June 24, 2009

OPINIONS

CURRY COUNTY REPORTER

EXHIBIT: 13 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 7-30-09
PAGES: 4
SUBMITTED BY: Brookings Resident

Planning Department has full plate

BY DAVID PRATT

No one wants a pig farm in the middle of a residential neighborhood or a disconnected street network that's next to impossible to navigate. It's the job of the Curry County Planning Division to address these and other issues.

County planners are responsible for updating, implementing, and enforcing the Curry County Comprehensive Plan, which sets the county's long range land-use policies; and the Curry County Zoning Ordinance (CCZO) the Flood Damage Prevention Ordinance and the Regulations for Division of Lands in Curry County, which provide the legal methods for implementing the plan's policies.

The Planning Division also administers ordinances relating to rural address and road naming system management. In addition, all development permit applications are reviewed by the Planning Division and coordinated with other regulating agencies to insure compliance with other land-use regulatory ordinances.

County planners handle land use applications, such as changes to the zone designation of certain properties; variances to development standards; conditional use permits to regulate activities such as home occupations or gravel extraction from Curry County rivers; and the review of subdivisions and partitions that implement the Comprehensive Plan.

There are also a number of special projects Planning Division has undertaken, including creating a comprehensive development plan for the Harbor Area; updating the 1992 Curry County Flood Damage Prevention Ordinance; working with the Rogue Valley Council of Governments to develop a water quality implementation plan for the Rogue River; updating the Curry County Comprehensive Plan; updating and consolidating the Curry County Zoning Ordinance, the Curry County Flood Damage Prevention Ordinance, and the land division regulations into a single document to form a land development code; and drafting an ordinance for the development of destination resorts and creating a map of eligible areas.

Harbor Hills Master Plan

Under the terms of the 2001 Joint Management Agreement between the City of Brookings and Curry County, no development at urban levels can be approved in any area designated for master planning until a master plan has been adopted by both the City and the County. The Harbor Hill Master Plan Area, which includes the Harbor Hills Special Plan Area of environmental concern, consists of approximately 1,200 acres. A more comprehensive planning effort is required to insure that there is minimal impact to the environment and that adequate facilities such as streets, water, sewer, and storm drainage are of sufficient size to service, not just for the Master Plan Areas, but the entire 3,600-acre Harbor Area.

A major element of the Harbor Hill Master Plan is the development of a street network to ensure connectivity throughout the Harbor Area and standards for hillside roads. This task is being completed as part of the Harbor Area Transportation System Refinement Plan, which is funded with a grant from the Oregon Department of Transportation and Department of Land Conservation and Development. Another component is the review and adoption of the Comprehensive Storm and Surface Water Management Plan for the Harbor Hill Special Plan Area by both the City of Brookings and Curry County. Water and sanitary sewer systems have yet to be addressed.

Mixed Used Master Plan

Another part of this planning effort is the development of a Mixed Use Master Plan (MUMP) zone that would affect not only the Brookings Urban Growth Area, but would be an option for development in the Urban Growth Areas of Gold Beach and Port Orford. This proposed zoning ordinance defines the process for the development of a master plan and is designed to encourage green, sustainable, and low impact development in order to preserve the natural environment and retain as much of the existing trees, vegetation, and topography as possible.

Under the proposed MUMP zoning ordinance, approximately 50 percent of the area within a master planning area would have to be retained as open space while allowing property within the urban growth boundaries but outside of the city limits of Brookings, Gold Beach, and Port Orford to develop at urban densities. To reduce the reliance on the automobile, limited commercial retail and office businesses such as a small bank, grocery store, book store, coffee shop, or offices for medical or other professional services would be allowed in "commercial nodes" to serve the immediate neighborhood. Under an approved mixed use master plan, "commercial nodes" would be allowed to develop on lots or parcels no larger than five acres that are located adjacent to intersections where collector streets or a collector and residential street intersect. Such nodes cannot be located any closer than one half a mile from another commercial retail or office node.

Other County projects include Federal and State mandated projects that require revisions to the Curry County Flood Damage Prevention Ordinance in order to continue participation in the Federal Flood Insurance Program; and complete the Rogue River Water Quality Management Plan for compliance with the Federal Clean Water Act. Over the next fiscal year (FY 2009-2010), the County will also be updating the Curry County Comprehensive Plan; making revisions to the Curry County Zoning Ordinance for compliance with changes in the State Statues; mapping areas in Curry County that may be eligible for destination resort development; participating and making presentations in wildfire risk reduction training programs; and engaging in community involvement by developing a Public Services web page and Land Use Case Data Base for public access; and printing Public Services information brochures on the land use planning process in Curry County.

The Public Services web page is currently under development. However, much of the information that is contained in this article may be found at www.co.curry.or.us/publicservices/publicservices.htm or you may call the Planning Division at (541) 247-3304 if you have any questions or are having difficulties in accessing the information on the County's web page.

CURRY COSTAL PILOT

7/8/09

Pratt's new Book of Genesis

Editor:

It looks like David Pratt has rewritten the Book of Genesis for Curry County – complete with the Tower of Babel.

If you can understand one paragraph of his public forum (*Pilot* July 4) then you deserve an honorary doctorate.

There is one thing our dear director did not mention: The people of our fair county will not get the opportunity to vote on any of this in the form of a public referendum.

You may not get a pig farm in your neighborhood, but think what might happen if pigs learn to fly.

Joe Willett
Harbor

7/8/09

LETTERS TO THE EDITOR

Wolf in sheep's clothing

MUMP (Mixed Use Master Plan) is an audacious attempt to trigger massive development in Curry County.

It has many flaws, foremost being that it restricts Curry residents from playing a critical role as to whether they wish to participate in this questionable undertaking or reject it.

The actual impact of this venture will be concentrated in the UGB (Urban Growth Boundaries) of the tri-cities, which will feature new zoning guidelines similar to those used in the annexation procedures.

This concept of expansion is being proposed by David Pratt and associates, designed to be enforced by the bureaucracy, allowing them complete discretion toward implementing UGB land development, disregarding the residents that will be impacted.

Would a court of law approve this unilateral breach of public trust? In a manner of speaking, it is comparable to eminent domain, although it does not confiscate property but rather infringes on the communities' lifestyle, causing drastic changes in their cost of living via the necessity of new roads, retrofitting their septic and wells to coincide with city regulations and new taxes.

In effect, each city's UGB will be supervised and regulated by the county which, under the MUMP guidelines, will be converted into a facsimile these cities are bound by.

Mayor Jim Auborn, Port Orford, has repeatedly insisted that he is totally opposed to MUMP for various reasons, one being a lack of water.

If that be the case, why is Director David Pratt prancing merrily along without acknowledging that Port Orford rejects MUMP and perhaps the same holds true for Gold Beach?

In these troubled times, any disruption that makes life more difficult for people should be shunned. Folks living in the county's UGB fortunately have their own wells and septic tanks, which in the cities are costly items since residents pay water and sewer fees.

The county is way out of sync in jamming this proposal down the throats of Curry residents. The gravity of this landmark proposal, at the very least, should call for a referendum of Curry County residents and a special vote of UGB residents.

The sporadic public meetings held by Pratt, with virtually no public attendance, is no indicator of public perception of the importance of this land proposal, not only for current UGB homeowners, but the cities' infrastructure insofar as new competitive businesses will evolve, causing considerable distress to those in the city proper.

The entire idea needs to be sacked until a more propitious time in our economy and under a different format.

The crux of this project is motivated by land developers who are turning our coastal towns into garish strip malls.

It's time they were restrained so that people's rights took preference over rampant growth.

Louis Mincer
Port Orford

Great Lakes Bulletin ISSUE 12, AUGUST 2000

Click for larger image and photo identities

Cover Report

WE THE PEOPLE

Broken: The Public Trust

"Compliance Assistance": Rhetoric vs. Reality
• Bulldozing Residents

How the Big Boys Get Away With It
• Don't Dump on Us

Needed: True Leadership
• Invaded by Livestock Factories

Shut Up and Take Your Hazardous Waste Well

Electrifying Win in Monroe County's Milan Township

Friends of the Crystal River Persist for 14 Years, and Win

People Power

Finding the Mismatch: Effective Organizing in Your Community

Planning and Zoning Basics

Guard Your Master Plans

Resources

Projects

TRANSPORTATION

New Direction Curbs Road-Building Binge

Dead End Road? State Stalling on Transportation Reform

LAND STEWARDSHIP

"Farmland Preservation" Proposal a Sprawl Subterfuge

Lansing Transfers Public Assets to Private Interests

GREAT LAKES SHORELINE

Legal Sandstorm

Good Laws Undermined

Departments

FROM THE FIELD

We The People

Guard Your Master Plans

All over Michigan, people who have worked hard to enact sound master plans and zoning ordinances — the essential guidelines for deciding what gets built and where — are watching local officials violate these legally enforceable planning rules on a regular basis. The result is more sprawl, more congestion, less open space, and growing civic disputes in dozens of townships and counties.

Fast-growing Meridian Township, east of Lansing, is typical of the clash between existing residents and new developments. Former Meridian Planning Commission chair Joan Guy recently analyzed how the township responds to developers' requests to rezone land from residential to commercial uses. Between January 1997 and May 2000, the Meridian Township Board violated the township's master plan in 61% of the rezoning requests it approved.

When local governments ignore the public's will, they threaten the entire basis for local land-use decision making. Early in the 20th century, Michigan enacted planning and zoning laws to provide citizens and local governments with the authority to guide development in the best interest of the overall community. Master plans set out principles for improving quality of life and ensuring orderly growth. Zoning ordinances establish regulations that put the master plan into effect.

In recent years countless Michigan communities have updated both documents to protect neighborhoods, reduce congestion, and conserve natural green spaces. Development interests have attacked many of the new conservation-based land use plans, however, as regulations that threaten their bottom lines.

Giving in to this growth-at-any-cost strategy establishes precedents that undermine the validity of local land use laws. In a 1997 case involving Troy, for example, city officials refused to rezone a large parcel for a new mall because it violated the master plan. Oakland County Circuit Judge Denise Langford Morris, however, ruled in favor of the developer because the city had previously approved so many similar rezoning requests.

Citizen involvement is the last defense of local land use planning. Residents now must be more mindful than ever to hold officials accountable for making decisions that are consistent with the community's values and development goals.

—K.S. and P.C.

Resources >>

EXHIBIT: 10 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 7-30-09
PAGES: 1
SUBMITTED BY: Lisa Bucko

Thank you for listening to my comment.

I was told you might not be the persons to whom to address my issue. However, I offer my comment and ask only that you bear in mind what I say to you today and scrutinize closely any future plans for the development of the areas surrounding us here before giving your approval for any development going forward.

I live on Napa Lane in what is known as the 2nd addition to the Pelican Bay Heights subdivision. I have a water pressure problem and a significant residential fire safety issue to report and that needs to be rectified.

I have this problem because the developer did not complete the work as specified in the development plans over 19 years ago. I have this problem because those agencies who are commissioned to protect the public from unsafe or unethical proceedings did not act with due diligence to ensure that the appropriate and safe completion of those plans actually occurred. Not the Rural Water District, not the Curry County Planning Commission, not the Oregon Department of Health Services Drinking Water Program.

The packet of information submitted to you gives some of the details of my current problem. The water system where I live does not have adequate water to supply the domestic flow water pressure needs and it does not supply <u>any</u> fire-flow water to the fire hydrants in the subdivision. If the fire hydrants are opened, not only is the water flow inadequate to use in the event of a fire; it literally sucks the water back from all of the homes in the subdivision leaving those homes dry and without any water. This is because the water reservoir to supply these water flow issues was never completed and installed as was proposed in the original submitted plans. Somehow, after 19 years this was allowed to slip by unchecked and unmonitored.

I rely on those commissioned to protect me, the public, from false pretense (like fire hydrants that do not function as such), misleading information (like property titles and real estate brokers that state there are homeowners associations in place and functioning to maintain the roadways and properties in the developments into which I buy) and to assist me when I identify a problem that has been allowed to go unfixed for too long (such as is my current water issue).

I will rely on you to be extremely vigilant when you review any and all proposed future developments in this area.

Thank you so much for your time.

EXHIBIT: 12 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 7-30-09
PAGES: 15
SUBMITTED BY: Tom Huxley

July 30, 2009: Public Testimony

Land Conservation and Development Commission (LCDC)

Tour of Brookings Area: 9:00 A.M. July 29, 2009.

Re: Misrepresentation of topography slope percents (%).

Map "Figure 5-1 Harbor Area Environmental Constraints" was, I understand provided to commission members and citizens attending the approximate 3-hour tour.

The subject map **DOES NOT** accurately show the actual topography percent slope of the area. Curry County officials are well aware of this fact.

1) Public testimony **(A)** provided June 24, 2009: Harbor Area Transportation System Refinement Plan. Copy of testimony attached.

2) Item 3 of testimony shown below; Neither officials from Curry County Public Services Department or Parametrix (sub contractor) responded to concerns and questions with respect to the map.

*"**3.** Memo 2 Figures Fig5.1.jpg "Figure 5-1 Harbor Area Environmental Constraints." This image was provided for download on the Curry County website. Like most similar maps provided for the Harbor Area Transportation System Refinement Plan, it does not identify/credit the document source. Furthermore, the Slope % Legend does not remotely correspond with other recognized documents from the State of Oregon Department of Geologic and Mineral Industries (DOGAMI) nor recent (2007) LIDAR imagery provided by Harbor Construction, Inc. showing topography by slope class.*

***Question:** Parametrix representative Jason Franklin. What is the source(s) for the map image documents provided in this Harbor Area Transportation System Refinement Plan and what steps have been taken to verify the general accuracy of the each document prior to publication with respect to slopes for example?"*

3) Map **(B)** "Figure 5-1 Harbor Area Environmental Constraints" shows minor traces of topography exceeding 51% slope. No source is referenced.

4) Map **(C)** APPENDIX A. (Curry County Website Download) from Harbor Area Transportation Plan Meeting May 6, 2009; page 35; Source; Harbor Construction - January 9, 2007. Slope Class Derived from LiDAR. Map is illegible as provided online.

5) Map **(D)**, same as **(C)** above but in color. Approximately 1,000 acres are shown on map. Notation was made on the map after receipt from and communication with Harbor Construction owner that the legend (<) less than 70% should be (>) greater than 70% slope.

6) Geologic Hazard Map **(E)** (w/legend) of Cape Ferrelo & Mt. Emily Quadrangle (in part). Bulletin 90 Land-Use Geology of Western Curry County. 1976; State of Oregon: Dept. of Geology and Mineral Industries (DOGAMI).

7) Map section **(F)** (Buchanan Parcel Slope Comparison June 2009) of Geologic Hazard Map **(E)** above comparing LiDAR imagery shown on map **(D)**.

8) Mt. Emily & Cape Ferrelo Geo Hazard Legend Combined: July 2009 **(G)**. This is the same legend as shown on Geologic Hazard Map **(E).**

Conclusion: The general topography shown on map **(D)**, **(E)** & **(F)** are quite similar in the slope classes indicated. The slope class percents differ. If you group the two slope classes exceeding 50% on the LiDAR imagery map **(D)** with the average regional slope > 50% on the DOGAMI maps **(E)** & **(F)**, the similarities are extremely close considering the DOGAMI map preceded the LiDAR map by thirty plus years.

