



**CORVALLIS  
CITY COUNCIL AGENDA**

**March 7, 2011  
12:00 pm ONLY**

**Downtown Fire Station  
400 NW Harrison Boulevard**

**COUNCIL ACTION**

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**PLEDGE OF ALLEGIANCE**

**I. ROLL CALL**

**II. CONSENT AGENDA [direction]**

The following items are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member (or a citizen through a Council member) so requests, in which case the item will be removed from the Consent Agenda and considered separately. If any item involves a potential conflict of interest, Council members should so note before adoption of the Consent Agenda.

- A. Reading of Minutes
  - 1. City Council Meeting – February 22, 2011
  - 2. City Council Work Session – February 22, 2011
  - 3. For Information and Filing (Draft minutes may return if changes are made by the Board or Commission)
    - a. Economic Development Commission – February 8, 2011
    - b. Investment Council – February 3, 2011
    - c. Planning Commission – January 5 and 19, 2011
- B. Announcement of vacancy on Community Police Review Board (Lambert)
- C. Schedule a public hearing for March 21, 2011 to consider a Land Use Board of Appeals remand order (PLD06-00018, SUB06-00006 – Brooklane Heights)
- D. Schedule a public hearing for April 4, 2011 to consider a Land Development Code text amendment (LDT10-00001 – FEMA flood plain maps and regulations)
- E. Schedule an Executive Session following the regular noon meeting under ORS 192.660(2)(d)(i) (status of labor negotiations; status of employment-related performance)

**III. ITEMS REMOVED FROM CONSENT AGENDA**

**IV. UNFINISHED BUSINESS**

- A. Adoption of 2011-2012 City Council goals [direction]
- B. City Legislative Committee – February 23, 2011 [direction]

**V. MAYOR, COUNCIL, AND STAFF REPORTS**

- A. Mayor's Reports
  - 1. Proclamation of Enhancing Community Livability – Zonta Club of Corvallis and International Women's Day – Celebrating 100 Years – March 8, 2011 (immediately after Consent Agenda)
- B. Council Reports
- C. Staff Reports [information]
  - 1. Council Request Follow-up Report – March 3, 2011
  - 2. Media in Executive Sessions

**VI. VISITORS' PROPOSITIONS** – 12:30 pm *(Note that Visitors' Propositions will continue following any scheduled public hearings, if necessary and if any are scheduled)* [citizen input]

**VII. PUBLIC HEARINGS** – None.

**VIII. & IX. STANDING COMMITTEE REPORTS, ORDINANCES, RESOLUTIONS, AND MOTIONS**

- A. Human Services Committee – February 23, 2011
  - 1. Council Policy Review: CP 97-4.07, "City-Owned Art Objects on Private Property" [direction]
  - 2. Social Services Semi-Annual Report [direction]
  - 3. Herbert Farm Natural Area Management Plan [direction]
- B. Administrative Services Committee – February 23, 2011
  - 1. Economic Development Allocations Second Quarter Report [direction]
- C. Administrative Services Committee – March 2, 2011
  - 1. Local Option Levy Explanatory Statement [direction]

- D. Urban Services Committee – February 24, 2011
  - 1. Total Maximum Daily Load Update [direction]
  - 2. Street Trees and Sidewalk Liability [direction]

*ACTION: An ordinance amending Corvallis Municipal Code Chapter 2.15, "Sidewalk Improvements," as amended, to be read by the City Attorney [direction]*

**X. NEW BUSINESS**

- A. City Manager recruitment process [direction]

**XI. ADJOURNMENT**

For the hearing impaired, a sign language interpreter can be provided with 48 hours' notice prior to the meeting. Please call 541-766-6901 or the Oregon Communications Relay Service at 7-1-1 to arrange for TTY services.

**A LARGE PRINT AGENDA CAN BE AVAILABLE BY CALLING 541-766-6901**

*A Community That Honors Diversity*



**CITY OF CORVALLIS  
ACTIVITY CALENDAR**

**MARCH 7 - 19, 2011**

MONDAY, MARCH 7

- ▶ City Council - 12:00 pm only - Downtown Fire Station, 400 NW Harrison Boulevard

TUESDAY, MARCH 8

- ▶ No Human Services Committee
- ▶ Historic Resources Commission - 7:00 pm - Downtown Fire Station, 400 NW Harrison Boulevard

WEDNESDAY, MARCH 9

- ▶ City Legislative Committee - 7:30 am - Cornell Meeting Room, 2300 NW Walnut Boulevard
- ▶ Citizens Advisory Commission on Transit - 8:20 am - Madison Avenue Meeting Room, 500 SW Madison Avenue
- ▶ Housing and Community Development Commission - 12:00 pm - Madison Avenue Meeting Room, 500 SW Madison Avenue
- ▶ Administrative Services Committee - 4:00 pm - Madison Avenue Meeting Room, 500 SW Madison Avenue
- ▶ Downtown Commission - 5:30 pm - Downtown Fire Station, 400 NW Harrison Boulevard

THURSDAY, MARCH 10

- ▶ Citizens Advisory Commission on Civic Beautification and Urban Forestry - 8:00 am - Parks and Recreation Conference Room, 1310 SW Avery Park Drive
- ▶ Urban Services Committee - 5:00 pm - Madison Avenue Meeting Room, 500 SW Madison Avenue

SATURDAY, MARCH 12

- ▶ Government Comment Corner (Councilor Hal Brauner) - 10:00 am - Library Lobby, 645 NW Monroe Avenue

MONDAY, MARCH 14

- ▶ Economic Development Commission - 3:00 pm - Madison Avenue Meeting Room, 500 SW Madison Avenue

WEDNESDAY, MARCH 16

- ▶ Watershed Management Advisory Commission - 5:30 pm - Madison Avenue Meeting Room, 500 SW Madison Avenue
- ▶ Planning Commission - 7:00 pm - Downtown Fire Station, 400 NW Harrison Boulevard

THURSDAY, MARCH 17

- ▶ Parks, Natural Areas, and Recreation Board - 6:30 pm - Madison Avenue Meeting Room, 500 SW Madison Avenue

SATURDAY, MARCH 19

- ▶ Government Comment Corner (Councilor Mark O'Brien) - 10:00 am - Library Lobby, 645 NW Monroe Avenue

**CITY OF CORVALLIS  
COUNCIL ACTION MINUTES**

**February 22, 2011**

**SUMMARY OF DISCUSSION**

Agenda Item	Information Only	Held for Further Review	Decisions/Recommendations
<b>Consent Agenda</b> Pages 75-76			
<b>Mayor's Report</b> 1. Police Sergeant Jefri Van Arsdall Recognition 2. OSU Tobacco Free Campus Steering Committee Appointment Pages 76, 78	Yes  Yes		
<b>Unfinished Business</b> 1. City Legislative Committee – February 9, 2011  Pages 76-78			<ul style="list-style-type: none"> <li>• Adopted amended guidelines <u>passed U</u></li> <li>• Supported Senate Bill 242 <u>passed U</u></li> </ul>
<b>Council Reports</b> 1. WMAC (Hervey) 2. City Sustainability Activities (Traber) 3. Benton County 2-1-1 Service (Traber) 4. Upcoming Events (Raymond) 5. Song for Blue Ocean (Raymond) 6. Benton County Commission on Children and Families (Raymond) 7. OAC Economic Impacts (Hirsch) 8. Corvallis School District Student Art Show (Hirsch) 9. Construction Parking in Handicapped-Accessible Spaces (Hirsch) Pages 78-79	Yes Yes Yes Yes Yes Yes Yes Yes Yes		
<b>Staff Reports</b> 1. Public Meetings Legal Opinion 2. Election Law Informational Presentation 3. City Manager's Report – January 2011 4. Council Request Follow-Up Report – February 17, 2011 Pages 79-80	Yes Yes Yes Yes		
<b>Items of HSC Meeting of February 8, 2011</b> 1. Council Policy Review: CP 97-4.09, "Guidelines for Free Use of Park Facilities" Page 80			<ul style="list-style-type: none"> <li>• Amended Policy <u>passed U</u></li> </ul>

Agenda Item	Information Only	Held for Further Review	Decisions/Recommendations
<b>Other Related Matters</b> 1. Asset Forfeiture Page 81			<ul style="list-style-type: none"> <li>• RESOLUTION 2011-03 <u>passed U</u></li> </ul>
<b>New Business</b> 1. City Attorney Performance Evaluation Process Page 81	Yes		
<b>Executive Session</b> 1. Labor Negotiations Page 81	Yes		

Glossary of Terms

HSC Human Services Committee  
 OAC Osborn Aquatic Center  
 OSU Oregon State University  
 U Unanimous  
 WMAC Watershed Management Advisory Commission

**CITY OF CORVALLIS  
COUNCIL ACTION MINUTES**

**February 22, 2011**

The regular meeting of the City Council of the City of Corvallis, Oregon, was called to order at 12:00 pm on February 22, 2011, in the Downtown Fire Station, 400 NW Harrison Boulevard, Corvallis, Oregon, with Mayor Manning presiding.

**PLEDGE OF ALLEGIANCE**

**I. ROLL CALL**

**PRESENT:** Mayor Manning, Councilors Hervey, Beilstein, Hogg, Brown, Traber, Brauner, O'Brien, Raymond, Hirsch

Mayor Manning directed Councilors' attention to items at their places, including an e-mail from Councilor Hervey regarding suggested amendments to the City Legislative Committee guidelines (Attachment A), an e-mail from Bill York regarding Councilors preparing motions and communicating about issues prior to meetings (Attachment B), and a memorandum from the City Attorney's Office regarding public meeting requirements (Attachment C).

**II. CONSENT AGENDA**

Councilors Hervey and Brauner, respectively, moved and seconded to adopt the Consent Agenda as follows:

- A. Reading of Minutes
  - 1. City Council Meeting – February 7, 2011
  - 2. City Council Special Meeting – February 14, 2011
  - 3. For Information and Filing (Draft minutes may return if changes are made by the Board or Commission)
    - a. Bicycle and Pedestrian Advisory Commission – December 3, 2010 and January 7, 2011
    - b. Citizens Advisory Commission on Transit – January 12, 2011
    - c. Corvallis-Benton County Public Library Board – January 5, 2011
    - d. Downtown Commission – January 12, 2011
    - e. Downtown Parking Committee – December 7, 2010
    - f. Historic Resources Commission – December 14, 2010
    - g. Housing and Community Development Commission – January 19, 2011
    - h. Watershed Management Advisory Commission – December 15, 2010 and January 19, 2011
    - i. Willamette Criminal Justice Council – January 19, 2011
- B. Confirmation of appointment to Committee for Citizen Involvement (Main); Parks, Natural Areas and Recreation Board (Williams)
- C. Announcement of Appointment to Capital Improvement Program Commission (Hutchens)

- D. Approval of an application for a "Limited On-Premises Sales" liquor license for Elsa Nunez Parmelee, owner of La Rockita, dba La Rockita Ninth Street, 1416 NW Ninth Street (New Outlet)
- E. Approval of an application for a "Full On-Premises Sales" liquor license for Elsa Nunez Parmelee, owner of La Rockita, dba La Rockita Kings Boulevard, 2309 NW Kings Boulevard (New Outlet)
- F. Schedule an Executive Session following the regular noon meeting under ORS 192.660(2)(d) (status of labor negotiations)

The motion passed unanimously.

III. ITEMS REMOVED FROM CONSENT AGENDA – None.

V. MAYOR, COUNCIL, AND STAFF REPORTS

A. Mayor's Reports

1. Police Sergeant Jefri Van Arsdall recognition

Mayor Manning reviewed that, on November 28, 2010, Sergeant Van Arsdall was on patrol, smelled smoke, and responded to a suspicious fire at the Islamic Cultural Center. During a recent peace tree-planting event, the Center recognized community members for their support following the fire via awards of appreciation.

Mayor Manning presented to Sergeant Van Arsdell a plaque representing the Center's gratitude and recognition of his dedicated services to the community.

IV. UNFINISHED BUSINESS

A. City Legislative Committee – February 9, 2011

City Manager Nelson noted that the Committee conducted its first meeting of the year in anticipation of the 2011 Oregon Legislative session. Much of the Committee's discussion focused on Senate Bill 242 regarding re-structuring higher education funding. One concern involved how regional and smaller universities would benefit from the Bill in terms of flexibility in conducting business. Universities believed unspent revenues should be used for educational purposes, rather than added to an ending fund balance. Oregon State University (OSU) Vice President for University Relations and Marketing Todd Simmons said OSU administrative officials believed it was an appropriate time to change the university funding system. Mr. Nelson noted the Committee's recommendation that the Council's position be conveyed to state legislators, the League of Oregon Cities (LOC), and city councils of Oregon cities with public universities.

Mr. Nelson said the Committee also discussed its operating guidelines, for which Councilor Hervey later suggested amendments.

Councilor Hervey explained that the Committee guidelines were intended to provide clarity regarding issues presented to the Committee by individuals or entities other than the LOC. Therefore, the guidelines should have a broader scope.

Councilor Brauner opined that Councilor Hervey's suggested amendments seemed appropriate and would align with previous Committee actions.

Councilors Brauner and Raymond, respectively moved and seconded to adopt the City Legislative Committee guidelines with Councilor Hervey's suggested amendments.

Councilor Beilstein opined that there was no reason to include Councilor Hervey's suggested amendment to the guidelines regarding focus, as it pertained to non-City-related issues brought by organizations and citizens. He noted that the Council could decline to act on any issue, but he believed the amendment would imply that all non-City-related issues would be declined. He would prefer that the guidelines reference issues brought to the Council by citizens and organizations. He did not want the guidelines to imply that the Council would generally ignore issues presented by citizens and organizations.

Councilor Raymond concurred with Councilor Beilstein and suggested that his suggestion be accepted as a friendly amendment to the motion. Councilor Hervey accepted the friendly amendment.

In response to Councilor Brauner's inquiry, Councilor Beilstein confirmed that, under his friendly amendment, the Focus portion of the Committee guidelines would be amended to read, "Past City Councils have discussed and forwarded City positions on those bills directly impacting City government, as well as issues brought to the Council by citizens and organizations." Councilor Brauner opined that the amendment would change the meaning of the guideline statement, but he did not have strong feelings about the amendment. The amendment would state that, normally, the Committee would review issues related to City government and could decline to consider issues unrelated to City government. He did not want to add a statement that, contrary to past practice, would imply that the Council would almost always consider all issues presented by citizens.

Mr. Nelson clarified that the statement described the Committee's previous practice. The Council could change the statement; however, it reflected past practice of the Council, not necessarily approving all requests presented by citizens.

Councilor Brown said he accepted leaving the amendment unchanged.

The motion to amend the guidelines focus statement as suggested by Councilor Hervey passed unanimously.

In response to Councilor Hervey's inquiry, Mr. Nelson asked that Council members present to him any legislative bills they would like the City Legislative Committee to consider. He would then ask Department Directors to provide impact analysis to the Committee.

Councilors Brauner and Hirsch, respectively, moved and seconded to support Senate Bill 242 and communicate Corvallis' position to Senator Morse, Representative Gelser, the League of Oregon Cities, and the city councils in Oregon cities with public universities.

Councilor Beilstein expressed support for the Council's action and the Bill. He opined that the issue of retaining tuition revenue at the respective universities was a good idea but would not address the basic problem of higher education not receiving the necessary state support to operate. He characterized the Bill as "a desperate grasp at a little bit of comfort for the universities." However, universities were not funded adequately, and the Bill would not address the basic problem.

The motion passed unanimously.

V. MAYOR, COUNCIL, AND STAFF REPORTS – Continued

A. Mayor's Reports – Continued

2. Council liaison appointment to OSU Tobacco Free Campus Steering Committee

Mayor Manning reported that OSU announced its intention to be a smoke-free campus by fall 2012 and requested a City representative to serve on the Committee. OSU requested a representative from a neighborhood surrounding the campus, and Councilor Hogg agreed to serve on the Committee.

B. Council Reports

Councilor Hervey reported that he attended the Watershed Management Advisory Commission's (WMAC) recent meeting and noted that the City was fortunate to have many qualified volunteers serving on its advisory bodies. The WMAC membership included many experts in the field of forest management. The Commission was formalizing policies to implement practices adopted as part of the Forest Stewardship Plan.

Councilor Traber reported that the Corvallis Sustainability Coalition Steering Committee received a presentation regarding City sustainability activities. He questioned whether the Council would like to receive a similar presentation.

Mr. Nelson noted that staff could include the presentation in its annual sustainability report to the Council.

Councilor Traber reported that Benton County's 2-1-1 service will be operational in July. People will be able to dial 2-1-1 for assistance finding needed resources.

Councilor Raymond announced some upcoming events:

- March 5 – She will host Government Comment Corner.
- March 9 – The Drug-Free Teen Summit will present workshops and information for area teens.
- March 9 – The Corvallis Sustainability Coalition will host its annual town hall.

Councilor Raymond reported that she attended the Song for Blue Ocean event, which included lectures, films, music, and information. Special-interest groups provided information regarding ocean preserves, climate change and effects on the Oregon Coast, banning plastic shopping bags, and related legislative proposals. This prompted her concern that the City Legislative Committee be receptive to legislative concerns presented by individuals and groups.

Councilor Raymond reported on Benton County Commission on Children and Families programs and concerns:

- The Teen Court served 65 clients and 80 peer jurors of 12 to 17 years of age during the past year.
- The Commission was concerned about a possible change in State funding. Governor Kitzhaber's proposal would fund education programs for children through five years of age. Benton County's education programs serve youth five to 17 years of age. Funding for programs for vulnerable populations were being reviewed for possible reduction or elimination.

Councilor Hirsch reported that he attended a district swim meet at Osborn Aquatic Center, which attracted 1,600 people. He noted the facility's year 'round use. Center staff asked attendees to complete a survey regarding how long they would be in town, where they were eating, how much money they were spending on food, and how many people were in their group. He expected that the survey would provide information regarding the financial impact on the community from Center activities.

Councilor Hirsch said he attended the Corvallis School District Student Art Show, which will continue through March 4.

Councilor Hirsch reported that a constituent complained about construction contractors parking in handicap-accessible parking spaces. He asked if staff could advise contractors, during the permitting process, to provide alternate parking for their crews and equipment.

#### C. Staff Reports

Mr. Nelson noted that the memorandum distributed today by the City Attorney's Office (Attachment C) pertained to the City of Philomath. Staff will provide the Council with the correct information regarding the City of Corvallis.

Mr. Nelson announced that the City Attorney's Office would host a March 16 informational presentation for advisory bodies regarding state rules during election periods. The information would also be shared with staff. He explained that the City strives to provide information to the community, but State elections laws restrict what City employees and volunteers may say and do on behalf of the City during an election period. To comply with State laws, a large amount of information must be removed from the City's Web site and placed in a publicly accessible location, such as the Library.

1. City Manager's Report – January 2011

Mr. Nelson asked Council members to call him if they had questions regarding the Report.

2. Council Request Follow-up Report – February 17, 2011

Mr. Nelson reviewed issues addressed in the Report:

- Council executive session materials will be sent to Council members via United States Postal Service.
- The hydrology of a neighborhood determines the quantity and flow of excess storm water. A storm water pipe in the neighborhood of NW Greenley Avenue could be replaced to provide relief. This work was scheduled.

VI. VISITORS' PROPOSITIONS – None.

VII. PUBLIC HEARINGS – None.

VIII. & IX. STANDING COMMITTEE REPORTS AND ORDINANCES, RESOLUTIONS, AND MOTIONS

A. Human Services Committee – February 8, 2011

1. Council Policy Review: CP 97-4.09, "Guidelines for Free Use of Park Facilities"

Councilor Beilstein reported that the Committee reviewed the Policy and concurred with staff's suggestion that the Policy review period be changed from two to three years.

Councilors Beilstein and Brown, respectively, moved and seconded to amend Council Policy CP 97-4.09, "Guidelines for Free Use of Park Facilities."

Councilor Hervey referenced the minutes notation of his conversation with Councilor Beilstein regarding alternative uses for parks to share food. He determined that his proposal should be considered by the Council after the current study regarding food access. He said he would support the motion.

The motion passed unanimously.

B. Administrative Services Committee – None.

C. Urban Services Committee – None.

D. Other Related Matters

1. A resolution relating to criminal asset forfeiture funds and adopting a new supplemental budget

City Attorney Fewel read a resolution authorizing the Finance Director to make budget adjustments for forfeited funds in the amount of \$15,367.

Councilors Brauner and Beilstein, respectively, moved and seconded to adopt the resolution.

Mr. Nelson said the staff report indicated that 40 percent of asset forfeitures must be invested in law enforcement. Police Chief Boldizar said the remaining 60 percent is invested in treatment programs and state agencies. State law allows the local law enforcement agency to retain 40 percent of asset forfeitures.

RESOLUTION 2011-03 passed unanimously.

X. NEW BUSINESS

- A. City Attorney performance evaluation process

Councilor O'Brien noted that Council conducts annual performance evaluations of the City Attorney, City Manager, and Municipal Judge. He reviewed the evaluation process and asked Council members to complete and submit their evaluations to Assistant to City Manager/City Recorder Louie by March 2. He said the Council will conduct the evaluation during the March 7 Council meeting executive session. Council leadership will then meet with the City Attorney to discuss contract terms.

Mayor Manning read a statement, based upon changes in Oregon laws regarding executive sessions. The statement indicated that only representatives of the news media, designated staff, and other Council-designated persons were allowed to attend the executive session. News media representatives were directed not to report on any executive session discussions, except to state the general subject of the discussion, as previously announced. No decisions would be made during the executive session. She reminded Council members and staff that the confidential executive session discussions belong to the Council as a body and should only be disclosed if the Council, as a body, approves disclosure. She suggested that any Council or staff member who may not be able to maintain the Council's confidences should leave the meeting room.

*The Council entered executive session at 12:33 pm.*

Assistant City Manager Volmert briefed the Council regarding labor negotiations and the Council's responsibilities and legal restrictions in communicating with bargaining unit members and the community regarding the negotiations.

XI. ADJOURNMENT

The meeting was adjourned at 1:33 pm.

APPROVED:

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MAYOR

ATTEST:

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CITY RECORDER

**Nelson, Jon**

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**From:** ward3 [ward3@council.ci.corvallis.or.us]  
**Sent:** Tuesday, February 22, 2011 10:27 AM  
**To:** Mayor; Ward 8; cc; Ward 4; Ward 9; Ward 7; Ward 6; Ward 1; Ward 5; Ward 2  
**Cc:** Nelson, Jon  
**Subject:** [SPAM] Minor rewording for Legislative Committee  
**Importance:** Low

Julie,

I plan to propose a couple of minor rewordings to the City Legislative Committee Guidelines today. This heads up is to give you time to consider whether you think these would best be considered as amendments or as part of a general consensus discussion.

I have highlighted the added text inside arrowheads. They also show up in color on my email screen. I see these changes to be in line with today's agenda topic on SB 242.

From "Focus"

<<For the most part, p>>ast City Councils have discussed and forwarded City positions on those bills directly impacting City government. In the past, citizens and organizations have asked Council for support of their non-City related issues and Council, by and large, has declined.

From "Outcomes"

We rely on LOC expertise for lobbying and legislative representation, since that is a part of our LOC dues. The Committee's role includes review of the LOC Bulletin, <<review of bills called to it's attention by citizens>>, recommendations to Council, and communication with legislators and LOC staff, <<and other bodies as fits the need>>. Traditionally, this communication has been through the Mayor's Office speaking on behalf of the City Council. The department directors are prepared to support you in this endeavor through their impact analysis of legislation and their service through their professional associations.

Louie, Kathy

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**From:** Bill York [  
**Sent:** Monday, February 21, 2011 1:16 PM  
**To:** Louie, Kathy  
**Subject:** Council Goal Setting

Hi Kathy,

Please forward my comments on the Council's Draft Operating Agreements to the Mayor and Council.

Be prepared for the meetings  
Written motions

This might make for efficient meetings, but suggesting Councilors make up their minds before hearing from the public and their fellow councilors just doesn't feel right to me.

Communicate with other councilors before the meeting to get clarification to minimize surprises

Sounds like you're setting yourselves up for "serial meeting" opportunities

Regards,

Bill York



CORVALLIS CITY ATTORNEY  
456 SW Monroe, #101  
Corvallis, OR 97333  
Telephone: (541) 766-6906  
Fax: (541) 752-7532

MEMORANDUM

To: Mayor and City Council, City of Corvallis  
Chair and Planning Commission,  
Chair and Budget Commission

From: Jim Brewer, Deputy City Attorney 

Date: February 17, 2011

Subject: Public Meeting Requirements, Email and recent Lane County Circuit Court case

Issue:

City Council members, staff and advisory board and commission members have asked for advice related to the use of email and other electronic forums in order to comply with the requirements of the Oregon Public Meetings law (ORS 192.610 et seq). A recent (January 14, 2011) Lane County Circuit Court case, Dumdi et al v. Handy, Sorenson, Fleenor and Lane County Board of Commissioners, provides some useful insight.

Background:

Oregon Public Meetings law is set out in ORS 192.610 et seq.

No, but historically, the Mayor has voted.

Section 4.5 of the Philomath City Charter states that "the Mayor shall preside over Council deliberations and shall have a vote on all questions before the Council". This language obviously is subject to interpretation, and could be seen as permitting, but not obligating, the Mayor to vote. Historically (at least dating to the 1980's), the Council has interpreted the language to mean the Mayor is obligated to vote, and the Mayor has done so. This practice is based in part on Section 4.5 and in part on Section 3.3 of the Charter, which states that "the council shall be composed of a mayor and six councilors elected from the City at large." Consequently, the Mayor is a member of the Council, and the Mayor is included as a member of the Council for purposes of determining whether there is a quorum. In some cities in Oregon, the mayor is specifically prohibited from voting except to break a tie (Albany and Corvallis), and is not considered a member of the council for purposes of determining whether a quorum exists. Other cities' charters specifically state that the mayor in those cities is a voting member of the council (Salem). Philomath's Charter leaves some ambiguity.

That said, if Charter language comes into question, the City Council is the body charged with interpreting the language. The City Council has adopted an ordinance (Philomath Municipal

Code 2.10.070.G), that adopts Robert's Rules of Order, Newly Revised as its parliamentary procedure. Robert's distinguishes between presiding officers who are members of the assembly (and therefore can vote) and those that are not members of the assembly (and therefore cannot vote). Under Robert's a presiding officer that is a member of the assembly should vote only when the vote affects the result – either breaking a tie to pass a motion or creating a tie to kill a motion. But the same ordinance makes it clear that if there is a conflict between Robert's and the Charter, the Charter should prevail.

The City Council could have an official consideration of the issue and adopt a modified interpretation; that interpretation would be binding until such time it is reviewed by either a future Council or a Court of local jurisdiction.

**CITY OF CORVALLIS  
CITY COUNCIL WORK SESSION**

**February 22, 2011**

The work session of the City Council of the City of Corvallis, Oregon, was called to order at 5:31 pm on February 22, 2011, in the Madison Avenue Meeting Room, 500 SW Madison Avenue, Corvallis, Oregon, with Mayor Manning presiding.

**I. ROLL CALL**

PRESENT: Mayor Manning, Councilors O'Brien, Hogg, Hervey, Brown, Beilstein, Hirsch, Raymond (5:32 pm), Traber, Brauner

The Mayor and Councilors were joined by facilitator Joseph Bailey, City Manager Jon Nelson, Assistant City Manager Volmert, Community Development Director Gibb, and Assistant to City Manager/City Recorder Louie.

**II. UNFINISHED BUSINESS**

Councilor O'Brien briefed the Council regarding the City Manager recruitment process.

**A. 2011-2012 City Council Goal Setting**

The Mayor and Council continued discussion to refine the goals for the 2011-2012 Council term. City Manager Nelson and staff present reviewed the February 15, 2011, goals implementation analysis memorandum and noted goals adoption will occur at the March 7, 2011, Council meeting. A revised draft set of goals from Facilitator Bailey is attached.

**IV. ADJOURNMENT**

The meeting was adjourned at 8:10 pm.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY RECORDER

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## Corvallis City Council

February 21, 2011

### 2011- 2012 Goals

- ❖ By 12/11, the Council will hear and provide direction on recommendations to strengthen access to and availability of locally produced food and community gardens via policy, ordinance and LDC changes.
  - ◆ By 12/12, the Council will have enacted the necessary code and policy changes to support those recommendations.
- ❖ By 12/11, the Council will take action on recommendations by the Economic Development Commission concerning strategic priorities and funding sources for economic development initiatives.
- ❖ Working with the OSU President and his staff, by 12/11, the Council will create a plan to seize opportunities on parking, code enforcement, infill design, rental code, traffic design and other important issues.
- ❖ The Council will create a financially sustainable city budget.
  - ◆ Amend compensation policies to align total employee compensation with city revenue.
  - ◆ Develop new sources of revenue that align with expenditures.

**CITY OF CORVALLIS  
ECONOMIC DEVELOPMENT COMMISSION  
FEBRUARY 8, 2011**

**Present**

Mayor Manning, Interim Chair  
Sam Angelos  
Jay Dixon  
Nick Fowler  
Elizabeth French  
Pat Lampton  
Ann Malosh  
Skip Rung  
Rick Spinrad  
Dan Brown, Council Liaison

**Staff**

Jon Nelson, City Manager  
Ken Gibb, Community Development Director  
Marci Laurent, Management Assistant

**Excused**

Larry Mullins

**SUMMARY OF DISCUSSION**

	Agenda Item	Summary of Recommendations/Actions
I.	Call to Order; Self Introductions	Information only.
II.	Meeting Days and Times Discussion	Meeting dates confirmed.
III.	Distribution and Review of Background Material	Information only.
IV.	Preview of Next Commission Meeting Agenda	Information only.
V.	Selection of Chair and Vice-Chair	Chair and Vice-Chair were selected.
VI.	Other Business	Information only.
VII.	Adjournment	The next meeting will be held on February 22, 2011, at 3:00 p.m.

**CONTENT OF DISCUSSION**

**I. CALL TO ORDER/SELF INTRODUCTIONS.**

Mayor Manning called the meeting to order and thanked each individual and their respective organizations for agreeing to serve on this commission. She asked each member to introduce themselves.

## **II. MEETING DAYS AND TIMES DISCUSSION.**

Ken Gibb provided a visual for the best dates that would work with regard to other regularly scheduled meetings. The Commission discussed options for regular meeting dates as well as options for additional meetings. It was determined that the Commission's regular meetings will occur on the 2<sup>nd</sup> Monday of each month from 3-5pm. The Commission also agreed that it would be beneficial to meet more frequently over the next few months.

## **III. DISTRIBUTION AND REVIEW OF BACKGROUND MATERIAL**

Mayor Manning identified the background materials that were distributed to the Commission:

- Vision 2020 – Page 5 “Economic Vitality is highlighted; she noted that the current council is exploring updating or expanding this document for an additional ten years.
- The Prosperity That Fits Report and Action Plan – the result of a community process that includes an Action Plan that has continued to be used by community groups.
- Article 8 of the City's Comprehensive Plan – addresses the Statewide Planning Goal 9: “To diversify and improve the economy of the State.”
- Economic Development Policy (CP 96-6.03) and Ordinance 2010-28 establishing the Economic Development Commission.

Ken Gibb noted that the previous policy focused on allocating funds and the revised policy focuses on planning and action items. Mayor Manning noted that the Ordinance forming this Commission provides the initial charge of advising the City Council on every aspect of Economic Development, developing a strategic plan as well as identifying sources of funding.

Nick Fowler asked if there was a schedule for deliverables that would motivate the group. Mr. Gibb responded that there were many expectations for this Commission, and suggested that the next meeting be dedicated to a work program. Elizabeth French asked if he could clarify the assumptions. Mr. Gibb noted that some are captured in the ordinance, such as: collaboration with other entities, how staffing will be provided, sources of funding as well as the City Council goals. He suggested that the focus of the next few meetings be to prioritize items for their work program. Mr. Nelson noted that one item for the Commission would be the extension of the boundaries of Enterprise Zone 3. Mayor Manning added that the city does not currently have staff dedicated to economic development.

Elizabeth French, noting that historically many organizations have relied upon this funding, asked if this Commission would also be advising the City Council on allocations. Mr. Nelson provided an overview of how the City's required budget reductions have impacted this program in FY 10-11 and 11-12. He noted that FY 11-12 is a transition period and that the message to these organizations is that there will not be any economic funding allocations. Mr. Nelson stated that the proposed budget for next year has approximately \$130,000 in support of economic development to provide staffing for this Commission until it is determined how staffing should be provided, to develop the Enterprise Zone and the Airport Marketing Plan.

Councilor Brown stated that this revised policy is an enabling document, while the old policy had a narrow focus, this one is broad and allows this Commission to choose what is important, adding that they can also recommend changes to the policy. He noted that the City Council would like to see substantial progress by June.

The Commission agreed that they would need two (2) additional meetings in February and

March to meet this goal. Mr. Gibb suggested the focus of the next meeting be on protocols, information and expectations, agenda and meeting material formats, and staff's role. He added that the Commission can look at the short term and the longer term; that the strategic plan would not be expected by June.

Ms. French stated that it is important to look at what the current activity is of community groups and organizations; to look at successes and barriers to success. Mr. Rung asked if this group was to be reactive or would they take a leadership role. Mr. Dixon opined it should be proactive and agreed it was important to take an inventory of who is doing what.

Mr. Angelos stated that he had not yet heard what the objectives are, stressing the need to identify objectives so that they can then measure the results, communicate back what they are doing and then focus the hard discussion and decision making and intensity to move objectives forward.

Mr. Fowler asked about meeting protocols and if they can hold email, serial conversations. Mr. Nelson cautioned the Commission, that because they are an advisory body to the City Council, they need to be careful about how much is done over the internet.

Ms. French agreed with Mr. Angelo's statement that they need to develop measurable objectives and come to an agreement on how they will work together, and what economic development means to each of them. Councilor Brown stated that Policy Section 6.03.056 "Measurement", is an important part of this policy. Mr. Spinrad suggested that along with objectives, the Commission will also need to look at the outcomes and impacts.

#### **IV. PREVIEW OF NEXT COMMISSION MEETING AGENDA**

Ms. Malosh suggested the Commission discuss additional meeting dates; perhaps inviting a facilitator to assist them in identifying objectives. She added that LBCC has facilitators they might enlist. Mr. Gibb stated that once the Commission elects their Chair, this member could work on organizing the next meeting.

The Commission agreed to meet on the following dates at 3:00 pm: 2/22, 2/28, 3/14 (regular meeting) and 3/28. Mr. Gibb noted that staff will review the availability of meeting rooms and confirm the location with the Commission.

#### **V. SELECTION OF CHAIR AND VICE-CHAIR**

The Commission discussed the role of the Chair. Mr. Nelson stated that this individual will give reports to the City Council and provide presentations to other services clubs.

Mr. Lampton nominated Ms. French as Chair, Mr. Fowler seconded the motion and it carried by a unanimous vote.

Mr. Angelos nominated Mr. Rung as Vice-Chair, Mr. Fowler seconded the motion and it carried by a unanimous vote.

Mr. Gibb noted that a quorum of the Commission would be needed to take formal actions and should the need arise, a phone conference could be arranged.

## **VI. OTHER BUSINESS**

Ms. French suggested that the next meeting may take longer than two (2) hours; that they arrange for a facilitator at the beginning; she requested that each member bring a list of objectives which they rank in order of priority and that they review the concept of Economic Gardening on the internet, noting that Littleton Colorado is one of the best examples. She also requested that members identify which community models they might suggest for the Commission to review for objectives and benchmarks.

Mr. Rung stated that they should also identify serious roadblocks to economic development; noting that the White Paper prepared by Councilor Brown has a couple of pages that lists many of these. Mr. Fowler agreed they should create a qualitative list of roadblocks.

Mr. Lampton stated that the Commission's list of objectives needs to have community support to be successful. Ms. Malosh said she will ask the Committee for Prosperity that Fits to prepare historical information for the Commission. Mr. Gibb said he would provide a list of the economic development activities the City has been involved with in recent years.

## **VII. ADJOURNMENT**

The meeting adjourned at 4:30 pm.

**DRAFT**  
**CITY OF CORVALLIS**  
**INVESTMENT COUNCIL MEETING**  
**FEBRUARY 3, 2011 MINUTES**

The City of Corvallis Investment Council meeting was called to order at 7:30 a.m. on February 3, 2011 in the Madison Avenue Meeting Room, 500 SW Madison Avenue, Corvallis, Oregon.

**ROLL CALL**

Present: Jon Nelson, Nancy Brewer, Bill Mercer, Staci Voight, Mark O'Brien, Janet Chenard, Julian Contreras, Stephanie Kassavetis (recorder)

Excused: Scott Fewel

**SUMMARY OF DISCUSSION**

Agenda Item	Information Only	Held Over for Further Review	Recommendations
I. Approval of Minutes from November 4, 2010			Approved
II. Fiscal Year 2010-2011 Second Quarter Review - - Quarterly Portfolio Summary			Approved
III. Open Discussion	X		
V. Adjournment			The meeting was adjourned at 7:50a.m.

