streams.

(ii) *Alternative mass limit.*

$$M_T = \left(\sum_{i=1}^N M_i \right) \left(\frac{F_T - F_D}{\sum_{i=1}^N F_i} \right)$$

where

M_T =the alternative mass limit for a pollutant in the combined wastestream.

M_i =the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i =the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D =the average daily flow (at least a 30-day average) from: (a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC v. Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see appendix D of this part):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T =The average flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N=The total number of regulated streams.

(2) *Alternate limits below detection limit.* An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(3) *Self-monitoring.* Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of §403.12(g).

(4) *Choice of monitoring location.* Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the Industrial User may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable Pretreatment Standards. If the Industrial User chooses to monitor the segregated process wastestream, it shall apply the applicable categorical Pretreatment Standard. If the User chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The Industrial User may change monitoring points only after receiving approval from the Control Authority. The Control Authority shall ensure that any change in an Industrial User's monitoring point(s) will not allow the User to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 21037, May 17, 1984; 49 FR 31224, Aug. 3, 1984; 51 FR 20430, June 4, 1986; 51 FR 23760, July 1, 1986; 53 FR 40610, Oct. 17, 1988; 55 FR 30129, July 24, 1990; 58 FR 18017, Apr. 7, 1993; 70 FR 60192, Oct. 14, 2005]

§ 403.7 Removal credits.

(a) *Introduction* —(1) *Definitions.* For the purpose of this section:

(i) *Removal* means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

(ii) *Sludge requirements* shall mean the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) and State regulations contained in any State sludge management plan prepared pursuant to subtitle D of SWDA); the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

(2) *General.* Any POTW receiving wastes from an Industrial User to which a categorical Pretreatment Standard(s) applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical Pretreatment Standard(s). The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected Industrial User shall calculate its revised discharge limits in accordance with paragraph (a)(4) of this section. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical Pretreatment Standard if the categorical Pretreatment Standard so specifies.

(3) *Conditions for authorization to give removal credits.* A POTW is authorized to give removal credits only if the following conditions are met:

(i) *Application.* The POTW applies for, and receives, authorization from the Approval Authority to give a removal credit in accordance with the requirements and procedures specified in paragraph (e) of this section.

(ii) *Consistent removal determination.* The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with paragraph (b) of this section.

(iii) *POTW local pretreatment program.* The POTW has an approved pretreatment program in accordance with and to the extent required by part 403; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in paragraph (d) of this section.

(iv) *Sludge requirements.* The granting of removal credits will not cause the POTW to violate the local, State and Federal Sludge Requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with

applicable Sludge Requirements, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s) as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal credits, the additional sludge management costs will not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants.

(A) For any pollutant listed in appendix G section I of this part for the use or disposal practice employed by the POTW, when the requirements in 40 CFR part 503 for that practice are met.

(B) For any pollutant listed in appendix G section II of this part for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in appendix G section II of this part in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in appendix G section II of this part.

(C) For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 CFR part 258.

(v) *NPDES permit limitations.* The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the Approval Authority that even though it is not presently in compliance with applicable limitations and conditions in its NPDES permit, it will be in compliance when the Industrial User(s) to whom the removal credit would apply is required to meet its categorical Pretreatment Standard(s), as modified by the removal credit provision.

(4) *Calculation of revised discharge limits.* Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1-r}$$

where:

x=pollutant discharge limit specified in the applicable categorical Pretreatment Standard

r=removal credit for that pollutant as established under paragraph (b) of this section (percentage removal expressed as a proportion, *i.e.* , a number between 0 and 1)

y=revised discharge limit for the specified pollutant (expressed in same units as x)

(b) *Establishment of removal credits; demonstration of Consistent Removal—(1) Definition of Consistent Removal.* “Consistent Removal” shall mean the average of the lowest 50 percent of the removal measured according to paragraph (b)(2) of this section. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (b)(2) of this section must be reported and used in computing Consistent Removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the Approval Authority. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between 8 and 12, the average of the lowest 6 removals shall be used. If there are less than 8 samples with concentrations equal to or above the limit of measurement, the Approval Authority may approve alternate means for demonstrating Consistent Removal. The term “measurement” refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(2) *Consistent Removal data.* Influent and effluent operational data demonstrating Consistent Removal or other information, as provided for in paragraph (b)(1) of this section, which demonstrates Consistent Removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

(i) *Representative data; seasonal.* The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

(ii) *Representative data; quality and quantity.* The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate Consistent Removal as provided for in paragraph (b)(1) of this section.

(iii) *Sampling procedures: Composite.* (A) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(B)(1) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the Approval Authority determines that this schedule will not be most representative of the actual operation of the POTW Treatment Plant, an alternative sampling schedule will be approved.

(2) In addition, upon the Approval Authority's concurrence, a POTW may utilize an historical data base amassed prior to the effective date of this section provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(C) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

(iv) *Sampling procedures: Grab.* Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes.

(v) *Analytical methods.* The sampling referred to in paragraphs (b)(2) (i) through (iv) of this section and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(vi) *Calculation of removal.* All data acquired under the provisions of this section must be submitted to the Approval Authority. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, where such data cannot be obtained, Removal may be demonstrated using other data or procedures subject to concurrence by the Approval Authority as provided for in paragraph (b)(1) of this section.

(c) *Provisional credits.* For pollutants which are not being discharged currently (*i.e.* , new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of paragraph (b) of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of paragraph (b) of this section, the authority to grant provisional removal credits shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(d) *Exception to POTW Pretreatment Program Requirement.* A POTW required to develop a local pretreatment program by §403.8 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

(1) All Industrial Users who are currently subject to a categorical Pretreatment Standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in §403.12(b)(1) through (7) (except new or modified industrial users must only submit the information required by §403.12(b)(1) through (6)), pertaining to the categorical Pretreatment Standard as modified by the removal credit. The Industrial Users shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standard(s) as modified by the removal credit;

(2) The POTW must have submitted to the Approval Authority an application for pretreatment program approval meeting the requirements of §§403.8 and 403.9 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's NPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

(3) The POTW must:

(i) Compile and submit data demonstrating its consistent removal in accordance with paragraph (b) of this section;

(ii) Comply with the conditions specified in paragraph (a)(3) of this section; and

(iii) Submit a complete application for removal credit authority in accordance with paragraph (e) of this section;

(4) If a POTW receives authority to grant conditional removal credits and the Approval Authority subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in paragraphs (d)(2) and (3) of this section, the authority to grant conditional removal credits shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority.

(5) If a POTW grants conditional removal credits and the POTW or the Approval Authority subsequently makes a final determination, after appropriate notice, that the Industrial User(s) failed to comply with the conditions in paragraph (d)(1) of this section, the conditional credit shall be terminated by the POTW or the Approval Authority for the non-complying Industrial User(s) and the Industrial User(s) to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time, not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s), as may be specified by the Approval Authority. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the Industrial User(s) or the Industrial User(s) had demonstrated substantial compliance.

(6) The Approval Authority may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the Approval Authority. This review may occur at any time in accordance with the procedures of §403.11, but in no event later than the time of any pretreatment program approval or any NPDES permit reissuance thereunder.

(e) *POTW application for authorization to give removal credits and Approval Authority review*—(1) *Who must apply.* Any POTW that wants to give a removal credit must apply for authorization from the Approval Authority.

(2) *To whom application is made.* An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the Approval Authority.

(3) *When to apply.* A POTW may apply for authorization to give or modify removal credits at any time.

(4) *Contents of the application.* An application for authorization to give removal credits must be supported by the following information:

(i) *List of pollutants.* A list of pollutants for which removal credits are proposed.

(ii) *Consistent Removal data.* The data required pursuant to paragraph (b) of this section.

(iii) *Calculation of revised discharge limits.* Proposed revised discharge limits for each affected subcategory of Industrial Users calculated in accordance with paragraph (a)(4) of this section.

(iv) *Local Pretreatment Program Certification.* A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at paragraph (d) of this section.

(v) *Sludge management certification.* A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in paragraph (a)(3)(iv) of this section.

(vi) *NPDES permit limit certification.* A certification that the granting of removal credits will not cause a violation of the POTW's NPDES permit limits and conditions as required in paragraph (a)(3)(v) of this section.

(5) *Approval Authority review.* The Approval Authority shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of §403.11 and shall, in no event, have more than 180 days from public notice of an application to complete review.

(6) *EPA review of State removal credit approvals.* Where the NPDES State has an approved pretreatment program, the Regional Administrator may agree in the Memorandum of Agreement under 40 CFR 123.24(d) to waive the right to review and object to submissions for authority to grant removal credits. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTW's except to the extent 40 CFR 123.24(d) allows such restriction.

(7) Nothing in these regulations precludes an Industrial User or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

(f) *Continuation and withdrawal of authorization* —(1) *Effect of authorization.* (i) Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical Pretreatment Standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in paragraph (a)(3)(iv) of this section or its NPDES permit limits and conditions as required by paragraph (a)(3)(v) of this section. If a POTW elects at a later time to extend removal credits to a certain categorical Pretreatment Standard, industrial subcategory or one or more Industrial Users that initially were not granted removal credits, it must notify the Approval Authority.

(2) *Inclusion in POTW permit.* Once authority is granted, the removal credits shall be included in the POTW's NPDES Permit as soon as possible and shall become an enforceable requirement of the POTW's NPDES permit. The removal credits will remain in effect for the term of the POTW's NPDES permit, provided the POTW maintains compliance with the conditions specified in paragraph (f)(4) of this section.

(3) *Compliance monitoring.* Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the Approval Authority, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

(4) *Modification or withdrawal of removal credits* —(i) *Notice of POTW.* The Approval Authority shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)(3) of this section or other relevant information available to it, the Approval Authority determines:

(A) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

(B) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's NPDES Permit.

(ii) *Corrective action.* If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the Approval Authority shall either withdraw such discharge limits or require modifications in the revised discharge limits.

(iii) *Public notice of withdrawal or modification.* The Approval Authority shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all Industrial Users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a hearing. Following such notice and withdrawal or modification, all Industrial Users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standards, as appropriate, and shall achieve compliance with such limits within a

reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s) as may be specified by the Approval Authority.

(g) *Removal credits in State-run pretreatment programs under §403.10(e)*. Where an NPDES State with an approved pretreatment program elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program (as provided in §403.10(e)), the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of paragraph (a)(3) of this section.

(h) *Compensation for overflow*. "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW Treatment Plant. POTWs which at least once annually Overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraphs (h)(1) or (h)(2) of this section. However, paragraph (h) of this section shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant;

(1) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur at the POTW or at a sewer to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

(i) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an Overflow event can reasonably be expected to occur, Discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (h)(1)(iii) of this section, to insure that Industrial Users are containing, ceasing or reducing operations during POTW System Overflow; and

(iii) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, State Director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or

(2)(i) The Consistent Removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \frac{8760 - Z}{8760}$$

Where:

r_m = POTW's Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (b)(2) of this section

r_c = removal corrected by the Overflow factor

Z = hours per year that Overflows occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and

(ii) The POTW is complying with all NPDES permit requirements and any additional requirements in any order or decree, issued pursuant to the Clean Water Act affecting combined sewer overflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the Combined Sewer Overflow Control Policy.

[49 FR 31221, Aug. 3, 1984, as amended at 51 FR 20430, June 4, 1986; 53 FR 42435, Nov. 5, 1987; 58 FR 9386, Feb. 19, 1993; 58 FR 18017, Apr. 7, 1993; 70 FR 60193, Oct. 14, 2005]

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

(a) *POTWs required to develop a pretreatment program.* Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the NPDES State exercises its option to assume local responsibilities as provided for in §403.10(e). The Regional Administrator or Director may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent Interference with the POTW or Pass Through.

(b) *Deadline for Program Approval.* A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing NPDES permit but in no case later than July 1, 1983. POTWs whose NPDES permits are modified under section 301(h) of the Act shall have a Pretreatment Program within three (3) years as provided for in 40 CFR part 125, subpart G. POTWs identified after July 1, 1983 as being required to develop a POTW Pretreatment Program under paragraph (a) of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Approval Authority of such identification. The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and shall be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. The POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA to incorporate the approved Program as enforceable conditions of the Permit. The modification of a POTW's NPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedure in §403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

(d) *Incorporation of compliance schedules in permits.* [Reserved]

(e) *Cause for reissuance or modification of Permits.* Under the authority of section 402(b)(1)(C) of the Act, the Approval Authority may modify, or alternatively, revoke and reissue a POTW's Permit in order to:

(1) Put the POTW on a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(2) Coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW Pretreatment Program;

(3) Incorporate a modification of the permit approved under section 301(h) or 301(i) of the Act;

(4) Incorporate an approved POTW Pretreatment Program in the POTW permit; or

(5) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(6) Incorporate the removal credits (established under §403.7) in the POTW permit.

(f) *POTW pretreatment requirements.* A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(1) *Legal authority.* The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

(i) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;

(ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

(iii) Control through Permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under §403.3(v), this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such User except as follows.

(A)(1) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Require the same effluent limitations;

(iv) Require the same or similar monitoring; and

(v) In the opinion of the POTW, are more appropriately controlled under a general control mechanism than under individual control mechanisms.

(2) To be covered by the general control mechanism, the Significant Industrial User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with §403.12(e)(2) for a monitoring waiver for a pollutant neither present nor expected to be present in the Discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the Discharge is not effective in the general control mechanism until after the POTW has provided written notice to the Significant Industrial User that such a waiver request has been granted in accordance with §403.12(e)(2). The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific Significant Industrial User meets the criteria in paragraphs (f)(1)(iii)(A)(1) through (5) of this section, and a copy of the User's written request for coverage for 3 years after the expiration of the general control mechanism. A POTW may not control a Significant Industrial User through a general control mechanism where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for Industrial Users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (§§403.6(e) and 403.15).

(B) Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(1) Statement of duration (in no case more than five years);

(2) Statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(3) Effluent limits, including Best Management Practices, based on applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

(4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the Discharge in accordance with §403.12(e)(2), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general Pretreatment Standards in part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

(5) Statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines;

(6) Requirements to control Slug Discharges, if determined by the POTW to be necessary.

(iv) Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-

monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in §403.12.

(v) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under §403.12(o) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

(vi)(A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTW's shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements.

(B) Pretreatment requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) of this section, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations in this part. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

(vii) Comply with the confidentiality requirements set forth in §403.14.

(2) *Procedures.* The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

(i) Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request;

(ii) Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under paragraph (f)(2)(i) of this section. This information shall be made available to the Regional Administrator or Director upon request;

(iii) Notify Industrial Users identified under paragraph (f)(2)(i) of this section, of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. Within 30 days of approval pursuant to 40 CFR 403.8(f)(6), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

(iv) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in §403.12;

(v) Randomly sample and analyze the effluent from Industrial Users and conduct surveillance activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards. Inspect and sample the effluent from each Significant Industrial User at least once a year, except as otherwise specified below:

(A) Where the POTW has authorized the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard in accordance with §403.12(e)(3), the POTW must sample for the waived pollutant(s) at least once during the term of the Categorical Industrial User's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the Industrial User's wastewater based on changes that occur in the User's operations, the POTW must immediately begin at least annual effluent monitoring of the User's Discharge and inspection.

(B) Where the POTW has determined that an Industrial User meets the criteria for classification as a Non-Significant Categorical Industrial User, the POTW must evaluate, at least once per year, whether an Industrial User continues to meet the criteria in §403.3(v)(2).

(C) In the case of Industrial Users subject to reduced reporting requirements under §403.12(e)(3), the POTW must randomly sample and analyze the effluent from Industrial Users and conduct inspections at least once every two years. If the Industrial User no longer meets the conditions for reduced reporting in §403.12(e)(3), the POTW must immediately begin sampling and inspecting the Industrial User at least once a year.

(vi) Evaluate whether each such Significant Industrial User needs a plan or other action to control Slug Discharges. For Industrial Users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; additional Significant Industrial Users must be evaluated within 1 year of being designated a Significant Industrial User. For purposes of this subsection, a Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions. The results of such activities shall be available to the Approval Authority upon request. Significant Industrial Users are required to notify the POTW immediately of any changes at its facility affecting potential for a Slug Discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(A) Description of discharge practices, including non-routine batch Discharges;

(B) Description of stored chemicals;

(C) Procedures for immediately notifying the POTW of Slug Discharges, including any Discharge that would violate a prohibition under §403.5(b) with procedures for follow-up written notification within five days;

(D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

(vii) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under §403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

(viii) Comply with the public participation requirements of 40 CFR part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annual public notification in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of Industrial Users which, at any time during the previous 12 months, were in significant noncompliance with applicable Pretreatment requirements. For the purposes of this provision, a Significant Industrial User (or any Industrial User which violates paragraphs (f)(2)(viii)(C), (D), or (H) of this section) is in significant noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

(B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(C) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

(E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

(3) *Funding.* The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (f) (1) and (2) of this section. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately (see §403.9(b)).

(4) *Local limits.* The POTW shall develop local limits as required in §403.5(c)(1), or demonstrate that they are not necessary.

(5) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

(i) Describe how the POTW will investigate instances of noncompliance;

(ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

(iii) Identify (by title) the official(s) responsible for each type of response;

(iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2).

(6) The POTW shall prepare and maintain a list of its Industrial Users meeting the criteria in §403.3(v)(1). The list shall identify the criteria in §403.3(v)(1) applicable to each Industrial User and, where applicable, shall also indicate whether the POTW has made a determination pursuant to §403.3(v)(2) that such Industrial User should not be considered a Significant Industrial User. The initial list shall be submitted to the Approval Authority pursuant to §403.9 or as a non-substantial modification pursuant to §403.18(d). Modifications to the list shall be submitted to the Approval Authority pursuant to §403.12(i)(1).

(g) A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 51 FR 20429, 20430, June 4, 1986; 51 FR 23759, July 1, 1986; 53 FR 40612, Oct. 17, 1988; 55 FR 30129, July 24, 1990; 58 FR 18017, Apr. 7, 1993; 60 FR 33932, June 29, 1995; 62 FR 38414, July 17, 1997; 70 FR 59889, Oct. 13, 2005; 70 FR 60193, Oct. 14, 2005]

[§ 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.](#)

(a) *Who approves Program.* A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the information set forth in paragraphs (b)(1) through (4) of this section. This description shall be submitted to the Approval Authority which will make a determination on the request for program approval in accordance with the procedures described in §403.11.

(b) *Contents of POTW program submission.* The program description must contain the following information:

(1) A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in §403.8. This statement shall:

(i) Identify the provision of the legal authority under §403.8(f)(1) which provides the basis for each procedure under §403.8(f)(2);

(ii) Identify the manner in which the POTW will implement the program requirements set forth in §403.8, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and,

(iii) Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;

(2) A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;

(3) A brief description (including organization charts) of the POTW organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and

(4) A description of the funding levels and full- and part-time manpower available to implement the Program;

(c) *Conditional POTW program approval.* The POTW may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (b) of this section except that the requirements of paragraph (b) of this section, may be relaxed if the Submission demonstrates that:

(1) A limited aspect of the Program does not need to be implemented immediately;

(2) The POTW had adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and

(3) Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Approval Authority will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW Pretreatment Program and any removal allowances granted to the POTW, may be modified or withdrawn.

(d) *Content of removal allowance submission.* The request for authority to revise categorical Pretreatment Standards must contain the information required in §403.7(d).

(e) *Approval authority action.* Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b), and if appropriate, (d) of this section. Within 60 days after receiving the Submission, the Approval Authority shall make a preliminary determination of whether the Submission meets the requirements of paragraph (b) and, if appropriate, (d) of this section. If the Approval Authority makes the preliminary determination that the Submission meets these requirements, the Approval Authority shall:

(1) Notify the POTW that the Submission has been received and is under review; and

(2) Commence the public notice and evaluation activities set forth in §403.11.

(f) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (e) of this section, the Approval Authority determines that the Submission does not comply with the requirements of paragraph (b) or (c) of this section, and, if appropriate, paragraph (d), of this section, the Approval Authority shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the Submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of paragraphs (b), (c) of this section, and, if appropriate, paragraph (d) of this section.

(g) *Consistency with water quality management plans.* (1) In order to be approved the POTW Pretreatment Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR parts 130, 131, as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with 40 CFR part 403. In order to assure such consistency the Approval Authority shall solicit

the review and comment of the appropriate 208 Planning Agency during the public comment period provided for in §403.11(b)(1)(ii) prior to approval or disapproval of the Program.

(2) Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations and/or does not address pretreatment in a manner consistent with this regulation, the Approval Authority shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

[53 FR 9439, Jan. 28, 1981, as amended at 53 FR 40612, Oct. 17, 1988; 58 FR 18017, Apr. 7, 1993]

§ 403.10 Development and submission of NPDES State pretreatment programs.

(a) *Approval of State Programs.* No State NPDES program shall be approved under section 402 of the Act after the effective date of these regulations unless it is determined to meet the requirements of paragraph (f) of this section. Notwithstanding any other provision of this regulation, a State will be required to act upon those authorities which it currently possesses before the approval of a State Pretreatment Program.

(b) [Reserved]

(c) *Failure to request approval.* Failure of an NPDES State with a permit program approved under section 402 of the Act prior to December 27, 1977, to seek approval of a State Pretreatment Program and failure of an approved State to administer its State Pretreatment Program in accordance with the requirements of this section constitutes grounds for withdrawal of NPDES program approval under section 402(c)(3) of the Act.

(d) [Reserved]

(e) *State Program in lieu of POTW Program.* Notwithstanding the provision of §403.8(a), a State with an approved Pretreatment Program may assume responsibility for implementing the POTW Pretreatment Program requirements set forth in §403.8(f) in lieu of requiring the POTW to develop a Pretreatment Program. However, this does not preclude POTW's from independently developing Pretreatment Programs.

(f) *State Pretreatment Program requirements.* In order to be approved, a request for State Pretreatment Program Approval must demonstrate that the State Pretreatment Program has the following elements:

(1) *Legal authority.* The Attorney General's Statement submitted in accordance with paragraph (g)(1)(i) of this section shall certify that the Director has authority under State law to operate and enforce the State Pretreatment Program to the extent required by this part and by 40 CFR 123.27. At a minimum, the Director shall have the authority to:

(i) Incorporate POTW Pretreatment Program conditions into permits issued to POTW's; require compliance by POTW's with these incorporated permit conditions; and require compliance by Industrial Users with Pretreatment Standards;

(ii) Ensure continuing compliance by POTW's with pretreatment conditions incorporated into the POTW Permit through review of monitoring reports submitted to the Director by the POTW in accordance with §403.12 and ensure continuing compliance by Industrial Users with Pretreatment Standards through the review of self-monitoring reports submitted to the POTW or to the Director by the Industrial Users in accordance with §403.12;

(iii) Carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW Permit; and carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance with Pretreatment Standards;

(iv) Seek civil and criminal penalties, and injunctive relief, for noncompliance by the POTW with pretreatment conditions incorporated into the POTW Permit and for noncompliance with Pretreatment Standards by Industrial Users as set forth in §403.8(f)(1)(vi). The Director shall have authority to seek judicial relief for noncompliance by Industrial Users even when the POTW has acted to seek such relief (e.g., if the POTW has sought a penalty which the Director finds to be insufficient);

(v) Approve and deny requests for approval of POTW Pretreatment Programs submitted by a POTW to the Director;

(vi) Deny and recommend approval of (but not approve) requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in §403.13; and

(vii) Approve and deny requests for authority to modify categorical Pretreatment Standards to reflect removals achieved by the POTW in accordance with the criteria and procedures set forth in §§403.7, 403.9 and 403.11.

(2) *Procedures.* The Director shall have developed procedures to carry out the requirements of sections 307 (b) and (c), and 402(b)(1), 402(b)(2), 402(b)(8), and 402(b)(9) of the Act. At a minimum, these procedures shall enable the Director to:

(i) Identify POTW's required to develop Pretreatment Programs in accordance with §403.8(a) and notify these POTW's of the need to develop a POTW Pretreatment Program. In the absence of a POTW Pretreatment Program, the State shall have procedures to carry out the activities set forth in §403.8(f)(2);

(ii) Provide technical and legal assistance to POTW's in developing Pretreatment Programs;

(iii) Develop compliance schedules for inclusion in POTW Permits which set forth the shortest reasonable time schedule for the completion of tasks needed to implement a POTW Pretreatment Program. The final compliance date in these schedules shall be no later than July 1, 1983;

(iv) Sample and analyze:

(A) Influent and effluent of the POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit (see §403.7); and

(B) The contents of sludge from the POTW and methods of sludge disposal and use to identify, independent of information supplied by the POTW, compliance or noncompliance with requirements applicable to the selected method of sludge management;

(v) Investigate evidence of violations of pretreatment conditions set forth in the POTW Permit by taking samples and acquiring other information as needed. This data acquisition shall be performed with sufficient care as to produce evidence admissible in an enforcement proceeding or in court;

(vi) Review and approve requests for approval of POTW Pretreatment Programs and authority to modify categorical Pretreatment Standards submitted by a POTW to the Director; and

(vii) Consider requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in §403.13.

(3) *Funding.* The Director shall assure that funding and qualified personnel are available to carry out the authorities and procedures described in paragraphs (f)(1) and (2) of this section.

(g) *Content of State Pretreatment Program submission.* The request for State Pretreatment Program approval will consist of:

(1)(i) A statement from the State Attorney General (or the Attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to implement the requirements of this part. The authorities cited by the Attorney General in this statement shall be in the form of lawfully adopted State statutes or regulations which shall be effective by the time of approval of the State Pretreatment Program; and

(ii) Copies of all State statutes and regulations cited in the above statement;

(iii) States with approved Pretreatment Programs shall establish Pretreatment regulations by November 16, 1989, unless the State would be required to enact or amend statutory provision, in which case, such regulations must be established by November 16, 1990.

(2) A description of the funding levels and full- and part-time personnel available to implement the program; and

(3) Any modifications or additions to the Memorandum of Agreement (required by 40 CFR 123.24) which may be necessary for EPA and the State to implement the requirements of this part.

(h) *EPA Action.* Any approved NPDES State requesting State Pretreatment Program approval shall submit to the Regional Administrator three copies of the Submission described in paragraph (g) of this section. Upon a preliminary determination that the Submission meets the requirements of paragraph (g) the Regional Administrator shall:

(1) Notify the Director that the Submission has been received and is under review; and

(2) Commence the program revision process set out in 40 CFR 123.62. For purposes of that section all requests for approval of State Pretreatment Programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

(i) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (h) of this section, EPA determines that the Submission does not comply with the requirements of paragraph (f) or (g) of this section EPA shall so notify the applying NPDES State in writing. This notification shall identify any defects in the Submission and advise the NPDES State of the means by which it can comply with the requirements of this part.

[46 FR 9439, Jan. 28, 1981, as amended at 51 FR 20429, June 4, 1986; 53 FR 40612, Oct. 17, 1988; 55 FR 30131, July 24, 1990; 58 FR 18017, Apr. 7, 1993; 60 FR 33932, June 29, 1995]

§ 403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization:

(a) *Deadline for review of submission.* The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of §403.9(b) and, where removal credit authorization is sought with §§403.7(e) and 403.9(d), to review the Submission. The Approval Authority shall review the Submission to determine compliance with the requirements of §403.8 (b) and (f), and, where removal credit authorization is sought, with §403.7. The Approval Authority may have up to an additional 90 days to complete the evaluation of the Submission if the public comment period provided for in paragraph (b)(1)(ii) of this section is extended beyond 30 days or if a public hearing is held as provided for in paragraph (b)(2) of this section. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of §403.9(b) and, in the case of a removal credit application, §§403.7(e) and 403.9(b).

