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MEMORANDUM

To: Mayor Adams
Commissioner Fish
Commissioner Fritz
Commissioner Leonard
Commissioner Saltzman

From: Susan Anderson, Director

Date: April 29, 2010

Subject: May 5, 2010 Council Vote on Siltronic Resolution

The consent agenda item on the May 5, 2010 Council Agenda, "Accept Memorandum of Understanding between Siltronic and the City of Portland," will correct a procedural error from the previous River Plan hearings and Council decisions on this subject.

This is necessary because the wrong version of the Memorandum of Understanding was approved at the April 15, 2010 Council meeting. The May 5, 2010 vote will correct the error by moving the March 24, 2010 version of the MOU that was the subject of the Council hearing on April 1, 2010. (See the attached March 24, 2010 version of the MOU in strikethrough and underline format and a replacement Exhibit E.) Public comment and council discussion was on the correct March 24 version, but council did not move or vote to formally attach it to the resolution.

For more information about the procedural error please see the attached background information. If you have any questions about this please call Brian Campbell at 503-823-9719.

Staff expects to return to council with a draft development agreement for your consideration on or about June 16, 2010.

c: Siltronic Corporation (Neil Nelson, Tom Fahey and Tom McCue)

Attachments:
- Siltronic/City MOU – Adoption Process Background Information
- Amendments to Exhibit A of the Resolution Related to Siltronic Corporation

Siltronic/City MOU – Adoption Process Background Information
April 29, 2010

Why is the Siltronic resolution on the council agenda again?

The proposed action for the May 5, 2010 Council meeting is to vote to substitute the revised March 24, 2010 Memorandum of Understanding (MOU) for the original version dated February 10, 2010. This will correct a procedural error that occurred during the Council hearing and adoption process.

The resolution to adopt a MOU between the City and Siltronic Corporation was originally introduced on February 17, 2010. On April 1, 2010 Council heard public testimony on a revised version of the MOU, dated March 24, 2010, in addition to three other River Plan agenda items. Council voted to adopt amendments to the River Plan ordinance, but there was no motion to adopt the amendments to the Siltronic resolution package.

Prior to the April 15th Council meeting, the City/Siltronic negotiating team tentatively decided to request a date change in both the River Plan ordinance and the Siltronic Resolution to allow for additional time to prepare a development agreement. At the outset of the Council meeting, staff decided not to request the change because the amendments would delay the second reading of the entire River Plan. During the Council meeting Karla Moore-Love asked if there were any amendments. Staff replied "no" assuming that the Clerk was referring to the date change, and forgetting that the MOU amendments had not been adopted at the April 1, 2010 meeting as intended. As a result Council voted 5-0 in favor of the original MOU dated February 10, 2010.

Please see reverse for a detailed timeline of the Council process related to the Siltronic MOU.

What changes were made between the original and the current version?

The proposed changes are outlined in the table below and displayed in strikethrough and underline format in the attached version of the MOU. The changes are agreeable to City staff and Siltronic, and constitute the directions being used for the ongoing work on the Development Agreement, which will be the document adopted by Council ordinance before July 1, 2010.

March 24, 2010 MOU Draft Amendments

Page 3, Point 1.	States the City's intent to apply environmental zoning to the conservation easement.
Page 3, Point 2.	Clarification of intent.
Page 4, Point 4.	Deletes references to specific timeframes in favor of substantial changes made in the new Exhibit E.
Page 5, Point 6.	Acknowledges that the different configuration of and activities allowed on the conservation easement will change its real estate appraisal value and its viability as a wildlife corridor, and the valuation of the habitat lost on the development site, and that all of those changes will result in a re-statement of the Mitigation tradeoffs.
Page 6, Point 7.	New language more accurately reflecting the most recent discussions on the eco-roof.
Page 7, Point 10.	Clarification about PDC's budget.
Exhibit E	Identifies new uses and activities allowed in the easement area.

Timeline

February 17, 2010 – Council Meeting, 6:00 pm

- A resolution to adopt the MOU with Siltronic dated 2/10/10 was introduced for Council consideration.
- Council heard a staff presentation (Edmunds) and public testimony on the resolution.
- Resolution moved to a 2nd reading on March 3, 10:45 am.