## **I. APPROVAL OF MINUTES**

City Manager Jon Nelson asked for any corrections to the minutes from the November 4, 2010. None being received, the minutes were approved as submitted.

## **II. FISCAL YEAR 2010-2011 SECOND QUARTER REVIEW**

Treasury Accountant Staci Voight presented the Second Quarter Portfolio Summary to the Investment Council (Attachment A), noting the ending cash balance for December 2010 was up about \$12.3 million. Historically there is generally a big spike in the month of November because of property tax dollars that are received from the County.

- Returns - there wasn't much change in short term portfolio but it has gone down by six basis points; the long term portfolio earnings are at zero, as there is nothing Long Term at this point.
- The Local Government Investment Pool (LGIP) showed a drop of five basis points that occurred on October 28, 2010. Ms. Voight noted the City's cash balance in the LGIP is up by \$13.7 million due to the property tax dollars that were received from the County.
- Treasury's 2 Year - 12 Week Average is down 6 basis points and 379 Day Agency - 12 Week Average is down by 3 basis points.
- Ms. Voight noted no purchases were made in the second quarter of 2010/2011.
- Ms. Voight stated that economic recovery is continuing, though still at a pace that's insufficient for significant improvements in the labor market (Attachment B).
- Ms. Voight stated that the review of the Investment Administrative Policy Review has been pushed back until staff secures an Investment Advisor. Any recommendations for change in the policy would then come to the Investment Council by August 2011 (Attachment C).

There being no further questions or comments on the Second Quarter Review Investment Council moved forward with Open Discussion.

## **IV. OPEN DISCUSSION**

Ms. Chenard talked about getting an Investment Advisor. An RFP was issued at the end of December 2010, with the help of Terry McCall, the principal with Portfolio Services for Government and a former finance director in Oregon. Mr. McCall has considerable experience with Investment Advisory Services. Three bids have been received from reputable firms. The bids are being reviewed by Ms. Voight, Ms. Brewer and Ms. Chenard. We are anticipating a meeting with Terry McCall early next week; at which time a decision will be made with respect to conducting interviews with the top candidate(s). Currently, possible interviews are scheduled for the end of February 2011 with intent to award on March 1, 2011. We hope to have an Investment Advisor contract fully implemented with a view to starting services as of April 1, 2011. This type of service is provided by a few expert organizations that seek alternatives for placing investments for local governments, and then make recommendations about opportunities that meet cash flow needs, level of risk, etc. Early analysis indicates investment performance

may be better than the City is currently doing. Ms. Chenard will be officially managing the contract and working along with Ms. Voight to ensure that the City remains informed and participates actively in all investment-related decisions. The Investment Advisor will be called upon to supply reports to the Investment Council as often as requested and would be primarily responsible for the monthly and quarterly Investment Reports in the future. This is expected to yield cost savings from no longer needing the SymPro tracking software to help offset the additional costs of the Advisory service.

Ms. Brewer stated that most of Corvallis comparators that use Investment Advisors are getting a good 40 to 50 basis points higher earnings rate right now than what the City of Corvallis has been achieving. Investment Advisors are more attuned to the market and opportunities where we do not have the time or resources to see what is available in the market to buy every single day. Having an Investment Advisor should prove to be a good revenue driver for the City.

Mr. O'Brien asked if the intent would be to move a majority of the state pool money into other investments. Ms. Brewer stated that one of the first things to be done with the Investment Advisor is to look at the City's policies and cash flow, including what the City needs for cash on hand. With that in mind, the Advisor would then look at the options for having only enough cash on hand to meet liquidity needs, with the remainder doing more "work" for us in higher earning, acceptably-risked vehicles.

The next Investment Council meeting is May 5, 2011 at 7:30 a.m. in the Madison Avenue Meeting Room.

## **V. ADJOURNMENT**

With no other questions or comments brought forward, City Manager Nelson adjourned the meeting at 7:50 a.m.

### **ATTACHMENTS:**

- A. FY 10-11 Second Quarter Portfolio Summary
- B. Economic Outlook
- C. Annual Investment Administrative Policy Review

## Investment Council - February 3, 2011

### Quarterly Portfolio Summary

<b>Balances:</b>	<b>September 2010 (page 3 of Treasury Report)</b>	<b>December 2010 (page 3 of Treasury Report)</b>	<b>Difference</b>
Cash	\$25,499,655	\$37,825,112	\$12,325,457
Investments	\$4,245,450	\$4,245,450	\$0
Total	\$29,745,105	\$42,070,562	\$12,325,457

<b>Returns:</b>	<b>September 2010 (page 3 of Treasury Report)</b>	<b>December 2010 (page 3 of Treasury Report)</b>	<b>Difference</b>
Short Term Portfolio	0.60	0.54	-0.06
Long Term Portfolio *	0	0	-
Total to Call Date	0	0	-
LGIP **	0.55	0.50	-0.05

\* No Long Term at this time

\*\* LGIP dropped to 0.50 on October 28, 2010

<b>LGIP:</b>	<b>September 2010 (page 4 of Treasury Report)</b>	<b>December 2010 (page 4 of Treasury Report)</b>	<b>Difference</b>
Cap: \$42,523,082	20,563,123	34,349,170	13,786,047

	<b>September 2010 (page 3 of Treasury Report)</b>	<b>December 2010 (page 3 of Treasury Report)</b>	<b>Difference</b>
<b>Treasury's 2 Year - Historical 12 Week Average:</b>	0.52	0.46	-0.06

	<b>September 2010 (page 3 of Treasury Report)</b>	<b>December 2010 (page 3 of Treasury Report)</b>	<b>Difference</b>
<b>379 Day Agency - Historical 12 week average</b>	0.33	0.30	-0.03

No purchases were made in the 2nd Quarter of 2010/2011

## **Economic Outlook**

Recent reports state that economic recovery is continuing, though still at a pace that's insufficient for significant improvements in the labor market.

Real Gross Domestic Product increased at an annual rate of 3.2% in the 4<sup>th</sup> quarter of 2010, while 3<sup>rd</sup> quarter increased by only 2.6%. Increases are primarily in personal consumption expenditures, exports and nonresidential fixed investment.

The Federal Open Market Committee will continue its recent asset-purchase program, announced back in November, with the intent to promote economic recovery. In order to reach maximum employment and price stability, the FOMC will monitor the pace and size of its securities in the program, and maintain the target range for the federal funds rate at 0 to ¼ percent for an extended period.

January 25, 2011

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To: Investment Council  
From: Staci Voight, Treasury Accountant  
Subject: Annual Investment Administrative Policy Review

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**Issue**

Per ORS 294.135(a) the City's Investment Administrative Policy must be reviewed and re-adopted annually. The City's policy states this should take place in February of each year by the Investment Council.

**Background**

Staff is considering the use of an Investment Advisor, and issued a Request for Proposal (RFP) for these services. Proposals were submitted last week and are undergoing evaluation; an award decision is anticipated by March 1, 2011. An Investment Advisor that is hired out of this process would be expected to assist in the review of this policy.

**Recommendation**

Since staff is in the process of securing an Investment Advisor coincident with the timing of the normal review process, staff recommends postponing the annual review of the investment policy until late spring. By that time any Investment Advisory Contract should have been awarded and implemented. Any recommendations for change in the policy would then come to the Investment Council by August 2011.

Review and Concur:

  
\_\_\_\_\_  
Nancy Brewer, Finance Director

ATTACHMENT C

ATTACHMENT C



Community Development  
 Planning Division  
 501 SW Madison Avenue  
 Corvallis, OR 97333

Approved as corrected, February 16, 2011

**CITY OF CORVALLIS  
 PLANNING COMMISSION MINUTES  
 January 5, 2011**

**Present**

Jennifer Gervais, *Chair*  
 Roger Lizut  
 Frank Hann  
 Tony Howell  
 Jim Ridlington  
 Tad Abernathy  
 Jasmin Woodside  
 Biff Traber, *Council Liaison*

**Staff**

Ken Gibb, Community Development Director  
 David Coulombe, Deputy City Attorney  
 Kevin Young, Planning Division Manager  
 Jeff McConnell, Development Engineer Supervisor  
 Matt Grassel, Development Review Engineer  
 Claire Pate, Recorder

**Excused**

Steve Reese  
 James Feldmann

**SUMMARY OF DISCUSSION**

	Agenda Item	Information Only	Held for Further Review	Recommendations
I	Visitors' Propositions	X		
II.	Deliberations: Bald Hill Farms (PLD10-00008):			Approved, with revisions to Conditions of Approval
III.	PC minutes: December 15, 2010			Approved as drafted
IV.	Old Business	X		
V.	New Business	X		
VI.	Adjournment – 8:50 p.m.			

## CONTENT OF DISCUSSION

The Corvallis Planning Commission was called to order by Chair Jennifer Gervais at 7:00 p.m. in the Downtown Fire Station Meeting Room, 400 NW Harrison Boulevard. Introductions were made.

I. VISITORS' PROPOSITIONS: There were no propositions brought forward.

### II. DELIBERATIONS - BALD HILL FARM (PLD10-00008)

#### A. Staff Update:

Planning Division Manager Kevin Young related that at the public hearing held December 15, 2010, a request had been made to hold the record open. Copies of all subsequent written testimony received by staff (**Attachment A**) were sent out to the Commissioners in the packets.

Also in the packet was a staff-recommended revision to Condition 19 (**Attachment B**). This is a result of a review of prior correspondence and discussion between the applicant and staff regarding the requirement for sewer hookups for the existing development. It showed that staff had made a previous determination that those hookups would not be required to serve the existing development on site, and the proposed revision to this Condition honors the obligation made to the owner. The level of operation that currently exists does not warrant a hookup. Instead, staff is recommending replacement of Condition 19 with a Development-Related Concern, which essentially says that with future intensification, the applicant would be required to hook up with the City's sewer facilities.

The third item included in the packet is the applicant's final written argument (**Attachment C**). It contains a proposed Condition of Approval 21 relating to use of "animal waste by-products." If the Planning Commission determines that animal waste processing, as proposed by the applicant, should be allowed, a fourth item in the packet is a staff proposal for some revisions to the wording of applicant's proposed Condition 21 (**Attachment D**). These revisions clarify that the animal waste processing portion of the uses on the site would not be classified as "construction sales and services." This might seem to be a minor point, but it is offered for clarity. The other change clarifies the relationship between the applicant's operations plan and the DEQ permitting process.

#### B. Discussion and Action by the Commission:

In response to a question from Commissioner Hann, Manager Young said that on page 9 of the original staff report there was an analysis of why staff had not recommended including animal waste processing as a permitted use. To elaborate, staff was concerned that the applicant's submittal did not contain a clear definition of what they intended with animal waste processing, which could include a wide variety of activities, some of which could have compatibility conflicts with the surrounding residential areas. Without better specificity, staff could not make a determination whether there were compatibility issues.

**MOTION:** Commissioner Hann moved to approve the Bald Hill Farm Major Modification to a Conceptual and Detailed Development Plan application (PLD10-00008) as conditioned in the December 3, 2010, staff report to the Planning Commission. This motion is based on findings in support of the application presented in the December 3, 2010, Staff Report to the Commission, and findings in support of the application made by the Commission during deliberations on the request. Included in this motion is adoption of the staff-recommended changes to remove Condition #19, and add a Development Related Concern N for Sewer Hookup. Also included in the motion is adoption of the applicant's proposed language for Condition #21, but with the revisions offered by staff. Commissioner Howell **seconded** the motion.

Commissioner Hann said that after reviewing the information presented by the applicant and re-reading the staff report, it was his belief that the applicant had met the requirements of Chapter 3.25, and has now provided enough detail to allow the animal waste processing, as described, as a permitted use.

Commissioner Howell noted that proposed Condition 21 would become Condition 20 if Condition 19 is removed. He supports the addition of it, but wanted some clarification on one aspect. In a new Planned Development, the thinking in the past has been that if it is a use approved outright and there is no variation proposed, it is assumed to be compatible with neighboring uses. This is a little different because it is a modification, so part of the review criteria is to go back to see if it is consistent with the Conceptual Plan, etc. There has at times been some tension between staff's interpretation and the Planning Commission's, in a case where the applicant is not asking for a variation, as to how much the compatibility criteria review is applicable. Since this is a modification, those criteria may be more applicable. Commissioner Howell struggles with the concern for potential odors and visual impacts, versus the fact that it is an Intensive Industrial area that is not, by definition, going to be as visually attractive as a farm.

Manager Young said staff had looked back at the history of the annexation and the process of assigning a zoning district to this site, which had been a bit problematic at the time, since it was an existing mill site and it was known that there would be residential development in the nearby vicinity. For this reason, the decision was made to place a Planned Development overlay on the site, in conjunction with the Intensive Industrial designation, recognizing that the City wanted to support continued industrial uses there but, because of the proximity of residential properties, there would be some heightened concern about compatibility. In the Intensive Industrial zone, there are some uses that are conditionally permitted, though animal waste processing is not one. However, most people would recognize that a use of this type has the potential for some compatibility impacts. Are we allowed by the Land Development Code to put some parameters around that operation beyond just being outright permitted? One perspective is offered by the example of single-family residential use being permitted in some zones, but with parameters placed around it. In past years, when a PD overlay was placed on residential property, staff would look at the residential developments and, if flexibility from Land Development Code standards was requested, staff would look at whether compatibility considerations were being met and then allow for that flexibility. This might be somewhat analogous, but it certainly will be up to the Planning Commission to make that determination.

Commissioner Abernathy asked for clarification on the animal waste processing and whether staff was recommending that it be permitted or not. Manager Young said they are not recommending one way or the other, but are simply asking for some changes in the wording of the applicant's proposed new Condition 21, if the Commissioners approve of their operations plan outlining parameters for their proposed animal waste processing.

Commissioner Howell said that replacement of Condition 19 with a Development-Related Concern makes sense to him, based on the determination that the sewer hookup would need to be tied to an intensification of use, which does not happen at this time. He asked if that same rationale might apply to some other requirements, like the driveway access paving, as well as the landscape buffer. Manager Young said that the landscape buffer consideration came about for two reasons: one has to do with the compatibility criteria and the visual impacts of the development and the other is a zoning district requirement. This site is a bit different in that it once had a mill, which was abandoned. The site was unused for a period of years and then uses began to occur on the site. What constitutes intensification is really a judgment call.

Development Engineering Supervisor McConnell said that, in staff's view, there has not been enough intensification in use to require the sewer hookup, and they remain comfortable with the applicant using the septic tank, as long as it is in proper operational order. With the driveway, there is more concern with material coming in and out of the site with debris getting tracked onto the road. They recommend the paving in order to keep the debris out of the public right-of-way.

Manager Young got back to the landscape buffer requirement and referred Commissioners to the analysis on page 15 of the staff report. In that analysis, staff finds that the outdoor storage areas do not comply with the landscaping buffering and screening standards in Section 3.25.30.03.b. Manager Young noted that one perspective might be that, since there are almost 250 feet between these areas and the nearest residential areas, the visual impacts are minimal. There is a screening standard that staff is pointing to, but the Commissioners could make a finding that there is enough separation to not warrant additional screening.

Commissioner Howell referred to Mr. Martin's testimony wherein he suggested that, although it was not a part of the application, a landscape berm with low shrubs had already been planted; and believed that it could be considered as an adequate, existing replacement for the requirement. He made the case that trees would not buffer adequately from the residential development on the south side because of the elevation of the homes. In reality, they would just be screening from the road, which the existing landscape berm might already be accomplishing. Commissioner Howell asked staff if they were familiar with the new landscaping. Manager Young said that he had been out to the site, and that there is a berm located near where the meat store used to be located. The length of the berm is not the extent that is contemplated by the proposed Condition of Approval.

Commissioner Howell opined that the options then would be to remove the landscaping requirement because it does not function because of the elevation of the houses, accepting what is there as a substitute, or requiring an enhancement of what is already there.

Commissioner Hann agreed with Commissioner Howell's comments. He thought the applicant had made a good case with regard to the height of the neighboring properties and how difficult it would be to create an absolute screen. He believes that this applies to the perimeter screen rather than to the screen for the storage facilities. In response to more discussion about the applicant's options, Manager Young said that Commissioners could choose to amend Condition 4 or eliminate it.

Commissioner Abernathy spoke in support of removing Condition 4, as it did not make sense based on the height of the neighboring houses. Trees could not get to a height where it would adequately screen the site.

Commissioner Lizut referred to Mr. Martin's comments related to Condition 4, and thought he made a good point in that he has four entrances onto Reservoir Avenue and the resultant need to keep vision clearance areas free of screening would make the screening somewhat useless. He asked staff if this would indeed reduce screening to the point of being non-functional. Manager Young said that the need to keep landscape screening out of the vision clearance areas is a standard requirement, and it would certainly play into how extensive the screen would end up being. With the eventual transition to a new Reservoir Avenue, the existing road would become a low travel-speed, private roadway, which would mean the vision clearance areas would be less extensive. He does not believe that the vision clearance requirement would negate or eliminate a landscape screen.

Chair Gervais noted that Condition 2 will also need to be modified if Condition 21 is incorporated into the approval. The reference to "animal waste processing" not being a use approved by this land use decision would have to be removed.

Chair Gervais further commented that in reading through Mr. Martin's testimony, it appeared he was looking for the ability to do other farming activities such as tree crops, horticulture and the potential for animal husbandry should the Codes change. She asked staff for a discussion about whether those uses could be included as a part of this process, with the understanding that they would not be allowed until a future enabling Code change was approved. Manager Young said that staff had consulted with the City Attorney's office on this question. The operative rule in Oregon land use law is that applications have to be processed in accordance with rules in place at the time of application. It is not appropriate to speculate on what future legislation might be and to apply it. Director Gibb added that a year ago it was anticipated that both a Planned Development Modification application and Land Development Code text amendments would be running on parallel paths. At that time, staff thought that they could run a parallel process that would ultimately allow both some limited retail of agricultural products and some potential other agricultural uses. That changed when the applicant withdrew the Code amendments. The City went on to initiate part of the Land Development Code text amendment relating to an agricultural limited retail sales use, which was adopted as review of this application, proceeded.

Commissioner Hann referred to Attachment K, depicting the roadway at the time the realignment of Reservoir Avenue is completed. Manager Young explained that the existing alignment of Reservoir would become a small spur road that would extend from its connection on the west end to the new Reservoir Avenue, through the

property, and end in a cul de sac to the east of the existing building. A multi-use path would continue on to 53<sup>rd</sup> Street. Commissioner Hann thought that if landscaping were provided along that portion of the old Reservoir Road that becomes the private roadway, it would provide adequate line-of-sight screening for the residential properties on the south side. Manager Young said that the language included in Condition 4 roughly coincides with that location.

Commissioner Howell said that in his review of Land Development Code sections 3.25.30.02 and .03, another option for the landscaping issue would be to remove the height requirement along with extending the time frame. Since the height does not seem to be all that functional from a residential screening point of view, that would allow any combination of shrubbery, ground cover or trees that the applicant might want to put in. Manager Young added that in Section 4.2.50 there is also a height requirement for 6 feet with an 80% opaque standard.

Commissioner Howell said he would not want to lose the 35-foot buffer requirement, especially as uses evolve in the future. Additionally, there really was not any testimony in support of not requiring at least some landscaping. However, there was convincing testimony about why the 10-foot height requirement might not really be helpful, and preserving what is already in place might be a good thing to do. He would like to still require landscaping, look at a different timeframe that allows for good seasonal planting, and remove the 6-foot height requirement that is in the regular Code.

Commissioner Hann said he would be in support of Commissioner Howell's proposal. He then asked staff, if "animal waste processing" were removed from Condition 2, would that be opening a door to other animal waste processing in the future. Manager Young said that the Operations Plan submitted by the applicant details what "animal waste processing" would entail in conjunction with this application. It would take another submittal of a Planned Development Modification to change that.

Commissioner Ridlington asked what would happen when the existing wood chips disappear; would the applicant be able to haul in woodchips from off site? Staff said yes.

Chair Gervais referred to Condition 2, and opined that it might be better to strike the whole paragraph relating to "uses not approved," rather than just taking out "animal waste processing." In her opinion, the conditions might not be the best place to be telling an applicant what is not allowed in the Code when the Code is pretty clear about what is allowed. She also wondered what would happen in the future if any of those uses were allowed, and whether it would supersede the language in Condition 2. Staff said that if the Land Development Code were to change, and the applicant or successive owner were to come in and say they now wanted to do agricultural uses, there would have to be a modification process to do this, which could amend the language in Condition 2. These exclusions are listed for clarity purposes only.

Commissioner Howell asked if there was a rule of thumb to distinguish row and field crops, tree crops, etc. from a home garden that a caretaker might have. Staff said that a caretaker's home garden would certainly be allowed.

**MOTION TO AMEND:** Commissioner Hann **moved** to amend Condition #2 by striking the words “animal waste processing” from Condition #2. Commissioner Howell **seconded** the motion which **passed** unanimously.

**MOTION TO AMEND:** Commissioner Howell **moved** to amend Condition #4 as follows:

- a) In first sentence, change 120 days to 365 days.
- b) In third sentence, second to the last line on page 50 of staff report, after Land Development Code Section 4.2.50, strike the rest of the sentence and substitute “with the exception that no minimum height or opacity is required.”

Commissioner Hann **seconded** the motion. The motion **passed**, with Commissioner Abernathy voting in opposition.

Commissioner Howell voiced concern about not having had a discussion before voting and wished to know why Commissioner Abernathy had voted in opposition. Commissioner Abernathy said that his belief was that Condition #4 was not necessary at all. Commissioner Woodside said she did not think that the applicant was opposed to buffering, and she believed that Commissioner Howell’s motion to amend Condition #4 provided enough flexibility for the property owner to be able to meet some of the standard yet do what he wants to do.

Commissioner Hann said his preference was to substitute 270 days as opposed to the 365 days. This would give the applicant into September to plant prior to the rainy season so things can flourish.

**MOTION TO AMEND:** Commissioner Hann **moved** to modify the previous amendment to Condition #4, 1<sup>st</sup> sentence, so as to substitute “270 days” for the original language of “120 days.” Commissioner Woodside **seconded** the motion.

In response to Commissioner questions, Manager Young said that the intent for the timeline is that within 120 days of approval the plantings occur. At that time, then the 18 month provision in Section 4.2.50 kicks in, wherein the plantings have to reach 6 feet in height.

The motion **passed**, with Commissioner Abernathy voting in opposition.

Manager Young asked Commissioner Howell whether he intended for the last two sentences of Condition 4 to remain. Commissioner Howell asked staff to describe what landscaping and irrigation plans would be consistent with Section 4.2.20. Manager Young said that the standard requires the applicant to turn in a landscape plan showing ground coverage of 90% in three years and to provide a financial guarantee to ensure that it is well-established within those three years.

Commissioner Howell referred to the language in Section 4.2.20.a.3, which states that the financial guarantee has to be provided for new, nonresidential development or nonresidential redevelopment that involves a 3,000-square-foot or 20% expansion, whichever is less. Part of his struggle is determining how to apply “expansion.” Even though there might be new uses, the structures were pre-existing. Manager Young

said it boils down to whether there is an intensification of use on the property and what that level of intensification is. Director Gibb said that this question illustrates how staff has been trying all along to strike a balance between existing development and uses of existing buildings, alongside the new uses proposed. It has been a struggle to figure out the level of required improvements that are appropriate for the proposal. The Planning Commission will have the final say in what is appropriate.

Commissioner Howell added that the site actually seems to be an area where it would be more appropriate to have "xeriscaping" than irrigation to achieve the 90% coverage.

Commissioner Lizut agreed with Commissioner Howell. They have already removed the height and opacity requirements, and the idea is to just move to a reasonable position on the landscaping requirements.

**MOTION TO AMEND:** Commissioner Lizut **moved** to amend Condition #4 by striking the last two sentences as contained on page 51 of the Staff Report, starting with "Prior to installation..." and ending with "as required by Land Development Code Section 4.2.20.a.3." Commissioner Howell **seconded** the motion.

Commissioner Howell asked staff if this was sufficient, or whether they had to include a statement that certain specific things required by Section 4.2.20 are exempted. Manager Young said that if the last two sentences were removed, what would remain is a one-time requirement to plant some landscaping. He suggested that it might be appropriate to add in language to the effect that landscape plans and financial security shall not be required for this perimeter landscaping, just to clarify that an exception is being made to this typical Code standard. That would still leave the coverage requirement, unless the Commissioners wish to exempt that as well.

**FRIENDLY AMENDMENT TO LAST MOTION TO AMEND:** Commissioner Howell moved to replace the two stricken sentences with a statement to the effect that the landscaping installation is exempted from requirements for landscape plans, financial security and coverage typically required by Land Development Code Section 4.2.20. The motion **died** for lack of a second.

Commissioner Hann suggested that they leave in the requirement for submitting plans, so the City would know whether the applicant wants to do "xeriscaping" or sustainable landscaping, and take out the references to financial security.

Commissioner Abernathy suggested that they take out the requirements for the bond and for submitting plans. In response to a question from Commissioner Woodside, staff explained that financial security is in the form of a bond so that if landscaping fails to meet coverage, the City can call the bond and re-install the landscaping. It is a kind of "fail-safe" measure. In order to determine the amount of the bond, landscaping plans are needed.

Commissioner Howell said that the standards are there for a good reason. The struggle he is having is determining what the intensification that is triggering this requirement is. He would have no issue of imposing these requirements if a new industrial use came on the site with a bigger level of investment. He does not see this as a "forever" exemption; an exemption is appropriate at this point because of the minimal level of intensification.

Manager Young read language for a possible modification to Condition 4.

Commissioners Lizut and Howell agreed to **withdraw** their previous Motion to Amend Condition #4, and consider the new language for a motion.

**MOTION TO AMEND:** Commissioner Howell **moved** to amend Condition #4 as follows: Strike the balance of the language in Condition #4, starting with the third sentence that reads "Proposed landscaping shall meet the screening requirements described in Land Development Code Section 4.2.50.....". Insert the following sentence: "Provisions of 4.2.50 (screening requirement) and 4.2.a.3 (financial security/landscape plan requirement) shall not be applied to this landscaping requirement." Commissioner Lizut seconded the motion, which **passed** unanimously.

**MOTION TO AMEND:** Commissioner Woodside **moved** to amend Condition #9 to replace "120" days with "180" days as the amount of time the applicant has to complete the driveway approaches improvements. Commissioner Howell seconded the motion.

Commissioner Howell said he agreed with staff that it was appropriate to make this requirement for this type of use, in order to keep debris out of the street, but it seemed appropriate to extend the time frame so that the work could be done during drier weather.

The motion **passed** unanimously.

Commissioner Woodside asked if it made sense to extend the timeline for installing bicycle parking as well. Commissioner Hann opined that this was not as critical an issue related to weather.

**VOTE ON MAIN MOTION:** The main motion was **approved** unanimously.

Chair Gervais said that anyone not satisfied with the decision tonight has twelve days in which to appeal the decision to City Council. Manager Young said he hoped to get the Notice of Disposition signed on January 6, 2011.

#### IV. PLANNING COMMISSION MINUTES:

December 15, 2010:

**MOTION:** Commissioner Hann moved to approve the December 15, 2010, minutes as presented. Commissioner Howell seconded the motion and it **passed** unanimously

## V. OLD BUSINESS:

### A. Budget Update

Director Gibb said that the Budget Commission has recommended to City Council that the City pursue a levy in the amount of \$.40/1,000 which will generate on an annual basis roughly \$1.5 million, or about ½ of the budgetary shortfall. Even with this amount, there will still be significant reductions. The work of the Budget Commission is not done, as they will still have to address the deficit as it is now. If the levy passes, the budgetary cuts can be modified. Gibb intends to send out a more detailed summary relating to the budget to all of the boards and commissions.

- B. Commissioner Woodside asked staff to address some of the concerns expressed by Mr. Martin. During his pre-application meetings with staff he thought he had an understanding of what was required and then was surprised by staff requirements relating to a different interpretation when the staff report came out. She remembered feeling the same way when she went through the process. Director Gibb said that they always want to give the best possible service to their customers, and they try to let the applicant know that staff might propose one direction, and the Planning Commission or City Council might make a different decision in the end. Miscommunication can go both ways. An example of this is with the current application relating to the concept of having a use approved on a future legislative action which might make it permissible. The applicant and staff had a discussion early on when there was going to be parallel consideration of the Land Development Code text amendment application along with the Planned Development modification process. Mr. Martin's testimony referred back to what was a different set of circumstances while Mr. Martin was pursuing the Code text amendments. Certainly, circumstances changed when the Code text amendment application was dropped.

Commissioner Howell said that in the case where an applicant needs a Code text amendment to proceed with a design that they want, they should do that process first or ensure that the processes are done in parallel. Director Gibb said that a year ago, Mr. Martin had requested of City Council that they initiate text amendments: one to deal with the retail sales aspect, and the second to expand uses in industrial zones to include establishment of new agricultural uses. Even though an applicant might initiate the process, they have to get the Planning Commission to sign off on the initiation, based on the Land Development Code. This was done, and they were proceeding down that path. Then Mr. Martin decided to withdraw the text amendments. There was no longer a way to link the two together.

- C. Commissioner Howell asked for a brief update on the status of Reservoir Avenue realignment. Manager Young said that Benton County is hoping to move forward with the project with the work done by this summer. The problem they are running into is a lack of funds, and they are pursuing other mechanisms for funding. There are a series of other improvements that are contemplated for the 53<sup>rd</sup> Street corridor, following completion of the Reservoir Avenue realignment project.

## **VI. NEW BUSINESS:**

### **A. City Council Goal Setting**

Director Gibb said that an email had been sent out to the Commissioners soliciting suggestions and feedback for the City Council goal setting session. Councilor Traber, newly appointed as the Planning Commission liaison, said that any recommendations should be sent to City Recorder Louie and City Manager Nelson. He said that the request is for ideas, things that the Commissioners might think are important, to put in front of City Council. During this next week and the January 24<sup>th</sup> session, the Councilors will be doing an electronic exchange on what goals they would personally like to see as part of the process, and work through combining them appropriately. The focus of the January 24<sup>th</sup> session is going to be to select goals as opposed to wordsmithing or reworking them. This is a key process for what will set staff's agenda over the next two years. Director Gibb said that this ties into looking at Planning's work program, which will happen over the next couple of months.

Commissioner Howell said his hope is that as they look at strategies for implementing their goals, City Council will realize the importance of land use planning in meeting some goals that he anticipates will be there. In looking at past City Councils, for instance, he would anticipate goals related to economic development and sustainability and goals that at least peripherally might relate to livability. All of these have land use planning elements. One element that has been worked on is the infill requirements, which helps with economic development because it is less costly with less infrastructure to provide to a site, and is therefore more sustainable. His hope is that City Council will include, as a strategy, maintaining adequate resources for the Planning division to be able to implement their goals.

Councilor Traber said that there is a strong desire to be specific in terms of goals, and have them measurable. Using Commissioner Howell's example, the goal might be to get the first pass of Code tweaks, by a certain date, to improve the ability to do in-fill development.

Commissioner Gervais thought it was more appropriate for the City Council to set dates, as opposed to other entities.

Commissioner Hann suggested that what seems to be missing in the general discussion of economic development and sustainability, etc. is the word vitality. At least two small businesses that he has frequented have left in the past month. Another he knows of is struggling. As a business owner, when he first established a business, he was amazed by the lack of quality office space available in the community. He still does not understand clearly who is responsible for economic development and vitality in this community. He is aware of all of the entities that have a say in it, but the buck does not seem to stop with any one individual.

Director Gibb said that, in the past, Corvallis has contracted with agencies to provide the service. Now a new Economic Development Commission has been formed which will make some decisions on who will do the work and how it will be financed. "Prosperity that Fits" has been the operative plan for the past 4 years.

Commissioner Abernathy said that as a former local business owner his overhead was too much. His thinking is that we have infill development, but the con to that is that overhead and rent are too high. We need to be more flexible about allowing bigger businesses that are not intrusive to come in.

Commissioner Howell thought it critical to have some partnership work with OSU about how to house students. The student population will be over ½ of Corvallis' overall population. There are lots of issues with this, in that they are only here for nine months. There have been discussions with OSU about paying for fire protection services, and there should be more discussions about ways to support City services.

Chair Gervais agreed that OSU will continue to have a tremendous impact on the community and these impacts will overshadow land use decisions. She hopes the City Council will be keeping their eye on that ball, which is rolling towards us rapidly. Councilor Traber said he shared the concern for the student population growth and that it was a serious issue that needed to be addressed. Recognizing that we had an essentially zero vacancy rate last September is one symptom of the impact that needs to be addressed. There need to be affordable places to live.

- B. Planning Division Manager Kevin Young said there is a full schedule of hearings and discussions coming up. Things will be ramping up with the FEMA changes, which will be seen by the Planning Commission on February 2. There will be an open house on January 25 for the public to discuss impacts of new regulations or changes in flood plain mapping done by FEMA. The ultimate adoption of the FEMA regulations must be completed by early June in order to preserve the City's participation in the National Flood Insurance Program.

**VII. ADJOURNMENT:** The meeting was adjourned at 8:50 p.m.

**Bald Hill Farm  
Major Modification to a  
Conceptual and Detailed  
Development Plan  
(PLD10-00008)**

**Written Testimony Received  
after the December 15, 2010,  
Planning Commission Public Hearing,  
but prior to  
Close of Record on December 22, 2010**

**Young, Kevin**

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**From:** B.Lawrie [b.lawrie@comcast.net]  
**Sent:** Thursday, December 16, 2010 6:37 AM  
**To:** Young, Kevin  
**Subject:** Bail Hill Farms/Pro Bark

Mr. Young:

I read in the GT online this morning that the Bald Hill Farms matter is being held over for 7 days for public comment.

My husband and I are homeowners on Cherry Avenue, just south of Bald Hills Farms and Pro Bark.

When Pro Bark started their operations we noticed a horrible smell in the air on occasion. It is disgusting to walk outside to smell the fresh air only to get a whole different smell. I cannot 100% say that this smell was from Pro Bark but it wasn't the Dairy, that is a whole other smell and the wind needs to blow from the East which it rarely does. We also don't smell it in heavy rains and the cooler temperatures, and of course we aren't outside as much during those times.

We are opposed to the land use changes, not just for the odor that comes from Pro Bark, but for the manure that can leach into the ground so close to Dunawai Creek, the walking paths, etc. No one wants to walk along a nature path and smell those smells.

Also I recall Mr. Martin proposing a chicken processing plant on his property. I am vehemently opposed to this. I do not want our property value to drop because he has strong armed the city council into changing things to suit his needs while harming hundreds of other tax paying property owners. He can cry job creation, but you must decide if the bad outweighs the good. In this case I do not think his operations will benefit many people but himself and his pocketbook since he is looking out for number one.

Please take this into consideration when voting on whether or not to pass his requested changes.

Thank you for your time,  
Bradley & Brandy Lawrie

**Young, Kevin**

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**From:** kirk nevin [kirksnevin@yahoo.com]  
**Sent:** Thursday, December 16, 2010 10:24 AM  
**To:** Young, Kevin  
**Cc:** Mayor; Ward 8; City Manager  
**Subject:** Bald Hill Farm

**To Whom It May Concern:**

Clearly, Andrew Martin has proved to be a savvy capitalist. He has succeeded in amassing a certain amount of wealth (maybe not a lot, but enough). He has proved that he can navigate the dangerous shoals of the American way of life. And... very important point... he has shown faith in the livability of Corvallis. He has chosen our little city as his home.

Just as clearly, the economies of Corvallis and Benton County and Oregon and the United States are suffering through a period of readjustments. Nothing is carved in stone. The 'new' American economy is likely to be vastly different from the old one in ways that are totally unpredictable in late 2010.

One thing is certain during this transition period: Mr. Martin and his ilk are important links to our future. Assuming we succeed in transitioning to a new reality, Mr. Martin will use his economic and business skills to enhance life in Corvallis.

I think it is absolutely imperative that Andrew Martin and his plan for Bald Hill Farm be welcomed by the local officials who are charged with making the decisions that will lead us out of our current very dangerous fiscal situation. The Europeans and Asians have a term... value-added... that perfectly describes the plans for Bald Hill Farm. Without value-added business ventures, an economy will dry up on the vine and blow away. Mr. Martin's proposals are sound and good for the local economy. They should be approved, without conditions. I think we can count on Mr. Martin to be a good neighbor and an honest citizen of Corvallis, which is more than I can say about many of the people charged with judging the Bald Hill plan.

Please put me on record as approving of the plan as it now exists. And... this is important... if you're going to open the 'bad odor' can of worms, you have an obligation to review the impact of the OSU confinement dairy operation on the residents of the City of Corvallis. That place is morally and ethically bankrupt (as are all animal-confinement operations), but local government ignores the negative impacts. Mr. Martin's operation could never be as stinky as the OSU farm, no matter what he does.

One vote for Mr. Martin and Bald Hill!  
Namaste.