(b) *Public notice and opportunity for hearing.* Upon receipt of a Submission the Approval Authority shall commence its review. Within 20 work days after making a determination that a Submission meets the requirements of §403.9(b) and, where removal allowance approval is sought, §§403.7(d) and 403.9(d), the Approval Authority shall:

(1) Issue a public notice of request for approval of the Submission;

(i) This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:

(A) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish and wildfish resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

(B) Publication of a notice of request for approval of the Submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that meaningful public notice.

(ii) The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the Submission.

(iii) All written comments submitted during the 30 day comment period shall be retained by the Approval Authority and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Approval Authority; and

(2) Provide an opportunity for the applicant, any affected State, any interested State or Federal agency, person or group of persons to request a public hearing with respect to the Submission.

(i) This request for public hearing shall be filed within the 30 day (or extended) comment period described in paragraph (b)(1)(ii) of this section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

(ii) The Approval Authority shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

(iii) Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for

approval of the Submission under paragraph (b)(1)(i)(B) of this section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(c) *Approval authority decision.* At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (a) of this section, the Approval Authority shall approve or deny the Submission based upon the evaluation in paragraph (a) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the Approval Authority may allow the requestor additional time to bring the Submission into compliance with applicable requirements.

(d) *EPA objection to Director's decision.* No POTW pretreatment program or authorization to grant removal allowances shall be approved by the Director if following the 30 day (or extended) evaluation period provided for in paragraph (b)(1)(ii) of this section and any hearing held pursuant to paragraph (b)(2) of this section the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. A copy of the Regional Administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(e) *Notice of decision.* The Approval Authority shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the Submission. In addition, the Approval Authority shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the Submission was published. The Approval Authority shall identify in any notice of POTW Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the POTW may make, in accordance with §403.7, for removal of pollutants subject to Pretreatment Standards.

(f) *Public access to submission.* The Approval Authority shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 51 FR 20429, June 4, 1986; 53 FR 40613, Oct. 17, 1988; 62 FR 38414, July 17, 1997]

§ 403.12 Reporting requirements for POTW's and industrial users.

(a) [Reserved]

(b) *Reporting requirements for industrial users upon effective date of categorical pretreatment standard—baseline report.* Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under §403.6(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)–(7) of this section. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)–(5) of this section. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in paragraphs (b) (4) and (5) of this section:

(1) *Identifying information.* The User shall submit the name and address of the facility including the name of the operator and owners;

(2) *Permits.* The User shall submit a list of any environmental control permits held by or for the facility;

(3) *Description of operations.* The User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes.

(4) *Flow measurement.* The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(i) Regulated process streams; and

(ii) Other streams as necessary to allow use of the combined wastestream formula of §403.6(e). (See paragraph (b)(5)(iv) of this section.)

The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5) *Measurement of pollutants.* (i) The user shall identify the Pretreatment Standards applicable to each regulated process;

(ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standard;

(iii) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(iv) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of §403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with §403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;

(v) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator;

(vi) The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(vii) The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW;

(6) *Certification.* A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (l) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional Pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and

(7) *Compliance schedule.* If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

(i) Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (§403.7), the combined wastestream formula (§403.6(e)), and/or a Fundamentally Different Factors variance (§403.13) at the time the User submits the report required by paragraph (b) of this section, the information required by paragraphs (b)(6) and (7) of this section shall pertain to the modified limits.

(ii) If the categorical Pretreatment Standard is modified by a removal allowance (§403.7), the combined wastestream formula (§403.6(e)), and/or a Fundamentally Different Factors variance (§403.13) after the User submits the report required by paragraph (b) of this section, any necessary amendments to the information requested by paragraphs (b)(6) and (7) of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

(c) *Compliance schedule for meeting categorical Pretreatment Standards.* The following conditions shall apply to the schedule required by paragraph (b)(7) of this section:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(2) No increment referred to in paragraph (c)(1) of this section shall exceed 9 months.

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.

(d) *Report on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in paragraphs (b) (4)–(6) of this section. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in §403.6(c), this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

(e) *Periodic reports on continued compliance.* (1) Any Industrial User subject to a categorical Pretreatment Standard (except a Non-Significant Categorical User as defined in §403.3(v)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may modify the months during which the above reports are to be submitted.

(2) The Control Authority may authorize the Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

(i) The Control Authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

(ii) The monitoring waiver is valid only for the duration of the effective period of the Permit or other equivalent individual control mechanism, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.

(iii) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

The request for a monitoring waiver must be signed in accordance with paragraph (l) of this section and include the certification statement in §403.6(a)(2)(ii). Non-detectable sample results may only be used as a demonstration that a

pollutant is not present if the EPA approved method from 40 CFR part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

(iv) Any grant of the monitoring waiver by the Control Authority must be included as a condition in the User's control mechanism. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Control Authority for 3 years after expiration of the waiver.

(v) Upon approval of the monitoring waiver and revision of the User's control mechanism by the Control Authority, the Industrial User must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR 403.12(e)(1).

(vi) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of paragraph (e)(1) of this section or other more frequent monitoring requirements imposed by the Control Authority; and notify the Control Authority.

(vii) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

(3) The Control Authority may reduce the requirement in paragraph (e)(1) of this section to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the Approval Authority, where the Industrial User meets all of the following conditions:

(i) The Industrial User's total categorical wastewater flow does not exceed any of the following:

(A) 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches;

(B) 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

(C) 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical Pretreatment Standard for which approved local limits were developed by a POTW in accordance with §403.5(c) and paragraph (d) of this section;

(ii) The Industrial User has not been in significant noncompliance, as defined in §403.8(f)(2)(viii), for any time in the past two years;

(iii) The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to paragraph (g)(3) of this section;

(iv) The Industrial User must notify the Control Authority immediately of any changes at its facility causing it to no longer meet conditions of paragraphs (e)(3)(i) or (ii) of this section. Upon notification, the Industrial User must immediately begin complying with the minimum reporting in paragraph (e)(1) of this section; and

(v) The Control Authority must retain documentation to support the Control Authority's determination that a specific Industrial User qualifies for reduced reporting requirements under paragraph (e)(3) of this section for a period of 3 years after the expiration of the term of the control mechanism.

(4) For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in §403.6(c), the report required by paragraph (e)(1) shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by paragraph (e)(1) shall include the User's actual average production rate for the reporting period.

(f) *Notice of potential problems, including slug loading.* All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by §403.5(b), by the Industrial User.

(g) *Monitoring and analysis to demonstrate continued compliance.* (1) Except in the case of Non-Significant Categorical Users, the reports required in paragraphs (b), (d), (e), and (h) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under paragraphs (b)(6) and (d) of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

(2) If sampling performed by an Industrial User indicates a violation, the User shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation. Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:

(i) The Control Authority performs sampling at the Industrial User at a frequency of at least once per month; or

(ii) The Control Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.

(3) The reports required in paragraphs (b), (d), (e) and (h) of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil & grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

(4) For sampling required in support of baseline monitoring and 90-day compliance reports required in paragraphs (b) and (d) of this section, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraphs (e) and (h) of this section, the Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

(5) All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR part 136 and amendments thereto or with any other test procedures approved by the Administrator. (See, §§136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(6) If an Industrial User subject to the reporting requirement in paragraph (e) or (h) of this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Control Authority, using

the procedures prescribed in paragraph (g)(5) of this section, the results of this monitoring shall be included in the report.

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical Industrial User.

(i) *Annual POTW reports.* POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the following:

(1) An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial Users are subject to categorical Pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements. The list must also identify Industrial Users subject to categorical Pretreatment Standards that are subject to reduced reporting requirements under paragraph (e)(3), and identify which Industrial Users are Non-Significant Categorical Industrial Users.

(2) A summary of the status of Industrial User compliance over the reporting period;

(3) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;

(4) A summary of changes to the POTW's pretreatment program that have not been previously reported to the Approval Authority; and

(5) Any other relevant information requested by the Approval Authority.

(j) *Notification of changed Discharge.* All Industrial Users shall promptly notify the Control Authority (and the POTW if the POTW is not the Control Authority) in advance of any substantial change in the volume or character of pollutants in their Discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under paragraph (p) of this section.

(k) *Compliance schedule for POTW's.* The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW Pretreatment Program required by §403.8.

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

(2) No increment referred to in paragraph (k)(1) of this section shall exceed nine months;

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Approval Authority including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Approval Authority.

(l) *Signatory requirements for Industrial User reports.* The reports required by paragraphs (b), (d), and (e) of this section shall include the certification statement as set forth in §403.6(a)(2)(ii), and shall be signed as follows:

(1) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (b), (d), and (e) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs (b), (d), and (e) of this section is a partnership, or sole proprietorship respectively.

(3) By a duly authorized representative of the individual designated in paragraph (l)(1) or (l)(2) of this section if:

(i) The authorization is made in writing by the individual described in paragraph (l)(1) or (l)(2);

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(iii) the written authorization is submitted to the Control Authority.

(4) If an authorization under paragraph (l)(3) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (l)(3) of this section must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(m) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraph (i) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the Pretreatment Program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to or together with the report being submitted.

(n) *Provisions Governing Fraud and False Statements:* The reports and other documents required to be submitted or maintained under this section shall be subject to:

(1) The provisions of 18 U.S.C. section 1001 relating to fraud and false statements;

(2) The provisions of sections 309(c)(4) of the Act, as amended, governing false statements, representation or certification; and

(3) The provisions of section 309(c)(6) regarding responsible corporate officers.

(o) *Record-keeping requirements.* (1) Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section, including documentation associated with Best Management Practices. Such records shall include for all samples:

(i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods use; and

(v) The results of such analyses.

(2) Any Industrial User or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator.

(3) Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs (b), (d), (e), and (h) of this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator.

(p)(1) The Industrial User shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12 (j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12 (b), (d), and (e).

(2) Dischargers are exempt from the requirements of paragraph (p)(1) of this section during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(4) In the case of any notification made under paragraph (p) of this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(q) *Annual certification by Non-Significant Categorical Industrial Users.* A facility determined to be a Non-Significant Categorical Industrial User pursuant to §403.3(v)(2) must annually submit the following certification statement, signed in accordance with the signatory requirements in paragraph (l) of this section. This certification must accompany any alternative report required by the Control Authority:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, to _____, _____ [month, days, year]:

(a) The facility described as _____ [facility name] met the definition of a non-significant categorical Industrial User as described in §403.3(v)(2); (b) the facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than

100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information:

(r) The Control Authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31225, Aug. 3, 1984; 51 FR 20429, June 4, 1986; 53 FR 40613, Oct. 17, 1988; 55 FR 30131, July 24, 1990; 58 FR 18017, Apr. 7, 1993; 60 FR 33932, June 29, 1995; 62 FR 38414, July 17, 1997; 70 FR 59889, Oct. 13, 2005; 70 FR 60195, Oct. 14, 2005]

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

(a) *Definition.* The term *Requester* means an Industrial User or a POTW or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.

(b) *Purpose and scope.* In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b). In some cases, information which may affect these Pretreatment Standards will not be available or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standards, making them either more or less stringent, as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical Pretreatment Standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the EPA.

(c) *Criteria* —(1) *General criteria.* A request for a variance based upon fundamentally different factors shall be approved only if:

(i) There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and

(ii) Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and

(iii) The request for a variance is made in accordance with the procedural requirements in paragraphs (g) and (h) of this section.

(2) *Criteria applicable to less stringent limits.* A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:

(i) The alternative limit requested is no less stringent than justified by the fundamental difference;

(ii) The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under §403.5;

(iii) The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment Standards; and

(iv) Compliance with the Standards (either by using the technologies upon which the Standards are based or by using other control alternatives) would result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(3) *Criteria applicable to more stringent limits.* A variance request for the establishment of limits more stringent than required by the Standards shall be approved only if:

(i) The alternative limit request is no more stringent than justified by the fundamental difference; and

(ii) Compliance with the alternative limit would not result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(d) *Factors considered fundamentally different.* Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the User's process wastewater:

(2) The volume of the User's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the User's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technology.

(e) *Factors which will not be considered fundamentally different.* A variance request or portion of such a request under this section may not be granted on any of the following grounds:

(1) The feasibility of installing the required waste treatment equipment within the time the Act allows;

(2) The assertion that the Standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this section;

(3) The User's ability to pay for the required waste treatment; or

(4) The impact of a Discharge on the quality of the POTW's receiving waters.

(f) *State or local law.* Nothing in this section shall be construed to impair the right of any state or locality under section 510 of the Act to impose more stringent limitations than required by Federal law.

(g) *Application deadline.* (1) Requests for a variance and supporting information must be submitted in writing to the Director or to the Administrator (or his delegate), as appropriate.

(2) In order to be considered, a request for a variance must be submitted no later than 180 days after the date on which a categorical Pretreatment Standard is published in the Federal Register.

(3) Where the User has requested a categorical determination pursuant to §403.6(a), the User may elect to await the results of the category determination before submitting a variance request under this section. Where the User so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to §403.6(a)(4).

(h) *Contents submission.* Written submissions for variance requests, whether made to the Administrator (or his delegate) or the Director, must include:

(1) The name and address of the person making the request;

(2) Identification of the interest of the Requester which is affected by the categorical Pretreatment Standard for which the variance is requested;

(3) Identification of the POTW currently receiving the waste from the Industrial User for which alternative discharge limits are requested;

(4) Identification of the categorical Pretreatment Standards which are applicable to the Industrial User;

(5) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

(6) The alternative discharge limits proposed by the Requester for each pollutant or pollutant parameter identified in paragraph (h)(5) of this section;

(7) A description of the Industrial User's existing water pollution control facilities;

(8) A schematic flow representation of the Industrial User's water system including water supply, process wastewater systems, and points of Discharge; and

(9) A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.

(i) *Deficient requests.* The Administrator (or his delegate) or the Director will only act on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the Administrator (or his delegate) or the Director that their requests are deficient and unless the time period is extended, will be given up to thirty days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the Administrator (or his delegate) or the Director, the request for a variance shall be denied.

(j) *Public notice.* Upon receipt of a complete request, the Administrator (or his delegate) or the Director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.

(1) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

(i) The POTW into which the Industrial User requesting the variance discharges;

(ii) Adjoining States whose waters may be affected; and

(iii) Designated 208 planning agencies, Federal and State fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

(2) The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(3) Following the comment period, the Administrator (or his delegate) or the Director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requester (and the Industrial User for which the variance is requested if different), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.

(k) *Review of requests by state.* (1) Where the Director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and Industrial User where they are not the same) and the POTW of the denial.

(2) Where the Director finds that fundamentally different factors do exist, he shall forward the request, with a recommendation that the request be approved, to the Administrator (or his delegate).

(l) *Review of requests by EPA.* (1) Where the Administrator (or his delegate) finds that fundamentally different factors do not exist, he shall deny the request for a variance and send a copy of his determination to the Director, to the POTW, and to the requester (and to the Industrial User, where they are not the same).

(2) Where the Administrator (or his delegate) finds that fundamentally different factors do exist, and that a partial or full variance is justified, he will approve the variance. In approving the variance, the Administrator (or his delegate) will:

(i) Prepare recommended alternative discharge limits for the Industrial User either more or less stringent than those prescribed by the applicable categorical Pretreatment Standard to the extent warranted by the demonstrated fundamentally different factors;

(ii) Provide the following information in his written determination:

(A) The recommended alternative discharge limits for the Industrial User concerned;

(B) The rationale for the adjustment of the Pretreatment Standard (including the reasons for recommending that the variance be granted) and an explanation of how the recommended alternative discharge limits were derived;

(C) The supporting evidence submitted to the Administrator (or his delegate); and

(D) Other information considered by the Administrator (or his delegate) in developing the recommended alternative discharge limits;

(iii) Notify the Director and the POTW of his or her determination; and

(iv) Send the information described in paragraphs (i)(2) (i) and (ii) of this section to the Requestor (and to the Industrial User where they are not the same).

(m) *Request for hearing.* (1) Within 30 days following the date of receipt of the notice of the decision of the Administrator's delegate on a variance request, the requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.

(2) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the findings of the Administrator's delegate the requester may submit a petition for a hearing to the Environmental Appeals Board (which is described in §1.25 of this title) within 30 days of the Regional Administrator's decision.

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 5132, Feb. 10, 1984; 50 FR 38811, Sept. 25, 1985; 51 FR 16030, Apr. 30, 1986; 54 FR 258, Jan. 4, 1989; 57 FR 5347, Feb. 13, 1992; 58 FR 18017, Apr. 7, 1993; 60 FR 33932, June 29, 1995; 70 FR 60198, Oct. 14, 2005]

§ 403.14 Confidentiality.

(a) *EPA authorities.* In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

(b) *Effluent data.* Information and data provided to the Control Authority pursuant to this part which is effluent data shall be available to the public without restriction.

(c) *State or POTW.* All other information which is submitted to the State or POTW shall be available to the public at least to the extent provided by 40 CFR 2.302.

§ 403.15 Net/Gross calculation.

(a) *Application.* Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (*i.e.* , adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph (b) of this section are met.

(b) *Criteria.* (1) Either:

(i) The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.

(4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

[70 FR 60198, Oct. 14, 2005]

§ 403.16 Upset provision.

(a) *Definition.* For the purposes of this section, *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) *Effect of an upset.* An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.

(c) *Conditions necessary for a demonstration of upset.* An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;

(2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;

(3) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):

(i) A description of the Indirect Discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

(iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(d) *Burden of proof.* In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

(e) *Reviewability of agency consideration of claims of upset.* In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

(f) *User responsibility in case of upset.* The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement

applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

[46 FR 9439, Jan. 28, 1981, as amended at 53 FR 40615, Oct. 17, 1988]

§ 403.17 Bypass.

(a) *Definitions.* (1) *Bypass* means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

(2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) *Bypass not violating applicable Pretreatment Standards or Requirements.* An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

(c) *Notice.* (1) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(d) *Prohibition of bypass.* (1) Bypass is prohibited, and the Control Authority may take enforcement action against an Industrial User for a bypass, unless;

(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(iii) The Industrial User submitted notices as required under paragraph (c) of this section.

(2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in paragraph (d)(1) of this section.

[53 FR 40615, Oct. 17, 1988, as amended at 58 FR 18017, Apr. 7, 1993]

§ 403.18 Modification of POTW pretreatment programs.

(a) *General.* Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's submission, as approved under §403.11.

(b) *Substantial modifications defined.* Substantial modifications include:

(1) Modifications that relax POTW legal authorities (as described in §403.8(f)(1)), except for modifications that directly reflect a revision to this Part 403 or to 40 CFR chapter I, subchapter N, and are reported pursuant to paragraph (d) of this section;

(2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of this section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under §403.5(c);

(3) Changes to the POTW's control mechanism, as described in §403.8(f)(1)(iii);

(4) A decrease in the frequency of self-monitoring or reporting required of industrial users;

(5) A decrease in the frequency of industrial user inspections or sampling by the POTW;

(6) Changes to the POTW's confidentiality procedures; and

(7) Other modifications designated as substantial modifications by the Approval Authority on the basis that the modification could have a significant impact on the operation of the POTW's Pretreatment Program; could result in an increase in pollutant loadings at the POTW; or could result in less stringent requirements being imposed on Industrial Users of the POTW.

(c) *Approval procedures for substantial modifications.* (1) The POTW shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description (see §403.9(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.

(2) The Approval Authority shall approve or disapprove the modification based on the requirements of §403.8(f) and using the procedures in §403.11(b) through (f), except as provided in paragraphs (c) (3) and (4) of this section. The modification shall become effective upon approval by the Approval Authority.

(3) The Approval Authority need not publish a notice of decision under §403.11(e) provided: The notice of request for approval under §403.11(b)(1) states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change.

(4) Notices required by §403.11 may be performed by the POTW provided that the Approval Authority finds that the POTW notice otherwise satisfies the requirements of §403.11.

(d) *Approval procedures for non-substantial modifications.* (1) The POTW shall notify the Approval Authority of any non-substantial modification at least 45 days prior to implementation by the POTW, in a statement similar to that provided for in paragraph (c)(1) of this section.

(2) Within 45 days after the submission of the POTW's statement, the Approval Authority shall notify the POTW of its decision to approve or disapprove the non-substantial modification.

(3) If the Approval Authority does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under paragraph (b)(7) of this section, the POTW may implement the modification.

(e) *Incorporation in permit.* All modifications shall be incorporated into the POTW's NPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 40 CFR 122.63(g).

[62 FR 38414, July 17, 1997]

[§ 403.19 Provisions of specific applicability to the Owatonna Waste Water Treatment Facility.](#)

(a) For the purposes of this section, the term "Participating Industrial Users" includes the following Industrial Users in the City of Owatonna, Minnesota: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Josten's Inc.—Southtown Facility; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company.

(b) For a Participating Industrial User discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota, when a categorical Pretreatment Standard is expressed in terms of pollutant concentration the City of Owatonna may convert the limit to a mass limit by multiplying the five-year, long-term average process flows of the Participating Industrial User (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical Pretreatment Standard. Participating Industrial Users must notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate

determined by Owatonna when it establishes a Participating Industrial User's initial mass limit. To remain eligible to receive equivalent mass limits the Participating Industrial User must maintain at least the same level of treatment as at the time the equivalent mass limit is established. Upon notification of a revised production rate from a Participating Industrial User, the City will reassess the appropriateness of the mass limit. Owatonna shall reestablish the concentration-based limit if a Participating Industrial User does not maintain at least the same level of treatment as when the equivalent mass limit was established.

(c) If a categorical Participating Industrial User of the Owatonna Waste Water Treatment Facility has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that pollutants regulated through categorical Pretreatment Standards, other than 40 CFR part 414, are not expected to be present in quantities greater than the background influent concentration to the industrial process, the City of Owatonna may reduce the sampling frequency specified in §403.8(f)(2)(v) to once during the term of the categorical Participating Industrial User's permit.

(d) If a Participating Industrial User is discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota and is subject to a categorical Pretreatment Standard other than one codified at 40 CFR part 414, the City of Owatonna may authorize the Participating Industrial User to forego sampling of a pollutant if the Participating Industrial User has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Participating Industrial User certifies on each report, with the following statement, that there has been no increase in the pollutant in its wastestream due to activities of the Participating Industrial User. The following statement is to be included as a comment to the periodic reports required by §403.12(e):

“Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR ___, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last periodic report under 40 CFR 403.12(e).”

(e) If the average daily loading from the Participating Industrial Users to the Owatonna Waste Water Treatment Facility is equal to or less than 0.68 pounds per day of chromium, 0.25 pounds per day of copper, 1.17 pounds per day of nickel, and 1.01 pounds per day of zinc, Owatonna may authorize a categorical Participating Industrial User to satisfy the reporting requirements of §403.12(e) with an annual report provided on a date specified by Owatonna, provided that the Participating Industrial User has no reasonable potential to violate a Pretreatment Standard for any pollutant for which reduced monitoring is being allowed, and has not been in Significant Noncompliance within the previous three years.

(f) The Owatonna Waste Water Treatment Facility in Owatonna, Minnesota shall post public notice of all Significant Noncompliance subject to the publication requirement in §403.8(f)(2)(vii) at the Minnesota Pollution Control Agency website for a period of one year, as soon as practicable upon identifying the violations. In addition, the Owatonna Waste Water Treatment Facility shall post an explanation of how Significant Noncompliance is determined, and a contact name and phone number for information regarding other, non-Significant Noncompliance violations. If a violation is not corrected within thirty (30) calendar days or results in pass through or interference at the Owatonna Waste Water Treatment Facility, publication must also be made in the format specified in §403.8(f)(2)(vii).

(g) The provisions of this section shall expire on October 6, 2005.

[65 FR 59747, Oct. 6, 2000]

[§ 403.20 Pretreatment Program Reinvention Pilot Projects Under Project XL.](#)

The Approval Authority may allow any publicly owned treatment works (POTW) that has a final “Project XL” agreement to implement a Pretreatment Program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in §403.18. The approved modified program must be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority must include a reopener clause in the POTW's NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program if the Approval Authority determines that the primary objectives of the Local Pilot Pretreatment Program are not being met or the “Project XL” agreement expires or is otherwise terminated.

[66 FR 50339, Oct. 3, 2001]

[Appendixes A–C to Part 403 \[Reserved\]](#)

[Appendix D to Part 403—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula](#)

The following industrial subcategories are considered to have dilute wastestreams for purposes of the combined wastestream formula. They either were or could have been excluded from categorical pretreatment standards pursuant to paragraph 8 of the Natural Resources Defense Council, Inc., et al. v. Costle Consent Decree for one or more of the following four reasons: (1) The pollutants of concern are not detectable in the effluent from the industrial user (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationales were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list is complete as of October 9, 1986. It will be updated periodically for the convenience of the reader.

Auto and Other Laundries (40 CFR part 444)

Carpet and Upholstery Cleaning

Coin-Operated Laundries and Dry Cleaning

Diaper Services

Dry Cleaning Plants except Rug Cleaning

Industrial Laundries

Laundry and Garment Services, Not Elsewhere Classified

Linen Supply

Power Laundries, Family and Commercial

*Electrical and Electronic Components*¹ (40 CFR part 469)

¹ The Paragraph 8 exemption for the manufacture of products in the Electrical and Electronic Components Category is for operations not covered by Electroplating/Metal Finishing pretreatment regulations (40 CFR parts 413/433).

Capacitors (Fluid Fill)

Carbon and Graphite Products

Dry Transformers

Ferrite Electronic Devices

Fixed Capacitors

Fluorescent Lamps

Fuel Cells

Incandescent Lamps

Magnetic Coatings

Mica Paper Dielectric

Motors, Generators, Alternators

Receiving and Transmitting Tubes

Resistance Heaters

Resistors

Switchgear

Transformer (Fluid Fill)

Metal Molding and Casting (40 CFR part 464)

Nickel Casting

Tin Casting

Titanium Casting

Gum and Wood Chemicals (40 CFR part 454)

Char and Charcoal Briquets

Inorganic Chemicals Manufacturing (40 CFR part 415)

Ammonium Chloride

Ammonium Hydroxide

Barium Carbonate

Calcium Carbonate

Carbon Dioxide

Carbon Monoxide and Byproduct Hydrogen

Hydrochloric Acid

Hydrogen Peroxide (Organic Process)

Nitric Acid

Oxygen and Nitrogen

Potassium Iodide

Sodium Chloride (Brine Mining Process)

Sodium Hydrosulfide

Sodium Hydrosulfite

Sodium Metal

Sodium Silicate

Sodium Thiosulfate

Sulfur Dioxide

Sulfuric Acid

Leather (40 CFR part 425)

Gloves

Luggage

Paving and Roofing (40 CFR part 443)

Asphalt Concrete

Asphalt Emulsion

Linoleum

Printed Asphalt Felt

Roofing

Pulp, Paper, and Paperboard, and Builders' Paper and Board Mills (40 CFR parts 430 and 431)

Groundwood-Chemi-Mechanical

Rubber Manufacturing (40 CFR part 428)

Tire and Inner Tube Plants

Emulsion Crumb Rubber

Solution Crumb Rubber

Latex Rubber

Small-sized General Molded, Extruded and Fabricated Rubber Plants,²

² Footnote: Except for production attributed to lead-sheathed hose manufacturing operations.

Medium-sized General Molded, Extruded and Fabricated Rubber Plants²

Large-sized General Molded, Extruded and Fabricated Rubber Plants²

Wet Digestion Reclaimed Rubber

Pan, Dry Digestion, and Mechanical Reclaimed Rubber

Latex Dipped, Latex-Extruded, and Latex-Molded Rubber³

³ Footnote: Except for production attributed to chromic acid form-cleaning operations.

