CITY OF CORVALLIS
COUNCIL ACTION MINUTES
May 18, 2015

SUMMARY OF DISCUSSION

Agenda Item	Information Only	Held for Further Review	Decisions/Recommendations
Executive Sessions 1. Status of pending litigation 2. Municipal Judge and City Attorney evaluations Page 205	 Yes Yes		
Proclamations/Presentations 1. Proclamation Celebrating 25 Years of Youth Volunteer Corps 2. Proclamation of Older Americans Month 3. Proclamation of Public Works Week Pages 205-206	 Yes		• Proclaimed • Proclaimed
New Business 1. Timberhill Violations Appeal Pages 206-208			• Denied each appeal and affirmed the CDD's decision passed U
Visitors' Propositions 1. TCE cleanup (Koenitzer) 2. FY 15-16 proposed budget and funding for Council goals (Mills, Stevens, Lovett) Pages 208-209	 Yes Yes		
Consent Agenda Page 209			• Adopted Consent Agenda passed U
ASC Meeting – 5/6/15 1. Corrections to ASC minutes, if any 2. EDAB – Benton County membership Page 210	 Yes		• ORDINANCE 2015-09 passed U
City Legislative Committee 1. May 5, 2015 meeting Page 210	 Yes		
Other Related Matters 1. Resolution accepting $25,000 donation from Friends of Corvallis Parks and Recreation 2. Resolution transferring appropriations from 9-1-1 Fund to Police Department Operating Budget 3. Resolution appropriating $60,000 in Risk Management Fund Pages 210-211			• RESOLUTION 2015-17 passed U • RESOLUTION 2015-18 passed U • RESOLUTION 2015-19 passed U

Agenda Item	Information Only	Held for Further Review	Decisions/Recommendations
Mayor's Reports 1. India Day of Celebration Page 211	Yes		
Council Reports 1. Ward 6 meeting, Corvallis Watershed tour, Garfield Carnival, recognition of CDD Gibb's pending retirement (Hirsch) 2. Lebanon Strawberry Festival Queen contest, Vision and Action Plan Task Force (York) 3. CRAG, Community Policing, Cops and Robbers course (Hogg) 4. Sustainable Budget Task Force (Brauner) 5. Green building/sustainability presentation, Les Misérables, Robert Prince, ABCs issues (Hann) 6. Cops and Robbers course, GCC report (Glassmire) 7. CATF, South Corvallis Millrace tour, OSU students and sustainability (Baker) 8. Housing Task Force (Beilstein) 9. Buildable Lands Inventory, DACs (Bull) Pages 211-213	Yes Yes Yes Yes Yes Yes Yes Yes Yes		
Staff Reports 1. City Manager's Report – April 2015 2. EDMBAR – April 2015 3. CRFR: Homeless Shelter Location and Buildable Lands Inventory Process Page 213	Yes Yes Yes		

Glossary of Terms

ABCs	Advisory Boards and Commissions
ASC	Administrative Services Committee
CATF	Climate Action Task Force
CDD	Community Development Director
CRAG	Community Relations Advisory Group
CRFR	Council Requests Follow-up Report
DACs	Department Advisory Committees
EDAB	Economic Development Advisory Board
EDMBAR	Economic Development Monthly Business Activity Report
FY	Fiscal Year
GCC	Government Comment Corner
OSU	Oregon State University
TCE	Trichloroethylene
U	Unanimously

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Mayor Traber read a statement, based upon Oregon law 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. He 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, approved disclosure. He suggested that any Council or staff member who may not be able to maintain the Council's confidences should leave the meeting room.

Council entered executive session at 5:30 pm under ORS 192.660(2)(h) (status of pending litigation or litigation likely to be filed) and adjourned at 6:18 pm.

PRESENT: Mayor Traber; Councilors Baker, Beilstein, Brauner, Bull (5:32 pm), Glassmire, Hann, Hirsch (5:32 pm), Hogg, York

I. CALL TO ORDER

The regular meeting of the City Council of the City of Corvallis, Oregon was called to order at 6:31 pm on May 18, 2015 in the Downtown Fire Station, 400 NW Harrison Boulevard, Corvallis, Oregon, with Mayor Traber presiding.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

PRESENT: Mayor Traber; Councilors Baker, Beilstein, Brauner, Bull, Glassmire, Hann, Hirsch, Hogg, York

Mayor Traber noted items at Councilors' places, including an email from Jeremy Monroe concerning the clean-up of trichloroethylene (TCE) contamination at Hollingsworth and Vose (formerly Evanite) (Attachment A) and correspondence from Bill Kloos concerning the Timberhill Violations Appeal (Attachment B).

IV. PROCLAMATION/PRESENTATION/RECOGNITION

A. Proclamation Celebrating 20 Years of Youth Volunteer Corps (YVC)

Mayor Traber read the proclamation.

YVC Program Manager Curtis said 8,800 YVC participants provided 1.1 million hours of service over the past 20 years. YVC member Madeline Miller said participation in the program was a good experience that taught her valuable life skills.

B. Proclamation of Older Americans Month – May 2015

Mayor Traber read the proclamation.

Senior Center volunteer Lynda Wolfenbarger said three representatives from the City would attend the Oregon White House Conference on Aging on May 20. Senior Center activities included production of a bi-monthly newsletter, installation of a new dishwasher, and plans to add a south parking lot.

C. Proclamation of Public Works Week – May 17-23, 2015

The proclamation was for information only. Mayor Traber noted the challenges to providing public infrastructure services and recognized the contributions of Public Works Department employees.

V. NEW BUSINESS

A. Timberhill Violations Appeal

Mayor Traber said the Council was considering an appeal of two decisions made by Community Development Director Gibb finding that Appellant GPA1, LLC violated local regulations related to the Land Development Code (LDC) and Corvallis Municipal Code. The hearing was not a land use matter; however, it was a quasi-judicial decision under Municipal Code Chapter 1.11, "Appeals Procedures."

Deputy City Attorney Brewer added there were no applications for development or permits. The Council was to decide whether Mr. Gibb's decision was arbitrary or capricious. The Council was not to consider new evidence in rendering its decision, nor to substitute its judgment for that of Mr. Gibb. The Council was only to determine whether competent evidence existed in the record for Mr. Gibb to have made his decision.

Mayor Traber said the Appellant and the City would each have ten minutes to present their oral arguments, followed by questions from the Council. No conflicts of interest or inabilities to make impartial decisions were declared.

Appellant Attorney Kloos referred to materials he provided to the Council just prior to the meeting (Attachment B), noting his client received notices of violation for mowing significant vegetation without a permit and for violating the City's erosion control ordinance. He said the City's Fire Code required mowing vegetation that was ten inches or more in height between June and September. His client began mowing the 211-acre property in February to ensure he would be in compliance by June. Mr. Kloos said the stop work order prevented his client from completing mowing and fire season was quickly approaching. He said the erosion control ordinance only applied in the context of construction and development work. He opined the ordinance was not applicable in this situation because his client was only mowing the property, and vegetation was moved as part of that work. He disagreed with staff's assertion that his client's actions constituted development activities. He said the notice of violation paperwork required his client to stop work and hire a consultant to assess the impact to the property. Pacific Habitat Services was hired and their report was included in Attachment B. Mr. Kloos said the City accepted the report; however, due to the stop work order, his client had not been able to complete the recommended remediation plan. He said the report confirmed that no

trees had been cut in violation of the ordinance and only a miniscule amount of the total area of significant vegetation had been impacted.

In response to Councilor Bull's inquiries, Mr. Kloos said he was arguing the City's notice of violation was not appropriate, his client was trying to comply with the City's directives but could not due to the stop work order, and the mowing requirement in the Fire Code conflicted with the Land Development Code.

In response to Councilor Glassmire's inquiry, Mr. Kloos said it was not clear whether the notice of violation could be appealed, so his client filed the appeals as a precaution.

In response to Councilor Hann's inquiry, Mr. Kloos acknowledged the process was initiated by a citizen complaint.

Deputy City Attorney Coulombe said most of Mr. Kloos' legal arguments were outside the scope of the Council's review. The appeal challenged Mr. Gibb's decision to initiate enforcement of the LDC and Municipal Code provisions related to erosion control and protection of natural features, as set out in the notices of violation. The appeal did not challenge the stop work order and the matter before the Council only related to whether Mr. Gibb acted arbitrarily or capriciously based on the facts before him at the time he made his decision.

Mr. Coulombe said he was present when Fire Marshal Prechel recently testified about the Timberhill property in Circuit Court. He added that Mr. Kloos was not present in court and the statements he asserted in Attachment B were not accurate. Mr. Prechel clearly indicated in court there was no requirement to mow the property. Mr. Coulombe believed the Appellant's defense was a post-event justification and development activity had occurred based on the photographic and video evidence, copies of which had been provided to the Council.

In response to Councilor Bull's inquiry, Mr. Coulombe said Mr. Wood, a representative of the property owner, was present on April 16, 2013 when photographs and a video of the property were taken.

In response to Councilor Hann's inquiry, Mr. Coulombe said the City received several citizen complaints about work on the Timberhill property.

In response to Councilor Glassmire's request for clarification, Mr. Coulombe said the Fire Code requires a defensible space around structures; however, no structures existed on the Timberhill property. Defensible space around abutting properties with structures was already provided for in the setbacks for those properties. Therefore, no mowing was required on the Timberhill property.

In response to Mr. Kloos' request, Mayor Traber said the matter was not a land use hearing and he denied a rebuttal, as both sides had already received an equal amount of time to present their arguments.

For reasons set out in the executive summary, the statements, explanations, and presentation of facts by photographic and other competent evidence prepared by City staff, along with due consideration of the Appellant's and City staff's positions presented

during oral argument, Councilors Hirsch and Hann, respectively, moved and seconded that each appeal be denied and the Community Development Director's decision be affirmed.

Councilor York said Mr. Gibb had ample evidence to make his decision. Councilor Beilstein agreed.

Councilor Hann said Mr. Gibb followed the process prescribed in the LDC and he did what the City asked of him.

The motion passed unanimously.

VI. VISITORS' PROPOSITIONS

Marilyn Koenitzer spoke from prepared testimony concerning the remediation action plan for the TCE clean-up at Hollingsworth and Vose (Attachment C).

In response to Councilor York's inquiries, City Manager Shepard said the City was not actively providing information to the public about the process, as the matter was between the Department of Environmental Quality (DEQ) and the property owner. If the City received questions, they would be directed to the DEQ. The City was aware of what was occurring; however, there was no plan to comment because there was no impact to City infrastructure.

In response to Councilor Bull's inquiries, Ms. Koenitzer said the area was zoned mixed use transitional, which allows for office and residential development. Land use restrictions were likely due to the large amounts of TCE detected underneath the hardboard manufacturing plant. Ms. Koenitzer said water under the site was still contaminated and the issue was complex. A link to the proposed remediation plan and information about the comment period was provided in written testimony provided by Mr. Monroe (Attachment A).

Annette Mills spoke from prepared testimony concerning the budget and funding for Council's Climate Action goal (Attachment D). Mayor Traber noted the public hearing concerning the Fiscal Year 2015-16 proposed budget would be held at the June 1 Council meeting.

Marge Stevens read from a prepared statement concerning the Fiscal Year 2015-16 proposed budget and Council goals funding (Attachment E).

Linda Lovett provided a handout showing the 50 largest United States cities and the status of their Climate Action Plans (Attachment F). She said those who worked on Corvallis' Climate Action Plan formed a coalition of various groups and their perspectives were represented when she and others who support climate action speak to the Council. She said such groups do not wish to be pitted against City services and she believed there was broad community support for climate action, as evidenced by Citizen Attitude Survey results. In response to Councilor Hann's inquiry, Ms. Lovett said the essential element for moving forward on climate action was a commitment to get something done, and other cities had taken steps to address climate change without adding a lot of staff. She said the community members who worked on the Climate Action Plan did not request City funding. However, funding to add City staff was essential, as it was the most practical way to start working on the goal. In response to Councilor Bull's inquiry, Ms. Lovett said there was never an expectation the City would adopt the Climate Action Plan without a public process, information about funding options such as grants and programs was included in

the Climate Action Plan, and she believed City staff was necessary to move the Climate Action goal forward.

VII. CONSENT AGENDA

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

A. Reading of Minutes
   1. City Council Meeting – May 4, 2015
   2. City Council Special Meeting (City Manager Open House) – May 7, 2015
   3. For Information and Filing (Draft minutes may return if changes are made by the Board or Commission)
      a. Arts and Culture Advisory Board – April 15, 2015
      b. Community Relations Advisory Group – May 11, 2015
      c. Economic Development Advisory Board – April 13, 2015
      d. Library Advisory Board – April 1, 2015
      e. OSU-Related Plan Review Task Force – April 13, 2015
      f. Parks, Natural Areas, and Recreation Advisory Board – April 16, 2015
      g. Watershed Management Advisory Board – April 22, 2015

B. Approval of an Off-Premises Sales liquor license for Mark and Amy Bradley, owners of Furby Foods, dba Corvallis Grocery Outlet, 1755 NW Ninth Street (Change of Ownership)

C. Announcement of vacancies on advisory boards and commissions (various)

D. Announcement of appointment to King Legacy Advisory Board (Campbell)

E. Confirmation of appointments to advisory boards (Airport Advisory Board – Shute; Arts and Culture Advisory Board – Garrison; Parks, Natural Areas and Recreation Advisory Board – Rosenberg, Sumner; Watershed Management Advisory Board – Heggen, Rogers)

F. Schedule an Executive Session for 5:30 pm on June 1 under ORS 192.660(2)(i)(status of employment related performance): Municipal Judge and City Attorney

G. Confirmation of an Executive Session for May 18, 2015 immediately following the regular meeting under ORS 192.660(2)(i)(status of employment related performance): Municipal Judge and City Attorney

The motion passed unanimously.

VIII. ITEMS REMOVED FROM CONSENT AGENDA – None

IX. UNFINISHED BUSINESS – None

X. STANDING COMMITTEE REPORTS, ORDINANCES, RESOLUTIONS, AND MOTIONS

A. Human Services Committee – None

B. Urban Services Committee – None

C. Administrative Services Committee (ASC) – May 6, 2015

1. Corrections to ASC minutes, if any

Councilor Bull provided clarifications to the minutes (Attachment G). The item was for information only.

2. Economic Development Advisory Board (EDAB) – Benton County Membership

Councilor Brauner said staff and EDAB recommended that the Benton County Commissioners appoint three EADB members, and that EDAB include a Benton County Commissioner as a non-voting liaison. If passed, the Ordinance would amend the EDAB to reflect the Mayor appointing six members and Benton County appointing three.

Mr. Brewer read an ordinance relating to advisory boards and commissions, amending Municipal Code Chapter 1.16, "Boards and Commissions," as amended.

Councilor Hirsch apologized for missing the May 6 ASC meeting. He said the Economic Development budget required more resources and if the City could not afford to fund the program to be fully effective, it should stop funding it half-way, and use the resources elsewhere.

ORDINANCE 2015-09 passed unanimously.

D. City Legislative Committee

1. May 5, 2015 meeting

There were no corrections to the May 5, 2015 meeting minutes. Mayor Traber reported Resolution 2015-15 concerning carbon pricing was sent to State and Federal representatives. A hearing on inclusionary zoning was scheduled for May 19 and the City's position on the matter was included in the record. He sent a letter to State representatives supporting SB 5005 regarding affordable housing, and he signed on to Portland Mayor Hales' letter to the State Legislature urging action on infrastructure funding and maintenance. The item was for information only.

E. Other Related Matters

1. A resolution accepting a $25,000 donation from Friends of Corvallis Parks and Recreation to help fund Arnold Park Playground improvements

Mr. Brewer read a resolution accepting a $25,000 donation from Friends of Corvallis Parks and Recreation to help fund Arnold Park Playground improvements.

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

Councilor Glassmire said at the May 16 Government Comment Corner, people who lived near Arnold Park expressed concern that traffic was hampering the ability of children and the elderly to access the park. He said their feedback was another aspect to consider in addition to funding the playground improvements.

RESOLUTION 2015-17 passed unanimously.

2. A resolution transferring appropriations from 9-1-1- Emergency Communications Fund contingencies to Police Department Operating Budget

Mr. Brewer read a resolution transferring appropriations from 9-1-1- Emergency Communications Fund contingencies to Police Department Operating Budget.

Councilors Hirsch and Hann, respectively, moved and seconded to adopt the resolution.

In response to Councilor Glassmire's inquiry, Mr. Shepard confirmed the appropriations transfer did not impact the City's $1.5 million budget surplus.

RESOLUTION 2015-18 passed unanimously.

3. A resolution for a supplemental budget to appropriate $60,000 in the Risk Management Fund for costs to refurbish an insured ambulance

Mr. Brewer read a resolution for a supplemental budget to appropriate $60,000 in the Risk Management Fund for costs to refurbish an insured ambulance.

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

RESOLUTION 2015-19 passed unanimously.

XI. MAYOR, COUNCIL, AND STAFF REPORTS

A. Mayor's Reports

Mayor Traber read a proclamation on May 16 in recognition of the India Day Celebration. A copy of the proclamation will be included in the June 1, 2015 Council meeting packet as information only.

B. Council Reports

Councilor Hirsch thanked staff for attending the Ward 6 meeting on May 12. The annual public tour of the Corvallis watershed was scheduled for May 28 and the Garfield Carnival was scheduled for May 30. He noted Community Development Director Gibb's June 30 retirement and wished him well.

Councilor York was invited to serve as a judge for the Lebanon Strawberry Festival Queen contest and the Vision and Action Plan Task Force's first meeting was scheduled for May 19.

Councilor Hogg said the newly formed Community Relations Advisory Group began meeting to discuss neighborhood issues. Recommendations about how to improve neighborhood livability will be made to the City Council and Oregon State University (OSU). He noted Corvallis' use of community policing to more effectively engage the community and the last Police Department Cops and Robbers class focused on the Department's School Resource Officer.

Councilor Brauner said the Sustainable Budget Task Force would meet on June 5.