March 3, 2010 – Council Meeting

- Siltronic resolution was removed from Council calendar and postponed until April 1 to coordinate with the other River Plan / North Reach items.

February 17 to March 24, 2010

- Negotiating team agrees on a set of amendments to respond to public and Council comments.

March 25, 2010

- Strikethrough/underline version of the MOU dated 3/24/10 was filed with the Auditor's office on March 25, 2010
- River Plan News sent out with link to river plan amendments including the strikethrough/underline version of the MOU

April 1, 2010 – Council Meeting, 2:00 pm

- Council heard a staff presentation (Campbell) and public testimony on the amendments to the Siltronic resolution.
- Council adopted the amendments to the River Plan ordinance, but did not adopt the amendments to the Siltronic resolution.
- Council moved the entire package to a second reading on April 15, 2010.

April 1 to April 15, 2010

- The negotiating team and Council staff agreed to change the date that the DA needs to be complete from July 1 to September 1, 2010.
- The date change amendment was made in the River Plan ordinance and filed with the Auditor's office on April 9, 2010. (At the hearing the date change was withdrawn.)
- No amended Siltronic resolution was filed.
- Mayor's office agreed to amend the date in the Siltronic resolution at the hearing. Staff notified the Council Clerk that the date change amendment would be coming.

April 15, 2010 – Council Meeting, 2:00 pm

- The Mayor and Staff decided to withdraw the date change amendment in the River Plan ordinance because it would delay the Council vote on the entire River Plan package. As a result staff decided not to propose a date change in the Siltronic resolution either.
- During the Council meeting, the City Clerk asked if the amendments to the Siltronic resolution needed to be voted on before Council voted on the resolution. Staff assumed the Clerk meant the date change amendment, and therefore replied no. The Clerk actually meant the amendments that were filed on March 25, 2010 and were the topic of the public hearing on April 1, 2010. The amendments had not been adopted on April 1.
- Council passed the original version of the Siltronic resolution dated 2/10/10, without passing the amendments.

MEMORANDUM OF UNDERSTANDING
3/24/10

This Memorandum of Understanding ("MOU") is entered into between the City of Portland ("City), the Portland Development Commission ("PDC") and Siltronic Corporation ("Siltronic") as of this ____ day of _____, 2010.

Purpose

The purpose of this MOU is to identify areas of agreement between the City, PDC and Siltronic concerning future zoning and development of Siltronic's property.

Recitals:

A. The City is in the process of adopting a land use policy document and implementing regulations entitled *The River Plan / North Reach Recommended Draft* (the "Draft Plan"). This multi-objective plan includes recommendations related to economic prosperity, watershed health and access, among other things. These objectives can be integrated through careful design and use of innovative planning tools.

B. The Draft Plan proposes to meet objectives for watershed health by protecting existing natural resources and functions, ensuring that development impacts to existing natural resources are minimized and mitigated, and ensuring that opportunities for future restoration and enhancement are not precluded by development. The Draft Plan proposes to facilitate economic and industrial development by strengthening land use regulations to protect prime industrial land and support riverfront businesses, providing more predictability and flexibility for redevelopment and expansion and undertaking public investments in infrastructure and land development to fuel private investment in the working harbor. The Draft Plan recognizes that restoration and economic prosperity are interdependent activities in the North Reach, and one will not be successful without the other. The Draft Plan also proposes to improve access to, along and across the river.

C. The Draft Plan includes a Natural Resource Inventory that documents the extent, condition and functionality of riparian corridors and wildlife in the North Reach, and provides the basis for the new River Environmental (e) zone and refinements to the existing Environmental Protection (p) and Environmental Conservation (c) zones. The Draft Plan designates a portion of the undeveloped upland portions of Siltronic's property as a Special Habitat Area because the existing upland habitat provides connectivity between the Willamette River and Forest Park. The Draft Plan released on November 28, 2009 proposes application of e, c and p overlay zones to undeveloped portions of the Property as depicted on the attached Exhibit A. The Draft Plan also designates part of the Property as the Doane Creek restoration site with proposals to enhance the natural resource functions of the area.