Latex Foam⁴

⁴ Footnote: Except for production that generates zinc as a pollutant in discharge.

Soap and Detergent Manufacturing (40 CFR part 417)

Soap Manufacture by Batch Kettle

Fatty Acid Manufacture by Fat Splitting

Soap Manufacture by Fatty Acid

Neutralization

Glycerine Concentration

Glycerine Distillation

Manufacture of Soap Flakes and Powders

Manufacture of Bar Soaps

Manufacture of Liquid Soaps

Manufacture of Spray Dried Detergents

Manufacture of Liquid Detergents

Manufacture of Dry Blended Detergents

Manufacture of Drum Dried Detergents

Manufacture of Detergent Bars and Cakes

Textile Mills (40 CFR part 410)

Apparel manufacturing

Cordage and Twine

Padding and Upholstery Filling

Timber Products Processing (40 CFR part 429)

Barking Process

Finishing Processes

Hardboard—Dry Process

[51 FR 36372, Oct. 9, 1986]

[Appendix E to Part 403—Sampling Procedures](#)

I. Composite Method

A. It is recommended that influent and effluent operational data be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots should be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites should be flow proportional to either the stream flow at the time of collection of the influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

B. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample is taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based on the average of the daily flows during the same month of the previous year.

II. Grab Method

If composite sampling is not an appropriate technique, grab samples should be taken to obtain influent and effluent operational data. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes. The collection of influent grab samples should precede the collection of effluent samples by approximately one detention period except that where the detention period is greater than 24 hours such staggering of the sample collection may not be necessary or appropriate. The detention period should be based on a 24-hour average daily flow value. The average daily flow should in turn be based upon the average of the daily flows during the same month of the previous year. Grab sampling should be employed where the pollutants being evaluated are those, such as

cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interaction which take place after sample collection and affect the results.

[49 FR 31225, Aug. 3, 1984]

[Appendix F to Part 403 \[Reserved\]](#)

[Appendix G to Part 403—Pollutants Eligible for a Removal Credit](#)

I. Regulated Pollutants in Part 503 Eligible for a Removal Credit

Pollutants	Use or disposal practice		
	LA	SD	I
Arsenic	X	X	X
Beryllium			X
Cadmium	X		X
Chromium		X	X
Copper	X		
Lead	X		X
Mercury	X		X
Molybdenum	X		
Nickel	X	X	X
Selenium	X		
Zinc	X		
Total hydrocarbons			X ¹

Key:

LA—land application.

SD—surface disposal site without a liner and leachate collection system.

I—firing of sewage sludge in a sewage sludge incinerator.

¹The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons (or carbon monoxide) in subpart E in 40 CFR Part 503 are met when sewage sludge is fired in a sewage sludge incinerator:

Acrylonitrile, Idrin/Dieldrin(total), Benzene, Benzidine, Benzo(a)pyrene, Bis(2-chloroethyl)ether, Bis(2-ethylhexyl)phthalate, Bromodichloromethane, Bromoethane, Bromoform, Carbon tetrachloride, Chlordane, Chloroform, Chloromethane, DDD, DDE, DDT, Dibromochloromethane, Dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, Diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, Din-butyl phthalate, Endosulfan, Endrin, Ethylbenzene, Heptachlor, Heptachlor epoxide, Hexachlorobutadiene, Alphahexachlorocyclohexane, Beta-hexachlorocyclohexane, Hexachlorocyclopentadiene, Hexachloroethane, Hydrogen cyanide, Isophorone, Lindane, Methylene chloride, Nitrobenzene, N-Nitrosodimethylamine, N-Nitrosodi-n-propylamine, Pentachlorophenol, Phenol, Polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2,-tetrachloroethane, Tetrachloroethylene, Toluene, Toxaphene, Trichloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, and 2,4,6-Trichlorophenol.

II. Additional Pollutants Eligible for a Removal Credit

[Milligrams per kilogram—dry weight basis]

Pollutant	Use or disposal practice			
	LA	Surface disposal		I
		Unlined ¹	Lined ²	
Arsenic			³ 100	
Aldrin/Dieldrin (Total)	2.7			
Benzene	³ 16	140	3400	
Benzo(a)pyrene	15	³ 100	³ 100	
Bis(2-ethylhexyl)phthalate		³ 100	³ 100	
Cadmium		³ 100	³ 100	
Chlordane	86	³ 100	³ 100	
Chromium (total)	³ 100		³ 100	
Copper		³ 46	100	1400
DDD, DDE, DDT (Total)	1.2	2000	2000	
2,4 Dichlorophenoxy-acetic acid		7	7	
Fluoride	730			
Heptachlor	7.4			
Hexachlorobenzene	29			
Hexachlorobutadiene	600			
Iron	³ 78			
Lead		³ 100	³ 100	
Lindane	84	³ 28	³ 28	
Malathion		0.63	0.63	
Mercury		³ 100	³ 100	
Molybdenum		40	40	
Nickel			³ 100	
N-Nitrosodimethylamine	2.1	0.088	0.088	

Pentachlorophenol	30			
Phenol		82	82	
Polychlorinated biphenyls	4.6	<50	<50	
Selenium		4.8	4.8	4.8
Toxaphene	10	³ 26	³ 26	
Trichloroethylene	³ 10	9500	³ 10	
Zinc		4500	4500	4500

¹Active sewage sludge unit without a liner and leachate collection system.

²Active sewage sludge unit with a liner and leachate collection system.

³Value expressed in grams per kilogram—dry weight basis.

Key: LA—land application.

I—incineration.

[60 FR 54768, Oct. 25, 1995, as amended at 65 FR 42567, Aug. 4, 1999; 70 FR 60198, Oct. 14, 2005]



Item: Public Hearing – Resolution 9788 to Annex and Ordinance 3023 to Assign City Zoning to Tyndall Addition, Phase 1

From: Charles Sheets, Planner 1

Initiated By: Kendall and Maxima Cox, Property Owner and Developer

Presented By: Bill Walters, Senior Planner

Action Requested: City Commission adopt Resolution 9788 and Ordinance 3023.

Public Hearing:

1. Mayor conducts public hearing, calling three times each for opponents and proponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motions: (Each motion to be separately considered)

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 9788 and approve the Subdivision Plat of Tyndall Addition, Phase 1 and the accompanying Annexation Agreement.”

and;

“I move that the City Commission (adopt/deny) Ordinance 3023.”

2. Mayor calls for a second, discussion, and calls for the vote after each motion.
-

Planning Board and Zoning Commission Recommendations: The Planning Board has recommended the City Commission approve the annexation and subdivision plat of Tyndall Addition, Phase 1. The Zoning Commission has recommended the City Commission assign a zoning classification of R-3 Single-family high density district to Tyndall Addition, Phase 1, upon annexation to the City.

Background: During a meeting held August 5, 2008, the City Commission conditionally approved the Preliminary Plat of Tyndall Addition, Phase 1, as recommended by the Planning Board. The developer now requests approval of the final plat and annexation of Tyndall

Addition, Phase 1. The subdivision is located along the westerly extension of 37th Avenue Northeast and consists of 10 single-family lots ranging in size from 9,472 sq. ft. to 10,240 sq. ft.

For additional information, please refer to the attached Vicinity/Zoning Map and reduced copy of the final plat.

Access to the subdivision will be via 37th Avenue Northeast through West Ridge Addition Phase V. The developer will install standard City paving, curb and gutter for the roadway within the subdivision.

City water mains and sanitary sewer mains are proposed to be installed in the public roadway. Easements will be provided upon each lot in the subdivision for other utilities such as electric, gas, telephone and cable TV.

Surface drainage from the subdivision mostly flows westerly to the unincorporated portion of the owner's property. A storm drainage plan has been approved by the City Engineer.

The developer has fulfilled the subdivision's park obligation by paying a fee in lieu of dedicating park land, which has been accepted by the Park and Recreation Department.

Annexation of subject property will enhance health, safety and welfare through application of City Codes and provision of municipal services.

The applicant has requested the subject property be zoned R-3 Single-family high density district, upon annexation to the City.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines, which must be considered in conjunction with establishing municipal zoning on land:

- a) is designed in accordance with the growth policy (comprehensive plan);
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Subject property is located on the fringe of the City, which has been attracting high quality single family dwelling units. The subdivision is a natural projection of urban growth.

Goals of the land use element of the Great Falls Growth Policy include:

- To support and encourage efficient, sustainable development and redevelopment throughout the community.

- To support and encourage a compatible mix of land uses in newly developing areas.

Applicable policy statements include “Residential land uses should be planned and located so that they do not result in adverse impacts upon one another” and “Annexations should be logical and efficient extensions of the City’s boundaries and service areas”.

It is anticipated the planned single-family use of the property will be compatible with neighboring uses. Therefore, staff concludes the twelve criteria stated above are substantially met.

At the conclusion of a public hearing held July 22, 2008, the Zoning Commission passed a motion recommending the City Commission assign a zoning classification of R-3 Single-family high density district to Tyndall Addition, Phase 1, upon annexation to the City. No citizens spoke as proponents or opponents during the hearing. The Planning Board during a meeting held November 12, 2008, recommended the City Commission approve said Subdivision Plat and annex Tyndall Addition, Phase 1 subject to fulfillment of the following conditions by the applicant:

- 1) The final plat of Tyndall Addition Phase 1 shall incorporate correction of any errors or omissions noted by staff and include the following provisions: 1) a notification clause to lot purchasers regarding soil conditions; and 2) utility easements as recommended by the City Engineer.
- 2) The final engineering drawings and specifications for the required public improvements to serve Tyndall Addition, Phase 1 shall be submitted to the City Public Works Department for review and approval prior to consideration of the final plat.
- 3) An annexation agreement shall be prepared containing terms and conditions for annexation of Tyndall Addition Phase 1, including agreement by applicant:
 - a) to install, within two years of the date of annexation of the subdivision, the public improvements referenced in Condition 2) above;
 - b) to pay proportionate share of the costs for the regional storm water retention facility and offsite storm piping system;
 - c) to indemnify and hold City harmless for any damages that may be sustained as a result of adverse soil and/or groundwater conditions;
 - d) to notify lot purchasers and home builders that individual home booster pumps may be desirable to enhance water pressure; and,
 - e) to notify lot purchasers and home builders that individual grinder pumps may be required for sewers.
- 4) Provision of easements at the west side of the subdivision to accommodate storm drainage and/or vehicle turnaround.
- 5) All applicable fees owed as a condition of plat or annexation approval shall be paid upon final platting and annexation, including:

a) Annexation Agreement Fee	\$ 200.00
b) Resolution of Annexation Fee	\$ 100.00
c) Final Plat Fee	\$ 200.00
d) Storm Sewer Fee (\$250/acre x 2.824 gross acres)	\$ 706.00

e) Park Fee in Lieu of Land Dedication (\$15,246/acres x 2.269 acres x 11%)	\$ 3,805.25
f) Reimbursement for proportionate share of off-site storm sewer piping system between the Subdivision and the Retention Facility (Middle (\$1357.05/acre x 1.2 Contributing acres))	\$ 1,628.46
g) Recording fees for Agreement and Resolution (\$11 per page 11 pages)	<u>\$ 121.00</u>
Total fees made payable to City of Great Falls	<u>\$ 6,760.71</u>

At the time of writing this report items 2) 3) 4) and 5) have been completed by the applicant and item 1) will be completed prior to filing the final plat.

Concurrences: Representatives from the City’s Public Works, Community Development, Park and Recreation, and Fire Departments have been involved throughout the review and approval process for this project.

Fiscal Impact: Providing services to the single-family lots in the subdivision is expected to be a negligible cost to the City. Any increased costs likely will be covered by increased tax revenues from improved properties.

Alternatives: If there are justifiable reasons to do so, the City Commission could deny the requested action to the extent allowed in City Code and State Statute.

Attachments/Exhibits:

1. Resolution 9788
2. Ordinance 3023
3. Vicinity/Zoning map
4. Reduced copy of drawing portion of the final plat
5. Annexation Agreement

Cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
Kendall and Maxima Cox, 3805 7th St NE, Great Falls, MT, 59404
HKM Engineering, P O Box 49, Great Falls, MT, 59403

RESOLUTION 9788

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, TO EXTEND THE BOUNDARIES OF SAID CITY TO INCLUDE TYNDALL ADDITION, PHASE 1, IN THE SE $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED HEREINBELOW.

* * * * *

WHEREAS, the City of Great Falls is a city incorporated under the laws of the State of Montana, and having a population of more than ten thousand (10,000) is a city of the first class; and,

WHEREAS, there is contiguous to said City, but without the boundaries thereof, certain tracts or parcels of land situated in the County of Cascade, State of Montana, and described as follows:

Tyndall Addition, Phase 1, located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, Township 21 North, Range 3 East, P.M.M., Cascade County, Montana, and containing 2.816 acres more or less,

generally as shown on the vicinity map exhibit attached hereto marked Exhibit "A" and by this reference made a part hereof and according to the final plat of Tyndall Addition, Phase 1, filed with the Clerk and Recorder's Office of Cascade County, Montana; and,

WHEREAS, Section 7-2-4601, Montana Code Annotated, provides that whenever the owners of real property contiguous to any incorporated city of the first class petition to have said property made a part of the municipal corporation, such lands may be embraced within the corporate limits thereof and the boundaries of such city of the first class extended so as to include the same; and,

WHEREAS, the owners of the hereinabove described property have submitted a petition to have said property annexed to the City of Great Falls.

NOW, THEREFORE, the City Commission now finds that it is to the best interest of the City of Great Falls and its inhabitants to proceed with the incorporation of said territory into the City of Great Falls; and,

WHEREAS, all of the proceedings herein have been conducted in strict compliance with and in conformity to the law and constitution of the State of Montana, and all conditions, acts, and things required to be done precedent to and in the passage and adoption of this resolution have been properly and legally done, and performed;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA;

That the boundaries of the City of Great Falls, Montana, be and the same are hereby extended so as to embrace and include within the corporate limits of said City all of the land hereinabove described, included as: "TYNDALL ADDITION, PHASE 1, IN THE SE $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA."

BE IT FURTHER RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

That the Cascade County Clerk and Recorder is hereby authorized and directed to change the appropriate district boundaries of the City of Great Falls, Montana, to include said tract of land; and,

That this Resolution shall become effective from and after the date of the filing of said document in the office of the Cascade County Clerk and Recorder.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on this 6th day of January, 2009.

Dona R. Stebbins, Mayor

ATTEST:

Lisa Kunz, City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

David V. Gliko, City Attorney

State of Montana)
County of Cascade :ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution 9788 was placed on its final passage by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6th day of January, 2009, wherein it was approved by said Commission.

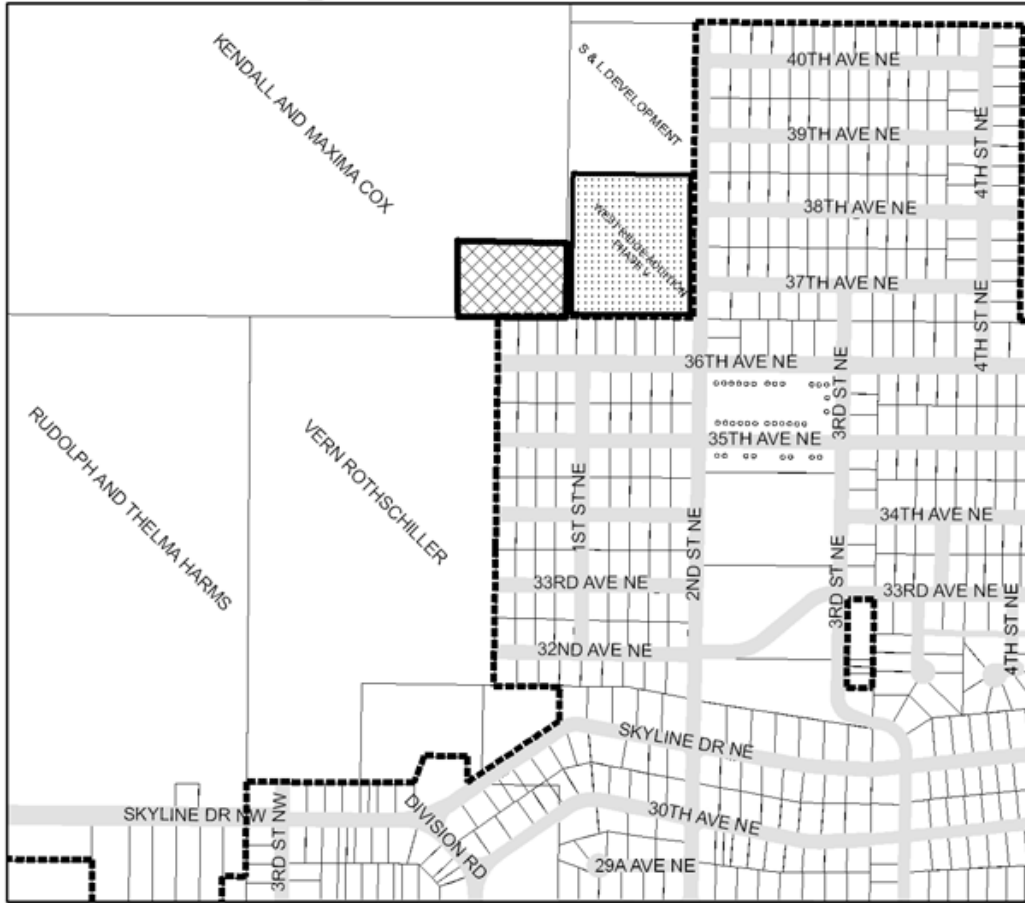
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6th day of January, 2009.


Lisa Kuntz, City Clerk


(CITY SEAL)

EXHIBIT "A"

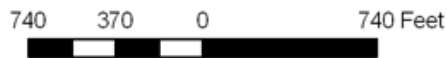
VICINITY MAP



 FINAL PLAT OF TYNDALL ADDITION PHASE I PROPOSED TO BE ANNEXED TO THE CITY AND ASSIGNED A CITY ZONING CLASSIFICATION OF "R-3" SINGLE-FAMILY HIGH DENSITY DISTRICT UPON ANNEXATION TO THE CITY

 WEST RIDGE ADDITION PHASE V BEING SUBDIVIDED AND ANNEXED BY S & L DEVELOPMENT

 City Limit Boundary



ORDINANCE 3023

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION
OF R-3 SINGLE-FAMILY HIGH DENSITY DISTRICT TO
TYNDALL ADDITION, PHASE 1, IN SESW SECTION 26,
TOWNSHIP 21 NORTH, RANGE 3 EAST, P.M.M., CASCADE
COUNTY, MONTANA

* * * * *

WHEREAS, Kendall and Maxima Cox, are the owners of record of property being subdivided and platted as Tyndall Addition, Phase 1, in SESW Section 26, Township 21 North, Range 3 East, P.M.M., Cascade County, Montana; and,

WHEREAS, Kendall and Maxima Cox have petitioned the City of Great Falls to annex Tyndall Addition, Phase 1; and,

WHEREAS, Kendall and Maxima Cox have petitioned said Tyndall Addition, Phase 1, be assigned a City zoning classification of R-3 Single-family high density district, upon annexation to City; and,

WHEREAS, notice of assigning a zoning classification of R-3 Single-family high density district, to Tyndall Addition, Phase 1, was published in the Great Falls Tribune advising that a public hearing on this zoning designation would be held on the 6th day of January, 2009, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and recommended that the said zoning designation be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS,
STATE OF MONTANA:

Section 1. It is determined that the herein requested zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Tyndall Addition, Phase 1 be designated as R-3 Single-family high density district classification.

Section 3. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Tyndall Addition, Phase 1 into the corporate limits of the City of Great Falls, Montana, whichever event shall occur later.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS,
MONTANA, this 6th day of January, 2009.

Dona R. Stebbins, Mayor

ATTEST:

Lisa Kunz, City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

David V. Gliko, City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 3023 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6th day of January, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6th day of January, 2009.

Lisa Kunz, City Clerk

(CITY SEAL)

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, being first duly sworn, deposes and says: That on the 6th day of January, 2009 and prior thereto, I was the City Clerk of the City of Great Falls, Montana; that as said City Clerk, I did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 3023 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:


On the Bulletin Board, first floor, Civic Center Building;
On the Bulletin Board, first floor, Cascade County Court House;
On the Bulletin Board, Great Falls Public Library

Lisa Kunz, City Clerk








(CITY SEAL)

VICINITY/ZONING MAP



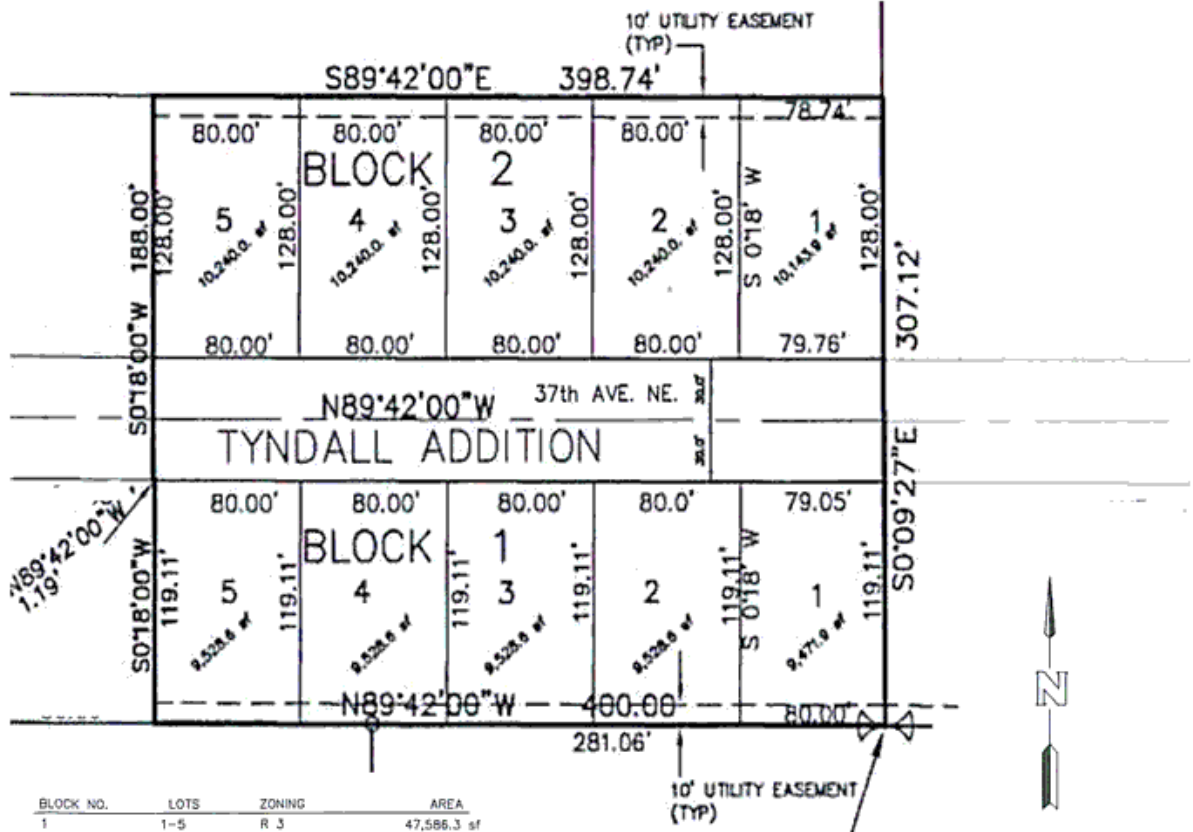
 FINAL PLAT OF TYNDALL ADDITION PHASE I PROPOSED TO BE ANNEXED TO THE CITY AND ASSIGNED A CITY ZONING CLASSIFICATION OF "R-3" SINGLE-FAMILY HIGH DENSITY DISTRICT UPON ANNEXATION TO THE CITY

 WEST RIDGE ADDITION PHASE V BEING SUBDIVIDED AND ANNEXED BY S & L DEVELOPMENT

-  R-2 Single-family medium density
-  PLI Public Lands and Institutional
-  PUD Planned unit development
-  R-3 Single-family high density
-  POS Parks and Open Space
-  U Unincorporated enclave
-  Tracts of land outside City



SUBDIVISION PLAT OF
 TYNDALL ADDITION TO GREAT FALLS PHASE I
 IN THE SE1/4 SW1/4 SEC. 26, T 21 N, R 3 E, P.M.M.
 CASCADE COUNTY, MONTANA



BLOCK NO.	LOTS	ZONING	AREA
1	1-5	R 3	47,586.3 sf
2	1-5	R 3	51,103.9 sf
TOTAL	10		122,649.1 sf
ROAD AREA			23,958.9 sf

N
↑
↓
N

S1/4 CORNER SEC. 26
 1/2" REBAR, M. HENEN
 T.P.B.

**ANNEXATION AGREEMENT
FOR TYNDALL ADDITION, PHASE 1,
IN THE SE¼SW¼ SECTION 26,
TOWNSHIP 21 NORTH,
RANGE 3 EAST, P.M.M.,
CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this 6th day of January, 2009, between KENDALL G. AND MAXIMA S. COX, hereinafter referred to as “Owners,” and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as “City,” regarding the requirements for filing the Final Plat and the annexation to the corporate limits of City, of TYNDALL ADDITION, PHASE 1, in SE¼SW¼ Section 26, Township 21 North, Range 3 East, P.M.M., Cascade County, Montana, hereinafter referred to as “Subdivision.”

2. PRIOR ACTIONS

The Preliminary Plat of Subdivision, prepared by HKM Engineering, was conditionally approved by City on August 5, 2008.

3. SUPPORTING DOCUMENTS

A. A final plat of Subdivision, prepared by HKM Engineering, and filed of record in the Clerk and Recorder’s Office of Cascade County, Montana.

B. Final engineering drawings and specifications prepared by HKM Engineering, consisting of documents for sanitary sewer mains, water mains, drainage improvements, paving, sidewalk, conduit for wiring for potential future public roadway lighting facilities, curb and gutter. Said drawings and specifications are on file in the City Engineer’s office.

4. AMENDMENTS

Minor changes to engineering documents and such revisions to the engineering drawings as are deemed appropriate and necessary by City's Engineer and City's Public Works Department and which do not materially affect the hereinabove mentioned final plat, can be made as follows:

- A. The proposed revision will be submitted to City's Public Works Department for review and, if approved, the City Engineer or Public Works Director will sign and adequately annotate the change.
- B. The annotated revision becomes a part of this Agreement upon City's Public Works Department approval.
- C. Changes during construction shall be made by change order approved by City's Public Works Department.
- D. "As Built" reproducible drawings shall be supplied to City's Engineer upon completion of the construction.
- E. All amendments to this Agreement, except as allowable above in this section, shall be in writing and approved by City and Owners.

5. FEES AND CHARGES

A. Prior to annexation of Subdivision, Owners shall, in addition to the Preliminary Plat Fee of \$500.00, Zoning Application Fee of \$400.00, Annexation Application Fee of \$100.00, and Park Fee of \$3,805.25 which have been paid, pay the following required fees and annexation charges as provided by City policy, ordinances and resolutions:

a) Annexation Agreement Fee	\$ 200.00
b) Resolution of Annexation Fee	\$ 100.00
c) Final Plat Fee	\$ 200.00
d) Storm Sewer Fee (\$250/acre x 2.824 gross acres)	\$ 706.00
e) Reimbursement for proportionate share of off-site storm sewer piping system between the Subdivision and the Retention Facility (Middle (\$1357.05/acre x 1.2 Contributing acres))	\$ 1,628.46
f) Recording fees for Agreement and Resolution (\$11 per page 11 pages)	<u>\$ 121.00</u>
Total fees made payable to City of Great Falls	\$ 2,955.46

B. Owners or its successors or assigns shall reimburse City for its expenses incurred in testing and acceptance of public utilities to serve Subdivision at the rates charged by City for said work at the time performed.