Kirk S. Nevin  
2935 NW 13th St.  
Corvallis, Oregon 97330  
541-753-1840

**Young, Kevin**

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**From:** Fix That Cat! [bluestray@yahoo.com]  
**Sent:** Thursday, December 16, 2010 9:52 AM  
**To:** Young, Kevin  
**Subject:** Mr. Martin's application

As a former long time Corvallis resident, who lived not far from Bald Hill park, which is on land I believe Mr. Martin donated, as now an Albany resident, who terribly misses the parks of Corvallis, particularly Bald Hill park, my favorite, I hope you grant this man's application for his land use. Bald Hill park is a blessing to Corvallis and I miss walking there almost daily.

After I had back surgery, I hiked up Bald Hill four times a week and that helped my back heal. I know this has little direct bearing on the land use application. Except, that park is a jewel and a treasure to many people and came about because of him. Grant him a wish, approve his application, his vision is clear I believe. And tell him thank you, from someone he doesn't know and never will, for giving me a refuge there in that beautiful park.

Jody Harmon  
Albany, OR  
[www.purr.petfinder.com](http://www.purr.petfinder.com)

12/16/2010

## Young, Kevin

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**From:** Greg Campbell [greg.campbell1@comcast.net]  
**Sent:** Thursday, December 16, 2010 8:36 AM  
**To:** Young, Kevin  
**Subject:** Bald Hill Farm

As a Grand Oaks property owner, I have interest in the Planning Commission's actions regarding Bald Hill Farm but was unable to attend the public hearing. My thoughts are:

\* If someone bought a property backing to the railroad/Reservoir Rd., they should know what to expect. As example, I don't care for the occasional noise, but was aware of the industrial site when I made my purchase decision.

\* Mr. Martin's proposals really don't significantly change the impact on the homeowners. I would agree adequate definition is needed to ensure future development isn't outside intent.

\* It is critical that the Reservoir Rd. extension be completed. The traffic situation at Reservoir/53rd and West Hills/53rd is hazardous, with the increase in traffic from Grand Oaks.

\* Mr. Martin is making a substantial contribution to improve public safety. The Planning Commission should work to resolve the issues, not create unnecessary roadblocks.

Greg Campbell  
(541) 760-9666  
greg.campbell1@comcast.net

**Young, Kevin**

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**From:** Don Gregerson [djngreg@gmail.com]  
**Sent:** Thursday, December 16, 2010 1:50 PM  
**To:** Young, Kevin  
**Subject:** Bald Hill Farms

I live on 55th st. in the West Hills addition. Have been here since 1971. Everything Andrew Martin has done so far has been a good improvement for the neighborhood. I can't imagine anything causing as much problem as the Grand Oaks division behind us with the extra traffic and run off.

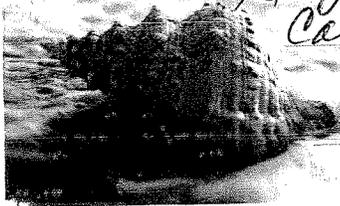
Don Gregerson

Dec. 16

City Planning,

Stop the No Growth attitude  
& let Bold Hill Farms pro-  
ceed with job creation &  
business. God knows how  
badly Or., & Corvallis in  
particular need to create  
some.

Sincerely,  
Bill & Jean Thayer  
Corvallis, Or.



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RECEIVED

DEC 17 2010

Community Development  
Planning Division

Andrew M. Martin

5700 SW Reservoir Ave.  
Corvallis, OR 97333

Cell: 541-740-5431

Email: [ammartin@comcast.net](mailto:ammartin@comcast.net)

RECEIVED

December 18, 2010

To: Planning Commission

DEC 20 2010

Re: PLD10-00008

Community Development

Additional Submittal#1 to the Record – “Animal Waste Processing” agricultural activities.

As you know from the recent hearing, after completing DSL and COE approved wetland mitigation and filling activities to reclaim/restore a large portion of my 80 acre Reservoir Ave (“ResAv”) property from its abandoned log ponds back to its original farm condition, I had then intended to: 1) develop the east side with substantial Internet Company/Data Storage/Business Enterprise Center activities, 2) maintain a small, educationally-focused, model farm in the middle, and, 3) working with community food alliances, create and/or finance various food processing businesses on the far western edge of the property. My prior 2008 Conceptual and Detailed Development Plan (“C&DDP”), submitted by Benton County in partnership with me, at great cost in time and expense, was intended to accomplish these reclaim/restore activities, document then existing land use activities, and expedite a county desired realignment of Reservoir Avenue. As you also know, to my great disappointment, except for approving the road building construction and certain waste-bark-material processing and wholesaling activities, unfathomably, nothing else of importance to me was accomplished by the prior C&DDP.

In consequence, I abandoned most of my prior plans, shut down my farm store, supported my daughter’s decision to move out of the caretaker residence and leave Corvallis, and began marketing my Corvallis properties. Except for my ResAv property, I expect to have all my other properties sold within the next 5 years including, to different buyers, my 600acre, main Bald Hill Farm property just west of Bald Hill running between Oak Creek Drive and West Hills Road, my 144 acres north of Oak Creek Drive (just east of the OSU Equestrian Center), and my 80 acres north of Ponderosa Blvd. (abutting Jack Brandis’s Dimple Hill property above me).

As a firm believer in the “Peak Oil” and “Olduvai” theories, and since I expect an ever-escalating, then total collapse of our cheap-fossil-fuel-based industrial society over the next twenty years, while ever hopeful, I don’t realistically see how I will successfully sell my Industrially-zoned, Corvallis-located, ResAv property to anyone for industrial development. As such, I was forced to consider doing a costly Major Modification to a Conceptual and Detailed Development Plan (“MMC&DDP”) in order to accomplish the following much reduced and simplified goals:

- 1) Continue reclaiming/restoring the non-road-realignment portions of the property to usable farm ground including continued processing and **retail** selling of the excavated waste bark material instead of hauling it to the dump.
- 2) Get approval for the outright-allowed, agricultural activity “Animal Waste Processing” on the entire, reclaimed, grass-growing portion of the property. This would validate me, during my extended visits here, as a legally operating farmer on my property, with legal farmer/caretaker residence, producing a valuable, composted, organic fertilizer product to replace soon-to-disappear, natural-gas-based commercial fertilizers.
- 3) Get approval for several other future, desired agricultural (“farming”) activities, contingent upon, and at such time, as Corvallis corrects its Land Development Code to allow the other

farming activities on industrial-zoned lands (and preferably on all large city properties, however zoned).

- 4) Get approval of the Jackson Family ProBark Landscape Supplies/Construction activities that I finance and other potential, small-family, spin-off businesses that might be sustainable in an energy-constrained future.

To the above end, at great cost, my consultants and I prepared and submitted the required MMC&P land-use application, with many, extensive, post-staff-review revisions to the application narrative and attachments. We fully expected that our full cooperation with city Staff in a hopefully-proactive application process would provide a complete and comprehensive final application that would be presented to the Planning Commission, with few Staff conditions of approval, and certainly no outright rejections of my above-desired, simplified goals and objectives.

I was therefore shocked when I opened and read, on Monday 12/13/10, their 12/7/10 Staff report mailed 12/9/10, and found that city Staff, having never previously told me, had totally rejected my above goals #2 & #3, and effectively rejected the ProBark activities of goal #4, since one of ProBark's major products, "Fertile Mix" garden fertilizer, contains animal manure as a raw-material component. It was just another devastating blow. Had they told me this in prior communications or meetings, including the 6/14/10 Staff Review Comments meeting on our first full plan submission, I would have abandoned the application early in the process, in protest, and well before running up my planning costs and paying their high application fees.

The purpose of this letter is to attempt to provide information within the seven days the record is held open that will resolve the above problems. As long letters are rarely read, I will cover Staff's rejection of my above farming goal#2 in this letter. I will then soon submit a second letter covering Staff's rejection of my above farming goal#3. My consultant, Lyle Hutchens, having again met with the Jacksons at the site, will handle submitting such information as will hopefully resolve any Staff-perceived problems about my commercial goal#4 of ProBark using animal manure in its essential, fertile-mix product. Finally, I will submit a letter to the record further clarifying the "problems of timing" for complying with certain of Staff's other, more minor, conditions of approval.

Item 3 of page 3 of our application summarizes our project's proposed uses and intended activities as: "Farming, construction and landscape supplies." We provide substantial additional information in the applications narrative and map attachments.

Staff's Condition of Approval#2 on page 50 of their report names "Animal Waste Processing" as one of the "uses not approved by this land use decision..."

Their reasoning, from page 9 of their report, seems to be "the applicant did not provide any specific details regarding proposed animal waste processing activities on the site" and then "Even though animal waste processing is a permitted use in the Zoning District, the potential for compatibility conflicts with this use type, along with the lack of any specific details regarding proposed animal waste processing activities on the site, lead Staff to recommend that animal waste processing activities on the site not be approved at this time (Condition 2)."

Further, page 45 of their report restricts us by saying: "Except for grading, Staff recommend that only activities in and immediately adjacent to existing buildings be permitted on the site through this application. This is because.... or the applicant has not provided sufficient information to understand the impacts of those uses (Condition of Approval 2)."

Again, until reading their recent report, we were unaware that Staff required additional information from us in order to approve our "Animal Waste Processing" agricultural use of above farming goal#2. While I wish they had told us this before they wrote their Staff report, I do enjoy educating people on sustainable, organic farming activities, so:

I propose to here remedy this problem of Staff's stated deficiencies in our application by providing the below additional "narrative" to be inserted into the record as an addition to the application.

Proposed Additional Narrative for Application:

Animal Waste Processing

The applicant proposes to do animal waste processing on the developable portions of the site as detailed in the "Site Plan – Proposed Uses" map attachments. Animal waste processing is an "Agricultural Use Type" that is approved outright in the intensive Industrial Zone, per Chapter 3.25.20.01. It is defined in the LDC as: "Processing of animal waste and by-products, including animal manure, animal bedding waste, and similar by-products of animal husbandry operations, for use as a commercial fertilizer, soil amendment or compost."

The primary, specific operation to be utilized in applicant's agricultural activity will be "windrow composting" on the fields during the dry summer months. This activity is defined in Wikipedia as:

"In agriculture, **windrow composting** is the production of compost by piling organic matter or biodegradable waste, such as animal manure and crop residues, in long rows (windrows). This method is suited to producing large volumes of compost. These rows are generally turned to improve porosity and oxygen content, mix in or remove moisture, and redistribute cooler and hotter portions of the pile. Windrow composting is a commonly used farm scale composting method. Composting process control parameters include the initial ratios of carbon and nitrogen rich materials, the amount of bulking agent added to assure air porosity, the pile size, moisture content, and turning frequency."

The applicant's high-carbon raw materials will be purchased or otherwise secured bark, sawdust, straw, leaves or wood shavings. The main high-nitrogen raw materials will be purchased or self-produced animal matter/manure, crop residues, rain-spoilt hay, and grass clippings. As part of a future community-wide, "Save Our Nutrients", recycling project, applicant also intends to collect waste food from participating stores, restaurants and urban households, Raw materials will be brought to the site and finished product delivered to customers by either truck, pickup, and/or tractor or horse drawn farm wagon, depending on the then availability of transportation-energy supplies. To better prepare the raw materials for rapid and efficient composting, certain meat-type animal matter and crop residue inputs may first be coarse ground with a farm grinder powered by a tractor PTO or small electric motor. The equipment used to water and turn the compost will be standard small-tractor or draft-horse pulled water-tank farm trailer and compost-turning farm implement.

Once the compost is "finished", after 4 to 8 weeks, it will be gathered from the field and piled on our concrete slab with plastic cover or placed under roof in one of our storage buildings. This will prevent its valuable nutrients from being leached out by rains. Any residual compost not easily gathered will be spread out into an under-an-inch layer by harrowing the field prior to the fall rains. This "sheet composting", which directly mimics the top-down nutrient recycling action of nature, will substantially improve the fertility and tilth of the property's soil. Applicant's above described activities are all modeled on beneficial permaculture standards.

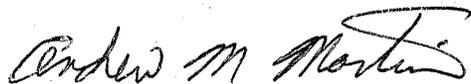
As long as the ProBark Landscape Supply commercial business remains in existence, all of applicant's compost product will be wholesaled to them for their resale. If no commercial landscape supply business is operating on the property, then applicant will, as an approved agricultural activity, sell the compost through standard farmer marketing wholesale and retail channels.

As to the potential compatibility conflicts of this activity, applicant asserts it is a very low smell and low noise process. This can be verified by visiting any farmer's windrow composting operation, including John Eveland's of Gathering Together Farms, or by visiting any landscape supply firm and smelling their "fertile mix" pile containing bark and animal manure. You can literally stand right next to a high-carbon composting product and not smell much of anything. Innumerable gardeners on tiny urban lots do bulk, back-yard, "pile" composting with no ill effects on their next-door neighbors. Finished compost is actually sweet smelling. The composting windrows are five or so feet wide and four or so feet high. As they follow the contour of the land, they remind one of hay windrows and are very pleasing esthetically. Any high-nitrogen raw materials will be promptly covered with high-carbon bark, to eliminate potential smells, until they can be expediently utilized in the windrow mix. Given the ResAv property is large, our low-conflict windrow composting is further buffered by the considerable distance that separates our activities from our neighbors.

**I hope the above additional information solves the animal waste processing problem.** If the info is insufficient, I would be pleased to provide more.

I am compelled to get this animal waste processing agricultural activity approved. There is no worthier occupation for me in retirement than being an organic Composter. It is a true "green wizard" activity essential for our future survival. For convenience of travel and other reasons, I live in a Condo on the Columbia River in Vancouver, WA – directly across from the Portland airport. After selling my other Corvallis holdings, the only property I will have to live, farm and garden on will be this unsalable ResAv property. I have family and many friends in Corvallis. While my days of leading or funding any business development efforts here are over, I do intend to continue financially supporting and working with open space, trails, wildlife, farming and food security groups to improve Corvallis, so need a base here and an enjoyable farming occupation to occupy my spare time. No law is being violated and nobody is being harmed by your approving my above requested use.

Sincerely,



Andrew M. Martin

Andrew M. Martin

5700 SW Reservoir Ave.  
Corvallis, OR 97333

Cell: 541-740-5431

Email: [ammartin@comcast.net](mailto:ammartin@comcast.net)

RECEIVED

December 19, 2010

DEC 20 2010

To: Planning Commission

Community Development  
Planning Division

Re: PLD10-00008

Additional Submittal#2 to the Record – Other agricultural activities.

As explained in recent Submittal#1, my Goal#3 of the MMC&DDP was to secure approval for several other future, desired agricultural (“farming”) activities, contingent upon, and at such time, as Corvallis corrects its Land Development Code to allow the other farming activities on industrial-zoned lands (and preferably on all large city properties, however zoned). Specifically, these other Agricultural Use Type activities are animal husbandry, horticulture, row and field crops, and tree crops.

I, and most others, believe that the city’s LDC needs to be corrected to allow farming on large properties in the city. Were I correcting their code, instead of having 7 different, micro-regulating categories, I would simply change the LDC definition to a concise:

Farm Usage- The production, processing, storage, and sale of farm products, except for Feed Lots (defined as where six or more cattle or pigs are kept within a confined area of less than five (5) acres such that a nuisance from noise, sound, or odor occurs).

There – job done. The above is essentially how the state of Oregon, Benton County, and most enlightened cities define farming. The whole problem of retail sales of farm products, by a farmer, is also clearly resolved, as it is defined as allowable in the primary use, rather than a confusing reference to an allowed accessory use.

It is not, however, my responsibility to correct our city’s code. Staff chose to attempt correcting the retail sales problem by including it as a component of the Commercial Use Type – Agricultural Sales and Service allowed in Industrial zones. This is fine as it goes. But what about a family that lives on a 40 acre parcel, zoned residential, and, during the transition period before eventual development, wants to raise and provide food for themselves and their community (and retail sale it under a Community Supported Agriculture (“CSA”) program)? Clearly, Staff needs to also, separately, address the issue of which of the 7 different agricultural use types will be allowed in which zones. All very complicated, their way, and will take some time yet to finally correct.

I know the City Council debated whether to fix the whole problem at once, or just fix the retail sales on industrial lands urgently, then address the remaining problems, as time allowed. I read the Staff’s response to Council, of 6 months or so ago, explaining how there is much else to do, and no current time to solve whole problem now. Fine. I haven’t even received permission to grade my property yet. There is no need for me to rally the food security groups to press anyone to get it corrected urgently. Now that the farm usage zoning problem has been brought to the attention of our Councilors, I am confident (and assured by many) that Corvallis will correct its LDC soon enough.

On this point, farming is a very special land use and occupation category. It involves overworked and under earning families committed to living with nature. As such, it deservedly receives many necessary exemptions from the government's expensive & time consuming requirements put on commercial businesses. We need to better recognize this fact in our city's LDC and permit processes, rather than treat farming as identical, or worse, than residential, industrial, or commercial development. Specifically, as just one little example, we need to exempt farmers from sign permits, as most other regulating bodies do. Farmers don't have the required week it takes to fill out your complex forms and make repeated visits to the permit office. "Eggs for Sale- Hay for Sale" anyone?

Given all the above, I am again stunned by Staff's outright rejection of my Goal#3. Their Condition of Approval 2 on page 50 of their report names animal husbandry, horticulture, row and field crops, and tree crops as "uses not approved by this land use decision".

Their reasoning, from page 9 of their report, seems to be "...no specific details were provided regarding the other proposed agricultural use types that are not permitted in the II Zone, including animal husbandry and tree crops. It is not possible to approve uses through a Planned Development that are not permitted in a site's Zoning District."

Further, page 45 of their report restricts us by saying: "Except for grading, Staff recommend that only activities in and immediately adjacent to existing buildings be permitted on the site through this application. This is because uses proposed in the undeveloped areas are either not permitted in the II Zone, or the applicant has not provided sufficient information to understand the impacts of those uses (Condition of Approval 2)."

This is a two part problem- insufficient info and current zoning. Again, until reading their recent report, we were unaware that Staff required additional information from us in order to approve our above farming goal#3.

I propose to here remedy the problem of Staff's stated deficiencies in our application by providing the below additional "narrative" to be inserted into the record as an addition to the application. I will then address the existing zoning problem.

Proposed Additional Narrative for Application:

Other Farming Activities

The applicant proposes to do animal husbandry, horticulture, row and field crops, and tree crops agricultural activities on the developable portions of the site, as detailed in the "Site Plan – Proposed Uses" map attachments. These four activities are "Agricultural Use Types" that are currently not permitted in the II Zone, but applicant reasonably expects them to be permitted, in an appropriate time frame, by a City Council directed correction of the LDC. Applicant understands and agrees that the requested approval for these activities is entirely contingent upon a future LDC correction, which contingency shall be clarified in a condition of approval.

Applicant is a pasture-based farmer. Per Jo Robinson, author of Pasture Perfect:

"Truly sustainable livestock farming requires the use of a pasture-based system. Pasture-raised animals roam freely in their natural environment where they're able to eat nutritious grasses and other plants that their bodies are adapted to digest. In addition to dramatically improving the welfare

of farm animals, pasturing also helps reduce environmental damage, and yields meat, eggs, and dairy products that are tastier and more nutritious than foods produced on factory farms.

#### **Animal Health Benefits**

Animals raised on pasture enjoy a much higher quality of life than those confined within factory farms. When raised on open pasture, animals are able to move around freely and carry out their natural behaviors. This lifestyle is impossible to achieve on industrial farms, where thousands of animals are crowded into confined facilities, often without access to fresh air or sunlight. These stressful conditions are a breeding ground for bacteria and the animals frequently become ill, so factory farms must routinely treat them with antibiotics to prevent outbreaks of disease.

#### **Environmental Benefits**

Pasture-based systems can help the environment, especially through fertilizing the soil and by reducing the amount of grain produced as feed. And unlike industrial farms, which rely on large amounts of fossil fuels to truck feed and animal waste, pasture-based systems take advantage of the animal's ability to feed itself and spread its own manure."

Since the usable portion of the ResAv property is limited, the operation will be a small, diversified, family-farm type. The carrying capacity will restrict the cattle numbers (cows, sheep, pigs, and goats) to a total of 30 head, or so, at any time. Our primary livestock will be egg laying and seasonal broiler chickens. These are moved onto fresh grass daily, under Joel Salatin's rotational grazing methods, using "mobile protective pens" and electrified plastic netting.

While mostly on pasture, to meet "certified humane" comfort standards, and to prevent compaction ("pugging") of wet ground, our animals are bedded under a roof cover on bark or sawdust in winter, with free-choice access to selected outdoor areas.

A solidly built, woven-wire perimeter fence will contain the animals on the farm grounds and keep them out of the wetlands per DSL and COE requirements. Electric wire fencing will be used as cross fencing.

In addition to livestock, small quantities of grains, beans, fruits, nuts, and vegetables will be raised in an appropriate crop-rotation manner. Except for the garden, most fields are five years in pasture, then 2 to 3 years in crops, then back to pasture. At no time will more than 25% of the ground be in field crops.

All standard farmer marketing activities may be used, including on-site retail sales.

As to compatibility issues, there will be insignificant noises and smells emanating from this operation. Pasture-based farming, by definition, spreads out the manure over growing grasses. Ample, high-carbon bedding keeps the manure diluted by composting in winter barns. No monoculture orchards are intended. Our fruit and nut trees will be dispersed along the upland edges of the wetlands to minimize concentration of insect pests and provide additional food for wildlife. We are "beyond organic" and do not use chemical herbicides or pesticides. We had goats on the property for several years, until the wetland studies required our temporarily removing them, and received many compliments and never a complaint. We are on the edge of town and surrounded by other farming activities. Our livestock will be well separated from residential neighbors. The pastoral view afforded will be pleasing to most neighbors and travelers passing by.

**I hope the above proposed narrative insertion solves the insufficient info problem.**

Zoning Problem:

As to the zoning problem, while Planned Developments can't outright approve activities contrary to existing zoning, they can, of course, approve them subject to conditions of approval requiring future zoning change or LDC corrections before the activities can commence. Staff has already proven this by approving the retail farming sales activities included in our application contingent on the recent LDC changes fully passing the appeals period.

Way back at our 6/14/10 Staff Review Comments meeting on our first full plan submission, even though I had withdrawn my applications to change the LDC for both "retail sales" and "allow other farm uses in industrial", Staff confirmed that I could get conditional PD approval for these future activities, subject to eventual LDC corrections by the city, if I decided to continue with my submitted PD application and pay their fees.

On 7/15/2010, I met personally with Mr. Gibb again on these issues to decide whether I would move forward with my PD application or abandon it as a lost cause and shut down everything. I agreed to move forward with the understanding that all 4 of my desired goals could be achieved with acceptable conditions of course. After the meeting, he sent me an email, as requested, confirming our agreements. The whole email is provided below, but here is his key sentence:

"- You plan to continue with the PD application and include future agricultural uses that would be contingent on approved LDC text amendments"

To now reject approving my future agricultural uses, subject to future approved LDC text amendments, seems like a violation of trust.

Here is Mr. Gibb's entire email and my reply:

Thanks for the clear summary. Yes- Lyle will be proceeding expediently.

Appreciated reading the attached staff report and hope the city eventually completes ag related LDC text amendments.

AMM

----- Original Message -----

**From:** Gibb, Ken

**To:** Andrew M. Martin

**Cc:** Young, Kevin

**Sent:** Thursday, July 15, 2010 5:26 PM

**Subject:** Meeting follow-up

A brief summary of our meeting this morning:

- You plan to continue with the PD application and include future agricultural uses that would be contingent on approved LDC text amendments

- We should hear from Lyle Hutchens soon about moving the PD application forward  
- You requested details/explanation regarding why the Phase 1 Detailed Development Plan approval did not include the wetlands mitigation fill area located north of realigned Reservoir Road

- You also requested an explanation as to why the City did not sign off on the revised wetland mitigation plan

We have staff out of the office so we will get back to you next week re: the two requests. As I noted, I am attaching the staff report that went to the City Council at their last meeting, regarding City sponsored LDC text amendments. As we discussed, the Council direction received at the meeting was to only move forward with the proposed expansion of the definition of agricultural sales at this time.

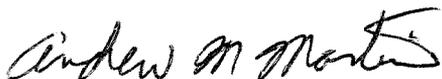
Please let me know if you have any questions.

Thank you,

Ken Gibb

Given all the above, I hope that my application will be approved with only a qualifying condition requiring future LDC changes before farming activities can commence. While being a Green Wizard Composting Farmer would be super, being a pasture-based farmer raising food for my family and my community, someday, would be even better.

Sincerely,



Andrew M. Martin

Andrew M. Martin

5700 SW Reservoir Ave.  
Corvallis, OR 97333

Cell: 541-740-5431

Email: [ammartin@comcast.net](mailto:ammartin@comcast.net)

RECEIVED

December 20, 2010

DEC 20 2010

To: Planning Commission

Re: PLD10-00008

Community Development  
Planning Division

Additional Submittal#3 to the Record – Other Objections to Conditions of Approval

It is almost too wonderful. This whole process I've been through, culminating with the shocking 12/7/10 Staff Report, has become a perfect case study in the deficiencies of wasteful, centralized, bureaucratic planning versus cost-effective, site-specific, unregulated planning by the individual property owner. I may yet be successful in dramatically improving this city after all.

#### Condition of Approval 4- Southern Perimeter Landscaping

The LDC requires an 80% opaque landscape buffer to screen "unsightly" views. This would be relevant if my property directly abutted a residential property or if our storage materials were particularly offensive. With my ResAv property, however, the Grand Oaks neighbors are separated from me by a major highway and a double-wide railroad line. Further, the ProBark materials are in middle of property, so further buffered, and these materials are a common commercial item, so not particularly offensive. Landscape supply businesses exist on small commercial lots near houses throughout the country with minimal visual conflict (or odor conflict). As stated in our application:

"Given that the buffering distance between these stored materials and the nearest Residential property is approximately 250', the visual scale is reduced to the point where the impact is no greater than that of landscaping materials typically found stored in Residential neighborhoods by individuals."

Additionally, besides the substantial distance separation, the Grand Oaks neighbors are also 60 feet in elevation above me. A 10 foot screen, rather than accomplishing anything, will only cause damage. It would take a multi-row of Giant Sequoias on my property to block their view.

Furthermore, there is already a complete, evergreen-tree screen between the railroad track and the Grand Oaks houses that runs from the tree farm property line west to the end of the Grand Oaks houses. The only Grand Oaks houses that can even see my property are the 10 or so abutting along the north-south running property line with the tree farm. They have a northeast only view of my property and are so high in elevation that no screen of mine would accomplish anything. The dividing line between the tree farm and the railroad has only a partial screen of evergreen trees. Would these houses even want a more complete screen there to be put in place by the railroad at my expense? Many homeowners enjoy a view out over a large vista of farm, forest, wetlands, and the commerce of other humans and would vehemently oppose it.

Since, because of elevation, no screen planted on my property is going to meet its purpose anyways, why plant it? Contrarily, there are several reasons not to plant it:

1) I have four entrances on Reservoir Ave. where this screening buffer is supposed to be planted. The condition states "The required landscaping shall be located outside of vision clearance areas

for intersections of public and private streets and access ways." This already ineffective screen will be rendered even more useless by these openings. Because Reservoir Ave. is a very busy road, no matter how wide a vision clearance area you leave, it will still be unsafe. Any tall screening at all will be unsafe. Blocking a driver's vision by a screen that accomplishes nothing is only going to result in needless vehicle crashes at these intersections.

2) I don't like the esthetics of a maze where Reservoir Ave. travelers have their views blocked by an elevated railroad line on the south side and a 10 ft high screen on the north side. Who wants to travel in a tunnel? I want people on the elevated road to be able to enjoy a panoramic view over my property and see clear to the farms and hills to the north. Most people would agree with me, that rather than accomplishing its intended purpose, the required screen would only destroy the enjoyable views of a multitude of others.

3) Normally, an industrial property with outdoor storage is strictly a wholesaler. While wholesalers don't need as much marketing exposure on their road frontage, they still desire as much as they can get. ProBark, by contrast, is primarily a retailer and needs visibility on its road front to be viable. Plus, any screen required because of ProBark's outdoor storage would block the exposure of my future farming activities. I want people to feel welcome to stop in to my property and talk with me about the benefits of sustainable organic farms versus detestable factory farms. A screen will effectively block this goal of openness.

So – what to do? First, everyone should make a site visit to see for themselves the site-specific situation. Why Staff doesn't always first do this before writing conditions is inexplicable yet obvious- centralized planners, overwhelmed by demands of quantity, rarely leave their cubicles. That is one of its great deficiencies. Central planning/zoning must just routinely design/zone/enforce rules by straight lot lines instead of the preferred, custom-designed contours of site-specific geography. Why Staff doesn't seek input, though, from the property owner before springing on them a damaging screen, and other such conditions, is something I can't answer.

When visiting the site to confirm above, please note that we are constantly improving, in stages, the functionality and appearance of our property. Most recently, the Jacksons just planted, at the preferred planting time of late September, a nice, visually-enhancing, landscaped berm with low shrubs - designed not to obstruct the views at the intersections. We're not too pleased about having to rip this out and replace it with taller growing plants that, without purpose, will just be damaging to the property as detailed above. Most people have pride of possession and don't need being told how to best landscape and otherwise take care of their property. In fact, the whole notion of big brother increasingly interfering in the smallest property detail is offensive. But, I'm a Libertarian, so what do I know? And what would everyone do if us minorities didn't exist to be persecuted by the rules of the majority?

#### Variance:

Again- what to do? You all best know the procedural situation, but it seems that our storage situation should not be considered unsightly. If you determine it is unsightly, then could this screening problem be treated as a variance? Again, this isn't an abutting line with residential property. The special circumstances of the site justify it and would prevent the variance establishing a precedent. The compensating benefits are the ones itemized in #1 to #3 of above reasons for not planting the screen. Further, I would be happy to discuss with Staff some other investment, of equal or greater cost, that I could make on the property to provide additional compensating benefits.

## Young, Kevin

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**From:** violinstring1917@netzero.com  
**Sent:** Wednesday, December 22, 2010 12:19 PM  
**To:** Young, Kevin  
**Subject:** Resubmitted Testimony for Andrew Martin PD application

**Attachments:** HouseAppraisal-1.png; HouseAppraisal-2.png; HouseAppraisal-3.png; PC210023.JPG; PC210028.JPG



HouseAppraisal-1.png (137 KB) HouseAppraisal-2.png (32 KB) HouseAppraisal-3.png (129 KB) PC210023.JPG (579 KB) PC210028.JPG (606 KB)

To: Kevin Young, Corvallis

Planning Commission Staff

Please find attached the [redacted] property appraisal done in late July 2005 for my purchase. I included only the initial page, the page with the appraiser's signature and PAGE 3, where I ask the Commission to please read "CONDITION OF THE IMPROVEMENTS" which discusses, as I spoke at the hearing, how the railroad influence if "offset" by the "appealing views to the north."

The value of my property is going to plummet if/when that "mill pond", of which I have also attached below two photos of the view from my upstairs bedroom windows (and of course, it's also completely visible from all my north-facing back windows downstairs), is developed. Just the NOISE of the bulldozers filling it with dirt is going to be adverse, coming as it will on top of the railroad noise. I will never be able to sell my house (not that I plan to for a long time, which is what scares me), and it is my only asset post-divorce. The quality of my life here will be ruined.

I beg the Commission to consider the above in their deliberations at the Jan. 5 hearing. Perhaps the commissioners could at least require him to plant a row of VERY TALL EVERGREENS next to Reservoir Road, which will grow taller in time, to help block whatever awful views will be coming from industrial buildings? At least, that would be something. Thank you, Margo Michelle Huffman

Staff's response to above, in their follow-up email re the above meeting, was that sewer hook up would not be required until such time as an intensification of use or Benton County sanitation required it. Here is an excerpt from their 6/21/10 SRC Meeting Follow-up email on this point:

"SewerConnections

Requirements to connect to City sewer lines are found in the Municipal Code, and, therefore, cannot be varied through the Planned Development process. However, Staff review determined that sewer hook-ups would not be required until uses on the site were intensified, or until Benton county determined that the septic system was failing."

My July decision to move forward on the project assumed we had agreed that sewer hook up would not be required until better justified.

Solution

In summary, would request that wording of this condition be amended from "90 days" to "until use intensifies or Benton County Sanitation requires, but in no event later than September 30 three years after Reservoir Avenue realignment is completed, if building still occupied"

Alternatively, I could put a latch and lock on the bathroom door and give the only keys to Staff, if that is preferable.

Bicycle and Auto Parking Conditions and many other Conditions

What with roads being realigned, accesses being changed, filling, grading and bark processing activities underway that may not remain long term, and potential future permanent businesses or farming that may or may not even get started after PD approval, if approval is even secured, it is safe to say that my ResAv property may be the most unique transition property any owner or Staff has ever had to deal with. As such, I think there should be a lot of leeway on where things are specified to be built in the plan versus where they eventually best end up.

I beg you all to show some flexibility. Specifically, bike parking and auto parking might need to be moved around as everything changes. The standards will remain at high quality wherever relocated.

This is also a property where the PD application is dealing with the unique situation of uses changing on the land and uses of existing buildings, but no construction of new buildings, as is the more typical situation. And then there's the whole uniqueness of the farming subject. All this is hard for owner and staff to deal with and makes the interpretations of everything more subjective.

Summary

I want to emphasize that the above transition nature of this property, plus the whole grandfather clause aspect of an intensive finger-jointing mill being there at time of annexation, makes almost every decision by Staff in regulating this property a difficult **and arbitrary** one.

They have shown that they can be liberal in their interpretations, if they desire. I appreciate the way they handled the "Off-Street Parking Landscaping" requirements. Here it is on page 20:

"Since the proposed uses on the site do not create an intensification of uses beyond the scope of the finger-jointing mill that used to occupy the site, the provisions of LDC Section

If your rules and procedures allow no way to avoid this useless and damaging screen, then at least please grant me an extension until optimum planting time of late September to plant it. The ground doesn't consistently dry out here until mid-June. As a farmer, I consider it a major sin to drive equipment on wet soil because it destroys its tilth through compaction. Why Staff doesn't routinely account for this weather situation in setting time frames for their conditions is confounding.

#### Condition of Approval 19 – Sewer Laterals

The City's Municipal Code requires our Building#1 to hook up to the sewer within 90 days of approval. Again, another generally beneficial rule, but one that certainly justifies a few, specially-qualified exceptions. Here is the history.

When Grand Oaks put the sewer line into Reservoir Ave. to serve their property for their benefit, they didn't put in any connecting tees to serve my property. It is customary to do this at time of original construction because the ditch is dug and tees are most cheaply placed when laying the pipe. The city is supposed to force this action. Why didn't they? They say they didn't because they were unsure how the property would be developed long term. Well I am unsure too. What we both know is that building #1 was there, it is still there now, and it has a toilet. Staff neglected their duty to me, and now they want me to pay for it.

I have already paid for this sewer once through my Zone of Benefit reimbursement to the Grand Oaks developers for my front-foot share of the sewer line. Now Staff wants me to incur the excess costs of digging up the street again and cutting into an active line, when they should have required it be done correctly, at insignificant additional expense, the first time.

To what purpose? I have a perfectly good septic there designed to serve 10 people that worked out of the building when it was a lumber mill. I get the septic pumped at its recommended interval and only have 1 or 2 people working out of that office. Furthermore, the waste pipe exits out of the north side of the building under a concrete patio to the septic. It's a massive project to dig this up and reroute the pipe around the building to the sewer in the road to the south. I had intended to do this after ResAv gets realigned, when, if still using property, I would be putting a new front door into north wall facing toward the new road. At that same time, I was going to move the garden from the north lawn to the south lawn (another reason don't want buffer screen is would shade my garden) and put in new parking on the north lawn. A nice project and all in good time.

What I have now works fine during the next few years transition period. If, after the grading is over, we are still there occupying the property in any capacity, then I am fine with hooking up to the sewer at that time, but not in the rainy season.

I told Staff most of this above at the 6/14/10 Staff Review Comments meeting on our first full plan submission. Having already decided to shut down my farm store and move my daughter out of the caretaker residence, I presented this sewer thing as being a deal breaker. There are limits to how much money I will throw down a sink hole just to keep the ProBark group employed with a shot at success. I get no rent from this operation nor return on all the construction equipment I have purchased. Financially, I should send my equipment back to the auction and close ProBark down, but, I know many of us will starve to death if we don't make compost fertilizer. Plus, I am a softy when it comes to keeping people employed, and I like the Jacksons and all of their employees enormously. They are honest and hard working and have a chance of making it in this city in their line of work, if anyone does.

## Young, Kevin

---

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The value of my property is going to plummet if/when that "mill pond", of which I have also attached below two photos of the view from my upstairs bedroom windows (and of course, it's also completely visible from all my north-facing back windows downstairs), is developed. Just the NOISE of the bulldozers filling it with dirt is going to be adverse, coming as it will on top of the railroad noise. I will never be able to sell my house (not that I plan to for a long time, which is what scares me), and it is my only asset post-divorce. The quality of my life here will be ruined.