Map **(B)** "Figure 5-1 Harbor Area Environmental Constraints" provided by officials from the Curry County Public Services Department appears to be an intentional misrepresentation the facts.

Respectfully submitted.

Thomas Huxley
Brookings/Harbor

t&k

From: "t&k" <runawayfreighttrain@verizon.net>
To: "Rhodes, George" <rhodesg@co.curry.or.us>; "Waddle, Bill" <Waddleb@co.curry.or.us>
Sent: Tuesday, July 28, 2009 7:11 PM
Attach: Correction to 6-24-2009 Meeting Minutes 7-28-2009.pdf
Subject: Corrections & Omissions: Minutes; Harbor Area Transportation System Refinement Plan Meeting June 24, 2009

Curry County Commissioners

George Rhodes; Bill Waddle,

The attached document regarding the above subject is self explanatory.

Thank you in advance for taking to time to review and correct the issues addressed.

Tom Huxley

July 28, 2009

Thomas C. Huxley
15877 Pelican Bay Drive
Brookings, OR 97415

Curry County Commissioners
Bill Waddle & George Rhodes
P.O. Box 746
Gold Beach, OR 97444

Corrections & Omissions:

Minutes; Harbor Area Transportation System Refinement Plan Meeting June 24, 2009

Commissioners,

Officials of the county Public Services Department do not appear to be of the opinion Oregon Statutes apply to them. Therefore, this letter is being forward to you for your action. Please include this document into the public record of the above subject Plan provide a copy to members of the Citizen Advisory Committee and when appropriate, members of the respective city and County Planning Commissions. To my knowledge, no minutes of the June 24, 2009 Citizen Advisory Committee meeting have been approved during a public meeting.

Public meeting written minutes need not be a verbatim transcript but must give *"a true reflection of the matters discussed at the meeting and the views of the participants."* ORS 192.650(1).

"You should work directly with the public body to correct discrepancies that you believe exist in the minutes." State of Oregon Department of Justice Attorney General's Public Records and Meetings Manual January 2008.

Page 1. Call to Order: The committee chair, after finally confirming there was not a quorum (non committee member was first counted) present is referred to stating the committee would strive for consensus via-e-mail. Review of the audio of the meeting shows the chair stating *"We can go ahead and vote on the issues and then we will get the other votes by e-mail from the people who aren't here."*

Shortly thereafter a citizen intervenes with *"May I ask a question? This is a public meeting?"*

Curry County Planning Director Pratt: *"Oh yes."*

Committee Chair McMahan: *"This is a public meeting."*

The citizen goes on to give them a hint that they can't do what they say they are going to do.

Committee Chair McMahan: "But we're gonna vote, we can vote by e-mail"

Curry County Planning Director Pratt: *"Yeah."*

Citizen: *"Hah?"*

This is contrary to Oregon State Law and NOT legal.

Two of the four Citizen Advisory Committee members present who remained silent throughout this dialog are the respective city and county Planning Commission Chairs.

When the Citizen Advisory Committee members were asked if anyone had any comments or questions on the May 6, 2009 meeting minutes, committee member Markham stated *"I didn't get a copy of the minutes."*

Page 4. Audience Comment *"partially in audible."* If county officials would provide the proper environment where the public could hear what county officials were saying and officials could hear what the public was saying during public meetings, this would not occur. The outrageously overpriced ($25) audio of the meeting was purchased and weeks later finally provided by county staff. Rather than the vague generalities referred to in the minutes, below are the statements verbatim from the audio, which was "mainly audible" if you cranked the volume way up and listened intently.

Huxley: Referring to earlier discussions (Larry Aslinger) about recent landslides and proposed code changes (Franklin) to require geo-technical reports for any hillside development. *"Go back to Larry's question and his mention of the landslide. Dave* (Curry County Planning Director) *knows what landslide he's talking about. Dan* (Curry County Road Master) *knows what landslide he's talking about. I've been talking with Bill Buchanan* (Citizen Advisory Committee member) *several times over the last three months about a checklist because what happened on that particular property on that slide shows that what system is in place does not work. It's broken. There were checks and balances. There was a geologist. There were required and several* (items) *mandated in writing to be done prior to the issuance of a building permit. Everything fell through there. It didn't happen. It just didn't happen. So you can say you've got all these things in place. They didn't work. On one parcel they didn't work. And there's nothing that would lead me or anyone to believe they would work if you doubled the number of parcels or multiplied it by 100. It did not work."*

"There needs to be a checklist. A basic checklist to put some peoples butts on the line. So that if they come up with these 'you're supposed to do this' and it's not done, there are consequences for not doing it. There is not at this point accountability. I would like to propose to include that (checklist). *I'm sorry he's* (Buchanan) *not here. We hadn't finished it. To include a checklist in this whole thing. To hold people accountable. There is no accountability. Period."*

Page 6. Both "audience comments" were made by Jan Sirchuck of HW3 who opened with *"I have a comment on exactly what Tom was saying."*

Respectfully submitted.

Tom Huxley

(A)

June 24, 2009

To: Curry County Planning Director Dave Pratt
Parametrix Representative Jason Franklin
Citizen Advisory Committee

Re: Questions; - Harbor Area Transportation System Refinement Plan

Dave,

Please include this document into the public record. Following are questions regarding the Harbor Area Transportation System Refinement Plan.

1. I understood Advisory Committee member Markham made reference to Brookings population figures during the April 1, 2009 committee meeting. I was unable to hear much of the discussion and addressed this and other questions in written testimony April 3, 2009. These and other questions were apparently deemed **NOT RELEVANT** to the study and excluded from public comments published with information on the May 6, 2009 committee meeting.

Question: Committee member Markham: What were the population figures you mentioned? Please elaborate.

2. Illegible documents; Harbor Area Transportation System Refine Plan 196 Page Draft. Pages 69 & 70 of 196 were noted as example in written testimony April 1, 2009. This testimony was apparently also deemed **NOT RELEVANT** to the study. An additional example would be the map on page 39 of 64 in the package provided committee members and limited citizens during the May 6, 2009 committee meeting.

Question: Parametrix representative Jason Franklin. Can you read and interpret these illegible documents?

3. Memo 2 Figures Fig5.1.jpg "Figure 5-1 Harbor Area Environmental Constraints." This image was provided for download on the Curry County website. Like most similar maps provided for the Harbor Area Transportation System Refinement Plan, it does not identify/credit the document source. Furthermore, the Slope % Legend does not remotely correspond with other recognized documents from the State of Oregon Department of Geologic and Mineral Industries (DOGAMI) nor recent (2007) LIDAR imagery provided by Harbor Construction, Inc. showing topography by slope class.

Question: Parametrix representative Jason Franklin. What is the source(s) for the map image documents provided in this Harbor Area Transportation System Refinement Plan and what steps have been taken to verify the general accuracy of the each document prior to publication with respect to slopes for example?

4. Memo 4 Figures Memo4.jpg "Proposed Roadway Network." This map image was discussed during the April 1, 2009 Advisory Committee meeting. June 1, 2009 a new map was unveiled titled "Draft Road Network; Proposed Roadway Network Lidar Base" dated May7 29, 2009.

Question: Parametrix representative Jason Franklin. What is the basis and logic for the major change and addition of a new "Proposed Collector" shown just south of Harbor Hills Heights Road?

Question: Parametrix representative Jason Franklin. What is the road standard for the newly titled road classification "Proposed Secondary Access?"

5. Infrastructure costs in addition to proposed roads include storm water, sewer, water, power and their associated maintenance. All these infrastructure components need to be looked at as a whole and not randomly piecemealed. The combined total infrastructure costs will be in the tens of millions of dollars.

Question: Parametrix representative Jason Franklin and Curry County Planning Director Dave Pratt. When do you expect this draft road network to become a reality?

Question: Parametrix representative Jason Franklin and Curry County Planning Director Dave Pratt. Who will be accountable and responsible for these huge infrastructure costs including future maintenance?

6. Harbor Area Transportation System Refinement Plan Citizen Advisory Committee Meeting Minutes Summary May 6, 2009. Advisory Committee member Markham is referred to on page 3 of 7 commenting **"that there isn't a lot of reality to what they are doing."** No (S***).

Question: Committee member Markham: What do you specifically mean by this comment? Please explain in detail.

7. June 18, 2009 Curry County Planning Directory Dave Pratt responded to correspondence given him at the close of the June 1, 2009 Open House "Re: Comments; Suggestions; Requests; Questions; - Harbor Area Transportation System Refinement Plan" and the exit questionnaire that I returned June 2, 2009. Dave responded with "...a response will be forthcoming as time allows."

Question: Curry County Planning Director Pratt: What exactly does "as time allows" mean?

8. Oregon Public Meetings and Records law. The Public Meetings Law applies to meetings of the "governing body of a public body." ORS 192.630(1). A "public body" is the state, any regional council, county, city or district, or any municipal or public corporation. A "public body" is also a board, department, commission, council, bureau, committee, subcommittee or advisory group of any of the entities in the previous sentence. ORS 192.610(4)

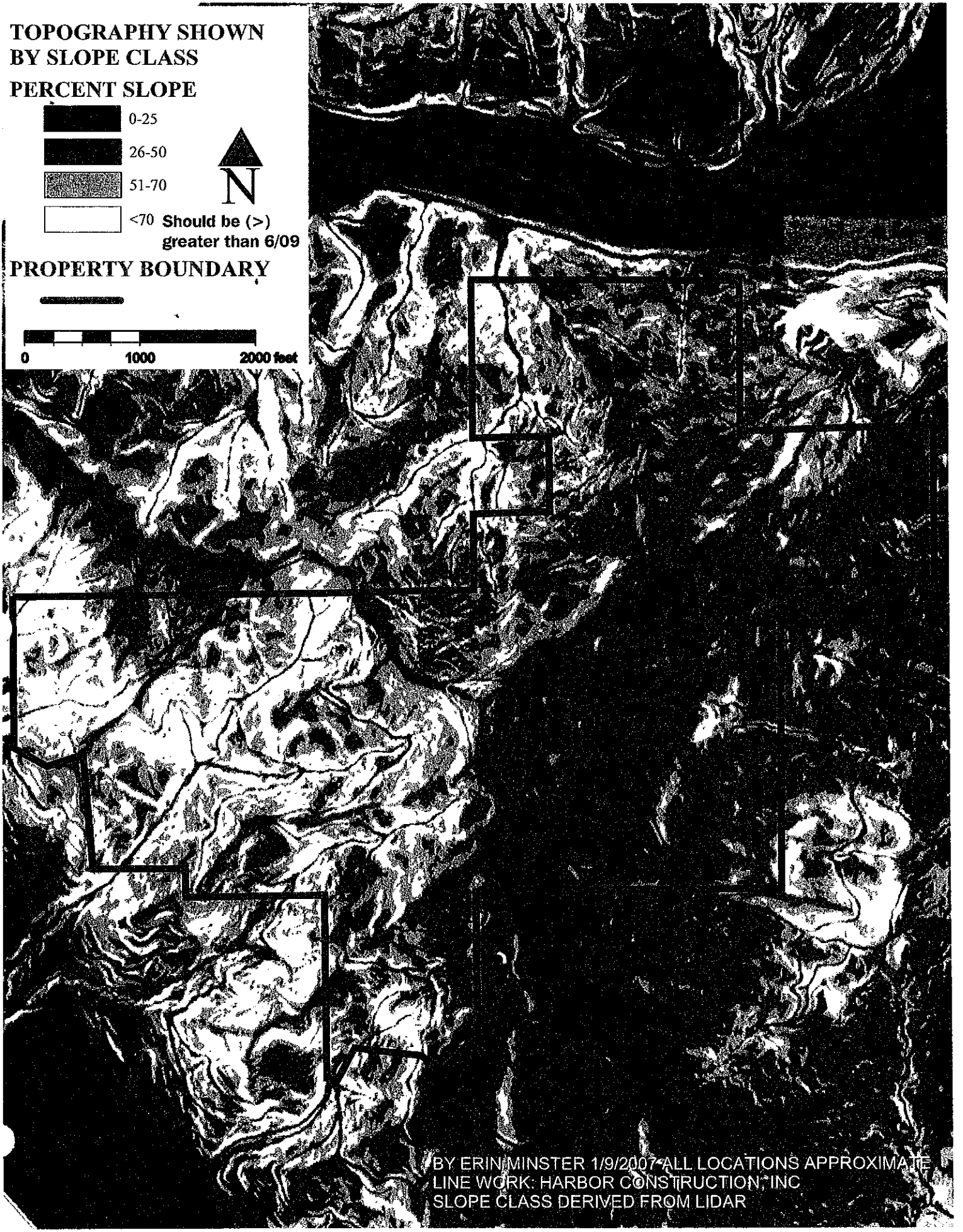
Question: County Planning Director Pratt: Is this advisory committee a public body and therefore governed by the minutes and record keeping rules with respect to for example, the timely distribution of advisory committee meeting minutes to committee members and citizens if so requested?