- C. Water tapping, water connection, sewer service tapping, and sewer connection fees will be assessed at the time of installation.
- D. The absence of any fee from this agreement lawfully charged by the City in connection with construction activity associated with Subdivision shall not constitute a waiver by the City.

6. PUBLIC IMPROVEMENTS

Owners agree to complete within two (2) years of the date of this Agreement, the installation of the sanitary sewer, storm sewer and water improvements, street paving, conduit for wiring for potential future public roadway lighting facilities, curb and gutter to serve Subdivision, according to plans referenced in Paragraph 3.B. above and filed in the City Engineer's office and in accordance with standards of City.

7. RESTRICTIONS ON BUILDING PERMITS AND OCCUPANCY

Building permits for lots in Subdivision shall not be issued until the contracts for installation of the public improvements have been executed. Owners acknowledges that City will not permit the occupancy of any residential structure in Subdivision until street improvements and water and sanitary sewer mains within Subdivision have been installed, tested and accepted by City, which acceptance will not be unreasonably withheld by City.

8. WATER PRESSURE

Owner agrees to notify lot purchasers and home builders that individual home booster pumps may be desirable to enhance water pressure.

9. GRINDER PUMPS

Owner agrees to notify lot purchasers and home builders that individual home grinder pumps may be desired to provide sewage disposal at desirable floor elevations.

10. SOIL AND/OR GROUNDWATER CONDITIONS

Owner hereby agrees to indemnify and hold the City, its employees, agents and assigns harmless for and against all damages, claims, attorney fees, judgments, demands and/or liabilities that may, arise from, be attributable to or be sustained as a result of adverse soil and/or groundwater conditions associated with Subdivision.

11. FUTURE STORM DRAINAGE FACILITIES

Owners hereby agree to waive right to protest any future area wide special improvement district for storm drainage facilities and further agree to pay for proportionate share of any future storm drainage improvements which service Subdivision that may be installed with or without an area wide special improvement district. The term "area wide" as used herein, means any area larger than that covered by Subdivision which is a contributor to the drainage sub-basin of which Subdivision is a part.

12. PUBLIC ROADWAY LIGHTING

Owners hereby agree to waive their right to protest any future special lighting district for public roadway lighting facilities that service Subdivision, and further agrees to pay for proportionate share of the costs associated with roadway lighting which service Subdivision that may be installed with or without a special lighting district.

13. SIDEWALKS

It is hereby agreed that the following exception to the strict adherence of Subdivision requirements will be permitted: sidewalks serving and abutting any lot in Subdivision shall be installed as a condition of final occupancy by the then lot owner within six (6) months (allowing for unfavorable weather conditions only) of occupancy. It is understood that the above provision regarding sidewalks shall not preclude City from exercising its authority provided by Chapter 12.28, Municipal Code of the City of Great Falls pertaining to sidewalks.

14. WAIVER OF PROTEST OF ANNEXATION

Owners do hereby waive any and all statutory procedure notice on right of protest to annexation of Subdivision, as provided for by State law.

15. WARRANTY, OWNERSHIP AND INSPECTION OF UTILITY AND STREET IMPROVEMENTS

A. After the public utilities, drainage and street improvements described in Paragraph 3.B. hereof have been installed and accepted by City, the same shall be in all respects treated, owned and maintained as though the same had been constructed and installed by City. However, to the extent installed by Owners, Owners or its contractor shall guarantee said improvements against defective work and materials for a period of two (2) years from date of acceptance of the completed improvements by City.

B. Installation of the public utilities and street improvements described in Paragraph 6. hereof, shall be subject to City's infrastructure inspection policy in place at the time of installation.

16. ANNEXATION PREREQUISITES

Subdivision is contiguous to City; is not included within the boundary of any other incorporated municipality; and is not a part of any fire district existing or organized under any of the provisions of Chapter 33, Title 7, of the Montana Code Annotated. Subdivision, upon annexation to City, will be provided fire protection services by City comparable to that provided incorporated properties.

17. MAINTENANCE DISTRICTS

Owners waive their right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant and street maintenance and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to lots in Subdivision.

18. CITY ACCEPTANCE AND ZONING

In consideration of the foregoing, City hereby accepts and approves the final plat of Subdivision and will approve the property contained within the boundaries of Subdivision for incorporation by annexation into the corporate limits of the City of Great Falls, Montana, as R-3 Single-family high density district. It is hereby understood that the preceding language regarding zoning of lots in Subdivision does not preclude City from reclassifying lots if an area wide reclassification is undertaken, in which event City agrees to reclassify said lots as a conforming use.

19. BINDING EFFECT

The provisions, covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns; and any and all parties claiming by, through, or under them, shall be taken to agree and covenant with each of the parties to the Agreement, their devisees, heirs, successors and assigns, to conform to the provisions, covenants and terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day, month and year first hereinabove written.

THE CITY OF GREAT FALLS, MONTANA
A Municipal Corporation of the State of Montana

Gregory T. Doyon, City Manager,

APPROVED FOR LEGAL CONTENT:

David V. Gliko, City Attorney

State of Montana)

:ss.

County of Cascade)

On this _____ day of _____, in the year Two thousand and nine A. D., before me, the undersigned, a Notary Public for the State of Montana, personally appeared Gregory T. Doyon, known to me to be the City Manager of the City of Great Falls, Montana, and the person whose name is subscribed to the instrument within and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Notary Public for the State of Montana

(NOTARIAL SEAL)

Notary Public (Printed)

Residing at _____

My Commission Expires _____, 20__



Item: Resolution 9802 for Conditional Use Permit to allow a Worship Facility on Lot 8, Block 307, Original Townsite to Great Falls (525 1st Avenue North)

From: Charles Sheets, Planner 1

Initiated By: Heartland Community Fellowship, Pastor David Booth

Presented By: Bill Walters, Senior Planner

Action Requested: City Commission adopt Resolution 9802.

Public Hearing:

1. Mayor conducts public hearing, calling three times each for opponents and proponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 9802.”

2. Mayor calls for a second, discussion, and calls the vote.
-

Zoning Commission Recommendation: At the conclusion of a public hearing held November 12, 2008, the Zoning Commission passed a motion recommending the City Commission grant a conditional use permit to allow Lot 8, Block 307, Original Townsite to Great Falls, addressed as 525 1st Avenue North, to serve as a worship facility.

Background: Heartland Community Fellowship leases a portion of a building, addressed as 525 1st Ave N, from Hearing Aid Institute, Inc. The leasee and owner have applied for a conditional use permit to allow the worship facility at the site.

Subject property is zoned C-4 Central business core district wherein a worship facility is permitted upon processing and approval of a conditional use permit. (See attached Vicinity/Zoning map.)

The definition in the Unified Land Development Code for worship facility is “a place and/or building, or portion thereof, that has tax-exempt status and that is used or is intended as a place

where people can regularly assemble for religious worship and associated activities. The term includes sanctuaries, chapels, cathedrals, churches, synagogues, and temples and other onsite accessory buildings such as parsonages, friaries, convents, fellowship halls, Sunday schools, rectories, and day care centers within the same structure. The term does not include community recreation facilities, dormitories, private educational facilities, emergency shelters, health care facilities, and the like.”

The applicant has stated that the Fellowship currently averages 20 parishioners at its services which take place on Wednesday nights. The subject building is posted with signs that 24-hour on-site parking is only for patrons of the building. Only minor problems have arisen when adjoining bowling alley patrons use the parking area on Wednesday nights. The subject property also accommodates a beauty salon which operates independently of the worship facility. No information was provided if the salon has had any parking issues. Additionally, the City owns and operates a parking lot kitty-corner from the property, at 600 1st Avenue North. Attached is a Memorandum from the City Parking Supervisor, dated October 16, 2008, stating the proposed parking plan meets the City’s parking requirements for both the worship facility and salon.

Neighborhood Council No. 7 discussed the conditional use permit application. Aaron Weissman, Council 7 Chairman contacted the Planning Office and stated that Council 7 was supportive of the conditional use permit, as long as the worship facility would not impact any other established businesses.

The procedure for processing a conditional use is identical to that for a City zone change. Following a public hearing and recommendation by the Planning Board, the City Commission shall conduct a public hearing and arrive at a final decision regarding the conditional use application. The City Commission may, through a written agreement with the applicant, establish such conditions and restrictions upon the construction, maintenance and operation of the conditional use as is deemed necessary for the protection of the public interest and to secure compliance with standards and requirements.

The City Zoning Code lists the seven following criteria to be applied to a request for a conditional use for evaluation purposes.

1. The conditional use is consistent with City’s growth policy and applicable
2. That the establishment, maintenance or operation of the conditional use will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare.
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminishes and impairs property values within the neighborhood.
4. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
5. Adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
6. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
7. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the City Commission.

A goal in the land use element of the Growth Policy is “to preserve and enhance the character, quality, and livability of existing neighborhoods”. The Growth Policy states proposed land use changes should be evaluated according to the type of neighborhood affected, which in this case, is established and stable. Land use changes should be compatible with the type, scale, and physical character of the neighborhood.

The streets in the vicinity of the worship facility may, on occasion, be needed to absorb any overflow parking demand which is legal but can generate concerns from neighboring property owners. However, in addition to the on-site parking plan for the subject property, the City public parking lot across the street from the property should also accommodate overflow parking.

Staff concludes no significant negative aspects, associated with the seven above mentioned criteria, should result from the approval of the conditional use permit.

Establishing a worship facility at this location would not be out of character as numerous worship facilities are presently located in the vicinity and in the periphery of the downtown area.

During the public hearing held by the Zoning Commission, no proponents or opponents spoke. However, Mel Willey, operator of the Little’s Lanes/Tavern and Casino and Dave Gunness, owner of the land occupied by Little’s Lanes, questioned the status of the business in accordance with current applicable zoning codes. Staff responded that the bowling alley and accompanying tavern are permitted uses in the C-4 zoning district and the existing casino is a legal nonconforming use. Should another party assume ownership of Little’s Lanes/Tavern and Casino, it would not trigger any zoning related issues and could continue. Should the casino (gaming) portion of the operation cease for 24 consecutive months, it would lose its nonconforming status and could only be reestablished upon adherence to applicable state statutes and City Code.

Concurrences: Representatives from the Community Development Department have been involved throughout the review and approval process for this project.

Fiscal Impact: No change in providing services due to conditional use permit.

Alternatives: If there are justifiable reasons to do so, the City Commission could deny the requested action to the extent allowed in City Code and State Statute.

Attachments/Exhibits:

1. Resolution 9802
2. Vicinity/Zoning Map
3. Memo from City Parking Supervisor, dated October 16, 2008

Cc: Mike Rattray, Community Development Director
Kim McCleary, City Parking Supervisor
Heartland Community Fellowship, 525 1st Ave N, Great Falls, MT 59401
Hearing Aid Institute, Inc., 725 1st Ave N, Great Falls, MT 59401

RESOLUTION 9802

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT
TO ALLOW A WORSHIP FACILITY
ON LOT 8, BLOCK 307, ORIGINAL TOWNSITE TO GREAT FALLS,
ADDRESSED AS 525 1ST AVENUE NORTH

* * * * *

WHEREAS, Hearing Aid Institute Inc. presently owns Lot 8, Block 307, Original Townsite to Great Falls, addressed as 525 1st Avenue North; and

WHEREAS, said Lot 8 is occupied by a commercial structure, a portion of which presently houses a beauty salon and the remainder which previously accommodated a pawn shop; and

WHEREAS, Heartland Community Fellowship, Pastor David Booth, recently leased a portion of subject building to utilize as a worship facility; and

WHEREAS, said Lot 8 is presently zoned as C-4 Central business core district wherein a worship facility is permitted upon processing and approval of a conditional use application; and

WHEREAS, Hearing Aid Institute Inc. and Heartland Community fellowship have applied for a conditional use permit to allow a portion of the commercial structure on subject Lot 8 to serve as a worship facility; and

WHEREAS, the Great Falls Zoning Commission conducted a public hearing on November 12, 2008, to consider said conditional use permit application and at the conclusion of said hearing, passed a motion recommending a conditional use permit be granted to allow a worship facility on Lot 8, Block 307, Original Townsite to Great Falls, addressed as 525 1st Avenue North.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

That a conditional use permit to allow a worship facility on Lot 8, Block 307, Original Townsite to Great Falls, addressed as 525 1st Avenue North is hereby approved; and,

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that this Resolution shall become effective immediately upon its passage and approval.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on this 6th day of January, 2009.

Dona R. Stebbins, Mayor

ATTEST:

Lisa Kunz, City Clerk

(SEAL OF CITY)

Approved for legal content:

David V. Gliko, City Attorney

State of Montana)
County of Cascade :ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution 9802 was placed on its final passage by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6th day of January, 2009, wherein it was approved by said Commission.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6th day of January, 2009.

Lisa Kunz, City Clerk

(SEAL OF CITY)

VICINITY/ZONING MAP



525 1ST AVENUE NORTH, REQUESTED TO BE GRANTED A CONDITIONAL USE PERMIT TO ALLOW TO SERVE AS A WORSHIP FACILITY



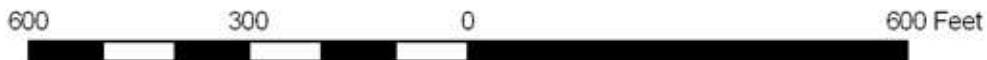
PROPERTY LINES OF WORSHIP FACILITIES AND CASINOS

R-9 Mixed residential

C-5 Central business periphery

C-4 Central business core

PLI Public Lands and Institutional



Community Development Department

Memo

To: Charlie Sheets, Planner I

From: Kim McCleary, Parking Supervisor *Kim McCleary*

Date: October 16, 2008

Re: Heartland Community Fellowship

The City's parking code requires a worship facility containing 50 seats to provide 10 off-street parking spaces. It appears from the site plan provided in your application packet, that the property has 12 off-street parking spaces that meet the City's parking space design criteria. The hair salon is required to provide 4 off-street parking spaces, however, their business is open opposite hours of the worship facility, so the two facilities can share parking.

The parking plan as submitted with the conditional use permit meets the City's parking code. If you have any questions or need additional information, please don't hesitate to contact me.



Item: Resolution 9803 for Conditional Use Permit to allow a Contractor Yard, Type I on Lot 3, Block 754, Great Falls Tenth Addition (1308 6th Avenue South)

From: Charles Sheets, Planner 1

Initiated By: Norris' Wall Covering & Painting, L.L.C., Kirk Norris (Owner)

Presented By: Bill Walters, Senior Planner

Action Requested: City Commission adopt Resolution 9803.

Public Hearing:

1. Mayor conducts public hearing, calling three times each for opponents and proponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 9803.”

2. Mayor calls for a second, discussion, and calls the vote.
-

Zoning Commission Recommendation: At the conclusion of a public hearing held November 25, 2008, the Zoning Commission passed a motion recommending the City Commission grant a conditional use permit to allow Lot 3, Block 754, Great Falls Tenth Addition, addressed as 1308 6th Avenue South, to serve as a contractor yard, type 1.

Background: Norris' Wall Covering & Painting intends to buy subject Lot 3 and accompanying shop building, addressed as 1308 6th Ave S, from Viann D. Stimac. The owner and purchaser have applied for a conditional use permit to allow a contractor yard, type I. (See attached application.) For additional information, please refer to the attached Vicinity/Zoning Map.

Subject property is surrounded on three sides by single-family residences and a duplex on the fourth side. Subject property is zoned R-3 Single-family high density district wherein a

contractor yard, type I is not permitted. However, the property has a legal nonconforming designation upon it from the previous land use of vehicle repair (First Class Autobody). The change of the current nonconforming use to another nonconforming use could not be approved administratively, as all three criteria cited in Code for such a procedure, could not be met. However, Code provides that a legal nonconforming use may be changed to another nonconforming use upon processing and approval of a conditional use permit.

The definition in the Unified Land Development Code for contractor yard, type I is “a place and/or building, or portion thereof, that is used or is intended to be used by a contractor/builder with one or more of the following: construction material storage, machinery storage or repair, including trucks and heavy equipment, shops, and office space.”

The attached site plan shows the size and configuration of subject property together with the location of the primary structure and parking upon the property. The existing 36 foot x 75 foot structure was constructed in 1979 to accommodate the exchange of parts, storage and restoration of antique vehicles. When this structure was built the property was zoned “C” Area, “LB” Use which did allow vehicle repair.

The applicant has stated that his contracting business has 5 employees, including himself. He would remodel an office area within the existing structure and use the remaining portion of the building for vehicle and material storage. Employees drive the company vehicles to and from work sites throughout the area. One employee would work at the office most days. The subject property has a fenced storage area along the west side of the building in which the applicant intends to store scaffolding and trailers.

Attached is a letter circulated by Norris’ Wall Covering & Painting, dated October 27, 2008, and signed by the contacted neighbors.

Attached is a Memorandum from the City Planning Department, Transportation Section, dated September 3, 2008, stating the proposed use would not generate more traffic than the previous nonconforming use.

Neighborhood Council No. 9 discussed the subject conditional use permit on November 13, 2008. The Council Chairman, Gareth Schoenthal, has provided the attached memo approving the request.

The procedure for processing a conditional use is identical to that for a City zone change. Following a public hearing and recommendation by the Planning Board, the City Commission shall conduct a public hearing and arrive at a final decision regarding the conditional use application. The City Commission may, through a written agreement with the applicant, establish such conditions and restrictions upon the construction, maintenance and operation of the conditional use as is deemed necessary for the protection of the public interest and to secure compliance with standards and requirements.

The City Zoning Code lists the seven following criteria to be applied to a request for a conditional use for evaluation purposes.

1. The conditional use is consistent with City's growth policy and applicable
2. That the establishment, maintenance or operation of the conditional use will not be detrimental to, or endanger the health, safety, morals, comfort or general welfare.
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminishes and impairs property values within the neighborhood.
4. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
5. Adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
6. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
7. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the City Commission.

A goal in the land use element of the Growth Policy is "to preserve and enhance the character, quality, and livability of existing neighborhoods". The Growth Policy states proposed land use changes should be evaluated according to the type of neighborhood affected, which in this case, is established and stable. Land use changes should be compatible with the type, scale, and physical character of the neighborhood.

Staff concludes no significant negative aspects, associated with the seven above mentioned criteria, should result from the approval of the conditional use permit, provided the property otherwise stays in compliance with City Code.

During the public hearing held by the Zoning Commission, Mr. Jose Martinez, 1317 7th Avenue South, stated that the traffic in the alley has been a problem. If the contractor yard, type I, continues to generate this amount of traffic, he was against the conditional use. A representative of the applicant stated that the business is performed at clients premises and the clients do not come to the shop. Therefore, traffic is limited to employees.

Concurrences: The Community Development Department has been involved throughout the review and approval process for this project.

Fiscal Impact: Granting the conditional use permit will not result in any changes to providing City services to the area.

Alternatives: If there are justifiable reasons to do so, the City Commission could deny the requested action to the extent allowed in City Code and State Statute.

Attachments/Exhibits:

1. Resolution 9803
2. Vicinity/Zoning Map
3. Development Review Application for Conditional Use Permit
4. Site Plan provided by applicant
5. Letter circulated by Norris' Wall Covering & Painting, dated October 27, 2008
6. Memo from City Transportation Section, dated September 3, 2008
7. Memo/Fax from Neighborhood Council #9, dated November 13, 2008
8. Memo from City Parking Supervisor, dated November 17, 2008

Cc: Mike Rattray, Community Development Director
Kim McCleary, City Parking Supervisor
Viann D. Stimac, 757 33A Ave NE, Great Falls, MT 59404
Norris' Wall Covering & Painting, P.O. Box 2749, Great Falls, MT 59403

RESOLUTION 9803

A RESOLUTION APPROVING A CONDITIONAL USE PERMIT
TO ALLOW LOT 3, BLOCK 754, TENTH ADDITION TO GREAT FALLS,
ADDRESSED AS 1308 6TH AVENUE SOUTH,
TO SERVE AS A CONTRACTOR YARD, TYPE I

* * * * *

WHEREAS, Viann D. Stimac presently owns Lot 3, Block 754, Tenth Addition to Great Falls, addressed as 1308 6th Avenue South; and

WHEREAS, Norris' Wall Covering & Painting, L.L.C. is purchasing said Lot 3 from the present owner; and

WHEREAS, said Lot 3 is occupied by an approximate 3312 square foot shop structure wherein an auto body repair shop previously operated; and

WHEREAS, purchaser desires to use said shop structure to accommodate a wall covering and painting business, categorized as a contractor yard, type I; and

WHEREAS, said Lot 3 is presently zoned as R-3 Single-family high density district and was previously occupied by an auto body repair shop determined to be a legal nonconforming use; and,

WHEREAS, City Code provides that a legal nonconforming use may be changed to another nonconforming use upon processing and approval of a conditional use permit application; and

WHEREAS, Owner and purchaser have applied for a conditional use permit to allow Lot 3, Block 754, Tenth Addition to Great Falls, addressed as 1308 6th Avenue South to serve as a contractor yard, type I, thereby allowing the purchaser to operate his wall covering and painting business from the premises; and

WHEREAS, the Great Falls Zoning Commission conducted a public hearing on November 25, 2008, to consider said conditional use permit application and at the conclusion of said hearing, passed a motion recommending a conditional use permit be granted to allow Lot 3, Block 754, Tenth Addition to Great Falls, addressed as 1308 6th Avenue South, to serve as a contractor yard, type I.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

That a conditional use permit to allow Lot 3, Block 754, Tenth Addition to Great Falls, addressed as 1308 6th Avenue South to serve as a contractor yard, type I is hereby approved; and,

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that this Resolution shall become effective immediately upon its passage and approval.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, on this 6th day of January, 2009.

Dona R. Stebbins, Mayor

ATTEST:

Lisa Kunz, City Clerk

(SEAL OF CITY)

Approved for legal content:

David V. Gliko, City Attorney

State of Montana)
County of Cascade :ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution 9803 was placed on its final passage by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6th day of January, 2009, wherein it was approved by said Commission.


IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6th day of January, 2009.






Lisa Kunz, City Clerk

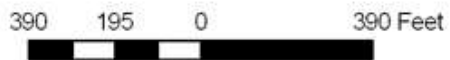
(SEAL OF CITY)

VICINITY/ZONING MAP



 LOT 3, BLOCK 754, GREAT FALLS TENTH ADDITION REQUESTING A CONDITIONAL USE PERMIT BE GRANTED TO ALLOW A LAND USE OF A CONTRACTOR YARD, TYPE 1

-  R-3 Single-family high density
-  C-2 General commercial
-  POS Parks and Open Space
-  R-5 Multi-family medium density
-  PLI Public Lands and Institutional





P. O. Box 5021, 59403-5021

Planning Department

DEVELOPMENT REVIEW APPLICATION

Name of Project/Development: Norris Wallcovering & Painting

Owner(s): Kirk, Jack, Brad Norris

Mailing Address: P.O. Box 2749

Phone: 406-452-2174 E-mail: peggy@norris-wallcovering.com FAX: 406-452-2182

Agent(s): Tracy Mastello

Mailing Address: 920 Central Ave

Phone: 406-799-9474 E-mail: tracymastello@busman.net FAX: 406-741-5812

Legal Description: Great Falls 10th Lot 3 block 754

Section: _____ Township: _____ Range: _____

Street Address: 1308 10th Ave S.

Zoning: Current: R3 Proposed: _____

Land Use: Current: autobody Proposed: contractor

Covenants or Deed Restriction on Property: Yes _____ No X
If yes, please attach to application

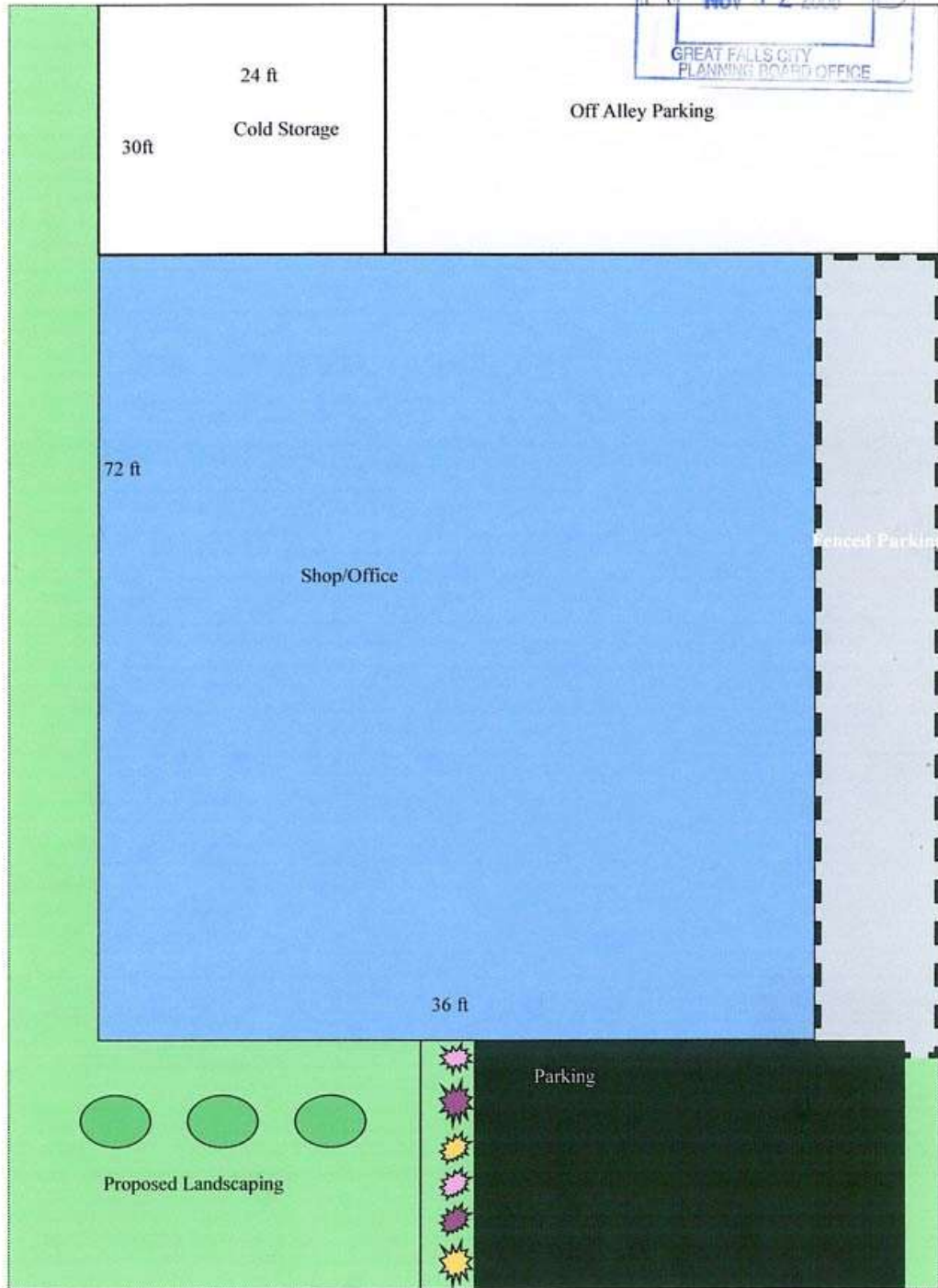
- Application Type (please check all that apply):
- Subdivision Preliminary Plat
 - Subdivision Minor Plat
 - Subdivision Mobile Home/RV Park
 - Subdivision Final Plat
 - Annexation
 - Zoning Map Amendment
 - Conditional Use Permit
 - Establishment of Zoning with Annexation

I (We) the undersigned understand that the filing fee accompanying this application is not refundable. I (We) further understand that the fee pays for the cost of processing, and the fee does not constitute a payment for approval of the application.
I (We) also attest that the above information is true and correct to the best of my (our) knowledge.