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THIS SUMMARY APPRAISAL IS INTENDED FOR USE BY THE LENDER/CLIENT FOR A MORTGAGE FINANCE TRANSACTION ONLY.

Property Address: 6229 S.W. Grand Oaks Drive, City: Corvallis, State: OR, Zip Code: 97333. Legal Description: \*\*\* See Additional Comments \*\*\*. Assessor's Parcel No. [REDACTED]. Tax Year: 04/05, R.E. Taxes: NwConst, Special Assessments: N/A. Borrower: Huffman, Current Owner: Matrix Development, Occupant: [REDACTED], Owner: [REDACTED], Tenant: [REDACTED], Vacant: [X]. Neighborhood of Project Name: SW Corvallis, Project Type: [X] PUD, Condominium: [REDACTED], HOAS: 56.00 Mo. Sales Price: 312,900, Date of Sale: 7/05, Description: / \$ amount of loan charges/concessions to be paid by seller: None. Property rights appraised: [X] Fee Simple, [REDACTED] Leasehold, Map Reference: 12-5-5AB 13200, Census Tract: 0003.00

Notes: Race and the racial composition of the neighborhood are not appraisal factors. Location: [X] Urban, [REDACTED] Suburban, [REDACTED] Rural. Property Values: [REDACTED] Increasing, [REDACTED] Stable, [REDACTED] Declining. Single family housing PRICE \$(000): 180, AGE (yrs): Low, New, N/A. Condominium housing PRICE \$(000) (if applic.): N/A, AGE (yrs): Low, N/A. Neighborhood boundaries: Bounded on south and west by Corvallis city limits, north by Harrison Boulevard and east by Highway 99W. The market area includes competing urban and suburban Corvallis neighborhoods. The immediate area is the Grand Oaks development. 250 sq. ft. 10 N/A N/A

Dimensions: [REDACTED] sq. ft., Shape: SI, Irregular, OK. Specific zoning classification and description: RS-3.5 Low Density Residential. Zoning compliance: [X] Legal, [REDACTED] Legal nonconforming (Grandfathered use), [REDACTED] Illegal, attach description, [REDACTED] No zoning. Highest and best use of subject property as improved (or as proposed per plans and specifications): [X] Present use, [REDACTED] Other use, attach description. Utilities: Public [REDACTED], Other [REDACTED]. Electricity: [X] Water, [REDACTED] Gas. Sanitary sewer: [X]. Off-site improvements: Street: Asphalt, [REDACTED] Alley: None, [REDACTED]. Are there any apparent adverse site conditions (easements, encroachments, special assessments, slide areas, etc.): [REDACTED] Yes, [X] No. If Yes, attach description.

Source(s) used for physical characteristics of property: [X] Interior and exterior inspection, [X] Exterior inspection from street, [REDACTED] Previous appraisal files. [X] MLS, [X] Assessment and tax records, [REDACTED] Prior inspection, [REDACTED] Property owner, [X] Other (Describe): Metroscan. No. of Stories: Two, Type (Det./Att): Detached, Exterior Walls: Hardiplank, Roof Surface: Composition, Manufactured Housing: [REDACTED] Yes, [X] No. Does the property generally conform to the neighborhood in terms of style, condition, and construction materials? [X] Yes, [REDACTED] No. If No, attach description. Are there any apparent physical deficiencies or conditions that would affect the soundness or structural integrity of the improvements or the livability of the property? [REDACTED] Yes, [X] No. If Yes, attach description. None known. \*\*\* See Additional Comments \*\*\*. Are there any apparent adverse environmental conditions (hazardous wastes, toxic substances, etc.) present in the improvements, on the site, or in the immediate vicinity of the subject property? [REDACTED] Yes, [X] No. If Yes, attach description. None known.

I researched the subject market area for comparable listings and sales that are the most similar and proximate to the subject property. My research revealed a total of 9 sales ranging in sales price from \$ 294,900 to \$ 355,000. My research revealed a total of 16 listings ranging in list price from \$ 304,900 to \$ 459,000. The analysis of the comparable sales below reflects market reaction to significant variations between the sales and the subject property.

FEATURE	SUBJECT	SALE 1	SALE 2	SALE 3
6229 S.W. Grand Oaks Drive	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Address	Corvallis	[REDACTED]	[REDACTED]	[REDACTED]
Proximity to Subject	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sales Price	\$ [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Price/Gross Liv. Area	\$ [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Data & Verification Sources	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
VALUE ADJUSTMENTS	DESCRIPTION	[REDACTED]	[REDACTED]	[REDACTED]
Sales or Financing	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Concessions	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Date of Sale/Time	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Location	SW Corvallis	[REDACTED]	[REDACTED]	[REDACTED]
Site	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
View	Local/RR/View	[REDACTED]	[REDACTED]	[REDACTED]
Design (Style)	Traditional	[REDACTED]	[REDACTED]	[REDACTED]
Actual Age (Yrs.)	New	[REDACTED]	[REDACTED]	[REDACTED]
Condition	New	[REDACTED]	[REDACTED]	[REDACTED]
Above Grade	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Room Count	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Gross Living Area	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Basement & Finished	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Rooms Below Grade	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Garage/Carport	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Net Adj. (total)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Adjusted Sales Price of Comparables	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Date of Prior Sale	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Price of Prior Sale	\$ [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Analysis of any current agreement of sale, option, or listing of the subject property and analysis of the prior sales of subject and comparables: The property was listed (prior to construction) 8/24/04 for \$297,900. \*\*\* See Additional Comments \*\*\*. Summary of sales comparison and value conclusion: Five relatively recent sales from subject's area are shown. Sales 1-4 are all in subject's development. Sales 1 and 3 back to the railroad (like subject). Sale 2 is located across the street from subject. Sale 3 is a "resale" from the development. Sale 5 is the recent sale of a similar home from a competing development. Sales 4 and 5 are slightly dated (8 months) and are given slightly less weight due to the date of sale. The general value range is reasonably well supported (\$300-320,000). The limited inventory and the currently pending sale agreement were also considered in reconciling to a single figure value estimate.

This appraisal is made [X] "as is", [REDACTED] subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, or [REDACTED] subject to the following repairs, alterations or conditions: \*\*\* See Additional Comments \*\*\*. BASED ON AN [REDACTED] EXTERIOR INSPECTION FROM THE STREET OR AN [X] INTERIOR AND EXTERIOR INSPECTION, I ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT TO BE \$ 313,000, AS OF July 21, 2005.



ADDITIONAL COMMENTS

Borrower or Owner	Huffman		
Property Address	6229 S.W. Grand Oaks Drive		
City	Corvallis	County	Benton
		State	OR
		Zip Code	97333
Lender or Client	[REDACTED]		

**PURPOSE, FUNCTION & SCOPE OF THE APPRAISAL**

**PURPOSE**

The purpose of this limited appraisal is to estimate the market value of the real property identified within this report.

**FUNCTION**

The function of the report is to assist the client in making a decision regarding using the property for loan collateral. Due to the requested report format, narrative description and comments are limited.

**SCOPE**

The appraiser has completed a limited "walk-through" inspection of subject property. The inspection is intended to observe conditions readily observable to an informed purchaser. The inspection does not include the attic or crawl space of the structures. The appraiser is not a building inspector pest/dry rot inspector or engineer. Additional information regarding the property may also have been obtained from public records, metroscan, local mls and/or property owner.

The appraiser has reviewed office sales data files for similar recent comparable sales data. The office files are based on information obtained from Willamette Valley Multiple Listing Service, County Assessor records, Metroscan, local Realtors, other appraisers, buyers and sellers and previous appraisals. Any sales information obtained from a party to the transaction has been verified with an independent source when possible. Sales information obtained from independent parties is periodically reverified with another source (frequency and degree of verification varies with confidence level of the source). All information used in the report is believed to be correct, but the appraiser does not assume responsibility for the accuracy of items that were furnished by other parties.

The appropriate sales data has been analysed by the appraiser and conclusions developed regarding the property's highest and best use (highest and best use is the present use unless otherwise reported) and value. The property condition, appropriate sales data and the appraiser's conclusions are summarized in the appraisal report. The written report is intended to report the appraiser's conclusions. Due to the nature of the report and client's desire for a "Limited Analysis and Summary Report", narrative comments, descriptions and support for the conclusions reported are minimally stated. The appraisal report is intended to conform with the Uniform Standards of Professional Appraisal Practice (subject to permitted departures itemized below).

**PERMITTED DEPARTURES**

The appraiser has employed the methods and techniques necessary to produce a credible report. The appraisal analysis is "Limited" in that the client has requested that the market value be estimated based on the sales comparison approach to value. The income and cost approaches have not been used. In conformance with the Uniform Standards of Professional Appraisal Practice currently in effect, the Departure Provision has been invoked regarding Standards Rule 1-4 a & b. (cost and income approaches excluded from analysis). In cases where the cost and income approaches are necessary to produce a credible report, this "Limited Appraisal-Summary Report" format will not be used.

**LEGAL DESCRIPTION**

Grand Oaks Summit No. [REDACTED], City of Corvallis, Benton County, Oregon (New parcel verify legal w/title company)

**CONDITION OF THE IMPROVEMENTS**

The property backs to a common area, railroad tracks and Reservoir Avenue. The railroad tracks are located adjacent north of subject. The rail line is significantly lower in elevation to subject. Although some noise will be evident from the yard, the proximity to the tracks is not considered a major detriment to marketability or value. The railroad influence is also offset by appealing views to the north. The rail line influence and view is considered in sete appeal/view in the sales comparison grid.

**ANALYSIS OF CURRENT AGREEMENT**

The list price was increased several times during the construction (final list price: \$ [REDACTED]). There is a currently pending sale on the property with an agreed sales price of \$ [REDACTED]. The pending sale is within the value range indicated by recent closed sales and was also considered in reconciliation.

No other sale or listing information for subject was found within the last 3 years.

**CONDITIONS AND ADDITIONAL CERTIFICATIONS**

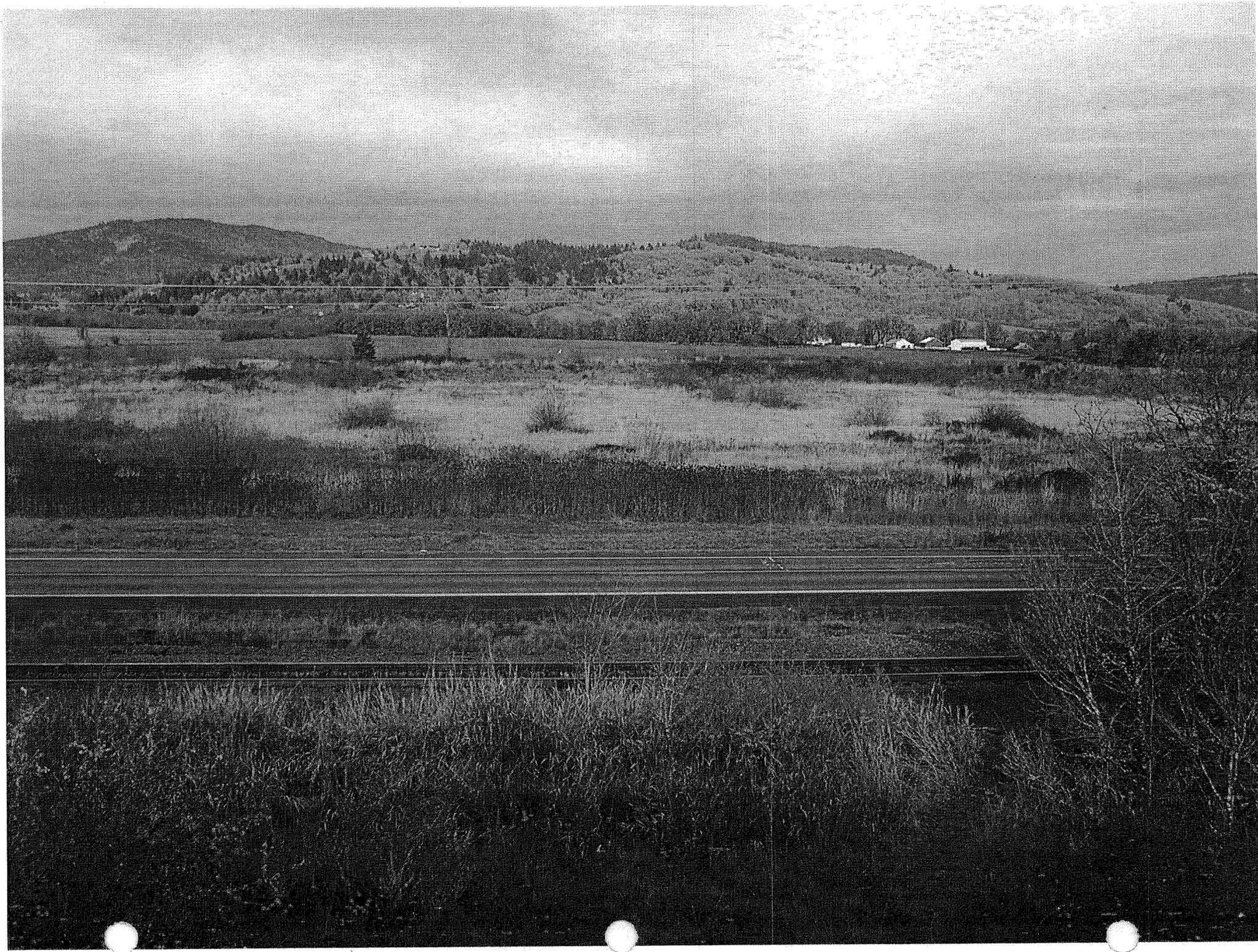
The value estimate reported is for the property in it's present "AS-IS" condition.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by it's duly authorized representatives.

As of the date of this appraisal, Charlie Grove has completed the requirements of the continuing education





**Young, Kevin**

---

**From:** chrisshonnard@gmail.com on behalf of Chris Shonnard [chris@shonnards.com]  
**Sent:** Wednesday, December 22, 2010 12:59 PM  
**To:** Young, Kevin  
**Subject:** Bald Hill

Dear Mr Young

As a landscaper my company uses Pro-Bark on a regular basis. As a nursery owner we refer many customers to them when we are unable to provide the products they need that we know Pro-Bark carries. Since their inception they have been a valuable asset. The Jackson's have been a joy to work with and the products they carry and produce have given us and the entire area some different organic options. They have been generous with their time and product donating over 60 yards of their organic Pro Mix to the Philomath Community Garden.

I have never smelled any foul odors at their distribution yard, and although composted animal waste is part of their organic mixes it is nothing compared to what comes from the OSU dairy barns.

In short it would leave a huge hole in the products and services available to the entire community if they were to go out of business. My entire company, a great many of our clients, and everyone at the Philomath Community Garden ask that you allow them to continue operations.

I also feel that agricultural uses on this property should be allowed to continue. The overlay of the long term uses for this area make sense to include the uses listed by Mr. Hutchens. With the agricultural uses abutting Bald Hill Park and the Fair Grounds and the more intense uses proposed for the future being closer to the changes made on Reservoir Rd. make good use of the property. All of what is being proposed will benefit the area with increased jobs and revenue.

I hope the Commission finds in favor of Mr. Martin and we see the this entire project move forward.

--

Chris Shonnard  
Shonnard's Nursery and Landscape  
6600 SW Philomath Blvd.  
Corvallis, OR. 97333

541-929-3524  
[chris@shonnards.com](mailto:chris@shonnards.com)

**Bald Hill Farm  
Major Modification to a  
Conceptual and Detailed  
Development Plan  
(PLD10-00008)**

**Staff-Recommended replacement  
of Condition of Approval # 19,  
Regarding Sewer Hookup**

## **Staff-Recommended replacement of Condition of Approval # 19, regarding Sewer Hookup:**

In response to a question from the applicant, staff reviewed previous correspondence and discussion between staff and the applicant regarding the requirement for existing facilities on the Bald Hill Farm site to hookup to the City's sanitary sewer service. Staff have found that prior discussions had determined that sewer hookups would not be required until uses on the site were intensified (or until current septic systems are no longer functioning in compliance with Benton County standards). Therefore, staff recommend replacing Condition of Approval # 19 with the following Development Related Concern. The City Attorney's Office has indicated that neither a condition of approval nor a development related concern would supercede the applicability of Municipal Code Section 4.03.020.10.

### *Development Related Concern N: Sewer Hookup*

*In conjunction with future intensification or development on the site beyond that approved by this land use decision, the applicant shall demonstrate compliance with Municipal Code Section 4.03.020.10. This regulation requires all buildings within the applicant's site that have or require a toilet facility to have sewer laterals connected to the City's wastewater system. If, at any time, the applicant is not able to maintain a septic system, or septic systems, on the site in compliance with Benton County standards and requirements, the applicant shall instead connect services to the City system in compliance with City requirements.*

**Bald Hill Farm  
Major Modification to a  
Conceptual and Detailed  
Development Plan  
(PLD10-00008)**

**Applicant's Final  
Written Argument**



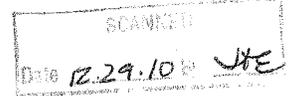
December 29, 2010

245 NE Conifer P.O. Box 1211 Corvallis, OR 97339 (541) 757-8991 Fax: (541) 757-9885

RECEIVED

DEC 29 2010

Community Development  
Planning Division



Kevin Young  
Planning Division Manager  
City of Corvallis, Planning Division  
501 SW Madison Ave.  
PO Box 1083  
Corvallis, OR 97339

SUBJECT: BALD HILL FARM  
MAJOR MODIFICATION TO A CONCEPTUAL AND DETAILED DEVELOPMENT PLAN  
(PLD10-00008)

Dear Kevin:

Accompanying this letter is our refined wording for the proposed condition of approval (requested during the public hearing) which would allow the preparation and composting of soil amendments including an animal waste by-product.

We find that the composting of "Feedstocks" which by definition includes manure is regulated by Oregon DEQ under Oregon Administrative Rules, Divisions 93, 96 and 97. The essence of the DEQ permitting is stated on the attached fact sheet. The DEQ permitting process includes performance standards for odor control, leachate control, and protection of groundwater among with other environmental concerns.

The condition of approval proposes a time frame to obtain a DEQ permit for the soil amendment operations; proposes that on-going detail development plan approval for the soil amendment operations is subject to maintaining a valid DEQ permit; and, that without a valid DEQ permit all operations involving composting must cease.

If you have any questions, please do not hesitate to call me.

Sincerely,

Lyle E. Hutchens  
Project Manager

LEH/sh  
09-424 kevinyoung letter operations plan awbp 12-29-10.doc

cc: Andrew Martin

## New Rules Regulating Composting Facilities

### Background

On Aug. 20, 2009, the Oregon Environmental Quality Commission adopted new rules for regulating composting facilities. The new rules became effective Sept. 14, 2009, when they were filed by the Secretary of State. This document provides a brief summary of the new rules. For additional information and copies of the rules, please see the contact information below.

### Introduction

Composting facilities are operations that process certain organic feedstocks into a finished product called compost. The most commonly used feedstocks for composting are yard debris, wood waste, manure and food waste. Composting can be an efficient method for recycling organic materials that might otherwise be disposed of in a landfill, and by avoiding uncontrolled anaerobic decomposition in landfills, it prevents the release of methane, a significant component of greenhouse gas.

The use of compost offers numerous benefits: when incorporated into soil, it can improve soil tilth and fertility; it can provide a more stable form of nitrogen less susceptible to leaching into water supplies; and on heavy soils, compost helps reduce compaction and increases infiltration. Incorporation of compost into soil stores carbon, helping to reduce atmospheric carbon.

Composting also contributes to achieving the state's solid waste recovery goal of 50 percent by 2009. In 2006, 41 permitted composting facilities in the state composted more than 591,000 tons of feedstock, accounting for 15 percent of all solid waste diverted from landfills.

DEQ supports and encourages composting. At the same time, DEQ is aware that, if not conducted in the proper manner, or if conducted at an improper location, composting presents potential environmental problems, most notably to surface water and groundwater.

### What is the objective of the new rules?

The new rules provide a regulatory program that encourages composting by clarifying environmental requirements, exempting more small facilities, making the rules more focused

and efficient and providing regulation tailored to the potential environmental harm at each facility, while ensuring all operations protect public health and the environment.

### Significant changes to the composting rules

The new rules are addressed in Oregon Administrative Rule Chapter 340, Divisions 93, 96 and 97. They make the following significant changes to the structure of DEQ's composting program:

- All facilities, both existing and new, will be screened to evaluate the degree of environmental risk posed by the facility. Low-risk facilities will operate under a *registration permit*. Higher-risk facilities will be required to provide an *operations plan* for DEQ approval that addresses the identified risks. These facilities will operate under a *composting permit*.
- The rules adopt performance standards that clearly describe the environmental standards every composting facility must meet.
- The rules give operators the responsibility and flexibility to design, construct and manage their operations – subject to DEQ approval – to meet the performance standards.
- DEQ will focus its inspection, technical assistance and compliance efforts on facilities that present significant environmental risks.
- The rules remove limitations on feedstocks agricultural composters may use. They also require that agricultural composters meet the same performance standards as all other composters.

### Other changes to the composting rules

The new rules also:

- Redefine feedstock types based on physical contaminants and pathogen-carrying properties.
- Exempt more small facilities (under 100 tons of feedstock per year) from screening and permitting.



State of Oregon  
Department of  
Environmental  
Quality

### Land Quality Division

Solid Waste Program  
811 SW 6<sup>th</sup> Ave.  
Portland, OR 97204  
Phone: (503) 229-6832  
(800) 452-4011  
Fax: (503) 229-6977  
[www.oregon.gov/DEQ/](http://www.oregon.gov/DEQ/)

- Eliminate the previous permit exemption for institutional composting facilities. Such facilities composting more than 100 tons per year are required to submit screening information.
- Implement a fee for initial facility screening; adjust fees for plan approval and annual compliance fees.
- Clarify design and operational requirements for composting facilities.
- Add testing requirements for pathogen reduction.
- Clarify financial assurance requirements for composting facilities and specify that financial assurance requirements apply to all solid waste disposal facilities covered in Oregon Administrative Rule 340, Division 96.
- Add public notice requirements for renewal of several solid waste permits.

#### Who may be affected?

The proposed rules apply to all existing and new composting facilities, including commercial, agricultural, institutional and government composting facilities.

The rules generally will not apply to small composting operations, including most home composting operations.

#### If I own or operate a composting facility, what do I need to do?

All composting operations that compost 100 or more tons of feedstock per year (or more than 20 tons per year of animal carcasses or meat waste) must submit screening information to DEQ no later than Monday, March 15, 2010 (180 days after the rules went into effect). The local DEQ contact listed below can help you determine the size of your facility and also help you assemble the required screening information.

#### What happens after screening?

Through the screening process, DEQ will determine the level of environmental risk presented by each operation. Operations that are low risk will receive a *registration* (a simple permit). Facilities with greater risk may be required to submit an *operations plan* to DEQ that shows how the facility will operate to achieve environmental protection. After DEQ approves the operations plan, the facility can receive its *composting permit*. For existing facilities that need to make environmental improvements, DEQ will work with those facilities to develop a reasonable implementation schedule.

#### How were the new rules developed?

DEQ convened a workgroup with representatives from the commercial refuse and recycling industry, composting operations, the Composting Council of Oregon, farm composters and local and regional governments to develop the new rules. DEQ also met with the Oregon Department of Agriculture and Oregon State University Extension Service. With these partners, DEQ conducted outreach to the agricultural community and convened a workshop for agricultural composters.

#### How to obtain copies of the new rules

The new rules and related documents are available at [www.deq.state.or.us/lq/sw/compost/](http://www.deq.state.or.us/lq/sw/compost/). For hard copies, please contact Christie Nuttall, Portland, at (503) 229-6832, toll-free in Oregon at 1-800-452-4011, ext. 6832.

#### Regional contacts:

##### DEQ Northwest Region

Stephanie Rawson  
2020 SW Fourth Ave., # 400  
Portland, OR 97201  
Tel: (503) 229-5562  
E-mail: rawson.stephanie@deq.state.or.us

##### DEQ Western Region

Bob Barrows  
165 East 7th, Suite 100,  
Eugene, OR 97401  
Tel: (541) 687-7354  
E-mail: barrows.bob@deq.state.or.us

##### DEQ Eastern Region

Bruce Lumper  
400 East Scenic Drive, #307  
The Dalles, OR 97058  
Tel: (541) 298-7255, ext. 240  
E-mail: lumper.bruce@deq.state.or.us

#### Alternative formats

Alternative formats (Braille, large type) of this document can be made available. Contact DEQ's Office of Communications & Outreach, Portland, at (503) 229-5696, or call toll-free in Oregon at 1-800-452-4011, ext. 5696.

**Proposed Condition of Approval:**

21) As an allowed construction sales and service use, the on-site preparation of soil amendments using animal waste by-products shall be an approved use under this DDP modification subject to compliance with all of the following:

- a) Soil amendment preparation and composting shall comply with the operations plan prepared by the applicant, attachment "SA", dated December 29, 2010 until such time as c) below is completed.
- b) Within 90 calendar days after the expiration of any appeal period the applicant shall submit to Oregon DEQ (copies to City of Corvallis) the following items; all on the forms and in the format required by Oregon DEQ per OAR 340, Division 096:
  - 1) Land Use Compatibility Statement
  - 2) Environmental Risk Screening Information
  - 3) Solid Waste Permit Application Form.
- c) Within 270 calendar days after the expiration of any appeal period, the applicant shall provide evidence to the City of Corvallis that Oregon DEQ has either issued a "Registration Permit" or a "Composting Permit" for the preparation and composting of soil amendments on the applicant's property.
- d) The applicant's operations plan shall be superseded by the permit issued in c) above.
- e) The applicant shall provide to City of Corvallis on going and continual proof of a valid Oregon DEQ "Registration Permit" or "Composting Permit" for the preparation and composting of soil amendments on the applicant's property.
- f) If at any point within the time frames stated above, a valid Oregon DEQ "Registration Permit" or "Composting Permit" is not in place, the preparation and composting of soil amendments on the applicant's property shall cease.

**Operations Plan for preparation and composting of soil amendments using Animal Waste By-Products (AWBP's) on Bald Hill Farm property.**

**Tax Lots 501 and 503  
Map 11 5 32D**

**1) Premise**

- a) This Operations Plan represents a quantifiable method to manage site practices related to the handling, processing, and storage of soil amendments with an AWBP component.
- b) Soil amendments with AWBP's have been prepared on site since March, 2009.
- c) This Operations Plan documents current practices by the Operator. Time has proven the effectiveness of these practices as there are no documented odor complaints associated with the current operations.
- d) This Operations Plan does not change current on-site practices for handling, processing, and storage of soil amendments with an AWBP component.
- e) This Operations Plan per attachment SA-1 limits the on-site areas upon which soil amendments with AWBP's are stock piled and processed, and limits the area where raw animal waste by products may be stock piled. This limitation provides practical control of the quantities of these materials which may be on-site at any given time.

**2) Allowed animal waste products imported to site (RAW AWBP's)**

- a) Chicken manure – generally consisting of an uncontrolled mixture of chicken manure and sawdust.
- b) Cow manure – generally consisting of dewatered solids removed from settling basins.
- c) Horse manure – generally consisting of a partially composted mixture of horse manure and straw.

**3) Annual imported volumes of AWBP's**

- a) CY 2010, chicken manure – 200 cubic yards.
- b) CY 2010, cow manure – 200 cubic yards.
- c) CY 2010, horse manure – 200 cubic yards
- d) Expected annual increase after 2010 – 10% to 15% per year.

**4) Raw material delivery and storage**

- a) All AWBP's delivered to designated stockpile area.
- b) AWBP's stored in separate piles.
- c) Stockpile surfaces moistened as required to create surface crust which helps contain odors.

**5. Processing and handling of AWBP's to create soil amendment.**

- a) Proportioned by tractor loader into a raised bunker. Approximate proportions:
  - 1. **AWBP** – 20% to 35%
  - 2. **Composted Wood By Product** – 35% to 45%
    - i. Composted wood by product includes recycled wood waster from on-site materials left from the original mill operations.
  - 3. **Soil** – 35% to 45%
    - i. Soil may include inert construction materials (i.e. pumice, agricultural lime).
- b) Proportioned material is mechanically transferred from bunker to screening plant to further mix material and remove any oversize particles.
- c) Screened material is moved by tractor-loader to designated stockpile area for composting of soil amendment product.
- d) Finish product in stockpile area covered with visqueen to facilitate composting and reduce rainwater infiltration.
- e) Retail deliveries and sales made from designated finish product stockpile area.

**6) Waste**

- a) All imported AWBP's are incorporated into the finish product. Any over size material is reduced mechanically on-site and reintroduced into the proportioning bunker.
- b) There are no waste products removed from the site. All AWBP's leave the site incorporated into the soil amendment product.

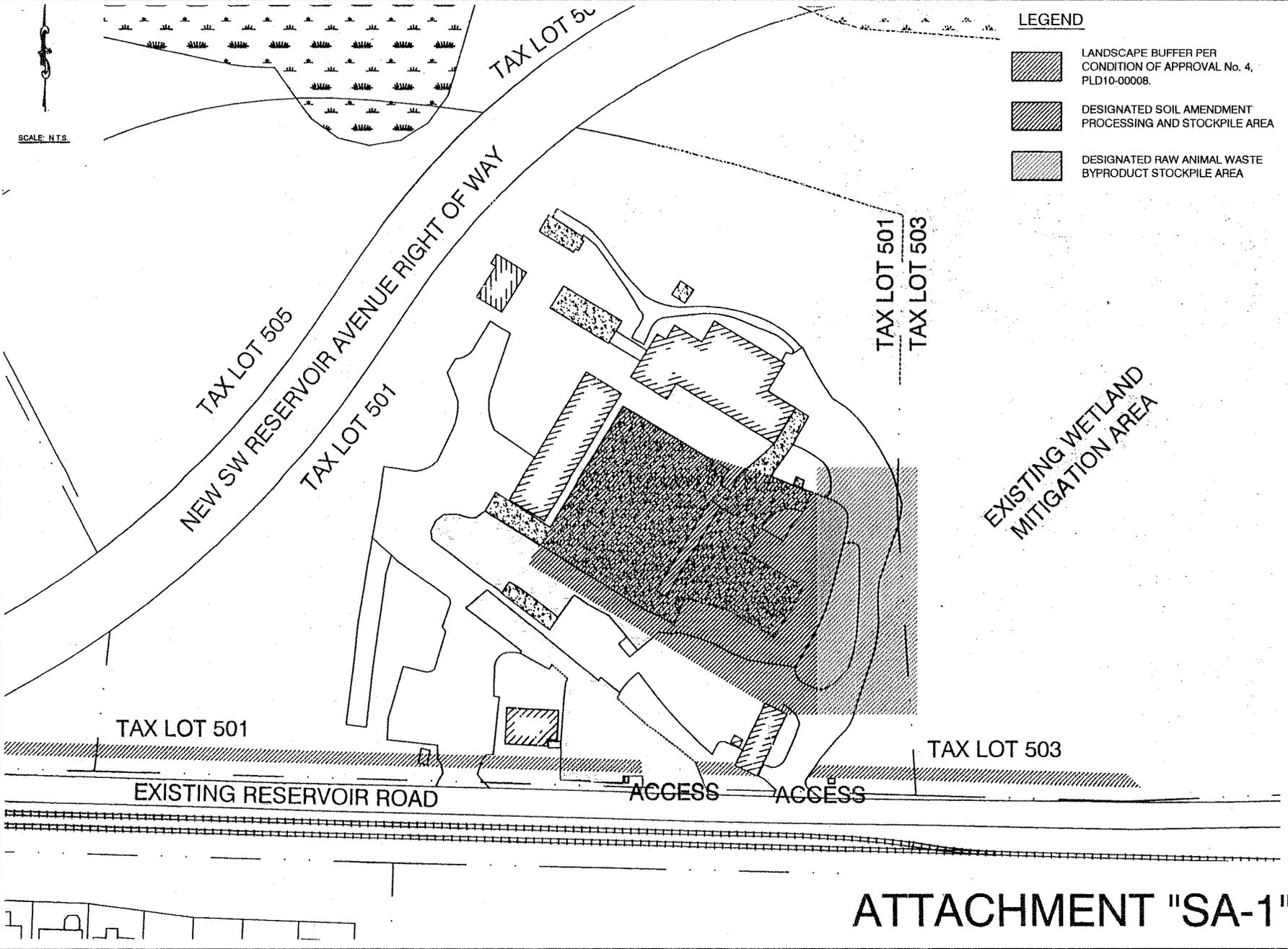
**7) Annual export volume of soil amendments containing AWBP's**

- a) CY 2010, less than 2000 cubic yards
- b) Expected annual increase after 2010 – 10% to 15% per year
- c) Annual volume not to exceed 20,000 cubic yards without a subsequent Detail Plan modification.

**8) Stormwater**

- a) Surface run-off water shall be controlled per attachment SA-2.

SCALE: N.T.S.



LEGEND

-  LANDSCAPE BUFFER PER CONDITION OF APPROVAL No. 4, PLD10-00008.
-  DESIGNATED SOIL AMENDMENT PROCESSING AND STOCKPILE AREA
-  DESIGNATED RAW ANIMAL WASTE BYPRODUCT STOCKPILE AREA

FOR LAND USE PURPOSES ONLY

DATE	REVISION	NO.	DATE	BY	DESCRIPTION
		1			
		2			
		3			
		4			
		5			
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		7			
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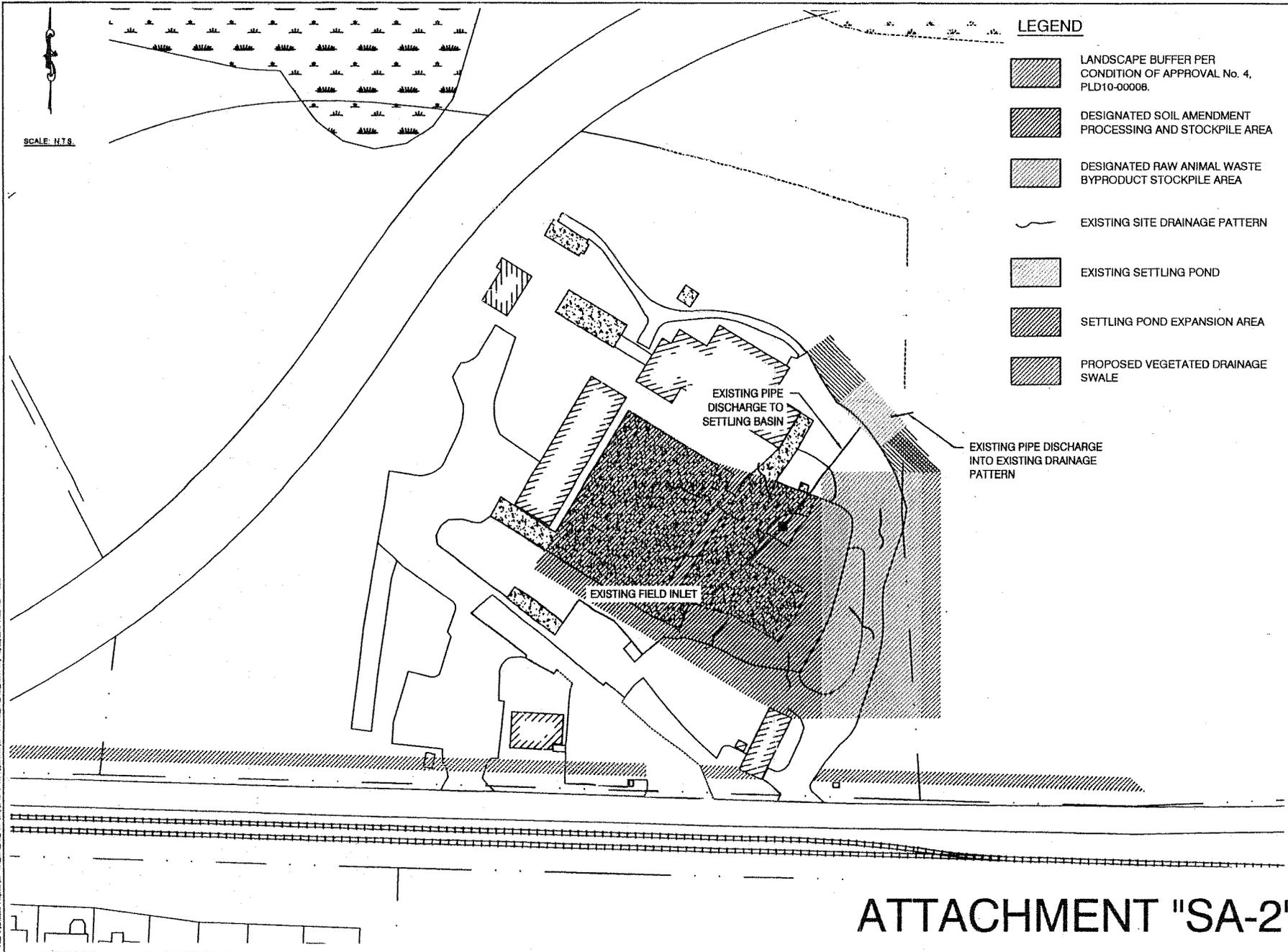
**DEVCO**  
 DEVELOPMENT CONSULTANTS  
 200 W. CORVALLIS, OREGON 97331  
 TEL: 503/755-1111  
 FAX: 503/755-1112  
 WWW.DEVCO.COM

PROJECT:  
 CONCEPTUAL DEVELOPMENT  
 PLAN MODIFICATION AND  
 DETAIL DEVELOPMENT PLAN  
 PROJECT LOCATION:  
 CORVALLIS, OREGON  
 CLIENT:  
 BALD HILL FARM, LLC

SHEET TITLE:  
 DESIGNATED SOIL  
 AMENDMENT AND ANIMAL  
 WASTE BYPRODUCT  
 STOCKPILE AREAS

JOB NO. 08-424  
 DRAWN BY: 8000  
 DRAWING:

ATTACHMENT "SA-1"



**LEGEND**

-  LANDSCAPE BUFFER PER CONDITION OF APPROVAL No. 4, PLD10-00008.
-  DESIGNATED SOIL AMENDMENT PROCESSING AND STOCKPILE AREA
-  DESIGNATED RAW ANIMAL WASTE BYPRODUCT STOCKPILE AREA
-  EXISTING SITE DRAINAGE PATTERN
-  EXISTING SETTLING POND
-  SETTLING POND EXPANSION AREA
-  PROPOSED VEGETATED DRAINAGE SWALE

SCALE: N.T.S.