(B)

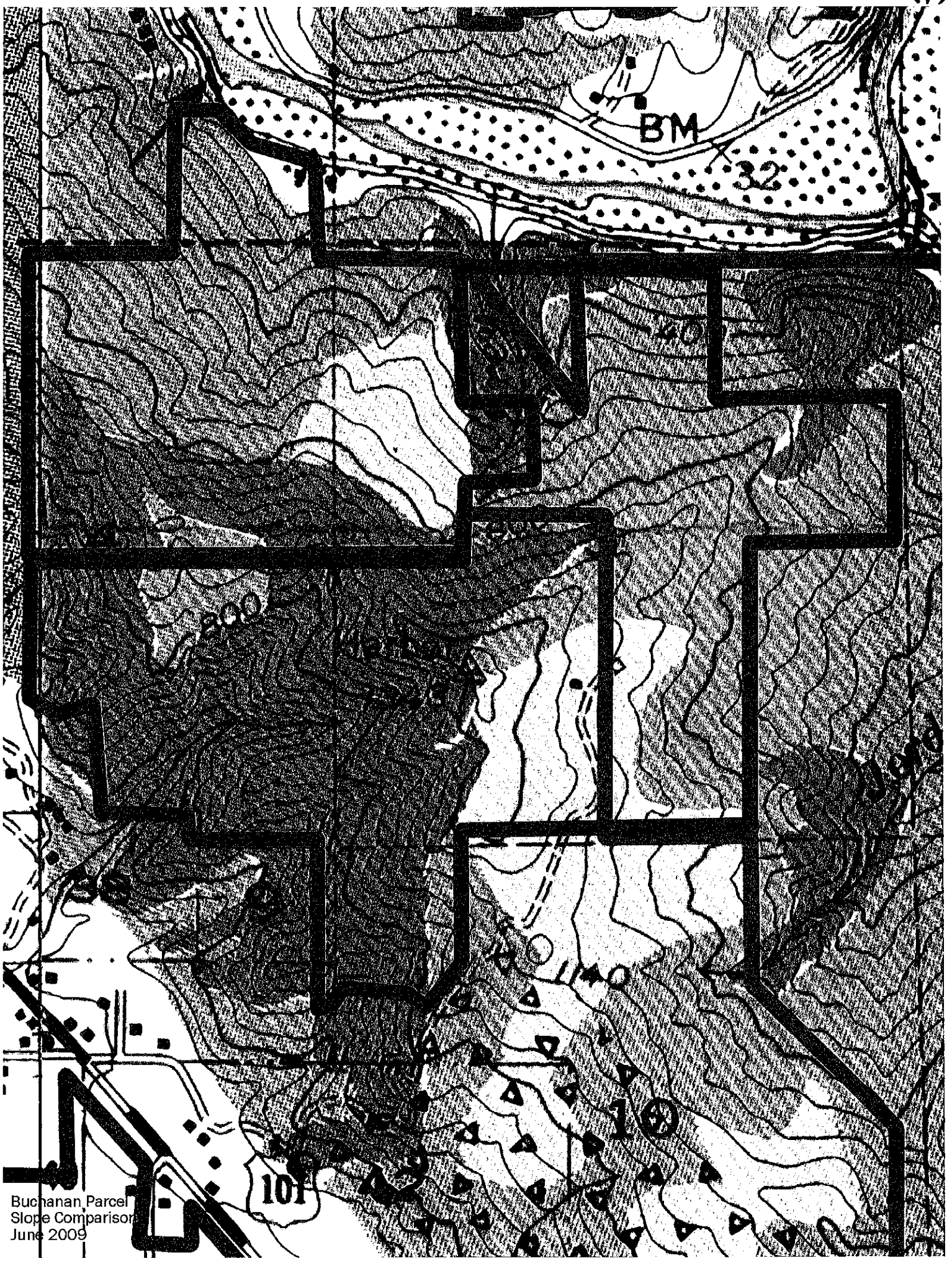
Figure 5-1
Harbor Area
Environmental Constraints
Curry County, Oregon

TOPOGRAPHY SHOWN
BY SLOPE CLASS
PERCENT SLOPE
0-25
26-50
51-70
<70
N
PROPERTY BOUNDARY
0
1000
2000 feet
APPENDIX A
BY ERIN MINSTER 1/9/2007-ALL LOCATIONS APPROXIMATE
LINE WORK: HARBOR CONSTRUCTION, INC
SLOPE CLASS DERIVED FROM LIDAR

(D)


TOPOGRAPHY SHOWN
BY SLOPE CLASS
PERCENT SLOPE
0-25
26-50
51-70
<70 Should be (>)
greater than 6/09
N
PROPERTY BOUNDARY
0
1000
2000 feet
BY ERIN MINSTER 1/9/2007 ALL LOCATIONS APPROXIMATE
LINE WORK: HARBOR CONSTRUCTION, INC
SLOPE CLASS DERIVED FROM LIDAR

(F)



Buchanan Parcel
Slope Comparison
June 2009

EXPLANATION

(Boundaries are approximate; statements are general; site evaluations require on-site examination)

Average (Regional) Slope
Interpreted from maps with scale 1:62,500

0-5% — *0-15% slopes locally; landforms include beaches, flood plains, fluvial and marine terraces; surficial geologic units; hazards include flooding, ponding, high ground water, poor drainage, and compressible soils; land-use potential excellent in areas of minimal hazard.*

5-15% — *0-50% slopes locally; landforms include dunes, dissected marine terraces, and gentle uplands, especially ridge crests; hazards include negligible to moderate erosion and deposition by stream, wind, or wave; land-use potential good in regions of minimal or controllable hazards.*

15-30% — *0-50% slopes locally; landforms include dissected parts of older marine terraces and moderately sloping uplands, especially sheared areas undergoing mass movement; other hazards include moderate to rapid erosion and deposition; land-use potential variable and generally restricted to low density residential use, forestry, and open space.*

30-50% — *Greater than 50% slopes locally; landforms include uplands of relatively hard and unsheared bedrock; hazards include moderate to rapid erosion, local earthflow, slump, debris slide, and debris flow; land use potential generally limited to very sparse development and well-managed forestry.*

>50% — *50% to vertical locally; landforms include interior uplands of unsheared very hard bedrock and sea cliffs; hazards include extreme erosion, rapid earthflow, debris slide, debris flow, and rockfall; land use restricted to very well-managed forestry and open space.*

Flooding

Intermediate Regional (100-year) Flood: Extent of flood (determined by the U. S. Soil Conservation Service) having a 1% probability of occurrence in any given year.

Flood-prone Areas: Areas that are known to have experienced flooding on the basis of field observations and interviews (composite maximum historical flood) and areas of inferred flood potential based on landform, vegetation, and soils (without benefit of direct flooding observations); approximately equivalent to the Intermediate Regional Flood.

Potential Ocean Flooding: (no symbol on maps owing to limitations of scale) Beaches, marshes, interdunes, and other low-lying coastal areas are subject to tidal flooding, storm surge, and tsunami inundation; highest possible tides are about 6 feet above mean sea level; storm surges may add 4 feet to this, exclusive of wave action; tsunamis with heights of 15 feet and runups of 20 to 25 feet are possible; major impacts on open coast.

Erosion and Deposition

Headland and Sea Cliff Erosion: Removal of headlands and sea cliffs by waves; generally slow in hard bedrock, but may approach a few inches annually in softer bedrock near Cape Blanco and on exposed marine terrace deposits; associated mass movement effects large areas; slides may produce large, sporadic coastal retreat locally; generally no viable means of protection; impact minimized by adequate setback and proper design.

Potential Beach Erosion and Deposition: Areas in which jetty construction or modification, beach excavations, channel dredging, spoil disposal, and other artificial changes may initiate beach erosion or deposition; extent of impact varies with size of project; beach areas generally in equilibrium with headlands except for seasonal and longer term cyclic fluctuations.

Critical Stream-bank Erosion: Undercutting and caving of river and stream-bank material by stream action; restricted primarily to flood plains and terraces; characterized by location on outer river bends, bar growth on inner bank, and relatively deep water nearshore; passes upstream into actively eroding stream channels; treatment may include riprap, channel modification, and land-use restrictions, depending upon local hydraulics, desired land use, and erosion rates.

Erosion and Deposition

Regional Wind Erosion: Windward sides of unvegetated dune complexes, foredunes and beaches; promoted by overgrazing, fire, and artificial devegetation; hazard minimized by proper conservation practices.

Wind Deposition: Sand deposition by wind on the leeward side of active dunes and around artificial structures in active wind erosion areas; prevented by stabilizing source area, proper location of structures, and proper planning.

Slope Erosion: Loss of soil material by moving water on slopes; favored by removal of vegetation, ground disturbance, sandy soil textures, lack of consolidation, slope gradient (see above), and slope length; removes valuable top soil and causes deposition downslope; may silt streams or adversely impact developments; wide variety of engineering and land-management techniques for control.

Mass Movement

Earthflow and Slump Topography: (areas less than 20 acres not shown) Moderately sloping terrain with irregularities of slope, drainage, or soil distribution; recent movement shown by tension cracks, bowed trees and others; most extensive in sheared bedrock areas; greatest activity where coastal retreat, stream-bank erosion, or steep-gradient streams remove material from the toe; hazards associated with inactive areas include variable foundation strength, caving in excavations, poor drainage, and others; development possible locally, but generally may reactivate or accelerate sliding; may also initiate sliding in previously stable areas.

Steep Slope Mass Movement: Areas subject to localized debris slide, debris flow, rockfall, or rock slide; specific locations a function of rock type and structure, soil properties and thickness, cover, root support, and others; common on steeply sloping very hard bedrock; mitigation may include structural solutions, drainage control, and appropriate land use and forest-management practices.

Mt. Emily & Cape Ferrelo Geo Hazard
Legend Combined: July 2009
Bulletin 90 Land-Use Geology of
Western Curry County, Oregon

Oregon's LCDC will meet in Brookings next week

The Land Conservation and Development Commission (LCDC), a seven-member governor-appointed commission that oversees the State Land Use Program, will be in Brookings Wednesday through Friday.

Curry County officials, along with their counterparts from local cities and ports, will meet with the commission on Wednesday for a roundtable discussion on local issues. The roundtable is scheduled for 3 p.m. at the Best Western Beachfront Inn at the Port of Brookings Harbor.

The commission, assisted by the Department of Land Conservation and Development (DLCD) staff, adopts statewide goals and rules, assures local plan compliance with the goals, and manages the coastal zone program. It meets approximately every six weeks to direct the work of DLCD. The commission has never come to the Brookings area to conduct its regular meeting. During its visit the members will tour the area, and conduct their regular meeting.

From 6 to 8 p.m., Thursday, July 30, the city of Brookings is hosting a reception for the Commission at the Crissey Field State Park Visitor Center.

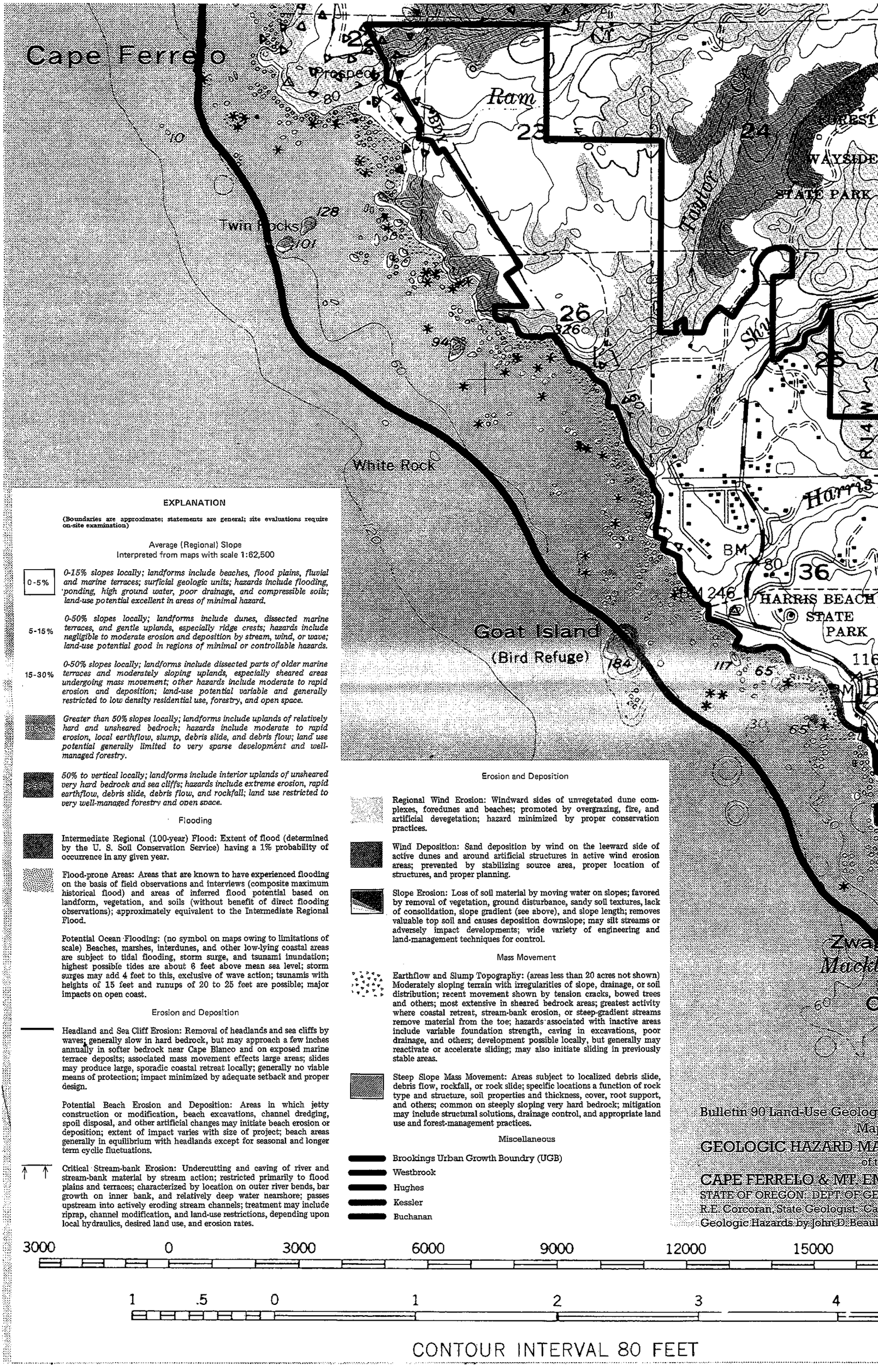
The city invites the public to the reception to meet the members of the commission and to see displays of community projects that are underway.

Oregon Parks and Recreation Department staff will also give a presentation on the "green" building techniques incorporated in the Crissey Field Visitor Center. Refreshments will be served.

NO Agenda or reference to where an agenda may be found.

Had Curry County officials wanted the public to be aware of this info, front page newspaper coverage would have preceded the LCDC meeting weeks in advance.

Tom Huxley 7/30/2009



EXPLANATION

(Boundaries are approximate; statements are general; site evaluations require on-site examination)

Average (Regional) Slope

Interpreted from maps with scale 1:62,500

0-5% — *0-15% slopes locally; landforms include beaches, flood plains, fluvial and marine terraces; surficial geologic units; hazards include flooding, ponding, high ground water, poor drainage, and compressible soils; land-use potential excellent in areas of minimal hazard.*

5-15% — *0-50% slopes locally; landforms include dunes, dissected marine terraces, and gentle uplands, especially ridge crests; hazards include negligible to moderate erosion and deposition by stream, wind, or wave; land-use potential good in regions of minimal or controllable hazards.*

15-30% — *0-50% slopes locally; landforms include dissected parts of older marine terraces and moderately sloping uplands, especially sheared areas undergoing mass movement; other hazards include moderate to rapid erosion and deposition; land-use potential variable and generally restricted to low density residential use, forestry, and open space.*

30-50% — *Greater than 50% slopes locally; landforms include uplands of relatively hard and unsheared bedrock; hazards include moderate to rapid erosion, local earthflow, slump, debris slide, and debris flow; land use potential generally limited to very sparse development and well-managed forestry.*

50+% — *50% to vertical locally; landforms include interior uplands of unsheared very hard bedrock and sea cliffs; hazards include extreme erosion, rapid earthflow, debris slide, debris flow, and rockfall; land use restricted to very well-managed forestry and open space.*

Flooding

Intermediate Regional (100-year) Flood: Extent of flood (determined by the U. S. Soil Conservation Service) having a 1% probability of occurrence in any given year.

Flood-prone Areas: Areas that are known to have experienced flooding on the basis of field observations and interviews (composite maximum historical flood) and areas of inferred flood potential based on landform, vegetation, and soils (without benefit of direct flooding observations); approximately equivalent to the Intermediate Regional Flood.