Property Owner's Signature: Marian D. Stinac Date: 11/24/08

Property Owner's Signature: B. Ah- Date: 11/24/08

Alley



Lot
150 ft

Lot 50 ft

Norris' Wall Covering & Painting, LLC



P.O. Box 2749 • Great Falls, MT 59403 • Phone (406) 452-2174 • Fax (406) 452-2182

October 27, 2008

In regards to: Conditional Zoning Change 1308 6th Avenue South

Dear Neighbor,

For the past 30 years the property of 1308 6th Avenue South has been zoned for Auto Body Repair. We are seeking to have the conditional zoning variance transferred to accommodate a paper hanging and paint shop.

The site will be used as office space for one part time bookkeeper, dry storage for materials and equipment and work on race cars which is a hobby of the owners. Hours of operation may vary but 8am to 6pm will be the general business hours. Three company vehicles, 2 vans and a club cab truck are used for business and personal use and will generally not be parked on site overnight. Typically, two trailers will be parked in the fenced area west of the building. Customers are not met on premise. The majority of business is conducted out of the shop on job sites. Most waste is disposed of on job location and we will not require additional waste provisions at the shop. Three owners and three additional full/part time employees are currently employed.

Norris Wall Covering and Painting, has been in business for over 75 years. It is a full service painting contractor serving all Montana and the Northwest. We specialize in hotels (new construction and remodel) commercial and residential properties. We recently finished a remodel project on the Town House Inn on 10th Avenue and the new Hilton Garden Inn at the Market Place.

We will maintain the yard and do additional landscaping: you will see pride of ownership, at the location!

Thank you for your time, we hope for your support on the zoning variance from Auto Body Repair to Wall Covering and Painting Shop.

Respectfully,

Kirk, Jack, and Brad Norris

Norris Wall Covering & Painting

*George L. Holm
1323-6 Ave So.
Gr. Falls MT*

*1314 6th AVE South
Nathan A Ogden
DANIEL RANIERI
1316 6th AVE. SO.
James Livingston
1322 6th Ave SO*

Norris' Wall Covering & Painting, LLC



P.O. Box 2749 • Great Falls, MT 59403 • Phone (406) 452-2174 • Fax (406) 452-2182

1305 8th Ave - Not Home

1309 1/2 8th Ave - Vacant Remodeling

1315 8th Ave - ~~Handwritten~~

1317 - Not Home

1321 12th Ave S. - Garrett Butler *Jammin Woodard*

1325 Not Home

612 Vacant 14th St

~~1317~~ Elaine Tyler

1315 6th Ave South

Great Falls, MT 59405

1309 Vacant For sale

1305 6 Ave S. Brennan Brian

1303 Remodeling Vacant

1300-#2

1300 #

1300 #3 *Handwritten signature*

1300 #1 Jessica Modus

605 *Jane R Patton*

1305-6th Ave S. *Lillian Fisher*

1301 1/2 7th Ave S. - *E. E. DeLombroso*

1301 - Vacant

FILE MEMO
GREAT FALLS PLANNING DEPARTMENT
TRANSPORTATION SECTION

Date: September 3, 2008

Subject: Traffic impact due to proposed change in nonconforming use from a vehicle repair shop to a painting and drywall contractor's shop in a 2,736 sq. ft. building.

Notes: According to the latest edition of the *Institute of Transportation Engineers (ITE) Trip Generation Manual (7th Edition)*, the land use class of "Automobile Care Center" is the closest use to an automobile repair shop. An Automobile Care Center is defined as housing "...numerous businesses that provide automobile-related services, such as repair and servicing, stereo installation and seat cover upholstery." However, the Trip Generation Manual provides only Peak Hour generation rates. So, an alternative similar use was found that provides a daily generation rate for a weekday.

The land use class of "Tire Shop" is reasonably similar in activity to that of an automobile repair shop. A Tire Store is defined as a place of business that generally offers, in addition to sale of tires, "...tire installation and repair, as well as other automotive maintenance or repair services and customer assistance."

No similar land use to a contractor's shop was found in the Trip Generation Manual.

Automobile Repair Shop Calculation: The estimated average weekday trip ends generated by the repair shop, based upon 24.87 average weekday trip ends/1000 sq. ft. for a tire shop, is calculated as follows:

24.87 average weekday trip ends/thousand sq. ft. = $24.87 \times 2.736 = \underline{\underline{68 \text{ Average weekday trip ends}}}$

Drywall/Painting Contractor Shop Calculation: Because no data is available on trip generation, the average weekday trip ends must be estimated using what is known.

The shop will have a maximum of five (5) employees and five (5) vehicles. The estimated average trip ends per day per employee is calculated as follows:

Each employee is estimated to make the following daily trips:

- Trip 1: arriving in the morning and departing in the evening (2 trip ends)
- Trip 2: one morning trip to off-premise jobsite, departing and returning (2 trip ends)
- Trip 3: one afternoon trip to off-premise jobsite, departing and returning (2 trip ends)
- Trip 4: two miscellaneous trips to and from the workplace during the day (4 trip ends)

The average daily trip ends generated by employees is the sum of the above, times the number of employees: $10 \text{ trip ends/employee} \times 5 \text{ employees} = \underline{\underline{50 \text{ employee trip ends/day}}}$. This is a high estimate, since it is likely that some of the employee trips will

be “shared trips” taken in the same vehicle, while other employees may stay on-premise all day. However, for the purposes of this analysis, a high estimate is preferable to a low estimate.

In addition, while the shop is likely to generate very few walk-in customers, it may attract salespersons, manufacturers’ representatives, deliveries and miscellaneous trips. An average of these trip ends (coming and going of the non-employee trips) is estimated as follows:

Walk-in customers and other clients:	8 trips ends/day
Salespersons/manufacturers representatives/deliveries:	4 trip ends/day
Other, non-specified trips:	<u>4 trip ends/day</u>
Total non-employee trip ends per day:	16 misc. trip ends/day

The total trips anticipated to be generated by the proposed use, adding the above estimates, is **66 avg. daily trip ends**. As stated previously, this is considered a conservative, or high, estimate calculation. Even so, it is below the estimated trips for the repair shop.

Conclusion: The proposed new use would not generate more traffic than the previous non-conforming use.

13 Nov 08

TO: City Planning Board Charlie Sheets

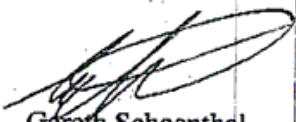
SUBJECT: Conditional Use Permit Request Norris Wallcovering

FROM: Neighborhood Council #9 Gareth Schoenthal

Neighborhood Council #9 was presented a proposal at our 13 Nov 08 monthly meeting for a Conditional Use Permit request from Norris Wallcovering and Paint to change from an auto body and paint business to a wallcovering business.

Council discussion took place with no objections except to the possible noise issues associated with the race car hobby. Oft times these vehicles are run without mufflers and can be VERY loud to neighbors even when running indoors. This council would never dictate what hobbies a resident could have but we would prefer the Norris' would consider voluntarily adding additional indoor sound proofing but is NOT a condition of approval.

Conditional Use Permit request **APPROVED**



Gareth Schoenthal
Chairman
Neighborhood Council #9
cschoenthal1841@bresnan.net

Charlie Sheets

From: Kim McCleary
Sent: Monday, November 17, 2008 3:47 PM
To: Charlie Sheets
Subject: Conditional Use - 1308 6th Ave S

It appears from the site plan submitted with the application that there is sufficient off-street parking if they utilize the parking area inside the building. This usage would require six off-street parking spaces. The parking area in front of the building and off the alley is large enough to provide 5 spaces. According to your explanation, there is space inside the building that could provide the sixth space. If this is accurate, their proposal meets the City parking code requirements.

If you have any questions, please don't hesitate to contact me.

Kim McCleary
Zoning/Parking Supervisor
P.O. Box 5021
Great Falls, MT 59403-5021
(406) 455-8405
kmccleary@greatfallsmt.net



Item: 2008/2009 Community Development Block Grant Policies and Funding Priorities

From: Community Development Department

Initiated By: Chris Imhoff, CDBG/HOME Administrator

Presented By: Chris Imhoff, CDBG/HOME Administrator

Action Requested: Approve Motion

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission reaffirm the CDBG Policies and Citizen Participation Plan, and approve the 2009-2010 Community Development Block Grant Funding Priorities.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls the vote.

Staff Recommendation: Staff recommends the City Commission reaffirm the Community Development Block Grant (CDBG) Policies and Citizen Participation Plan and approve the 2009-2010 CDBG Funding Priorities.

Background:

Significant Impacts

Funding priorities will lay out the base for the Annual Action Plan required by HUD as part of the Consolidated Plan.

Citizen Participation

Community Needs Public Hearing Minutes from the December 16, 2008, City Commission meeting are attached

Workload Impacts

Not applicable

Purpose

The CDBG policies, adopted in previous years and amended in December 2005 by the City Commission, are attached for the Commission's review, as is the Citizen Participation Plan adopted in February of 2005. Staff is asking acceptance of these policies and the Plan for use in the 2009-2010 CDBG allocation process.

Based on testimony given at the Community Needs Public Hearing held by the City Commission on December 16, 2008 and consideration of the national objectives of the Community Development Block Grant Program, staff is recommending the attached priorities for the 2009 program year. The recommendations include 35% of the grant allocated to Public Facility Improvements/Handicap Accessibility, 25% allocated to Housing, 5% allocated to economic development, 15% allocated to Public Services, and 20% allocated to Administration.

Project Work Scope

Not applicable

Evaluation and Selection Process

Projects will be considered that fall into the guidelines established by these funding priorities and are eligible for CDBG funding. This year's recommendation to fund the Public Facility improvements/Handicap Accessibility allocation could support projects that provide handicap accessibility in public facilities and/or general public facility improvement projects. The Affordable Housing allocation could support Rehabilitation Services, and New Construction or Rehabilitation of Housing for low/moderate income families. The Economic Development allocation could support creation of jobs for low/moderate income persons. The Public Service Activities could provide services benefitting low/moderate income persons. The Administration priority includes funding administrative costs for the CDBG, HOME, and City Housing Revolving Loan grant programs and required environmental review activities.

Conclusion

The majority of the current CDBG policies were adopted by the City Commission during the block grant allocation process in 1994. The policies were amended in 2005, and have been reaffirmed annually. The Citizen Participation Plan was adopted with the Consolidated Plan in 2005. It has been reaffirmed annually. Acceptance of CDBG policies and a Citizen Participation Plan for use in the 2009-2010 CDBG allocation process is required by HUD.

Funding priorities will lay out the base for the Annual Action Plan required by HUD as part of the Consolidated Plan. Projects will be considered that fall into the guidelines established by these funding priorities and meet national CDBG objectives making them eligible for use of CDBG funds.

Concurrences: Not Applicable

Fiscal Impact: Meeting HUD requirements for receipt of CDBG funding will bring \$917,000 to the City to benefit Low/moderate income citizens and families.

Alternatives: The Commission could change the funding priorities, CDBG City Commission policies or the Great Falls Citizen Participation Plan.

Attachments/Exhibits:

CDBG Policies

2008-2009 CDBG Funding Priorities

Community Needs Public Hearing Minutes

Citizen Participation Plan

**City of Great Falls
Community Development Block Grant
City Commission Policies
January 6, 2009**

1. City Commission will determine the allocation of all CDBG projects.
2. The City Commission will conduct a Community Needs public hearing to allow citizens (especially low/moderate income persons) and city staff the opportunity to express their opinion as to the needs of the community that should be addressed with block grant funding.
3. The City Commission will determine priorities and allocate funding percentages to priority categories following the Community Needs public hearing.
4. The Community Development Department will make recommendations to the City Commission for any grant proposal applications not reviewed by the Community Development Council.
5. The Community Development Council will review and make funding recommendations for grant proposal applications, as directed by the City Commission.
6. The Community Development Council will review, prioritize, and make funding recommendations to the City Commission for all public service grant applications based on solicitation for proposals in an amount to be approximately 15% of the grant entitlement amount. The minimum grant request will be for \$5,000.
7. The City Commission will not fund proposals from agencies/departments whose last fiscal year or older CDBG funded projects will not be 75% complete by March 31st of the current year, unless a special public purpose exists for waiving the policy.
8. Private non-profit agencies will not be funded for staff salaries, benefits, office consumables, and rent payments for agency office space or utility costs.
9. City Commission will fund activities to further fair housing as a part of block grant administration.

10. Projects that leverage and/or match the CDBG funds will be given priority consideration for funding.
11. Handicap accessible projects that serve the largest number of the public will be given priority consideration for funding.

City of Great Falls Community Development Block Grant
2009/2010 Funding Priorities

We are expecting the budget to be on par with the 2008/2009 allocation of \$917,014. HUD funding is currently operating under a continuing Resolution through March. The budget amount will not be announced until after the new Congress convenes.

<u>09/10 CDBG Priorities</u>	<u>Funding Percentage</u>	<u>09/10 Funding Amount</u>
Public Facility Improvements/ Handicap Accessibility (Includes Infrastructure, Park Facilities, Public Building Rehab)	35%	\$316,800
Affordable Housing (Housing for low/moderate income Families: Rehab Services, New Construction, Rehabilitation including Historic Preservation)	25%	\$229,250
Economic Development (Resulting in Job Creation for low/moderate income persons)	5%	\$50,000
Public Service Activities (maximum) (Benefiting low/moderate income persons)	15%	\$137,550
Administration (maximum) (Includes CDBG Grant Administration, Environmental review, City Housing RLF)	20%	\$183,414
Total Allocation	100%	\$917,014

A public meeting was held as part of the regular City Commission meeting on December 16, 2008, at 7 p.m. in the Commission Chambers at the Civic Center. The meeting was held to provide an opportunity for citizens to advise the City Commission on the needs of low income people in the community and how CDBG and HOME grant funds could be used to address those issues and eliminate community needs.

The following listing is a summary of the comments involving current community needs which were expressed in the meeting.

Tim McKittrick, vice-chair, Great Falls Housing Authority Board of Commissioners:

Mr. McKittrick stated the Housing Authority wished to stress the need for decent affordable housing that meets minimum property standards for community members who have limited incomes. The Housing Authority has a waiting list of 201 families, with the most pressing need being for one and two bedroom homes. The Housing Authority currently houses 1,040 clients and these people have an annual average income of \$10,000. Mr. McKittrick pointed out the strong need to maintain and increase affordable housing through the Housing Authority. He requested using CDBG and HOME funds to improve the supply of housing in Great Falls that is safe, sanitary and affordable.

John Stephenson-Love, Upper and Lower River Road Water and Sewer District:

Mr. Stephenson-Love reported the ULRRWSD has been engaged in bringing water and sewer services to the District since 2001. They have completed Phase 1 and 2 and Phase 2 will be annexed soon. The District is in the process of doing the required income survey of the Phase 3 area. Although the final results are not yet available, they believe it will verify the area has a high percentage of low income people similar to the previous phases of the project. The District has been recommended for several other state grants for this project.

When the District started in 2001 the City agreed to put forth \$1,000,000 in CDBG funds to help finance the project. The District used 1/3 of the funds in Phase 1 and 1/3 in Phase 2. They are preparing to do Phase 3 and would like to request the remaining 1/3 of CDBG funding for this phase. Mr. Stephenson-Love noted that bringing water and sewer services to the area will revitalize an area that has been dormant.

Brett Doney, director, Great Falls Development Authority:

Mr. Doney requested the City's continued support of revolving loan funds with an allocation of \$200,000 this year. He also requested the two national priorities of the CDBG program which include job creation for low income residents and addressing slum and blight be supported so loan funds can be used for real estate purposes. The GFDA has been hit with the dilemma of the need to create more jobs and jobs with higher wages at the same time a lack of credit opportunities is occurring because of the current economic situation. The GFDA would like to help renovate commercial properties in the downtown area and other areas in Great Falls but do not have the loan

funds available to do so. They need more money so they will be able to fund loans to businesses to fund construction projects and create jobs for low income residents. Mr. Doney distributed a letter dated December 11, 2008, describing the GFDA's CDBG needs statement (see attached).

Sheila Rice, executive director, NeighborWorks Great Falls:

Ms. Rice described the need to use CDBG and funds for improving home ownership and rental property and requested support for affordable homeownership and rental activities.

Ms. Rice reported that the City and several local groups collaborated to undertake a Cascade County Comprehensive Housing Survey in October and November, 2008. She distributed copies of selected responses from the survey (see attached) and reviewed the findings. She noted surveys were mailed to 8,000 households and 1,380 responses were received. Ms. Rice stated one of the most significant findings from the survey was that 44% of the people indicated they spend 30% or more of their total household income on housing and this indicates a problem with affordable housing in Cascade County. Among other findings, the survey reflected the need for affordable housing, shelter space for homeless and transitional families and individuals, housing for teen parents and improved curbs, gutters and sidewalks. The group undertook a second survey in which survey forms were sent directly to clients of social service agencies. Of the 612 responses, 63% of the people were renters.

Ms. Rice advised the City Commission to be aware that the special allocation of CDBG funds which is going to be made through the State of Montana in the form of Neighborhood Stabilization Funds must be used for foreclosed and abandoned homes only. Therefore, those funds will not be able to be used do the same affordable housing activities as the regular CDBG and HOME funds NWGF receives.

No public comments were received via letter, email and/or telephone.

City of Great Falls, Montana
Citizen Participation Plan
for the
Consolidated Plan or the Annual Action Plan
January 2009

PURPOSE OF CITIZEN PARTICIPATION IN DEVELOPING THE CONSOLIDATED PLAN:

A key component in creating the HUD required Consolidated Plan is citizen participation in all steps of the planning development process. To ensure citizens in Great Falls have the opportunity to take part in creating the Consolidated or the Annual Action Plan, the City of Great Falls has developed and commits to follow these elements of the Citizen Participation Plan.

THE CITIZEN PARTICIPATION PLAN:

PARTICIPATION: The City of Great Falls will provide for, and encourage, citizen participation emphasizing the involvement of low, very low, and poverty income residents in areas where housing and community development funds may be spent. The City of Great Falls will also inform and offer opportunities for comment to residents of low, very low and poverty income neighborhoods. The City of Great Falls will encourage the participation of the Great Falls Housing Authority and public and assisted housing residents of the Great Falls Housing Authority, and of Opportunities, Inc., and their assisted housing residents in Great Falls. The City will provide Consolidated Plan or Annual Action Plan development information to the Great Falls Housing Authority that will be available at the public hearing required for the Public Housing Agency Plan.

The City of Great Falls will make reasonable efforts to consult with other public, private, and non-profit agencies that provide housing, health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities - including physical, mental and developmental disabilities as well as other persons in need of services). When preparing the portion of the Consolidated Plan or Annual Action Plan concerning lead-based paint hazards, the City of Great Falls will consult with the City/County Health Department in order to examine data identifying the addresses of housing units with children as containing lead. The City of Great Falls will encourage input and solicit information from each of the nine neighborhood councils, notify of all of the public hearings and the Consolidated Plan or the Annual Action Plan development process, and solicit comments.

The City Commission appoints ten citizens who reside within Great Falls to a voluntary advisory board that reviews public service and public facility projects submitted for CDBG funding. This advisory board, the Community Development Council, recommends project funding to the City Commission under the public service and public facility portions of the CDBG funding. The encouragement of lower income, minority, and disabled citizens or their representatives to apply for Community Development Council positions occurs annually; through advance notice of board openings and application information with have adequate time to apply.

ACCESS TO MEETINGS: The City of Great Falls will afford adequate, timely notification of meetings so all citizens can attend the public hearings. This will include, as appropriate, legal notices, advertisements, press releases, public service announcements, letters or other means of notifying interested parties. The City of Great Falls will also provide reasonable accommodations for persons with disabilities to all public hearings, and local meetings. Reasonable accommodations include but are not limited to holding meetings in handicapped accessible buildings, providing for sign language interpreters, and language interpreters, etc. when requested.

ACCESS TO INFORMATION: The City of Great Falls will provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the Consolidated Plan or annual Action Plan and all of its components and the City's planned use of financial assistance received under the relevant federal programs during the next year. The public will have the opportunity to receive information, review and submit comments on any proposed submission including the Consolidated Plan adoption by the City of Great Falls City Commissioners and any Plan amendments and its performance reports. The required 30-day comment period on any proposed submission, adoption of the Consolidated Plan or Annual Action Plan submission, and any plan amendments is available as occurring. Information will also be available on the range of programs, the amount of assistance the City expects to receive, the amount of funds available and the estimated amount proposed to benefit low, very low and poverty income residents. These groups will also have access to the City's plans to minimize displacement of residents and businesses and assist those displaced because of these activities. Information and public records will be available during regular business hours in the City Community Development Department. Special arrangements are available to accommodate access to information for persons with disabilities.

TECHNICAL ASSISTANCE: The City of Great Falls will provide appropriate technical assistance to all groups that request assistance in developing proposals for financial assistance under any of the programs covered by the Consolidated Plan.

PUBLIC HEARINGS: To obtain citizens views the City holds at least two public hearings conducted at a minimum of two different stages of the program. The City of Great Falls program year begins July 1 and ends June 30. These public hearings will address and respond to proposals and comments on:

1. Housing and community development needs
2. Development of proposed activities
3. Review of proposed uses for funds
4. Review of program performance

The City of Great Falls attempts to provide public meetings conveniently timed for people who might or will benefit from program funds, accessible to people with disabilities and adequately publicized with sufficient information about the subject of the hearing to permit informed comment. The public hearings occur on a weekday evening

in the Civic Center Building, which is centrally located, easily accessible with adequate parking, and handicap accessible.

Throughout the year, citizens may attend the City Commission meetings and public hearings to provide input as to the distribution of federal funds into the City. There will be two public hearings conducted by the City Commission annually. The first public hearing will give citizens the opportunity to comment and provide input on the following:

- Any housing and non-housing community development needs that they have identified and wish addressed
- How funding proposals may meet community development needs in Great Falls
- Performance of the City in administering and distributing federal funds
- Every five years, or anytime the Citizen Participation Plan has substantial revisions or re-written, citizens may comment on the adoption of the Citizens Participation Plan. Prior to adopting the plan, the City distributes the plan for review and comment for a full 15 days.

The second public hearing will offer the opportunity for the citizens to comment on the following:

- Adoption of the Consolidated or Annual Action Plan
- Use of federal funds
- Performance of the administration and implementation of funded projects

TIMELY RESPONSE: The City of Great Falls will consider any comments or views of citizens, agencies, units of general local government, or other interested parties concerning the Consolidated Plan or Annual Action Plan, any amendments to the Plan and all performance reports. The Community Development Department will address any complaints with written responses to written complaints within 15 working days, where practical. Depending on the nature of the complaint, staff may refer the issue to the City Manager or the City Commission if the response from staff is unsatisfactory to the complainant. As appropriate, an attachment of summary of comments and responses to complaints to the final submission of the Consolidated Plan, the Consolidated Plan Amendments, or the Annual Performance Report will take place.

NON-ENGLISH SPEAKING RESIDENTS: In the event that a significant number of non-English speaking residents can reasonably be expected to participate, the City will provide accommodations for non-English speaking residents in the case of public hearings, if such accommodations are available.

SUBSTANTIAL AMENDMENTS: Substantial changes in the City's planned or actual activities will require an amendment to the Consolidated Plan or Annual Action Plan. The following criterion determines substantial change and governs Consolidated Plan or Annual Action Plan amendments:

1. If a new project that has not previously received funding, is being created with unprogrammed funds, or created from financial changes from other funded projects.

2. If there is a change in the project site location, or the project affects an area, an amendment will be required if the project location changes to a different census tract.
3. If there is a change in project purpose or beneficiaries, such as a project eliminates or reduces by over 50% the proposed impact on the original beneficiaries, and/or if less than 51% of the beneficiaries are determined to be low, very low, or poverty income an amendment will be required. The CDBG administrator will determine on a case-by-case basis if an Amendment is required when the beneficiaries change from one targeted group to another.
4. If the project changes in scope the activity from the original proposal.
5. If a project budget increases by twice the total allocation and the increase exceeds 10% of the City's total current Block Grant allocation.

The City will advertise a notice in the *Great Falls Tribune* and make available any amendments to the Consolidated Plan for citizen comment for a 30-day period.

ANNUAL PERFORMANCE EVALUATION REPORT

The Annual Performance Report is available to all citizens at the Public Library and the City Community Development Office through a notice in the daily newspaper notifying the public of the availability of this report for review and comment for a minimum of 15 days. Any comments received regarding the Annual Performance Report are considered and a summary of all comments is attached to the performance report.

SOLICITATION OF CITIZEN COMMENTS ON THE CITIZEN PARTICIPATION PLAN:

Prior to its adoption and approval by the Great Falls City Commission, the City of Great Falls will publish a legal notice in the *Great Falls Tribune* and *Consumer's Press*. The notices of the plan and/or any amendments to this plan are available for a 15-day comment listing the sites that a citizen may obtain a copy of the plan. The plan and any amendments to this plan are available to citizens at the Great Falls Public Library, the Great Falls city web page (www.ci.great-falls.mt.us) and the City Community Development Office in the Civic Center.

SOLICITATION OF CITIZEN COMMENTS IN PREPARING THE CONSOLIDATED OR THE ANNUAL ACTION PLAN:

1. The City of Great Falls will contact local agencies, the housing authority, the local neighborhood revitalization agency, and the neighborhood councils to obtain information and comments to make citizens aware of the Consolidated or Annual Action Plan process.
2. The proposed Consolidated Plan or Annual Action Plan is available to all citizens at the Public Library, the City Community Development Office, the City's web page (www.greatfallsmt.net) and the Housing Authority. To inform the citizens of the proposed Consolidated Plan or Annual Action Plan, a notice published in the daily newspaper, the free weekly publication, and distributed to various agencies describes the availability of this plan and the 30-day period to receive public comment.

3. City Commission will conduct two public hearings requesting input from the citizens and representatives of low, very low and poverty level people as to the needs of the community, including but not limited to housing, community development, infrastructure, economic development and homeless assistance. A second public hearing conducted to receive citizen comments on the proposed Consolidated Plan or Annual Action Plan occurs after completion of the Plan.

The City will provide a reasonable number of free copies of the Consolidated Plan or Annual action Plan to citizens and groups upon request.



Item: Ordinance 3029 to rezone Parcel Mark No. CC, Section 14, T20N, R3E
(City-owned parcel along Overlook Drive)

From: Bill Walters, Senior Planner

Initiated By: City Administration

Presented By: Bill Walters, Senior Planner

Action Requested: City Commission accept Ordinance 3029 on first reading and set a public hearing for February 3, 2009.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (accept/deny) Ordinance 3029 on first reading and set a public hearing for February 3, 2009.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls the vote.

City Zoning Commission Recommendation: The City Zoning Commission, at the conclusion of a public hearing held December 9, 2008, unanimously passed a motion recommending the City Commission rezone Parcel Mark No. CC, Section 14, T20N, R3E, from PLI Public lands and institutional district to M-2 Mixed-use transitional district.

Background: The City is the owner of a vacant 2.67 acre tract of land legally described as Parcel Mark No. CC, Section 14, Township 20 North, Range 3 East, Cascade County, Montana. Subject parcel is located between the City Water Treatment Plant and Warden Bridge where Lower River Road intersects with Overlook Drive. The City is interested in having the parcel rezoned from PLI Public lands and institutional district to M-2 Mixed-use transitional district to make the property more marketable for development. The M-2 Mixed-use transitional district allows commercial, residential, and institutional uses and public spaces. The zoning district does not permit light or heavy industrial uses.