**FOR LAND USE PURPOSES ONLY**

DRAWING STATUS	DATE	REVISION
PRELIMINARY		
FOR REVIEW		
FOR PERMIT		
FOR CONSTRUCTION		
FOR RECORD		

**DEVCO**  
 DEVELOPMENT CONSULTING, INC.  
 1000 N. COMMERCE AVE., SUITE 100  
 WACARVILLE, OHIO 43081  
 TEL: 614-885-1111  
 FAX: 614-885-1112

PROJECT:  
 CONCEPTUAL DEVELOPMENT  
 PLAN MODIFICATION AND  
 DETAIL DEVELOPMENT PLAN  
 PROJECT LOCATION:  
 CORVALLIS, OREGON  
 CLIENT:  
 BALD HILL FARM, LLC

SHEET TITLE:  
 STORM WATER  
 MANAGEMENT PLAN FOR  
 SOIL AMENDMENT  
 PROCESSING

JOB NO. 08-424  
 DRAWN BY: DEVCO  
 DRAWING:

**ATTACHMENT "SA-2"**

FILE: D:\2008\Projects\08-424\Drawings\StormWater\SA-2.dwg, Plot Date: 11/20/08 11:58 AM

## Staff-Recommended Revisions to Applicant's Proposed Condition of Approval #21

If the Planning Commission determines that animal waste processing, as proposed by the applicant, should be allowed as requested, Staff recommend the following revisions to Condition #21: (changes indicated by ~~strikeout~~ or underline (new language))

- 21) ~~As an allowed construction sales and service use, t~~ The on-site preparation of soil amendments using animal waste by-products shall be is an approved use under this DDP modification, subject to compliance with the following:
- a) Soil amendment preparation and composting shall comply with the operations plan prepared by the applicant, attachment "SA" dated December 29, 2010, ~~until such time as c) below is completed. unless the DEQ permit described in c) below requires a more restrictive standard, in which case, the more restrictive standard shall apply.~~
  - b) Within 90 calendar days after the expiration of any appeal period, the applicant shall submit to Oregon DEQ (copies to City of Corvallis) the following items; all on the forms and in the format required by Oregon DEQ per OAR 340, Division 096:
    - 1) Land Use Compatibility Statement
    - 2) Environmental Risk Screening Information
    - 3) Solid Waste Permit Application Form
  - c) Within 270 calendar days after the expiration of any appeal period, the applicant shall provide evidence to the City of Corvallis that Oregon DEQ has either issued a "Registration Permit" or a "Composting Permit" for the preparation and composting of soil amendments on the applicant's property.
  - d) ~~The applicant's operations plan shall be superseded by the permit issued in c) above. If the DEQ permit described in c) above requires significant alterations to the soil amendment operation that are outside the parameters of the applicant's operations plan (for example, if the permit required relocation of the operation to another portion of the site), the soil amendment operation would need to receive Planned Development Modification approval prior to operation.~~
  - e) The applicant shall provide to City of Corvallis on going and continual proof of a valid Oregon DEQ "Registration Permit" or "Composting Permit" for the preparation and composting of soil amendments on the applicant's property.
  - f) If at any point within the time frames stated above, a valid Oregon DEQ "Registration Permit" or "Composting Permit" is not in place, the preparation and composting of soil amendments on the applicant's property shall cease.



Approved as submitted, February 16, 2011

**CITY OF CORVALLIS**  
**PLANNING COMMISSION MINUTES**  
**January 19, 2011**

**Present**

Jennifer Gervais, *Chair*  
 Tad Abernathy (arrived 7:15pm)  
 James Feldmann  
 Roger Lizut  
 Frank Hann  
 Tony Howell  
 Jim Ridlington

**Staff**

Kevin Young, Planning Division Manager  
 Brian Latta, Associate Planner  
 Kelly Potter, Senior Planner  
 Greg Gescher, Engineering Supervisor  
 Jackie Rochefort, Parks Planner  
 David Coulombe, Deputy City Attorney  
 Jeff McConnell, Development Engineer Supervisor  
 Claire Pate, Recorder

**Excused**

Jasmin Woodside  
 Steve Reese  
 Biff Traber, *Council Liaison*

**SUMMARY OF DISCUSSION**

	Agenda Item	Information Only	Held for Further Review	Recommendations
I.	Visitors' Propositions			
II.	Public Hearing <b>Good Samaritan Regional Medical Center Major Surgery Center (PLD10-00013)</b>			Approved with one added Condition of Approval
III.	Public Review of Corvallis <b>Capital Improvement Program (CIP) for FY2012-FY2016</b>			Concurred with the conclusions and forwarded back to CIP Commission and Council
IV.	Minutes			None for review
V.	Old Business	X		
VI.	New Business A. Planning Manager's Update	X		
VII.	Adjournment	9:50 p.m.		

## CONTENT OF DISCUSSION

The Corvallis Planning Commission was called to order by the Chair at 7:10 p.m. in the Downtown Fire Station Meeting Room, 400 NW Harrison Boulevard.

### I. VISITOR'S PROPOSITIONS:

**Andrew Martin**, 5700 SW Reservoir, shared some of his insights and suggestions on how to make the land use application process more business-friendly. After his recent application process relating to Bald Hill Farms, he received many calls and emails of congratulations, but had to tell the well-wishers that his application had not really been approved since the Conditions of Approval rejected three elements he had requested. The Planning Commissioners should be the checks and balances to staff, whose focus might be to put on restrictions which might be unduly strong. He would like to put a seed in some of the Commissioners' minds of how to do that.

Once Mr. Martin had realized what staff's recommended Conditions of Approval were as contained in the staff report, he wrote a lengthy report on animal waste processing, describing his specific desire to do *wind-row composting*, an innocuous use done by farmers all over. Only one Commissioner brought it up and pursued the questioning about whether it was an outright use. Since it was during the deliberations portion of the process, he (Mr. Martin) could not say anything. It would be more business-friendly if, at the end, the Commissioners would ask the applicant if they understood what had been decided. He emailed Planning Division Manager Kevin Young after the proceedings to ask if he could do wind-row composting and Manager Young said he did not know what that was. Mr. Martin wished he could have had a chance to explain during the hearing. The Commissioners should not assume that an applicant has agreed to all of the conditions of approval, and they should focus on those conditions before coming to a decision on the application.

Commissioner Howell said that there seemed to be a lot of community interest in looking at farming on industrial property. He asked Mr. Martin why he had not pursued the Land Development Code text amendment process. Mr. Martin opined that he had not pursued it because he was not in a hurry to do the farming and he is not in to half-measures. He first wanted to get the land re-claimed and then do farming in a couple of years. He believes that the City Council might have dealt with the whole issue of farming in the City by that time, based on what he had been told. As it is now, there will not be farming on his property because he will not go through a third Planned Development modification process.

### II. PUBLIC HEARING - Good Samaritan Regional Medical Center Major Surgery Center (PLD10-00013)

#### A. Opening and Procedures:

The Chair welcomed citizens and reviewed the public hearing procedures. Staff will present an overview followed by the applicant's presentation. There will be a staff report and public testimony, followed by rebuttal by the applicant, limited in scope to issues raised in opposition and sur-rebuttal by opponents, limited in scope to issues raised on rebuttal. The Commission may ask questions of staff, engage in deliberations and make a final decision. Any person interested in the agenda may offer relevant oral or written testimony. Please try not to repeat testimony offered by an earlier speaker. It is sufficient to say you concur with an earlier speaker without repeating their testimony. For those testifying this evening, please keep your comments brief and directed to the criteria upon which the decision is based.

Land use decisions are evaluated against applicable criteria from the Land Development Code and Comprehensive Plan. A list of the applicable criteria for this case is available as a handout at the back of the room

Persons testifying either orally or in writing may request a continuance to address additional documents or evidence submitted in favor of the application. If this request is made, please identify the new document or evidence during your testimony. Persons testifying may also request that the record remain open seven additional days to submit additional written evidence. Requests for allowing the record to remain open should be included within a person's testimony.

**B. Declarations by the Commission: Site visits, conflicts of interest or ex parte contacts**

1. Site visits were made by Commissioners Hann, Howell and Ridlington.
2. Declarations of potential conflicts of interest: Commissioner Hann said that he is employed as a casual physical therapist with Albany General Hospital, which is part of Samaritan Health Services, and his wife is employed as a nurse with Samaritan Health Services; Commissioner Gervais said she volunteers for Good Samaritan Regional Medical Center with her dog. Both Commissioners said that they would be able to make fair and impartial decisions on this application.
3. No ex parte contacts were declared.
4. There were no rebuttals to the declarations, and no objections on jurisdictional grounds.

**C. Staff Overview:**

Associate Planner Brian Latta showed the Corvallis Comprehensive Plan map and Zoning map for the Good Samaritan Regional Medical Center (GSRMC) site, which is designated Public Institutional and mostly zoned RS-3.5 with a Planned Development (PD) overlay. A portion of the campus in the southeast corner is RS-9 with a PD overlay. He also showed the Natural Features and Existing Conditions maps and reviewed some of the highlights.

**D. Legal Declaration:**

Deputy City Attorney Coulombe said the Commission will consider the applicable criteria as outlined in the staff report, and he asked that citizens direct their testimony to the criteria in the staff report or other criteria that they believe are applicable. It is necessary at this time to raise all issues that are germane to this request. Failure to raise an issue, or failure to provide sufficient specificity to afford the decision-makers an opportunity to respond, precludes an appeal to the State Land Use Board of Appeals on that issue.

The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government to respond to the issue precludes an action for damages in Circuit Court.

**E. Applicant's Presentation:**

Patricia Weber, Devco Engineering, presented on behalf of the applicant, and introduced Scott Wilson, Samaritan Health Services, who was available to answer questions as well.

The application involves a request to modify the current, approved version of the GSRMC Master Plan, primarily to add 4,000 square feet of additional surgery facilities onto the existing hospital. This includes revising the approved schedule of projects in a number of ways. First, a portion of the Major Surgery Addition that was approved as part of the 2-5 year Capital Improvement Program (CIP) is to be moved up to the "Present to 2 Year" CIP. In an effort to maintain or stay within previously approved traffic and parking levels, the size of the proposed Cancer Center addition will be reduced by 2,000 square feet, and the proposed addition onto the existing storage building located in Area D is to be deleted and instead, 2,600 square feet of interior space within that building would be remodeled for hospital use. It is the revision to the phasing of the CIP that exceeds the threshold between Minor and Major Modification of the Planned Development, and, as such, requires a decision from the Planning Commission.

For the most part, all development is proposed to be in compliance with Land Development Code requirements, with only two variances being requested. The first variance is a request to allow for the exterior finish on the 4,000-square-foot Major Surgery addition to be a cement stucco material. The approved Campus Master Plan design standards require that all exterior finishes for GSH be brick veneer. The Land Development Code does not, in and of itself, specify building materials. However, a request to vary from the approved Master Plan is required as part of the process. The compensating benefits of using the cement stucco in lieu of the specified brick veneer include the ability to more easily expand the Major Surgery Center when the remaining 12,000 square feet are built as part of the 2 to 5 Year CIP. The 4,000-square-foot addition is only the first phase, with the second phase occurring in a few years. It would be expensive to remove the brick veneer at that time.

The second variance would allow the development to exceed the eight-foot standard for maximum cut and fill height in the grading at the location of the Major Surgery addition. Given the topography, it would be impossible to construct additional facilities without exceeding the grading standard. Furthermore, given the nature of the facilities themselves, it is not feasible to consider constructing this addition some place else on campus. Compensating benefits include the ability for GSRMC to expand surgery services while maintaining the location already approved in the approved Campus Master Plan. The effects of the cuts would be mitigated by a retaining wall, with drainage provided at the bottom of it to accommodate the free-flow of sub-surface water.

Proposed changes to the Present to 2 Year CIP would also result in some associated revisions to site landscaping. Building landscaping would be provided commensurate with the area of the addition, while landscaping at the Cancer Center and the storage facility would be reduced or eliminated accordingly. The applicants are amenable to the staff-recommended Condition of Approval requiring inclusion of the trail system linkage at the storage building, even though no additional development is proposed at that building. Revisions to the CIP also result in slight modifications to the parking calculations; the total campus-wide parking requirement actually decreases by four spaces. The proposal maintains the status quo. The only project in the Present to 2 Year CIP which falls under the requirement for Chapter 4.10 Pedestrian Oriented Design (POD) standards is the 4,000-square-foot Major Surgery addition. The project is in compliance with all POD standards with the exception of the grading standard. In terms of traffic, the Traffic Generation summary prepared by Lancaster Engineering indicates that the sum total of all changes to traffic that would result from all of the revisions included in the Present to 2 Year CIP would end in a slight net decrease in vehicular traffic overall.

Commissioner Abernathy asked if they would plan to stay with the stucco finish for the addition, or if they would go back to the other materials. Ms. Weber said that the Major

Surgery addition, when it is completed, will adhere to the architectural design standards with brick veneer. The variance is only for the first phase, which will be covered up by completion of the addition.

Commissioner Howell referred to Attachment F of the 2007 application. He said that when he looked back at the original plan, it appeared that the Major Surgery addition was going to be in a different location directly between the hospital and the Ancillary Services building across from the Electrical/Mechanical structure, which was a flatter area. Considering the grading variance request, he was curious why it was being moved. Ms. Weber said that for as long as she has been working on the Campus Master Plan, the Major Surgery addition has been in the same location, and had not been moved. It is an expansion of the existing surgery center. Manager Young said that staff could respond to this as part of their presentation.

Commissioner Howell said that his concern is for public and employee pedestrian access. He referred to Figure 9-2 of the current Campus Master Plan. Currently, he does not believe that pedestrian access to the hospital is as originally envisioned. The Planning Commission had originally asked for a covered walkway, which was appealed to City Council, who upheld the Planning Commission's decision. The intent was to help both employees and customers of the Wellness Center and the parking lots and buildings east of Samaritan Drive to access the hospital cafeteria and other services without having to drive around to the main entrance side. Right now it appears there is only employee access to the hospital. Ms. Weber said that her understanding is that the footprint of the 4,000-square-foot expansion will extend over a portion of the covered walkway and it will have to be re-routed around so that employees will still have access. This will be accommodated as part of the plan. She does not know if that part is open to the public. Commissioner Howell opined that when the Master Plan came to the Planning Commission for approval, the assumption was that this access would be open to the public, since this would be a major pedestrian route. One of the challenges of the campus design is providing access to customers so they can get from one side to the other without driving around. Ms. Weber asked Mr. Wilson to clarify whether the public had access at this point. Mr. Wilson pointed out where the two points of public access would be on that side. The public will be able to get around between the two buildings and up the stairs into the cafeteria. They will also be able to come around through the Healing Garden and into the Heart Center. There is not a public access into the Short Stay; it is locked because of concerns relating to H1N1.

Commissioner Howell said that the other piece is to have signage in place that will indicate points of public access. Mr. Wilson said that it was his understanding there would be new signage at Samaritan Drive indicating to pedestrians how to access the cafeteria.

Commissioner Hann asked if most of the wellness function had moved off site to the Circle Boulevard property, leaving the Wellness Center as primarily mental health counseling. Mr. Wilson affirmed that was the case.

Commissioner Hann further asked if the traffic studies take into consideration both public use and possible intensification of staffing impacts. Lyle Hutchens, Devco Engineering, arrived at the meeting and joined Ms. Weber at the table. He said that it takes into account both staff and visitor impacts.

Commissioner Hann remembered back to when the Planning Commission approved the Master Plan and said that there was a necessary lack of detail in Phases II and III, and that there was a limited amount of activity in Phase I before certain requirements would be triggered in terms of parking, traffic flow, and pedestrian considerations. He asked the

applicant if anything is being lost with this modification request. Mr. Hutchens said that the short answer is no. In terms of parking, each of the applications deal individually with the parking requirements based on existing and proposed use and a total quantification of parking across the campus. The traffic impacts basically were approved for the Phase I development, but within that development there was a total building square footage with the uses broken out between hospital and medical office buildings. This application works within the allowed building areas so that the total traffic generation will remain the same. At some point in the near future, they will be coming in with a new Traffic Impact Study, because the requested additional building area will generate more traffic than what the Phase I approval allows. Conceptually, in Phase II, there is a parking structure that will be pretty well centrally located so that parking will be improved for patients and visitors to the center of the campus. Commissioner Hann voiced his concern for the lack of convenient parking at this time for visitors and sick customers, though the valet parking has helped the situation.

Commissioner Hann asked whether there was a lessening of support for a traffic roundabout. Mr. Hutchens said that the present approvals show the roundabout. However, they are starting into the traffic impact analysis for the overall campus Master Plan update and, in starting to put it together, there is information now that a four-way intersection would function better in terms of the impacts on the highway. To a large extent, ODOT will drive the decision as to whether it will be a traffic roundabout or a four-way intersection.

Commissioner Hann asked about the 23-foot grading cut, and how it might compare with the cutaway above the Coffee Culture structure at the Winco Shopping Center. Mr. Hutchens said that in depth they are similar; however, this is fairly localized because of the tapering to the ground, and the perspective from the public side of the project is that one will look out over the roof and the top of the retaining wall onto the patio area next to the cafeteria. It will be almost invisible from the public side. As one comes out of the Major Surgery addition, there will be the mass of wall.

Commissioner Howell asked when the alternate routing of the pedestrian access on the east side would take place and whether there would be any interruption in access. Mr. Hutchens said that there would be no interruption to connectivity with each phase. Access will be relocated with a future phase, but there will be connectivity from the covered walkway up to the hospital. This connectivity will move to the east with the ultimate expansion of the surgery area. Presently, there is no connectivity from the ground floor level, or the covered walkway level, to the first floor level which, in essence, is the entrance into the Heart Center. Ultimately, this will be the area that gets impacted by the parking structure through which one will be able to access the various levels. Right now, there will be access through the Heart Center.

Commissioner Howell said that his concern at this time is for the interim period until the Major Surgery center is built out and the parking structure is provided. The public access on the east side is important, and was part of the original requirement for the covered walkway. Mr. Hutchens said that from the covered walkway there is walkway and stair connection up to the patio from which the public can access the cafeteria. This will be maintained. He agreed that there was no signage.

Commissioner Howell referred to Appendix 2.7, Staff Report Attachment J-53. In it is a reference to Ride-Share and patient shuttle as mechanisms to be instituted as part of the Cancer Center. Mr. Hutchens said that the Ride-Share program has been going on for quite a while with respect to information disseminated in their newsletter encouraging its use. The patient shuttle, which is similar to an enlarged golf cart, is not regularly used but

has been used for moving people around campus.

Commissioner Howell referred to Staff Report Attachment J-27, and said that he has concerns about the trail that was supposed to be installed in the area of Satinwood extension. Mr. Hutchens said that the trail had already been put in with the West Tower project.

Commissioner Howell returned to his original question and asked Mr. Hutchens if the surgery center location had shifted. Mr. Hutchens said it is in its intended location from the original conceptual approval.

Chair Gervais asked what types of hospital uses would be part of the storage building, and whether there would be a need for public access connectivity. Mr. Hutchens said that this includes a couple of offices and conference rooms that largely support emergency management activities. These activities are currently taking place in one of the modular units, which will have to be moved as part of the next project. Access and connectivity, both internal and external, should be adequate already.

Chair Gervais asked if the Ambulatory Services building, which appears to be completed, is now being occupied; if it is, how is it that it can be occupied without completion of the improvements to the Elks Drive intersection? Mr. Hutchens affirmed that it was being occupied; in the interim, Samaritan Health Services, City of Corvallis and ODOT have entered into a cooperative improvement agreement for the construction of the intersection improvements. As part of the agreement, there is financial security to assure the construction of those improvements. In the context of the Land Development Code, this financial security and the signed agreement is, in essence, the same as having a physical improvement in place. As a practical matter, it is anticipated that construction will be during the summer of 2012. The Cancer Center has been calculated into the Traffic Generation Level, and they are still within the Phase I levels, until such time as they complete the Master Plan Update with its related traffic impact studies.

F. Staff Report:

Associate Planner Latta used an overhead of Attachment G-1 of the 2005 GSRMC Campus Master Plan (CMP) showing all the projects that were approved with the 2005 Planned Development application. The Phase I projects approved at a Detailed Development plan level are shown in blue, with Phase II and III projects conceptually approved highlighted in red and orange. The applicant's proposal is for changes to the Schedule of Projects by Priority – Table 5.1, and associated changes. The changes to the schedule would allow 4,000 square feet of the Major Surgery Center to be included as a Phase 1 project; reduce the Phase 1 Cancer Center addition project by 2,000 square feet; remove the Phase 1 Engineering Building addition from the Campus Master Plan; and change the use of 2,600 square feet of the Engineering Building from a Storage/Warehouse use to Hospital use.

The applicant is requesting two variations:

1. Land Development Code Section 4.5.80.04.d limits the cut depth and fill height on a development site to eight feet. The applicant requests a cut depth of approximately 23 feet to construct the Major Surgery Center. Applicant's compensating benefits include: consistency with the Campus Master Plan; location of structure is an efficient use of space and a functional continuation of the hospital; grading for the full build-out of the Major Surgery Center will be an efficient use of resources by reducing resource expenditure in the future. Staff support the variation request for the following reasons:

it will be supported by an engineered retaining wall and does not endanger life, property or aquatic resources; vegetation that will be removed from the hillside during construction is proposed to be replaced with new vegetation by the applicant; the retaining wall is proposed to have drains to allow for the free movement of water that aids slope stability; and the location of the Major Surgery Center is conceptually approved in this location and would be functionally difficult to relocate.

2. Campus Master Plan Section 6.1.2 requires all buildings designed for human occupancy to incorporate brick as at least a portion of the finish façade materials. The applicant proposes to use a cement stucco siding material. Applicant's compensating benefits include: less waste of an expensive finish material, because the exterior walls will be covered by Phase 2 of this project; the cement stucco is a more compatible material with existing facades of nearby structures which are primarily exposed concrete. Staff support the variation request for the following reasons: The Major Surgery Center addition is subject to the Land Development Code Pedestrian Oriented Design Standards and complies with those standards; the Phase 1 cement stucco walls will be entirely covered by Phase 2 of the Major Surgery Center, effectively making the variation request a temporary solution; and the Major Surgery Center addition is at the basement level of the hospital and is surrounded by exposed concrete facades, which are a compatible material to the proposed cement stucco façade.

Planner Latta then went through the remainder of the compatibility criteria and found that, as conditioned, it complied with the criteria in Section 2.5.40.a. He briefly spoke to some of the highlights. The proposal does not significantly alter the approved basic site design of the Campus Master Plan. The proposal does not create any noise, odors or emissions that will negatively impact surrounding uses on and off the hospital campus; and no new lighting or signage is proposed. According to the Campus Master Plan, landscaping is required per building at a one-to-one ratio; the applicant has revised the landscaping numbers to be consistent with the proposed modifications. Staff did identify a proposed trail that is behind the Engineering Building addition. Since that addition is being removed, the trail was also removed by the applicant. Staff is recommending approval of a Condition that would require the trail to be put in with the Engineering Building remodel project, in order to maintain a connected trail network on the hospital campus. The proposed modifications to the Campus Master Plan result in an overall vehicle trip reduction of 1 PM peak hour trip as stated by the applicant. That change is not significant, and the overall trips associated with the Phase 1 projects will be mitigated as approved through the 2005 Campus Master Plan approval. Since those mitigations are still in effect, and no significant change would occur with this proposal, staff find the proposal is compatible. Staff and applicant have both referenced the Cooperative Improvement Agreement between the City, ODOT and the hospital; through that agreement, the door is opened for all Phase 1 projects to be constructed and occupied. Parking numbers are altered slightly, but the proposal will still be consistent with the offsite parking impacts. Where modifications have been made to the approved Master Plan, the application demonstrates compliance with the applicable Pedestrian Oriented Design Standards as well as the standards that apply to the natural features and natural hazards areas.

When a variation is proposed to one of the Land Development Code natural features chapters, it has to comply with additional criteria. In this case, the variation is to the cut and fill standard which is in Chapter 4.5. Because of this, the proposal needs to comply with the criteria in Section 2.5.40.04.b. These two criteria state that the variation shall provide protections to the impacted natural feature equal to or exceeding the standard being varied; and that protection shall be located on the same development site where the variation is proposed to occur. The applicant proposes to construct an engineered retaining wall that

will provide protection to the slope receiving the large cut, and that retaining wall is proposed at the location of the cut. Staff finds the criteria are met.

Given the preceding discussion, and the findings and conclusions contained in the January 7, 2011, Staff Report to the Planning Commission, the proposal complies with the applicable development standards of the Land Development Code and is compatible with neighboring and surrounding uses. Staff recommends the Planning Commission approve the application, as conditioned.

Commissioner Abernathy asked if there would be any landscaping or trees in front of the retaining wall. Planner Latta said that there would not be any landscaping in the area between the retaining wall and the walkway, though there would be landscaping on top of the retaining wall extending up to the existing parking area. He believed that the walkway was right up against the retaining wall.

- G. Public Testimony in favor of the application: None
  - H. Public Testimony in opposition to the applicant's request: None
  - I. Neutral testimony: None
- The Chair reminded people that speaking neutrally removes rebuttal rights. No-one came forward.
- J. Rebuttal by Applicant: None
  - K. Sur-rebuttal: Not required
  - L. Additional questions of staff:

Commissioner Howell said he wanted to make sure that public access is provided on that side of the hospital. He would be concerned if the hospital were to make a decision to secure doorways that provide public access. He thought it appropriate that there be the two access points – one to the basement level and one to the Heart Center eventually. He asked staff for their thoughts relating to consideration of a condition relating to access and signage for customers and employees coming up the covered walkway from Samaritan Drive. Planner Latta said that his understanding of the existing condition is that a pedestrian can take the covered walkway past the Rehabilitation Center, and to the left is an employee entrance and to the right is a set of stairs leading up to the patio and to a public entrance into the cafeteria. He did not believe that there was a public entrance into the basement level, only one for employees. Conditioning for signage would be a simple and appropriate thing to do.

Commissioner Ridlington asked if hospital security concerns could trump the ability for the public to get in through an entrance other than the main entrance. Planner Latta said that the Pedestrian Access Design standards would only require the main entrance as a customer entrance, which is on the west side. Commissioner Howell said that his understanding is that there was a previous approval that required public access ways for people parking along Samaritan Drive to get to the hospital. It was certainly the intention of the Planning Commission and City Council at that time to have a back entrance that would be covered and attractive for people to walk the distance rather than to drive around. Otherwise, the Planning Commission could have required that they build a taller structure that could be served with just a main entrance. The campus design, which was approved

with its dispersed parking areas, requires that additional public access be provided other than just through the main entrance, and he would assert that these other public access points are required to be maintained. Staff agreed with Commissioner Howell's assessment. It was agreed that there might be a temporary need by the hospital to secure an entrance, for instance if there were a pandemic, but that the long term agreement is that the public access way be maintained.

M. Additional time for applicant to submit final argument: Waived by applicant

**MOTION:** Commissioner Abernathy moved to close the public hearing. Commissioner Howell seconded the motion and it **passed** unanimously.

N. Deliberations:

**MOTION:** Commissioner Hann **moved** to approve the proposed Major Planned Development Modification (PLD10-00013), as described on Attachments A and J of the January 7, 2011, Staff Report, and with the Conditions included by staff. The motion is based upon the staff recommendation to the Planning Commission and the information provided by the applicant this evening. The motion was **seconded** by Commissioner Lizut.

Commissioner Hann said that after reviewing the application and hearing the applicant's testimony, he believes that the applicant has met the review criteria in Land Development Code section 2.5.40.04. Commissioner Howell added that with regard to the two proposed variations, both seem appropriate. It makes sense to allow for the different surface treatment so that materials will not be wasted and, given the topography, it makes sense to have a more compact site and allow for the necessary grading. He asked staff to develop language for a proposed condition relating to signage of access ways.

**MOTION TO AMEND:** Commissioner Howell **moved** to add a Condition 6, entitled "Public access signage," stating: Concurrent with the development of the Phase 1 Major Surgery Center addition, applicant shall provide signage from the Rehabilitation Center parking lot identifying the location of public access stairs to the cafeteria. Commissioner Lizut **seconded** the motion.

Commissioner Lizut said that it seemed the Planning Commission had a strong desire to have the covered walkway and access to the back of the hospital, and he thought that the Commissioners and staff should not be working off their collective memory of whether the access was there. He suggested that there might need to be some specific language in a new condition that would ensure the accessway.

Commissioner Howell said that that was not the intent with his motion. Manager Young referred to page 3, in Section 10 of the Campus Master Plan. As part of PDM-97-9, there is a Condition 8(b) entitled "Walkway in Area 1 west of Samaritan Drive" that states:

Concurrent with future review of the proposed structure in the southeast portion of Area 1, the City will make a determination as to the likelihood of pedestrians accessing this building from the new Samaritan Drive bus stop and/or pedestrians that may need to circulate from Area 1 to Area 4. If it is found that there may be significant non-recreational use of this path, then this path in Area 1 may also have a canopy. With this canopy, pedestrians could travel in a continuous weather-protected walkway, except when

crossing drives and roads from eastern building of Area 1 to any of the 5 Area 4 buildings on the east side of the campus.”

Manager Young said that there did not seem to be anything specific in the Condition that actually required access into the hospital proper. Because the campus areas are now identified by letters, he understands Area 4 to the east of Samaritan Drive and Area 1 to be the central portion of the campus. Commissioner Howell thought that this might be referring to an additional walkway, not to the one which exists now and which he believed had been completed previous to PDM-97-9. Manager Young said that when the Master Plan was done, staff had looked back at all the prior approvals and all of the prior conditions should be reflected in Section 10 of the Campus Master Plan. However, if the Commissioners desired to have a condition relating to ensuring that there was a public stairway to the cafeteria, they could propose that. Commissioner Howell said that was not his intention.

Commissioner Abernathy suggested that this might not be relevant to what they have been asked to talk about. He worries that at times they get “caught up in the weeds” instead of focusing on what they need to do. Chair Gervais said that if it bears on the decision, it needed to be addressed at this point.

**Vote on motion to amend:** The motion **passed**, with Commissioner Abernathy voting in opposition.

**Vote on Main Motion:** The main motion **passed** unanimously.

O. Appeal Period:

The Chair explained that the decision will be effective 12 days from when the Notice of Disposition is signed, unless an appeal is filed with the City Recorder.

III. **PUBLIC REVIEW & HEARING OF CORVALLIS CAPITAL IMPROVEMENT PROGRAM (CIP) FOR FY 2012-FY 2016:**

A. Opening and Procedures:

The Chair welcomed citizens and reviewed the public hearing procedures. Staff will present an overview followed by the applicant's presentation. There will be a staff report and public testimony, followed by rebuttal by the applicant, limited in scope to issues raised in opposition and sur-rebuttal by opponents, limited in scope to issues raised on rebuttal. The Commission may ask questions of staff, engage in deliberations and make a final decision. Any person interested in the agenda may offer relevant oral or written testimony. Please try not to repeat testimony offered by an earlier speaker. It is sufficient to say you concur with an earlier speaker without repeating their testimony. For those testifying this evening, please keep your comments brief and directed to the criteria upon which the decision is based.

Persons testifying either orally or in writing may request a continuance to address additional documents or evidence submitted in favor of the application. If this request is made, please identify the new document or evidence during your testimony. Persons testifying may also request that the record remain open seven additional days to submit additional written evidence. Requests for allowing the record to remain open should be included within a person's testimony.

B. Declarations by the Commission: Site visits, conflicts of interest or ex parte contacts

None

C. Staff Report:

Senior Planner Kelly Potter said that each year the Planning Commission is asked to evaluate the Proposed Capital Improvement Program (CIP) for consistency with the Comprehensive Plan, facility master plans, and other applicable land use policies and standards of the City of Corvallis and the State of Oregon. This evaluation focuses on new projects added to the program and also changes to projects already in the program. Although the projects are evaluated primarily for consistency with the Comprehensive Plan and facility master plans, they are also evaluated with regard to: 1) requirements of state and federal agencies; 2) impact on public safety; 3) continued maintenance of essential City services; and 4) contribution to the City's economic growth. Staff's conclusion was that the projects met at least one of those criteria. Staff recommends approval of the proposals and asks that the Planning Commission concur with the conclusion of consistency with the criteria and forward these determinations of consistency for the 2012-2016 Capital Improvement Program to the CIP Commission and the City Council.

Greg Gescher, Engineering Supervisor, said that one of his tasks is to work as liaison with the CIP Commission for developing the CIP, which is a 5-year plan identifying capital improvement expenditures throughout the community. A capital improvement is something that is generally \$10,000 or more in cost, serves to maintain existing publicly owned property and infrastructure or adds new facilities or infrastructure, and enhances livability within the community. Supervisor Gescher and Jackie Rochefort, Parks Planner, then went on to describe the eight existing projects that had new elements, along with the four newly-proposed projects.

**Existing Projects:**

City Hall Block

The only new element is the purchase of the Municipal Court Building (which is currently leased) and design/implementation of modifications to improve customer access in FY 13-14.

Municipal Buildings Rehab

The new element is replacement of the library chiller in FY 12-13.

Acquisition of Land

There is a proposed scope change in FY 12-13 to include the purchase of land in the Coronado Subdivision and in the Witham Hill area for purposes of developing parks.

Osborn Aquatic Center

Two elements have been added: In-water climbing wall (FY13-14) and pool filter upgrade (FY 15-16).

New Park Development

Two new parks have been added for development in Coronado Subdivision and Witham Hill area. Design and construction of the parks will take place over three years starting with FY 13-14.

### Park Facility Renovation

The new element is replacement of restroom doors in Avery Park and Riverfront Park, to make them more ADA-accessible, in FY 11-12.

### Existing Park Improvements

A new element in FY 11-12 is an upgrade to the Tunison Park and Community Center, part of which will be a flooring replacement.

### Special Use facilities

There are two new elements in FY 12-13, including a community garden at Willamette Park and a bike shelter at the Senior Center.

### **New Projects:**

#### City Hall Parking

This project originated as a result of a lot of input received during the process to establish Parking District C. Concerns were expressed about availability of parking. This project was added to initially investigate opportunities for resolving some of the parking issues, and to explore possibilities such as using a remote lot and providing a shuttle service.

#### Downtown Wayfinding

This is a project to improve signage in the downtown area for bicyclists, pedestrians and drivers. It is conceptual in nature at this time but the idea is to place 32 signs to improve the flow of traffic and direct people to points of interest around the community. This would be funded in large part through a potential grant from the State.

#### Pedestrian Crossings

This project includes four pedestrian crossings on 9<sup>th</sup> Street, which were identified by the Corvallis Area Metropolitan Planning Organization in its 9<sup>th</sup> Street Improvement Plan adopted by the City Council in March 2010. It also includes crossings on Walnut Boulevard at Jack London and between 13<sup>th</sup> and Garryanna Streets. The City has applied for a grant to fund this effort.

#### Sidewalk In-fill

There are nine locations and 4600 lineal feet of sidewalk in-fill proposed in places around the City where there are missing sections of sidewalks, and development may not occur or may be delayed for many years. Funding still needs to be worked out, and is shown as part of the 4<sup>th</sup> and 5<sup>th</sup> years of the plan.

Supervisor Gescher then gave a brief summary of the whole CIP. Over one-third of the project money is transportation-related, and 30% related to wastewater. Fifty-three percent of the dollars is for community preservation, 34% for infrastructure development, and 13% for community enhancement.