Potential Ocean Flooding: (no symbol on maps owing to limitations of scale) Beaches, marshes, interdunes, and other low-lying coastal areas are subject to tidal flooding, storm surge, and tsunami inundation; highest possible tides are about 6 feet above mean sea level; storm surges may add 4 feet to this, exclusive of wave action; tsunamis with heights of 15 feet and runups of 20 to 25 feet are possible; major impacts on open coast.

Erosion and Deposition

Headland and Sea Cliff Erosion: Removal of headlands and sea cliffs by waves; generally slow in hard bedrock, but may approach a few inches annually in softer bedrock near Cape Blanco and on exposed marine terrace deposits; associated mass movement effects large areas; slides may produce large, sporadic coastal retreat locally; generally no viable means of protection; impact minimized by adequate setback and proper design.

Potential Beach Erosion and Deposition: Areas in which jetty construction or modification, beach excavations, channel dredging, spoil disposal, and other artificial changes may initiate beach erosion or deposition; extent of impact varies with size of project; beach areas generally in equilibrium with headlands except for seasonal and longer term cyclic fluctuations.

Critical Stream-bank Erosion: Undercutting and caving of river and stream-bank material by stream action; restricted primarily to flood plains and terraces; characterized by location on outer river bends, bar growth on inner bank, and relatively deep water nearshore; passes upstream into actively eroding stream channels; treatment may include riprap, channel modification, and land-use restrictions, depending upon local hydraulics, desired land use, and erosion rates.

Erosion and Deposition

Regional Wind Erosion: Windward sides of unvegetated dune complexes, foredunes and beaches; promoted by overgrazing, fire, and artificial devegetation; hazard minimized by proper conservation practices.

Wind Deposition: Sand deposition by wind on the leeward side of active dunes and around artificial structures in active wind erosion areas; prevented by stabilizing source area, proper location of structures, and proper planning.

Slope Erosion: Loss of soil material by moving water on slopes; favored by removal of vegetation, ground disturbance, sandy soil textures, lack of consolidation, slope gradient (see above), and slope length; removes valuable top soil and causes deposition downslope; may silt streams or adversely impact developments; wide variety of engineering and land-management techniques for control.

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Miscellaneous

- Brookings Urban Growth Boundry (UGB)
- Westbrook
- Hughes
- Kessler
- Buchanan

Bulletin 90 Land-Use Geolog
Ma
GEOLOGIC HAZARD MA
off
CAPE FERRELO & MT. EM
STATE OF OREGON: DEPT. OF GE
R.E. Corcoran, State Geologist: Ca
Geologic Hazards by John D. Beaul

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CONTOUR INTERVAL 80 FEET

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STIRES
C. A. Schumacher, 1976.
21000 FEET
METERS

Harbor Community Action Committee HCAC
P.O. Box 7102
Brookings, OR 97415

EXHIBIT: 8 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 7-30-09
PAGES: 3
SUBMITTED BY: Yvonne Maitland

Comments LCDC July 30
Public comment:
Yvonne Maitland

Dear Chair VanLandingham, Commissioners and Director Whitman,

Thank you for giving me the opportunity to speak on behalf of myself and Harbor Community Action Committee.

The Water Element of the Mixed Use Master Plan (MUMP) has not been addressed. Water availability is a critical issue of concern in Curry County and the State of Oregon. Growth, consumption and use of water at buildout conflicts with anadromous fish. The Chetco River SONC Coho are a federally protected species.

Conditions have not changed for the better and are more detrimental to the Chetco River and native fish. The Public Facilities Plan states: "The planned population growth and development within the UGB are uses which conflict with the resource. A future collision between fisheries concerns and Urban Growth."

The fish resource of the Chetco, a Wild and Scenic River is significant and has "the highest priority ranking from the state for stream flow restoration needs in summer and fall months."

Salmon and steelhead form a major part of the Brookings Harbor economy and depend on good river flows. "The flows you see today are about as good as they're going to get." [Ivan Gall – OWRD]

The important question is: Will the projected development in Harbor Hills exceed water capacity? The county has not developed an adequate factual information base, an economic analysis or whether they have any resources to support such growth.

The Draft MUMP is proceeding with a discretionary track provision which HCAC believes will negatively impact the community. The process establishes land use regulations and development standards that differ from regulations in the Curry County Zoning Ordinance. The purpose is to make development easier which will place a burden on the citizens. The discretionary process for development is unpredictable and therefore unfair, unbalanced and a quality of life issue. Property values are preserved through stable zoning and regulation.

The Transportation Element of the Harbor Area Transportation System Refinement Plan, states: "The roads are to be different from existing standards. On some roads, the formality of curbs and gutters does not fit **the character** of the street. Gravel driveways to be paved back 15 feet, adjacent to paths and sidewalks. Utilizing the existing road standards would not be feasible or sensitive to the unique environment and character of the area." In other words, engineering costs of overcoming site-specific problems in Harbor Hills may be prohibitive. The county has already stated it will not accept maintenance of roads.

Curry County Roadmaster has concerns with two roads. (McVay Creek Road and Harbor Hills Heights Roads) He does not feel there is a way to get these roads to current road standards. Harbor Hills Heights Road is a two-way, 12 ft. wide roadway, 17 blind curves and a sheer drop on one side. Public safety concerns clearly take a back seat to what is referred to as Urban Planning in Curry County.

In a letter from the Association of Oregon Counties to LCDC Chair John VanLandingham dated March 24, 2008, "The fundamental element of the Land Use Planning Process is developing coordinated population forecasts and allocation of the forecasts for land use planning purposes." In an e-mail to Parametrix, February 20, 2008 Mr. Perry wrote "That work is acknowledged (referring to the Periodic Review) so it is imperative that the county not deviate from the acknowledged projections, until the comprehensive plan is actually amended to incorporate new projections and allocations." It is time for staff to disclose these population projections and allocation numbers.

The court case is a matter of record. Nothing has changed those court instructions. It appears that the Draft MUMP discretionary provision has made changes to the conditions and representations made to the court.

Judicial Review, argued and submitted – June 12, 1997 the court stated; "If it does not prove possible to develop an appropriate plan for the expanded area, the city can then reconsider and modify its action on the UGB." "We express no opinion on whether actions that the city, DLCD, and LCDC may take at later stages if that process will require any reevaluation of that issue." [page 5 & 6 of 7]

Sincerely,

Yvonne Maitland

Yvonne Maitland
HCAC - Secretary

Attachment:

Unbuildable land on Harbor Hills

Comments from: County Commissioner to DLCD Director (2006) and comments from DLCD Director (1996), Court of Appeals Judge, County Counsel and Developer's Consultant (Harbor Hills):

In an e-mail dated February 2, 2006 to DLCD Director, Lane Shetterly Commissioner LaBonte wrote; "It (Brookings UGB) was a very large UGB and we were told that **it was large because it included unbuildable lands**." The allocated number of homes for the Harbor hills in 1993 was "300 – 400 homes."

The same arguments were made by DLCD Director and attorney, Richard Benner to LCDC and the City of Brookings, March 28, 1996: "The steep portion of the Harbor Hills which was **mapped as a mass movement hazard area** was included in the UGB for locational reasons under Goal 14, Factor 3 to provide corridors for roads and utilities... **The city and county did not include the area within the UGB to provide buildable land for housing, commercial or industrial uses**."

Judge Warren P.J. of the Court of Appeals affirmed, "Land Conservation and Development Commission did not err in approving city's expanded Urban Growth Boundary (UGB) to include an additional 3,491 acres, **most of which was unbuildable land that was allegedly needed** for providing services to buildable area;"

"The need to include unbuildable lands within the UGB is well documented... Approximately 1,437 acres of unbuildable land is added to the boundary for locational reasons. This unbuildable land includes ravines, slopes and hazard areas..."
(page 15, Intervenor Curry County Brief – Counsel Gerard Herbage)

Burton Weast Consultant/representative for Harbor Hills developers wrote an e-mail dated June 23, 1993 to City Planning Director, John Bishoff, "...expansion on difficult to develop hilly and **geologically unstable lands**. ...rather than (on) the Harbor Bench agricultural areas. **We can provide reports that indicate that about half of the land is undevelopable**..."

EXHIBIT: _____ AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: _____
PAGES: 11
SUBMITTED BY: Lisa Buscho

ATTENTION: Land Conservation and Development Commission
July 21, 2009

Please bear my statement in mind when considering approving further plans for the development of the Harbor Hills area.

I live on Napa Lane in what is known as the 2nd addition to the Pelican Bay Heights subdivision. I have a water pressure problem and a significant residential fire safety issue to report and that needs to be rectified.

The development of the 2nd addition to the Pelican Bay Heights subdivision began under the name of Oread Development, Inc. and was sold some time in the 1980's to owners Henry Westbrook III and Robert L. Westbrook under the business name of Reservation Ranch. Reservation Ranch continued the development and assisted in completing the sale of 24 lots in this subdivision. However, they never completed the water system per the original plans 19 years ago.

In the enclosed packet of material are several pertinent documents from Real Estate agents corresponding with original buyers of these lots and from the Westbrook's corresponding with the original buyers of these lots. In these documented correspondences you will find the issue of an identified water pressure problem sited several times. These correspondences indicate this identified issue stemming as far back as 1988.

The 1988 & 1989 documents site that the Harbor Rural Water District (HRWD) had concerns regarding the plans the Westbrooks had submitted relating to water use in the subdivision. Among those concerns and specific to this statement was that HRWD said there would not be enough water pressure to supply the residential domestic flow water use adequately and would not supply the fire hydrants for fire-flow water use at all. It goes on to say that this issue would not be solved unless the Westbrooks put in a water tower to supply this water pressure need and that the Westbrooks were reluctant to go to this expense until more lots had been sold. However, a month later, documented correspondences indicate that the HRWD went ahead and approved the plans without these identified issues being rectified by the Westbrooks.

In a 1991 letter from the Reservation Ranch Marketing Manager, Robert Dunn, it states, "the water system is presently owned and maintained by our company" and goes on to say, "Our goal will be to turn the system over to the HRWD some time soon"...and "The transfer of the system to HRWD will not take place until the installation of the reservoir for emergency situations is completed later this year."

In a 1994 correspondence from Steven Westbrook to the one of the property owners after a query asking when the reservoir water tanks would be installed; it stated, "It is our intention at this time, to have the tank installed some time this fall." It is addressed again in 1995, without resolution.

I asked County Planner, David Platt about this problem and was told, "From a County perspective, there is nothing we can do." This response by our County Planner reflects to me poor oversight and inadequate response to problems identified due to past developments and portends the type of oversight and response we can expect for future developments in this area.

I am concerned that this very significant issue was not disclosed to me at the time I purchased my property by the previous owner nor by the real estate agency that represented my interests. I have asked my real estate agent for help in resolving this problem. I have sent letters to other real estate agents who are currently listing properties in this subdivision ensuring that they are aware of and that they disclose this problem to potential buyers.

My questions are:

- How is it that after 19 years, this developer has not only been allowed to get away with developing a subdivision that does not meet residential fire safety needs and residential water pressure requirements, but is allowed to continue developing other areas without adequately completing prior developments?
- What can you do to help me and what recourse can we, as homeowners newly discovering this terrible water pressure and fire-flow water situation do that will adequately resolve this issue?

Respectfully submitted by,

Lisa Buscho

Lisa Buscho
15702 Napa Lane
Harbor, OR
541-412-7051

MLS

CREATIVE REAL ESTATE

15440 Museum Road - Brookings, Oregon 97415 - (503) 469-7491

"LISTING UPDATE"

Price Chg 11/1/88

Date 7-11-88

Listing # 163 thru 173

Client Reservation Ranch "Lots" Address Pelican Bay - 2nd addition

TO WHOM IT MAY CONCERN:

The water situation has finally been resolved. Westbrooks have worked out an arrangement with Harbor Water to supply water to all these listed lots. Installation of the water line has already begun. Tell your customer that the total cost to hook up to the water system will be $1660, payable when the service is hooked up. (This includes $1000 for a buy-in charge, $600 for a meter and $60 deposit). The water rate will be 3 times the normal rate or $18.00 per month for the first 2000 gallon plus .27/100 gallon. Yes, this rate is higher, however, the cost is offset by the lower tax rates since these lots are in not in the water district. The lots all have septic approvals, however, most are sand filter systems of one type or another. Each office has a copy of all the septic approvals. Please check with Nick for the latest information on the sand filter septic systems. Westbrooks may be able to install them at a bargain price.

The scheduled date for completion of the road, water and all underground utilities is Sept. 1, 1988. The road will be 20' wide but will not have curbs or gutters. Westbrooks have requested that we be tolerant with the road situation, as it will be in a state of disrepair until the project is completed.

Help us get these sold!

Creative Real Estate

SEA-BROOK, INC.
SEASHORE
REAL ESTATE
"Serving Oregon's Pacific Wonderland"

P.O. BOX 141 • 1201 CHETCO AVENUE
BROOKINGS OR 97415 • (503) 469-7457

May 3, 1989

Roy and Joan Geiselman
700 Birch St.
Edmonds, WA 98020

Dear Roy and Joan,

How are things going with you two? I'm sorry I missed you when you were last here. I heard that you did some topographical surveying and I hope your plans are coming along. I had just gotten out of the hospital where I was diagnosed with diabetes and pernicious anemia. I feel great now that everything is under control once again.

I am writing to inform you of a concern that has come to my attention. I don't think there is going to be problem but want to keep you apprised of the situation if there get's to be one.

Enclosed is a letter from the Harbor Water District to the developer's of your property. The morning after receiving this Steve Westbrook came to our office and I questioned him about the situation. He indicated that the matter was taken care of and that the requested material had been submitted to Harbor Water.

Kathy, of our office, and I were discussing the situation this morning and she called the Harbor Water district to get their views. I have also enclosed a document laying out what she was told (written by Kathy).

I am also going to try and get all the information that Creative Real Estate, the listing company, disseminated to the local agents. I believe that their advertising documents gave the impression that there was no problem with getting water to the property. Also enclosed is a copy of the first addendum to the first sales contract in which Steve Westbrook has indicated that there was water pressure to the lot.

In conclusion, the Westbrook's are a large organization and I believe have every intention of bringing water pressure to the property. It seems to be taking a little longer than we were led to believe.

I will keep in touch with you and inform you of any new developments. I am looking forward to seeing you the next time you are in Brookings.

Sincerely,

David Soiseth

David Soiseth
Sales Associate
SEASHORE REAL ESTATE

Enclosures

SEA-BROOK, INC.
SEASHORE
REAL ESTATE
"Serving Oregon's Pacific Wonderland"

P.O. BOX [illegible] 6 • 1201 CHETCO AVENUE
BROOKINGS, OR 97415 • (503) 469-7457

May 5, 1989

I called Harbor Water and was told:

1. At this time no more lots would be served in the subdivision.
2. Only HRWD personnel can turn the valve off and on
3. The "As-Built" plans that were turned into them are unacceptable.
4. They have not been furnished test results from the State of Oregon Health Division and they need to be on file.
5. The fire hydrants are not working and will not be until the water tower is constructed.
6. The water district does not feel that adquate water pressure is available to these lots and will not be until the water tower has been built.
7. The Westbrook's have indicated that they do not want to have the expense of putting the water tower up with so few lots having been sold.