Please refer to the attached Vicinity/Zoning Map.

The City acquired subject parcel from the Great Northern Railroad in 1972. The City Public Works Department has used the property for several years as a site for depositing snow removed from City streets. Two City water transmission mains traverse the site and a City sanitary sewer

main is located in the BNSF Railroad right-of-way bordering the south corner of the site. The current reconstruction of the abutting portion of Overlook Drive will result in the relocation of water mains traversing Parcel Mark No. CC. Vehicular access is currently provided by State right-of-way lying beneath the Warden Bridge which connects to River Drive South.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines which must be considered in conjunction with municipal zoning regulations:

- a) is designed in accordance with the comprehensive plan;
- b) is designed to lessen congestion in the streets;
- c) will secure safety from fire, panic or other dangers;
- d) will promote health and the general welfare;
- e) will provide adequate light and air;
- f) will prevent overcrowding of land;
- g) will avoid undue concentration of population;
- h) will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- i) gives reasonable consideration to the character of the district;
- j) gives reasonable consideration to the peculiar suitability of the property for particular uses;
- k) will conserve the value of buildings; and
- l) will encourage the most appropriate use of land throughout the municipality.

Parcel Mark No. CC is bordered on the north by right-of-way and abutments supporting the Warden Bridge, on the east by a beverage warehouse and railroad right-of-way, on the south by a water treatment plant and on the west side by River Drive South and the Missouri River.

Two primary goals of the economic development element of the City of Great Falls Growth Policy are:

- ◆ Attract new businesses.
- ◆ Encourage businesses and industries that will utilize existing infrastructure.

Two primary goals of the land use element of the Growth Policy are:

- ◆ To support and encourage efficient, sustainable development and redevelopment throughout the community.
- ◆ To support and encourage a compatible mix of land uses in newly developing areas.

The Growth Policy encourages compatible infill and redevelopment which offer the community the highest degrees of efficiency and sustainability. Land use changes should be compatible with the type, scale, and physical character of the neighborhood.

Subject property is located within the boundaries of the Missouri River Urban Corridor Plan dated 2004. The primary purpose of this Plan is to present a vision for what is possible in the corridor. The Plan indicates vacant properties should be planned and developed carefully. Subject parcel has not been identified for park purposes. The Plan provides that City-owned land in the corridor that may offer good development opportunities, be sold or leased for development that would be beneficial to the community.

In addition, development upon Parcel Mark No. CC will be subject to the review and approval of the City's Design Review Board, which considers such features as building architecture, exterior materials, colors, façade design and elevations, outdoor lighting and landscaping.

Considering the remaining procedural steps to insure quality of the built environment, staff concludes all of the above cited criteria are or can substantially be met.

A private party has expressed an interest in acquiring subject parcel if it is properly zoned to accommodate private development. As no City Department has indicated a need for subject property, either short or long term, rezoning the property to M-2 Mixed-use transitional district is a step in preparing the property to be marketed for sale.

During the Public Hearing before the Zoning Commission on December 9, 2008, no proponents or opponents spoke and no public comment was presented.

Concurrences: Other City Departments including Public Works, Community Development, Park and Recreation and Fire have been consulted regarding the rezoning. Neighborhood Council 6 reviewed the rezoning proposal during a meeting held December 3, 2008, and no objections were expressed.

Fiscal Impact: Approval of the rezoning could eventually result in private development of the property which will enhance the tax base.

Alternatives: The City Commission could deny acceptance of Ordinance 3029 on first reading and not set the public hearing. However, such action would preclude due process and consideration of a public hearing, as provided for in City Code and State Statute.

Attachments/Exhibits:

Ordinance 3029

Vicinity/Zoning Map

Cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
Mike Rattray, Community Development Director
Mike Jacobson, Water Plant Supervisor

ORDINANCE 3029

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION ON PARCEL MARK NO. CC, SECTION 14, TOWNSHIP 20 NORTH, RANGE 3 EAST, CASCADE COUNTY, MONTANA, LOCATED ALONG OVERLOOK DRIVE BETWEEN THE WATER TREATMENT PLANT AND THE WARDEN BRIDGE, FROM PLI PUBLIC LANDS AND INSTITUTIONAL DISTRICT TO M-2 MIXED-USE TRANSITIONAL DISTRICT

* * * * *

WHEREAS, on the 6th day of September, 2005, the City Commission of the City of Great Falls, Montana, adopted a certain Ordinance designated as Ordinance 2923 entitled: "AN ORDINANCE ADOPTING TITLE 17 OF THE OFFICIAL CODE OF THE CITY OF GREAT FALLS, MONTANA, PERTAINING TO LAND DEVELOPMENT CODES AND REPEALING ANY AND ALL PREVIOUS ORDINANCES OR INTERIM ORDINANCES,"; and,

WHEREAS, said Ordinance 2923 became effective the 6th day of October, 2005; and,

WHEREAS, said Ordinance 2923 has placed the following described property situated in the City of Great Falls, Cascade County, Montana, in a PLI PUBLIC LANDS AND INSTITUTIONAL DISTRICT, as defined therein:

Parcel Mark No. CC, Section 14, Township 20 North, Range 3 East, Cascade County, Montana, located along Overlook Drive between the Water Plant Addition and the Warden Bridge.

WHEREAS, notice of rezoning the above-mentioned property from the existing PLI PUBLIC LANDS AND INSTITUTIONAL DISTRICT to a M-2 MIXED-USE TRANSITIONAL DISTRICT was published in the Great Falls Tribune, advising that a public hearing on this proposed change in zoning would be held on the 3rd day of February, 2009, before final passage of said Ordinance herein; and,

WHEREAS, pursuant to said Ordinance 2923, a hearing was duly held after notice thereof was first duly given according to said Ordinance 2923, for the purpose of considering changing said zoning designation on said property to a M-2 MIXED-USE TRANSITIONAL DISTRICT; and,

WHEREAS, following said public hearing, it was found and recommended that the said zone change be made, NOW THEREFORE,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein requested zone change will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning designation on the property hereinabove described be changed from a PLI PUBLIC LANDS AND INSTITUTIONAL DISTRICT to a M-2 MIXED-USE TRANSITIONAL DISTRICT.

Section 3. All Ordinances and parts of Ordinances in conflict herewith, are hereby repealed.

Section 4. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption by the City Commission.

PASSED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, this 3rd day of February, 2009.

Dona R. Stebbins, Mayor

ATTEST:

Lisa Kunz, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

David V. Gliko, City Attorney

State of Montana)
County of Cascade : ss.
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Ordinance 3029 was placed on its final passage and passed by the City Commission of the City of Great Falls, Montana at a meeting thereof held on the 3rd day of February, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City on this 3rd day of February, 2009.

Lisa Kunz, City Clerk

(SEAL OF CITY)

State of Montana)
County of Cascade : ss.
City of Great Falls)

Lisa Kunz, being first duly sworn, deposes and says: That on the 3rd day of February, 2009, and prior thereto, she was the City Clerk of the City of Great Falls, Montana; that as said City Clerk she did publish and post as required by law and as prescribed and directed by the Commission, Ordinance 3029 of the City of Great Falls, in three conspicuous places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;
On the Bulletin Board, first floor, Cascade County Court House;
On the Bulletin Board, Great Falls Public Library

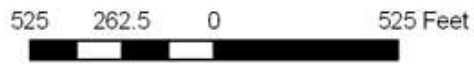
Lisa Kunz, City Clerk

(SEAL OF CITY)

VICINITY/ZONING MAP



- XXXXXX MARK CC IN NE 1/4 SECTION 14, TOWNSHIP 20 NORTH, RANGE 3 EAST, PROPOSED TO BE REZONED FROM PLI PUBLIC LANDS AND INSTITUTIONAL DISTRICT TO M-2 MIXED-USE TRANSITIONAL DISTRICT
 CITY LIMITS
 RIGHT-OF-WAY
 R-1 Single-family suburban
 R-2 Single-family medium density
 R-3 Single-family high density
 PLI Public Lands and Institutional
 POS Parks and Open Space
 RIVERS
 Tracts of land outside City





Item: Resolution 9785, Intent to Create Special Improvement Lighting District - City-Owned Residential Lighting District No. 1305, Water Tower Park Addition

From: Martha Cappis, Operations Supervisor

Initiated By: TD Development

Presented By: Coleen Balzarini, Fiscal Services Director

Action Requested: City Commission Adopt Resolution 9785

Suggested Motion:

1. Commissioner moves:

“I move the City Commission (adopt/deny) Resolution 9785 and set a public hearing for the creation of Special Improvement Lighting District – City-Owned Residential Lighting District No. 1305 for February 3 2009”

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

Staff Recommendation: Staff recommends the City Commission adopt Resolution 9785 and set a public hearing for the creation of Special Improvement Lighting District – City-Owned Residential Lighting District No. 1305 for February 3 2009.

Background: The City Commission adopted Resolution 9506 creating the City’s Street Light Policy on July 19, 2005. This resolution established the City’s policy to own and operate any new street lighting districts, within City limits, requested by property owners or developers, as allowed by MCA 7-12-4301, 7-12-4329, and 7-12-4333. These authorize the City to create lighting districts and to assess the cost of installing and/or maintaining the district to the property owners within the boundaries of such district.

On March 26, 2008, staff received a signed petition from TD Development as shown on Exhibit A from TD Development, the owner and developer of Water Tower Park Addition, requesting the installation of street lights in the newly annexed subdivision. The petition requested the installation of 4 - 100 watt HPS semi-cut off street light units mounted on 20-foot poles with underground wiring in accordance with the City’s Street Lighting Policy. Resolution 9784, Intent to Create Special Improvement Lighting District – City Owned Residential Lighting District No. 1305 was adopted by the City Commission on November 18, 2008 and a public hearing was set for December 16, 2008. After review from GPD Engineering Firm, the design of

the street lighting was recommended to be 5 – 100 watt lights mounted on 16 foot poles. The change in design is necessary to provide adequate lighting coverage to the properties within the district, while maintaining compliance with standard lighting practices. Resolution 9784 was voided by the City Commission on December 16 2008. There are 16 individual properties anticipated within Water Tower Park Addition. The signed petition meets all requirements as set forth in the policy for new street light districts. Property owners have 15 days after the date of the first publication of the Legal Notice or written notification as shown on Exhibits E and F, respectively, of the Resolution, to make a written protest against the proposed creation of the Special Improvement Lighting District.

This change is anticipated to add approximately \$1,000 to the estimated construction costs of the project and the additional light will also increase the on-going electrical supply costs. The developer has been notified of these potential costs increases and has requested staff proceed with the creation of the district.

Concurrences: Representatives from the City’s Public Works, Fiscal Services, Engineering and Planning Department work with the property owner and developer throughout the review and approval process of annexation and the lighting district creation and construction.

Fiscal Impact: The special assessment for the installation costs of the improvements shall be payable over a term not to exceed fifteen years. The estimated assessment for construction, exclusive of annual interest of 5% will be \$108.33 for an average sized lot of 13,541 square feet; and as shown on Exhibit C of the Resolution. Property owners have the right to prepay the assessment as provided by law.

The ongoing estimated annual maintenance assessment will be \$77.91 for an average sized lot of 13,541 square feet. The maintenance costs include energy, transmission, distribution, and other ongoing related costs; and as shown on Exhibit D of the Resolution.

Alternatives: The City Commission could choose to not set the public hearing and thereby deny the adoption of Resolution 9785 to Create Special Improvement Lighting District No. 1305.

Attachments/Exhibits: Resolution 9785 w/ Exhibits

- A – Copy of Customer Petition
- B – Map of Proposed Lighting District No. 1305
- C – Estimated Installation Costs of the Improvements
- D – Estimated Maintenance Costs of the Improvements
- E – Legal Notice for Publication
- F – Letter to Property Owners within Proposed Lighting District No. 1305

Cc: David Dobbs, City Engineering
Jason Handl, City Engineering
TD Development, Developer
Brad Kauffman, GPD Engineering

RESOLUTION NO. 9785

A RESOLUTION DECLARING IT TO BE THE INTENTION OF THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA TO CREATE SPECIAL IMPROVEMENT LIGHTING DISTRICT-CITY-OWNED RESIDENTIAL LIGHTING DISTRICT NO. 1305 IN THE CITY OF GREAT FALLS, MONTANA FOR THE PURPOSE OF FINANCING THE INSTALLATION OF FIVE 100 WATT HPS SEMI-CUT OFF STREET LIGHTS ON 16-FOOT POLES WITH UNDERGROUND WIRING ON PROPERTIES LOCATED WITHIN WATER TOWER PARK ADDITION

WHEREAS, the City Commission of the City of Great Falls, is authorized to create special improvement districts embracing any street or streets or public highway therein or portion thereof and property adjacent thereto or property which may be declared by said City Commission to be benefited by the improvements to be made for the purpose of lighting such street or streets or public highway.

WHEREAS, the City Commission of the City of Great Falls, is authorized to require that all or any portion of the cost of installing and maintaining such lighting system be paid by the owners of the property embraced within the boundaries of such special improvement district.

WHEREAS, the City Commission of the City of Great Falls, is authorized to assess and collect the costs for installation and maintenance by special improvement assessment against the property within the district.

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

Section 1. That public interest and convenience requires and it is deemed necessary to create, and the City Commission of the City of Great Falls, Montana, intends to order and

create a Special Improvement Lighting District – City-Owned Residential Lighting District No.1305 to finance the installation of the improvements hereinafter described as authorized by 7-12-4301 MCA.

Section 2. The City Commission has received petitions, attached as Exhibit A, signed by more than the minimum requirement of 60 percent of the owners of the property proposed to be included in the district. The City Commission also intends to conduct a public hearing to consider establishing the District as provided for in State Statute.

Section 3. That the general character of the improvements to be made within or for the benefit of the District is the installation of five 100 Watt HPS semi-cut off street lighting units mounted on 16-foot poles with underground wiring.

Section 4. That the number of said Special Improvement Lighting District is hereby designated as Special Improvement Lighting District – City-Owned Residential Lighting District No. 1305 of the City of Great Falls, Montana.

Section 5. That the boundaries of said Special Improvement Lighting District are hereby declared to be as follows:

The land being described lies in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 36, T. 21 N., R. 3 E., P.M.M Cascade County, Montana.

Water Tower Park Addition: Beginning at NE corner of Certificate of Survey #3762, and the True Point of Beginning; Thence S 89° 25'45" E, 406.68'; Thence S 00° 47'01" W, 683.32 ft.; Thence N 89° 14'00" W, 406.48 ft.; Thence N 0° 46'00" E, 681.93' to the True Point of Beginning. Herein described Subdivision contains 6.369 acres.

The lands included in the District are shown on the map attached as Exhibit B, and that the legal descriptions of the lots, parcels and tracts of land within the District are shown on Exhibit C attached hereto.

Section 6. The City Commission hereby finds and determines that all real estate situated in said district will be especially benefited and affected by such improvement and the property included within the boundaries of said district is hereby declared to be the property assessed for the cost and expense of making said improvements. The installation, utility and administrative costs will be assessed against benefited properties within the District on the following basis, pursuant to Section 7-12-4323 MCA:

Each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

The special assessment for the installation cost of the improvements shall be payable over a term not to exceed 15 years and estimated at \$26,000. The total area for the district to be assessed, or subject to assessment is 216,649 square feet.

The estimated annual cost of the improvements per square foot, exclusive of annual interest of 5%, is \$0.008000. The property owners have the right to prepay the assessment as provided by law.

The ongoing annual assessment, for the utility and administrative costs, is estimated to be \$0.005754 per square foot assessable area.

The assessable area and related costs of construction for each lot or parcel of land is shown on Exhibit C and, the assessable area and estimated costs of maintenance for each lot or parcel of land is shown on Exhibit D attached hereto.

Section 7. That on Tuesday, the 3rd day of February 2009, in the City Commission Chambers, in the Civic Center, Great Falls, Montana, at 7:00 o'clock p.m., the Commission will conduct a public hearing on the creation of the Special Improvement Lighting District and pass upon any written protests timely filed against creation of the Special Improvement Lighting District. Within 15 days after the date of the first publication of the notice of passage of this resolution of intention, any property owner liable to be assessed for the cost of the improvements may make written protest against the proposed work or against the extent or creation of the Improvement District.

Section 8. The City Clerk is hereby authorized and directed to publish notice of the adoption of this Resolution twice in the *Great Falls Tribune*, a daily newspaper published in the City of Great Falls, Montana, with at least six days separating each publication.

The Clerk of said City is hereby further directed to mail a copy of said notice to every person, firm or corporation or the agent of such person, firm or corporation having property within the proposed district, at their last known address, upon the date of the first publication of said notice. The notice for publication is attached as Exhibit E and the letter to the property owners is attached as Exhibit F.

PASSED AND ADOPTED by the Commission of the City of Great Falls, Montana, on this 6th day of January 2009.

Dona R. Stebbins, Mayor

ATTEST:

Lisa Kunz, City Clerk

(SEAL OF CITY)

STREET LIGHT PETITION

DATE: March 26, 2008

TO: The City Commissioners
City of Great Falls
Great Falls, Montana

We, the undersigned property owners of Great Falls, respectfully request that a Special Improvement Lighting District be created in the area: **TD Development**

This is for the anticipated installation of: **four (4) 100 Watt HPS Semi-cut off Street Light units mounted on 20 foot steel/fiberglass poles with underground wiring, wherein the actual amount of lights, types and sizes will be determined upon final design.**

The cost of the Special Improvement Lighting District is to be paid for by the property owners within the district being assessed one hundred percent (100%) of the annual costs.

Using current dollars, this will result in an **estimated** annual assessment during the first fifteen (15) years in the newly created area of **\$163.920** for an average lot of 14,875 square feet for the installation and maintenance of the lights. The second fifteen (15) years the costs will be approximately **\$67.40** for a average lot of 14,875 square feet for the maintenance of the lights.

The street lighting system is to be installed, owned and maintained by the City of Great Falls.

We are the respective owners of the following described city lots abutting upon and which will be benefited by said proposed improvements, and we hereby agree to pay the assessments levied by the City of Great Falls upon the respective properties, to defray the costs of said improvements.

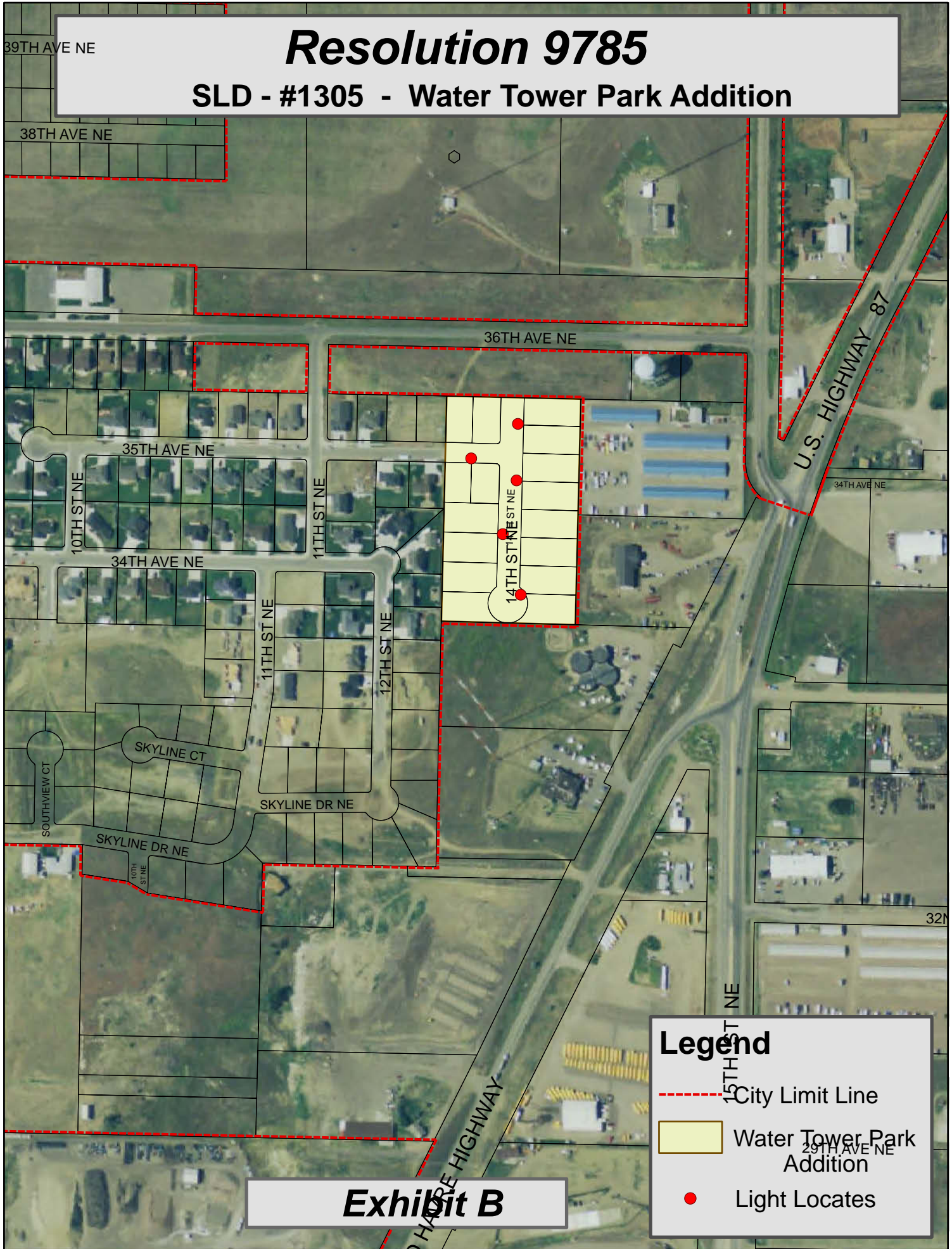
NAME	ADDRESS	LOT	BLOCK
------	---------	-----	-------

1	<i>Dan Jensen</i>	<i>524 4th Ave. No. #1</i>	
2	<i>Tim Spencer</i>	<i>618 Central</i>	<i>59401</i>
3			
4			
5			
6			
7			
8			
9			
10			



Resolution 9785

SLD - #1305 - Water Tower Park Addition



Legend




-  City Limit Line
-  Water Tower Park Addition
-  Light Locates

Exhibit B

RESOLUTION 9785 EXHIBIT C

**SPECIAL IMPROVEMENT LIGHTING DISTRICT 1305
INSTALLATION COSTS**

Total Construction Costs: \$ 26,000.00
Improvements: Street Lighting
Term in Years 15
1st draw date 7/1/2009
bill thru date 7/1/2010
 365

Interest Rate Annual 5.00% Daily 0.0137%
Total Cost per Square Foot: 0.008001 (principal only)
 (address columns F & G)

Average Lot Size 13,541
 TOTAL AVE ASSESSMENT \$108.33
 TOTAL AVE ANNUAL PRIN \$7.22
 TOTAL AVE 1ST YR INT \$5.42
 TOTAL 1ST YR PAYMENT \$12.64

2608760	PARCEL	BLOCK	LOT	SUB-DIVISION	NAME	SET UP AREA (SQUARE FEET)	TOTAL ASSESSMENT	PRINCIPAL PER YEAR	ANNUAL INTEREST	1st Year TOTAL ANNUAL PYMT
1		1	1	Water Tower Addition	TD LAND DEVELOPMENT	11,271	90.18	6.01	4.51	10.52
2		1	2	Water Tower Addition	TD LAND DEVELOPMENT	11,982	95.86	6.39	4.79	11.18
3		2	1	Water Tower Addition	TD LAND DEVELOPMENT	9,690	77.53	5.17	3.88	9.04
4		2	2	Water Tower Addition	TD LAND DEVELOPMENT	10,275	82.21	5.48	4.11	9.59
5		2	3	Water Tower Addition	TD LAND DEVELOPMENT	14,850	118.81	7.92	5.94	13.86
6		2	4	Water Tower Addition	TD LAND DEVELOPMENT	14,850	118.81	7.92	5.94	13.86
7		2	5	Water Tower Addition	TD LAND DEVELOPMENT	14,668	117.35	7.82	5.87	13.69
8		2	6	Water Tower Addition	TD LAND DEVELOPMENT	13,451	107.62	7.17	5.38	12.56
9		2	7	Water Tower Addition	TD LAND DEVELOPMENT	14,035	112.29	7.49	5.61	13.10
10		2	8	Water Tower Addition	TD LAND DEVELOPMENT	14,398	115.19	7.68	5.76	13.44
11		2	9	Water Tower Addition	TD LAND DEVELOPMENT	14,581	116.66	7.78	5.83	13.61
12		2	10	Water Tower Addition	TD LAND DEVELOPMENT	14,583	116.67	7.78	5.83	13.61
13		2	11	Water Tower Addition	TD LAND DEVELOPMENT	14,585	116.69	7.78	5.83	13.61
14		2	12	Water Tower Addition	TD LAND DEVELOPMENT	14,587	116.71	7.78	5.84	13.62
15		2	13	Water Tower Addition	TD LAND DEVELOPMENT	14,590	116.73	7.78	5.84	13.62
16		2	14	Water Tower Addition	TD LAND DEVELOPMENT	14,253	114.03	7.60	5.70	13.30
						216,649	\$1,733.33	\$115.56	\$86.67	\$202.22

SPECIAL IMPROVEMENT LIGHTING DISTRICT 1305
ANNUAL MAINTENANCE ASSESSMENT

Estimated Cost of Operation
 and Routine Maintenance \$ 1,246.53

Annual Cost per Square Foot: 0.005754

(address columns F & G) Average Lot Size 13,541
 Average Annual Maintenance \$77.91

	2608760				SET UP AREA (SQUARE FEET)	Estimated ANNUAL MAINTENANCE
	PARCEL	BLOCK	LOT	SUB-DIVISION	NAME	
1		1	1	Water Tower Addition	TD LAND DEVELOPMENT	64.85
2		1	2	Water Tower Addition	TD LAND DEVELOPMENT	68.94
3		2	1	Water Tower Addition	TD LAND DEVELOPMENT	55.75
4		2	2	Water Tower Addition	TD LAND DEVELOPMENT	59.12
5		2	3	Water Tower Addition	TD LAND DEVELOPMENT	85.44
6		2	4	Water Tower Addition	TD LAND DEVELOPMENT	85.44
7		2	5	Water Tower Addition	TD LAND DEVELOPMENT	84.40
8		2	6	Water Tower Addition	TD LAND DEVELOPMENT	77.39
9		2	7	Water Tower Addition	TD LAND DEVELOPMENT	80.75
10		2	8	Water Tower Addition	TD LAND DEVELOPMENT	82.84
11		2	9	Water Tower Addition	TD LAND DEVELOPMENT	83.89
12		2	10	Water Tower Addition	TD LAND DEVELOPMENT	83.91
13		2	11	Water Tower Addition	TD LAND DEVELOPMENT	83.92
14		2	12	Water Tower Addition	TD LAND DEVELOPMENT	83.93
15		2	13	Water Tower Addition	TD LAND DEVELOPMENT	83.95
16		2	14	Water Tower Addition	TD LAND DEVELOPMENT	82.01
					216,649	\$1,246.53

RESOLUTION 9785
Exhibit E

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that on the 6th day of January 2009, the City Commission of the City of Great Falls, Montana, adopted Resolution 9785 entitled:

A RESOLUTION DECLARING IT TO BE THE INTENTION OF THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA TO CREATE SPECIAL IMPROVEMENT LIGHTING DISTRICT CITY-OWNED RESIDENTIAL LIGHTING DISTRICT NO. 1305 IN THE CITY OF GREAT FALLS, MONTANA FOR THE PURPOSE OF FINANCING THE INSTALLATION OF FIVE 100 WATT HPS SEMI-CUT OFF STREET LIGHTS ON 16-FOOT POLES WITH UNDERGROUND WIRING ON PROPERTIES LOCATED WITHIN WATER TOWER PARK ADDITION.