Councilor Hann said as part of Historic Preservation Month activities, he attended a presentation at the Whiteside Theatre regarding green building and its impact on sustainability. Les Misérables was playing at the Majestic Theatre and was expected to generate $80,000 in revenue to the City. He recognized the passing of Mr. Robert Prince, a Ward 8 resident who worked at OSU and served in the military. He recently attended Arts and Culture Advisory Board and EDAB meetings, and noted that each had a vision and was working on developing a sense of identity for Corvallis. Sometimes there was overlap, but a common thread was a lack of understanding about how the Boards could interrelate, communicate, and share resources to accomplish more. He suggested having an all boards and commissions meeting to bring everyone together.

Councilor Glassmire, who also participated in the Cops and Robbers course, noted the City's School Resource Officer was recognized statewide as an expert on child abuse and was an instructor at the Oregon Police Academy in Monmouth. He participated in a ride along with Corvallis police officers and encouraged others to do the same by making an appointment through the Police Department. He hosted Government Comment Corner on May 16 where he received comments about problems near Arnold Park, including streets without stop signs where accidents have occurred and perceived intermittent drug activity in the Park late at night.

Councilor Baker was working with staff to schedule the first Climate Action Task Force meeting in early June. A bicycle and trolley tour of the millrace in South Corvallis was scheduled for May 30 and a kayak paddle up the Marys River to the millrace inlet was scheduled for June 13. He noted the entry in the City Manager's Report that Public Works Department staff presented information to OSU graduate students regarding sustainability. He suggested staff consider how to leverage student projects to assist with the City's sustainability initiatives. He thanked Parks and Recreation Department staff for preparing the softball fields.

Councilor Beilstein said the Housing Task Force's first meeting was scheduled for June 2.

Councilor Bull thanked staff for providing information about the Buildable Lands Inventory (BLI) process to date and requested a copy of the BLI Request for Proposals (RFP) document. She was not aware that a BLI Department Advisory Committee (DAC) had been formed and requested more information about the process for forming DACs. She was pleased an opportunity for public participation in the BLI would eventually be provided. Mayor Traber said the previous Council adopted a process to form DACs.

Mr. Shepard said he would forward a copy of the RFP to Councilors. He noted the BLI DAC included two City Councilors and two Planning Commissioners who helped develop the RFP document. He confirmed there would be a separate public process for residents to participate in the BLI.

C. Staff Reports

1. City Manager's Report – April 2015
2. Economic Development Monthly Business Activity Report – April 2015
3. Council Request Follow-up Report
   a. Homeless Shelter Location
   b. Buildable Lands Inventory Process

The items were for information only.

XII. PUBLIC HEARINGS – None

XIII. ADJOURNMENT

The meeting adjourned at 8:22 pm.

Council entered Executive Session at 8:27 pm under ORS 192.660(2)(i) (status of employment related performance) to discuss results of Municipal Judge and City Attorney evaluations. Councilor Hirsch did not attend the executive session, which adjourned at 9:31 pm.

APPROVED:

Biff Traber

MAYOR

ATTEST:

Carla Hogwarth

CITY RECORDER

From: Jeremy Monroe
Sent: Saturday, May 16, 2015 6:08 AM
To: Ward 3; Ward 2
Cc: Mayor and City Council; City Manager
Subject: DEQ Proposed Remediation of Evanite TCE spill in South Corvallis

Dear Roen and Zach,

I am a Ward 3 resident who has been following the clean-up of the Evanite TCE spill near my neighborhood, and am now working with several other citizens to review and provide public comment, if any, on the Oregon DEQ proposed plan for remediation, which was just released 2 weeks ago and currently open for public comment.

I am unable to attend the coming City Council meeting to make comment, so I am providing the summary of issue below, and have also attached this as document that can be shared at the Council meeting.

ISSUE SUMMARY:
Proposed Remediation of the Evanite Trichloro-ethylene (TCE) Contamination Site in South Corvallis

Background

- TCE leakage occurred at the Evanite plant in the 1970s and 1980s in an area beneath the submicro and glass plants on Chapman Pl in South Corvallis, and spread through groundwater/soil to a 25-acre area that reached to nearby residential wells, the Marys and Willamette Rivers and the Mill Race
- TCE = Trichloro-ethylene - a persistent contaminant listed as a known carcinogen by EPA in 2011 that is not easy to remove from groundwater and soils
- Since the 1990s, the contamination site has been studied by DEQ, and pilot clean-up measures have been recommended and implemented by Evanite and present owner
- Present owner, Hollingsworth & Vose (who is NOT responsible for the actual spill, but is responsible for the clean-up) has been doing their diligence as far as initial clean-up and DEQ cooperation

DEQ Remediation Plan

- Over a decade in preparation, the DEQ proposed remediation plan is based on site studies and pilot clean-up measures
- The plan includes extracting TCE from groundwater and soil to the extent possible, and capping the site along with a relatively new bacterial dechlorination method
- Based on an assumed 20-30 year timeline for clean-up measures, the cost is estimated at 6 million dollars.
- Hollingsworth & Vose is responsible for the clean-up implementation and cost
- The proposed plan was released on April 29, 2015 and is open for public comment until June 1, 2015

- The proposed plan is available online: http://www.deq.state.or.us/Webdocs/Controls/Output/PdfHandler.ashx?p=549a8a8a-c4c1-4b51-9180-b11da9f1695fpdf&s=StaffReport.pdf

Public comment

- A group of citizens is collaboratively reviewing the plan, and preparing questions for DEQ staff that would inform any formal public comment (group members may attend the Council meeting to share questions).
- We would like Councilors, Mayor Traber, and the City Manager to be aware of this issue, and would like to inform City staff of our questions and any responses we receive from DEQ. **Is there a recommended City staff person or representative that we should contact?**

Thank you for your time and consideration,

--
Jeremy Monroe

LAW OFFICE OF BILL KLOOS PC

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BILL KLOOS
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May 18, 2015

Corvallis City Council
501 SW Madison St.
Corvallis, OR 97333

Re: Appeal of Community Development Director Decisions in VIO13-00199

Dear Councilors:

Please accept this statement and the enclosures on behalf of the appellant.

A. Summary:

As the Director will confirm, the owner has fully cooperated with the three-step correction process the Director required in the NOVs, even while maintaining that the NOVs were illegally issued.

Why were the NOVs illegally issued? The answers are simple.

> **NOV for vegetation cutting:** The Corvallis Fire Code requires the mowing that was done by the owner. This is plain under the language of the Fire Code. If the plain language of the code is not enough, the Corvallis Fire Marshall, Jeff Prechel, stated this under oath in circuit court on May 15. (The 80-acre Sept. 5, 2014 wildfire on this site demonstrates the importance of mowing in compliance with the fire code.)
>
> **NOV for erosion control:** The plain language of the EPSC ordinance says that the regulation only applies "during construction and development." The record is devoid of any evidence that soil disturbance was done in connection with construction and development. None was approved; none was done.

The record of facts generated prior to the NOVs shows the following sequence of events:

> As the owner explained to the city staff prior to issuance of the NOVs:
>
> > The 211 acre property was bought in December 2012. At that time it was a neglected, overgrown fire hazard with a big homeless camp population.

> The owner wanted to cut vegetation in order reduce the fire fuel load, remove cover for the homeless population, and open the area to facilitate survey of the property.

The owner conferred with Director Gibb prior to commencing vegetation mowing; the Director did not advise of any prohibition of the mowing or of permits that were needed.

Mowing began on February 13th, 2013; neighbors complained; city staff Shannen Chapman inspected the property with the owner on March 13th; staff determined there was no violation, and closed the case.

On April 16, 2013, city staff Westfall visited the site with the owner, determined violations had occurred, and issued the Stop Work Order the same day.

The NOVs were issued on April 25, 2013.

The NOV for vegetation removal required the owner to do three things: (1) Stop Work; (2) Assess adverse impacts to mapped natural resources and to all mapped wetlands; and (3) Propose and conduct appropriate mitigation. The assessments were done by Pacific Habitat Services (PHS), Inc., (Aug. 15, 2014), reviewed by the Director, and accepted by the Director. A copy is attached as Exhibit A. The PHS Assessment (at page 6) concluded that no trees were removed by the owner. Using city mitigation standards, only a 1.42-acre area needed to be revegetated to mitigate impacts to HPSV areas (page 7), and only 1.18 acres needed mitigation for impacts to riparian corridors (page 9). The owner has not been able to actually do the mitigation work because the Director has left the Stop Work Order in place, for more than two years now. In summary, the owner has fully complied with the corrective directions in the NOV, to the extent the Director will allow work to be done on site.

B. Both NOVs should be dismissed based on the law that applies – the Fire Code and the Erosion Prevention and Sediment Control ordinance.

We fully briefed the law to the city staff many months ago, but staff has not forwarded that information to you.

> **(1) As the City Fire Marshall explained in circuit court on May 15, the Corvallis Fire Code requires the mowing of vegetation that was done by the owner. Issuance of the NOV for vegetation cutting was contrary to the Fire Code.**

On October 15, 2014, we filed a "Request for Summary Disposition," explaining why this NOV was fatally deficient under the code and why the mowing that was done is required by the Fire Code. Staff has not forwarded that to the Council. We have attached a copy as Exhibit B.

The Fire code requires the mowing that was done here.

Section 7.08.130 - Combustible vegetation.

(1) OFC Section 304.1.2 as adopted by this Chapter is amended to add Section 304.1.2.1 as follows:

304.1.2.1 Combustible vegetation on city parcels. The person owning, possessing, or having the care or custody of any lot or parcel of land shall cut, as close to the ground as is reasonably practical, and shall remove or destroy all brush, grass, weeds, thistles, vines, and other vegetation growing at a height of 10" or more between the months of June 1 and September 30 of each year, or when determined by the fire chief to be a fire hazard. When the fire chief determines that total removal of growth is impractical due to size or environmental factors, approved fuel breaks shall be established. Minimum width of a fuel break adjacent to public sidewalks, streets, bikeways, and trails shall be 10 feet. Minimum width of fuel breaks along property lines and around combustible structures shall be 25 feet unless determined to be impractical by the fire chief.

EXCEPTION: Vegetation along drainage ways in wildland and wildflower areas under public ownership, and on private lands designated as protected under federal or state legislation, can exceed the 10" limitation so long as it is not determined to be a fire hazard by the fire chief.

Parcels in the urban wildland interface areas shall also be subject to OFC Section 304.1.2.

(Ord. 2014-08, § 1 and § 2, Repealed & Replaced, 07/21/2014; Ord. 2004-23 § 1 and § 2, 11/01/2004; 98-40 & 41, Repealed & Replaced, 11/02/1998)

The Fire Code requires the vegetation cutting that was done here. It is a public health and safety issue. It intends to avoid or mitigate fire hazard on this land and all lands in Corvallis. It applies directly. It does not require any discretionary permitting from the Director.

In sworn testimony in circuit court on May 15, City Fire Marshall Jeff Prechel testified that the Fire Code requires cutting these lands.

Neither of the "Exceptions" stated in the Fire Code to avoid cutting applies here. The site does not include wildland or wildflower area in public ownership. There is no acreage on the site that is required to be protected from cutting under state or federal law. The wetlands on site may be mowed under federal and state law. The city vegetation protections (for wetlands, riparian corridors, and significant vegetation) are protections under <u>city</u> law, not state or federal law. The particular lands the city has elected to protect under Goal 5 are not required to be protected under state or federal law.

In summary, the NOV was issued contrary to the Fire Code. By stopping the mowing, the Director violated the Fire Code, and aggravated the destruction of property and risk to life that followed in the September 5, 2014 fire on the site. The wildfire was stopped at 86 acres and at people's door steps due to the efforts of many firefighters and a fortuitous change in the wind direction.

With the Stop Work Order still in place, the Director is continuing these risks as we all move into another, drier fire season. The Director is ensuring that the fuel load will remain in place. Perhaps he is counting on a big dose of good luck and favorable winds.

(2) The NOV for violation of the Erosion Prevention and Sediment Control ordinance must be dismissed because any exposure of soil was not done during construction and development, which is the essential trigger in the ordinance.

On October 15, 2014, we filed a "Request for Summary Disposition," explaining why, based on the plain language of the ordinance and the EPSC Manual, the regulation only applies "during construction and development." Staff did not forward that information to you. We have attached a copy as Exhibit C.

The mowing was not done during construction or development. There is no evidence to support such a finding. No development approval was in place at the time of the mowing. None was even applied for at that time.

In addition, on October 24, 2015, in the course of negotiations with city staff on this NOV, the City Attorney conceded that the erosion control NOV had become moot, with the passage of time. That email, attached as Exhibit D, said in part:

> "As I understand it, the Erosion violation(s) have been mitigated as revegetation occurred. Consequently, that violation matter appears closed. I've asked for a copy of any document to confirm that closure has occurred and will provide that to you."

In summary, the erosion control NOV should be dismissed. The work was not done in connection with construction or development. And, as the city staff has already found, the issue is moot.

C. Evidentiary and process shortcomings in this proceeding.

(1) Only the staff has been allowed to submit evidence related to the allegations.

Your staff has insisted that this appeal must be heard "based on the facts or record upon which the decision was based." City Attny Mem (April 13) page 1. What this means is that only the Director (and his staff) have had any opportunity to submit evidence as to whether there was a violation, or, if so, of what magnitude. Thus, your materials contain Mr. Westfall's four-page

"Executive Summary" of the evidence. That is his explanation of what he says the neighbors told him, what he says he observed on his own, and what he says the owner's representative told him. It does not contain any evidence submitted by the property owner. The property owner has not had a chance to submit evidence or to rebut the evidence submitted by Mr. Westfall.

Under these circumstances, with only evidence from the Director before the Council, how can the City Council reach any conclusion from the evidence other than affirming the Director? The Director is the prosecutor. But only the prosecutor is allowed to submit evidence. If only the prosecution can submit evidence, what is the purpose or utility in the appeal?

(2) The city's failure to provide an opportunity to present and rebut evidence submitted by staff violates the owner's right to due process.

The owner and the City Attorney have had extensive discussions about the correct process under the city code for conducting a hearing like this. See email chain dated November 4, 2014, enclosed as Exhibit E. The owner pointed to code provisions which the city could follow to provide the owner with an opportunity to present and rebut evidence. The owner incorporates those arguments here.

As explained in (1) above, the City is conducting this appeal in a manner that affords only the city staff with an opportunity to present evidence. Proceeding in this fashion violates the federal due process rights of the owner. As we explained in the November 4 email:

> The scope of the appeal to the City Council is discussed in CMC 1.11.020 and CMC 1.11.030. CMC 1.11.020 provides for a de novo hearing before the City Council where the initial decision is in the form of a recommendation and is not a final decision. CMC 1.11.030 provides for an on the record hearing before the City Council when the decision being appealed from is a final decision. Your October 22 email says that the hearing before the City Council is on the record.
>
> There is no record in this matter, other than the Notice of Violation and the appeal filed by my clients. The City is alleging a violation of the Municipal Code. The City has the burden of proving that. Thus far the City has provided the owner with nothing but the bare allegation of a violation. The City needs to support that allegation with facts. My client has a right to contest those facts. If the appeal to the City Council is de novo under CMC 1.11.020, then both the City and the owner will have an opportunity to be heard on the facts. However, if the City insists on the appeal being "on the record" under CMC 1.11.030, then the owners will not have been afforded an opportunity under any code provision to present evidence to contest the alleged violation.
>
> If the City does not afford the owner a right to be heard and to contest the facts under city code provisions, then it must afford the owner its due process rights under the Fourteenth Amendment to the US Constitution. See *Mathews v.*

> *Eldridge*, 424 US 319, 348, 96 S Ct 893, (1976). Absent a city process that allows for submission and review of evidence, *Mathews* requires that opportunity under federal law. The three-part test of *Matthews* is met. (1) The owner's private interest would be affected by the city action. They are being directed to pay a filing fee and endure a city application process; they have been painted by city officials as scofflaws, for having violated a city environmental ordinance; their business success hinges on their reputation as land developers who respect the city's environmental laws. (2) The city's proposed "on the record" review process is neither fair nor reliable. An on the record appeal process does not require the prosecution to prove its case by presenting evidence, and it does not allow the owner to contest the allegations by presenting evidence. It is an empty shell of a process. Federal due process rights are a necessary safety net for the process you have proposed. (3) It is in the public interest of every citizen of Corvallis to have the city, as prosecutor, be required to put facts showing the alleged code violations on the table, in the light of day, and to afford any citizen the right to contest those facts with evidence of their own. That has not happened yet; and it will not happen with the process the city proposes. The owner's due process rights ensure, at a minimum, the equivalent of the city's de novo appeal procedures. The owner demands those rights.

To restate the point made in C.1. above, if the only evidence that can be considered in this proceeding is evidence gathered by the city staff, then what is the utility of this appeal hearing? Staff gives the evidence on behalf the neighbors, on behalf of staff, and on behalf of the owner. In that staff evidence there can be material omissions, material misrepresentations, and lies. Staff should be advocating for an evidentiary proceeding just as vigorously as the owner, as insurance that the process appears to be and in fact is fair.

If this appeal process is intended to pass minimum muster under the constitution, then the City Council must afford the owner the opportunity to submit and rebut evidence. That has not happened yet.

D. Response to specific legal argument in the Westfall "Executive Summary."

In response to the owner's explanation in B.2. above that the EPSC ordinance is not triggered in this instance because it is only triggered by construction or development, and no construction or development was approved or done, the Westfall Executive Summary asserts that the work should be considered "development" because it included pushing piles of vegetation and soil into piles and into swales as fill. There is no evidence in the record of fill taking place, or the pushing of soil into piles on the property. This assertion is a fabrication. It is the kind of fabrication that would not stand in the light of day, if the city process provided an opportunity for the owner to present and rebut evidence.

The EPSC ordinance and its implementing Manual make clear that this ordinance is intended to come into play when there is actual development taking place on the property. It does not apply

to mowing vegetation any more than it applies to farming activities or to homeowners tearing out old lawns and installing new lawns.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Client

Violation Resolution and Significant Vegetation Management Plan

Timberhill Planned Development
Corvallis, Oregon

(Benton County Assessors Map 1152200,
Tax Lot 3500, W.M.)