This is from Kathy's conversation with HWD

"Serving Oregon's Pacific Wonderland"

P.O. BOX 1410 • 1201 CHETCO AVENUE
BROOKINGS, OR 97415 • (503) 469-7457

June 30, 1989

Roy and Jo Geiselman
700 Birch St.
Edmonds, WA 98020

Dear Roy and Jo:

How are things going with you two? I hope that you are both fine and in good health.

The tourist season is going in full swing with lots of people looking at real estate. I just sold the lot next to yours (lot 21) to a really nice older gentleman from California.

Enclosed is a copy of a letter from the Harbor Water District. It appears that everything is O.K. now in regards to the problem that came up earlier and which I sent you copies of.

I'm looking forward to seeing you again soon.

Sincerely,

David Soiseth

David Soiseth
Sales Associate
SEASHORE REAL ESTATE

Harbor Rural Water District

P.O. Box 2437 • Harbor, Oregon 97415 • 503-469-3011

June 26, 1989

Henry/Robert Westbrook
Reservation Ranch
P.O. Box 75
Smith River, CA 95567

Re: Waterline Extension; Pelican Bay Heights Subdivision
Second Addition

Gentlemen:

Thank you for submitting the requested "As-Built" plans for the above referenced subdivision.

The Harbor Rural Water District is prepared to make water available, after receipt of the required fees, to any additional lots within the subdivision.

As before, please advise prospective/current property owners of this updated situation.

Again we thank you for your cooperation in this matter and hope to continue our good working relationship.

Sincerely,

Harbor Rural Water District

Dale L. Chapman

Dale L. Chapman
Chairman, Board of Commissioners

DLC:ja

xc: Curry County Planning Department
Curry County Title
Ocean Title and Escrow
Brookings/Harbor Area Realtors (9)

July 9, 1991

Reservation Ranch

MR. AND MRS. ROY J. GEISELMAN
700 Birch Street
Edmonds WA 98020

Dear Mr. and Mrs. Geiselman:

You will find enclosed a copy of a press release that announces the sale of the last property in Pelican Bay Heights 2nd Addition. Needless to say we are very excited about the completion of this phase of our development plans.

It has come to my attention that several of the property owners are concerned about the continued maintenance of the streets, the water system and the enforcement of the CC & R's. Unfortunately it took several developers to finally complete this project and some of the previous developers left some loose ends that need to be addressed.

The street is a public street to be maintained by the property owners, but so many of you live out of the area it is going to be difficult to maintain them without a Home Owner's Association. This same problem will be true of the CC & R's, without an established Home Owner's Association and elected officers, no one will be enforcing the covenants and restrictions. To compound the difficulty some of the original property owners have different CC & R's than some of the later property purchasers.

The water system is presently owned and maintained by our company and we will be establishing a billing system for the water in the near future. Our goal will be to turn the system over to the Harbor Rural Water District some time soon, but have not agreed upon a date with H R W D as yet. The transfer of the system to H R W D will not take place until the installation of the reservoir for emergency situations is completed later this year.

The above stated conditions being what they are, I would like to encourage you to contact me at (707-487-3516) to discuss the resolving of these questions and hopefully organizing a direction for the future of PELICAN BAY HEIGHTS 2nd ADDITION.

Our interest is strictly in helping you establis a wa
maintain the beautiful quality of living presently a ailable
your property.

Sincerely,

Robert L. Dunn
Real Property Marketing Manager
RESERVATION RANCH

Enclosures

RLD:kat

[redacted]

Reservation Ranch

July 20, 1994

Roy Geiselman
P.O. Box 2941
Harbor OR 97415

Dear Roy:

Per our conversation on June 16th, you indicated you wanted to know the appr imate date the tank would be installed for the Pelican Bay Heights water system. In a subsequ nt conversation on July 17th, I told you that I would be talking with our engineer about changes that were to be made. It is our intention at this time, to have the tank installed some time this f l. However, I do not have a firm date to give you.

I hope this information helps you in your meeting. Should you or anyone else h ve any questions please feel free to call me.

Sincerely,

Steven Westbrook
Reservation Ranch

SW:ga

DEPT OF
JUL 21 2009
LAND CONSERVATION
AND DEVELOPMENT

July 20, 2009

EXHIBIT: _____ AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT
COMMISSION
DATE: _____
PAGES: 17
SUBMITTED BY: Thomas Huxley

Thomas C. Huxley
15877 Pelican Bay Drive
Brookings, OR 97415

Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Attn: Lisa Howard

Re: Written Testimony & Associated Attachments: July 29 - 31, 2009 Meeting

Lisa,

I spoke with you late last week regarding the procedure for having written testimony placed out in quantities for interested members of the public to pick up. You mentioned just one copy was required and that LCDC personnel would provide twenty copies.

Enclosed is one copy, which includes:

* Cover sheet.

* E-mail (2 sides) dated Tuesday, July 14, 2009 & titled "Land Use Public Process Sham July 13, 2009"

* Letter (2 sides) to Curry County Commissioners dated July 13, 2009.

Also included is one complete copy of the three items above plus all associated attachments referred to in the letter dated July 13, 2009. If possible I would like this package placed out for interested parties to view. Included with this package are electronic media that may be freely copied. I am not asking for any copies to be made of this package but rather for it to be retained as a public record by LCDC.

This package includes the same three items listed above plus:

* Transcription of the Curry County Board of Commissioners workshop held on Tuesday, March 27, 2007. 166 pages (2 sides).

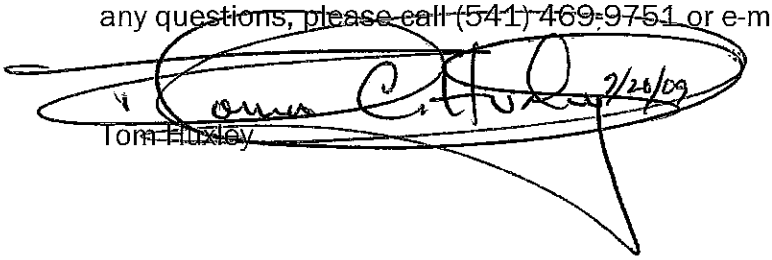
* Transcription of the Curry County Board of Commissioners workshop held on Monday, May 30, 2007. 72 pages (2 sides).

* Video (DVD) KBSC Channel 9; June 24, 2009: Jim Newman; In My Opinion - Show #63.

* CD with PDF files of the two transcriptions referred to above and the letter to the Curry County Board of Commissioners dated July 13, 2009.

Unfortunately I will not be in the area July 29 -31, 2009. Originally the LCDC meeting in Brookings was tentatively scheduled for June. After I made plans for the end of July, the LCDC meeting was changed to July.

Lisa, thank you for you assistance in providing this information for viewing by the public. If you have any questions, please call (541) 469-9751 or e-mail runawayfreighttrain@verizon.net.



Tom Huxley

CURRY COUNTY

Land Use Public Process

SHAM

Oregon Public Record & Public Meeting Law Abuse

To request electronic PDF copy of "Transcripts of Workshops March 27, 2007 & May 30, 2007:
E-Mail runawayfreighttrain@verizon.net

t&k

From: "gen_information" <gen_information@verizon.net>
To: <johnvl@lclac.org>; <richard.whitman@state.or.us>; <john.kroger@state.or.us>; <jud@europa.com>; <tdoran@bendbulletin.com>; <etwist@juno.com>; <nickbudnick@gmail.com>; <tgleason@oregon.uoregon.edu>; <laurie@orenews.com>; <bbrumley@ap.org>; <samo@brookings.k12.or.us>; "Nysted, Barbara" <pumpkin5@charter.net>; "Maitland, Ian & Yvonne" <ian.maitland@nyu.edu>; <richards@nwtec.com>
Sent: Tuesday, July 14, 2009 2:04 PM
Attach: [Emphasis Added] 3-23-2009 - Transcript of Workshop March 27, 2007.pdf; [Emphasis Added] 3-24-2009 - Transcript of Workshop May 30, 2007.pdf; Land Use Public Process Sham July 13, 2009.pdf
Subject: Land Use Public Process Sham July 13, 2009: Public Record & Meeting Law Abuse:

July 14, 2009

Ladies/Gentlemen,

The attached are in regard to current Land Use Public Process in Curry County Oregon. More specifically, the blatant disregard for the Public Meeting and Records Laws. For this reason, the Oregon State Attorney General and many Board members of Open Oregon are copied in the hope they will recognize how freely and boldly these laws are abused and disregarded by officials and initiate recommendations for future legislative changes in this area.

Until (via the legislative process) the current laws are given "teeth" with actual and painful consequences prescribed for those offenders, business will continue as usual or worsen. Officials will continue to boldly and freely break the current laws, as there is no fear of punishment for doing anything to the contrary.

This knowledge spreads quickly like a cancer among counties within Oregon. One county attorney tells another how easily this or that onerous oppressive county policy flew and the next thing you know another county has a similar policy. This was the case with the Curry County Public Records Policy.

Thank you for your review and consideration of the facts presented in the attached.

Thomas Huxley

Brookings, OR

runawayfreighttrain@verizon.net

A Side Note & Update

Over the weekend (July 11, 2009) I had a phone call from a friend stating they had just received notice via postcard of a public meeting (July 14, 2009) regarding the "Citizen Advisory Committee" for the Brookings "Harbor Area Transportation System Refinement Plan." I was not aware of any such meeting and had not received notice. There had not been any article in the local newspaper or any paid or unpaid notices published notifying the public at large of this meeting. This particular "Plan" is a big deal in that just the future road network infrastructure costs alone were recently discussed in the "Plan" and estimated to easily exceed $50 Million in a city with a population less than 10,000. Who has the resources for or who will actually be held financially responsible for these infrastructure costs (should they evolve) remains a mystery.

The State of Oregon Department of Justice "Attorney General's Public Records and Meeting Manual" is quite clear on the "Notice of Meetings" subject as is "A Quick Reference Guide to Oregon's Public Meetings Law" published by Open Oregon and the Oregon Attorney General's office which in part states *"Public notice must be reasonably*

calculated to give actual notice to interested persons...and general notice to the public at large. Governing bodies wishing to provide adequate notice should strive to provide as much notice as possible to ensure that those wishing to attend have ample opportunity - a week to 10 days for example."

Once again citizens-at-large were intentionally excluded from the public process by Curry County officials.

Update: Now in the third week after the request and pre-payment for an audio recording (addressed in the attached letter) of a public meeting held June 24, 2009 on the Harbor Area Transportation System Refinement Plan, the subject audio has yet to be provided. The State of Oregon Department of Justice "Attorney General's Public Records and Meeting Manual" is clear on the time frame for public bodies to make such records available to the public. *"We assume that a governing body generally should be able to make a sound, video or digital recording of a meeting available to the public within a few days following the meeting."*

July 13, 2009

Thomas C. Huxley
15877 Pelican Bay Drive
Brookings, OR 97415

Curry County Commissioners
Bill Waddle & George Rhodes
P.O. Box 746
Gold Beach, OR 97444

Re: Land Use Public Process SHAM: Certified Mail # 7006 0810 0006 1432 8189

Commissioner Waddle; Commissioner Rhodes,

You have now been in office six months and are no longer eligible for "new kids on the block" free passes. Please include this testimony and attachments into both public records listed directly below. Please also provide copies of this testimony and attachments to members of the respective City of Brookings and Curry County Planning Commissions whom I understand are scheduled for a "joint show" Tuesday July 14, 2009. This document is broken into three parts. This, the general cover letter and the two public record subjects directly below.

1) Harbor Area Transportation System Refinement Plan (Begins on page 6)
2) Mixed Use Master Plan Zone Ordinance (Begins on page 9)

The following sums up current Land Use Public Process in Curry County. This includes a blatant disregard for the Oregon Public Meeting and Records Laws. Curry County elected and appointed officials appear to have been of the belief that:

* Officials are not required to listen to, read or pay attention to any public testimony.
* Officials are not required to respond to citizen's verbal or written concerns regarding anything.
* Officials are not required to understand issues they are recommending or voting for or against.
* Officials are not required to pay attention to or abide by the Oregon Public Meeting and Records Laws.
* Officials are not required to provide facilities at meetings that enable citizens to hear what they say.
* Officials are not required to provide legible or understandable documents on their proposed issue.
* Officials are not required to provide notice to the public for public "Open Houses" on a proposed issue.
* Officials determine what written citizen testimony is "Relevant" and will be published/provided to the public at large and what will not. (Censorship)

Citizen recourse with respect to the above scenarios is, at their sole expense to challenge this behavior in the appropriate Oregon Courts. Oh yah, citizens also get to pay (taxes) to defend those officials they are challenging.

In a nutshell, officials are **NOT ACCOUNTABLE** to the citizens, period. There are **NO TEETH** in and **NO ENFORCEMENT** of the Oregon Public Meeting or Records Law at the state level. (Are you listening Oregon Attorney General Kroger?) There are **NO CONSEQUENCES** for unethical or illegal behavior on the part of elected or appointed officials. There is a continued **ABUSE of POWER** by officials. Gee, sure sounds a lot like Washington DC don't you think?

Two illegally noticed "workshops" were held March 27, 2007 and May 30, 2007. Actually one wasn't noticed at all and there may have been more than one. County officials were repeatedly asked to provide proof of proper notice and refused to do so. Individuals present during these meetings consisted of three county commissioners, Curry County Planning Director, county counsel, ex Brookings City Manager representing a large land owner/developer and one individual from the press during portions of the meetings. All members excluding press participated in the "workshops." During these meetings the proposed Mixed Use Master Plan Zone Ordinance (MUMPZ) was conceived without public involvement or knowledge. (Are you listening Oregon Department of Land Conservation and Development [DLCD] Director Whitman?)

July 2007 there was a "Town Hall Meeting" held in Brookings Oregon regarding the proposed Mixed Use Master Plan Zone Ordinance (MUMPZ). The meeting was recorded, not well but recorded nonetheless. One member of the current Curry County Board of commissioners that participated in the illegal "workshops" referred to above was present along with the ex Brookings City Manager who had also participated. The commissioner is on the record **LYING** two times during this "Town Hall Meeting." (1) In response to the allegation the subject "workshops" were illegally held without notice. *"...These workshops have always been publicly announced."* (2) In response to previously being provided and not responding to citizens written questions. *"I can write some of it down." "OK. I'll try to do my best and put it in writing. Without legal counsel."* The ex Brookings City Manager is on the record **LYING** one time. In response to the allegation the subject "workshops" were illegally held without notice. *"And the meetings that were held by the county commissioners ah was publicized in the way that they always publicize their work sessions. It was in the newspaper."*

During the July 2007 "Town Hall meeting" there were several citizens who expressed frustration in not receiving responses from Curry County commissioners. Around 45 minutes into the meeting there were questions presented to the county Planning Director such as;

"The fellow just mentioned that he contacted the commissioners and they didn't respond to his questions. What do the citizens do or what do you suggest the citizens of this area do when we write to the commissioners multiple times with environmental questions, concerns like this gal talking about the roads washing out, boulders washing out and the commissioners do not respond to our questions. What do you suggest?"