Resolution No. 9785 is on file in the office of the City Clerk, Lisa Kunz, (406) 455-8541, Civic Center, 2 Park Drive, Great Falls, Montana, to which reference is hereby made for a full description of the boundaries of said district.

The City Commission of the City of Great Falls, Montana, recognizes a need for a special improvement lighting district for the installation of street lighting. The special assessment for the installation costs of the improvements shall be payable over a term not to exceed fifteen years. The estimated assessment for construction, exclusive of annual interest of 5% will be \$108.33 for an average sized lot of 13,541 square feet; and ongoing maintenance of \$77.91 for an average sized lot of 13,541 square feet.

The City Commission of the City of Great Falls, Montana, will be in session on the 3rd day of February 2009 at 7:00 o'clock p.m., in the Commission Chambers, Civic Center, 2 Park Drive, Great Falls, MT, at which time and place the City Commission will hear objections to the intent to create said Special Improvement Lighting District – City-Owned Residential Lighting No. 1305. Any person or persons, who are owners of any lot or parcel of land within said Special Improvement Lighting District No. 1305, who shall, within 15 days after the first publication of this notice have delivered to the City Clerk of the City of Great Falls, a protest in writing against the proposed creation of said special improvement lighting district, shall have the right to appear at said meeting in person or by counsel, and show cause, if any there be, why such special lighting district should not be created.

Publication Dates: January 9 & 16, 2009

RESOLUTION 9785
EXHIBIT F

January 7, 2009

TD Land Development
618 Central Ave
Great Falls, MT 59401

Parcel No.: 2608760

INTENT TO CREATE RESOLUTION NO. 9785

Dear Property Owner:

The Great Falls City Commission is considering the creation of Special Improvement Lighting District – City-Owned Residential Lighting District No. 1305, as petitioned by the developer Water Tower Park Addition. This petition has started the process to install five 100-watt HPS semi cut-off street lighting units on 16-foot poles with underground wiring within the boundaries of said addition.

If the City Commission adopts the proposed resolution, it would result in an **estimated** annual lighting installation assessment of \$1,733.33, exclusive of annual interest of 5% for a period of 15 years, and an **estimated** ongoing annual maintenance assessment of \$1,246.53 for your property. The total costs will be split proportionately per square foot to the 16 planned parcels contained within Water Tower Park Addition and will appear on the property tax bill beginning with the 2009/2010 assessment year.

Montana State Law requires sending individual notices of intent to each affected property owner in addition to the publication of the legal notice relating to the creation and assessment of the district. The enclosed notice is scheduled to be published in the *Great Falls Tribune* on Friday, January 9 2009, and again Friday, January 16 2009.

At any time within 15 days after the date of the first publication of the notice of the resolution of intent, any owner of property liable to be assessed for said work may make written protest against the creation of the district. Such notice must be in writing, must list the property address and parcel number if known, must include signatures of all owners of the property, must indicate the resolution number being protested and may be mailed to City Clerk, PO Box 5021, Great Falls, MT 59403 or hand-delivered to the City Clerk, Civic Center, 2 Park Drive, Great Falls, MT, who shall endorse thereon the date of its receipt.

Each protest shall be weighted in proportion to the amount of the assessment to be placed upon the lot or parcel of property. If the City Commission finds that such protests constitute a majority of the total assessments, the resolution will be denied. The City Commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

Re: Intent to Create Resolution No. 9785

Page 2

You are invited to attend the public hearing for the creation of Special Improvement Lighting District – City-Owned Residential Lighting No. 1305 on February 3 2009 at 7:00 o'clock p.m. in the Commission Chambers, Civic Center, 2 Park Drive, Great Falls, MT.

If you have any questions regarding the creation of this district, please call me at 455-8484 or by email at mcappis@greatfallsmt.net.

Sincerely,

Martha Capps
Operations Supervisor
City of Great Falls

Enc: Legal Notice



Item: Resolution 9808 to Levy and Assess the Cost of Removal and Disposal of Nuisance Weeds on Property Located at Lot 8, Block 16, Boston and Great Falls Addition, Great Falls, Montana addressed as 3425 4th Avenue North

From: Judy Burg, Account Technician

Initiated By: Adopt Resolution #9808 for recovering costs incurred in removal and disposal of nuisance weeds located at 3425 4th Avenue North

Presented By: Coleen Balzarini, Fiscal Services Director

Action Requested: City Commission Adopt Resolution 9808

Suggested Motion:

1. Commissioner moves:

“I move the City Commission adopt Resolution 9808.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

Staff Recommendation: Staff recommends the City Commission adopt Resolution 9808 to Levy and Assess the Cost of Removal and Disposal of Nuisance Weeds.

Background: From May through October of each year, nuisance weed violations are reported to the Public Works Department, either by phone or through e-mail on the City Website. The complaints include uncared for weeds and grasses in alleys, boulevards, vacant lots, yards, etc within the City limits. The Nuisance Weed Program involves investigation and notification of verified weed and grass violations. The investigation process involves an on-site inspection followed by the determination of the legal ownership of the properties. Once ownership of the properties has been established, notification letters of nuisance weed violations are prepared and mailed.

In accordance with the City of Great Falls Municipal Code 8.44.040, owners are given seven business days from the date of the notification letter to comply with the weed ordinance. After the allotted time has expired, properties are once again inspected. Properties found not in compliance are documented and scheduled for cutting by the City crew. Photographs are taken before cutting to verify violations and again when the work is done.

On June 24, 2008, the City was contacted regarding nuisance weeds at 3425 4th Avenue North. An initial inspection was performed and it was determined the property was in violation of the Nuisance Weed Program. On the same day, a letter was sent notifying the property owner of the violation. The property was re-inspected on July 17, 2008 and was still in violation. City crews were contacted and the weeds were cut on July 17th. Several attempts were made to collect for the services; to date payment has not been received.

Fiscal Services is in receipt of a notification for a pending Trustee's Sale on the property located at 3425 4th Avenue North scheduled for January 31, 2009. In the event the property is sold, payment for the weed cutting services will be lost as the new property owner is not responsible for the charges.

In normal circumstances, the costs of removal and disposal of nuisance weeds are levied and assessed during the annual assessment process in August of each year. However due to the pending Trustee's Sale, it is necessary to attach the weed cutting assessment to the property prior to the sale. The weed assessment will be paid from the proceeds at the time of sale.

Section 7-22-4101, MCA, authorizes the City Commission to levy the cost of removing nuisance weeds against the properties if payment is not made.

Concurrences: Public Works staff is responsible for the operational expenses for the Nuisance Weed Program. Fiscal Services staff is responsible for assessing and collecting the revenues necessary to carry out the operations.

Fiscal Impact: The owner's property was cut by the City crews and billed for actual time spent cutting at the rate of \$200.00 per hour (minimum of one hour.) Adoption of Resolution 9808 will allow the City to reimburse the cost of work in the Nuisance Weed Program.

Alternatives: The City Commission could choose to deny the adoption of Resolution 9808 to levy and assess the cost of removal and disposal of nuisance weeds; however, the reduction in services to the community could be harmful and render land unfit for agriculture, forestry, wildlife, native plant communities and the general public.

Attachments/Exhibits: Resolution 9808

Cc: Debbie Kimball, Program Specialist

RESOLUTION 9808

A RESOLUTION LEVYING AND ASSESSING THE COST OF REMOVAL AND DISPOSAL OF NUISANCE WEEDS ON THE PROPERTY LOCATED AT LOT 8, BLOCK 16, BOSTON AND GREAT FALLS ADDITION, GREAT FALLS, MONTANA, ADDRESSED AS 3425 4TH AVENUE NORTH AGAINST SAID PROPERTY

WHEREAS, Mark Hegel, owner of the property located on Lot 8, Block 16, Boston and Great Falls Addition, Great Falls, Montana, 3425 4th Avenue North was issued a notice of weed violation;

WHEREAS, the City Commission of the City of Great Falls declares after due notice and re-inspection, the weeds had not been removed and were subsequently cut by the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

1. The cost of said weed removal and disposal are hereby assessed upon the aforementioned property in accordance with City of Great Falls Municipal Code 8.44.040 and Section 7-22-4101, MCA.
2. The legal description of the lot or parcel of land is: Lot 8, Block 16, Boston & Great Falls Addition, addressed as 3425 4th Avenue North, Great Falls, Montana, hereby levied upon and assessed, with the name of the owner, the amount of \$200.00 for the assessment.

PASSED by the Commission of the City of Great Falls, Montana, on this 6th day of January, 2009.

Dona R. Stebbins, Mayor

ATTEST:

Lisa Kunz, City Clerk

(SEAL OF CITY)

Approved for Legal Content: City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that the foregoing Resolution 9808 was placed on its final passage and passed by the Commission of the City of Great Falls, Montana, at a meeting thereof held on the 6th day of January, 2009, and approved by the Mayor of said City on the 6th day of January 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this 6th day of January 2009.

Lisa Kunz, City Clerk

(SEAL OF CITY)

Regular City Commission Meeting

Mayor Stebbins presiding

CALL TO ORDER: 7:00 PM

PLEDGE OF ALLEGIANCE

ROLL CALL: City Commissioners present: Dona Stebbins, Bill Bronson, John Rosenbaum, Bill Beecher and Mary Jolley. Also present were the City Manager, Assistant City Manager, City Attorney, Directors of Community Development, Fiscal Services, Library, Park and Recreation, Planning, Public Works, the Fire Chief, Police Chief, and the City Clerk.

NEIGHBORHOOD COUNCILS

1. There were no miscellaneous reports or announcements from neighborhood council representatives.

PUBLIC HEARINGS

CDBG and HOME Grant/Consolidated Plan Community Needs. Public hearing conducted.

2. CDBG and HOME GRANT/CONSOLIDATED PLAN COMMUNITY NEEDS.

CDBG Administrator Chris Imhoff reported that the purpose of this public hearing was to allow citizens an opportunity to provide input regarding the City of Great Falls' community needs and how CDBG and HOME funds might be used to address those needs. Ms. Imhoff projected that the City will receive approximately \$917,000 in CDBG funds and \$394,000 in HOME funds from HUD for the 2009 program year. These federal dollars are designated for use in the community for projects that primarily benefit low and moderate income persons, or eliminate slum and blight. No action by the Commission is required tonight. Ms. Imhoff requested that the Commission consider the comments received when prioritizing and allocating the 2009/2010 CDBG and HOME grant funds.

Mayor Stebbins declared the public hearing open. Those addressing the City Commission were as follows:

Tim McKittrick, 2026 3rd Avenue South, Vice-Chairman of the Great Falls Housing Authority Board of Commissioners. Mr. McKittrick informed the Commission that his experience as a commissioner on the Great Falls Housing Authority Board has been very pleasant and an honor. He complimented Cheryl Patton and Kevin Hagar, as well as other staff for running the Housing Authority in a professional and very efficient manner. Mr. McKittrick stressed the need for decent, affordable housing that meets the minimal property standards for members of our community with limited incomes. The Housing Authority waiting list consists of 201 families and the most pressing need are for one and two bedroom homes. Currently, 1,040 clients are housed in the Housing Authority. Mr. McKittrick reported

that the average annual income for those families was \$10,000. He stressed the strong need to maintain and increase affordable housing for the Housing Authority. Mr. McKittrick urged the continued support of the use of CDBG/HOME funds to improve that supply of housing for the Great Falls community.

John Stephenson-Love, 300 40th Avenue South, on behalf of the Upper Lower River Road Water and Sewer District, reported that since 2001 the ULRR Water and Sewer District has been engaged in bringing water and sewer service to the District which lies immediately south of Great Falls. Two projects have been completed. Phase I was annexed two years ago and Phase II will be annexed to the City in the near future. Mr. Stephenson-Love reported that the District is now preparing for Phase III. The areas served have a large percentage of low and moderate income residents. An income survey is underway for Phase III. He expects that the results will show the area consists of more than 50% low and moderate income people. He reported that the District has been put on the recommended list for a DNRC grant for \$100,000 and the District has applied for a \$500,000 TSEP grant. Mr. Stephenson-Love stated that in 2001 when this project began, the City informed him that it would set aside \$1 million in CDBG funds spread through the District to help finance the project. One-third of that money was used for Phase I and one-third for Phase II. Mr. Stephenson-Love requested that the Commission consider funding Phase III to the same extent. He concluded that, by bringing water and sewer services to this area, it will revitalize an area of Great Falls that has been economically dormant.

Brett Doney, 3048 Delmar Drive, on behalf of the Great Falls Development Authority, requested the City's continued support of revolving loan funds in the amount of \$200,000 from this year's CDBG application. He also requested that two national priorities be used in the CDBG program statement – job creation for low and moderate income residents and slum and blight, so that the loan funds could be used for real estate purposes.

Sheila Rice, 509 1st Avenue South, NeighborWorks, reviewed with the Commission a survey conducted to assess the housing needs in Cascade County. Ms. Rice emphasized how important housing affordability was to people in the county. The next steps will be to complete the survey analysis, focus groups, and public comment meetings and then prepare recommendations and a report to the City and County Commissions. Ms. Rice thanked Chris Imhoff for helping every step of the way and others that donated time or money to conduct the survey. Ms. Rice thanked the Commission for its many years of support for affordable housing.

There being no one further to address the Commission, Mayor Stebbins declared the public hearing closed.

Res. 9805, Revise Land Development Application Fees. Adopted.

3. RESOLUTION 9805, REVISE LAND DEVELOPMENT APPLICATION FEES.

Planning Director Ben Rangel reported that during development of the current Planning Department budget, it became apparent that costs have continued to increase, but that some revenue sources have remained the same for the past several years. Therefore, a review was made of all Planning Department revenue sources, including the basic fees the Department charges to process land development activities through the Planning Board, Zoning Commission and City Commission. These activities include the processing of annexations, subdivisions and zone changes. The current fees were established over 13 years ago.

The Planning Board feels that local tax revenues provided to the Planning Department budget should help fund the Department's various core programs, but that user fees should continue to be applied toward specific services, including land development activities. The Planning Board also feels that the costs for these services should be shared on a 50/50 basis between the local taxpayers and the service users.

On December 2, 2008, the City Commission set public hearing for this evening. After conducting the public hearing, Mr. Rangel requested that the City Commission adopt Resolution 9805, which would revise the current land development fee schedule.

The Planning Board unanimously recommends City Commission approval.

Mayor Stebbins declared the public hearing open. No one spoke in support of or opposition to Resolution 9805.

Mayor Stebbins declared the public hearing closed and asked for the direction of the City Commission.

Commissioner Bronson moved, seconded by Commissioner Beecher, that the City Commission adopt Resolution 9805.

Mayor Stebbins asked if there was any discussion amongst the Commissioners.

Commissioner Jolley asked if it was the Planning Department's recommendation to the Planning Board that the fees be higher. Mr. Rangel responded that Planning staff compared current fees with fees of similar type activities charged in other communities, as well as by Cascade County, and used that as the basis to increase current fees. In most cases it was a doubling of those fees. Commissioner Jolley responded that the Planning Board thought those fees were too high. Mr. Rangel stated that staff determined what the general costs were for the various types of activities and recommended attempting to recoup 100% of the costs. The Planning

Board felt that development activities were beneficial to the overall taxpayer as well, and felt the general funds should pay for the general core programs and recommended the developers involved in the subdivision development should pay an equitable split of 50/50.

Commissioner Jolley stated that she would have liked to see additional information and would have then considered 75/25 split.

Commissioner Bronson added that discussions about raising the fees and rates started a few years ago. It has been 13 years without an increase. In the future, Commissioner Bronson thought it critical to assess the fees and rates every year, not necessarily with the idea of having an increase every year, but that the City would be in a better position to bring about needed increases on an incremental basis as time goes on. Commissioner Bronson further stated that he takes pleasure in the comparison with the other cities that Great Falls is extremely competitive and fair.

Motion carried 5-0.

Res. 9784, Creating Special Improvement Lighting District – City-Owned Residential Lighting District 1305, Water Tower Park Addition. Voided.

4. VOID RESOLUTION 9784, CREATING SPECIAL IMPROVEMENT LIGHTING DISTRICT – CITY-OWNED RESIDENTIAL LIGHTING DISTRICT 1305, WATER TOWER PARK ADDITION.

Fiscal Services Director Coleen Balzarini reported that this item is a request to void Intent to Create Resolution 9784 that was previously approved. The reason is that once the final plat was complete, the structure of the platting for each of the parcels provided a need for additional lighting above and beyond what was originally intended. Ms. Balzarini requested that this resolution be voided and that staff would propose a new resolution of intent and public hearing so the Commission would be approving what would actually be installed.

Mayor Stebbins declared the public hearing open. No one spoke in support of or opposition to voiding Resolution 9784.

Mayor Stebbins declared the public hearing closed and asked for the direction of the City Commission.

Commissioner Jolley moved, seconded by Commissioner Bronson, that the City Commission void Resolution 9784 creating Special Improvement Lighting District – City-Owned Residential Lighting District 1305, and void the scheduled public hearing.

Mayor Stebbins asked if there was any discussion amongst the Commissioners. No one responded.

Motion carried 5-0.

OLD BUSINESS**NEW BUSINESS**

Blended Energy Rate Offer from Southern Montana Electric G&T. Pulled.

5. BLENDED ENERGY RATE OFFER FROM SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION.

Mayor Stebbins reported that Item 5 had been pulled from the agenda.

FY 2007-2008 CAFR and Independent Auditor's Report. Approved.

6. FISCAL YEAR 2007-2008 COMPREHENSIVE ANNUAL FINANCIAL REPORT AND INDEPENDENT AUDITOR'S REPORT.

Fiscal Services Director Coleen Balzarini reported that this is an audited financial report of all the various activities within the City. JCCS was the independent audit firm that performed the audit. Loran Stensland, a partner from JCCS, would provide the independent auditor's report. Ms. Balzarini further reported that the audit findings, audit report, the special emphasis report, as well as the annual report to the citizens are posted on the City's website. The audit committee met on December 10th and recommended City Commission acceptance of the 2007-2008 Comprehensive Report.

Loran Stensland, JCCS, provided background information on the audit process. JCCS contracts with the City of Great Falls and the State of Montana to perform compliance testing procedures for the State of Montana as part of the audit procedure. The field work commenced on September 15th and significantly ended the first week of October. Mr. Stensland congratulated City management for receiving the Government Finance Officers Association Certificate of Achievement for the June 30, 2007 year. He expects said document will also be awarded for the 2008 year.

Mr. Stensland summarized the auditor's report which concluded that there was a clean audit opinion on the financial statements. He also reported that there were no findings or questioned costs of the administration of federal funds expended by the City of Great Falls.

Mr. Stensland reviewed portions of the management letter and noted the City was not in compliance with Ordinance 2925. Two comments were also noted with regard to the prior year's audit. One had to do with outstanding accounts and checks over one year old. Recommendations were made and implemented by City staff. The other comment was a carryover from 2001 that the City was not in compliance with the golf course revenue bond covenants.

Mr. Stensland also summarized the Independent Accountant's Report regarding the special emphasis audits and the appendixes. He explained that

the accountant's responsibility is to provide an opinion on whether the financial statements are materially stated. The electric utility fund is a major fund of the City. That fund received a clean audit opinion.

Mr. Stensland concluded that all City staff was forthcoming during the audit process and thanked the Commission, City Management and Fiscal Services.

Commissioner Jolley moved, seconded by Commissioner Beecher, that the City Commission accept the FY 2007-2008 Comprehensive Annual Financial Report and Independent Auditor's Report as presented, as well as approve the responses to the Audit Management Letter recommendations as presented, the Special Emphasis Audit as presented, and authorize staff to submit the responses to the State of Montana, Department of Administration and other government agencies as necessary.

Mayor Stebbins asked if there was any discussion amongst the Commissioners.

Commissioner Jolley stated she thought last year the documents were submitted to the State first. Ms. Balzarini responded that the Commission has to first accept it and then it is sent to the State. Commissioner Jolley stated she has gone through the CAFR and appreciates that there is more information and detail this year.

Mayor Stebbins asked if there were any inquiries from the public.

Larry Rezendes, 2208 1st Avenue North, objected to the large losses being sustained by the City as a result of the operation of Electric City Power. Mr. Rezendes noted the losses in the CAFR and that Electric City Power is operating in violation of Ordinance 2925. Mr. Rezendes expressed that he does not doubt the accounting was done properly. The issue is the large losses while the City has had to reduce expenditures for essential services. It troubles him that the City has violated its own laws, but that it enforces the laws and obligations on the public. Mr. Rezendes concluded that the ECP program should be terminated to avoid continuing losses to the citizens of Great Falls. The alternative would be for him as a citizen to seek legal standing to file suit to force the City to do what its obligations are under its own laws.

Ron Gessaman, 1006 36th Avenue N.E., concurred with Mr. Rezendes' comments. Mr. Gessaman pointed out that the auditors responsibility is only to express an opinion whether the financial statement prepared by management is fairly presented in conformity with generally accepted accounting principles. Mr. Gessaman commented that the audit report proves nothing except that the presentation is in accordance with the generally accepted accounting principles.

Motion carried 5-0.

ORDINANCES/RESOLUTIONS

Ord. 3027, Development Project proposed by West Bank Properties, LLC, and Associated Public Improvements. Adopted.

7. **ORDINANCE 3027, APPROVE A DEVELOPMENT PROJECT PROPOSED BY WEST BANK PROPERTIES, LLC, AND ASSOCIATED PUBLIC IMPROVEMENTS AS AN URBAN RENEWAL PROJECT, AUTHORIZE FINANCING THE PUBLIC IMPROVEMENTS WITH TAX INCREMENT REVENUES IN A PRINCIPAL AMOUNT NOT TO EXCEED \$900,000, AND AUTHORIZE CITY STAFF TO DEVELOP AND NEGOTIATE A DEVELOPMENT AGREEMENT.**

Planning Director Ben Rangel reported that Brad Talcott, doing business as West Bank Properties, LLC, has submitted an application for the use of West Bank Urban Renewal District tax increment funds. In conjunction with several area property owners, the City Commission created the West Bank Urban Renewal District in March of last year to help revitalize and redevelop the area generally located along the west bank of the Missouri River, both north and south of Central Avenue West. Because the District was found to be deficient of streets, sidewalks, curbs and gutters, resulting in poor traffic and pedestrian access and to be deficient of some public utilities, a tax increment financing provision was established to help encourage private sector investment and reinvestment in the area.

West Bank Properties has requested tax increment funds for several activities and improvements associated with a mixed use commercial development project to include a Staybridge Suites hotel and future sites for a restaurant, office building and retail shops.

On December 2, 2008, the City Commission conducted a public hearing on the subject project and accepted Ordinance 3027 on first reading. Mr. Rangel requested that the City Commission adopt Ordinance 3027 on final reading which would approve tax increment financing not to exceed \$900,000, and would authorize City staff to develop and negotiate a development agreement for Commission future approval.

The Planning Board unanimously recommends City Commission approval.

Commissioner Bronson moved, seconded by Commissioners Beecher Rosenbaum, that the City Commission adopt Ordinance 3027.

Mayor Stebbins asked if there was any discussion amongst the Commissioners or inquiries from the public. No one responded.

Motion carried 5-0.

Ord. 3028, Federal Courthouse/4th Avenue NW Project as an Urban Renewal Project and Tax Increment Financing of Certain Public Projects. Adopted as corrected.

8. ORDINANCE 3028, APPROVE THE FEDERAL COURTHOUSE/4TH AVENUE NW PROJECT AS AN URBAN RENEWAL PROJECT AND AUTHORIZE THE TAX INCREMENT FINANCING OF CERTAIN PUBLIC PROJECTS.

Fiscal Service Director Coleen Balzarini reported that this project is also located within the West Bank Park/Brownsfield area. The action requested is to approve the public improvements necessary to gain access to the Federal Courthouse building, as well as installation of the water and sewer pipelines, to be approved as tax increment projects, in addition to the improvements to West Bank Park. These improvements will also be paid for from the incremental dollars generated from the taxes that are paid by this property, as well as other properties within the District.

Commissioner Jolley moved, seconded by Commissioner Beecher, that the City Commission adopt Ordinance 3028, to approve the Federal Courthouse/4th Avenue NW project as an urban renewal project and authorize the tax increment financing of certain projects, subject to project 3 of said Ordinance being corrected to state 3rd Avenue NW reconstruction project.

Mayor Stebbins asked if there was any discussion amongst the Commissioners.

Commissioner Rosenbaum asked for clarification on 3rd and 4th Avenues. Community Development Director Mike Rattray answered that it will be named 3rd Avenue NW.

Mayor Stebbins asked if there were any inquiries from the public.

Ron Gessaman, 1006 36th Avenue NE, commented that he opposes tax increment financing projects. With regard to Items 7 and 8, Mr. Gessaman stated that he doesn't believe the public is aware that over the next 25 years \$8.4 million dollars of taxpayers' money will not be going to support City services.

Brett Doney, Great Falls Development Authority, residing at 3048 Delmar Drive, commented that tax increment financing makes projects work that otherwise wouldn't happen. It is a great economic development tool. Mr. Doney also noted that the addition of the road will increase the value of the County property and increase the likelihood of attracting a developer.

John Hubbard, 615 7th Avenue South, commented that he thought federal monies were paying for the Federal Courthouse. Mr. Hubbard stated that the City should leave West Bank alone. Mr. Hubbard made derogatory comments regarding the Commissioners and was asked to moderate his language. He was subsequently removed from the Commission Chambers.

Motion carried 5-0.

Res. 9806, Creating a Board of Trustees for the Great Falls Tourism Business Improvement District No. 1307, Appointing the Initial Trustees, and Specifying the Powers and Duties of the Board. Adopted.

9. RESOLUTION 9806, A RESOLUTION CREATING A BOARD OF TRUSTEES FOR THE GREAT FALLS TOURISM BUSINESS IMPROVEMENT DISTRICT NO. 1307, APPOINTING THE INITIAL TRUSTEES, AND SPECIFYING THE POWERS AND DUTIES OF THE BOARD.

Assistant City Manager Cheryl Patton reported that the Great Falls Area Lodging Association requested that the City Commission name trustees for the Tourism Business Improvement District. The recommendations of the Lodging Association were provided to the City Commission.

Commissioner Rosenbaum moved, seconded by Commissioner Bronson, that the City Commission adopt Resolution 9806.

Mayor Stebbins asked if there was any discussion amongst the Commissioners or inquiries from the public. No one responded.

Motion carried 5-0.

Consent Agenda. Approved.

CONSENT AGENDA

10. Minutes, December 2, 2008, Commission meeting.
11. Total expenditures of \$2,050,629 for the period of November 26-December 10, 2008, to include claims over \$5,000, in the amount of \$1,880,416.
12. Set public hearing for January 6, 2009, on Ordinance 3026, adopting 40 CFR Part 403, to update the legal authority required by the EPA.
13. Set public hearing for January 6, 2009, on Resolution 9803, for Conditional Use Permit to allow a Contractor Yard, Type 1 on Lot 3, Block 754, Great Falls Tenth Addition (1308 6th Avenue South).
14. Award bid for one new 2009 wheel loader to Western Plains Machinery of Great falls in the amount of \$104,351.45, including trade-in.
15. Award bid for five new 2009 single axle dump trucks to I State Truck Center of Great Falls in the amount of \$352,890.