#### Preliminary questions of staff:

Commissioner Hann asked if the City Hall parking project scope included the area where there has been a lot of conflict between the Presbyterian Church, college and business parking concerns. Supervisor Gescher said that it would likely have some impact; it was not intended just to resolve issues for the occupants of City Hall.

Commissioner Hann then asked about the size of park being planned for the Coronado Subdivision. Planner Rochefort said they were looking at a neighborhood park which would be typically approximately five acres.

Commissioner Ridlington asked why it was not considered the property owner's responsibility to fund the various sidewalk in-fill projects. Supervisor Gescher said that the in-fill projects are in locations that, in general, are not expected to be developed soon. A couple of them are in areas that are built out with housing but, for whatever reason, did not have a sidewalk. The property owners will eventually pay for the improvements as the properties get developed.

Commissioner Howell asked what would happen if the right of way is not available for the sidewalks. Would the City be able to impose a sidewalk without reimbursement if there is no development happening at the time? Supervisor Gescher said that the first approach would be to get the cooperation of the property owner, because that cooperation would be needed to get the easement in the case of insufficient right-of-way. Commissioner Howell then asked: if a sidewalk were to be installed at curbside, would a property owner then be required to replace the sidewalk with a standard one at time of development or would the City opt to compromise the standard in favor of getting payback? Supervisor Gescher said that if there is not enough right-of-way for putting in a sidewalk and parking strip, they will approach the property owner about that. They will try to get an adequate easement for a standard sidewalk. A reimbursement request probably should not be made of a property owner if the City were to also require replacement of the curbside sidewalk with a standard sidewalk.

Commissioner Howell referred to the existing sidewalk safety program and asked if the new fee had been worked into the budget, or whether the new CIP would have to be modified to incorporate that revenue. Supervisor Gescher said the financial page related to that program still had to be updated. Commissioner Howell said that one nice thing about the existing program is that the City could work with the property owner on the shape of the sidewalk and size of concrete segments so that trees could be saved. Supervisor Gescher said that the main difference will just be the administration of the fund, and that there would still be that direct communication with property owners.

Commissioner Feldmann asked for clarification on how the Transportation Enhancement Program priorities get set. For instance, the Monroe Streetscape pre-dated the Downtown Wayfinding, and when it was denied funding it got moved back, and Downtown Wayfinding got moved up. Supervisor Gescher said that part of the problem is that some projects have a higher likelihood for being approved for funding. If a project has been denied once, like the Monroe Streetscape project, more work would need to be done to make it compete better. That is why it was pushed out to a later fiscal year. There is no way of knowing if the State will fund Downtown Wayfinding, and if they do not it also might get pushed back.

- D. Testimony in favor: None
- E. Testimony in opposition: None
- F. Neutral Testimony: None
- G. Requests for Continuance or to Hold the Record Open: None

H. Deliberations and additional questions of staff:

Commissioner Howell asked about funding trails, since the Planning Commission had recently dealt with a couple of trails relating to Evanite and Creekside proposals. At one time when the Parks System Development Charges (SDCs) were being priced out, there was discussion about the community trail network being a part of the calculation and being dealt with in a similar fashion to how the City deals with streets, wherein the developer pays for the streets serving their development then SDC's reimburse them for the extra capacity to serve the public. He was curious why the Creekside project was not going to be an SDC reimbursement, and asked whether there were some community trails or paths that get paid by SDCs while others get paid for by the developers. Ms. Rochefort said that the developer had the option of paying for building the path in lieu of their paying the SDC fee. If a trail is associated with new development and is included in the Parks and Recreation facilities plan, then it is SDC eligible.

Commissioner Hann asked if the pedestrian crosswalks across 9<sup>th</sup> Street and across Walnut Boulevard would be like the one on Circle Boulevard at Richey's, which he considers to be hazardous to the pedestrians since not all cars on all lanes can see them. Supervisor Gescher said that the new ones have been designed to have pedestrian-activated flashing lights. There is a project on the books to improve the Richey's crossing on Circle Boulevard. Commissioner Hann also expressed concern for the locations of the crossings on 9<sup>th</sup> Street and hoped that the new ones would not be in places that might impede left turn movements or block business access. Many of the businesses, such as the car wash, had expressed a concern relating to having medians. Staff said that affected property and business owners would still have an opportunity to review proposed locations and provide input.

Commissioner Abernathy asked if some of the funding comes out of the General Fund and, if so, whether these projects would be scaled back because of the funding situation. Supervisor Gescher said that over the past few years they have pretty much eliminated any projects that have a sole-source of General funds. There might be one on the books at this time. Manager Young added that the impacts of the CIP will be negligible on the General Fund itself. The City gets grants and gas tax money, and many of the utility projects get funded through the fees associated with those services. There were many that were funded with stimulus monies. Only the first year of the five-year CIP has City Council authorization for the expenditures; the out years serve as a planning tool and are re-analyzed each year. If there were an economic situation that required use of some of the CIP funds, City Council could authorize a change in use of those funds.

**MOTION:** Commissioner Feldmann moved that the Planning Commission:

1. Concur with the conclusion of consistency with the criteria; and
2. Forward these determinations of consistency for the 2012-2016 Capital Improvement Program to the Capital Improvement Program Commission and the City Council.

Commissioner Howell **seconded** the motion.

Commissioner Hann commended Planner Rochefort and Parks and Recreation for taking advantage of the opportunity for purchasing and developing a park in the Coronado subdivision. His recollection was that there was a piece of property that was a leftover and not part of the development that somehow connected in with the Maxine Avenue property, and he hopes that it is being wrapped up into this proposal. There is a real need for a park

in this area, especially with connectivity to the Habitat for Humanity development. Commissioner Howell commended staff on the new design for pedestrian crossings similar to the one on S. 3<sup>rd</sup> Street. They seem to work well and do not seem to unnecessarily slow traffic.

The motion **passed** unanimously.

I. Appeal Period:

Any participant not satisfied with this decision may raise these issues again with the City Council when they hold their hearing regarding the adoption of this action.

IV. MINUTES: None for review

V. OLD BUSINESS: None

VI. NEW BUSINESS:

- A. Commissioner Hann expressed a concern about the poor condition of street markings on some streets, such as striping for turn lanes and turn arrows etc. and wondered if this was due to inadequate funding for street maintenance. Manager Young said that Commissioner Hann should forward any specific concerns to him, and he would pass them along to the appropriate staff person.
- B. Commissioner Abernathy said he was having a hard time meeting his commitment of attending the Housing and Community Development Commission meetings at noon on Wednesdays because he works on the coast. Manager Young said he will send around an e-mail communicating the fact that Commissioner Abernathy might need to be reassigned and ask for a volunteer to fill the role. Manager Young will include in that communication a brief summary of everyone's committee assignments.
- C. Chair Gervais said that the meetings seem to be starting later and later, and wanted to put everyone on notice that she will be starting the meetings on time, and she will not be waiting for those who are late. If someone has to show up late, they should expect that the meeting will have started.
- D. Commissioner Abernathy apologized for being late. He again expressed his sentiment that he hoped Commissioners would not get so hung up on certain elements of land use proposals that might not apply to the decision at hand.
- E. Commissioner Hann said he had heard that the Sunnybrook Dairy property had been sold and wondered if there were any plans coming before the Planning Commission in this regard. Manager Young said he had seen a lot line adjustment for this property but was not sure that any land development applications would be coming before the Planning Commission.
- F. Manager Young said that at the next meeting the Planning Commission would be discussing the FEMA amendments, and the packet would be hefty. It would be important for the Commissioners to block out some time to review it. Planner Potter suggested that although the packet is thick, there will be a guide on the front of the packet that will indicate the important aspects for the Commissioners to focus on. Commissioner Howell asked if there would have to be a decision as to what level of implementation to adopt which would

thereby earn a greater discount for homeowners, weighing that against other values. Planner Potter said that we already know where we stand on our community rating system numbers. We know we have to comply with minimum standards; if local or state regulations are stricter we will stick with them, but we will not be creating any more strict standards just for the sake of being stricter.

**VII. ADJOURNMENT:** The meeting was adjourned at 9:50 p.m.

**MEMORANDUM**

**To:** City Council Members

**From:** Julie Jones Manning, Mayor



**Date:** March 1, 2011

**Subject:** Vacancy on Community Police Review Board

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Ryan Lambert has resigned from the Community Police Review Board; he is moving to Spokane, Washington. Ryan's term on the Board expires June 30, 2012.

I would appreciate your nominations of citizens to fill this vacancy.

1017

## Memorandum

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To: Mayor and City Council

From: Ken Gibb, Community Development Director 

Date: March 1, 2011

Subject: Scheduling a Public Hearing for Brooklane Heights Conceptual and Detailed Development Plan and Tentative Subdivision Plat (PLD06-00018, SUB06-00006)

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### Issue

Schedule a hearing to decide if the applicant's proposed storm water facility plans and associated grading plans comply with applicable conditions of approval and comprehensive plan policies as directed on remand from the Oregon Land Use Board of Appeals (LUBA).

### Background

The referenced land use application has received conditional approval by the City Council (Order Numbers 2007-111, 2009-007, and 2010-007). Each of the Council decisions to approve the application were appealed to LUBA. The first and second decisions were remanded by LUBA to the City Council. The third decision, which modified conditions of approval to respond to the LUBA remand of Order #2009-007, was affirmed by LUBA.

Conditions of Approval 20 and 27 were modified in Order #2010-007 to require the applicant to submit materials that would be reviewed through a public hearing process for compliance with applicable City standards and Comprehensive Plan policies 4.11.12 and 4.6.7. Condition 20 addresses public stormwater facility design and maintenance, and Condition 27 addresses grading.

The applicant has submitted stormwater facility plans and associated grading plans responding to Conditions 20 and 27, and has requested review through the public hearing process as required by these Conditions

### Requested Action

The Council is asked to schedule a public hearing on March 21, 2011, at 7:30 PM to consider the materials submitted by the applicant with respect to this matter.



## MEMORANDUM

**DATE:** March 1, 2011

**TO:** Mayor and City Council

**FROM:** Ken Gibb, Community Development Director 

**SUBJECT:** Scheduling a Public Hearing for a Legislative Land Development Code Text Amendment (LDT10-00001) to address new federal Emergency Management Agency (FEMA) floodplain maps and regulations.

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At its January 3, 2011, meeting, the City Council initiated the subject legislative Land Development Code Text Amendment (LDT10-00001) to revise the Land Development Code to address new federal Emergency Management Agency (FEMA) floodplain maps and regulations.

The Corvallis Planning Commission conducted a public hearing concerning the subject legislative Land Development Code Text Amendment (LDT10-00001) on February 2, 2011. The Planning Commission held the written record open until February 9, 2011, and conducted deliberations concerning this matter on February 16, 2011. The Commission found that the proposed request should be forwarded to the City Council with a recommendation of approval. The Planning Commission adopted the findings contained in the January 21, 2011, staff report and the Planning Commission findings in support of the Text Amendment, as expressed during its February 16, 2011, deliberations.

A City Council public hearing needs to be scheduled for this legislative Land Development Code Text Amendment (LDT10-00001) to revise the Land Development Code to address new federal Emergency Management Agency (FEMA) floodplain maps and regulations. It is recommended that this hearing be held during the Council's evening meeting of **April 4, 2011**.

In order to continue to participate in the National Flood Insurance Program (NFIP), the City of Corvallis must implement the new FIRM maps and adopt updated land use regulations by June 2, 2011, to fully address the NFIP regulations. Failure to accomplish these tasks by June 2, 2011, will result in the City's suspension from the National Flood Insurance Program. If the Council holds its public hearing on April 4, 2011, staff has developed a project schedule for this legislative Land Development Code Text Amendment (LDT10-00001) that will meet the June 2, 2011, deadline.

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# Corvallis City Council

February 21, 2011

## 2011- 2012 Goals

- ❖ By 12/11, the Council will hear and provide direction on recommendations to strengthen access to and availability of locally produced food and community gardens via policy, ordinance and LDC changes.
  - ◆ By 12/12, the Council will have enacted the necessary code and policy changes to support those recommendations.
- ❖ By 12/11, the Council will take action on recommendations by the Economic Development Commission concerning strategic priorities and funding sources for economic development initiatives.
- ❖ Working with the OSU President and his staff, by 12/11, the Council will create a plan to seize opportunities on parking, code enforcement, infill design, rental code, traffic design and other important issues.
- ❖ The Council will create a financially sustainable city budget.
  - ◆ Amend compensation policies to align total employee compensation with city revenue.
  - ◆ Develop new sources of revenue that align with expenditures.

\* \* \* MEMORANDUM \* \* \*

FEBRUARY 23, 2011

**TO:** MAYOR AND CITY COUNCIL  
**FROM:** JON S. NELSON, CITY MANAGER   
**SUBJECT:** FEBRUARY 23, 2011, CITY LEGISLATIVE COMMITTEE WORKING NOTES

1. Call to Order

The meeting was called to order by Mayor Manning at 7:30 am, with Councilors Brauner, Brown, and O'Brien in attendance. Also present were Community Development Director Gibb, Planning Division Manager Young, and City Manager Nelson.

2. Community Development Bills of Interest

Director Gibb and Manager Young reviewed the relevant bills being followed by City and League of Oregon Cities (LOC) staff concerning community development.

House Bill 2181 – The bill requires the award of attorney fees at Land Use Board of Appeals (LUBA) and Court of Appeals to the prevailing party. This bill is opposed by the LOC (letter attached). The Committee unanimously recommends the City Council support the LOC position and oppose the bill.

The following bills and issues will be monitored by staff and the Committee for potential recommendation to City Council for action:

House Bill 2610 – To be eligible to appeal a land use decision to LUBA on needed housing, industrial development, or aggregate resources issues, the appellant must own, lease, or rent property within 1,000 feet or show adverse impact of greater than \$5,000.

House Bill 2182 – Appellants not adjacent to or subject to the land use decision being appealed to LUBA must post a deposit for attorney fees and costs of expert witnesses.

House Bill 2352 – This bill requires that reductions in industrial lands be replaced or mitigated by local government if land use decisions affect the property. This

basically maintains industrial lands in perpetuity while not recognizing the Urban Growth Boundary and industrial lands inventories, plus the cost to comply.

House Bill 2609 – This bill requires five-year shovel-ready status for housing and industrial lands without consideration of the money necessary to provide shovel-ready status for privately owned property.

Transportation Planning Rule – Current interpretations of the Transportation Planning Rule provide obstacles to annexations in Corvallis. Principal Corvallis concerns have been making proportionality of investment for the State highway system required by the developer consistent with the impact and exempting additional required State highway investments if zone designations are consistent with the Comprehensive Plan. Local governments are concerned that the State is diverting highway funding needs to local governments and developers. An example was given where a Corvallis annexation request was withdrawn based upon a \$100,000 State highway cost for seven additional trips through an intersection already at capacity.

3. Other

- a. Mayor Manning acknowledged Councilor Hervey's email containing issues of interest, and they will be brought back for City Legislative Committee consideration.
- b. Committee members were also briefed on Community Development Block Grant funding discussions underway in Washington, DC.

4. Next Meeting

The next meeting is scheduled for 7:30 am on Wednesday, March 9, 2011, in the Cornell Meeting Room.

6. Adjournment

The meeting adjourned at 8:45 am.



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February 15, 2011

VIA HAND DELIVERY

Jeff Barker, Co-Chair  
Wayne Krieger, Co-Chair  
Judiciary Committee  
Oregon House of Representatives  
900 Court Street NE  
Salem, Oregon 97301

Re: House Bill 2181

Dear Committee Chairs and Representatives:

The League of Oregon Cities is a voluntary association whose members include all of Oregon's 242 cities. Thank you for the opportunity to provide comment on House Bill 2181, which would modify the attorney fee provisions in statutes governing cases before the Land Use Board of Appeals and subsequent reviews by the Court of Appeals. Specifically, House Bill 2181 would require both reviewing bodies to award attorney fees to the prevailing party if that party was an applicant before the local government whose land use decision is being appealed. The League would like to express its concern that the legislation, if approved, would place an unnecessary financial burden on local governments throughout Oregon.

Under current law, the standard for awarding attorney fees in an action before the Land Use Board of Appeals is very stringent. ORS 197.830(15)(b) authorizes the Land Use Board of Appeals to grant attorney fees only against any party who "presented a position without probable cause to believe the position was well-founded in law or on factually supported information." These are very limited circumstances under which any party, including a local government, may be awarded attorney fees. Conversely, House Bill 2181 would remove the standard of frivolousness currently imposed and provide automatic attorney fees to an applicant who prevails before the Land Use Board of Appeals even if a local government's position is legally well founded and factually supported. The result of such a standard will be that unless the law and facts are absolutely clear in a given case, local governments will

*"Getting it done for Oregon's cities!"*

have no choice but to approve every application regardless of policy or community concerns. In times of tight budgets, local governments will not be able to risk the possibility of attorney fees and will be required to approve any application that is considered a close call. Further, regardless of how frivolous an applicant's appeal might be, a local government will be precluded from being awarded attorney fees. For similar reasons, a local government will be reluctant to appeal a decision to the Court of Appeals.

In summary, the League of Oregon Cities believes that House Bill 2181 will simply add to the costs associated with implementing Oregon's land use laws without providing for better land use decisions. For these reasons, the League respectfully opposes House Bill 2181. Thank you for your consideration and the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad A. Jacobs". The signature is written in a cursive style with a large initial "C".

Chad A. Jacobs  
General Counsel  
League of Oregon Cities

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 1944

House Bill 2181

Sponsored by Representative KRIEGER; Representatives ESQUIVEL, SCHAUFLER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Modifies attorney fees provision related to review of decision of local government before Land Use Board of Appeals. Directs board to award attorney fees and expenses to prevailing party if prevailing party was applicant before local government.

Directs appellate courts to award attorney fees and expenses to prevailing party on review of decision of Land Use Board of Appeals if prevailing party was applicant before local government.

A BILL FOR AN ACT

Relating to land use appeals; creating new provisions; and amending ORS 197.830 and 197.850.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.830 is amended to read:

197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620 (1) and (2), a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required;

or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided mailed notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the mailed notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required;

or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(6) (a) Except as provided in paragraph (b) of this subsection, the appeal periods described in subsections (3), (4) and (5) of this section shall not exceed three years after the date of the decision.

(b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided, the provisions of paragraph (a) of this subsection do not apply.

(7) (a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of \$100.

(b) Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

(10)(a) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) The petition shall include a copy of the decision sought to be reviewed and shall state:

- (a) The facts that establish that the petitioner has standing.
- (b) The date of the decision.
- (c) The issues the petitioner seeks to have reviewed.

(13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a

local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent shall not be required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(14) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(15) { - (a) - } Upon entry of its final order the board { + :

(a) + } May, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review. The deposit required by subsection (9) of this section shall be applied to any costs charged against the petitioner.

(b) { - The board shall also - } { + Shall + } award reasonable attorney fees and expenses to the prevailing party { - against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information - } { + if the prevailing party was the applicant before the local government + }.

(16) Orders issued under this section may be enforced in appropriate judicial proceedings.

(17) (a) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

SECTION 2. ORS 197.850 is amended to read:

197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued under ORS 197.830 to 197.845 is solely as provided in this section.

(3) (a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days following the date the board delivered or mailed the order upon which the petition is based.

(b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a petition on all persons identified in the petition as adverse parties of record in the board proceeding is jurisdictional and may not be waived or extended.

(4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the petition must be served by first class, registered or certified mail on the board and all other parties of record in the board proceeding.

(5) Within seven days after service of the petition, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. The court may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the court may not tax the cost of the record to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for judicial review.

(6) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(7) (a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

(b) The court may hear oral argument more than 49 days from the date of transmittal of the record provided the court determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. The court shall not hold oral argument more than 49 days from the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

(c) The court shall set forth in writing a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for its determination, and shall provide a copy to the parties. The court shall schedule oral argument as soon as practicable thereafter.

(d) In making a determination under paragraph (b) of this subsection, the court shall consider:

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the court to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(8) Judicial review of an order issued under ORS 197.830 to 197.845 shall be confined to the record. The court shall not substitute its judgment for that of the board as to any issue of fact.

(9) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure is not cause for reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.835

(2).

(10) The Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency.

(11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the board shall respond to the court's appellate judgment within 30 days.

(12) A party must file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

(a) The party appealed a decision of the board to the Court of Appeals; and

(b) In making the decision being appealed to the Court of Appeals, the board awarded attorney fees and expenses against that party under ORS 197.830 (15)(b).

(13) Upon entry of its final order, the court shall award attorney fees and expenses to { + :

(a) + } A party who prevails on a claim that an approval condition imposed by a local government on an application for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article I, Oregon Constitution, or the Fifth Amendment to the United States Constitution.

{ + (b) The prevailing party if the prevailing party was the applicant before the local government. + }

(14) The undertaking required in subsection (12) of this section must be filed with the board and served on the opposing parties within 10 days after the date the petition was filed with the Court of Appeals.

SECTION 3. { + The amendments to ORS 197.830 and 197.850 by sections 1 and 2 of this 2011 Act apply to notices of intent to appeal filed with the Land Use Board of Appeals under ORS 197.830 (1) on or after the effective date of this 2011 Act. + }

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76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 1941

House Bill 2610

Sponsored by Representative SCHAUFLER (at the request of Oregon Home Builders Association) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Modifies basis for petitioning Land Use Board of Appeals for review of land use decisions or limited land use decisions involving needed housing or industrial development within urban growth boundary or aggregate resources.

Authorizes discretionary award of attorney fees.

A BILL FOR AN ACT

Relating to land use appeals; creating new provisions; and amending ORS 196.115, 197.625, 197.796, 197.830, 197.832, 197.835, 197.840, 197.845, 197.850, 215.412, 215.416, 227.170 and 227.175.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.830 is amended to read:

197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620 { - (1) and (2) - }, a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

{ + (3) Except as provided in ORS 197.620, in addition to the requirements of subsection (2) of this section, for review of a land use decision or limited land use decision involving needed housing or industrial development within an urban growth boundary or involving aggregate resources, a person may petition the board for review of the land use decision or limited land use decision if the person:

(a) Owns, leases or rents property within 1,000 feet of the use or real property that is the subject of the land use decision or limited land use decision; or

(b) Factually substantiates that the person's property will be adversely economically affected in excess of \$5,000.

(4) Subsection (3) of this section does not apply to local governments, special districts or state agencies. + }

{ - (3) - } { + (5) + } If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

{ - (4) - } { + (6) + } If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided mailed notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the mailed notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

{ - (5) - } { + (7) + } If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

{ - (6)(a) - } { + (8)(a) + } Except as provided in paragraph (b) of this subsection, the appeal periods described in subsections { - (3), (4) and - } (5) { + , (6) and (7) + } of this section shall not exceed three years after the date of the decision.

(b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided, the provisions of paragraph (a) of this subsection do not apply.

{ - (7)(a) - } { + (9)(a) + } Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of \$100.

(b) Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

{ - (8) - } { + (10) + } If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

{ - (9) - } { + (11) + } A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections { - (10) and (11) - } { + (12) and (13) + } of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

{ - (10)(a) - } { + (12)(a) + } Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record { + . + } { - ; - } However, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion. { + Unless the board determines that the interests of justice require otherwise, a correction to the record may not extend the time for filing a petitioner's brief or the board's deadline for decision in subsection (14) of this section for more than 60 days. + }

(b) Within 10 days after service of a notice of intent to

appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

{ - (11) - } { + (13) + } A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection { - (13) - } { + (15) + } of this section.

{ - (12) - } { + (14) + } The petition shall include a copy of the decision sought to be reviewed and shall state:

- (a) The facts that establish that the petitioner has standing.
- (b) The date of the decision.
- (c) The issues the petitioner seeks to have reviewed.

{ - (13)(a) - } { + (15)(a) + } The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent shall not be required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

{ - (14) - } { + (16) + } The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

{ - (15)(a) - } { + (17) + } Upon entry of its final order the board { + :

(a) + } May, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review. The deposit required by subsection { - (9) - } { + (11) + } of this section shall be applied to any costs charged against the petitioner.

{ + (b) May, in its discretion, award reasonable attorney fees and costs incurred by the prevailing party. + }

{ - (b) - } { + (c) + } { - The board shall also - }  
 { + Shall + } award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

{ - (16) - } { + (18) + } Orders issued under this section may be enforced in appropriate judicial proceedings.

{ - (17)(a) - } { + (19)(a) + } The board shall provide for

the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

{ - (18) - } { + (20) + } Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

SECTION 2. ORS 215.412 is amended to read:

215.412. (1) The governing body of a county { + , + } by ordinance or order { + , + } shall adopt one or more procedures for the conduct of hearings { + on permits and zone changes + }.

(2) The governing body of a county { + , + } by ordinance or order { + , + } shall adopt rules stating that all decisions made by the governing body will be based on factual information, including { - adopted - } { + acknowledged + } comprehensive plans and land use regulations.

SECTION 3. ORS 227.170 is amended to read:

227.170. (1) The city council shall prescribe one or more procedures for the conduct of hearings on permits and zone changes.

(2) The city council shall prescribe one or more rules stating that all decisions made by the council on permits and zone changes will be based on factual information, including { - adopted - } { + acknowledged + } comprehensive plans and land use regulations.

SECTION 4. ORS 196.115 is amended to read:

196.115. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission { - shall be - } { + are + } subject to review solely as provided in this section, except as otherwise provided by the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(2) (a) A final action or order by the commission in a review or appeal of any action of the commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, or a final action or order by the commission in a review or appeal of any action of a county pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided in subsections (3) and (4) of this section and ORS 183.482.

(b) On a petition for judicial review under paragraph (a) of this subsection the Court of Appeals also shall review the action of the county that is the subject of the commission's order, if requested in the petition.

(c) The Court of Appeals shall issue a final order on review under this subsection within the time limits provided by ORS 197.855.

(d) In lieu of judicial review under paragraphs (a) and (b) of this subsection, a county action may be appealed to the Land Use Board of Appeals under ORS 197.805 to 197.855. A notice of intent to appeal the county's action shall be filed not later than 21 days after the commission's order on the county action becomes final.

(e) Notwithstanding ORS 197.835, the scope of review in an appeal pursuant to paragraph (d) of this subsection shall not include any issue relating to interpretation or implementation of

the Columbia River Gorge National Scenic Area Act, P.L. 99-663, and any issue related to such interpretation or implementation shall be waived by the filing of an appeal under paragraph (d) of this subsection.

(f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Land Use Board of Appeals shall not review land use decisions within the general management area or special management area for compliance with the statewide planning goals. The limitation of this paragraph shall not apply if the Land Conservation and Development Commission decertifies the management plan pursuant to ORS 196.107.

(3)(a) If a petition for judicial review of a commission order is filed pursuant to subsection (2)(a) of this section, the procedures to be followed by the parties, the commission and the court, and the court's review, shall be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490 and 183.497, except as this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, otherwise provides.

(b) Notwithstanding any provision of ORS 183.482:

(A) The commission shall transmit the original record or the certified copy of the entire record within 21 days after service of a petition for judicial review is served on the commission; and

(B) The parties shall file briefs with the court within the times allowed by rules of the court.

(c) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a

provision of law and that a correct interpretation compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(d) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position or a prior agency practice, unless the inconsistency is explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(e) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the whole record.

(f) Notwithstanding any other provision of this section, in any case where review of a county action as well as a commission order is sought pursuant to subsection (2)(a) and (b) of this section, the court shall accept any findings of fact by the commission which the court finds to be supported by substantial evidence in the whole record, and such findings by the commission shall prevail over any findings by the county concerning the same or substantially the same facts.

(4)(a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this section, the procedures to be followed by the parties, the county and the court, and the court's review, shall be in

accordance with those provisions governing review of county land use decisions by the Land Use Board of Appeals set forth in ORS 197.830 (2) to { - (8), (10), (15) and (16) - } { + (10), (12), (17) and (18) + } and 197.835 (2) to (10), (12) and (13). As used in this section, 'board' as used in the enumerated provisions shall mean 'court' and the term 'notice of intent to appeal' in ORS 197.830 { - (10) - } { + (12) + } shall refer to the petition described in subsection (2) of this section.

(b) In addition to the other requirements of service under this section, the petitioner shall serve the petition upon the persons and bodies described in ORS 197.830 { - (9) - } { + (11) + }, as a prerequisite to judicial review of the county action.

(c) In accordance with subsection (3)(b)(B) of this section, a party to a review of both a commission order and a county action shall file only one brief with the court, which shall address both the commission order and the county action.

(d) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. Subject to subsection (3)(f) of this section, the court shall be bound by any finding of fact of the county for which there is substantial evidence in the whole record. The court may appoint a master and follow the procedures of ORS 183.482 (7) in connection with matters that the board may take evidence for under ORS 197.835 (2).

(5) Approval of county land use ordinances by the commission pursuant to section 7 of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, may be reviewed by the Court of Appeals as provided in ORS 183.482.

(6) Notwithstanding ORS 183.484, any proceeding filed in circuit court by or against the commission shall be filed with the circuit court for the county in which the commission has a principal business office or in which the land involved in the proceeding is located.

SECTION 5. ORS 197.625 is amended to read:

197.625. (1) If a notice of intent to appeal is not filed within the 21-day period set out in ORS 197.830 { - (9) - } { + (11) + }, the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An amendment to an acknowledged comprehensive plan or land use regulation is not considered acknowledged unless the notices required under ORS 197.610 and 197.615 have been submitted to the Director of the Department of Land Conservation and Development and:

(a) The 21-day appeal period has expired; or

(b) If an appeal is timely filed, the { + Land Use + } Board { + of Appeals + } affirms the decision or the appellate courts affirm the decision.

(2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the amendment or new regulation shall be considered acknowledged upon the date the appellate decision becomes final.

(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions, expedited land divisions and limited land use decisions if the amendment was adopted in substantial compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.

(b) Any approval of a land use decision, expedited land division or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with { - those - } { + the statewide + } land use goals applicable to the amendment.

(c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land use regulation shall not be relied upon to justify retention of improvements so permitted if the comprehensive plan provision or land use regulation does not gain acknowledgment.

{ - (d) The provisions of this subsection apply to applications for land use decisions, expedited land divisions and limited land use decisions submitted after February 17, 1993, and to comprehensive plan and land use regulation amendments adopted: - }

{ - (A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and 197.636; - }

{ - (B) After June 1, 1991, to meet the requirements of ORS 197.646; and - }

{ - (C) After November 4, 1993. - }

(4) The director shall issue certification of the acknowledgment upon receipt of an affidavit from the board stating either:

(a) That no appeal was filed within the 21 days allowed under ORS 197.830 { - (9) - } { + (11) + }; or

(b) The date the appellate decision affirming the adoption of the amendment or new regulation became final.

(5) The board shall issue an affidavit for the purposes of subsection (4) of this section within five days of receiving a valid request from the local government.

(6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent the Land Conservation and Development Commission from entering an order pursuant to ORS 197.633, 197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628.

SECTION 6. ORS 197.796 is amended to read:

197.796. (1) An applicant for a land use decision, limited land use decision or expedited land division or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance by an applicant for a land use decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condition may include but is not limited to paying a fee, performing an act or providing satisfactory evidence of arrangements to pay the fee or to ensure compliance with the condition.

(2) Any action for damages under this section shall be filed in the circuit court of the county in which the application was submitted within 180 days of the date of the decision.

(3) (a) A challenge filed pursuant to this section may not be dismissed on the basis that the applicant did not request a variance to the condition of approval or any other available form of reconsideration of the challenged condition. However, an applicant shall comply with ORS 197.763 (1) prior to appealing to the Land Use Board of Appeals or bringing an action for damages in circuit court and must exhaust all local appeals provided in

the local comprehensive plan and land use regulations before proceeding under this section.

(b) In addition to the requirements of ORS 197.763 (5), at the commencement of the initial public hearing, a statement shall be made to the applicant that the failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.

(c) An applicant is not required to raise an issue under this subsection unless the condition of approval is stated with sufficient specificity to enable the applicant to respond to the condition prior to the close of the final local hearing.

(4) In any challenge to a condition of approval that is subject to the Takings Clause of the Fifth Amendment to the United States Constitution, the local government shall have the burden of demonstrating compliance with the constitutional requirements for imposing the condition.

(5) In a proceeding in circuit court under this section, the court shall award costs and reasonable attorney fees to a prevailing party. Notwithstanding ORS 197.830 { - (15) - } { + (17) + }, in a proceeding before the Land Use Board of Appeals under this section, the board shall award costs and reasonable attorney fees to a prevailing party.

(6) This section applies to appeals by the applicant of a condition of approval and claims filed in state court seeking damages for the unlawful imposition of conditions of approval in a land use decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178.

SECTION 7. ORS 197.832 is amended to read:

197.832. The Board Publications Account is established in the General Fund. All moneys in the account are appropriated continuously to the Land Use Board of Appeals to be used for paying expenses incurred by the board under ORS 197.830 { - (17) - } { + (19) + }. Disbursements of moneys from the account shall be approved by a member of the board.

SECTION 8. ORS 197.835 is amended to read:

197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land use decision and prepare a final order affirming, reversing or remanding the land use decision or limited land use decision. The board shall adopt rules defining the circumstances in which it will reverse rather than remand a land use decision or limited land use decision that is not affirmed.

(2) (a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

(b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte contacts, actions described in subsection (10) (a) (B) of this section or other procedural irregularities not shown in the record that, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the local government, special district or state agency for which there is substantial evidence in the whole record.

(3) Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable.

(4) A petitioner may raise new issues to the board if:

(a) The local government failed to list the applicable criteria

for a decision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government; or

(b) The local government made a land use decision or limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final action.

(5) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals. The board shall reverse or remand a land use decision or limited land use decision subject to an acknowledged comprehensive plan or land use regulation if the decision does not comply with the goals and the Land Conservation and Development Commission has issued an order under ORS 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to apply the goals to the type of decision being challenged.

(6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment is not in compliance with the goals.

(7) The board shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:

(a) The regulation is not in compliance with the comprehensive plan; or

(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.

(8) The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations.

(9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse or remand the land use decision under review if the board finds:

(a) The local government or special district:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made an unconstitutional decision; or

(b) The state agency made a decision that violated the goals.

(10)(a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or

(B) That the local government's action was for the purpose of avoiding the requirements of ORS 215.427 or 227.178.

(b) If the board does reverse the decision and orders the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 { - (14) - } { + (16) + }, the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

(b) Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.

(12) The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, only if the member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever is applicable.

(13) Subsection (12) of this section does not apply to reverse or remand of a land use decision due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

(14) The board shall reverse or remand a land use decision or limited land use decision { - which - } { + that + } violates a commission order issued under ORS 197.328.

(15) In cases in which a local government provides a quasi-judicial land use hearing on a limited land use decision, the requirements of subsections (12) and (13) of this section apply.

(16) The board may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper.

{ + (17) If the board remands a land use decision, the board shall specifically address and decide each issue raised in the appeal that, if standing alone, would have resulted in the remand. The board shall identify the specific deficiencies in each issue. + }

SECTION 9. ORS 197.840 is amended to read:

197.840. (1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830 { - (14) - } { + (16) + }:

(a) Any period of delay up to 120 days resulting from the board's deferring all or part of its consideration of a petition for review of a land use decision or limited land use decision that allegedly violates the goals if the decision has been:

(A) Submitted for acknowledgment under ORS 197.251; or

(B) Submitted to the Department of Land Conservation and Development as part of a periodic review work program task pursuant to ORS 197.628 to 197.650 and not yet acknowledged.

(b) Any period of delay resulting from a motion, including but not limited to, a motion disputing the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record.

(c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

(d) Any reasonable period of delay resulting from a continuance granted by a member of the board on the member's own motion or at the request of one of the parties, if the member granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.

(2) { - No - } { + A + } period of delay resulting from a continuance granted by the board under subsection (1)(d) of this section

{ - shall - } { + is not + } be excludable under this section unless the board sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 77 days. The factors the board shall consider in determining whether to grant a continuance under subsection (1)(d) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 77-day time limit.

(3) { - No - } { + A + } continuance under subsection (1)(d) of this section { - shall - } { + may not + } be granted because of general congestion of the board calendar or lack of diligent preparation or attention to the case by any member of the board or any party.

(4) The board may defer all or part of its consideration of a land use decision or limited land use decision described in subsection (1)(a) of this section until the Land Conservation and Development Commission has disposed of the acknowledgment proceeding described in subsection (1)(a) of this section. If the board deferred all or part of its consideration of a decision under this subsection, the board may grant a stay of the comprehensive plan provision, land use regulation, limited land use decision or land use decision under ORS 197.845.

SECTION 10. ORS 197.845 is amended to read:

197.845. (1) Upon application of the petitioner, the { + Land Use + } Board { + of Appeals + } may grant a stay of a land use decision or limited land use decision under review if the petitioner demonstrates:

(a) A colorable claim of error in the land use decision or limited land use decision under review; and

(b) That the petitioner will suffer irreparable injury if the stay is not granted.