County Planning Director: *"I don't have an answer."*

I don't have an answer is **NOT** acceptable commissioner Rhodes; commissioner Waddle.

Fast forward to the June 1, 2009 Harbor Area Transportation System Refinement Plan **Public Open House**. This function was neither advertised nor promoted in the local newspaper nor recorded so there would not be a repeat of the July 2007 meeting. Who says elected and appointed officials don't sometimes learn from their unethical and illegal behavior.

While on the subject of the Harbor Area Transportation System Refinement Plan and with respect to an egregious **ABUSE OF POWER**; Approximately May 2008 the Curry County Planning Director put out a written announcement (undated) regarding the formation of a "Citizen Advisory Committee" for the "Development of the Harbor Area Transportation Refinement Plan." The representation make-up was quite specific as was the final date applications were due. "Completed Applications are due by **Monday, June 30 2008.**" The final date was in **bold letters** in the announcement. The announcement stated none other than the Curry County Board of Commissioners would appoint the committee of nine. Who would have thought? The last citizen representation listed on the announcement was "1 - Either an

additional Citizen-at-Large or Commissioner from the Port of Brookings-Harbor."

I and four other citizens who had submitted applications for consideration received notice dated July 23, 2008 that we were not appointed to the Harbor Area Transportation Refinement Plan Advisory Committee. Four of the five were members of the Harbor Community Action Committee (HCAC). What a coincidence. June 24, 2009 a public record request for copies of the "Citizen Advisory Committee" applications was submitted to county officials. The requested public records were finally received fifteen days later July 9, 2009.

One of the "Citizen Advisory Committee" member's chosen was a Commissioner from the Port of Brookings-Harbor. Their application was dated **July 17, 2008,** as was the FAX transmittal information at the top of the application. This was nearly **three weeks** after the final date applications were due.

Officials delay appointing the "Advisory Committee Members" because there are not sufficient applicants who have submitted applications by the deadline **that they wish to appoint** to the committee. Officials then most likely make a few calls, twist an arm or two and have a citizen submit an application for appointment a **little late**. What's a week or two or three, right?

Commissioners, this accusation must be investigated and if verified and proven (easily done) some county staff (and any others involved) should as a minimum lose their jobs. Once officials or any city or county staff has crossed this unethical line, there is no going back and no limit to what they will do next.

It is unclear why three members (one third of the total members) of the respective city and county Planning Commissions (vs. citizens-at-large) were chosen to serve on this advisory committee knowing full well this issue was to go from the advisory committee to these same Planning Commissioners. Commissioner Waddle; Commissioner Rhodes; what do you believe the logic or more importantly **the motive** was for **"stacking the deck"** with three Planning Commission members?

One City of Brookings Planning Commission member that had been hand chosen to serve on the advisory committee summed up the process best according to minutes of a May 6, 2009 meeting. **"...commented that there isn't a lot of reality to what they were doing."**

Missing public records and public access to electronic mail (e-mail).

April 2008 with Curry County counsel recommendation, Curry County commissioners unanimously approved a Public Records Policy that jettisoned the publics access to electronic documents back forty years, prior to the era of electronic documents and existence of the Sunshine Laws. In doing so, they created an Information Technology **CZAR.** Hey, if it works in Washington DC, why not Curry County. The county took the position that **every** electronic e-mail was **exempt from disclosure** until proven otherwise. The sole determination of what was and what was not exempt would be first be determined by the Information Technology **CZAR** and then by county counsel.

Example: You wish to review e-mail correspondence between one or more of the three county commissioners and another official over a three-month period say in 2007. You believe some documents have been concealed and not incorporated into the public record of an important public issue. One critical e-mail has already been uncovered that was not in the public record job file. The contents of that document indicate more critical "missing" documents may exist. Curry County officials position is to forbid citizens from inspecting records such as e-mail in electronic format. Instead, the Information Technology **CZAR** initially provides a cost estimate of approximately **$8,000** payable in advance to retrieve and review all possible e-mail within that three-month time frame. There is **NO** guarantee that

any documents will "cut the mustard" and ultimately determined to be non-exempt from disclosure. That determination will be at the **SOLE DISCRETION** of the Information Technology **CZAR** and county counsel. Under current policy, the public will **NEVER** have access to electronic e-mail records in Curry County. Yes, that estimate payable in advance was **$8** followed by **three zeros**.

According to the State of Oregon Department of Justice "Attorney General's Public Records and Meetings Manual" January 2008.

In referring to recent legislative changes; *"None of these changes, however, altered the fundamental premise underlying both the Public Records and Public Meetings Laws: any doubts in interpreting the legislation should be resolved in favor of providing the public with information. The authority to hold private meetings, executive (closed) and emergency sessions, as well as* ***to claim confidentiality of records, are exceptions to the general rule of openness and must be narrowly interpreted."*** [Emphasis added]

"The custodian's duty to provide reasonable opportunities for ***inspection of records expressly extends to records 'maintained in machine readable or electronic form.'*** [Emphasis added] *ORS 192.430(1). The law also requires the custodian of records to provide persons inspecting records with 'reasonable facilities' for making memoranda or abstracts from the records. In short, the law directs public bodies to take reasonable steps to accommodate members of the public while they inspect public records."*

County legal staff also continues to regularly disregard the Oregon Public Meeting Law requirements, especially notice for regular meetings. Published notice Friday afternoon for the regular Board of Commissioner meeting Monday morning is not acceptable or legal notice. For the continued disregard of these laws their punishment is a cost **of living pay raise effective July 1, 2009!**

Commissioners, citizens expect and demand open, legal and transparent government not just on land use issues but all issues. This **IS NOT** an option. Many city, county, state and federal employees have this bizarre illusion that citizens exist for the sole purpose of financially supporting them. Quite lavishly I might add. Commissioners, this illusion is just that, an illusion and it is **FALSE**.

Further comments on the two proposed land use issues below follow as separate documents.

Commissioner Rhodes; Commissioner Waddle; I encourage you to thoroughly read both documents below and respectfully request your written comments on how you intend to deal with and fix this corrupt situation that to date, I believe you have inherited, not participated in.

1) Harbor Area Transportation System Refinement Plan
2) Mixed Use Master Plan Zone Ordinance

Thank you for your time and attention to the serious matters addressed here. Should you require supporting documentation for any statements made herein, please advise and it will be promptly forwarded to you.

Sincerely,

Thomas C. Huxley

Attachments:

DVD KBSC Channel 9: June 24, 2009 Jim Newman's "In My Opinion" (Commissioners Waddle & Rhodes)

Electronic Format (PDF): Transcript of Workshop March 27, 2007 [Emphasis Added 3/23/2009]

Electronic Format (PDF): Transcript of Workshop May 30, 2007 [Emphasis Added 3/23/2009]

Cc:

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Advisory Committee Applicants Not Appointed

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Yvonne Maitland
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Barbara Nysted
Buena Vista Loop Resident
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Margie Richards
Harbor Hills Heights Road Resident
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Public Testimony: July 13, 2009
Submitted with cover letter to the Curry County Board of Commissioners July 13, 2009

Harbor Area Transportation System Refinement Plan.

No point will be served restating unanswered testimony provided since April 1, 2009. Rather, five areas are addressed below.

First: Both commissioners Waddle and Rhodes attended the "April Fools Day" meeting at the Chetco Public Library in Brookings. The presentation included documents generated after five months by the firm contracted to create the "Plan" and was disgraceful. Commissioner Waddle, I understand you were furious (my choice of wording) watching the presentation and left the meeting early. That is, the parts you could hear which for me totaled about half of what was said, especially for those sitting towards the back of the room. If my choice of wording is inaccurate commissioner Waddle, please feel free to elaborate and correct me. The unsatisfactory audio was a replay of previous meetings at this same location with the same firm and the same Planning Department officials. Advisory committee members had previously requested and according to one committee member just received minutes of their last public meeting held **five months** earlier.

According to "A Quick Reference Guide to Oregon's Public Meetings Law" published by Open Oregon and the Oregon Attorney General's office *"The meetings law says minutes must be made available within a 'reasonable time' after each meeting, but does not specify the time. Generally, this time frame should not exceed three weeks."* Three weeks is really stretching.

Second: Planning Department officials and the same individual from the same firm above continue to knowingly provide inflated population numbers into their forecasts. Couple that with the power of "compounding interest" over multiple decades and they can create whatever forecasted outcome they wish. Fifteen or twenty years later they won't be around to be held accountable. The use of inflated numbers was first brought to their attention in January 2008 during a "Transportation Analysis Zone" (TAZ) study. In this current "Plan" they have buried reference to "agreed upon data" in one sentence on page 61 of 196 and ignored repeated requests to provide the specific data used.

Compounding inaccurate numbers, even small ones over decades can have huge consequences. **Example:** November 2000 a Brookings Harbor area school bond in the amount of **$14 Million** dollars was narrowly passed by voters. A newspaper article October 21, 2000 titled "School Bond Fans Try to Overcome Naysayers" addressed current and forecasted school enrollment figures as a key support issue for passage of the bond. Mr. Anderson (Current Brookings Mayor and developer) was a spokesperson for proponents of the bond in the article stating *"The proposed projects were based on a 1.5 percent student growth rate over the next 20 years, Anderson said. That is just enough to accommodate the existing school population (1,871) and a small amount of growth."* What Mr. Anderson **neglected to mention** was that for the previous two years the school district had experienced a **negative student growth rate** of approximately 1.5 percent per year. History would show the school enrollment trend continued to decline. A January 10, 2009 news article titled "School district braces for deep cuts" shows enrollment decline has on average exceeded 1.5 percent per year since 2000 with a current enrollment of approximately 1,650 students. Bottom line, the bond passed and property taxes for Brookings and Harbor residents increased approximately **20%** as a result of this bond measure. The tax increase will remain in effect for twenty years. Would citizens have approved the bond measure had they known school enrollment was falling for two years prior to the bond measure?

Third: The last "official" public meeting for the Citizen Advisory Committee for the Harbor Area Transportation System Refinement Plan was held June 24, 2009. Last because the "grant" was up. Not because the "Plan" was good, bad or ugly. There was not a quorum of Citizen Advisory Committee members present. When asked to approve the minutes for the prior committee meeting May 6, 2009 one member present (Planning Commission member no less) stated they had not yet received the minutes. This was **seven** weeks after the May 6, 2009 meeting. The committee chair discussed with the county Planning Director contacting committee members via electronic medium and telephone to approve minutes, vote on motions, etc. Citizens politely objected stating that approach was not legal and that it excluded the public from the process.

"A Quick Reference Guide to Oregon's Public Meetings Law" referred to above states; *"Meetings accomplished by telephone conference calls or other electronic means are public meetings. The governing body must provide public notice, as well as a location where the public may listen to or observe the meeting."*

There were apparently a significant amount of revised "Plan" documents that had been provided to Advisory Committee members just one or two days prior to the meeting June 24, 2009. The representative responsible for the "Plan" appeared hell bent on racing through the revisions and receiving approval from committee members present even though there was no quorum. It was clear some members hadn't time to even read the revisions.

Approximately one week later citizens obtained (by chance only) one e-mail correspondence between Advisory Committee members that began June 23, 2009 (communication was back and fourth between members, Curry County and the City of Brookings officials). **The public was excluded.** The members expressed concern in receiving revisions "...two days prior to our meeting tomorrow." Further concern was aired in members having problems "...with these new recommendations, which we will need to discuss." Specific concerns were addressed throughout the e-mail.

County Planning Department staff now has provided both original and "Final" documents for the "Plan" on the county website. This online posting is best summed up as a freaking nightmare. As for the images under the various memos, etc. There are "preferred" networks and "proposed" networks. There is a Fig2-1 that is an intersection map. There is a Fig2-1 that is a "proposed" network map but the map image is not identified with any Figure number. Then there is another image identified as "MAP-Preferred Roadway Network." When you open that file the document is identified as Figure 3-1. If you go the "Final Tech Memo #2" and open image Fig3-1 you have "Existing Driveways Onto US101." Where the ambiguous reference to population data originally and intentionally buried on page 61 of 196 has been moved is unknown.

Commissioner Rhodes; Commissioner Waddle; I challenge you to go to the Curry County Public Services Home Page at: http://www.co.curry.or.us/publicservices/publicservices.htm and read what is available for review by citizens. The last 15 or so links on the page apply to the Harbor Area Transportation System Refinement Plan. There has been a recent (good) change from little or no information to lots of confusing information. You need to start with the oldest information first. Whoops, that's been removed so you couldn't compare unless you previously saved a copy of the 196-page PDF file. If you have slower dial up Internet service you are going to be one unhappy camper (large file sizes are not shown). All the unanswered questions citizens submitted back in April and May and June 2009 that have been ignored and not answered would be difficult as best to correlate with the new documents. Citizens may start over or throw in the towel and walk away from this open and transparent process.

Anyway, you might click on the "Harbor Area Transportation System Refinement Plan-Meeting Packet 05-06-09" and check out "APPENDIX A" page 39 of 64 pages. The map shown is a very current and valuable Topography by Slope Class LIDAR map. Well, it would be if you could read it. By the way, the (<) (less than) 70 percent slope designation is incorrect. It is actually (>) (greater than) 70 percent. This is yet another example of a previously submitted and unanswered question by citizens.

Regarding the May 6, 2009 Advisory Committee minutes; The first motion by members was to use Robert's Rules of Order for that and future meetings. Later in the minutes the Advisory Committee Chair is noted making and seconding motions. The answer to question #1 in Roberts Rules Frequently Asked Questions in part states *"However, the impartiality required of the presiding officer of an assembly (especially a large one) precludes exercising the right to make motions or debate while presiding, and also requires refraining from voting except (i) when the vote is by ballot, or (ii) whenever his or her vote will affect the result."*

Fourth: The following response from the Curry County Planning Director was received June 18, 2009 with respect to questions, comments, suggestions, etc. between April 1, 2009 and June 1, 2009. *"Regarding a response to your comments, suggestions, requests and questions, a response will be forthcoming as time allows."* Commissioners care to define **"as time allows?"** Effective the date of this letter, there has been no response.

Fifth: A request and pre-payment for an audio recording of the June 24, 2009 Advisory Committee meeting was mailed to Planning Department staff June 30, 2009 along with an e-mail notifying staff of the pending request. The e-mail request was for staff if at all possible to mail the audio prior to the July 4th holiday. The e-mail also included a follow-up regarding a pre-paid public record request that was given to a Planning Department official during the June 24, 2009 Advisory Committee meeting. The response from Planning Department staff was typical of the **ARROGANCE** and **CONTEMPT** towards citizens that has filtered down through the rank and file personnel.