D. Siltronic owns an approximately 80-acre parcel of partially developed land (the "Property"), which lies within the boundaries of the land to which the Draft Plan applies. An aerial photo of the Property is attached as Exhibit B. Siltronic acquired the Property from the City in 1978 and entered into a Disposition and Development Agreement dated May 26, 1978 (the "DDA"). The fundamental purpose of the DDA was to implement the Northwest Front Avenue Industrial Renewal Project, which was created to attract Siltronic to the City to develop a $30-40 million dollar silicon chip fabrication plant and employ workers with hiring preference to City residents. Siltronic has since exceeded its development responsibilities under the DDA by developing two silicon wafer fabrication plants and related facilities on approximately one-half of the Property. The existing improvements are shown on Exhibit B.

E. The City and Siltronic seek to advance a key principle of the Draft Plan through this MOU and a future Development Agreement ("DA") to follow -- that environmental protection and economic development can be mutually supportive objectives. The preliminary agreement outlined in this document is designed to achieve several substantive requirements of the Draft Plan. Both the City and Siltronic intend to protect, restore and maintain significant existing habitat, mitigate for impacts to natural resources, maintain effective use of the existing industrial land supply and achieve the City's economic development objectives, particularly in the high tech and green technologies areas.

F. The current zoning code designates the Siltronic property riverward of an existing utility easement on the Property for river dependent and related uses (i overlay). All parties acknowledge that this designation does not reflect the uses present on the land for the last 30 years, that it may hamper future industrial development compatible with current uses on the site, and needs to be changed to a g overlay zone.

G. Consistent with its initial 1978 development plans for the Property, Siltronic seeks to maximize the amount of developable land on the Property in order to give Siltronic a higher level of certainty that it will be able to quickly respond to development/employment opportunities on the Property. The desired future developable area (Development Site) is shown on Exhibit C, (Development Site and Conservation Easement Map). Siltronic desires that the City not apply the e, c and p overlays that the Draft Plan proposes to apply to undeveloped portions of the Property.

H. Consistent with the goals and objectives of the draft Plan, the City has identified certain portions of the Siltronic Property as providing significant natural resource functions, including riparian functions along the open portions of Doane Creek, habitat for grassland-associated wildlife species and wildlife connectivity between Forest Park, Doane Creek, North Doane Lake and the Willamette River. The City desires that Siltronic grant the City a conservation easement for land that provides the existing functions to be protected by the e, c and p overlays proposed for the Property by the Draft Plan.

I. PDC engaged a consultant (URS) to identify development impacts and mitigation options associated with reasonably anticipated future development and mitigation activities ("Mitigation Study"), using a Habitat Evaluation Process/Habitat Equivalency Analysis process developed collaboratively by URS, City and Siltronic representatives. The Mitigation Study was used by the Parties during negotiations of this MOU to identify the total mitigation obligation (or debit), in habitat units that would result from future development impacts to the grassland habitat on the Development Site. The monetary value of the mitigation obligation was then calculated based on the replacement value of habitat units in the North Reach area. This habitat value was calculated at approximately $1 million.

Preliminary Agreement

To achieve their mutual objectives, the City, PDC and Siltronic have discussed the potential terms of a Development Agreement with regard to implementation of the Draft Plan and new development on the Property, and have tentatively agreed as follows:

1. Zoning. When the City Council adopts the Draft Plan, the base zoning and overlay zoning for the Property will be as shown on Exhibit A. If, no later than July 1, 2010, a Development Agreement is approved by the City Council with the Development Site and Conservation Easement areas shown in Exhibit C and is signed by all parties, the base zoning and overlay zoning will be changed to reflect that set forth on Exhibit D. The City will likely explore options to add environmental overlay zoning to the Conservation Easement area following construction on the development site. Siltronic supports this concept. If a Development Agreement is not approved by the Council and signed by all parties on or before July 1, 2010, this MOU and Exhibit D are void and will have no force and effect.

2. Conservation Easement Conveyance. In exchange for modifying the environmental conservation and river environmental overlay zoning, which provides Siltronic with development certainty and provides the City with the opportunity to own and enhance an important restoration site identified in the River Plan / North Reach, Siltronic agrees to convey, at no cost to the City, a perpetual conservation easement over and across the land area shown in Exhibit C ~~(the Conservation Easement Area)~~. The Development Agreement shall include a mutually acceptable legal description of the Conservation Easement Area, which will be conveyed to the City within sixty (60) days after the execution of the Development Agreement; OR the effective date of the Draft Plan, whichever occurs first.