Prepared for

GPA1, LLC
202 NW 6th Street
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Prepared by

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PHS Project Number: 5170

August 15, 2014

TABLE OF CONTENTS

Page

1.0 INTRODUCTION **1**

2.0 EXISTING CONDITIONS AND IMPACT ASSESSMENT **1**
2.1 Highly Protected Significant Vegetation (HPSV) Areas 1
2.2 Partially Protected Significant Vegetation (PPSV) Areas 2
2.3 Riparian Corridors 2
2.4 Summary of Previous Impacts 3
2.5 ISA Certified Arborist's Assessment 4

3.0 RESOLUTION OF PROJECT IMPACTS **4**
3.1 Summary of Current Conditions in HPSV and PPSV areas (as of June 2014) 4
3.2 Determination of Required Mitigation for Vegetation Impacts 5
3.2.1 Mitigation for HPSV Impacts 5
3.2.2 Mitigation for PPSV Impacts 7
3.2.3 Mitigation for Riparian Corridor Impacts 7
3.3 Mitigation Plan for Impacted HPSV Areas 10
3.4 Mitigation Plan for Impacted Riparian Corridors 10
3.5 Mitigation Summary for HPSV and Riparian Corridor Areas 11
3.6 Mitigation Monitoring and Maintenance 11

4.0 SIGNIFICANT VEGETATION MANAGEMENT PLAN FOR OAK RELEASE AREA **12**
4.1 Plan Goals and Objectives 12
4.2 Oak Woodland Restoration 13
4.3 Conifer Forest Retention and/or Enhancement 14
4.4 Invasive Species Control 15
4.5 Implementation Plan / Schedule 16

5.0 REFERENCES **18**

APPENDIX A: Figures
APPENDIX B: City of Corvallis Recommendations for Violation Resolution and SVMP preparation (per City communication dated April 19, 2014)
APPENDIX C: ISA-Certified Arborist's Cost Estimate

1.0 INTRODUCTION

Pacific Habitat Services, Inc. (PHS) previously performed an assessment of vegetation management activities on an approximately 211-acre property located in Corvallis, Oregon and identified on Benton County Tax Assessor's Map 1152200, as Tax Lot 3500 (the Property). See Exhibit A for limits of the study area.

A Notice of Violation and Order to Abate (Case VIO13-00199) was issued by the City of Corvallis on April 25, 2013, in response to vegetation management activities that were allegedly implemented without first complying with the provisions of Land Development Code (LDC) Sections 4.12.50(b) and 4.13.50(a). A Vegetation Impact Assessment (VIA)(dated September 9, 2013) was prepared by PHS and provided to the City to establish the extent of need for any remedial actions.

The City of Corvallis previously mapped some areas of the Property as containing significant vegetation, as well as areas believed to contain riparian corridors and wetlands, as part of their Natural Resources Inventory. PHS also recently conducted a delineation of wetland and waterway boundaries within the property to aid in site planning; the delineation is currently under review by the Department of State Lands.

This document addresses the City's stated requirements for resolving the vegetation impact violations, and also provides an initial Significant Vegetation Management Plan for both developed and protected areas within the project area.

2.0 EXISTING CONDITIONS AND IMPACT ASSESSMENT

As previously described in the VIA, vegetation cover within City-mapped Significant Vegetation areas of the Property includes several distinct plant communities that range from open meadows to mixed conifer-deciduous forest. Areas within the mapped resource overlay areas were investigated for potential impacts from recent vegetation management activities. The provisions of Corvallis LDC Section 4.12.50(b) prohibit the removal of any trees over 4-inches in diameter, shrubs over 4-feet in height, or any groundcovers or soil. While much of the previous mowing was exempt under Section 4.12.30(i) of the LDC (which permits the removal of invasive and/or noxious vegetation), some native shrubs and small saplings were inadvertently damaged in the process.

2.1 Highly Protected Significant Vegetation (HPSV) Areas

WC-2b (E): Mixed Douglas fir-Oregon white oak forest west of CPI easement **(PHS Areas F, H, and N)**

As noted in the previous report, the HPSV areas mapped within the Property are comprised of eight distinct units of mostly closed canopy forest; each is separated by either open grassland or by mapped riparian corridors dominated by woody species. Due to their mapping designations and proximity to riparian corridors, understory clearing on the slopes immediately north and south of the northernmost mapped riparian corridor was largely avoided. However, in order to

provide consultants with access into the northern part of the Property, narrow corridors were cut through dense thickets dominated primarily by Himalayan blackberry, English hawthorn, and poison oak.

2.2 Partially Protected Significant Vegetation (PPSV) Areas

As noted in the previous report, the PPSV areas mapped within the Property included much of Area N, as well as the entirety of Area P.

Inventory Area WC-2b (E)(PPSV-1): Mixed Douglas fir-Oregon white oak forest west of CPI easement **(PHS Area N)**

This mixed forest unit is contiguous with two mapped riparian corridors bordered by HPSV-designated areas. PHS Area N extends southward from the central access road through this PPSV-1 mapped area. The contrast between the understory communities north and south of the road is strong, with the undisturbed area north of the road being dominated by dense tall growth of poison oak, Himalayan blackberry, English hawthorn, sweet briar, and spurge laurel, while south of the road the understory growing back in following the mowing is dominated by Himalayan blackberry.

Inventory Area N-8a (P)(PPSV-4): Mixed Douglas fir-Oregon white oak forest east of CPI easement **(PHS Area P)**

Recent understory clearing activities were conducted throughout this stand, with relatively small areas along the periphery retaining an undisturbed, predominantly non-native groundcover dominated by Himalayan blackberry. Re-sprouting blackberry and poison oak are common throughout these areas, along with occasional hazelnut, spurge laurel, English ivy, English holly, Indian plum, and snowberry. Few herbaceous groundcover species are present due to the shaded, shrubby understory condition.

Light damage did occur to a few conifers in this area; a certified arborist assessed these impacts and provided recommendations for repairing the damage.

2.3 Riparian Corridors (PHS Areas A-E, G, I-M, N [in part], O)

As noted in the VIA, several small drainages and their associated vegetated corridors were crossed to better enable site access for delineation field work; as such, the soil surface was typically disturbed within narrow corridors. Impact Areas A to L were typically less than 200 square feet in area, and no trees over 4 inches were impacted. Area M was a somewhat larger area of clearing along a small drainage, where both native and non-native shrubs were impacted. The most extensive clearing occurred in Area N, which includes a mapped riparian corridor through the center of the property in addition to the aforementioned HPSV and PPSV-1 areas. Most of this area was dominated by invasives such as Himalayan blackberry, spurge laurel, sweet cherry, and English hawthorn. However, resprouting poison oak and Indian plum were also observed in this area.

This drainageway feeds into an open wet meadow area dominated by reed canarygrass (Area O); the recent clearing activities primarily disturbed the soil surface in this open area, with some minor tire rutting.

2.4 Summary of Previous Impacts

Table 1 below summarizes the approximate size of each area (whether within Significant Vegetation or Riparian corridor overlays) as well as the type of impact. These impact areas are also mapped on Exhibit D.

Areas studied within the mapped HPSV units include PHS Areas F, H, and N. The latter area is by far the largest, as it encompasses mapped HPSV, PPSV-1, and Riparian resources south of the aforementioned central access road. Please note, however, that the summary table included in PHS' original impact assessment inadvertently listed Area N as containing HPSV resources only. As a result, the City's mitigation calculations (further discussed in Section 3.0 below) were skewed upwards by **10.3 acres of PPSV-1 and 5.68 acres of riparian corridor that were included within Area N. Both Table 1 and Vegetation Management Impacts exhibit (Appendix A) have been revised to correct this error.**

Table 1 Summary of Significant Vegetation and Riparian Corridor Impact Areas (A-P)

Impact Area	Approx. Area (SF)	Overlay Type (Significant Vegetation -or- Riparian Corridor)	Impact Type*
A	15'x75'=1,125	Riparian	Vegetation, Soils
B	8'x15'=120	Riparian	Vegetation, Soils
C	8'x15'=120	Riparian	Vegetation, Soils
D	10'x12'=120	Riparian	Vegetation, Soils
E	8'x20'=160	Riparian	Vegetation, Soils
F	10'x20'=200	HPSV	Soils
G	8'x15'=120	Riparian	Soils
H	10'x20'=200	HPSV	Soils
I	8'x18'=144	Riparian	Soils
J	10'x150'=1,500	Riparian	Vegetation, Soils
K	10'x20'=200	Riparian	Vegetation, Soils
L	8'x10'=80	Riparian	Soils
M	50'x175'=8,750	Riparian	Vegetation, Soils
N	**972,113 (22.3 AC)**	**HPSV, PPSV-1, Riparian****	**Vegetation, Soils**
N-1**	**24,360 0.56 AC)**	HPSV	Vegetation, Soils
N-2**	**448,820 (10.30 AC)**	PPSV-1	Vegetation, Soils
N-3**	**138,699 (3.18 AC)**	HPSV	Vegetation, Soils
N-4**	**247,329 (5.68 AC)**	Riparian	Vegetation, Soils
N-5**	**147,437 (3.38 AC)**	HPSV	Vegetation, Soils

Impact Area	Approx. Area (SF)	Overlay Type (Significant Vegetation -or- Riparian Corridor)	Impact Type*
O	60'x100'=600	Riparian	Vegetation, Soils
P	1,519,518 (34.8 AC)	PPSV-4	Vegetation, Soils

**Note: 'Impact type' indicates whether vegetation and/or soils were disturbed. 'Vegetation' refers to understory mowing activities, while 'soils' typically have either been exposed or very shallowly displaced from vehicle tracking. No soil fill or removal occurred as part of the mowing activities.*

*****Note: Area N descriptors have been revised to more accurately depict the resource types mapped by the City within the area boundaries; see Vegetation Management Impacts exhibit in Appendix A for updated mapping designations.***

2.5 ISA-Certified Arborist's Assessment

As noted in our previous report, Robert Mazany (ASCA, Registered Consulting Arborist #133; ABFE) reviewed the Property on June 24, 2013, and determined that although a few conifers had been scuffed by equipment, the scuffing damage was minor and not irreparable. Bark scuffing appears to have occurred to 12 trees, and of these, only one required repair due to the roughness of the scuffed area. Repair work would only require smoothing of the scuffed area by a trained arborist, in order to enable the tree to properly seal itself from harm due to pathogens (fungi, etc.).

3.0 RESOLUTION OF PROJECT IMPACTS

3.1 Summary of Current Conditions in HPSV and PPSV areas (as of June 2014)

PHS conducted site visits to the Significant Vegetation impact areas in June 2014 to determine current vegetation conditions. In the larger HPSV and PPSV areas, the previous soil disturbing activities were still visible in a few scattered areas, typically where slopes were somewhat steeper and vehicle movements had effectively displaced and compacted soils, making those patches somewhat slower to be recolonized by vegetation. In addition, since these areas have not been subject to enhancement plantings or other efforts to control non-native species, the recolonizers are predominantly comprised of pre-existing non-native or nuisance species, some of which are highly invasive. The smaller impacted areas (whether HPSV, PPSV, or Riparian) have generally revegetated to the extent that the previous disturbance is barely or not detectable.

Table 2 Summary of Current Conditions in HPSV and PPSV areas (as of June 2014)

Impact Area	Approx. Area (SF)	Overlay Type	Impact Type	Current Condition
F	10'x20'=200	HPSV	Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
H	10'x20'=200	HPSV	Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)

Impact Area	Approx. Area (SF)	Overlay Type	Impact Type	Current Condition
N	972,113 (22.3 AC)	HPSV [see corrected areas below]	Vegetation, Soils	
N-1*	**24,360 0.56 AC)**	**HPSV**	**Vegetation, Soils**	Partially regrown with mostly non-native understory species
N-2*	**448,820 (10.30 AC)**	**PPSV-1**	**Vegetation, Soils**	Partially regrown with mostly non-native understory species
N-3*	**138,699 (3.18 AC)**	**HPSV**	**Vegetation, Soils**	Partially regrown with mostly non-native understory species
N-5*	**147,437 (3.38 AC)**	**HPSV**	**Vegetation, Soils**	Partially regrown with mostly non-native understory species
P	1,519,518 (34.8 AC)	PPSV-4	Vegetation, Soils	Partially regrown with mostly non-native understory species

Note: Area N descriptors have been revised to more accurately depict the resource types mapped by the City within the area boundaries

3.2 Determination of Required Mitigation for Vegetation Impacts

The following subsections utilize the City's recommendations in determining the required mitigation for significant vegetation and riparian corridor impacts.

3.2.1 Mitigation for HPSV Impacts

The City provided a set of protocols for determining the extent and location of mitigation required to resolve the vegetation impacts violation (see Appendix B). The protocols were based on PHS' vegetation impact assessment (VIA), and included the following:

a) How much to mitigate:

- *Per Table 1, page 7 of VIA, Impact Area N represents a total area of 972,113 square feet (22.3 acres) in HPSV where understory vegetation was impacted;*

As already described in Section 2.0 above, the PHS assessment inadvertently omitted a breakdown of those portions of Area N that were not comprised of HPSV-mapped vegetation; these areas have been included in Table 1 above. As a result of this correction, the required HPSV area to be mitigated for should be reduced accordingly, to just **7.12 acres** of HPSV area within Area N.

- *Per Section 4.1, page 8 of VIA, the best estimate by PHS is that no more than 20% of mowed vegetation consisted of native shrubs over 4 feet in height; therefore,*

- *Calculation of mitigation area requirements is to be determined by factoring 20% of the total HPSV impact areas, so, (22.3 acres X .20 = 4.46 acres);*

Using the corrected HPSV-mapped area impacted within Area N, the recalculated mitigation area requirement should be as follows: **7.12 acres X 0.20= 1.42 acres.**

- *Per LDC 4.12.100(a)(2), losses are to be mitigated by replacement in an amount equal to 50% of the appraised value of impacted vegetation, using the Council of Tree and Landscape Appraisers Guide for Plant Appraisal. A certified arborist trained in this process shall apply the appraisal.*

  (1) The agreed methodology for appraising a value on 4.46 acres of presumed HPSV vegetation is to design for a hypothetical re-vegetation plan for appropriate understory shrubs. Please base the plan on consideration of the number of plants and the level of diversity and succession specimens necessary to replicate—over the entire hypothetical 4.46 acres—the density and the robust vigor of habitat conditions observed in abutting areas, albeit, without invasive or noxious vegetation. The planting plan may include oak saplings.

Since the hypothetical area to be mitigated is to be based on square footage but is not intended to 'fit' a particular site, a planting palette has been prepared to revegetate a **1.42-acre** area of relatively mesic understory in Area N. Since no trees were removed during the vegetation clearing activities, it has been assumed that the plants will be installed into this partial to fully shaded understory condition. As such, the palette includes a variety of species that are currently found at different locations within the mixed oak-fir forest. Plant numbers are based on a reasonably dense planting of mostly midsized to large native shrubs (overall average ~6 feet on center). Note: a spacing pattern for a unit area is just a means for determining quantities, since actual plantings within an understory may be more effectively installed in clumps or offset to avoid existing trees or other desirable vegetation.

*(2) Emphasis for **plant specimen selection** should:*

- *include any relevant restoration enhancement recommendations in the City of Corvallis Natural Features Inventory Wildlife Habitat Assessment for sub-polygon WC-2b, pages VI-34 to VI-35 http://archive.corvallisoregon.gov/docview.aspx?id=241000 ;*
- *include the identified understory shrubs, as listed in Section 2.1, page 2 of VIA, other than invasive or noxious species;*
- *include local source native plant species originating from stock collected from wild plants within 75 miles of planting site.*

*(3) The **mitigation planting standards** for LDC 4.12.100(a)(3) are:*

- *(a) Trees with a minimum planting size of one inch diameter;*
- *(b) Shrubs with a minimum planting size of one gallon;*
- *(c) Ground cover with a minimum planting size of one gallon, planted 12 inches on center.*

As recommended above, the City's Natural Features Inventory Wildlife Habitat Assessment (WHA) for sub-polygon WC-2b was reviewed for recommended plant species. The WHA noted just three desirable understory species; California hazelnut, Douglas hawthorn, and common snowberry. The hazelnut and snowberry were also noted in the VIA, while the other species noted were either nuisance or invasive non-native species. Each of the species noted above were included in the mitigation plant list, along with a number of other natives appropriate to the site conditions. Obtaining locally sourced native plant materials will be emphasized to the extent possible; however, it is highly likely that obtaining certification that plants have been sourced from within 75 miles of the site may be cost-prohibitive. This cost assessment will be based on obtaining native container stock from reputable local nurseries, with the assumption that most if not all of the species recommended will have originated from seed or propagules obtained in Linn and/or Benton counties.

For the **1.42-acre** mitigation planting area, an overall average spacing of six feet OC yields a total of **1,670** plants. The conceptual plant palette consists of 10 different shrub and sapling species (including Oregon white oak) to be procured as one gallon (minimum) container stock from local native nursery sources.

> *(4) Please base the total valuation on an "appraisal" of plant material necessary to mitigate as though the entire 4.46 acre area is to be planted in shrubs to establish a vibrant understory. This will inform calculation of the appraisal value of the impacted vegetation on 20% of 22.3 acres.*
> *(5) The mitigation replacement amount is 50% of this total valuation.*

Appendix C includes a spreadsheet prepared by PHS that provides an appraisal of the costs for procuring and installing the recommended plant palette. As noted above, the appraisal value must be based on the actual area of impacted HPSV-mapped habitat, and the resulting calculation **(7.12 acres X 0.20= 1.42 acres).** The total valuation from this assessment for the HPSV area is **$16,700,** with the mitigation replacement amount being 50% of this total, or **$8,350.**

3.2.2 Determining the Required Mitigation for PPSV Impacts

No requirements for mitigation of vegetation impacts to PPSV areas have been specified by the City of Corvallis. Since these areas have already largely revegetated with the same mostly non-native dominants that were present prior to mowing, and minimal damage occurred to overstory trees, any improvements to these areas will be proposed within the framework of the Significant Vegetation Management Plan.