Citizen request: *"I am e-mailing you this request today* (Tuesday June 30, 2009*) in the hope you will be kind enough to get the requested records in the mail to me prior to the three day weekend."* Planning Department staff response: *"I will send the C/D ...as soon as it arrives."*

Citizen request: *"Please advise the date you expect to have the minutes complete for the June 24, 2009 meeting."* Planning Department staff response: *"I will forward as soon as I get them completed."*

Commissioners I will not waste my time requesting further clarification as to when I may expect anything from this condescending exorbitantly overpaid "Permit Clerk." I would be interested in hearing the response received when you ask the same questions. Although the second lowest pay classification in the Curry County 2008/2009 Master Payroll, the annual compensation package for this individual including benefits totals nearly **$50,000 taxpayer dollars.** With the unemployment rate in Oregon the second highest in the nation and the economic climate that currently exists, this compensation package is ludicrous. This is ludicrous under any circumstances. Couple that with a $4 Billion or so pending two year state budget shortfall which does not include (surprise, surprise) any mention of the Oregon Public Employee Retirement System (PERS) deficits of approximately $1 Billion for 2008 alone. Taxpayer payments (yes taxpayers) for these investment deficits/shortfalls won't begin until 2011. This taxpayer guarantee of most Oregon public employees personal investment portfolio remains unprecedented, as Oregon is the only state in the United States to do so.

Public Testimony July 13, 2009
Submitted with cover letter to the Curry County Board of Commissioners July 13, 2009

Mixed Use Master Plan Zone Ordinance.

First: The illegal meetings held by elected and appointed county officials are coming up on their third anniversary. Attached are electronic files for both the March 27, 2007 and May 30, 2007 "workshops." Emphasis was added to these transcripts March 23, 2009. I will no longer provide photocopies and high resolution photographs that county officials pay no attention to, as doing so is expensive. Photocopies (2 sides) of these files (238 pages) can be purchased locally in Brookings for **$11.90** from a for profit retail copy shop. Charges for Curry County or the City of Brookings (not for profit) to provide the exact same documents as public records totals **$59.50** or **five times** the amount charged by the local for profit business in Brookings. Why is that the case commissioners? Sure makes you not want to run out and request copies of public records. I would encourage both of you gentlemen to as a minimum read the text in these files where emphasis has been added. Below is one quote from each document to create some interest or at least curiosity.

March 27, 2009: Page 22; Ex Brookings City Manager representing a large land owner/developer to the other "workshop" participants. **"There was one provision the other day when I talked about it."**

My gosh! Was there another illegal meeting prior to this one?

May 30, 2007: Page 53; County commissioner to the Ex Brookings City Manager representing a large land owner/developer present at the meeting. **"No, you can't have everything you want."**

They got everything including the farm and the farmhouse prior to hearing any other citizen input or for that matter, before any citizen-at-large knew anything about the proposed Mixed Use Master Plan Zone Ordinance. Actually, this individual is to be commended. Their manipulation of the officials present during these workshops was eloquent. There are many times throughout the transcripts where this individual carefully leads the commissioners, Planning Director and county attorney around a particular subject matter and then focuses them on specific points or ideas before raising the question; what do you think? Officials then react with that was a good idea they had. Then they are cleverly lead to the next objective. The behavior might also be likened to that of a chess player strategically placing the participants (Pawns, Rooks, Bishops, etc.) where they wanted them on the board. You have to read it to appreciate it commissioners.

Second: Attached are two copies of a DVD video dated June 24, 2009. KBSC Channel 9, Brookings, Oregon, owns the copyright. Title: "Jim Newman; In My Opinion." I was provided two copies at no charge and given permission to freely copy the DVD's. DVD - R Media costs 30¢ to 50¢ per disk. Let's splurge and call it an even **$1** each. It took maybe three minutes to electronically identify the content of the DVD, insert it into the computer DVD bay, open and execute the appropriate software program and remove the DVD once the copy was complete. Why is the public record charge for two DVD's from the county **$70** commissioners? Feel free to watch as you might enjoy some history on just how the proposed Mixed Use Master Plan Zone ordinance was conceived.

Third: July 2008 the charge for audiocassette tapes for any audio recording of commissioner meetings was **increased 250%** from $10 each to $25 each. Makes you want to rush right out and purchase one of these after each public meeting you may have interest in or been interested in and unable to attend. The Curry County Board of Commissioners was asked to provide an explanation for the exorbitant increase, as $10 was bad enough.

Oregon Public Records Law expressly authorizes a public body to establish fees *"reasonably calculated to reimburse the public body for the public body's **actual*** [emphasis added] *cost of making public records available."* ORS 192.440 (4) (a). The commissioners response was *"I did connect with ...(county attorney) this morning on the issues regarding public information. If there is no public document generated then the law does not require an answer. As far as the fees the inquires with other agencies from staff was made orally."*

Simply put, the Curry County commissioners and county attorney's position is if they determine fees "orally" they don't have to provide written justification for the actual costs of any public records fees. If you don't like it, tough. Hire an attorney.

Commissioners, go to Josephine County's website links below for some examples of transparency. All this information and much more is available for download at **NO CHARGE.**

http://www.co.josephine.or.us/index.asp Josephine County Home Page

http://www.co.josephine.or.us/Agendas.asp?SectionID=104 Archived Minutes: Board of Commissioners

http://www.co.josephine.or.us/Page.asp?NavID=790 Audio Recording of Minutes

http://www.co.josephine.or.us/Sitemap.asp Detailed Sitemap of Website

http://www.co.josephine.or.us/files/07-08P.pdf Organizational Chart & Salary Structure

http://www.co.josephine.or.us/Page.asp?NavID=1197 Current & Five (5) Prior Years of County Budgets

Fourth: June 24, 2009 article in the Curry Coastal Pilot titled "County zoning ordinance draws few people." The article mentioned **only** [emphasis added] four people appeared at the hearing. This was followed with *"...one person **who only got up and said*** [emphasis added] *the proposed ordinance should go to a vote of the people."*

What the article neglected to address was;

A: Those "people" drove 70 miles round trip from Brookings Harbor to Gold Beach to attend that meeting.

B: September of 2008 those and other "people" drove the same 70 miles to attend a public meeting on the same proposed Mixed Use Master Plan Zone Ordinance to learn testimony provided by some of the "people" had been censored and withheld from the Planning Commission members. You would have expected to see a future article in the newspaper titled **"County Planning Director Censors All Citizen's Testimony With Full Knowledge of County Attorney"** or something like that as the same Brookings newspaper staff writer was sitting in the front row of the hearing room that evening.

C: March of 2009 those and other "people" drove the same 70 miles to attend a Planning Commission "workshop" on the same proposed Mixed Use Master Plan Zone Ordinance. They watched intently as the Planning Director and county attorney whispered between one another while scanning those in the audience to see who was present. Then a funny thing happened; the Planning Director and county counsel decided there would not be a meeting on the proposed Mixed Use Master Plan Zone Ordinance that evening after all even though it had been **advertised** in the local newspaper. Those from Brookings who had driven the 35 mile one way trip to Gold Beach proceeded to drive the 35 miles back to Brookings.

Commissioners that **ABUSE OF POWER** really gets old.

Where was the staff writer who wrote the June 24, 2009 article regarding the public hearing June 11, 2009? Not at the hearing. I spoke with the "person" who only got up and said the proposed ordinance should go to a vote of the people. When asked to explain they responded they wanted their legal rights of referendum back that have been taken away by the county attorney and Curry County Board of Commissioners.

Fifth: July 1, 2009 article in the Curry Coastal Pilot titled "County planners delay master plan decision." The article states that the Curry County Planning Commission delayed action on any decision about the matter until August 30, 2009 when in fact, it was the county Planning Director and county attorney stating "We've received a tremendous amount of interest recently that we haven't had a chance to see,..."

One evening in December 2008 the Board of Commissioners met in Brookings for a "joint" hearing to consider approval of revisions to a storm water plan for the entire Brookings/Harbor area. This study had cost taxpayers nearly $140,000 according to Brookings Planning Department officials. Oh, by the way, city personnel didn't have a clue how much it cost until citizens asked them. Two months later they finally figured it out. Oh well, it was only around $140,000. Anyway, the commissioners were provided a significant amount of testimony and asked to thoroughly review prior to making any decision. Officials were told citizens were very disturbed about missing public records (e-mail) associated with this study from Oregon Department of Land Conservation and Development (DLCD) personnel that were critical of the study results.

Suffice to say; early the following morning county commissioners unanimously approved the action before them on the subject storm water plan. That's OK. As stated earlier, officials appear to have been of the belief they are not required to listen to, read or pay attention to any testimony

Concern was also raised about county Planning Department staff's failure to properly manage required geologic and storm water permit requirements on a particular parcel on the western slopes of the Harbor Hills. This was **just one lot and one house**. Citizens were concerned of a catastrophic failure because of pre-construction geologic and storm water requirements not being enforced by county staff. Citizens went so far as to state in written testimony that evening **"This is still a ticking time bomb as the situation has never been rectified nor did the Planning Director even ever respond to the e-mail."**

December 28, 2008 **the time bomb went off!** http://www.runawayfreighttrain.com for details. Holding true to form in government, **NO ONE WAS HELD ACCOUNTABLE.**

Staff from the local Brookings newspaper (Curry Coastal Pilot) came through in normal fashion to bring citizens fair, in depth, balanced and accurate news coverage of the above December 28, 2008 event. Their December 31, 2008 edition dedicated one entire sentence on page A2 stating, *"A slide on Serenity Way, a private road in the Harbor Hills, was being cleared on Tuesday."* January 5, 2009 in response to citizens concerns living above the slide area the Curry Coastal Pilot Editor responded with *"Please e-mail me two or three photos of the slides. I am curious to see what it actually looked like."*

Oh My! Did they really say that? Yes they did! The Editor's request was via e-mail. There is no Serenity Way, Road, Drive, Avenue or whatever in Brookings, Oregon. The actual street the landslide occurred on was Harbor Hills Height Road. As for the Editor's **curiosity**; this is what good journalism is **NOT**. For what good journalism should be go to http://www.spj.org/pdf/ethicscode.pdf for the Society of Professional Journalists Code of Ethics. And the moral of the story is: Don't believe everything you see online and for darn sure, don't believe everything you read in your local newspaper.

The July 1, 2009 article concluded with county legal staff stating the planning commission needs to act on the proposed Mixed Use Master Plan (MUMPZ) Ordinance, sending it to the County Board of Commissioners. I beg to differ. Planning Commission members do not need to be intimidated or coerced or manipulated into acting on matters created illegally.

People first need to stand up and say **NO** to any such behavior on the part of elected or appointed officials.

EXHIBIT: 6 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 7-30-09
PAGES: 107
SUBMITTED BY: Pat Sherman

A citizen's narrative on two quasi-judicial hearings in the City of Brookings

Submitted to Oregon Land Conservation and Development Commission

July 29- 31, 2009

Brookings, Oregon

Pat Sherman
PO Box 1140
Brookings, OR 97415

Oregon Land Conservation and Development Commission
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Chairman and Members of the Commission:

The enclosed narrative is submitted to you in your role as overseers of DLCD and in conformance with one of your assigned duties: to insure widespread citizen involvement and input in all phases of the land use planning process. This narrative relates events that occurred with two quasi-judicial hearings that were conducted by the City of Brookings in 2008 – 2009. Both of the cases have completed their journey through the various appeals processes and, for the time being, are closed cases.

Numerous problems were encountered or observed before and during the hearing process. The problems involved many government employees and elected officials at the local and state level. Some of the problems were within the margin of error for land use hearings; I doubt there have been many flawless hearings. Some of the problems were serious problems that undermined public trust in the hearing process. Still other problems were egregious, possibly rising to the level of misdemeanors and civil offences.

I participated in both of the hearings. I either experienced the events described herein, or was a first hand witness to the events. Other citizens had additional unfortunate experiences in the hearings, but I leave it to those citizens to come forward with their stories.

I have organized the narrative around ten items. Each item is supported with documentary evidence. In writing the story, I attempted to reflect back on the events in order to see if there was a lesson to be learned. I concluded that the problems encountered in these two hearings were unrelated to the hearing process itself. Rather, the failures were due to the unprofessional conduct of the government officials involved, the absence of oversight, and a complete lack of accountability. In particular, I opined that even though land use planners – both in the public and private sectors – work in an environment where personal agendas and political interests can interfere with impartial analysis, there is no independent oversight of this group of people. Because land use planners are involved with decisions that cost cities, counties, the state and their taxpayers millions upon millions of dollars, I think this gap in our system should be corrected.

I decided to bring this story to your attention because, knowing what I know, it would be wrong for me to remain silent about such a serious matter. It is my hope that you will read the narrative, give it fair consideration, and take appropriate action as you see necessary. If you require, I will make myself available for questioning at future LCDC meetings.

Sincerely yours, Pat Sherman

Pat Sherman July 30, 2009

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1B Letter dated March 18, 2008 from Planning Director Dianne Morris to Tim Ramis (1 page)
1C Emails dated March 31, 2008 between Morris and land use attorney J. Spickerman (2 pages)
1D Letter dated April 4, 2008 from J. D. Brown to Morris (2 pages)
1E Staff report excerpts dated May 20, 2008 (2 pages)
1F Fax cover sheet dated May 30, 2008 from Morris to City Attorney John Trew (1 page)

2A Letter dated April 29, 2008 from Burton Weast to Morris (2 pages)
2B Findings for MPD-1-08 as proposed by Morris (1 page)
2C Findings dated July 1, 2008 for MPD-1-08 as approved by Planning Commission (1 page)

3A Forwarded copy of email dated June 18, 2008 from C. Wiley to C. Tuss, US Fish and Wildlife (1 page)
3B Email dated July 1, 2008 from C. Wiley to P Sherman (1 page)
3C Letter dated May 30, 2008 from C. Tuss (no date stamp) (2 pages)
3D Letter dated May 30, 2008 from C. Tuss (date stamp June 5) (1 page)
3E P. Sherman Email dated June 27, 2008 regarding post office (1 page)
3F Email dated June 10, 2009 from C. Tuss to P. Sherman (2 pages)
3G Testimony dated July 9, 2008 from C. Tuss (first page only) (1 page)
3H Emails dated June 30, 2008 between Morris and Sherman (1 page)
3I Email dated June 30, 2008 from Sherman to self (1 page)
3J Email dated June 30 from Cathie Mahon to Sherman (1 page)
3K Series of emails dated June 30, 2008 between Colby-Hanks and Sherman (3 pages)

4A Sherman July 15, 2008 testimony for MPD-1-08 (11 pages)
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8A Sherman August 12, 2008 testimony with Nysted's attachment for DDP-1-08 (3 pages)

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9B Staff report for DDP-1-08 (2 pages)
9C Email dated August 31, 2008 from Sherman to Morris (1 page)
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9E Letter dated Sept 12, 2008 from Mayor Anderson to Sherman (1 page)
9F Letter dated Sept 13 from Sherman to Milliman (1 page)
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10A Cline August 12, 2008 testimony for DDP-1-08 (1 page)
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10C CRAG Law Center testimony dated October 14 for DDP-1-08 (6 pages)

11A Newspaper article dated September 16, 2008 (1 page)
11B Newspaper article dated October 7, 2008 (1 page)

A citizen's narrative on two quasi-judicial hearings in the City of Brookings

Submitted to Oregon Land Conservation and Development Commission
by Pat Sherman
July 29- 31, 2009
Brookings, Oregon

What follows is my recollection of events related to two separate quasi-judicial hearings in the City of Brookings. Both of the cases involved the same piece of property. The cases are MPD-1-08, an application for a two year extension of time for an approved master plan, and DDP-1-08, an application for approval of a detailed development plan – the first development phase of the master plan. A brief analysis follows the story.