   As development occurs on the Development Site, the City and Siltronic may revise and rerecord the Conservation Easement. The Conservation Easement may be revised to reflect the actual placement of development on the Property but in no case shall be narrower than the distances depicted in Exhibit C. ~~and.~~ The Conservation Easement may be revised to add additional property to the original

Conservation Easement Area. The City agrees it will impose no development condition of approval which requires expansion of the Conservation Easement Area. Any revision of the Conservation Easement Area shall be consistent with the objectives of the Development Agreement.

3. Conservation Easement Purpose and Objectives. The purpose of the Conservation Easement is to allow for mitigation or restoration within a habitat corridor on the Property that extends from the point where Doane Creek first intersects the Property along the southwest property boundary to the Willamette River. To accomplish this purpose, the corridor shall have the key dimensions indicated on Exhibit C.

   Mitigation or restoration activities by any party within the Conservation Easement Area are intended to accomplish the following objectives:

   - Protect in perpetuity a wildlife habitat connectivity corridor between the Willamette River and Forest Park, enhance upland wildlife habitat , and improve riparian corridor functions, including but not limited to microclimate and shade, flow and hydrology, water quality and pollutant control, and food web and nutrient cycling,
   - Maintain security of and minimize disruption to Siltronic's business and manufacturing activities on the Property.

4. Use of Conservation Easement Area. Access to and use of the Conservation Easement Area by the City and Siltronic will be addressed in the Development Agreement. In general, the City and Siltronic intend that access and use activities will be grouped into two categories, Phase I and Phase II areas indicated on Exhibit C, to correspond with the timing of development of the Development Site, as outlined in Exhibit E, Conservation Easement Access and Use. These activities are generally described as follows:

   ~~a. Phase I activities will be allowed until development occurs on the Development Site or 15 years from the effective date of the Development Agreement, whichever occurs first.~~

   ~~b. Phase II activities will be allowed in perpetuity after Phase II is initiated.~~

   a. ~~c~~. In addition to the terms outlined in Exhibit E, Siltronic may use the Conservation Easement area for calculating setbacks, buffers, lot coverage, vegetated area and other development standards, except that the Conservation Easement Area may not be used for calculating compliance with the required river setback and stormwater management development standards.

   b. ~~d~~. As development occurs on the Development Site, the fence along the boundary of the Property will be moved to a permanent location on the boundary between the Conservation Easement Area and the Development Site~~, as shown in Exhibit C~~.

c. ~~e~~. In both phases, no permanent uses will be allowed within the Conservation Easement that would be inconsistent with the primary use of protecting, enhancing, restoring and maintaining the area as a natural resource area, including the long term potential for daylighting parts of Doane Creek. Any part of the Conservation Easement area temporarily disturbed due to the activities allowed in Phases I and II, as outlined in Exhibit E, will be returned to its previous state or better.

d. ~~f~~. The existing Siltronic trail adjacent to the river will be retained although its location may change.

5. ESEE Analysis. BPS staff will recommend to the City Council that the Draft Plan ESEE analysis be amended at the time the Development Agreement becomes effective and that the proposed overlay zones for the site be consistent with the proposed revisions to the ESEE analysis, to be included in the Development Agreement as a separate exhibit..

6. Mitigation To arrive at an equitable trade between Siltronic and the City concerning the value of natural resources on the Development Site and the value of the Conservation Easement to be granted to the City, the parties used the City's HEP/HEA process (as described in Recital I.) and real estate appraisals from each party. While this approach does not mitigate for lost habitat, the parties agreed that these values would help inform to what degree there was an equivalency between the donation of a conservation easement and adequate compensation for habitat values lost due to development. In exchange for not applying c and e overlay zoning to the Development Site, and thus providing Siltronic with significantly enhanced development certainty, the City will receive from Siltronic a conservation easement which will include the remaining upland grassland habitat and riparian areas along the open channel and piped portions of Doane Creek and connecting with the Willamette River. This exchange provides the City with an asset that can be maintained, enhanced and restored, including improving the vegetated corridor and, potentially, the daylighting of Doane Creek. Doane Creek is one of two tributaries in the North Reach with sufficient stream flow to support salmonids. The easement also provides the City with certainty that a wildlife habitat connectivity corridor will be protected in perpetuity.