3.2.3 Determining the Required Mitigation for Riparian Corridor Impacts

The City of Corvallis has recommended the following means of determining required mitigation for the riparian corridor impacts, which reflects the provisions in LDC Section 4.13.50(d)(2). According to the following;

***2) Mitigation for impact to protected Riparian Corridor** areas will be considered on basis of Vegetation Impact Assessment (VIA) of September 9, 2013 by PHS:*

a) How much to mitigate:

i) Per Table 1, page 7 of VIA, Impact Areas A, B, C, D, E, G, I, J, K, L, M, O have documented impacts to the native soils and/or vegetation, with a combined area of 13,039 square feet (0.3 acre);

ii) Per Section 3.3, page 6 of VIA, impact to understory shrubs and to ground cover vegetation was documented in the above referenced areas.

As earlier described in Section 2.0 above, the PHS assessment inadvertently omitted a breakdown of those portions of Area N that were comprised of a mix of HPSV, PPSV, and Riparian Corridor-mapped vegetation; these areas have been calculated and included in Table 1 above. As a result of this correction, the required riparian area to be mitigated for should be adjusted upward, with **247,329 square feet, or 5.68 acres** of City-mapped riparian corridor area within Area N. This area, when combined with the other riparian impact areas, results in a total of **247,329 + 13,039=260,368 square feet, or 5.68 + 0.30=5.98 acres.**

b) Where to mitigate:

i) Consulting specialist will conduct site observations of identified impact areas previously enumerated to determine current conditions;

(1) Evaluate for minimum understory coverage, as per LDC 4.13.50(d)(2)(a)(2);

(a) "healthy riparian shrubs" over at least 50% of the area;

(b) "healthy groundcover" such that combination of shrubs + groundcover results in coverage over at least 90% of the area.

ii) If current conditions attain minimum understory coverage, no further action required.

iii) If current conditions do not attain minimum understory coverage, provide mitigation plan for achieving minimum coverage within 5 years, per LDC 4.13.50(d)(2)(b)(2&3) (1) Mitigation planting is required in areas within 30 feet of top of bank in the above referenced impact areas.

PHS conducted site visits to the riparian impact areas in June 2014 to determine current vegetation conditions. In nearly all instances the vegetation had recovered to the extent that the previous soil and vegetation disturbance was no longer readily detectable. In addition, the species composition in each area effectively mirrored the adjacent undisturbed terrain, which for the most part continues to be dominated by a mix of native and non-native species, some of which are highly invasive. Nevertheless, the cover could be considered 'healthy,' and so meet the above minimum understory coverage requirements.

Table 3 Summary of Riparian Corridor Impact Areas <u>and Current Conditions (as of June 2014)</u>

Impact Area	Approx. Area (SF)	Impact Type	Current Condition
A	15'x75'=1,125	Vegetation, Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
B	8'x15'=120	Vegetation, Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
C	8'x15'=120	Vegetation, Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)

Impact Area	Approx. Area (SF)	Impact Type	Current Condition
D	10'x12'=120	Vegetation, Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
E	8'x20'=160	Vegetation, Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
G	8'x15'=120	Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
I	8'x18'=144	Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
J	10'x150'=1,500	Vegetation, Soils	Fully regrown with mix of native/non-native species (mostly pre-existing invasive shrubs e.g. Himalayan blackberry and poison oak)
K	10'x20'=200	Vegetation, Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
L	8'x10'=80	Soils	Fully regrown with mix of native/non-native species (mostly groundcover spp.)
M	50'x175'=8,750	Vegetation, Soils	Partially regrown with mix of native/non-native species (avg >70% groundcover, shrubs, mostly invasives)
N-4*	247,329 (5.68 AC)	Vegetation, Soils	Partially regrown with mix of native/non-native species (averaging ~50% groundcover??)
O	60'x100'=600	wet meadow soil rutting	Fully regrown with RCG (original cover species)
Total Riparian Area	**260,368 (5.98 ac)**		

Note: Impact area 'N' was not accurately characterized in terms of City mapping overlays; N-4 represents the riparian overlay mapping within Unit N

The only riparian-mapped areas that still retain visible evidence of the recent understory clearing are within Areas M and N-4. Since Area N-4 transitions seamlessly into the other N units (mapped as HPSV and PPSV-1), it is proposed that the required riparian mitigation be determined using the same 20% standard used for the adjacent HPSV areas, since nearly all of the pre-existing cover in these areas was also comprised of invasive or nuisance understory species. As such, the extent of riparian mitigation required would be calculated based on the same 20% standard used for HPSV impacts. So a riparian impact area comprised of Areas M and N-4 (totaling 247,329 + 8,750=**256,079 square feet, or 5.88 acres X 20%= 1.18 acres). The 1.18 acres would represent the appraisal area for planting costs, as required for the HPSV areas.**

The channel within N-4 is narrow and seasonal, and essentially disappears into a wide grassy swale at its lower, western end (Area O) before re-forming a channel on the steepening slope to the west. Please note that there is no tributary channel that would coincide with a northern

branch of N-4 as mapped; this area is indistinguishable from unit N-3. The channel's influence on adjacent vegetation types within the mixed overstory is relatively limited, with similar species composition to that found on nearby slopes. Due to these factors, the location and nature of riparian mitigation is considered to be analogous to the HPSV mitigation, and most easily addressed using the same methodology.

3.3 Mitigation Plan for Impacted HPSV Areas

As previously determined in Section 3.1.1 above, the total valuation from our HPSV impact assessment is **$16,700**, with the mitigation replacement amount being 50% of this total, or **$8,350.** Given the finite nature of this mitigation funding, two mitigation alternatives are being proposed for consideration by the City.

Alternative 1 would apply the mitigation replacement amount to understory planting and subsequent maintenance/monitoring to achieve native understory dominance for a defined area within Units N-3 and N-5. The mitigation planting cost would provide installation of a sufficient number of native plants for the 1.42 acre area but would not include the funding of followup maintenance, watering, weed control, etc.This alternative would primarily enhance understory functions within the lower slopes and bottom of Area N.

Under Alternative 1, native woody plantings would be installed within a defined 1.42-acre area within Areas N-3 and N-5 in order to increase understory structural and species diversity. Ten or more native shrub species would be installed; the plant species to be used under this alternative are listed in Appendix C.

Alternative 2 would utilize the equivalent mitigation replacement cost as determined for Alternative 1, for the purpose of oak release activities within Areas N-3 and N-5. The oak release and reforestation activities would follow the Significant Vegetation Management Plan objectives as proposed in Section 4.0 below. Since there are relatively few Douglas firs that are actually suppressing oaks in Area N, much more of this area can be treated for the same mitigation replacement cost.

Mitigation for Previous Tree Impacts

As proposed in our previous report, mitigation for direct impacts to tree trunks due to bark scuffing during mowing activities will be conducted under the supervision of an ISA-certified arborist. Proper care to facilitate the natural repair and seal of exposed inner bark or cambium will ensure that any affected trees experience little or no long-term effects.

Since it is highly likely that most of the affected trees previously documented will be removed during either oak release treatments or future development activities, it is proposed that the same care be applied to any subsequent impacts that may inadvertently occur during any upcoming release treatments.

3.4 Mitigation Plan for Impacted Riparian Corridors

As mentioned above, vegetation within mapped riparian corridors was mostly avoided in the northern reaches of the site, and in nearly all areas actually mowed, the regrowth has eliminated any visual evidence of the previous impact. That said, two areas (M and N-4) still show signs of the vegetation removal, primarily by relatively sparse resprouting typical of a more shaded understory condition. The total riparian impact area that is not fully revegetated is approximately

256,079 square feet, or 5.88 acres. Utilizing the same formula as for the HPSV impacts described in Section 3.2.3 results in a 1.18-acre plant appraisal area (5.88 acres X 20%= 1.18 acres). Appendix C includes the appraisal values for Riparian as well as HPSV impact areas. The total valuation from this assessment for the Riparian Corridor area is $13,900, with the mitigation replacement amount being 50% of this total, or $6,950.

As previously proposed as an alternative for HPSV impact area mitigation, the assessed Riparian value may either be applied to understory plantings within a defined portion of Area N-4 (Alternative 1), or else applied to oak release measures within Area N to obtain more long-term benefits to forest health within the Timberhill parcel (Alternative 2).

3.5 Mitigation Summary for HPSV and Riparian Corridor Areas

Two alternatives were described in Sections 3.3 and 3.4 above, to mitigate for previous impacts to understory vegetation in HPSV and Riparian Corridor areas. To reiterate, the total valuation from our HPSV impact assessment is $16,700, with the mitigation replacement amount being 50% of this total, or $8,350. The total valuation from the Riparian Corridor assessment is $13,900, with the mitigation replacement amount being 50% of this total, or $6,950. The combined total valuation is $30,600, with the mitigation replacement amount being 50% of the total, or $15,300.

Given the finite nature of this mitigation funding, Alternative 2 (oak release measures in Area N) is the preferred mitigation alternative being proposed for consideration by the City.

3.6 Mitigation Monitoring and Maintenance

In the event that mitigation plantings are installed within the Area N understory (as opposed to the preferred alternative proposed for oak overstory enhancement measures within the same stand) then the following statements from the City may apply;

*c) **Monitoring period**:*
i) Per LDC Section 4.12.100(a)(3)(d), an irrigation system will be installed to support mitigation planting for a period of five years; however,
(1) Given site characteristics it is staffs' determination that the installation of an irrigation system will not be required; yet that notwithstanding,
(2) Per LDC Section 4.12.60(k), trees, shrub, and ground cover required under LDC Section 4.12.60—which is where current requirement for subject mitigation planting and enhancement derives—must "be continuously maintained in a healthy manner", and further requires financial security to be provided for maintenance and replacement of plantings for a period of five years.

Note, however, that any understory plantings will most likely require regular irrigation in one form or another during the first two years of establishment, simply to avoid widespread die-off's. Despite the proposed species' relative drought tolerance and suitability to the site, few plants (especially when container-grown) will survive their first summer without the establishment of strong root systems. As a consequence, requiring plants to be installed without also requiring an irrigation system will doom those plantings to failure. A portable watering system that relies on

manual watering of each plant (i.e. using ATV-mounted water tanks or similar) could be utilized; however, such a method can be cost-prohibitive.

Monitoring of any mitigation plantings will be conducted over a five year period, during which time an annual report will be prepared that describes the progress of plantings or other enhancements, the need for any weed control or other maintenance, and any replanting if necessary. A performance bond will be established by the Property Owners to cover maintenance and replacement of plantings over the five year period.

In the event that the preferred alternative (Alternative 2: oak release) is implemented within Area N, the treated areas will be monitored and maintained to minimize colonization by invasives, A performance bond will also be established by the Property Owners for these areas to cover maintenance over the five year period.

4.0 SIGNIFICANT VEGETATION MANAGEMENT PLAN FOR OAK RELEASE AREA

4.1 Plan Goals and Objectives

This Significant Vegetation Management Plan is intended to lay the groundwork for management of vegetation within a specific HPSV mapped area (Area N) within the Timberhill parcel, in accordance with LDC Section 4.12.90 standards. Management activities within retained Significant Vegetation areas will be aimed at restoring or enhancing the desired native plant communities, then maintaining those areas to provide the most diverse wildlife habitat over time. Restoration of Oregon white oak woodland wherever feasible constitutes the highest priority objective for Timberhill at this time.

As documented through historic aerial photos, the Timberhill property has experienced significant changes over the past century as land uses have evolved. Long term agricultural practices helped to retain features that were common prior to EuroAmerican settlement, in particular the savanna-like, relatively open landscape characterized by scattered Oregon white oaks within mostly native grassland. Cattle grazing helped to maintain this habitat structure, even while the pre wildfire regime was suppressed and species composition changed with non-native plant introductions. As grazing and other agricultural clearing activities on the property were slowly phased out, however, both native and non-native trees and shrubs could more readily colonize the open areas. Over time, most of the oak savanna or woodland has been converted to relatively dense mixed forest and scrubland.

The large scale historic grazing and earlier wildfires cannot practically be used at present to manage Significant Vegetation areas within a large subdivision development such as Timberhill. Instead, more readily controlled landscape practices that include precision logging and brush control, non-native groundcover reduction, and reintroduction of native species will likely be the best means to restore degraded plant communities to more structurally diverse, native habitats.

4.2 Oak Woodland Restoration

Oregon white oak is a relatively shade-intolerant species that grows best in open sun and well drained soils, although it is tolerant of a wide range of soils and hydrologic conditions. The broad growth form developed under open conditions provides the most leaf exposure for rapid growth, and ultimately favors healthy acorn production. This growth form provides the most ecologically important combination of food, shelter, and structure within a relatively open landscape.

A narrower growth habit, however, typically forms in response to partial or complete shading due to overtopping from faster growing coniferous and/or broadleaf trees (e.g. Douglas fir, grand fir, bigleaf maple). Shading can often result in leaf dieback and loss of upper branches; ultimately the tree may die, although this process can take decades.

Habitats dominated by well-spaced open-growth form oaks are present in just a few locations around the Timberhill property. Mixed stands should be individually evaluated to determine whether encroachment from Douglas fir or other non-native invasives is actually occurring, and whether all or just some portion of the encroaching trees or other woody vegetation must be removed in order for the stand to thrive over time. In some instances, just the non-native understory shrubs and groundcover species should be controlled through initial clearing or other eradication measures.

In addition, the presence of widely scattered mature Douglas fir within an oak-dominated woodland may actually increase local habitat diversity, since these trees provide year-round cover as well as additional food sources for species more commonly associated with conifers. This additional cover may be especially significant along narrow wildlife corridors between isolated patches of habitat. Nevertheless, whenever previously open areas between oaks have been invaded by conifers or other fast growing species, removal of the encroaching vegetation will be necessary to restore the desired oak woodland habitat.

Individual or Stand-Level Oak Release

Management prescriptions will be prepared for each localized tree stand, since removal of conifers will be necessary to release either individual oaks within a larger conifer stand, or to restore oak woodland through a stand-level release. Retaining a conifer overstory will not permit the restoration of plant communities associated with oak savanna to woodland habitats, as these communities can successfully develop only at higher light levels.

For a stand-level release, the limits of the stand must be determined, and all (or most) of the conifers must then be removed. Understory clearing (especially of invasive shrubs) prior to logging will aid in safely cutting and removing the trees. Recent brush-clearing efforts have temporarily accomplished this task in a few areas; however, more targeted local treatments may be required to permit reasonable access into stands proposed for release. Wood debris should be removed as well (either hauled off or chipped) in order to continue to manage the understory and control weeds. Wherever the conifers are too close to oaks to remove without damage, either topping or girdling the conifer should be considered. Since the treated conifers will not readily

recover from these treatments, they can provide wildlife habitat snags while no longer negatively affecting the adjacent oaks.

For individual oak release, the size and densities of surrounding conifers must be taken into account. Clearing all conifers within a radius of one tree length (to be specified) has been shown to provide the most benefit to the released tree (see Harrington and Devine, 2006), whereas clearing from just half a tree length in radius may not open the stand sufficiently to trigger increased oak growth. Alternatively, overtopping trees on the south or southwest sides of an oak may increase its sun exposure; however, any increase in oak crown growth will likely be unevenly distributed, and the other benefits of release (such as increased water and nutrient availability) will not be realized.

In order to trigger the sprouting of epicormic branches on all sides of the trunk, removing competitors from the larger radius area is warranted. Although these newly sprouting branches may initially appear stunted, their leaves will increase photosynthesis, they can eventually bear acorns, and they may develop into long-lived, large diameter branches. This is most likely to occur if the affected oak has not been overtopped to the extent that crown dieback is already occurring. In such instances, the removal of conifers may best be reserved for other trees more likely to benefit from release.

The best time of year for releasing oaks is during the dormant season (late fall to early spring), since releasing suppressed oaks during summer can potentially damage their leaves. A shaded oak tree typically has thinner leaves as an adaptation to lower light levels, and they may be damaged or killed by sudden exposure to direct sunlight. Leaf damage is largely avoided by releasing when the leaves have already turned brown or fallen. The downside of conducting release activities during the dormant season is the likelihood of wet soils and potential for rutting and compaction from heavy equipment. Heavy equipment should be minimized around drainageways and other wet areas, or rescheduled to avoid wetter periods, as long as the release occurs prior to leaf-out.

Selecting a Contractor

Oak release activities will require a specialized skill set on the part of any landscape or forestry contractor in order to properly remove undesirable trees while minimizing damage to desirable vegetation, associated wildlife, and soils. A contractor will be selected that has a proven record of successfully implementing oak canopy restoration projects in the Corvallis and surrounding areas. PHS will select the contractor and will oversee their work to ensure it is accomplished with the utmost care.

4.3 Conifer Forest Retention and/or Enhancement

Targeted areas within Area N that currently are dominated by Douglas fir and that contain few if any oaks may be managed for those habitat functions best provided by conifers. Certain native species are associated with both oaks and conifers (e.g. western gray squirrel), and the year round cover provides shelter and food sources for a variety of species that would not otherwise persist in the area. These stands should be evaluated in terms of age, densities, and relative size to determine whether any thinning within a stand would be of value in meeting long term management goals.

Whenever feasible, the occasional oak retained within a conifer stand can still be partially to fully released by removing smaller conifers within a minimum distance from the tree. Partial release may result in uneven crown growth of the oak, but still aid its overall health. The size of overtopping conifers and their proximity to the oak should be evaluated before determining which trees to remove. In densely stocked stands, there may be high potential for damage to the oaks being released; in such circumstances the trees targeted for removal may instead be girdled (or topped to the extent possible) and left in place as wildlife snags.

Limited thinning in densely stocked stands can also aid the growth of individual larger conifers, as well as facilitate understory weed management, permitting the reintroduction of desirable native understory shrubs and groundcover species over time.

4.4 Invasive Species Control

Control measures within the oak release area will generally target any noxious species listed by the Oregon Department of Agriculture (ODA), as well as the more widespread invasives that are no longer listed due to their pervasive nature. The most appropriate approach on the Property is to help native species succeed by minimizing competition from common invasives. Over time, introducing native woody plants, groundcover plantings, and grass seed into areas otherwise dominated by invasives or disturbed during oak release activities will have little success without also implementing weed control measures.