(2) If the board grants a stay of a quasi-judicial land use decision or limited land use decision approving a specific development of land, it shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000. The undertaking shall be in addition to the filing fee and deposit for costs required under ORS 197.830 { - (9) - } { + (11) + }. The board may impose other reasonable conditions such as requiring the petitioner to file all documents necessary to bring the matter to issue within specified reasonable periods of time.

(3) If the board affirms a quasi-judicial land use decision or

limited land use decision for which a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable attorney fees and actual damages resulting from the stay to the person who requested the land use decision or limited land use decision from the local government, special district or

state agency, against the person requesting the stay in an amount not to exceed the amount of the undertaking.

(4) The board shall limit the effect of a stay of a legislative land use decision to the geographic area or to particular provisions of the legislative decision for which the petitioner has demonstrated a colorable claim of error and irreparable injury under subsection (1) of this section. The board may impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or other undertaking or a requirement that the petitioner file all documents necessary to bring the matter to issue within a specified reasonable time period.

SECTION 11. ORS 197.850 is amended to read:

197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued under ORS 197.830 to 197.845 is solely as provided in this section.

(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days following the date the board delivered or mailed the order upon which the petition is based.

(b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a petition on all persons identified in the petition as adverse parties of record in the board proceeding is jurisdictional and may not be waived or extended.

(4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the petition must be served by first class, registered or certified mail on the board and all other parties of record in the board proceeding.

(5) Within seven days after service of the petition, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. The court may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the court may not tax the cost of the record to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for judicial review.

(6) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(7)(a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

(b) The court may hear oral argument more than 49 days from the date of transmittal of the record provided the court determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the



SECTION 12. ORS 215.416 is amended to read:

215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Oregon Department of Aviation as a 'public use airport' if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning authority; and

(b) The property subject to the land use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a 'visual airport'; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an 'instrument airport.'

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway 'approach surface' as defined by the Oregon Department of Aviation.

(8) (a) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(b) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective

standards, the standards must be clear and objective on the face of the ordinance.

(9) Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

(11)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or

community organizations recognized by the governing body and whose boundaries include the site.

(c) (A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(12) A decision described in ORS 215.402 (4) (b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830

{ - (5) (b) - } { + (7) (b) + }.

(13) At the option of the applicant, the local government shall provide notice of the decision described in ORS 215.402 (4) (b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(14) Notwithstanding the requirements of this section, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828.

SECTION 13. ORS 227.175 is amended to read:

227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved unless the proposed

development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a 'public use airport' if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a 'visual airport'; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an 'instrument airport.'

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway 'approach surface' as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10) (a) (A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3) (a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision

directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c) (A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830

{ - (5)(b) - } { + (7)(b) + }.

(12) At the option of the applicant, the local government shall

provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828.

SECTION 14. { + The amendments to ORS 196.115, 197.625, 197.796, 197.830, 197.832, 197.835, 197.840, 197.845, 197.850, 215.412, 215.416, 227.170 and 227.175 by sections 1 to 13 of this 2011 Act apply to notices of intent to appeal filed with the Land Use Board of Appeals under ORS 197.830 (1) on or after the effective date of this 2011 Act. + }

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76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 1938

House Bill 2182

Sponsored by Representative KRIEGER; Representatives ESQUIVEL, SCHAUFLEER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Modifies basis for petitioning Land Use Board of Appeals for review of land use decisions or limited land use decisions. Requires person that does not own real property adjacent to use or to real property that is subject of land use decision or limited land use decision to post deposit to cover attorney fees and costs of expert witnesses required by applicant to establish that use or change to real property meets applicable standards.

A BILL FOR AN ACT

Relating to land use appeals; creating new provisions; and amending ORS 196.115, 197.625, 197.796, 197.830, 197.832, 197.835, 197.840, 197.845, 197.850, 215.416 and 227.175.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.830 is amended to read:

197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620 { - (1) and (2) - }, a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

{ + (3) Except as provided in ORS 197.620, in addition to the requirements of subsection (2) of this section, if a person does not own, or have an ownership interest in, real property that is adjacent to a use or to real property that is a subject of the land use decision or limited land use decision to be reviewed by the board, the person may petition for review of the decision only after making a deposit with the board, as determined by rule of the board, to cover the cost of expert witnesses and attorney fees required by the applicant to establish that the use or the

change to the real property meets the applicable standards.

(4) Subsection (3) of this section does not apply to local governments, special districts, state agencies or the applicant before the local government. + }

{ - (3) - } { + (5) + } If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required;  
or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

{ - (4) - } { + (6) + } If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided mailed notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the mailed notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

{ - (5) - } { + (7) + } If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required;  
or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

{ - (6)(a) - } { + (8)(a) + } Except as provided in paragraph (b) of this subsection, the appeal periods described in subsections { - (3), (4) and - } (5) { + , (6) and (7) + } of this section shall not exceed three years after the date of the decision.

(b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided, the provisions of paragraph (a) of this subsection do not apply.

{ - (7) (a) - } { + (9) (a) + } Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of \$100.

(b) Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

{ - (8) - } { + (10) + } If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

{ - (9) - } { + (11) + } A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections { - (10) and (11) - } { + (12) and (13) + } of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

{ - (10) (a) - } { + (12) (a) + } Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record { + . + } { - ; - } However, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied

by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

{ - (11) - } { + (13) + } A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection { - (13) - } { + (15) + } of this section.

{ - (12) - } { + (14) + } The petition shall include a copy of the decision sought to be reviewed and shall state:

- (a) The facts that establish that the petitioner has standing.
- (b) The date of the decision.
- (c) The issues the petitioner seeks to have reviewed.

{ - (13)(a) - } { + (15)(a) + } The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent shall not be required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

{ - (14) - } { + (16) + } The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

{ - (15)(a) - } { + (17)(a) + } Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review. The deposit required by subsection

{ - (9) - } { + (11) + } of this section shall be applied to any costs charged against the petitioner.

(b) The board shall also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

{ - (16) - } { + (18) + } Orders issued under this section may be enforced in appropriate judicial proceedings.

{ - (17)(a) - } { + (19)(a) + } The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

{ - (18) - } { + (20) + } Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid

over to the State Treasurer to be credited to the General Fund.

SECTION 2. ORS 196.115 is amended to read:

196.115. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission { - shall be - } { + are + } subject to review solely as provided in this section, except as otherwise provided by the Columbia River Gorge National Scenic Area Act, P.L. 99-663.

(2) (a) A final action or order by the commission in a review or appeal of any action of the commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, or a final action or order by the commission in a review or appeal of any action of a county pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided in subsections (3) and (4) of this section and ORS 183.482.

(b) On a petition for judicial review under paragraph (a) of this subsection the Court of Appeals also shall review the action of the county that is the subject of the commission's order, if requested in the petition.

(c) The Court of Appeals shall issue a final order on review under this subsection within the time limits provided by ORS 197.855.

(d) In lieu of judicial review under paragraphs (a) and (b) of this subsection, a county action may be appealed to the Land Use Board of Appeals under ORS 197.805 to 197.855. A notice of intent to appeal the county's action shall be filed not later than 21 days after the commission's order on the county action becomes final.

(e) Notwithstanding ORS 197.835, the scope of review in an appeal pursuant to paragraph (d) of this subsection shall not include any issue relating to interpretation or implementation of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, and any issue related to such interpretation or implementation shall be waived by the filing of an appeal under paragraph (d) of this subsection.

(f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Land Use Board of Appeals shall not review land use decisions within the general management area or special management area for compliance with the statewide planning goals. The limitation of this paragraph shall not apply if the Land Conservation and Development Commission decertifies the management plan pursuant to ORS 196.107.

(3) (a) If a petition for judicial review of a commission order is filed pursuant to subsection (2)(a) of this section, the procedures to be followed by the parties, the commission and the court, and the court's review, shall be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490 and 183.497, except as this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, otherwise provides.

(b) Notwithstanding any provision of ORS 183.482:

(A) The commission shall transmit the original record or the certified copy of the entire record within 21 days after service of a petition for judicial review is served on the commission; and

(B) The parties shall file briefs with the court within the times allowed by rules of the court.

(c) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(d) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position or a prior agency practice, unless the inconsistency is explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(e) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the whole record.

(f) Notwithstanding any other provision of this section, in any case where review of a county action as well as a commission order is sought pursuant to subsection (2)(a) and (b) of this section, the court shall accept any findings of fact by the commission which the court finds to be supported by substantial evidence in the whole record, and such findings by the commission shall prevail over any findings by the county concerning the same or substantially the same facts.

(4) (a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this section, the procedures to be followed by the parties, the county and the court, and the court's review, shall be in accordance with those provisions governing review of county land use decisions by the Land Use Board of Appeals set forth in ORS 197.830 (2) to { - (8), (10), (15) and (16) - } { + (10), (12), (17) and (18) + } and 197.835 (2) to (10), (12) and (13). As used in this section, 'board' as used in the enumerated provisions shall mean 'court' and the term 'notice of intent to appeal' in ORS 197.830 { - (10) - } { + (12) + } shall refer to the petition described in subsection (2) of this section.

(b) In addition to the other requirements of service under this section, the petitioner shall serve the petition upon the persons and bodies described in ORS 197.830 { - (9) - } { + (11) + }, as a prerequisite to judicial review of the county action.

(c) In accordance with subsection (3)(b)(B) of this section, a party to a review of both a commission order and a county action shall file only one brief with the court, which shall address both the commission order and the county action.

(d) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. Subject to subsection (3)(f) of this section, the court shall be bound by any finding of fact of the county for which there is substantial evidence in the whole record. The court may appoint a master and follow the procedures of ORS 183.482 (7) in connection with matters that the board may take evidence for under ORS 197.835 (2).

(5) Approval of county land use ordinances by the commission pursuant to section 7 of the Columbia River Gorge National Scenic Area Act, P.L. 99-663, may be reviewed by the Court of Appeals as provided in ORS 183.482.

(6) Notwithstanding ORS 183.484, any proceeding filed in

circuit court by or against the commission shall be filed with the circuit court for the county in which the commission has a principal business office or in which the land involved in the proceeding is located.

SECTION 3. ORS 197.625 is amended to read:

197.625. (1) If a notice of intent to appeal is not filed within the 21-day period set out in ORS 197.830 { - (9) - } { + (11) + }, the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An amendment to an acknowledged comprehensive plan or land use regulation is not considered acknowledged unless the notices required under ORS 197.610 and 197.615 have been submitted to the Director of the Department of Land Conservation and Development and:

(a) The 21-day appeal period has expired; or

(b) If an appeal is timely filed, the { + Land Use + } Board { + of Appeals + } affirms the decision or the appellate courts affirm the decision.

(2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the amendment or new regulation shall be considered acknowledged upon the date the appellate decision becomes final.

(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions, expedited land divisions and limited land use decisions if the amendment was adopted in substantial compliance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.

(b) Any approval of a land use decision, expedited land division or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with { - those - } { + the statewide + } land use goals applicable to the amendment.

(c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land use regulation shall not be relied upon to justify retention of improvements so permitted if the comprehensive plan provision or land use regulation does not gain acknowledgment.

{ - (d) The provisions of this subsection apply to applications for land use decisions, expedited land divisions and limited land use decisions submitted after February 17, 1993, and to comprehensive plan and land use regulation amendments adopted: - }

{ - (A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and 197.636; - }

{ - (B) After June 1, 1991, to meet the requirements of ORS 197.646; and - }

{ - (C) After November 4, 1993. - }

(4) The director shall issue certification of the acknowledgment upon receipt of an affidavit from the board stating either:

(a) That no appeal was filed within the 21 days allowed under ORS 197.830 { - (9) - } { + (11) + }; or

(b) The date the appellate decision affirming the adoption of the amendment or new regulation became final.

(5) The board shall issue an affidavit for the purposes of subsection (4) of this section within five days of receiving a valid request from the local government.

(6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent the Land Conservation and Development Commission from entering an order pursuant to ORS 197.633, 197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628.

SECTION 4. ORS 197.796 is amended to read:

197.796. (1) An applicant for a land use decision, limited land use decision or expedited land division or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance by an applicant for a land use decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condition may include but is not limited to paying a fee, performing an act or providing satisfactory evidence of arrangements to pay the fee or to ensure compliance with the condition.

(2) Any action for damages under this section shall be filed in the circuit court of the county in which the application was submitted within 180 days of the date of the decision.

(3) (a) A challenge filed pursuant to this section may not be dismissed on the basis that the applicant did not request a variance to the condition of approval or any other available form of reconsideration of the challenged condition. However, an applicant shall comply with ORS 197.763 (1) prior to appealing to the Land Use Board of Appeals or bringing an action for damages in circuit court and must exhaust all local appeals provided in the local comprehensive plan and land use regulations before proceeding under this section.

(b) In addition to the requirements of ORS 197.763 (5), at the commencement of the initial public hearing, a statement shall be made to the applicant that the failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.

(c) An applicant is not required to raise an issue under this subsection unless the condition of approval is stated with sufficient specificity to enable the applicant to respond to the condition prior to the close of the final local hearing.

(4) In any challenge to a condition of approval that is subject to the Takings Clause of the Fifth Amendment to the United States Constitution, the local government shall have the burden of demonstrating compliance with the constitutional requirements for imposing the condition.

(5) In a proceeding in circuit court under this section, the court shall award costs and reasonable attorney fees to a prevailing party. Notwithstanding ORS 197.830 { - (15) - } { + (17) + }, in a proceeding before the Land Use Board of Appeals under this section, the board shall award costs and reasonable attorney fees to a prevailing party.

(6) This section applies to appeals by the applicant of a condition of approval and claims filed in state court seeking damages for the unlawful imposition of conditions of approval in

a land use decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178.

SECTION 5. ORS 197.832 is amended to read:

197.832. The Board Publications Account is established in the General Fund. All moneys in the account are appropriated continuously to the Land Use Board of Appeals to be used for paying expenses incurred by the board under ORS 197.830

{ - (17) - } { + (19) + }. Disbursements of moneys from the account shall be approved by a member of the board.

SECTION 6. ORS 197.835 is amended to read:

197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land use decision and prepare a final order affirming, reversing or remanding the land use decision or limited land use decision. The board shall adopt rules defining the circumstances in which it will reverse rather than remand a land use decision or limited land use decision that is not affirmed.

(2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

(b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities not shown in the record that, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the local government, special district or state agency for which there is substantial evidence in the whole record.

(3) Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable.

(4) A petitioner may raise new issues to the board if:

(a) The local government failed to list the applicable criteria for a decision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government; or

(b) The local government made a land use decision or limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final action.

(5) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals. The board shall reverse or remand a land use decision or limited land use decision subject to an acknowledged comprehensive plan or land use regulation if the decision does not comply with the goals and the Land Conservation and Development Commission has issued an order under ORS 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to apply the goals to the type of decision being challenged.

(6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment is not in compliance with the goals.

(7) The board shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:

(a) The regulation is not in compliance with the comprehensive

plan; or

(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.

(8) The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations.

(9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse or remand the land use decision under review if the board finds:

(a) The local government or special district:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made an unconstitutional decision; or

(b) The state agency made a decision that violated the goals.

(10) (a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or

(B) That the local government's action was for the purpose of avoiding the requirements of ORS 215.427 or 227.178.

(b) If the board does reverse the decision and orders the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(11) (a) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 { - (14) - } { + (16) + }, the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

(b) Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.

(12) The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, only if the member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever is applicable.

(13) Subsection (12) of this section does not apply to reverse or remand of a land use decision due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

(14) The board shall reverse or remand a land use decision or limited land use decision { - which - } { + that + } violates a commission order issued under ORS 197.328.

(15) In cases in which a local government provides a quasi-judicial land use hearing on a limited land use decision, the requirements of subsections (12) and (13) of this section apply.

(16) The board may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper.

SECTION 7. ORS 197.840 is amended to read:

197.840. (1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830 { - (14) - } { + (16) + }:

(a) Any period of delay up to 120 days resulting from the board's deferring all or part of its consideration of a petition for review of a land use decision or limited land use decision that allegedly violates the goals if the decision has been:

(A) Submitted for acknowledgment under ORS 197.251; or

(B) Submitted to the Department of Land Conservation and Development as part of a periodic review work program task pursuant to ORS 197.628 to 197.650 and not yet acknowledged.

(b) Any period of delay resulting from a motion, including but not limited to, a motion disputing the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record.

(c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

(d) Any reasonable period of delay resulting from a continuance granted by a member of the board on the member's own motion or at the request of one of the parties, if the member granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.

(2) { - No - } { + A + } period of delay resulting from a continuance granted by the board under subsection (1)(d) of this section

{ - shall be - } { + is not + } excludable under this section unless the board sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 77 days. The factors the board shall consider in determining whether to grant a continuance under subsection (1)(d) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 77-day time limit.

(3) { - No - } { + A + } continuance under subsection (1)(d) of this section { - shall - } { + may not + } be granted because of general congestion of the board calendar or lack of diligent preparation or attention to the case by any member of the board or any party.

(4) The board may defer all or part of its consideration of a land use decision or limited land use decision described in

subsection (1)(a) of this section until the Land Conservation and Development Commission has disposed of the acknowledgment proceeding described in subsection (1)(a) of this section. If the board deferred all or part of its consideration of a decision under this subsection, the board may grant a stay of the comprehensive plan provision, land use regulation, limited land use decision or land use decision under ORS 197.845.

SECTION 8. ORS 197.845 is amended to read:

197.845. (1) Upon application of the petitioner, the { + Land Use + } Board { + of Appeals + } may grant a stay of a land use decision or limited land use decision under review if the petitioner demonstrates:

(a) A colorable claim of error in the land use decision or limited land use decision under review; and

(b) That the petitioner will suffer irreparable injury if the stay is not granted.

(2) If the board grants a stay of a quasi-judicial land use decision or limited land use decision approving a specific development of land, it shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000. The undertaking shall be in addition to the filing fee and deposit for costs required under ORS 197.830 { - (9) - } { + (11) + }. The board may impose other reasonable conditions such as requiring the petitioner to file all documents necessary to bring the matter to issue within specified reasonable periods of time.

(3) If the board affirms a quasi-judicial land use decision or limited land use decision for which a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable attorney fees and actual damages resulting from the stay to the person who requested the land use decision or limited land use decision from the local government, special district or state agency, against the person requesting the stay in an amount not to exceed the amount of the undertaking.

(4) The board shall limit the effect of a stay of a legislative land use decision to the geographic area or to particular provisions of the legislative decision for which the petitioner has demonstrated a colorable claim of error and irreparable injury under subsection (1) of this section. The board may impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or other undertaking or a requirement that the petitioner file all documents necessary to bring the matter to issue within a specified reasonable time period.

SECTION 9. ORS 197.850 is amended to read:

197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued under ORS 197.830 to 197.845 is solely as provided in this section.

(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days following the date the board delivered or mailed the order upon which the petition is based.

(b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a petition on all persons identified in the petition as adverse parties of record in the board proceeding is jurisdictional and may not be waived or

extended.

(4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the petition must be served by first class, registered or certified mail on the board and all other parties of record in the board proceeding.

(5) Within seven days after service of the petition, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. The court may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the court may not tax the cost of the record to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for judicial review.

(6) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(7)(a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

(b) The court may hear oral argument more than 49 days from the date of transmittal of the record provided the court determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. The court shall not hold oral argument more than 49 days from the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

(c) The court shall set forth in writing a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for its determination, and shall provide a copy to the parties. The court shall schedule oral argument as soon as practicable thereafter.

(d) In making a determination under paragraph (b) of this subsection, the court shall consider:

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the court to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(8) Judicial review of an order issued under ORS 197.830 to 197.845 shall be confined to the record. The court shall not substitute its judgment for that of the board as to any issue of fact.

(9) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure is not cause for reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.835

(2).

(10) The Court of Appeals shall issue a final order on the

petition for judicial review with the greatest possible expediency.

(11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the board shall respond to the court's appellate judgment within 30 days.

(12) A party must file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

(a) The party appealed a decision of the board to the Court of Appeals; and

(b) In making the decision being appealed to the Court of Appeals, the board awarded attorney fees and expenses against that party under ORS 197.830 { - (15)(b) - } { + (17)(b) + }.

(13) Upon entry of its final order, the court shall award attorney fees and expenses to a party who prevails on a claim that an approval condition imposed by a local government on an application for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article I, Oregon Constitution, or the Fifth Amendment to the United States Constitution.

(14) The undertaking required in subsection (12) of this section must be filed with the board and served on the opposing parties within 10 days after the date the petition was filed with the Court of Appeals.

SECTION 10. ORS 215.416 is amended to read:

215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Oregon Department of Aviation as a 'public use airport' if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the county planning

authority; and

(b) The property subject to the land use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a 'visual airport'; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an 'instrument airport.'

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway 'approach surface' as defined by the Oregon Department of Aviation.

(8) (a) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(b) When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.

(9) Approval or denial of a permit or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

(11) (a) (A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission

or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and  
(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c) (A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(12) A decision described in ORS 215.402 (4) (b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830 { - (5) (b) - } { + (7) (b) + }.

(13) At the option of the applicant, the local government shall provide notice of the decision described in ORS 215.402 (4) (b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The

notice shall include an explanation of appeal rights.

(14) Notwithstanding the requirements of this section, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828.

SECTION 11. ORS 227.175 is amended to read:

227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a 'public use airport' if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and

(b) The property subject to the zone use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a 'visual airport'; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an 'instrument airport.'

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway 'approach surface' as defined by the Oregon Department of Aviation.

(8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of

such notice.

(9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.

(10) (a) (A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.

(B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.

(C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city's land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.

(c) (A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:

(i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an

urban growth boundary;

(ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.

(B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(11) A decision described in ORS 227.160 (2)(b) shall:

(a) Be entered in a registry available to the public setting forth:

(A) The street address or other easily understood geographic reference to the subject property;

(B) The date of the decision; and

(C) A description of the decision made.

(b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.

(c) Be subject to the appeal period described in ORS 197.830

{ - (5)(b) - } { + (7)(b) + }.

(12) At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.

(13) Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 and 197.828.

SECTION 12. { + The amendments to ORS 196.115, 197.625, 197.796, 197.830, 197.832, 197.835, 197.840, 197.845, 197.850, 215.416 and 227.175 by sections 1 to 11 of this 2011 Act apply to notices of intent to appeal filed with the Land Use Board of Appeals under ORS 197.830 (1) on or after the effective date of this 2011 Act. + }

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## PROCLAMATION

### Enhancing Community Livability – Zonta Club of Corvallis and International Women's Day – Celebrating 100 Years

March 8, 2011

WHEREAS, Our community's well-being is enhanced by the efforts of citizens, every day, in a variety of ways; and

WHEREAS, The community wishes to celebrate and honor the efforts of our neighbors in Enhancing Community Livability; and

WHEREAS, Zonta Club of Corvallis has, throughout its 70-year history, worked to advance the status of women worldwide through service and advocacy; and

WHEREAS, Zonta provides scholarships for women who are returning to college and provides grants to local non-profit organizations for their work with women and families; and

WHEREAS, Zonta's "Z Clubs" engage nearly 100 high school students in important service projects in school and in the community and will soon establish a "Golden Z Club" on the campus of Oregon State University; and

WHEREAS, Zonta celebrates March 8, International Women's Day, with a special Rose Day to recognize local women who are making a difference in the community; and

WHEREAS, This year's recipients will be honored for their efforts to raise awareness and advocacy about the global issue of the trafficking of women and girls.

NOW, THEREFORE, I, Julie Jones Manning, Mayor of the City of Corvallis, do hereby proclaim **March 8, 2011**, as **International Women's Day** in the City and encourage people throughout Corvallis to join with Zonta members to enhance community livability by working to enhance the status of women locally and worldwide.

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Julie Jones Manning, Mayor

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Date

*A Community That Honors Diversity*

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**COUNCIL REQUESTS**

**FOLLOW-UP REPORT**

**MARCH 3, 2011**

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1. Construction Contractors Parking in Handicapped Parking Spaces (Hirsch)

Attached is Community Development Director Gibb's response to Councilor Hirsch's request for information.

2. Commercial Signage in Park Strips (Hirsch)

Attached is Community Development Director Gibb's response to Councilor Hirsch's request for information.

  
Jon Nelson  
City Manager

**Council Request (Hirsch)**  
**Construction Contractors Parking in Handicapped Parking Spaces**

The following is information related to Mr. Bruce Marbin's communication with Councilor Hirsch, excerpted below in italics, regarding contractors parking in ADA parking areas. Staff appreciates the concerns raised and Mr. Marbin's effort to identify solutions:

- If contractors are parking in ADA spaces on public property (on street or in public off street lots), there is a parking violation and enforcement action is warranted. Community Development staff have contacted the contractor working on the Second Street project and also communicated this issue to the Police Department's Parking Enforcement staff.
- There may be instances where due to site constraints (especially downtown where buildings often front on the street), where it is necessary to block sidewalk and on-street parking spaces to allow for construction activity. This may include designated on-street ADA spaces. In certain cases, Development Services issues a permit to occupy the public right of way such as sidewalks and parking spaces. These permits are up to two weeks and can be renewed.
- Regarding the Second Street project discussed by Mr. Marbin, the City issued permits to occupy a section of sidewalk and associated parking space. None of the parking spaces were designated ADA spaces although apparently, the construction fencing exceeded the area approved by the City through the permit process.
- Requests for partial or full street closure request are managed by the Public Works Department.
- In either case, Staff evaluates the necessity and scope of occupying public right of way including blocking ADA space(s) and determines whether mitigation, such as a temporary alternative location, is appropriate. Mr. Marbin's concerns are a good reminder of the importance of minimizing the disruption to the public especially related to accessibility.
- On construction sites where private parking areas are used for staging and development needs, the jobsite is generally off limits for the public and this is not typically an issue. The City does not have a role in these situations.
- Mr. Marbin references the Beanery parking lot consisting of a gravel surface. This is a pre-existing condition that does not meet current code. If and when a remodel or expansion of the building occurs to a certain level, disabled access, beginning in the parking lot would be addressed.

Hi Joel,

Thanks for listening to my complaints last night. Here is a recap of what I said.

I am a person with a mobility challenge. I have not always been this way, my challenge is about 4 years old. To assist my mobility I now own an adapted van. The van is equipped with a ramp that comes out on the passenger side though the large side door.

The issue: I often go the Beanery and or the Troubadour Music Center on 2nd and Washington Streets. There has been construction on the southeast corner of 2nd and Washington since September 2010. When construction first began a barrier fence was erected covering all the parking spaces on the south side of Washington between the alley and Second street and on Second street up to the beginning of the Spa. This eliminated two ADA parking spaces: one on the corner of 2nd and Washington (Washington Street) and another on Second St. (next to the electric plug in spot). Around that time I saw Bob Grant (the contractor) and expressed my irritation about the elimination of the ADA parking spots and having to go down to Western Street to cross. He said he was sorry and had the fence moved from the ADA spot on Second Street. There is a curb cut there, so it made it possible to get on the sidewalk. However, it meant I had to go into the traffic lane on Second St. to get to the curb cut. There is an ADA designated parking spot on the Beanery lot. However, I am sure it does not meet ADA standards since the lot is gravel. Have you ever tried to get up a ramp when starting out in gravel?

So, I endured the loss of the best spot for my van on Washington Street for the last five months. Then the fencing was removed and they began the interior finish work. Several times they blocked off the sidewalk along Washington St. and now a trailer is parked in the designated ADA parking spot on Washington Street. It has been there for a week or more. I am sure Corvallis Meter Readers have gone by the spot numerous times and not ticketed or asked them to move. If this was an expired meter, the person would have received a ticket.

The solutions: I am a person who believes in proactivity rather than reactivity and punitive actions. I suggest the following;

1. Make it clear to contractors when they receive a building permit that it is against the law to block off ADA parking spaces, even on a temporary basis.
2. If they deem it necessary to block them off, they should be required to fill out a request form and the city needs to provide them with temporary signage and a permit that indicates the location of the new temporary parking. For example - If they have a cement truck coming for an hour some time during the day, then they need a permit and need to create a temporary ADA parking space for the entire day.
3. Building inspectors need to verify the temporary parking is secured when they conduct their inspections.
4. If there are violations, building inspectors will not sign off on the inspections and/or they should receive a warning and if they do not get a permit then a parking violation from the city. Illegal parking in ADA spots is expensive, no?

Thanks so much for allowing me to make these suggestions. I appreciate your help in changing the situation.

Attached are photos taken at night because I happened to be in that area at night.

Bruce Marbin

## **Council Request (Hirsch) Commercial Signs in Park Strips**

The following is information related to Marie Martin's communication (excerpts provided below in italics) with Councilor Hirsch regarding signs in the public right of way on Kings Boulevard and the presence of similar situations on a city-wide basis:

- As the Council is aware, the City's Code Enforcement Program is primarily a complaint based system.
- Regarding the Kings Boulevard situation, the City had not received a complaint previously.
- Ms. Martin's complaint has been recorded and Staff will investigate the matter as resources permit.
- As shared with the Council in the past, the Code Enforcement Program has a system to prioritize responses to complaint. This system places a higher priority on response to health and safety related issues. Sign enforcement is generally a lower priority unless there is a safety issue involved such as blocking vision clearance.
- Budget constraints have resulted in code enforcement staffing being reduced to a current level of 1.0 FTE. The number of code enforcement cases has averaged 400 - 500 annually meaning that prioritization of staff resources will need to continue and the challenge of timely responses to lower priority cases such as sign complaints will become more acute.

The status of the specific complaints related to Kings Boulevard can tracked via [corvallispermits.com](http://corvallispermits.com) (Case # VIO-11-0059 through 63).

*I talked with you previously during your campaign for re-election about businesses posting signs advertising their business on Kings Blvd. They are not only unsightly, but they are using city public areas to post their signs. Signs for the bead store, Animal Crackers pet store, and Any Time Fitness, are all placed in the public strip between the sidewalk and the street. Coffee Culture has a sign placed on the sidewalk near the bus stop, and actually blocks half of the sidewalk width, forcing people who are walking side by side to walk single file around the sign.*

*I spoke with the manager at Coffee Culture on Monday, January 25, and gave him a copy of the city ordinance*

prohibiting signs to be posted in public areas. The next day, the sign was still there.

On Tuesday, Jan 26 I talked with Jim Dagata, one of the owners of Animal Crackers about moving their sign off of public property and onto the property owned by the shopping center. Jim replied that the city does not allow him to trim the pine bushes so that their sign could be seen from both directions. I suggested that two signs located on the shopping center property would allow a sign to be seen from both directions.

I also talked to Dianna, an employee of the bead store on Kings Blvd. She stated that she had wondered if it was all right to post a sign in the strip between the sidewalk and the street, and that sometimes the sign blocked her view of traffic as she was exiting the tiny parking lot. She promptly moved the sign onto the lawn of the shopping centers property. I thanked her for her help.

I am asking for your assistance to point out to the City Council that these signs are increasing in frequency around town, detract from the beauty of our town, distract drivers, impede pedestrians, utilize our public spaces for advertising without compensating the taxpayers, and bombard us with ever more advertising as we drive, walk or bicycle to our homes, schools, shopping or work. I am asking that the City Council address this issue as soon as possible.

Sincerely, Marie Martin, citizen, Ward 6

**CITY OF CORVALLIS – COUNCIL REQUESTS – TRACKING REPORT  
PENDING REQUESTS**

<b>Council Request Item</b>	<b>Requested By</b>	<b>Date of Request</b>	<b>CM Report Due Date</b>	<b>Assigned to</b>	<b>Response in CM Rpt No.</b>	<b>Comments</b>
Construction Contractors Parking in Handicapped Parking Spaces	Hirsch	02-22-11	03-01-11	Gibb	CCR 03-03-11	
Commercial Signage in Park Strips	Hirsch	02-22-11	03-01-11	Gibb	CCR 03-03-11	



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**CITY ATTORNEY'S OFFICE  
MEMORANDUM**

To: Mayor and City Council

From: Jim Brewer, Deputy City Attorney 

Date: March 3, 2011

Subject: Media in Executive Sessions/Bloggers/New Media

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**Issue**

The City Council should provide direction to staff regarding how the City Council wishes to proceed with a request from a citizen, who is in the process of setting up a blog, to attend City executive sessions and to be invited to labor negotiations.

**Background**

In an email to the City Manager's Office, Kirk Nevin identified himself as being in the process of setting up a blog devoted mostly to Corvallis issues. Mr. Nevin inquired about the City's process for issuing press credentials, so that he could attend certain meetings. In this particular case, through other email, Mr. Nevin identified attendance at executive sessions and labor negotiations as the reason he needed press credentials. The City does not issue press credentials (which are typically issued by the media, not government) and so the question is simply whether the Council wants to permit Mr. Nevin to attend executive sessions as a representative of the media.

## Discussion

In considering Mr. Nevin's request, the Council will have to weigh several factors. First, we recommend that the Council approach the request without regard to personality or consideration of Mr. Nevin's prior communications with the City. Instead, the Council should consider this request as it would from any other person making such a request. In viewing the request, the Council should keep in mind that the sections of the Public Meetings Law that deal with executive sessions are permissive—a governing body is never required to conduct any business in executive session. On the other hand, the language in the Public Meetings Law that gives a governing body authority to conduct executive sessions for specific and limited purposes is clearly a legislative recognition that some discussions, deliberations and communications need to be conducted outside of public sessions, in order for government to be able to effectively function in those specific circumstances. The Council should also consider that Oregon's public meetings law is unique among states—it is the only one that requires governing bodies to allow representatives of the media to attend executive sessions. The representatives of the media are not supposed to report on the substance of the executive session, but there is no penalty or mechanism for a local government to enforce this statutory requirement, other than to try to exclude a representative who breaches that duty.

The Oregon Public Meetings Law (ORS 192.660(2)(d)) is clear that governing bodies may exclude representatives of the news media from executive sessions involving consultations with persons designated by the governing body to carry on labor negotiations. This is an exception to the general rule that "representatives of the news media" are permitted to attend most other types of executive sessions. Case law specifically leaves it to the discretion of a governing body whether to allow or exclude some, but not all, representatives of the media in such an executive session. *Barker v. City of Portland*, 67 OR App 23 (1984).

There is no statutory definition of "representatives of the news media", and no case law on point regarding people who do not have "credentials" from an established traditional media wanting to attend executive sessions. Consequently, the Council is faced with making this decision on an *ad hoc* basis. This problem is recognized (but no solution is offered) in the most recent Oregon Attorney General Public Records and Meeting Manual (January 2011), which states:

Current technologies make it easy to disseminate information to a potentially broad audience. Bloggers and others using these technologies sometimes seek to attend executive sessions, asserting that they are "representatives of the news media." A decision whether such an individual should be permitted to attend an executive session must be made on a case-by-case basis as no clear definition of "news media" exists. *Public Records and Meeting Manual*, January 2011, p. 153.

Because of uncertainties that result from this absence of a definition of "news media" in state public meetings law—especially in regard to new electronic media—we recommend that the City Council consider any such request in open session. If the Council needs additional information,

Executive Session/Requests to attend by new media

it should seek whatever information it believes is relevant from the person making the request, and determine whether the person is a “representative of the news media” for purposes of the statute. In determining whether someone is a representative of the news media, the Council should give the text of the statute its plain, natural and ordinary meaning, in the context of the purpose of the statute. The City Council can then direct staff (or the presiding officer at a meeting with an executive session) how to respond to such a request.

The Council’s options in dealing with such a request include:

- 1) Determining that the person is not a representative of the news media and excluding the person from attending any executive session;
- 2) Determining that the person is a representative of the news media, and permitting the person to attend those executive sessions that the media is not excluded from;
- 3) Determining that the person is a representative of the news media, and permitting the person to attend those executive sessions that the media is not excluded from, but excluding the person from those executive sessions that the Council has discretion to exclude representatives of the media from; or
- 4) Determining that the person is not a representative of the news media, and inviting the person to attend executive sessions anyway, as a member of the general public.

In addition to consideration of whether Mr. Nevin is a representative of the news media, the Council should also consider his request that the City invite him to attend labor negotiations. As the negotiations with AFSCME, currently under way, and the pending negotiations with the CPOA are conducted by designated representatives of the City, appointed by the City Council, these sessions are not subject to the public meetings laws at all. ORS 192.660(3)(4); *SW Ore. Pub. Co. V. SW Ore. Comm. Coll.*, 28 Or App 383 (1977). Nonetheless, our office understands that the parties have not adopted ground rules that prohibit either side from inviting guests. The City Council should provide guidance to its representative regarding this request to be invited to attend the labor negotiation sessions. Our understanding is that unless Council directs staff to invite Mr. Nevin to negotiations, they will not do so. However, as no protocols are agreed upon, AFSCME could invite anyone they choose. It is possible that ground rules for the negotiations with CPOA will result in all negotiations being conducted without visitors being allowed (neither the City nor a union may condition negotiations the other party accepting any specific groundrules).