~~The City agrees that the benefits of a permanent wildlife habitat connectivity corridor and the potential for future restoration of Doane Creek as salmonid habitat, combined with the monetary asset of the land conveyed to the City, are adequate compensation, and that additional mitigation for future development impacts to the upland grassland located outside of the easement is not required.~~

While a considerable level of agreement has been reached, the City is still in the process of assessing whether or not the permanent wildlife habitat connectivity corridor and the potential for future restoration of Doane Creek as salmonid

habitat, combined with the monetary asset of the land conveyed to the City, is an acceptable tradeoff for removal of the environmental overlay zones. The primary concern is that the width of the easement along the piped section of Doane Creek is narrower than what the scientific literature recommends for optimal species movement and constrains opportunities for future daylighting of Doane Creek.

As noted in section 4.a. of this MOU, at the time of development, Siltronic is allowed to comply with the vegetated area standards by claiming any vegetation within the easement area at the time the DA is signed. Siltronic has also agreed to plant native trees and understory within the 50 foot setback area on its property along the Willamette River as the first priority for complying with the vegetated area standards.

During the process of creating the Development Agreement, and following public testimony during the River Plan / North Reach hearing, there will be further discussion concerning the value of the conservation easement and the value of the habitat ~~equity of this tradeoff~~. The Development Agreement will reflect any adjustments regarding this issue ~~to this point of agreement~~.

7. ~~Potential~~ Eco-Roof for Additional Habitat.
In accordance with Section 10 below, PDC anticipates that it may provide a negotiated financial incentive package associated with new private capital investment on the site. The funding for this may come from a variety of sources including tax increment bond proceeds, City funds and/or state and federal funding. If such a financial package is provided which is agreeable to the parties, the parties further agree that Siltronic will incorporate an eco-roof into the design and development of the new project. The specifics of the eco-roof will be spelled out at that time and will take into consideration the technical and financial feasibility of the eco-roof, its compatibility with other uses and its value to wildlife, all which shall be agreed upon by both parties.
~~Siltronic and/or the developer of the Development Site will explore the idea of an eco-roof useable for habitat purposes as part of planning activities for the site. If the concept is determined to be feasible from an economic, functional and compatible use perspective and valuable for wildlife, the City will evaluate the feasibility of paying Siltronic and/or the developer for any cost differential between a conventional roof structure and one that incorporates an eco-roof habitat.~~

8. Front Avenue. At this time the City does not intend to exercise its eminent domain authority to condemn land for any extension of Front Avenue through the Property beyond its existing terminus located at the southeast corner of the Property, unless a future land use review requires transportation improvements to meet the associated approval criteria.

9. The Greenway Trail. The City will consider and take reasonable measures to address security issues that Siltronic may raise for the Property regarding any trail

constructed in the Conservation Easement Area that connects the railroad bridge to Highway 30 or Front Avenue, consistent with other applicable regulatory requirements.

10. PDC Funding. PDC intends to contribute funds from the Willamette Industrial Urban Renewal Area (WIURA) for the purpose of advancing restoration work in the WIURA. Initial funding is estimated to be approximately $200,000, to be disbursed over one or more years, and shall be limited to expenses that are eligible under state law and will not be used to pay for obligations that otherwise are the responsibility of Siltronic or other property owners in the Draft Plan area. PDC staff intends to request Commission approval to provide said funding in its 2010/11 FY budget request and agrees that some or all of this initial funding may be applied toward improvements in the Conservation Easement Area.

PDC will also consider other financial support to Siltronic as part of a negotiated incentive package tied to substantial new private capital investments in buildings and equipment resulting in the retention of existing Siltronic jobs at the location and/or the creation of new jobs at the Development Site by Siltronic Corporation, their partners, or another entity. To qualify for such support development must occur prior to the expiration of the WIURA or depletion of these funds (whichever occurs later).

11. Portland Harbor/NRDA Obligations. The MOU and the Development Agreement are not intended to nor shall they have any affect on the parties' legal rights, responsibilities or obligations under federal superfund and other environmental laws and regulations. The Parties to this agreement agree that neither this MOU nor the DA will preclude Siltronic from asserting that the Mitigation Tasks or Restoration Tasks required under the Development Agreement may qualify as consideration or credit toward their NRDA obligations.