As such, periodic mowing and possibly the limited use of herbicides should be considered in keeping invasives from outcompeting more desirable plantings. Some of the most common and problematic species found within the property include;

Table 4 Invasive/Nuisance species potentially subject to Control Efforts

Common Name	Species Name	ODA-Listed?
Himalayan blackberry	*Rubus armeniacus*	B-list
English hawthorn	*Crataegus monogyna*	Invasive
English ivy	*Hedera helix*	B-list
Spurge laurel	*Daphne laureola*	B-list
Poison oak	*Toxicodendron diversilobum*	Native; nuisance
Reed canarygrass	*Phalaris arundinacea*	Invasive
False brome	*Brachypodium sylvaticum*	B-list
Broadleaf forbs (thistles, ragwort, poison hemlock, St. Johns wort, etc.)		B-list (numerous)

Physical Control (Mowing)

Mowing around desirable plantings or to maintain open meadow areas can be a cost effective control method in favoring native species. Appropriate timing for a particular area should be based on factors such as: flowering and/or fruiting stages of target species, and presence of nesting migratory birds. Areas that require mowing that also contain suitable nesting habitat should first be surveyed by an experienced ornithologist; if no evidence of nesting activity is observed, the area would then be approved for mowing or other maintenance. Typical timelines to avoid nesting species and thereby meet Migratory Bird Treaty Act guidelines are between February 1 and July 31.

For surveyed and approved areas, mowing up to twice per year (ideally late spring and again in early fall) may provide the best control.

Chemical Control (Herbicide Treatments)

Herbicide treatments may also be appropriate at times, in particular for some noxious shrubs and broadleaf weeds that can be controlled selectively. However, our preference is to maximize use of mechanical, non-chemical methods to keep invasives under control, as there is arguably less impact to sensitive wildlife species (e.g. amphibians).

Spot spray applications should be applied on an as-need basis to help control invasives that are not being controlled effectively by mowing alone. Vegetation can often be controlled most effectively by using herbicide in combination with a freshly mowed surface in order to remove excess biomass and provide enhanced plant/herbicide contact. Backpack spot spraying will also provide more selective control of smaller weed patches, on an as-need basis only.

Table 5 Summary of Tasks Associated with Noxious/Invasive Weed Control

	Task	Timeline
Noxious/Invasive Weed Control	Monitor Site Conditions to determine specific control needs	Twice annually (early Spring and mid-Summer) at minimum
	Mowing	Early to Mid-Spring annually
		Early to Late Fall annually
	Herbicide Application	During Spring Growth stage (adjust per species targeted) or as needed
		During Fall Nutrient Storage stage (adjust per species targeted) or as needed

4.5 Implementation Plan / Schedule

The following table outlines the tasks to follow to treat any portion of Area N that is proposed for oak release. As shown, the initial steps are aimed at properly assessing each forest unit for their restoration potential, which may require limited understory clearing just to access invaded areas and determine which trees to release.

Table 6. Oak Release Implementation Schedule

Task	Method	Timeline
Survey forest stands	Document individual stand characteristics; prioritize surveys based on habitat mapping, protective easements, etc.	Survey individual units based on relative priority
Identify oak habitats that have been invaded/ overtopped by Douglas fir	Utilize stand surveys to determine location and extent of conifer invasion	As above
Determine which conifers to remove for oak release	Assess potential for individual oak recovery in response to partial or full release activities	As above
Clear invasive brush around trees to be removed	Excavator mounted flail mower or similar	Limit brush clearing to dry periods to minimize soil disturbance; also schedule any clearing with migratory bird nesting in mind
Release oaks by [felling/topping/girdling] designated conifers	Minimal impact selective logging equipment	Restrict to dry periods during oak dormancy (Nov-Mar)
Remove logging debris from site	Minimal impact selective logging, clearing equipment	As above
Continue invasive species control efforts; remove Douglas fir regrowth	Mechanical (cutting, mowing, pulling) or chemical (herbicide applications)	Herbicide applications should be according to label and timed to best control target species
Introduce native shrub and groundcover species to cleared areas	Shrubs: 1-gal container (minimum) Groundcover: Container or seed	Planting areas should be largely free of invasives prior to planting; Shrubs installed during dormancy (Nov-Mar); timing of seed application will depend on species
Monitor success of enhancement measures	Assess changes in released oak growth pattern on yearly basis; assess success of understory plantings, establishment of groundcover	Site visits conducted on seasonal basis, over 5+ year period from implementation

5.0 REFERENCES

Corvallis, City of. Recommendations for Violation Resolution and SVMP Preparation (City communication dated April 19, 2014)

Corvallis, City of. Applicable Standards for Significant Vegetation Management Plans (SVMPs) and Violation Resolution Procedures (City of Corvallis Section 4.12)

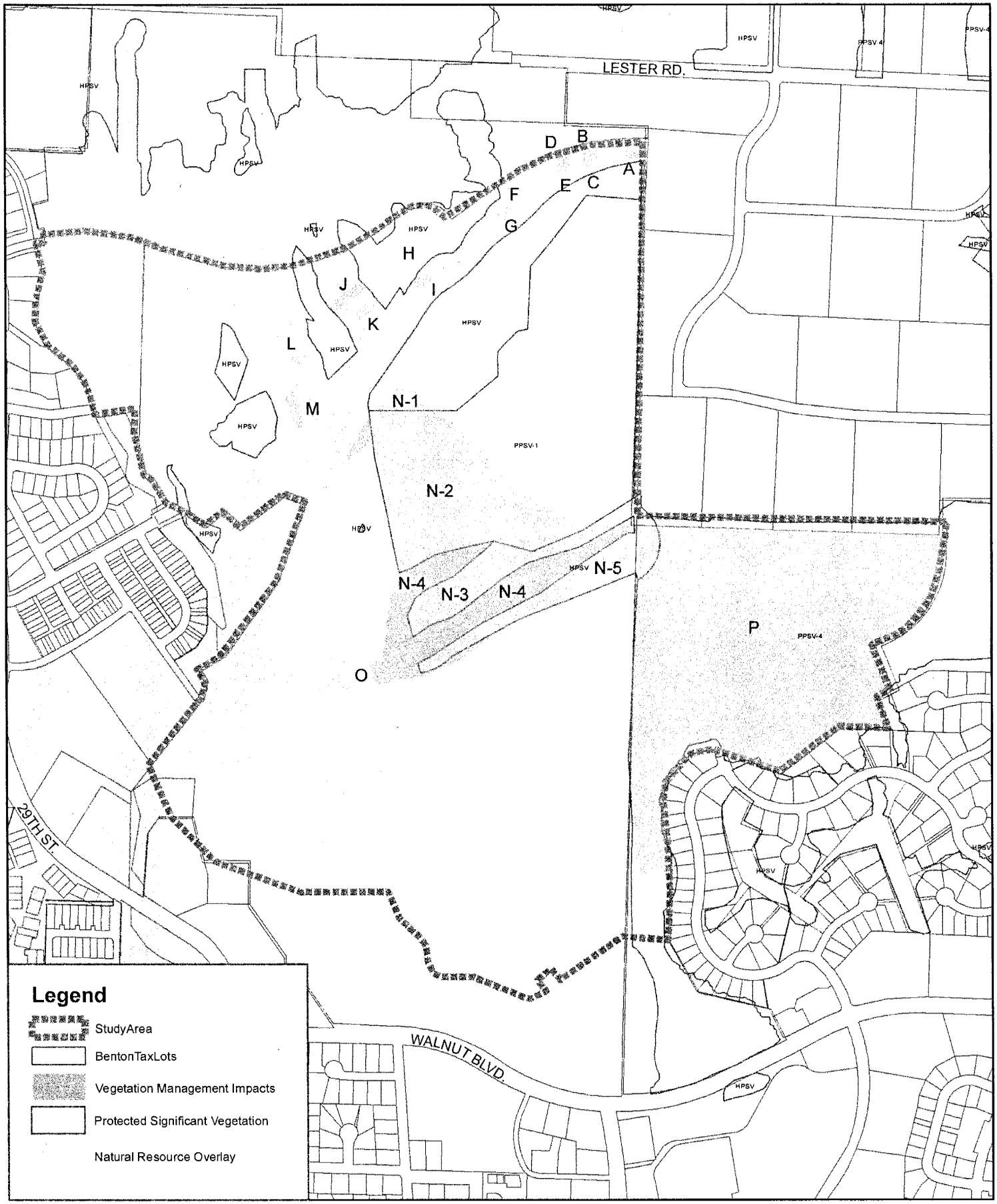
Harrington, Constance A. and Warren D. Devine. A Practical Guide to Oak Release. General Technical Report PNW-GTR-666. February 2006.

Legacy Oaks Task Force and Prairie Task Force. Restoring Oregon White Oak and Native Prairie Habitats in McDonald-Dunn Forest. Recommendations to the Forestry Executive Committee, OSU College of Forestry. February 2008.

Vesely, David and Gabe Tucker. Landowner's Guide to Restoring and Managing Oregon White Oak Habitats.

Appendix A

Figures



PACIFIC HABITAT SERVICES

N

600 300 0 600 Feet

Vegetation Management Impacts Within Mapped Resource Areas

Timberhill Property; Corvallis, Oregon

07-25-14

Appendix B

City of Corvallis Recommendations for Violation Resolution and SVMP Preparation (per City communication dated April 19, 2014)

[Memo prepared by Chris Westfall (City of Corvallis) outlining a series of mitigation steps based on LDC requirements.]

This is to provide a summary of the main points of our discussion, including a list of the next steps.

1) Mitigation for impact to protected vegetation in Highly Protected Significant Vegetation (HPSV) areas will be considered on basis of Vegetation Impact Assessment (VIA) of September 9, 2013 by PHS:

a) How much to mitigate:

- Per Table 1, page 7 of VIA, Impact Area N represents a total area of 972,113 square feet (22.3 acres) in HPSV where understory vegetation was impacted;
- Per Section 4.1, page 8 of VIA, the best estimate by PHS is that no more than 20% of mowed vegetation consisted of native shrubs over 4 feet in height; therefore,
- Calculation of mitigation area requirements is to be determined by factoring 20% of the total HPSV impact areas, so, (22.3 acres X .20 = 4.46 acres);
- Per LDC 4.12.100(a)(2), losses are to be mitigated by replacement in an amount equal to 50% of the appraised value of impacted vegetation, using the Council of Tree and Landscape Appraisers *Guide for Plant Appraisal*. A certified arborist trained in this process shall apply the appraisal.

(1) The agreed methodology for appraising a value on 4.46 acres of presumed HPSV vegetation is to design for a hypothetical re-vegetation plan for appropriate understory shrubs. Please base the plan on consideration of the number of plants and the level of diversity and succession specimens necessary to replicate—over the entire hypothetical 4.46 acres—the density and the robust vigor of habitat conditions observed in abutting areas, albeit, without invasive or noxious vegetation. The planting plan may include oak saplings.

(2) Emphasis for **plant specimen selection** should:

- include any relevant restoration enhancement recommendations in the City of Corvallis Natural Features Inventory Wildlife Habitat Assessment for sub-polygon WC-2b, pages VI-34 to VI-35 http://archive.corvallisoregon.gov/docview.aspx?id=241000 ;
- include the identified understory shrubs, as listed in Section 2.1, page 2 of VIA, other than invasive or noxious species;
- include local source native plant species originating from stock collected from wild plants within 75 miles of planting site.

(3) The **mitigation planting standards** for LDC 4.12.100(a)(3) are:

(a) Trees with a minimum planting size of one inch diameter;
(b) Shrubs with a minimum planting size of one gallon;
(c) Ground cover with a minimum planting size of one gallon, planted 12 inches on center.

(4) Please base the *total valuation* on an "appraisal" of plant material necessary to mitigate as though the entire **4.46 acre area** is to be planted in shrubs to establish a vibrant understory. This will inform calculation of the appraisal value of the impacted vegetation on **20% of 22.3 acres**.

(5) The mitigation *replacement amount* is 50% of this *total valuation.*

b) Where to mitigate:

i) Consulting arborist will conduct site observations to determine current conditions;
(1) Evaluate for 70 percent Mature Tree Canopy Coverage;
(2) Evaluate for regrowth of desirable plant species.

ii) On final recommendation of consulting arborist:
(1) As first priority, mitigation planting should occur directly in HPSV portions of Impact Area N;
(2) As second priority, enhancement of HPSV portions of Impact Area N may occur;
(3) As third priority, enhancement of HPSV onsite but outside of impact areas may occur;
(4) In conjunction with Significant Vegetation Management Plan, enhancement of other significant vegetation protection levels may occur.

iii) Replacement, restoration or enhancement of vegetation shall occur in specific conservation easements, such that a minimum of 70 percent Mature Tree Canopy Coverage is achieved.

c) **Monitoring period**:

i) Per LDC Section 4.12.100(a)(3)(d), an irrigation system will be installed to support mitigation planting for a period of five years; however,
(1) Given site characteristics it is staffs' determination that the installation of an irrigation system will not be required; yet that notwithstanding,
(2) Per LDC Section 4.12.60(k), trees, shrub, and ground cover required under LDC Section 4.12.60—which is where current requirement for subject mitigation planting and enhancement derives—must "be continuously maintained in a healthy manner", and further requires financial security to be provided for maintenance and replacement of plantings for a period of five years.

2) Mitigation for impact to protected Riparian Corridor areas will be considered on basis of Vegetation Impact Assessment (VIA) of September 9, 2013 by PHS:

a) How much to mitigate:

i) Per Table 1, page 7 of VIA, Impact Areas A, B, C, D, E, G, I, J, K, L, M, 0 have documented impacts to the native soils and/or vegetation, with a combined area of 13,039 square feet (0.3 acre);

ii) Per Section 3.3, page 6 of VIA, impacts to understory shrubs and to ground cover vegetation was documented in the above referenced areas.

b) Where to mitigate:

i) Consulting specialist will conduct site observations of identified impact areas previously enumerated to determine current conditions;

(1) Evaluate for minimum understory coverage, as per LDC 4.13.50(d)(2)(a)(2);
(a) "healthy riparian shrubs" over at least50% of the area;
(b) "healthy groundcover" such that combination of shrubs + groundcover results in coverage over at least 90% of the area.

ii) If current conditions attain minimum understory coverage, no further action required.
iii) If current conditions do not attain minimum understory coverage, provide mitigation plan for achieving minimum coverage within 5 years, per LDC 4.13.50(d)(2)(b)(2&3) (1) Mitigation planting is required in areas within 30 feet of top of bank in the above referenced impact areas.

3) Owners will develop a Significant Vegetation Management Plan (SVMP), as recommended per Section 5.0, page 10 of VIA.

a) Follow LDC Section 4.12.90 standards and Development Services procedures;
b) Owner may include mitigation provisions for Items #1 &2, above, in initial SVMP;
c) Owner will include provisions for site maintenance mowing procedures and protocols in initial SVMP.

Appendix C

Mitigation Cost Estimate

Conceptual Mitigation Plant List and Cost Estimate for Timberhill HPSV/ Riparian Mitigation Areas (Area N)

BOTANICAL NAME	COMMON NAME	USFWS Wetland Rating	PLANTING DENSITIES (Spacing in Feet OC)*	PLANT FORM/ CONTAINER SIZE	QUANTITIES HPSV Area N (7.12 ac X 20%=1.42 ac)	QUANTITIES Riparian Corridor Area N (5.88 ac X 0.20=1.18 ac)	Unit cost estimate (materials + installation)	Total cost per spp.
HPSV Uplands/ Riparian (well drained, shade tolerant, mostly Quercus/Pseudotsuga overstory)								
Shrubs/Saplings								
Acer circinatum	vine maple	FAC	6	1 gal	200	225	$10.00	$4,250.00
Amelanchier alnifolia	Saskatoon serviceberry	FACU	6	1 gal	200	200	$10.00	$4,000.00
Corylus cornuta	western hazelnut	FACU	8	1 gal	150	115	$10.00	$2,650.00
Crataegus douglasii	Black hawthorn	FAC	8	1 gal	150	150	$10.00	$3,000.00
Mahonia aquifolium	tall Oregon grape	FACU	5	1 gal	250	0	$10.00	$2,500.00
Oemleria cerasiformis	Indian plum	FACU	8	1 gal	150	150	$10.00	$3,000.00
Prunus emarginata	bitter cherry	FACU	10	1 gal	125	50	$10.00	$1,750.00
Quercus garryana	Oregon white oak	UPL	30	1 gal	25	0	$10.00	$250.00
Sambucus racemosa	red elderberry	FACU	8	1 gal	170	200	$10.00	$3,700.00
Symphoricarpos albus	snowberry	FACU	5	1 gal	250	300	$10.00	$5,500.00
Total					**1,670**	**1,390**		**$30,600.00**

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October 15, 2014

Ms. Nancy Brewer
Corvallis City Manager
501 SW Madison St.
Corvallis, OR 97333

Re: Appeal of Notice of Violation, VIO13-00199; Erosion Control
Request for Summary Disposition of Alleged Violation

Dear Ms. Brewer:

Please accept this letter in support of the pending appeal of the Notice of Violation above. I will be representing the appellant in the city proceeding.

I have a May 9, 2013 email from City Attorney Jim Brewer summarizing your position on several issues. From that I understand several things, including:

> This appeal will be heard and determined by the City Council.
>
> You have determined that more than 2000 feet of soil has been disturbed by the utility company in the power line easement; that work triggers the need for a permit, but you have decided not to prosecute that violation.
>
> You agree that there are a number of recreational trails and bike paths on the property, developed in connection with use of city park facilities, but you have decided not to prosecute the city parks department for these violations, or to require remediation by the city.
>
> Although the city is not prosecuting the utility company or the parks department for their violations on this property, you have decided to prosecute by client for the impacts of its brush clearing work.

With this letter I would like to do three things:

> 1. Request summary dismissal of this complaint; the ordinance only applies in the context of development or construction, which was not happening here, and was not alleged to be happening here.

2. Request including the utility company and city parks department in this proceeding if it is to go forward; and
3. Request that this appeal be processed, if the alleged violation is not summarily dismissed in response to point 1 above.

We address each point below:

1. This Notice of Violation should be summarily dismissed; as stated in the Code and the Manual, the ordinance only applies in the context of development or construction, which was not happening here, and was not alleged to be happening here. Absent an allegation of development or construction activity, there is no lawful basis for the Notice of Violation under appeal.