Commissioner Jolley moved, seconded by Commissioner Beecher, with the exception of Item 11, that the City Commission approve the Consent Agenda as presented.

Motion carried 5-0.

With regard to Item 11, Commissioner Jolley inquired about a payment for the West Bank Urban Renewal/BNSF 4th Avenue NW grade crossing and maintenance agreement. Public Works Director Jim Rearden responded that the sum of \$20,000 for a perpetual easement and \$244,439 for

equipment for the crossing was committed to in the construction and maintenance agreement.

Commissioner Jolley inquired if those amounts were included in the \$2 million dollar tax increment funding. Fiscal Services Director Coleen Balzarini responded that it was part of the \$2 million. She reminded the Commission that it approved a reimbursement resolution. In order to keep the project moving forward, the City is funding it with existing cash fully acknowledging that the City has the intent to finance and reimburse for the expenses.

Mayor Stebbins asked if there was any further discussion amongst the Commission. No one responded.

Commissioner Jolley moved, seconded by Commissioners Beecher and Bronson, that the City Commission approve Item 11 of the Consent Agenda as presented.

Motion carried 5-0.

BOARDS & COMMISSIONS

**Anthony Houtz
Reappointed and
Timothy Peterson
Appointed to the Board
of Adjustment.**

16. APPOINTMENTS, BOARD OF ADJUSTMENT.

Commissioner Bronson moved, seconded by Commissioner Beecher, to reappoint Anthony Houtz and appoint Timothy Peterson to three-year terms through September 30, 2011, to the Board of Adjustment.

Commissioner Jolley asked for a short explanation what the Board of Adjustment does. Community Development Director Mike Rattray responded that the Board of Adjustment hears citizen's appeals to determine if City code was accurately applied, and it also considers variance requests.

Motion carried 5-0.

**Bryan Thies
Reappointed and James
McCarvel and Karen
Harant Appointed to the
Park and Recreation
Board.**

17. APPOINTMENTS, PARK AND RECREATION BOARD.

Commissioner Bronson moved, seconded by Commissioners Beecher and Rosenbaum, to reappoint Bryan Thies and appoint James McCarvel and Karen Harant to three-year terms beginning January 1, 2009, through December 31, 2011, to the Park and Recreation Board.

Motion carried 5-0.

**Carl Donovan
Reappointed to the
Mansfield Center for the
Performing Arts
Advisory Board.**

**18. REAPPOINTMENT, MANSFIELD CENTER FOR THE
PERFORMING ARTS ADVISORY BOARD.**

Commissioner Beecher moved, seconded by Commissioner Bronson, to reappoint Carl Donovan to a three-year term through December 31, 2011, to the Mansfield Center for the Performing Arts Advisory Board.

Mayor Stebbins asked if there was any discussion amongst the Commissioners. No one responded.

Motion carried 5-0.

**Arthur Bundtrock and
Wyman Taylor
Reappointed to the Great
Falls Planning Advisory
Board.**

**19. REAPPOINTMENTS, GREAT FALLS PLANNING ADVISORY
BOARD.**

Commissioner Bronson moved, seconded by Commissioner Rosenbaum, to reappoint Arthur Bundtrock and Wyman Taylor to three-year terms through December 31, 2011, to the Great Falls Planning Advisory Board.

Mayor Stebbins asked if there was any discussion amongst the Commissioners. No one responded.

Motion carried 5-0.

**Fred Thiel Reappointed
and Darren Brown,
Philip Kiser and John
Godwin Appointed to the
Parking Advisory Board.**

20. APPOINTMENTS, PARKING ADVISORY COMMISSION.

Commissioner Bronson moved, seconded by Commissioners Beecher and Rosenbaum, to reappoint Fred Thiel to a term ending April 30, 2010, and appoint Darren Brown and Philip Kiser to terms ending April 30, 2011, and appoint John Godwin to a term ending on April 12, 2012, to the Parking Advisory Board.

Mayor Stebbins asked if there was any discussion amongst the Commissioners. No one responded.

Motion carried 5-0.

21. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

CITY MANAGER

22. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

City Manager Gregory T. Doyon appointed Coleen Balzarini as Acting City Manager on December 24, 2008. Mr. Doyon stated that this is Ben Rangel's last meeting. During the short time that he has worked with Mr. Rangel, he has demonstrated that he is an exceptional professional in his

line of work. He has a tremendous amount of dedication and commitment to the City. Mr. Doyon thanked Mr. Rangel for his years of service and stated he would be deeply missed.

PETITIONS AND COMMUNICATIONS

23. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Mayor Stebbins opened the meeting to Petitions and Communications.

HGS, Blended Rate Offer.

23A. Tim Gregori, General Manager of Southern Montana Electric Generation and Transmission Cooperative, 3521 Gable Road, Billings, Montana, apologized that the blended energy rate offer was not ready to be presented this evening in written form. Mr. Gregori reported that the outcome of the zoning hearing with Cascade County was favorable and that the air quality permit has been validated. Mr. Gregori summarized what the blended rate means. He believes that it seems prudent to fold the City's needs in with the needs of the other member systems. Mr. Gregori concluded that the Board is very much behind working with the City of Great Falls, giving a rate that he believes will be a savings to the member systems. He urged the Commission to give serious consideration to the blended rate offer.

Lawsuit, Blended Rate Offer, and Water Credits.

23B. Larry Rezendes, 2208 1st Avenue North, commented in response to Mr. Gregori that the zoning decision is going to be appealed. He is interested in learning more about the blended rate. With regard to eliminating the water credit, Mr. Rezendes stated it is unclear from the agenda report if the City would owe the \$1 million immediately.

Housing Authority's Late Fee Policy.

23C. Tina Cole, 5107 2nd Avenue South, voiced concerns about the Housing Authority's late fee policy. She stated that the current policy is too harsh and suggested that it be changed to be more accommodating.

ECP.

23D. John Driscoll, Helena, Montana, stated that he regulated the electric utilities in Montana for 12 years prior to deregulation. During that time he worked on strategic electricity issues at the national level. He also advised the Electric Power Research Institute on electricity technology related issues for seven years. He pointed out that the reason he was here was because he cares. He thinks the City of Great Falls is in a situation and needs to make some important decisions. Mr. Driscoll pointed out, from his experience, that the nature of a municipally-owned utility is very good for the people who are served by that utility. One of the few good things that came out of the restructuring of Montana Power and the sale of its assets was the creation of Electric City Power. Mr. Driscoll urged the Commission not to end ECP as requested by some. It is too valuable to the City and the City's ratepayers and the State in his view. He also pointed out that the reasons the City got involved with Southern Montana are all still valid reasons. Mr. Driscoll noted the problems in the financing arena. He urged the

Commission to use this valuable structure that will allow the City to provide service cheaper than any other combination of organizations, and try to provide some pumped hydro-electric storage in the region for the wind. He referred the Commission to his website: www.stewardmagazine.com.

Volunteerism.

23E. Karen Grove, Chairperson of NC 8, residing at 1816 1st Avenue North, thanked the Commission for its support. Ms. Grove recapped what was accomplished during the year. She also thanked NeighborWorks for everything it has done for Great Falls. Neighborhood Council 8 qualified for a second grant from Weed & Seed. The Council is working on beautification projects in Black Eagle. Ms. Grove commented that she had the privilege of attending the Police Academy and encouraged attendance. She concluded that it was a great year of volunteerism, and she wished everyone a Merry Christmas.

Recycling, SME.

23F. Ron Gessaman, 1006 36th Avenue N.E., referred to a December 14 article in the *Great Falls Tribune* regarding recycling. He quoted DEQ Recycling and Marketing Development Specialist Dustin Johnson stating that he has yet to meet a person who doesn't want to recycle; they just want it to be convenient. Mr. Gessaman commented that moving the Citizens Convenience Center will prove not to be very convenient. Mr. Gessaman also stated that he would like to know whether each of the Commissioners had reviewed the privileged SME documents. Commissioner Jolley responded by affirmatively nodding her head. Mr. Gessaman read a paragraph of a lawsuit between one of the coop members of SME and SME regarding the blended rates and commented that it is familiar with the issues raised at ECP meetings by members of the public. Mr. Gessaman stated he was curious if John Driscoll was now an employee of any utility company in Montana, or if he was here on his own like the rest of the speakers. Mr. Driscoll answered that he was not an employee of a utility company.

CITY COMMISSION

24. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.

Mayor Stebbins read a Resolution of Commendation, Appreciation and Gratitude to Ben Rangel for his dedication and years of service. Mr. Rangel stated that it has been a privilege the past 35 years to serve this community. He thanked this Commission, Mayor Stebbins, previous Commissioners he worked with, former Planning Directors Bob Roberts and John Mooney, and former City Manager John Lawton. Mr. Rangel appreciated the support and encouragement over the years. He stated it has been an honor to work with the City Planning staff. He also thanked the *Tribune* for the editorial in the newspaper.

In addition to Mr. Rangel's retirement, Mayor Stebbins acknowledged City employees who also have announced their retirements and have over 30 years of service: Rick Burton, Larry Mogstad, Jim Palagi and Rick Schott.

Mayor Stebbins congratulated them for their dedication and years of service.

Commissioner Jolley stated that, with all due respect, she believed Mr. Hubbard was removed prematurely this evening.

Mayor Stebbins wished everyone a Merry Christmas and Happy Hanukkah.

ADJOURNMENT

Adjourn.

There being no further business to come before the Commission, **Commissioner Beecher moved, seconded by Commissioner Rosenbaum, that the regular meeting of December 16, 2008, be adjourned at 8:40 p.m.**

Motion carried 5-0.

Mayor Stebbins

City Clerk

Minutes Approved: January 6, 2009



ITEM: \$5,000 Report
 Invoices and Claims in Excess of \$5,000

PRESENTED BY: Fiscal Services Director

ACTION REQUESTED: Approval with Consent Agenda

ITEMIZED LISTING OF ALL TRANSACTIONS GREATER THAN \$5000:

MASTER ACCOUNT CHECK RUN FOR DECEMBER 17, 2008	315,537.52
MASTER ACCOUNT CHECK RUN FOR DECEMBER 24, 2008	967,194.46
MASTER ACCOUNT CHECK RUN FOR DECEMBER 31, 2008	99,675.64
MUNICIPAL COURT ACCOUNT CHECK RUN FOR DECEMBER 12, 2008	3,571.99
MUNICIPAL COURT ACCOUNT CHECK RUN FOR DECEMBER 15, 2008	53,551.68
MUNICIPAL COURT ACCOUNT CHECK RUN FOR DECEMBER 19, 2008	1,545.00
MUNICIPAL COURT ACCOUNT CHECK RUN FOR DECEMBER 26, 2008	1,423.76
WIRE TRANSFERS FROM DECEMBER 10, 2008 TO DECEMBER 17, 2008	68,454.37
WIRE TRANSFERS FROM DECEMBER 18, 2008 TO DECEMBER 24, 2008	860,472.54
WIRE TRANSFERS FROM DECEMBER 19, 2008 TO DECEMBER 29, 2008	1,078,386.99
WIRE TRANSFERS FROM DECEMBER 31. 2008	49,473.54
TOTAL: \$	3,499,287.49

GENERAL FUND

POLICE

ADVANCED INTERACTIVE SYSTEMS	YEARLY WARRANTY, CHEMICAL AGENT SPRAY AND SCENARIO DISC	8,605.00
------------------------------	--	----------

PARK & RECREATION

MONTANA WASTE SYSTEMS	NOV 08 CHARGES (SPLIT AMONG FUNDS)	37.28
-----------------------	------------------------------------	-------

SPECIAL REVENUE FUND

CTEP PROJECT

DICK OLSON CONSTRUCTION INC	PMT #2 CONSTRUCTION OF LIBRARY LANDSCAPE	45,531.48
-----------------------------	---	-----------

FEDERAL BLOCK GRANTS

AGENCY ON AGING	PURCHASE FOOD FOR HOME MEAL DELIVERY PROGRAM	7,159.38
LONE STAR CONSTRUCTION	FOUNDATION DRAW 1408 12TH AVE S	13,800.00
DAKOTA FENCE COMPANY	CUSTOM PLAYBOOSTER SYSTEM	25,000.00
	HANDICAP ACCESSIBLE PLAY STRUCTURE FOR WEST KIWANIS PARK	
BIRDTAIL ELECTRIC CO	ELECTRICAL PROGRESS PMT PLATINUM LLC FOR THE AUGUSTUS APARTMENTS	15,000.00

SPECIAL REVENUE FUND (CONTINUED)

HOME GRANTS

NEIGHBORWORKS DRAWN #5 FOR NHS 21,115.15

AG TECH PARK

GREAT FALLS DEVELOPMENT AUTHORITY PMT #1 DEVELOPMENT COSTS FOR AG TECH DISTRICT 5,000.00

WEST BANK URBAN RENEWAL

NCI ENGINEERING PMT #4 RECONSTRUCTION & EXTENSION OF 4TH AVE NW & 3RD ST NW FEDERAL COURTHOUSE 67,906.83

DEBT SERVICE

IMPROVEMENT DISTRICT REVOLVING

US BANK NA GF SID 1266 BOND SERIES 1992 10,640.00

SOCCER PARK BONDS

US BANK NA SOCCER PARK GENERAL OBLIGATION BONDS SERIES 2004 44,568.75

SWIM POOL REHAB GO BONDS

US BANK NA SWIM POOLS GENERAL OBLIGATION BONDS SERIES 2007 42,000.00

ENTERPRISE FUNDS

WATER

THOMAS DEAN & HOSKINS PMT #6 WTP HEADHOUSE FLOOR REPLACEMENT 6,935.70

DANA KEPNER CO-BILLINGS 100 MXU RADIO READ UNITS 14,100.00

US BANK NA DEPT OF NATURAL RESOURCES LOAN SERIES 2000 109,780.00

US BANK NA DEPT OF NATURAL RESOURCES LOAN SERIES 2008 75,585.46

SEWER

VEOLIA WATER NORTH AMERICA MONTHLY WWTP OPERATION CONTRACT 230,312.08

VEOLIA WATER NORTH AMERICA MONTHLY CONTRACTED CAPITAL IMPROVEMENTS 12,500.00

TREASURE STATE ROOFING PMT #4 WWTP ROOF REPLACEMENT 22,101.75

DICK ANDERSON CONSTRUCTION PMT #1 NORTH SEWER LIFT STATION #27 REPLACEMENT 206,439.75

US BANK NA DEPT OF NATURAL RESOURCES LOAN SERIES 2002B 409,440.00

ENTERPRISE FUNDS (CONTINUED)

STORM DRAIN

SHUMAKER TRUCKING & EXCAVATING	SKYLINE HEIGHTS STORM DRAIN IMPROVEMENTS	116,125.42
PHILLIPS CONSTRUCTION	WEST BANK PARK STORM DRAIN OUTFALL IMPROVEMENTS	135,823.09
US BANK NA	DEPT OF NATURAL RESOURCES LOAN SERIES 2004	156,718.75
US BANK NA	STORM DRAIN SYSTEM REVENUE REFUNDING BONDS SERIES 2003	197,746.25

SANITATION

MONTANA WASTE SYSTEMS	NOV 08 CHARGES (SPLIT AMONG FUNDS)	62,004.29
MICHAEL BROTHERS INC	100 - 300 GALLON REFUSE CONTAINERS	24,725.00

ELECTRIC

SME	PMT OF ENERGY SUPPLY EXPENSE NOV 08	709,434.07
-----	-------------------------------------	------------

SAFETY SERVICES

QWEST	DECEMBER 2008 911 CHARGES	5,709.65
-------	---------------------------	----------

PARKING

APCOA/STANDARD PARKING	JANUARY 2009 COMPENSATION	23,152.17
------------------------	---------------------------	-----------

CIVIC CENTER EVENTS

CLUB BIGHOUSE	TICKET PROCEEDS 09-85 RUMBLE3 GREAT FALLS ULTIMATE FIGHTING	14,526.25
P8ZQ, INC.	TICKET PROCEEDS 09-33 AKIVA NUTCRACKER	37,572.06

INTERNAL SERVICES FUND

HEALTH & BENEFITS

BLUE CROSS/BLUE SHIELD	HEALTH INS CLAIMS DEC 9-15, 2008	92,750.73
BLUE CROSS/BLUE SHIELD	HEALTH INS CLAIMS DEC 16-22, 2008	113,466.41
BLUE CROSS/BLUE SHIELD	HEALTH INS CLAIMS DEC 23-29, 2008	49,473.54

FISCAL SERVICES

JUNKERMIER CLARK CAMPANELLA & STEVENS PC	FY 2008 AUDIT SERVICES PARTIAL PAYMENT	15,000.00
--	--	-----------

CENTRAL GARAGE

MOUNTAIN VIEW CO-OP	FUEL	15,788.08
---------------------	------	-----------

TRUST AND AGENCY

COURT TRUST MUNICIPAL COURT

CITY OF GREAT FALLS	FINES & FORFEITURES COLLECTIONS	53,251.68
---------------------	---------------------------------	-----------

ULRRWS AGENCY FUND PH I

US BANK NA	DEPT OF NATURAL RESOURCES LOAN	12,572.50
------------	--------------------------------	-----------

PHASE 1.1 SERIES 2005

US BANK NA	DEPT OF NATURAL RESOURCES LOAN	8,298.70
------------	--------------------------------	----------

PHASE 1.3 SERIES 2008

ULRRWS AGENCY FUND PH II

US BANK NA	DEPT OF NATURAL RESOURCES LOAN	5,792.83
------------	--------------------------------	----------

PHASE 2.1 SERIES 2008

CLAIMS OVER \$5000 TOTAL:

\$ 3,243,490.08

CITY OF GREAT FALLS, MONTANA

AGENDA: 12

COMMUNICATION TO THE CITY COMMISSION

DATE: January 6, 2009

ITEM: CONTRACT LIST
Itemizing contracts not otherwise approved or ratified by City Commission Action
(Listed contracts are available for inspection in the City Clerk’s Office.)

PRESENTED BY: Lisa Kunz, City Clerk

ACTION REQUESTED: Ratification of Contracts through the Consent Agenda

MAYOR’S SIGNATURE: _____

CONTRACT LIST

	DEPARTMENT	OTHER PARTY (PERSON OR ENTITY)	PERIOD	FUND	AMOUNT	PURPOSE
A	Public Works	Black Eagle Sewer District Number 24	Ongoing	N/A	N/A	Addendum to Sewer Agreement between the City of Great Falls and Black Eagle Sewer District Number 24, dated September 25, 1985.
B	Planning Department	Montana Department of Transportation (MDT)	2009	Planning/CTEP	Project -\$77,915 CTEP funds -\$67,459 Local Match -\$10,456	Project Agreement with MDT for CTEP Project Police Department Rehab-Great Falls, Project No. 180903 OF 1567

C	Planning Department	Montana Department of Transportation (MDT)		Planning/CTEP	Project -\$36,085 CTEP funds -\$31,242 Local Match -\$4,843	Project Agreement with MDT for CTEP Project 23 rd Street South Sidewalk-Great Falls, Project No. 180904 OF 1508.2
D	Planning Department	Camp Dresser & McKee	01/2009 – 03/2009	213-1811-512-3599	\$13,132 (not to exceed)	Contract to prepare updated major and short range project cost estimates for Transportation Plan Update.
E	Planning Department	Thomas Dean & Hoskins	01/2009 – 03/2009	213-1811-512-3599	\$3,500 (not to exceed)	Contract to prepare updated bike project cost estimates for Transportation Plan Update.
F	Park and Recreation/ Mansfield Events Office	Montana Repertory Theatre, U of M, Missoula, MT 59812	02/05/2009	571	\$3,500	Artist Fee for performance To Kill a Mockingbird. In house promotion used for raising additional funds.



Item: Set Public Hearing for Neighborhood Stabilization Program (NSP)
Community Housing Needs

From: Community Development Department

Initiated By: Chris Imhoff, CDBG/HOME Administrator

Presented By: Chris Imhoff, CDBG/HOME Administrator

Action Requested: Set Public Hearing for January 20, 2009.

Suggested Motion:

1. Commissioner moves:

"I move that the City Commission set the public hearing for January 20, 2009, to obtain comments on Neighborhood Stabilization Program related housing needs of the City of Great Falls. "

2. Mayor calls for a second, discussion, inquiries from the public, and calls the vote.

Staff Recommendation:

Staff recommends the City Commission set January 20, 2009, as the public hearing date for citizen comments regarding housing needs of the community, particularly those related to the housing foreclosure crisis that may be addressed with Neighborhood Stabilization Program (NSP) grant funds.

Background:

The State of Montana anticipates receiving one time funding from the U.S. Department of Housing & Urban Development of \$19,600,000 in Neighborhood Stabilization Program funds as authorized by the Housing and Economic Recovery Act of 2008 in an effort to address the housing foreclosure crisis. As the administrator of the NSP funds, the Montana Department of Commerce is requiring public input, especially input from lower income citizens and agencies representing them, and from moderate and middle income citizens regarding the housing needs of the community as related to NSP eligible projects.

Significant Impacts

Not applicable

Citizen Participation

The Montana Department of Commerce (MDOC) states “Public involvement can be a key factor in developing community understanding and support for a proposed NSP project. Each applicant for NSP funds must hold a minimum of one public hearing prior to submitting a formal proposal to the MDOC, and prior to passage of a resolution by the governing body authorizing the submission of the application.” A resolution authorizing participation will be presented at the January 20, 2008, Commission meeting.

Workload Impacts

Not applicable

Purpose

Public input helps identify NSP related housing needs in the community and planned response to those needs.

Project Work Scope

Not applicable

Evaluation and Selection Process

The Commission will be asked to give consideration to citizen comments received during this public hearing when submitting an application to MDOC for NSP grant funds.

Conclusion

The public hearing provides citizens an important opportunity to discuss before the City Commission, community housing needs related to foreclosure and other housing needs particularly those impacting low, moderate, and middle income households in Great Falls that might be addressed with NSP funded projects.

Concurrences: Not applicable

Fiscal Impact: Conducting the public hearing and adopting a resolution authorizing submission of a grant application is a pre-condition for the city to apply for NSP grant funds from the Montana Department of Commerce.

Alternatives: The public hearing is required for the city to be able to apply for NSP funding.

Attachments/Exhibits: Not applicable



Item: Construction Contract Award: Water Treatment Plant Backwash Clarifier Modifications, O.F. 1519.3

From: Engineering Division

Initiated By: Public Works Department

Presented By: Jim Rearden, Public Works Director

Action Requested: Consider and Award Construction Contract

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission award a contract in the amount of \$208,000 to James Talcott Construction, for the Water Treatment Plant Backwash Clarifier Modifications, O.F. 1519.3 and authorize the City Manager to execute the agreements.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

Staff Recommendation: Approve construction contract award.

Background:

Significant Impacts

This project will provide modifications to the backwash clarifier to correct deficiencies and improve the ability to monitor the quality of water being discharged to the Missouri River.

Citizen Participation

Not Applicable

Workload Impacts

Thomas Dean & Hoskins, Inc (TDH) staff designed the project, prepared the contract plans, specifications and estimates for this project and will perform primary construction inspection. City engineering staff will perform secondary construction inspection and contract and project administration duties.

Purpose

The Water Treatment Plant (WTP) requires modifications to the backwash clarifier to correct deficiencies and improve its ability to meet Montana Department of Environmental Quality (DEQ) regulatory requirements regarding effluent discharges to the Missouri River.

DEQ found that the WTP exceeded its permit limit for total suspended solids on some occasions.

Project Work Scope

This project will provide modifications to the backwash clarifier and screening system to correct deficiencies in the original design and help meet DEQ limits. Specific construction items will include a backwash sampling building, backwash metering manhole, new solids grinder for debris from raw water intake screens, chlorine residual monitoring station, and an effluent turbidity monitoring station.

Evaluation and Selection Process

Four bids were received and opened for this project on December 17, 2008. The bids ranged from \$208,000 to \$244,000. The Engineer's estimate was \$150,150. The difference between the Engineer's estimate and the actual bid is likely due to perceived difficulty of coordinating construction activities with a facility that has to remain operational during the contractor's construction period, difficulty retrofitting piping and electrical wiring into an existing facility as well as not knowing the exact locations of some existing underground piping and structures. Estimating a dollar value to place on a contractor's perceived risks is difficult. However, all four bids received were relatively similar in dollar amount, which indicates fair market value for this construction project. James Talcott Construction, Inc. submitted the low bid and has executed all necessary documents. James Talcott Construction, Inc. is an established and responsible contractor, who most recently successfully completed a \$2.25M rehabilitation project of several City swimming pools.

Conclusion

TDH recommends and City staff concurs in awarding the construction contract to James Talcott Construction, Inc. in the amount of \$208,000.

Concurrences:

The City's WTP staff has been consulted throughout the design phase of the project and has made their recommendations. Permits have been approved by the Montana Department of Environmental Quality.

Fiscal Impact:

The attached bid tabulation summarizes bids that were received. This project will be funded through Water Capital Funds.

Alternatives: The City Commission could vote to deny award of the construction contract.

Attachments/Exhibits:

1. Bid tabulation is attached.

CITY OF GREAT FALLS
 P.O. BOX 5021
 GREAT FALLS, MT 59403

BID TABULATION SUMMARY

Water Treatment Plant Backwash Clarifier System Modifications
 O.F. 1519.3

Project Number _____
 Bids Taken at Civic Center
 Date: December 17, 2008
 Tabulated By: Kari Wambach

	Name & Address of Bidder	Acknowledge Addendum #1	Acknowledge Addendum #2	10% Bid Security	Affidavit of Non-Collusion	Certificate of Non-Segregated Facilities	Certificate of Compliance with Insurance Req.	Total Bid
1	Swank Enterprises PO Box 568 Valier, MT 59486	√		√	√	√	√	\$244,000.00
2	Dick Anderson Cosntruction 4610 Tri Hill Frontage Road Great Falls, MT 59404	√		√	√	√	√	\$218,536.00
3	James Talcott Construction PO Box 2493 Great Falls, MT 59403	√		√	√	√	√	\$208,000.00
4	Detailed Construction Comp. PO Box 5 Stockett, MT 59480	√		√	√	√	√	\$238,000.00
5								
6								
7								
8								
9								
10	Engineer's Estimate							\$150,150.00



Item: Reappointments to the Regional Airport Authority Board
From: City Manager's Office
Initiated By: City Commission
Presented By: City Commission
Action Requested: Reappoint two members to the Regional Airport Authority Board

****REVISED****

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission reappoint Jeff Mangan and Raymond Wahlert to three-year terms through December 31, 2011, to the Regional Airport Authority Board.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls the vote.

Staff Recommendation: It is recommended that the City Commission reappoint Jeff Mangan and Raymond Wahlert to the Regional Airport Authority Board through December 31, 2011.

Background: Jeff Mangan and Raymond Wahlert were appointed to the Regional Airport Authority Board on February 7, 2006. Mr. Mangan and Mr. Wahlert are eligible for and interested in reappointment.

Purpose

The Regional Airport Authority consists of seven members, four appointed by the City Commission and three appointed by the Cascade County Commission. The Authority serves as the governing and policy setting body for the operation and management of the Great Falls International Airport. Its duties include employing the Airport Director, who hires staff and oversees the day-to-day operations of the Great Falls International Airport.

Evaluation and Selection Process

No advertising was done since both members are eligible for and interested in reappointment.

Continuing members of this board are:

James Morin

Owen Robinson
Ed Buttrey (County)
J.C. Kantorowicz (County)
Susan Humble (County)

Concurrences: Not applicable.

Fiscal Impact: Not applicable.

Alternatives: Advertise to seek other citizen interest.

Attachments/Exhibits: None