Finally, the City Council might want to consider adopting an administrative policy to guide its determinations in case of any similar future requests. In 2008, based on attention given to a similar request in Lake Oswego, a Media/Government Task Force consisting of representatives of The League of Oregon Cities, the City of Lake Oswego, Clackamas County, Open Oregon, the Oregon Newspaper Publishers Association, The Oregonian and the Oregon Association of

Broadcasters drafted a Model Policy, based largely on a 2007 policy adopted by Columbia County. While there are some advantages to such a policy, we note that not many members of League of Oregon Cities have adopted the model policy (notably, Lake Oswego has not), and, on its face, the model policy seems to disqualify new, innovative and small members of the new media. If the Council is interested in background on the model policy and the rationale behind it, we can provide information from the task force and the City of Lake Oswego.

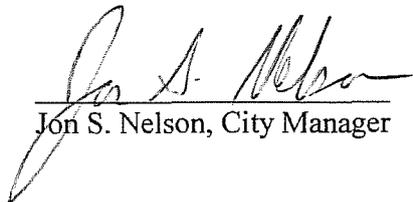
## **Conclusion**

Our office recommends that the City Council consider Mr. Nevin's request in open session, seek whatever information it needs from him to determine whether he is a representative of the news media for purposes of the public meetings law, and direct staff and the presiding officer regarding whether Mr. Nevin:

- 1) Is not a representative of the news media and is excluded from attending any executive session;
- 2) Is a representative of the news media, and permitted to attend those executive sessions that the media is not excluded from;
- 3) Is a representative of the news media, and permitted to attend those executive sessions that the media is not excluded from, but excluded from those executive sessions that the Council has discretion to exclude representatives of the media from; or
- 4) Is not a representative of the news media, but is invited to attend executive sessions anyway.

In addition, the City Council should consider whether to direct staff to invite Mr. Nevin to attend the labor negotiations scheduled for AFSCME and CPOA as a guest.

Review and Concur



Jon S. Nelson, City Manager

**ADMINISTRATIVE SERVICES COMMITTEE  
SCHEDULED ITEMS**

**March 3, 2011**

MEETING DATE	AGENDA ITEM
March 9	<ul style="list-style-type: none"> <li>• Second Quarter Operating Report</li> <li>• Financial Policies Review</li> </ul>
March 23	
April 6	<ul style="list-style-type: none"> <li>• da Vinci Days Loan Agreement Status Annual Report</li> <li>• GASB 54 Update</li> </ul>
April 20	
May 4	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 95-4.10, "Public Library Gifts and Donations Policy"</li> </ul> </li> </ul>
May 18	<ul style="list-style-type: none"> <li>• Economic Development Allocations Third Quarter Report</li> </ul>
June 8	<ul style="list-style-type: none"> <li>• Third Quarter Operating Report</li> <li>• Allied Waste Services Annual Report</li> </ul>
June 22	
July 6	
July 20	<ul style="list-style-type: none"> <li>• Land Use Application Fees Review</li> </ul>
August 3	
August 17	
September 7	
September 21	
October 5	<ul style="list-style-type: none"> <li>• Fourth Quarter Operating Report</li> <li>• Council Policy Reviews:               <ul style="list-style-type: none"> <li>• CP 04-1.09, "Public Access Television"</li> <li>• CP 93-1.06, "Guidelines for Use of the City Logo"</li> <li>• CP 94-2.09, "Council Orientation"</li> <li>• CP 91-3.02, "City Compensation Policy"</li> <li>• CP 91-3.04, "Separation Policy"</li> </ul> </li> </ul>
October 19	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 08-1.11, "Identity Theft Prevention and Red Flag Alerts"</li> </ul> </li> </ul>
November 9	<ul style="list-style-type: none"> <li>• Council Policy Reviews:               <ul style="list-style-type: none"> <li>• CP 91-2.03, "Expense Reimbursement"</li> <li>• CP 98-2.10, "Use of E-Mail by Mayor and City Council"</li> </ul> </li> <li>• Comprehensive Annual Financial Report</li> </ul>

MEETING DATE	AGENDA ITEM
November 23	<ul style="list-style-type: none"> <li>• Utility Rate Annual Review</li> </ul>
December 7	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 91-2.02, "Council Process"</li> <li>• CP 97-10.01 - 10.08, "Financial Policies"</li> </ul> </li> <li>• First Quarter Operating Report</li> </ul>
December 21	

**ASC PENDING ITEMS**

- Utility Rate Structure Review Public Works
- Voluntary Donations on Electronic Utility Payments Finance

**Regular Meeting Date and Location:**

Wednesday following Council, 4:00 pm – Madison Avenue Meeting Room

**HUMAN SERVICES COMMITTEE  
SCHEDULED ITEMS**

**March 3, 2011**

MEETING DATE	AGENDA ITEM
March 8	No meeting
March 22	<ul style="list-style-type: none"> <li>• Corvallis Arts Center Annual Report</li> <li>• Public Art Selection Commission Annual Report</li> </ul>
April 5	<ul style="list-style-type: none"> <li>• Willamette Neighborhood Housing Services Second Quarter Report</li> </ul>
April 19	<ul style="list-style-type: none"> <li>• Boys and Girls Club of Corvallis Annual Report</li> </ul>
May 3	<ul style="list-style-type: none"> <li>• Liquor License Annual Renewals</li> <li>• Majestic Theatre Annual Report</li> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 99-4.13, "Internet Access Policy for Corvallis-Benton County Public Library"</li> <li>• CP 95-4.08, "Code of Conduct on Library Premises"</li> </ul> </li> </ul>
May 17	<ul style="list-style-type: none"> <li>• Fall Festival Annual Report</li> </ul>
June 7	<ul style="list-style-type: none"> <li>• Boards and Commissions Sunset Reviews:               <ul style="list-style-type: none"> <li>• Community Police Review Board</li> <li>• Parks, Natural Areas, and Recreation Board</li> </ul> </li> </ul>
June 21	
July 6	<ul style="list-style-type: none"> <li>• Corvallis Farmers Market Annual Report</li> <li>• Parks and Recreation Annual Fee Review</li> </ul>
July 19	<ul style="list-style-type: none"> <li>• Willamette Neighborhood Housing Services Third Quarter Report</li> </ul>
August 2	
August 16	<ul style="list-style-type: none"> <li>• Social Services Semi-Annual Report</li> </ul>
September 7	
September 20	<ul style="list-style-type: none"> <li>• Rental Housing Program Annual Report</li> <li>• Willamette Neighborhood Housing Services Fourth Quarter Report</li> <li>• Communication Plan Annual Report</li> </ul>
October 4	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 93-4.11, "Public Library Policy for Selecting and Discarding Materials"</li> <li>• CP 99-4.14, "Use of City Hall Plaza and Kiosk"</li> </ul> </li> </ul>
October 18	
November 8	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 91-4.01, "Guidelines for Selling in Parks"</li> </ul> </li> </ul>

MEETING DATE	AGENDA ITEM
November 22	
December 6	<ul style="list-style-type: none"> <li>• Council Policy Review: <ul style="list-style-type: none"> <li>• CP 91-1.03, "Naming of Public Facilities and Land"</li> <li>• CP 92-5.04, "Hate/Bias Violence"</li> </ul> </li> </ul>
December 20	

**HSC PENDING ITEMS**

- Council Policy Review: CP 00-6.05, "Social Service Funding Policy" Community Development
- Indoor Furniture Placed Outdoors Community Development
- Municipal Code Review: Chapter 5.01, "City Park Regulations" (Alcoholic Beverages in Parks) Parks & Recreation
- Social Services Allocations – Fiscal Year 2011-2012 Community Development

**Regular Meeting Date and Location:**

Tuesday following Council, 12:00 pm – Madison Avenue Meeting Room

**URBAN SERVICES COMMITTEE  
SCHEDULED ITEMS**

**March 3, 2011**

MEETING DATE	AGENDA ITEM
March 10	<ul style="list-style-type: none"> <li>• Systems Development Charge Annual Review</li> <li>• Three Waters Update</li> </ul>
March 24	<ul style="list-style-type: none"> <li>• EECBG Program Update</li> </ul>
April 7	
April 21	
May 5	
May 19	
June 9	<ul style="list-style-type: none"> <li>• Boards and Commissions Sunset Reviews               <ul style="list-style-type: none"> <li>• Bicycle and Pedestrian Advisory Commission</li> <li>• Citizens Advisory Commission on Transit</li> </ul> </li> </ul>
June 23	
July 7	
July 21	
August 4	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 99-7.14, "Prepayment for Public Street Improvements"</li> </ul> </li> </ul>
August 18	
September 8	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 02-7.15, "Fee-in-Lieu Parking Program"</li> </ul> </li> </ul>
September 22	
October 6	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 91-7.01, "Assessments - Sanitary Sewer and Water System Improvements"</li> <li>• CP 91-7.02, "Assessments - Storm System"</li> <li>• CP 91-7.03, "Assessments - Street Improvements"</li> <li>• CP 91-7.11, "Water Main Extensions and Fire Protection"</li> <li>• CP 91-8.01, "Watershed Easement Considerations"</li> <li>• CP 91-9.04, "Street Lighting Policy"</li> <li>• CP 08-9.07, "Traffic Calming Program"</li> </ul> </li> </ul>
October 20	<ul style="list-style-type: none"> <li>• Council Policy Review: CP 04-1.08, "Organizational Sustainability"</li> </ul>
November 10	
November 24	No meeting

MEETING DATE	AGENDA ITEM
December 8	<ul style="list-style-type: none"> <li>• Council Policy Review:               <ul style="list-style-type: none"> <li>• CP 91-7.09, "Traffic Control Devices, Cost of"</li> <li>• CP 91-7.10, "Water Line Replacement Policy"</li> <li>• CP 91-9.01, "Crosswalks"</li> </ul> </li> </ul>
December 22	

**USC PENDING ITEMS**

- Council Policy Review: CP 91-7.04, "Building Permits" Community Development
- Council Policy Review: CP 91-9.03, "Residential Parking Permit District Fees" Public Works
- Fire Protection Services in Health Hazard Residential Areas Fire
- Reducing Potential for Fire Spread Involving Natural Resources Fire
- Renewable Energy Sources City Manager's Office
- Traffic Calming Program Public Works

**Regular Meeting Date and Location:**

Thursday following Council, 5:00 pm – Madison Avenue Meeting Room

## UPCOMING MEETINGS OF INTEREST



### City of Corvallis

**MARCH - JUNE 2011**  
(Updated March 3, 2011)

#### MARCH 2011

Date	Time	Group	Location	Subject/Note
3	7:00 pm	Committee for Citizen Involvement	Madison Avenue Mtg Rm	
4	7:00 am	Bicycle and Pedestrian Adv Cmsn	Madison Avenue Mtg Rm	
5	10:00 am	Government Comment Corner	Library Lobby - Jeanne Raymond	
<b>7</b>	<b>12:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
<b>7</b>	<b>7:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
8	12:00 pm	Human Services Committee	Madison Avenue Mtg Rm	
8	7:00 pm	Historic Resources Commission	Downtown Fire Station	
9	7:30 am	City Legislative Committee	Cornell Meeting Room	
9	8:20 am	Citizens Advisory Cmsn on Transit	Madison Avenue Mtg Rm	
9	12:00 pm	Housing and Community Dev Cmsn	Madison Avenue Mtg Rm	
9	4:00 pm	Administrative Services Committee	Madison Avenue Mtg Rm	
9	5:30 pm	Downtown Commission	Downtown Fire Station	
10	8:00 am	Citizens Advisory Cmsn on Civic Beautification and Urban Forestry	Parks and Rec Conf Rm	
10	5:00 pm	Urban Services Committee	Madison Avenue Mtg Rm	
12	10:00 am	Government Comment Corner	Library Lobby - Hal Brauner	
14	3:00 pm	Economic Development Cmsn	Madison Ave Mtg Rm	
<b>14</b>	<b>7:00 pm</b>	<b>Mayor/City Council/City Manager Quarterly Work Session</b>	<b>Madison Ave Mtg Rm</b>	
16	12:00 pm	<i>Election/Campaign Forum</i>	<i>Library Meeting Room</i>	
16	12:00 pm	Housing and Community Dev Cmsn	Madison Avenue Mtg Rm	
16	5:30 pm	Watershed Mgmt Adv Cmsn	Madison Avenue Mtg Rm	
16	7:00 pm	Planning Commission	Downtown Fire Station	
17	6:30 pm	Parks, Natural Areas, and Rec Brd	Madison Avenue Mtg Rm	
19	10:00 am	Government Comment Corner	Library Lobby - Mark O'Brien	
<b>21</b>	<b>12:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
<b>21</b>	<b>7:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
22	12:00 pm	Human Services Committee	Madison Avenue Mtg Rm	
22	12:00 pm	Cmsn for Martin Luther King, Jr.	Merryfield Meeting Rm	
23	7:30 am	City Legislative Committee	Cornell Meeting Room	
23	4:00 pm	Administrative Services Committee	Madison Avenue Mtg Rm	
24	5:00 pm	Urban Services Committee	Madison Avenue Mtg Rm	
24	5:30 pm	Arts and Culture Commission	Parks and Rec Conf Rm	
26	10:00 am	Government Comment Corner	Library Lobby - Linda Modrell	
28	3:00 pm	Economic Development Cmsn	Madison Ave Mtg Rm	
28	4:30 pm	Airport Industrial Park Plng Cmte	Downtown Fire Station	
29	7:00 pm	Budget Commission	Downtown Fire Station	

#### APRIL 2011

Date	Time	Group	Location	Subject/Note
1	7:00 am	Bicycle and Pedestrian Adv Cmsn	Madison Avenue Mtg Rm	

Date	Time	Group	Location	Subject/Note
2	10:00 am	Government Comment Corner	Library Lobby - TBD	
<b>4</b>	<b>12:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
<b>4</b>	<b>7:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
5	7:00 am	Airport Commission	Madison Avenue Mtg Rm	
5	12:00 pm	Human Services Committee	Madison Avenue Mtg Rm	
5	5:30 pm	Downtown Parking Committee	Madison Avenue Mtg Rm	
6	7:30 am	City Legislative Committee	Cornell Meeting Room	
6	4:00 pm	Administrative Services Committee	Madison Avenue Mtg Rm	
6	7:00 pm	Planning Commission	Downtown Fire Station	
6	7:30 pm	Library Board	Library Board Room	
7	5:00 pm	Urban Services Committee	Madison Avenue Mtg Rm	
7	7:00 pm	Committee for Citizen Involvement	Madison Avenue Mtg Rm	
9	10:00 am	Government Comment Corner	Library Lobby - TBD	
11	3:00 pm	Economic Development Cmsn	Madison Ave Mtg Rm	
12	7:00 pm	Ward 1 Meeting (O'Brien)	Ashbrook School Library	City sponsored
12	7:00 pm	Historic Resources Commission	Downtown Fire Station	
13	8:20 am	Citizens Advisory Cmsn on Transit	Madison Avenue Mtg Rm	
13	5:30 pm	Downtown Commission	Madison Avenue Mtg Rm	
14	8:00 am	Citizens Advisory Cmsn on Civic Beautification and Urban Forestry	Parks and Rec Conf Rm	
16	10:00 am	Government Comment Corner	Library Lobby - Biff Traber	
<b>18</b>	<b>12:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
<b>18</b>	<b>7:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
19	12:00 pm	Human Services Committee	Madison Avenue Mtg Rm	
20	12:00 pm	Housing and Community Dev Cmsn	Madison Avenue Mtg Rm	
20	4:00 pm	Administrative Services Committee	Madison Avenue Mtg Rm	
20	5:30 pm	Watershed Mgmt Adv Cmsn	Madison Avenue Mtg Rm	
20	7:00 pm	Planning Commission	Downtown Fire Station	
21	5:00 pm	Urban Services Committee	Madison Avenue Mtg Rm	
21	6:30 pm	Parks, Natural Areas, and Rec Brd	Downtown Fire Station	
23	10:00 am	Government Comment Corner	Library Lobby - Mike Beilstein	
25	4:30 pm	Airport Industrial Park Plng Cmte	Downtown Fire Station	
26	12:00 pm	Cmsn for Martin Luther King, Jr.	Madison Avenue Mtg Rm	
27	7:30 am	City Legislative Committee	Cornell Meeting Room	
28	5:30 pm	Arts and Culture Commission	Parks and Rec Conf Rm	
30	10:00 am	Government Comment Corner	Library Lobby - Richard Hervey	

**MAY 2011**

Date	Time	Group	Location	Subject/Note
<b>2</b>	<b>12:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
<b>2</b>	<b>7:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
3	7:00 am	Airport Commission	Madison Avenue Mtg Rm	
3	12:00 pm	Human Services Committee	Madison Avenue Mtg Rm	
3	5:30 pm	Downtown Parking Committee	Madison Avenue Mtg Rm	
3	7:00 pm	Budget Commission	Downtown Fire Station	
4	7:30 am	City Legislative Committee	Cornell Meeting Room	
4	4:00 pm	Administrative Services Committee	Madison Avenue Mtg Rm	
4	7:00 pm	Planning Commission	Downtown Fire Station	
4	7:30 pm	Library Board	Library Board Room	
5	5:00 pm	Urban Services Committee	Madison Avenue Mtg Rm	
5	7:00 pm	Committee for Citizen Involvement	Madison Avenue Mtg Rm	
6	7:00 am	Bicycle and Pedestrian Adv Cmsn	Madison Avenue Mtg Rm	

Date	Time	Group	Location	Subject/Note
7	10:00 am	Government Comment Corner	Library Lobby - Jeanne Raymond	
9	3:00 pm	Economic Development Cmsn	Madison Ave Mtg Rm	
9	7:00 pm	Budget Commission	Downtown Fire Station	
10	7:00 pm	Historic Resources Commission	Madison Avenue Mtg Rm	
11	8:20 am	<i>Citizens Advisory Cmsn on Transit</i>	<i>Madison Avenue Mtg Rm</i>	
11	5:30 pm	Downtown Commission	Madison Avenue Mtg Rm	
12	8:00 am	Citizens Advisory Cmsn on Civic Beautification and Urban Forestry	Parks and Rec Conf Rm	
14	10:00 am	Government Comment Corner	Library Lobby - Linda Modrell	
<b>16</b>	<b>12:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
<b>16</b>	<b>7:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
17	12:00 pm	Human Services Committee	Madison Avenue Mtg Rm	
17	7:00 pm	Ward 6 Meeting (Hirsch)	Osborn Aquatic Center	City sponsored
18	7:30 am	City Legislative Committee	Cornell Meeting Room	
18	4:00 pm	Administrative Services Committee	Madison Avenue Mtg Rm	
18	5:30 pm	<i>Watershed Mgmt Adv Cmsn</i>	<i>Madison Avenue Mtg Rm</i>	
18	7:00 pm	Planning Commission	Downtown Fire Station	
19	5:00 pm	Urban Services Committee	Madison Avenue Mtg Rm	
19	6:30 pm	Parks, Natural Areas, and Rec Brd	Parks and Rec Conf Rm	
21	10:00 am	Government Comment Corner	Library Lobby - Biff Traber	
23	4:30 pm	Airport Industrial Park Plng Cmte	Downtown Fire Station	
<b>23</b>	<b>5:30 pm</b>	<b>City Council Work Session</b>	<b>Madison Avenue Mtg Rm</b>	<b>Plng Cmsn/Historic Resources Cmsn interviews (tentative)</b>
24	12:00 pm	Cmsn for Martin Luther King, Jr.	Madison Avenue Mtg Rm	
<b>25</b>	<b>5:30 pm</b>	<b>City Council Work Session</b>	<b>Madison Avenue Mtg Rm</b>	<b>Plng Cmsn/Historic Resources Cmsn interviews (tentative)</b>
26	5:30 pm	Arts and Culture Commission	Parks and Rec Conf Rm	
28		No Government Comment Corner		
30		City Holiday - all offices closed		

## JUNE 2011

Date	Time	Group	Location	Subject/Note
1	7:00 pm	Planning Commission	Downtown Fire Station	
1	7:30 pm	Library Board	Library Board Room	
2	7:00 pm	Committee for Citizen Involvement	Madison Avenue Mtg Rm	
3	7:00 am	<i>Bicycle and Pedestrian Adv Cmsn</i>	<i>Madison Avenue Mtg Rm</i>	
4	10:00 am	Government Comment Corner	Library Lobby - TBD	
<b>6</b>	<b>12:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
<b>6</b>	<b>7:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
7	7:00 am	<i>Airport Commission</i>	<i>Madison Avenue Mtg Rm</i>	
7	12:00 pm	Human Services Committee	Madison Avenue Mtg Rm	
7	5:30 pm	<i>Downtown Parking Committee</i>	<i>Madison Avenue Mtg Rm</i>	
8	7:30 am	City Legislative Committee	Cornell Meeting Room	
8	8:20 am	<i>Citizens Advisory Cmsn on Transit</i>	<i>Madison Avenue Mtg Rm</i>	
8	4:00 pm	Administrative Services Committee	Madison Avenue Mtg Rm	
8	5:30 pm	Downtown Commission	Downtown Fire Station	
9	8:00 am	Citizens Advisory Cmsn on Civic Beautification and Urban Forestry	Parks and Rec Conf Rm	

<b>Date</b>	<b>Time</b>	<b>Group</b>	<b>Location</b>	<b>Subject/Note</b>
9	5:00 pm	Urban Services Committee	Madison Avenue Mtg Rm	
11	10:00 am	Government Comment Corner	Library Lobby - TBD	
13	3:00 pm	Economic Development Cmsn	Downtown Fire Station	
<b>13</b>	<b>5:30 pm</b>	<b>City Council Work Session</b>	<b>Madison Avenue Mtg Rm</b>	<b><i>Plng Cmsn/Historic Resources Cmsn interviews (tentative)</i></b>
<b>14</b>	<b>5:30 pm</b>	<b>City Council Work Session</b>	<b>Madison Avenue Mtg Rm</b>	<b><i>Plng Cmsn/Historic Resources Cmsn interviews (tentative)</i></b>
14	7:00 pm	Historic Resources Commission	Downtown Fire Station	
15	12:00 pm	Housing and Community Dev Cmsn	Madison Avenue Mtg Rm	
15	5:30 pm	<i>Watershed Mgmt Adv Cmsn</i>	<i>Madison Avenue Mtg Rm</i>	
15	7:00 pm	Planning Commission	Downtown Fire Station	
16	6:30 pm	Parks, Natural Areas, and Rec Brd	Parks and Rec Conf Rm	
18	10:00 am	Government Comment Corner	Library Lobby - Mike Beilstein	
<b>20</b>	<b>12:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
<b>20</b>	<b>7:00 pm</b>	<b>City Council</b>	<b>Downtown Fire Station</b>	
21	12:00 pm	Human Services Committee	Madison Avenue Mtg Rm	
22	7:30 am	City Legislative Committee	Cornell Meeting Room	
22	4:00 pm	Administrative Services Committee	Madison Avenue Mtg Rm	
23	5:00 pm	Urban Services Committee	Madison Avenue Mtg Rm	
23	5:30 pm	Arts and Culture Commission	Parks and Rec Conf Rm	
25	10:00 am	Government Comment Corner	Library Lobby - TBD	
27	4:30 pm	Airport Industrial Park Plng Cmte	Downtown Fire Station	
28	12:00 pm	Cmsn for Martin Luther King, Jr.	Madison Avenue Mtg Rm	

**Bold** type – involves the Council      ~~Strikeout~~ type – meeting canceled      *Italics* type – new meeting

TBD To be Determined



## In December 2010 Community Outreach provided the following:

- **Housing (men)** – 735 nights of housing for 32 homeless men
- **Housing (women)** – 341 nights of housing for 23 homeless women
- **Housing (families with children)** – 182 nights of housing for 11 homeless families, including 355 nights for 21 children
- **Medical Clinics** – 189 visits, 13 general medical clinics held this month, plus 3 psychiatric clinics, 4 physical therapy clinics, 3 diabetes clinics, 1 gynecology clinic, and 1 dental clinic
- **Alcohol and Drug Treatment** – 373 contact hours for 24 individuals, including 11 co-occurring clients (meaning they receive substance abuse and mental health treatment)
- **Mental Health** – 27 contact hours for 15 mental health clients
- **Therapeutic Childcare** – 699 hours working with 20 children, including Second Step counseling and activity hours (our therapeutic childcare center was closed for two weeks)
- **Family Support Services** – 127 hours working with 16 families
- **Crisis, Information, and Referral Services** – 719 calls or visits
- **Homeless Emergency Services** – 398 visits providing a shower or use of the community kitchen/food pantry
- **Abuse Intervention Counseling** – 107 contact hours for 22 individuals
- **Emergency Food** – 87 food boxes distributed, feeding 292 people
- **Case Management** – 162 case management meeting hours for residential men and women
- **Mail Services** – 85 clients
- **Bus Tickets** – 135 tickets, providing transportation throughout Corvallis and Albany
- **Permanent Supportive Housing** – 60 continuing clients



## In January 2011 Community Outreach provided the following:

- **Housing (men)** – 678 nights of housing for 34 homeless men
- **Housing (women)** – 530 nights of housing for 28 homeless women
- **Housing (families with children)** – 213 nights of housing for 8 homeless families, including 455 nights for 15 children
- **Medical Clinics** – 254 visits, 16 general medical clinics held this month, plus 3 psychiatric clinics, 4 physical therapy clinics, 7 diabetes clinics, 1 gynecology clinic, and 2 dental clinic
- **Alcohol and Drug Treatment** – 389 contact hours for 28 individuals, including 12 co-occurring clients (meaning they receive substance abuse and mental health treatment)
- **Mental Health** – 23 contact hours for 10 mental health clients
- **Therapeutic Childcare** – 1,204 hours working with 17 children, including Second Step counseling and activity hours
- **Family Support Services** – 141 hours working with 14 families
- **Crisis, Information, and Referral Services** – 916 calls or visits
- **Homeless Emergency Services** – 419 visits providing a shower or use of the community kitchen/food pantry
- **Abuse Intervention Counseling** – 132 contact hours for 23 individuals
- **Emergency Food** – 103 food boxes distributed, feeding 408 people
- **Case Management** – 215 case management meeting hours for residential men and women
- **Mail Services** – 102 clients
- **Bus Tickets** – 256 tickets, providing transportation throughout Corvallis and Albany
- **Permanent Supportive Housing** – 60 continuing clients

**Minutes of February 17, 2011  
Access Benton County**

**Present: Pat Shermer, Tony Albert, Ronald Naasko, Marlene Massey, Joe Harrod, Bob Fenner, Mary Marsh King, Edith Yang, Mike Mullett, Paul Mullett, Todd Allen, Judy Heath, Dana Marie, Hugh White, Jim Smith.**

**ABC Minutes are intended to describe the discussions, decisions, and actions that occur during ABC's monthly meeting. The minutes are to be considered only a draft until they are approved at the following monthly meeting. Persons who receive the draft of the minutes and see inaccuracies or omissions in them are asked to please inform ABC.**

- A. Minutes of January 20, 2011 meeting approved as submitted.**
- B. Treasurer's Report. Cash balance of \$308.00.**
- C. Correspondence: Letter of appreciation to Cornerstone and Associates for donation to Wheel Chair Day held last August at Riverfront Park. Letter of appreciation to China Delight Restaurant for the wonderful catering this vendor provided for ABC's Holiday Luncheon in December.**
- D. Continuing Business:**
  - 1. Discussion and selection of recipient for Keith E. Billings Award for 2010. Plans will be made for the Proclamation of Keith's Award to inform the citizens of Benton County of the details.**
- E. New Business:**
  - 1. ABC's special guest for our next meeting will be Linda Elder, Dial-A-Bus Director.**
  - 2. <http://www.ada.gov/t3compfm.htm> This is a link to the ADA website that describes how a qualified individual with a disability can file a discrimination complaint with the Department of Justice.**
  - 3. Link to free online course about Americans With Disabilities Act. <http://www.adabasics.org/>**
  - 4. Update on three of our ABCers who we recently had contact with. One has recently had a stroke and now in a nursing home. Another is now using oxygen for daily living activities. The third has recently received an award in Clark County Washington along with an Access Survey Committee for volunteers of the year. This is Mr. Wayne Yarnall who is chairman of the group. They surveyed over 50 buildings for the county!**

- 5. Joe reports that he has recommended to the Community Services Consortium that two gardening plots at their Western Boulevard and 2nd Street project be made accessible for persons using mobility devices. CSC, he informs us, is applying for grant money to make this a reality. Great work Joe! The raised beds along the sidewalk could be made accessible!**
- 6. Two concerns for access in the vicinity of 2nd Street and Washington Street were presented. One concerned temporary blockage of a handicapped parking spot. The other concerned poor drainage along a curb that is a problem for persons using wheel chairs. Photos were already taken and descriptions of the concerns written. Bob will share these with City staff for consideration of correction.**
- 7. Mary Marsh King shared that the Special Transportation bus route to Monroe may be ended soon due to low rider use. The Adair Village route is used quite a bit. Mary serves on the STAC. More on this and other special transportation news in the County will be discussed with our guest, Linda Elder, in March.**
- 8. Bob reports that Corvallis Street Department has recently improved ramps for access utilizing "New Freedom" grant monies. Three ramps were constructed to enable students using mobility devices to get to Jefferson School. Also four old ramps were replaced and gaps between curbs and sidewalks at some bus stops were eliminated. There will soon be an ADA accessible restroom at the downtown Transit Mall!**
- 9. Judy reminds us that riding on Corvallis Transit Buses is now FREE!  
Free is a good price.**
- 10. Health Care Workshop: Proposed Insurance Exchange and Public Plan (Single Payer bill), Oregon Health Policy Board update, general health reform in Oregon. Saturday, March 12th, First Congregational United Church of Christ, 4515 SW West Hills Rd., Corvallis.  
Registration Deadline March 7th.  
The Adobe Acrobat File attached is the registration form.**

**Meeting adjourned at 1:20 p.m.. Next ABC Meeting will be Thursday, March 17th, from Noon to 1 p.m. at the Benton Plaza, Commissioner's Meeting Room.  
Please join us!**

# QUALITY, AFFORDABLE HEALTH CARE IN OREGON



**Help Make It Happen I  
A Workshop  
Saturday, March 12, 2011  
8:30 a.m. – 3:30 p.m.**

**First Congregational United Church of Christ  
4515 SW West Hills Rd., Corvallis**

HEALTH CARE AND THE ECONOMY  
Val Hoyle, State Representative  
House Health Care Committee

FINANCING HEALTH CARE IN OREGON  
Eileen Brady, Oregon Health Policy Board  
Michael Dembrow, State Representative,  
Sponsor of "Affordable Health Care Act"  
Frank Morse, State Senator, Chair, Senate  
Subcommittee Health Care Reform

**Breakout Sessions**

I. PATIENT-CENTERED MEDICAL HOMES  
Sherlyn Dahl, BSN, MPH - Director Benton  
County Health Center  
Rick Wopat, MD, Family Physician

II. SINGLE PAYER LEGISLATION  
Michael Huntington, MD  
Cosimo Storniolo, MD

III. INSURANCE EXCHANGE & THE PUBLIC PLAN  
Laura Etherton - Health Policy Advocate,  
OSPIRG  
Liz Baxter, MPH – Director, We Can Do Better  
(Archimedes Movement).

IV. TRANSFORMING HEALTH CARE IN OREGON  
Eileen Brady - Oregon Health Policy Board

Workshop sponsors: *Albany Archimedes; Health Care for All Oregon (Mid-Valley Health Care Advocates Chapter); Interfaith Healthcare Network; League of Women Voters of Corvallis; and Physicians for a National Health Program.*

*OPEN TO THE PUBLIC*

Register by March 7, 2011 by filling in the form below and mailing it with your check to:  
Health Care for All Oregon, 1865 NW Lantana Dr., Corvallis, OR 97330.

*print and cut* .....

Name: _____	_____ Registration Fee \$10 (\$5 students)
Address: _____	_____ Box Lunch \$6 <input type="checkbox"/> vegetarian <input type="checkbox"/> turkey
Email: _____	_____ Total Enclosed (brown bag lunches ok)
Telephone: _____	Circle 2 Breakout Session choices: I or II, III or IV

Council Goals- Amendments

Mark O'Brien

3/7/11

Pg. 1

\*By 12/11, the Council will ~~hear and~~ provide direction on recommendations to strengthen access to and availability of locally produced food and community gardens via policy, ordinance and LDC changes.

\*By 12/12 the Council will ~~have enacted the necessary~~ code and policy changes **corresponding with that direction.** ~~to support those recommendations.~~

\*By 12/11, the Council will **consider** ~~take~~ action on recommendations by the Economic Development Commission concerning strategic priorities and funding sources for **Economic Development** initiatives.

\*Working with the OSU President and his staff, by 12/11, the Council will create a plan to seize opportunities on parking, code enforcement, infill design, rental code, traffic design and other important issues.

\*The Council will create a financially sustainable **City** budget.

\*Amend compensation policies to align total employee compensation with **available City** revenue.

\*Develop new sources of revenue that align with ~~expenditures~~ **the cost of desired City services.**

I move to adopt the proposed 2011-2012 City Council goals, as amended in this memo, and that the Council's official goal statements continue to reflect an ongoing commitment to the over-arching goals of Diversity, Citizen Involvement, Sustainability and Cost Efficiency.

Council Goals- Amendments

Mark O'Brien

3/7/11

Pg. 2

Clean Copy of Goals as Amended

\*By 12/11, the Council will provide direction on recommendations to strengthen access to and availability of locally produced food and community gardens via policy, ordinance and LDC changes.

\*By 12/12 the Council will enact code and policy changes corresponding with that direction.

\*By 12/11, the Council will consider action on recommendations by the Economic Development Commission concerning strategic priorities and funding sources for Economic Development initiatives.

\* Working with the OSU President and his staff, by 12/11, the Council will create a plan to seize opportunities on parking, code enforcement, infill design, rental code, traffic design and other important issues.

\*The Council will create a financially sustainable City budget.

\*Amend compensation policies to align total employee compensation with available City revenue.

\*Develop new sources of revenue that align with the cost of desired City services.



[[Date Prev](#)][[Date Next](#)][[Thread Prev](#)][[Thread Next](#)][[Date Index](#)][[Thread Index](#)]

## Fw: the questions

- **To:** ward8@xxxxxxxx, mayor@xxxxxxxx
- **Subject:** Fw: the questions
- **From:** kirk nevin <kirksnevin@xxxxxxxx>
- **Date:** Sun, 6 Mar 2011 19:10:39 -0800 (PST)

--- On Sun, 3/6/11, kirk nevin <kirksnevin@xxxxxxxx> wrote:

From: kirk nevin <kirksnevin@xxxxxxxx>  
Subject: the questions  
To: corvallisgadfly@xxxxxxxx  
Date: Sunday, March 6, 2011, 4:07 PM

To the Corvallis City Council:

Thank you for agreeing to debate the issues I have put before you: How do we define 'media' in 2011? Who qualifies for inclusion in city meetings that are closed to the public except for 'media' representatives? Exactly what are the reporting restrictions placed on 'media' representatives in city executive sessions?

I ask that you consider these issues in light of the effort I have put into establishing CorvallisGadfly.com; money and energy have been expended in an effort to create competition for the local 'media' outlet.

I would remind you that these are clearly First Amendment issues. I suggest you write your opinions in a form that would satisfy the Ninth Circuit Court of Appeals. The issues are critical to the future of Corvallis.

Successful government gets little public scrutiny. Failed government, which we now have in Corvallis, must expect an entirely different reaction from the public {Failed: My grandchildren have had to illegally urinate in Central Park. I cannot take my grandchildren to the library on rainy Sundays, when we were accustomed to curl up in a comfortable chair and read together. That defines failure}. Those of us who have been negatively affected by the fiscal irresponsibility of the Nelson administration are angered by the lack of public access to critical decision-making processes, and even more distressed by the apparent monopoly held by the recognized 'media' in Corvallis. When the only reports of local government events are controlled by a for-profit non-local organization, the opportunity for inaccuracy and omission is extreme.

I don't pretend to know the process of choosing legal counsel for the city, but I would suggest that these First Amendment issues are critical for the city, and that the council should review the process of choosing the legal entity which assists the elected government officials with these issues; I would hope that the choice of city counsel is an open process that is inclusive of all legal talent in Oregon, and that the city might consider retaining outside counsel for these critical First Amendment issues.

I appreciate the time and energy of the City Council members in reviewing these issues. I only hope the deliberations are productive in the sense that they lead to opinions and decisions that enable the Corvallis public to be more proactive in the governing process.

The example of the ongoing labor negotiations is one of many where the city/media combination has failed to properly inform the public. I'm hoping you'll change that situation so that we can avoid the historical *fait accompli* syndrome of the Nelson years, where the public is stuck with faulty agreements that are fiscally unsustainable.

Thank you for your consideration of these issues.

Namaste.  
Kirk Nevin  
CorvallisGadfly.com

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- Prev by Date: **Re: 2011 SEI Filing with Oregon Government Ethics Commission**
  - Previous by thread: **Mystery eCoupon Ends Sunday! You could save up to 50% off ThinkPad laptops | Reveal savings**
  - Index(es):
    - **Date**
    - **Thread**

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