As discussed further below, the ordinance, and the Erosion Prevention and Sediment Control Manual which implements the ordinance, do not regulate simple vegetation mowing or removal. By their plain terms they regulate development and construction activities. Neither development nor construction has taken place or is in the offing on the subject property; none has been alleged by the City. Therefore, there is no lawful basis for the city Notice of Violation.

Please consider this letter as a request of summary disposition of this proceeding; please dismiss the proceeding; and please formally rescind the Stop Work Order.

The "Purpose" of the ordinance is to regulate development and construction activities. Code 9.03.010 says:

> ***Section 9.03.020 Purpose.***
> *The purpose of these Standards is to establish uniform requirements for development and construction related activities in order to control the occurrence of erosion and to prevent the creation, migration and/or transport of erosion at the source during construction and development. (Ord. 2004-17 §1, 09/20/2004)*

The City Manager has authority to adopt policy to administer the ordinance. Code 9.03.070(2). The Manager has adopted the Erosion Prevention and Sediment Control Manual.

The Manual is in accord with the purpose being to regulate development and construction. Chapter 2 of the Manual begins:

> ***CHAPTER 2***
> ***EROSION CONTROL PLANNING***
> *The purpose of erosion and sediment control planning is to clearly establish the control measures which are intended to prevent erosion and off-site sedimentation during construction. The Erosion Prevention and Sediment Control (EPSC) plan should describe the site development and serve as a blueprint for the location, installation, and maintenance of practices to control erosion and prevent sediment from leaving the site during construction. It should also be understood*

that plans are only a blueprint and will require modification throughout the life of the project.

The "five basic rules" stated in the Manual relate to construction:

2.2 Five Basic Rules
Erosion control measures are required for construction areas where the ground surface will be disturbed by clearing, grading, fills, excavations and other construction activities. When developing an effective EPSC plan, there are several important concepts to consider:
 # Timing - schedule work to minimize overall impacts
 # Stage work - identify & process critical areas first
 # Minimize disturbance - create buffers & reduce mass grading
 # Pre-construction - during preliminary design & prior on site grading activities
 # Pictures/Video - documentation throughout life of project

Under the code, the permitting requirement arises in the context of "development." Code 9.03.090 says:

9.03.090 Permit Required
An erosion prevention and sediment control (EPSC) permit is required before commencing ground disturbing activity affecting 2000 square feet or greater, cumulative, throughout the duration of the development.

The same holds true for the more detailed provisions in the Manual. Regulation arises in the course of development or construction. Manual 2.6 says:

2.6 Erosion Prevention and Sediment Control Permit and Plan Submittal Requirements
City of Corvallis Municipal Code Chapter 9.03 requires an Erosion Prevention and Sediment Control (EPSC) permit before commencing ground disturbing activity affecting 2000 square feet or greater, cumulatively, throughout the duration of the development. Submittal requirements for EPSC permits and EPSC plans for various types of construction projects are presented below. This information will provide the necessary tools to gain City approval and reduce overall environmental risks. Once the project site has been assessed, the catch points for cuts and fills, drainage areas and drainage patterns, sensitive areas, size and location of drainage structures, and of disturbance should be located on the base map. Approximate final grades and any known problems such as highly erodible soils or unstable slopes should also be noted. Sample EPSC plans and details can be found in Appendix A.

The ordinance directs persons to the Manual for details on preparing plans for submission for a permit. Code 9.030.100 says:

Section 9.03.100 Erosion Prevention Sediment Control Plan Requirements
The applicant shall submit an Erosion Prevention & Sediment Control Plan (EPSCP) for projects requiring an EPSC permit prior to commencing any ground disturbing activity. All plans shall comply with the minimum standards set forth in the City of Corvallis Erosion Prevention Sediment Control Manual.

1) Erosion Prevention and Sediment Control Plans

a) Erosion prevention and sediment control plans shall be prepared in conformance with and shall demonstrate compliance with these Standards and the City of Corvallis Erosion Prevention &Sediment Control Manual in effect at the time of application.

Looking to the Manual, major ground disturbing activities that require permitting are limited to "construction" projects. Manual 2.6.2 says, in relevant part:

2.6.2 Major Ground Disturbing Activities
Construction, other than those sites covered in Section 2.6.1 above which will cause ground surface disturbance, have the following requirements for erosion control. * * * *

There is no room to argue, under the language above, that permitting is needed for clearing or mowing of vegetation. Construction or development must be involved.

The appendices to the Manual are in accord. Construction must be involved to trigger permitting. For example:

Appendix D to the Manual starts with the following overview:

Overview
To protect local waterways, all ground disturbing commercial construction sites in
Corvallis must comply with water quality standards. This includes developing and implementing a plan to limit soil erosion and contain sediment and other pollutants on-site during construction activities.

* * * *

When is a permit required?
An Erosion Prevention and Sediment Control (EPSC) permit is required for all construction sites that disturb 2,000 square feet or more of land surface. Sites that disturb less than 2,000 square feet of land surface are not required to obtain a permit, but property owners must protect water quality.

* * * *

What is required to obtain an erosion prevention permit?

> *Applicants must submit a completed EPSC application form and 3 copies of an EPSC site plan, details, and notes showing how soil erosion will be minimized and sediment contained on-site during construction activities.*

The flow chart of the process appearing in Manual Appendix D begins with the first box saying "proposed construction activity."

In summary, the entirety of the permitting scheme, as described in the ordinance, and as spelled out further in the Manual, is premised on there being a development or construction activity. The city Notice of Violation does not allege construction or development activity. None can be honestly alleged. The absence of construction or development activity is fatal to prosecuting the violation. It is simple legal shortcoming that is fatal to the city's Notice of Violation. It requires dismissal. It would be pointless, and a waste public and private resources, to pursue this Notice of Violation in the light of this legal shortcoming. The City may not be able to defend this prosecution in circuit court with a straight face. It is quite possible that the city could be found in circuit court to be prosecuting its action in bad faith, which could expose the City to attorney's fees.

At least one City Councilor has been instrumental in getting this enforcement proceeding rolling. If the city respects basic principles of honesty, equity and fair play, this prosecution will be dismissed. If the City Council follows through with this prosecution, my client will be preparing a robust local record, to be carried forward in an appeal of the final City Council decision. That likely will be a writ of review proceeding in circuit court, based on the record made before the city.

2. Request to include the utility company and city parks department in this proceeding if this prosecution is to go forward.

The owner of the property requests that if the City intends to prosecute my client under this ordinance, then it should also prosecute both the utility company and the city parks department for the alleged violations of the ordinance on the subject property. There is no reason to single out my client for prosecution and give the utility company and the parks department a free pass. Based on what we have heard from the city to date, the soil disturbance work by all three actors overlaps somewhat; and having all three alleged perpetrators in the same proceeding will facilitate an efficient sorting out of responsibilities.

In summary, if the city declines to dismiss prosecution of my client, please consider this letter a complaint and request for prosecution of both city parks and the utility company.

3. If this prosecution is not summarily dismissed as requested in item 1 above, then my client requests continued processing of this appeal consistent with city ordinances.

This matter has been on hold for more than a year, at the request of the property owner. We hope that the matter can be summarily dismissed based on the points of law above. If it is not dismissed, then my client requests continued processing of its appeal.

Also, please copy me with the Notices of Violation you send to the utility company and the Parks Department or other city staff you consider the responsible party for the recreation related soil disturbance that you have documented on the property.

Thank you for your consideration.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Client
Jim Brewer, City Attorney

Bill Kloos

From:	Bill Kloos
Sent:	Tuesday, November 04, 2014 10:40 AM
To:	David Coulombe
Cc:	Bill Kloos
Subject:	Timberhill; Notice of Violation; Owner's Request to Resume Appeal Process
Attachments:	Lttr City re VIO13-00199 Appeals 10.15.2014.pdf; Lttr Requesting Dismissal - Significant Vegetation - 10-15-2014.pdf; Letter Requesting Dismissal-Erosion Control-10-15-2014.pdf
Follow Up Flag:	Follow up
Flag Status:	Flagged

David:

Thank you again for your email of October 22, and your invitation therein to clarify whether the owner wants the stay, consented to by the parties, to be lifted, such that the city process may be completed.

This is the owner's request to lift the stay and complete the city process on the two Notices of Violation. Please forward the legal arguments contained in my October 15 filings, which arguments I sent to Ken Gibb and your office, to whomever the City determines is the appropriate decision maker in the city appeal process. I have attached again a copy of those October 15 documents.

I. Notice of Violation; Noncompliance with Approved Development Plans (lack of Significant Vegetation Management Plan).

The owner's 2013 appeal was filed as a precaution, after consultation with the City Attorney and the Community Development Director.

The Notice of Violation alleges a violation of the Land Development Code, specifically, a Type I violation under 1.3.60.

The Notice of Violation states that the Director has the discretion to determine the nature and extent of penalties. However, the Notice <u>does not</u> determine the nature and extent, and it does not impose penalties. It merely requests that the owner do studies; which studies have now been substantially completed and submitted to the city.

LDC 1.3.60.03 says that when the compliance deadline expires, the City Attorney will proceed with any legal or equitable action deemed appropriate unless: (1) it is demonstrated to the City Attorney that the violation has been corrected or has not occurred, or (2) the owner goes to Court to halt the enforcement pending the outcome of the proceeding concerning the violation. Specifically, LDC 1.3.60.03 says:

> **1.3.60.03 - City Attorney to Pursue Enforcement**
> When the compliance deadline expires, the City Attorney shall proceed with any legal or equitable action deemed appropriate unless:
> **a.** It has been demonstrated to the City Attorney that the violation has been corrected, removed, or will not be committed; or
> **b.** A court of competent jurisdiction has halted enforcement pending the outcome of a proceeding concerning the violation.

Under DC 1.3 Penalties, any "penalty" imposed by the director may be appealed within 20 days to the municipal court judge. LDC 1.3.60.04.a.7. Here there is no penalty, not yet anyway; so there should be no appeal available under Chapter 1.3. Put differently, it appears that the Director's Notice did not go far enough to trigger a right to appeal under Chapter 1.3.

If the Director intends to impose a penalty, then the owner requests that be done, so that the appeal process can go forward under LDC Chapter 1.3. If this is just a matter of meeting a compliance deadline in the Notice, then the owner requests that the City proceed with any enforcement deemed appropriate under LDC 1.3.60.03. If a penalty is imposed, the owner will appeal to the Municipal Court Judge. If the Director does not intend to impose a penalty, and the City Attorney does not elect to proceed with enforcement, then the owner requests confirmation of that intention, such that the matter can be put to rest.

If the Director/City Attorney does not intend to impose a penalty (such that an appeal can be filed under LDC Chapter 1.3), and the Director/City Attorney also does not intend to withdraw or dismiss the Notice of Violation, then the owner requests that its pending appeal be processed under the general appeal provisions of LDC 2.19.30.01.a., which says:

> Every decision relating to the provision of this Code substantiated by findings of every board, commission, committee, hearings officer, and official of the City is subject to review by Appeal in accordance with the provisions of this Chapter.

We have such a decision here -- a decision by the Director applying the code, making findings, and finding a violation, albeit not imposing a penalty.

Interestingly, this chapter says that the filing of an appeal stay's the Director's decision. LDC 2.19.30.01.b.1:

> The filing of an Appeal to a higher level of City hearing authority, in accordance with the provisions of this Chapter, shall initiate the Appeal process and stay the order or decision appealed. The process shall include adequate public notice, a public hearing, and preparation of findings by the hearing authority that affirms, amends, or reverses the decision appealed.

And LDC 2.19.30.01.c. says that all appeal hearings are de novo:

> All hearings on Appeals shall be held de novo (as a new public hearing). For any Appeal, the record of the decision made before the lower level of City hearing authority shall be part of the staff report on Appeal.

LDC 2.19.30.02.a. says the appeal is to the Land Development Hearings Board:

> Appeals of decisions of the Director shall be reviewed by the Land Development Hearings Board.

LDC 2.19.30.02.d. says that decision by the LDHB is appealable to the City Council:

> Appeals of decisions of the Planning Commission, the Land Development Hearings Board, or the Historic Resources Commission shall be reviewed by the City Council.

Summary: This Notice of Violation is in an odd posture; absent a penalty, there may be nothing to appeal under LDC 1.3, the LDC Enforcement Chapter. But we have been assuming that, under the general appeal provisions of LDC 2.19, we

have a decision applying the code by the Director, which is appealable to the LDHB and then to the City Council. Each of those would be a de novo hearing. In the meantime, the pendency of the appeal stays the effect of the initial Director decision.

With respect to the merits of the pending appeal, as explained in the attached October 15 documents, the owner requests that the Notice of Violation be withdrawn or dismissed based on: (1) Failure of the Notice to include information required by the code; and (2) the fact that all of the work done and subject to the Notice of Violation was required to be done to comply with the Corvallis Fire Code; and (3) no violation of the relevant sections of the Corvallis LDC actually occurred.

II. Notice of Violation; Erosion Prevention and Sediment Permit Required.

The Notice finds that the Erosion ordinance has been violated and it directs the filing of an application.

The City Attorney advised, in a May 9, 2013, email, that the violation is of the "administrative or procedural requirements" of the erosion ordinance.

Per CMC 9.03.120(2), the appeal is to the City Council:

> Appeals of orders, decisions or determinations made by the City Manager related to the application and interpretation of the administrative or procedural requirements of this chapter shall be made to the City Council in the manner set forth under Chapter 1.11 of this Code, and shall be reviewed according to the standards set forth in Chapter 1.11.

Notwithstanding the reference above to the City Council being the appeal body, CMC 9.03.120(3)e. says the appeal is to be heard within 30 days by the "Board of Appeals." This is confusing, given that 9.03.120(2) says the appeal is to the City Council. The Hearing Board is supposed to hear appeals of a different kind of violation. See CMC 9.03.120(1). There may be a typo here. Likely the City will say this appeal goes to the City Council, not the Hearing Board. That is what the City Attorney told us in an email dated May 9, 2013: "Appeals of this determination shall be to the City Council, under Corvallis Municipal Code 9.03.120(2)." Your October 22 email confirmed the appeal is to the City Council.

The appeal provisions in CMC1.11.010 say:

> Every decision of every board, commission, committee, hearings officer and official of the City is subject to review by appeal to Council except those decisions relating to the Building Code and Fire Code made by the Building Official, Fire Chief, or Board of Appeals.

The scope of the appeal to the City Council is discussed in CMC 1.11.020 and CMC 1.11.030. CMC 1.11.020 provides for a de novo hearing before the City Council where the initial decision is in the form of a recommendation and is not a final decision. CMC 1.11.030 provides for an on the record hearing before the City Council when the decision being appealed from is a final decision. Your October 22 email says that the hearing before the City Council is on the record.

There is no record in this matter, other than the Notice of Violation and the appeal filed by my clients. The City is alleging a violation of the Municipal Code. The City has the burden of proving that. Thus far the City has provided to the owner with nothing but the bare allegation of a violation. The City needs to support that allegation with facts. My client has a right to contest those facts. If the appeal to the City Council is de novo under CMC 1.11.020, then both the City and the owner will have an opportunity to be heard on the facts. However, if the City insists on the appeal being "on the record" under CMC 1.11.030, then the owners will not have been afforded an opportunity under any code provision to present evidence to contest the alleged violation.

If the City does not afford the owner a right to be heard and to contest the facts under city code provisions, then it must afford the owner its due process rights under the Fourteenth Amendment to the US Constitution. See *Mathews v.*

Eldridge, 424 US 319, 348, 96 S Ct 893, (1976). Absent a city process that allows for submission and review of evidence, *Mathews* requires that opportunity under federal law. The three-part test of *Matthews* is met. (1) The owner's private interest would be affected by the city action. They are being directed to pay a filing fee and endure a city application process; they have been painted by city officials as scofflaws, for having violated a city environmental ordinance; their business success hinges on their reputation as land developers who respect the city's environmental laws. (2) The city's proposed "on the record" review process is neither fair nor reliable. An on the record appeal process does not require the prosecution to prove its case by presenting evidence, and it does not allow the owner to contest the allegations by presenting evidence. It is an empty shell of a process. Federal due process rights are a necessary safety net for the process you have proposed. (3) It is in the public interest of every citizen of Corvallis to have the city, as prosecutor, to have to put facts showing the alleged code violations on the table, in the light of day, and to afford any citizen the right to contest those facts with evidence of their own. That has not happened yet; and it will not happen with the process the city proposes. The owner's due process rights ensure, at a minimum, the equivalent of the city's de novo appeal procedures. The owner demands those rights.

The owner's 14th Amendment safety net arguments apply to the Notice of Violation of the significant vegetation management ordinance as well.

Your October 24th email suggests that the erosion control violation may be considered closed.

> As I understand it, the Erosion violation(s) have been mitigated as revegetation occurred. Consequently, that violation matter appears closed. I've asked for a copy of any document to confirm that closure has occurred and will provide that to you.

If the City intends to consider this matter closed, due to natural revegetation with the passage of time, any documents reflecting that must not support, either explicitly or implicitly, a city position that there was a violation in the first place. That would leave the owner's reputation and business interests damaged.

Summary: If the City considers this proceeding closed, please provide written confirmation of the withdrawal of the Notice of Violation. I request a chance to review that withdrawal before it is issued. If the Notice of Violation is not withdrawn, please process the pending appeal. The processing must allow a de novo review under the city codes. If it does not, it must allow a de novo process consistent with the owner's due process rights. Please forward to the decision maker the legal argument in my October 15 documents submitted to the Community Development Director and your office.

Thank you for your consideration.

Bill Kloos
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 343-8596
Email: billkloos@landuseoregon.com
Web: www.LandUseOregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-343-8596. Also, please notify me by e-mail. Thank you.

LAW OFFICE OF BILL KLOOS PC

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October 15, 2014

Ms. Nancy Brewer
Corvallis City Manager
501 SW Madison St.
Corvallis, OR 97333

Re: Appeal of Notice of Violation, VIO13-00199;
Riparian Corridor/Wetland and Significant Vegetation Regulations
Request for Summary Disposition of Alleged Violation

Dear Ms. Brewer:

Please accept this letter in support of the pending appeal of the Notice of Violation above. I will be representing the appellant in the city proceeding.