12. Legal Effect. This MOU is not intended to and does not obligate any party to take any particular action and is not legally binding.

_____	_____	_____
City of Portland	PDC	Siltronic Corporation

List of Exhibits

Exhibit A: River Plan / North Reach proposal
Exhibit B: Air photo of the Property
Exhibit C: Development Site and Conservation Easement map
Exhibit D: Post Agreement Overlay Zoning
Exhibit E: Conservation Easement Access and Use

Exhibit E: Allowed Uses in the Easement Area

PRE-CONSTRUCTION	
PHASE 1 AREA	**PHASE II AREA**
Access for the following activities as long as disturbance is temporary and habitat impacts are fully mitigated: 1) access to existing gravel road 2) repair and maintenance of fence 3) maintenance and sampling of groundwater monitoring wells 4) access to the existing utility corridor 5) habitat restoration	Access for the following activities as long as disturbance is temporary and habitat impacts are fully mitigated: 1) access to existing gravel road 2) repair and maintenance of fence 3) maintenance and sampling of groundwater monitoring wells 4) access to the existing utility corridor 5) habitat restoration, as long as the restoration activities don't preclude construction activities.
CONSTRUCTION (Siltronic construction on development site or City construction on easement area)	
PHASE 1 AREA	**PHASE II AREA**
Once Siltronic's construction on the development site or the City's restoration of the easement area has begun, the allowed uses are as follows. The exact set of construction/restoration activities that will trigger this set of allowed uses will need to be further defined in the DA:	**Once Siltronic's construction on the development site has begun, the allowed uses are as follows. The exact set of construction activities that will trigger this set of allowed uses will need to be further defined in the DA:**
Access for the following activities as long as disturbance is temporary and habitat impacts are fully mitigated: 1) Storage of construction equipment and materials if a) storage cannot reasonably be accomplished first on property outside of the Conservation Easement Area or on Phase II of the Conservation Easement Area and the area of impact is minimized; b) areas planted within Phase I for enhancement purposes shall be avoided to the maximum degree practicable; and c) the timing and spatial extent of disturbance is agreed to by the City 2) location of utilities if they cannot reasonably be located outside of the	Access for the following activities as long as disturbance is temporary and habitat impacts are fully mitigated: 1) Storage of construction equipment and materials if a) storage cannot reasonably be accomplished on property outside of the Conservation Easement Area and the area of impact is minimized; b) areas planted within Phase II for enhancement purposes shall be avoided to the maximum degree practicable; and c) the timing and spatial extent of disturbance is negotiated by Siltronic and the City 2) location of utilities if they cannot reasonably be located outside of the Conservation Easement

Conservation Easement or on Phase 2 of the Conservation Easement Area 3) emergency vehicle access as long as said access requires no road surfaces to be constructed 4) habitat restoration	3) temporary roads for construction access 4) habitat restoration, as long as the restoration activities don't preclude construction activities.
POST-CONSTRUCTION	
PHASE I AREA	**PHASE II AREA**
The exact activities that will trigger this set of allowed uses will need to be further defined in the DA.	**The exact activities that will trigger this set of allowed uses will need to be further defined in the DA.**
Access for the following activities as long as said access requires no road surfaces to be constructed and habitat impacts are temporary and fully mitigated: 1) sampling and maintenance of groundwater monitoring wells 2) access to existing utilities 3) security operations 4) habitat restoration	Access for the following activities as long as said access requires no road surfaces to be constructed and habitat impacts are temporary and fully mitigated: 1) building maintenance 2) sampling and maintenance of groundwater monitoring wells 3) access to existing utilities 4) security operations 5) habitat restoration
FUTURE-CONSTRUCTION	
PHASE I AREA	**PHASE II AREA**
Access for the following activities as long as said access requires no road surfaces to be constructed and habitat impacts are temporary and fully mitigated: 1) sampling and maintenance of groundwater monitoring wells 2) access to existing utilities 3) security operations 4) habitat restoration	Access for habitat restoration, major building modification or reconstruction in accordance with the above restrictions for pre-construction, construction, and post-construction phases as long as any impact to the natural resource values of the Conservation Easement are temporary and fully mitigated.