With this letter I would like to do two things:

1. Request summary dismissal of the Notice of Violation for failure to include information required by the code.
2. Request summary dismissal of Notice of Violation based on requirements of the Corvallis Fire Code.

1. The Notice of Violation should be dismissed for failure to include information required by the code.

The Notice of Violation alleges generally:

> "This Notice is to inform you that vegetation management activity on your referenced property has occurred in noncompliance with the provisions of Land Development Code (LDC) Section 4.12.50(b) and 4.13.50(a)."

LDC 14.13 is Riparian Corridor and Wetland Provisions. Section 4.13.50(a) has a blanket prohibition against "[r]emoval of vegetation from Riparian Corridors and Riparian-related Areas" except in 10 enumerated situations. We understand the allegation to be that none of the 10 exceptions applies.

LCS 14.12 is Significant Vegetation Protection Provisions. Section 4.12.30 lists 10 exemptions from the protections. Section 4.12.50(b) then list five activities that may not be done without an approved Significant Vegetation Management Plan. These are:

b. Within Significant Vegetation Areas, the activities in "1," through "5," below, are prohibited unless they are specifically exempted in Section 4.12.30, or are allowed as a result of the approval of a Significant Vegetation Management Plan, a land use development permit, or a construction permit. See Section 4.12.90 - Standards for Significant Vegetation Management Plans.

1. Removing, damaging, destroying, or cutting any tree greater than four in. caliper as measured four ft. above Natural Grade;

2. Removing, damaging, destroying, or cutting any shrub over four ft. in height;

3. Removing any ground covers or soil;

4. Preparing a site for development, such as excavating, grading, clearing, etc.; And

5. Constructing fences over four ft. in height or of a material that will prevent small animal passage.

The Notice of Violation says that the owner is in noncompliance with the list above. However, it does not allege which of the five prohibited activities is alleged to have occurred.

The owner cannot effectively prepare its defense of the alleged violations unless in knows which one or more of the prohibited actions is alleged to have occurred.

The City has the burden of proof to show that a violation has occurred. More importantly, the LDC requires that a valid Notice of Violation include three kinds of information. LDC 1.3.60.02 says:

Such a notice shall indicate the following:
1. Location and nature of the violation; and
2. Provision or provisions of this Code or Conditions of Approval which allegedly have been violated; and
3. Whether immediate enforcement will be sought or if a specified time period will be allowed to correct or remove the violation.

The Notice of Violation is fatally deficient because it fails to allege which of the five standards in LDC 4.12.50(b) the city believes has been violated. The City has alleged the violation so broadly that the owner is unable to prepare an appropriate defense.

The owner requests, therefore, that the Notice of Violation be dismissed.

2. Request summary disposition of Notice of Violation based on requirements of the Corvallis Fire Code.

Please consider this letter as a request of summary disposition of this proceeding; please dismiss the proceeding; and please formally rescind the Stop Work Order.

The Corvallis Fire Code requires dangerously combustible vegetation to be removed seasonally, in order to protect life and property, whereas the regulations in the Chapter 4.12 and 4.13 of the Land Development Code say that many types of vegetation are not to be removed, except for limited exceptions, to preserve natural and aesthetic values. There is an apparent overlap and conflict between local regulations. The correct reading of the two codes is that the fire hazard needs to be removed, notwithstanding the Significant Vegetation regulations that would otherwise require a discretionary permit for such activities.

In general terms, the Significant Vegetation Overlay Zone prohibits a broad range of vegetation management activities without an approved Significant Vegetation Management Plan. These broad prohibitions are found in the Land Development Code at LDC 4.12.50(b), which provides:

c. *Within Significant Vegetation Areas, the activities in "1," through "5," below, are prohibited unless they are specifically exempted in Section 4.12.30, or are allowed as a result of the approval of a Significant Vegetation Management Plan, a land use development permit, or a construction permit. See Section 4.12.90 - Standards for Significant Vegetation Management Plans.*
    1. *Removing, damaging, destroying, or cutting any tree greater than four in. caliper as measured four ft. above Natural Grade;*
    2. *Removing, damaging, destroying, or cutting any shrub over four ft. in height;*
    3. *Removing any ground covers or soil;*
    4. *Preparing a site for development, such as excavating, grading, clearing, etc.; And*
    5. *Constructing fences over four ft. in height or of a material that will prevent small animal passage.*

Similarly, the Riparian Corridor and Wetland Provisions at LDC 4.13.50(a) prohibit removal of vegetation except in enumerated situations.

The fire code, on the other hand, says that combustible vegetation needs to be cut to ground level between June and the end of September. Specifically, the fire code provides:

Section 7.08.130 <u>Combustible vegetation</u>.
1. *OFC Section 304.1.2 as adopted by this Chapter is amended to add Section 304.1.2.1 as follows:*

304.1.2.1 <u>Combustible vegetation on city parcels</u>. The person owning, possessing, or having the care or custody of any lot or parcel of land shall cut, as close to the ground as is reasonably practical, and shall remove or destroy all brush, grass, weeds, thistles, vines, and other vegetation growing at a height of 10" or more between the months of June 1 and September 30 of each year, or when determined by the fire chief to be a fire hazard. When the fire chief determines that total removal of growth is impractical due to size or environmental factors, approved fuel breaks shall be established. Minimum width of a fuel break adjacent to public

> *sidewalks, streets, bikeways, and trails shall be 10 feet. Minimum width of fuel breaks along property lines and around combustible structures shall be 25 feet, unless determined to be impractical by the fire chief.*
>
> *EXCEPTION: Vegetation along drainage ways, in wildland and wild flower areas under public ownership, and on private lands designated as "protected" under federal or state legislation, can exceed the 10" limitation so long as it is not determined to be a fire hazard by the fire chief. "Parcels in the urban wild land interface areas shall also be subject to OFC Section 304.1.2."*

Thus, it appears there is a conflict between these city ordinances; one says you cannot cut vegetation; one says you must cut vegetation.

The zoning code contains a provision that addresses conflicting and overlapping provisions of the code or any other ordinance. LDC 4.12.40 says:

> *"[W]here this Chapter conflicts or overlaps with other provisions of this Code or any other ordinance, easement, covenant, or deed restriction, whichever imposes the more stringent restrictions shall prevail."* LDC 4.12.40.

And there is a comparable provision in LDC 4.13.40, which says:

> *"[W]here this Chapter and any other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail."*

It is the owner's view that provisions that impose an affirmative obligation (must cut) are more stringent than a provision prohibiting an act (shall not cut). The provision that requires a landowner to take action to protect human safety and property is more stringent than the provision that directs a landowner to maintain natural and aesthetic values. The failure to comply with the former can lead to a much more drastic outcome, with a much more severe liability, than would result from a failure to comply with the latter.

The "exemptions" section of the zoning regulations for the Significant Vegetation Overlay Zone, in LDC 4.12.30 contains specific standards for "Creation and Maintenance of Fire Fuel Breaks Surrounding All Structures Designed for Human Occupancy." The Fire Code applies more generally to areas adjacent to structures, such as the large open areas on the Timberhill site.

In summary, in reconciling the zoning code and fire code regulations, the city should place the greater emphasis on human safety and preservation of property. The alleged Notice of Violation should be dismissed, as all mowing activities on the subject property were undertaken in an attempt to reduce fire hazard and comply with the fire code.

Thank you for your consideration.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Client
Jim Brewer, City Attorney

Bill Kloos

From: David Coulombe <decoulombe@peak.org>
Sent: Friday, October 24, 2014 5:03 PM
To: Bill Kloos
Subject: RE: Violation VIO13-00199

Bill:

Thank you for the clarifying the conflict in your October 15, 2014 letters and confirm that your client has not yet requested the appeals process resume. If your client seeks that process, please let me know.

From my perspective, the appeal path for both violations leads to the City Council under CMC 1.11. The determination of violation activities would be a decision of an official for purposes of CMC 1.11.010. The scope of review is on the record, not de novo, as the Code Enforcement Supervisor's Notice of Violation determination was not a recommendation to Council. The on-the-record appeal would satisfy due process.

As I understand it, the Erosion violation(s) have been mitigated as revegetation occurred. Consequently, that violation matter appears closed. I've asked for a copy of any document to confirm that closure has occurred and will provide that to you. As for the balance of violations, I have received, but not reviewed a Vegetation Impact Assessment Plan. I also note your client's agent has delivered a proposal to prepare Significant Vegetation Management Plan. In short, as I understand the process to date, your client has worked toward mitigating the violations. That may be why no penalty has been imposed or other action sought. I would expect that my client would reconsider penalty imposition and turn to our office to assist in this action if your client were to discontinue its efforts along the mitigation pathway. If that is your client's intent, please let me know.

As an aside, please take notice that it would not be appropriate for the City Manager Pro Tem to consider and authorize your request to summarily dismiss the subject violations. Because your client has appealed a city official's determination, the matter is within the jurisdiction of the City Council.

David

From: Bill Kloos [mailto:billkloos@landuseoregon.com]
Sent: Thursday, October 23, 2014 8:56 PM
To: decoulombe@peak.org
Cc: Bill Kloos
Subject: Violation VIO13-00199

David:

Thank you for your email. I will confer with my client and get back to you on the issue of whether the owner wants the appeal resumed immediately.

Let me turn to the process question, which I raised in my initial email to Jim Brewer.

Initially, both appeals were filed as precautions, after some email discussions with Jim Brewer about venue and timing of the appeals. The owners wanted to get appeals filed under the city code to be sure they could be heard on the merits of the alleged violations. Thus far, the owners have not had an opportunity to contest the facts or argue the applicable

law. Indeed, the Notices are so general that the owners don't know exactly what code provisions the Director believes were violated by what actions.

The city is alleging violation; it has the burden of proof to show a violation. The owners have the right to contest the alleged violations with facts and law. The city prosecution must be in a forum that affords due process; it can't happen in a Star Chamber.

So, generally, the owner requests your current best thoughts on the appeal path for each of these violations. Based on the language of the code, what is the forum and process for the city to make its factual showing that that the code has been violated, and for the owners to refute the city's allegation with facts and the law?

I offer the following initial thoughts on each of the Notices of Violation.

Notice of Violation; Noncompliance with Approved Development Plans (lack of Significant Vegetation Management Plan).

The Notice of Violation alleges a Type I violation under 1.3.60. It does not impose a penalty; it does not require a citation to be issued immediately; it did demand the preparation of certain studies, which have been prepared, submitted to the Director, and amended and resubmitted to the Director. The Director can provide you with the hard copy of these studies and details on the many meetings with the owners and their consultants.

LDC 1.3.60.03 says that when the compliance deadline expires, the City Attorney will proceed with any legal or equitable action deemed appropriate unless: (1) it is demonstrated to the City Attorney that the violation has been corrected or has not occurred, or (2) the owner goes to Court to halt the enforcement pending the outcome of the proceeding concerning the violation. Specifically, LDC 1.3.60.03 says:

> **1.3.60.03 - City Attorney to Pursue Enforcement**
> When the compliance deadline expires, the City Attorney shall proceed with any legal or equitable action deemed appropriate unless:
> **a.** It has been demonstrated to the City Attorney that the violation has been corrected, removed, or will not be committed; or
> **b.** A court of competent jurisdiction has halted enforcement pending the outcome of a proceeding concerning the violation.

Under this chapter of the Code (1.3 Penalties), any "penalty" imposed by the director may be appealed within 20 days to the municipal court judge. LDC 1.3.60.04.a.7. Here there is no penalty, not yet anyway; so there may be no appeal available under Chapter 1.3. Put differently, the Director's Notice did not go far enough to trigger a right to appeal under Chapter 1.3. However, in a situation like this, where there is a Notice of Violation, combined with a directive to take action, but no citation issued or penalty imposed, then what to do with the proceeding falls to the City Attorney under the code section quoted above.

The owners filed the appeal of the Notice of Violation as a precaution, after consulting with both Ken Gibb and Jim Brewer immediately after the Notice was issued. However, given the absence of a citation or penalty, and the direction in the Notice to do studies that have been done and revised, the code appears to say that the matter is now in the hands of the City Attorney under LDC 1.3.60.03. The owner would like to get the thoughts of the City Attorney on this. If there is to be any further proceeding, then we need to know what the due process will be. If there is not to be any further proceeding, then the owners need to have the Notice of Violation withdrawn, so that they have a clean record in the city files and in the public eye.

Notice of Violation; Erosion Prevention and Sediment Permit Required.

The Notice finds that the Erosion ordinance has been violated and it directs the filing of an application.

The City Attorney advised, in a May 9, 2013, email, that the violation is of the "administrative or procedural requirements" of the erosion ordinance.

Per CMC 9.03.120(2), the appeal is to the City Council:

> Appeals of orders, decisions or determinations made by the City Manager related to the application and interpretation of the administrative or procedural requirements of this chapter shall be made to the City Council in the manner set forth under Chapter 1.11 of this Code, and shall be reviewed according to the standards set forth in Chapter 1.11.

Notwithstanding the reference above to the City Council being the appeal body, CMC 9.03.120(3)e. says the appeal is to be heard within 30 days by the "Board of Appeals." This is confusing, given that 9.03.120(2) says the appeal is to the City Council. The Hearing Board is supposed to hear appeals of a different kind of violation. See CMC 9.03.120(1). There may be a typo here. Likely the City will say this appeal goes to the City Council, not the Hearing Board. That is what the City Attorney told us in an email dated May 9, 2013: "Appeals of this determination shall be to the City Council, under Corvallis Municipal Code 9.03.120(2)."

The appeal provisions in CMC1.11.010 say:

> Every decision of every board, commission, committee, hearings officer and official of the City is subject to review by appeal to Council except those decisions relating to the Building Code and Fire Code made by the Building Official, Fire Chief, or Board of Appeals.

The scope of the appeal to the City Council is de novo. CMC 1.11.020.

The owners look forward to your thoughts on the process for this appeal, too.

Bill Kloos
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From: David Coulombe [mailto:decoulombe@peak.org]
Sent: Wednesday, October 22, 2014 7:34 PM
To: Bill Kloos
Cc: 'Kristen Rosser'
Subject: RE: Violation VIO13-00199; Supplemental Information and Request for Summary Disposition

Bill:

I've reviewed your three October 15, 2014 letters related to violation case as captioned above. In your letter seeking to add "Supplemental Information" you note that two appeals were stayed at your client's request and that your client "intends to reactivate the two appeals." Your letter then states that *before* reactivating "you would like to add another legal theory" based upon facts and allegations subsequent to the Notice of Appeal. In separate letter of the same date, and in regards to the Erosion Control Violations, you seek dismissal and if "not dismissed, then my client requests continued processing of this appeal."

Can you clarify if your client is requesting the stay be lifted and the appeal process renewed on both noticed violation matters or just the Erosion Control Violation matter?

On a related matter, it is not clear how it would be permissible for the City Manager Pro Tem to dismiss either of these violation cases. It would appear to me, at least on its face, that you have placed your client within the jurisdiction of the City Council as the Appellate Body when you filed the appeals. Consequently, I'm inclined to advise the City Manager

Pro Tem that it would not be appropriate for her to take any action with respect to your October 15, 2014 requests, except to the extent she can facilitate your requests to remove the stays and proceed with the appeals--upon your clarification of intent to proceed as noted in the above paragraph. Moreover, given the scope of the City Council's review--on the record--this belated attempt to supplement the record would also appear impermissible. I've copied the City Council's scope of review below for your convenience. I look forward to your response and courtesies as we move forward with resolution of these matters.

David

CMC 1.11.030. When a decision of a board, commission, committee, hearings officer or official is a final decision by the terms of the statute, law, or ordinance which provides for the decision, except for the right of appeal to Council, then the scope of review upon appeal by Council shall not be a de novo review upon the merits, and Council shall not hear evidence on which to base a new and independent decision; but rather, Council shall review the decision and the fact or record upon which the decision was based for the purpose of determining whether the decision was arbitrary and/or capricious. Council in such an instance shall not determine whether it agrees with the decision and shall not seek to substitute its judgment for that of the board, commission, committee, hearings officer or official. A decision is arbitrary or capricious if it is not supported by competent evidence. If Council finds that a decision is arbitrary and/or capricious, then Council may reverse or modify the decision as a final disposition; or it may return the matter to the board, commission, committee, hearings officer or official for further proceeding in accordance with instructions from Council.

From: Bill Kloos [mailto:billkloos@landuseoregon.com]
Sent: Thursday, October 16, 2014 3:59 PM
To: David Coulombe
Cc: Bill Kloos
Subject: RE: Violation VIO13-00199; Supplemental Information and Request for Summary Disposition

David:

Thanks. Will do, sometime tomorrow, I hope. My IT person is trading out laptops for me tonight. Always a crap shoot – every three year.

Bill Kloos
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From: David Coulombe [mailto:decoulombe@peak.org]
Sent: Thursday, October 16, 2014 3:37 PM
To: Bill Kloos
Subject: RE: Violation VIO13-00199; Supplemental Information and Request for Summary Disposition

Hi Bill:

I have yet to review the notices of violation and related communications to get up to speed on the issue. Feel free to send your analysis on the appeal path you believe is available.

David

From: Bill Kloos [mailto:billkloos@landuseoregon.com]
Sent: Thursday, October 16, 2014 2:46 PM
To: Jim Brewer
Cc: 'City Attorney Coulombe'; Bill Kloos
Subject: RE: Violation VIO13-00199; Supplemental Information and Request for Summary Disposition

Many thanks.

Bill Kloos
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From: Jim Brewer [mailto:jkbrewer@peak.org]
Sent: Thursday, October 16, 2014 2:45 PM
To: Bill Kloos
Cc: 'City Attorney Coulombe'
Subject: RE: Violation VIO13-00199; Supplemental Information and Request for Summary Disposition

Thanks, Bill:

David Coulombe from our office will be advising the City on these matters. I will forward this to David and the two of you can arrange a discussion of appeal routes.

Jim

From: Bill Kloos [mailto:billkloos@landuseoregon.com]
Sent: Wednesday, October 15, 2014 11:09 AM
To: Jim Brewer (jkbrewer@peak.org)
Cc: Bill Kloos
Subject: FW: Violation VIO13-00199; Supplemental Information and Request for Summary Disposition

Jim:

I copied you with the below and the attachments above. The owners would like to get this resolved. The requests for summary disposition offer a couple paths for resolution without a hearing. If those do not pan out, then we will need to get the appeals heard. We will also need to jump on some basic discovery requests.

I have given some further thought to the correct local appeal routes, if the Notices are not dismissed or withdrawn. I would like to compare notes with you on that appeal procedures. It would be great if we both view the elephant the same way. Maybe we could touch base at your convenience. When you are ready I can send an email with my take on the process.

Thanks.

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From: Bill Kloos
Sent: Wednesday, October 15, 2014 10:35 AM
To: Ken Gibb (Ken.Gibb@corvallisoregon.gov)
Cc: Jim Brewer (jkbrewer@peak.org); Bill Kloos
Subject: Violation VIO13-00199; Supplemental Information and Request for Summary Disposition

Ken:

Please find attached courtesy copies of three letters related to the Notices of Violation you issued in April 2013 and that are now under appeal. The originals are being mailed today to the City Manager.

The first adds to each appeal the defense that the work that was the subject of the Notices was required by the Corvallis Fire Code.

The second and third request summary disposition and dismissal of each Notice of Violation for legal reasons.

As reflected in the letters, if the Notices of Violation are not dismissed, the owner will request they be set for a hearing.

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Date: 18 May 2015
To: Corvallis Mayor and City Council, City Manager
From: Marilyn Koenitzer, , Corvallis 97333

First of all, I welcome our new City Manager, Mayor and Councilors.

I am here tonight give you some good news and ask a few questions. My subject is the Draft Recommended Remedial Action Plan prepared by the DEQ for Hollingsworth and Vose, (formerly Evanite). Comments about it are due June 1, 2015.

I am very pleased that H&V and DEQ have finally come to this momentous point in the cleanup process. The lengthy pilot projects for cleaning the soil are over. As a result of what they learned during the pilot projects, DEQ intends to use a multi-pronged approach to continue cleaning the soil at the site. I believe the cleanup will continue with a good plan in place.

The Recommended Remedial Action Plan is very thorough. It gives history, problems, solutions and ~~six~~ $ cleanup options. The recommended option will affect land use within the plant area, and will continue to affect water and air for a long, indefinite period of time. The option preferred by DEQ is the most cost effective and least disturbing for H&V operations.

A group of concerned citizens from within Benton County has reviewed the plan and sent clarifying questions about it to you and the DEQ contact person, Seth Sadofsky. We intend to respond to the June 1 deadline for comments.

My four questions are:
Is the city intending to respond to the report?

Is the city interested in having DEQ hold a public information meeting about the remediation plan? (This could not be for formal testimony about the remediation plan.)

Is it possible for the city to have a designated point person to liaison with the DEQ, the council and the public?

Is it possible for the city to post links to the DEQ website for H&V reports?

It would be excellent PR for the city and helpful for citizens to have links to the DEQ from the city's website, (and a person to ask questions of other than myself).

I am on the South Corvallis list serve, and get occasional questions about TCE, well water safety, fiberglass emissions, and noise. I usually refer people to either Gary Andes at the DEQ air quality division or to Seth Sadofsky, remedial action specialist.

For those of you who are new to this issue, I have been involved with Evanite since 1979. I have been following the TCE cleanup issue since about 2000. I have corresponded with the DEQ at least annually since 2006, and have sent those emails to council members. If any of you would like background information, please contact me. Seth Sadofsky welcomes questions, and H&V does as well.

460 million gallons of [illegible] extracted [illegible]
82 000 lbs of dissolved phase TCE have been removed.

Testimony to City Council – 05/17/15

Good evening. My name is Annette Mills, and I'm speaking tonight as an individual, not representing any organization. I'd like to address the proposed budget from my perspective as a mother, a grandmother, and a former local government employee of 18 years.

- Two of the most significant decisions you make are goal-setting and budgeting. Wisely crafted, goals and budgets address both current **and future** community needs.
- I attended all of your goal-setting work sessions, and I was impressed by your decisions. My hope is that your budget decisions will reflect your Council goals.

Vision, coupled with action, is critical to the livability of a community.

- Many of the best aspects of Corvallis didn't just happen. Community members and City Councilors envisioned those aspects and took steps to achieve them.
- The world and our community have changed in some dramatic ways since the 2020 Vision Statement was approved in 1997. I urge you to address these changes by making the vision and action plan goal a high priority in your budget.

The climate change goal deserves to be an equally high budget priority.

- In March, the worldwide average of atmospheric CO2 surpassed 400 parts per million. NOAA's Global Monitoring Division advises that we'll need to cut fossil fuel emissions by about 80 percent to stop this startling rise.
- California, Washington, and parts of Oregon are in a state of drought, and snowpack in the Cascades – the source of 2/3 of our community's water – has reached historic lows.

This new physical reality should be enough to move us to significant action. But there are also economic impacts of inaction.

- The longer we wait to address climate change, the costlier it will be.
- Financial experts say that climate change is one of three major trends shaping Oregon's economic future.

Action is needed NOW – not in a year, or in two years. Our lives and the lives of our children and grandchildren depend on all of us taking courageous action.

- No one is naïve enough to think that decreasing CO2 in Corvallis will have a measurable impact on the earth's overall carbon emissions.
- But, according to leading scientists, we are heading toward an emergency situation, and we need to prepare our city, its residents, and businesses for this developing crisis.

I have two requests related to your upcoming budget decision:

- First, show that **vision and action** and **climate action** are high priorities by restoring full funding to those Council goals.

- Second, encourage staff to make use of community resources similar to what governments did during the Great Depression and World War II. There are many community members and organizations with skills, expertise, and passion around nearly every item in the budget.
- As a city employee with a very tight budget, I learned first-hand that local government is most effective when community members and staff work together. We can achieve far more working together than we can working apart.

Thank you for your consideration of these requests.

To the Mayor, City Manager, and City Council, Below is a written copy of the testimony I presented during visitor propositions at the City Council meeting on May 18, 2015:

I am here tonight to talk about the council goals and the funding of those goals, with respect to the budget adoption process scheduled for June 1.

Earlier this year, the council adopted six goals. This was a public process with wide community input and discussion.

These goals include Sustainable Budget, Housing Development, Economic Vitality, OSU/City Relations, Climate Action, and Vision and Action Plan for Corvallis.

In anticipation of the budget hearing on June 1, I urge you to work on a process in the next two weeks to align the spending in the 2015-2016 budget with these goals.

The citizen members of the budget commission have weighed in, as they should. Not surprisingly, their actions focused on the one area of the goals of greatest interest to them, the Sustainable Budget. What is unfortunate is the narrowness of their focus. Their designation of $403,000 to be used as the city manager sees fit for public safety only addresses one portion of one of the goals.

It is important to point out that not only is the public safety area important to be considered, as a part of the Sustainable Budget goal discussion, but that all the other departments in the city which are suffering from unmet needs must also be considered in the discussion on this goal. There are many departments in the city which have suffered from insufficient budgets over the years.

It is also important to point out that not only is the Sustainable Budget area of the goals in need of funding, but that <u>all six</u> of the goal areas are in need of funding.

I request that the Council consider directing staff to prepare proposed budget amendments which will address the adequate funding of all six of the adopted goals for the 2015- 2016 period. In particular, I am requesting funding for the Climate Action and Vision and Action Plans for Corvallis, which are in need of staffing support in order to carry out their intended accomplishments.

Thank you

Marjorie Stevens

Distributed by Linda Lovett 5-18-15 Council mtg

50 Largest US Cities and Status of Climate Action Plans

Rank	City	Population	Plan? Y/N	Name/Description
1	New York, N.Y.	8,405,837	YES	PLANYC (2007); Uses a variety of indicators based around infrastructure to plan to integrate sustainability further into everyday life.
2	Los Angeles, Calif.	3,884,307	YES	GREEN LA and CLIMATE LA (2007)
3	Chicago, Ill.	2,718,782	YES	Sustainable Chicago 2015
4	Houston, Tex.	2,195,914	YES	Green Houston; completed inventory of Local Government Operations Emissions in 2007; Working with Los Angeles and Philadelphia on Mayor's National Climate Action Agenda: http://www.houstontx.gov/mayor/press/Climate_Action_Agenda.pdf
5	Philadelphia, Pa.	1,553,165	YES	Local Action Plan for Climate Change (2007)
6	Phoenix, Ariz.	1,513,367	YES	Climate Action Plan for Government Operations (2009)
7	San Antonio, Tex.	1,409,019	NO	
8	San Diego, Calif.	1,355,896	YES	City of San Diego Climate Action Plan (2014)
9	Dallas, Tex.	1,257,676	NO	
10	San Jose, Calif.	998,537	YES	City of San Jose Green Vision Annual Report 2014; Greenhouse Gas Reduction Strategy 2011
11	Austin, Tex.	885,400	YES	Austin Community Climate Plan
12	Indianapolis, Ind.	843,393	NO	
13	Jacksonville, Fla.	842,583	NO	
14	San Francisco, Calif.	837,442	YES	San Francisco Climate Action Strategy 2013
15	Columbus, Ohio	822,553	YES	The Columbus Green Community Plan, Green Memo III 2015
16	Charlotte, N.C.	792,862	YES	Work Green, Mecklenburg! 2012; Plan that encompasses the entire county focusing on energy conservation and emissions reduction.
17	Fort Worth, Tex.	792,727	NO	
18	Detroit, Mich.	688,701	PROGRESS	Citizen group, Detroit Climate Action Collaborative, working on plan
29	El Paso, Tex.	674,443	PROGRESS	Sustainability report guides City's efforts to develop plans to reduce energy consumption and greenhouse gas emissions. In December 2013, El Paso was selected to join the 100 Resilient Cities Network and was given direct funding to hire a Chief Resilience Officer. The Office of Resilience and Sustainability was formed in December 2014, built on the the Office of Sustainability.
20	Memphis, Tenn.	653,450	PROGRESS	Shelby County Commission and Memphis City Council approved resolutions this week expressing support for bringing solar power to the region's communities to create jobs, slow climate change and improve public health.
21	Seattle, Wash.	652,405	YES	Seattle Climate Action Plan (2013)
22	Denver, Colo.	649,495	YES	City of Denver Climate Action Plan (2007)
23	Washington, DC	646,449	YES	A Climate Action Plan for the District of Columbia (2011)
24	Boston, Mass.	645,966	YES	Greenovate Boston 2014 CAP Update
25	Nashville-Davidson, Tenn.	634,464	PROGRESS	Greenhouse Gas Inventory (2009); Resolutions supporting reduction in GHGs (2012 & 2014)
26	Baltimore, Md.	622,104	YES	City of Baltimore Climate Action Plan (2012)
27	Oklahoma City, Okla.	610,613	NO	Has Sustainability Office, but no climate plan: http://www.okc.gov/sustain/

28	Louisville-Jefferson Co., Ky.	609,893	YES	City of Louisville Climate Action Report (2009)
29	Portland, Ore.	609,456	YES	City of Portland and Multnomah County Climate Action Plan (2009; 205 update underway)
30	Las Vegas, Nev.	603,488	PROGRESS	Has completed GHG inventories; working with Carbon Disclosure Project
31	Milwaukee, Wis.	599,164	PROGRESS	ReFresh Milwaukee: City of Milwaukee Sustainability Plan 2013-2023 (2013); Sustainability plan that includes measures to reduce GHGs
32	Albuquerque, N.M.	556,495	YES	City of Albuquerque Climate Action Plan (2009)
33	Tucson, Ariz.	526,116	YES	Community Economic Security and Climate Action Analysis; community climate mitigation and adaptation plans in progress (2011)
34	Fresno, Calif.	509,924	PROGRESS	Fresno Green Program (2009) Focus on building green; constructing buildings and communities that are sustainable and environmentally responsible
35	Sacramento, Calif.	479,686	YES	Sacramento Climate Action Plan (2012)
36	Long Beach, Calif.	469,428	PROGRESS	Sustainable Long Beach: Sustainable City Action Plan (2010) Sustainability plan that includes measures to reduce GHGs
37	Kansas City, Mo.	467,007	YES	Climate Protection Plan (2008)
38	Mesa, Ariz.	457,587	NO	Provides "Climate Change Handbook; A Citizen's Guide to Thoughtful Action" on city website--an Oregon State U. publication
39	Virginia Beach, Va.	448,479	YES	Comprehensive Plan (2009); Coastal Resiliency: Adapting to Climate Change in Hampton Roads, Virginia (2013); Developing a Local Sea Level Rise Adaptation Plan for Virginia Beach (2014); One of the first cities in the U.S. to factor climate change into their Comprehensive Plan, the City of Virginia Beach identifies both mitigation and adaptation policy options in their plan
40	Atlanta, Ga.	447,841	YES	
41	Colorado Springs, Colo.	439,886	NO	
42	Omaha, Nebr.	434,353	PROGRESS	Website information on Air and climate: Develop and implement action-oriented strategies that pursue continuous improvement of air quality, reduce greenhouse gas emissions, incorporate climate change resilience and measure progress regularly; report these findings to the community to stimulate the appropriate action(s).
43	Raleigh, N.C.	431,746	YES	A Roadmap to Raleigh's Energy Future/City of Raleigh Climate/Energy Action Plan (2013) "Collaborative project that began as a simple Climate Energy Action Plan and has matured into this implementation/action plan."
44	Miami, Fla.	417,650	YES	Miami-Dade County Climate Action Plan (2008); Also part of Southeast Florida Regional Climate Action Plan.
45	Oakland, Calif.	406,253	YES	Oakland Energy and Climate Action Plan (ECAP) (2012)
46	Minneapolis, Minn.	400,070	YES	Minneapolis Climate Action Plan: A roadmap to reducing citywide greenhouse gas emissions (2013)
47	Tulsa, Okla.	398,121	PROGRESS	City of Tulsa Sustainability Plan: Resource Efficiency, Clean Energy, and Leading Growth in the New Economy (2011)
48	Cleveland, Ohio	390,113	YES	Cleveland Climate Action Plan: Building Thriving and Healthy Neighborhoods (2013)
49	Wichita, Kans.	386,552	NO	
50	Arlington, Tex.	379,577	PROGRESS	The city compiled an emissions inventory, for the year 2005, as the preliminary step towards adopting a reduction target and developing local climate action plan.

Cities Similar in Size to Corvallis		
Rank	**City**	**Population**
634	Rocky Mount city, North Carolina	56,954
635	Kokomo city, Indiana	56,895
636	Coconut Creek city, Florida	56,792
637	Bowie city, Maryland	56,759
638	Berwyn city, Illinois	56,758
639	Midwest City city, Oklahoma	56,756
640	Fountain Valley city, California	56,707
641	Buckeye town, Arizona	56,683
642	Dearborn Heights city, Michigan	56,620
643	Woodland city, California	56,590
644	Noblesville city, Indiana	56,540
645	Valdosta city, Georgia	56,481
646	Diamond Bar city, California	56,449
647	Manhattan city, Kansas	56,143
648	Santee city, California	56,105
649	Taunton city, Massachusetts	56,069
650	Sanford city, Florida	56,002
651	Kettering city, Ohio	55,870
652	New Brunswick city, New Jersey	55,831
653	Decatur city, Alabama	55,816
654	Chicopee city, Massachusetts	55,717
655	Anderson city, Indiana	55,670
656	Margate city, Florida	55,456
657	Weymouth Town city, Massachusetts	55,419
658	Hempstead village, New York	55,361
659	**Corvallis city, Oregon**	**55,298**
660	Eastvale city, California	55,191
661	Porterville city, California	55,174
662	West Haven city, Connecticut	55,046
663	Brentwood city, California	55,000
664	Paramount city, California	54,980
665	Grand Forks city, North Dakota	54,932

Rank	City	Population
666	Georgetown city, Texas	54,898
667	St. Peters city, Missouri	54,842
668	Shoreline city, Washington	54,790
669	Mount Prospect village, Illinois	54,771
670	Hanford city, California	54,686
671	Normal town, Illinois	54,664
672	Rosemead city, California	54,561
673	Lehi city, Utah	54,382
674	Pocatello city, Idaho	54,350
675	Highland city, California	54,291
676	Novato city, California	54,194
677	Port Arthur city, Texas	54,135
678	Carson City, Nevada	54,080
679	San Marcos city, Texas	54,076
680	Hendersonville city, Tennessee	54,068
681	Elyria city, Ohio	53,956
682	Revere city, Massachusetts	53,756
683	Pflugerville city, Texas	53,752
684	Greenwood city, Indiana	53,665

Population estimates 7/1/2013:
http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk

16/50 = 32%
Shaded = Cities that have not taken action on climate change

From: Ward 4
Sent: Monday, May 18, 2015 4:17 PM
To: Holzworth, Carla
Cc: Mayor and City Council
Subject: ASC minutes minor corrections

Hi Carla, I'm hoping this is a better way to send corrections so that everyone who is interested is aware of them. If Councilors Brauner or Hirsch remember something differently, I hope it would be okay for them to say so.

I have not listened to a recording or anything, most of what I have to say is about the intention behind what I said in the meeting which seems to have been misunderstood. Page 4 of 5 of minutes from the ASC meeting included in the packet for today's meeting. PP1: "She noted that economic development could affect people's impressions of a community, particularly when companies recruited prospective employees." Correction: I mentioned the concern about the maintenance of Central Park and the Riverfront as one example, as well as things like Arts and Culture activities as possibly effecting the decisions of firms to locate in Corvallis, and/or the decisions of potential employees to locate here. These issues have been raised as Economic Development issues in the past and are examples of things that might relate to the Economic Development goal. PP3: "She suggested a survey of community employers regarding economic development issues the EDAB should address." Correction: I believe I stated that as the only committee working on Economic Development and Business issues, it might be useful to get feedback from this group on city activities, and that hearing back from the group or the members might be a way to increase communication without interfering with other work. PP6: "Councilor Bull suggested that it might be helpful for the EDAB to receive a report regarding how the City was progressing toward the Council goal of housing development." Correction: I believe I mentioned the housing study as an example of something that EDAB or it's members could provide feedback on as I know affordable housing is typically a concern when we talk abou economic development issues.

Thanks, Barbara