Case MPD-1-08

Case MPD-1-08 timetable

June 3, 2008 – Planning Commission Hearing
June 17, 2008 – Planning Commission Final Order
July 16, 2008 – City Council (Appeal) hearing
August 21, 2008 – City Council hearing continued
August 25, 2008 – City Council hearing continued
September 8, 2008 – City Council Final Order
February 24, 2009 – LUBA decision affirmed approval

Item #1. A sense of urgency. The Lone Ranch Master Plan had been approved on October 25, 2004; the decision had been appealed to LUBA and remanded back to the city, and the approval of the remanded issues was completed on August 22, 2005. The Brookings Municipal Code (BMC) for master plans requires that a detailed development plan (DDP) for the first phase of the development be submitted and approved prior to the expiration date of the master plan.

In 2008 the timeline for approval of the master plan extension was a short one due to the fact that planning staff had incorrectly assumed, and incorrectly advised the applicant, that the master plan expiration date was August 22, 2009, when in fact the expiration date was October 25, 2008.

On March 7, 2008 the applicant's attorney, Tim Ramis, sent a letter to City Manager Gary Milliman in which he inquired when the expiration date of the master plan was.

(Attachment 1A) On March 18, 2008 Planning Director Dianne Morris, apparently without seeking a legal opinion, replied to Mr. Ramis's letter and she wrote that the expiration date of the master plan was August 22, 2009. (Attachment 1B) On March 31, 2008, apparently in response to a challenge about the expiration date by opponents, Ms. Morris sought a legal opinion from the city's land use attorney, James Spickerman, in which Mr. Spickerman *(incorrectly)* affirmed Ms. Morris's statement to Mr. Ramis. (Attachment 1C) On April 4, 2008 attorney James D. Brown, on behalf of Oregon Shores Coalition and Catherine Wiley, sent a letter to Planning Director Morris in which he cited a recent case proving that the expiration date of the master plan was October 25, 2008. (Attachment 1D)

If the master plan wasn't extended, and/or a detailed development plan wasn't approved by the expiration date, the applicant would have had to resubmit a master plan and start the whole process from the beginning – an option that would be undesirable to the applicant and to city staff. As staff reported in its May 20, 2008 report, it was "unlikely that the college or any applicant for a DDP could move through the process in only 5 months." (Attachment 1E) So, because it was unlikely that a DDP could be approved by the deadline of October 25, the applicant submitted an application for a two year extension of the master plan. In a fax cover sheet which was sent to City Attorney John Trew on May 30, 2008 Ms. Morris wrote: "Tim Ramis & others didn't give this case much consideration as it marched through the courts never dreaming this would be the outcome!" (Attachment 1F) Thus, as can be seen from the fax cover sheet sent to City Attorney John Trew, there was a sense of urgency created by the underlying circumstances of the case.

Item #2. Misinterpretation. The quasi-judicial hearing for case MPD-1-08 extension was scheduled for the June 3, 2008 Planning Commission meeting. The only criterion for approving the extension was for the Planning Commission to determine that "conditions had not changed" since the master plan had been approved. Staff, in its report of May 20, 2008, referred the Planning Commission to the applicant's explanation of "conditions have not changed," and concurred that "no circumstances had changed that were fundamental to the findings which were the basis for approval of the Master Plan of Development." (Attachments 1E and 2A) Staff recommended approval of the extension.

The opponents to the extension, using the definition of "conditions have not changed" proposed in the staff report as their frame of reference, presented persuasive testimony to the Planning Commission that conditions had indeed changed in several significant respects since the master plan had been approved. The Planning Commission denied the extension. For doing so, they were chastised by the press in an editorial in the *Curry Coastal Pilot.*

Planning Director Dianne Morris drafted the findings of fact which were to be approved by the Planning Commission at its next meeting. Among the proposed findings she wrote: "The majority of the Planning Commission was uncertain if any conditions had changed." (Attachment 2B) The Planning Commissioners did not agree that the findings of fact, as written by the Planning Director, were an accurate representation of the basis for the Planning Commission's decision. The Planning Commissioners directed the Planning Director to change the findings, which the Planning Director did. One of the amended findings stated: "The majority of the Planning Commission believed conditions had changed." The Planning Commission approved the amended findings of fact on June 17, 2008. (Attachment 2C) The Planning Director's initial submission of the findings could suggest that she was not neutral.

Item #3. Important testimony. Conflicting answers. Now, I have to digress to a discussion about a piece of testimony that had been submitted for the Tuesday, June 3 Planning Commission hearing. On Friday May 30, 2008, Craig Tuss, US Fish and Wildlife, mailed his testimony for the June 3 hearing from his Roseburg office, addressed to the Planning Director. The testimony was not provided to the Planning Commission.

On June 18 I received a phone call from Catherine Wiley, a citizen who was participating in the hearing, who told me that she had just come from City Hall where she had discovered, in a file belonging to the City Manager, the May 30 letter from Mr. Tuss. (Attachment 3A). Ms. Wiley told me the letter had no date-of-arrival stamp on it. Ms. Wiley also told me that when she discovered the letter, she was in the presence of the Senior Planner, Donna Colby-Hanks, who said, according to Ms. Wiley, that neither she, the Senior Planner, nor the Planning Director had seen Mr. Tuss's letter. (Attachment 3B) I asked Ms. Wiley to read Mr. Tuss's letter to me, which she did. When Ms. Wiley read the letter to me over the phone I immediately recognized that Mr. Tuss's testimony, in particular the part that said – "based on our partial inspection of the

property in July 2005, it appears that the MPD *[Master Plan of Development]* overly estimates the development potential of the site, with regards to the stated objective (LUBA remand order) to 'protect the wetlands and western lily'" – could easily be interpreted as a "circumstance that undermined the findings." (Attachment 3C)

The facts that the letter had apparently been mailed from Roseburg on May 30; that the letter had not been provided to the Planning Commission on June 3; that the letter was discovered by a citizen on June 18; that the letter did not have a date-of-arrival stamp on it when it was found; that the letter was discovered in a file in the City Manager's office; that the content of the letter, expert testimony as it was, could, without any other testimony, be reason for the Planning Commission to find that "conditions had changed;" that there was a sense of urgency about the case – all of these facts gave rise to a suspicion that something might be wrong.

On June 26, 2008 I submitted a public records request for the Tuss letter. On June 27, 2008 I picked up the requested record at City Hall and was surprised that the letter, which had no date-of-arrival stamp when it was discovered on June 18 by Ms. Wiley, now had a date-of-arrival stamp of June 5 affixed upon it. (Attachment 3D) This date was two days after the Planning Commission hearing and six days later than the date on the letter, May 30, 2008. After leaving City Hall, I then went directly to the post office. I asked the postal clerk how long it took for a letter mailed in Roseburg on a Friday to get to Brookings. She told me a letter mailed in Roseburg on a Friday would arrive in Brookings on Monday or Tuesday. I asked if it could arrive on a Wednesday or Thursday. She said: "if it fell off of the truck." (Attachment 3E) I later communicated with Mr. Tuss, (I think it was via email but may have been by phone) and he confirmed that he had mailed the letter on Friday, May 30. (Attachment 3F) I also asked Mr. Tuss if he could send a mailing from Roseburg in order to ascertain how long it took for a letter to get from Roseburg to Brookings. Mr. Tuss subsequently sent additional testimony to the city; he mailed the follow-up letter on July 9, and it arrived – based on the date-of-arrival stamp – on July 10. (Attachment 3G)

On June 30 I sent a series of emails to the city administrative secretary and to the planning office. The thrust of my inquiry was to find out what had happened with the Tuss letter. (Attachment 3H) I learned that the date-of-arrival stamp of June 5 had been affixed to the Tuss letter on June 26 and that the Planning Director pointed to the Planning Secretary, Cathie

Mahon, as being the person responsible for affixing the date stamp. The Planning Director also wrote that the Senior Planner and the Planning Secretary both remembered the arrival of the Tuss letter on June 5. Shortly after my initial inquiry I received a phone call from Planning Director Morris. I wrote down my recollection of our phone conversation in the evening of June 30 as follows: "Dianne said generally that there was much happening the day after the Planning Commission hearing and the letter got put in a file. I asked which file. She said there were many files and she did not know which one it was put into because there were so many files. Dianne also stated that she is an ethical person and that I should know that she is an ethical person because I worked with her. I asked Dianne if she would ask Cathie and Donna to verify to me that they remember the arrival of the letter." (Attachment 3I) In a subsequent phone conversation, the Planning Secretary said she put the date stamp of June 5 on the letter on June 26, but said that she did so only after she had been directed to do so by the Planning Director. Further, the Planning Secretary denied remembering the arrival of the letter, saying she did not see the letter until June 26 when she put the June 5 date stamp on it. (Attachment 3J). Senior Planner Colby-Hanks was evasive in a series of emails about her recollection of the arrival of the letter. A final email inquiry to the Senior Planner from me which asked point blank questions went unanswered. (Attachment 3K)

Mr. Tuss's letter was important expert testimony. A date-of-arrival stamp was improperly affixed on the letter three weeks after the Planning Director claimed the letter had arrived. Planning staffs' answers to the questions about the Tuss letter failed to verify the Planning Director's statements about the timing of the letter's arrival. The Planning Director's statements about the date of arrival of the letter did not line up with comments by the postal clerk. Even though the May 30 testimony from Mr. Tuss was included in the City Council packet for the appeal, it appears that it had been withheld from the Planning Commission.

In the meantime, while the incident about the Tuss letter was unfolding, the applicant had appealed the Planning Commission decision to the City Council. The hearing was scheduled for July 16, 2008. Staff's recommendation was to overturn the Planning Commission decision and approve the extension.

Item #4. A simple misstatement. A citizen responds. DLCD's Mr. Perry intervenes.

On July 15, I submitted extensive testimony in opposition to the extension. I concluded my testimony with comments about my observations about the process of the hearing, making note of some unusual actions taken in the case. Specifically, I noted that it was highly unusual for staff to recommend overturning a Planning Commission decision and that it was also highly unusual to change a definition – the definition of "conditions have not changed" – in the middle of the game. (Attachment 4A, p. 11) Those comments triggered a chain of events.

Even though the above comments did not address the criteria used to decide the case, in the July 16 City Council public hearing the Planning Director chose to address the comments. In response to my observation about the unusual action of recommending overturning the Planning Commission decision, the Planning Director cited a 2003 case in which she claimed staff had recommended overturning a Planning Commission decision.

On Thursday July 17 I sent an email to the Planning Director inquiring about the 2003 case that she had cited at the public hearing, and I later requested a copy of the staff report for the 2003 case; my intention was to compare and contrast the 2003 case to the current case. (Attachment 4B) Facing a deadline of July 23 to submit additional testimony, on Monday July 21, I phoned City Hall inquiring about the requested record. The Planning Director asked if I could meet with her at City Hall to discuss the record.

I met with the Planning Director in her office. The Planning Director gave me the requested document, and several other documents that I had not requested. Contrary to the Planning Director's statement in the public hearing, there was no recommendation to the City Council to overturn the Planning Commission decision in the 2003 case. In fact, staff had not made any recommendation at all in the 2003 City Council appeal.

The Planning Director had made an obvious error in her statement at the hearing about the 2003 case, and the issue could have been settled in that meeting in the Planning Director's office if the Planning Director simply corrected the error. That is not what happened. What happened in our meeting was the Planning Director handed me the record that showed she had made an insignificant misstatement, and with tears in her eyes, said something to the effect of: "you know I am an honest person." The Planning Director did not acknowledge, much less correct, the misstatement she had made at the hearing, and she subsequently failed to correct the

misstatement in the public record. She appeared to be more concerned with showing that the hearing was a *de novo* hearing, and also with protecting her workmanship, than with assuring that the public record was as accurate as possible.

Up to this point – the July 21 meeting in the Planning Director's office – I had been willing to give the Planning Director the benefit of the doubt with regard to the irregularities that had happened with this case. The turning point for me was when the Planning Director made the tearful you-know-I-am-an-honest-person comment at our meeting, coupled with her failure to acknowledge the simple misstatement about the 2003 case. I thought that the Planning Director had put her personal interest above the public's interest and, in so doing, had compromised herself; consequently she was not a person that, in my opinion, was a trustworthy public employee.

How badly the Planning Director had actually compromised herself was not evident to me at our July 21 meeting. It was much later – after the master plan extension had been approved – that implicating emails emerged related to testimony submitted by DLCD South Coast Representative Dave Perry. I postpone discussion of those emails to a later time in order that I may discuss events as they appeared to me while they were unfolding.

After the meeting in the Planning Director's office, I completed the testimony I had begun over the weekend. I decided to add information about the sequence of events related to the Tuss letter. I included the comments about the Tuss letter because: I knew that if I had been on the City Council, and if questionable activities such as what may have happened to the Tuss letter were going on, I would have wanted to know about the activities; I have a belief that if a person detects a problem and fails to act, then that person becomes part of the problem; I thought it was important to establish a testimonial record about the Tuss letter incident in case such a record was needed at some time in the future; I had lost trust in the Planning Director. In my testimony, I included a "red flag" statement expressing my distress about staff's management of the case; my hope was that the statement would raise concern among the City Council. (It didn't.) I submitted the testimony on July 23. (Attachment 4C) The testimony was copied to Director DLCD, Richard Whitman, in order to establish a testimonial record and to the Planning Commission because it serves as our Citizen Involvement Committee.

On July 30, letters from the Planning Director, South Coast DLCD Representative Dave Perry, and the applicant's attorney Tim Ramis (signed by one of his associates) were included in the supplemental packet for the hearing. (Attachment 4D)

In her testimony the Planning Director wrote that the Senior Planner had remembered the arrival of the Tuss letter; (Attachment 4E) however, there was no supporting statement from the Senior Planner in the Planning Director's testimony and, as a matter of fact, there existed an earlier contradictory statement from Catherine Wiley, and an earlier evasive statement from the Senior Planner. The latter two pieces of information were not in the record for the MPD hearing. (Attachments 3B and 3J)

Mr. Perry had not participated in the hearing up to this point, and would have been excluded from submitting testimony because the record was open at this point only to those who had participated in the hearing or submitted testimony in the first seven days when the record was left open to all. On appeal, LUBA ruled in favor of the City on the issue of the admissibility of Mr. Perry's testimony, and LUBA denied that the opponents should have an opportunity to rebut Mr. Perry's testimony. (Attachment 4F) However, at the LUBA hearing the emails that showed how Mr. Perry's testimony was procured were not brought forward. Mr. Perry's testimony was problematic. (Attachment 4G)

- First, Mr. Perry wrote: *"It seems there is some confusion over the real heart of the matter in this case. So much so, that the planning staff's judgment has been called into question, based on faulty reasoning."* It is unclear what Mr. Perry meant by this statement, but the implication is that he thought the opponents to the extension had no business questioning planning staff's judgment and that the opponents were irrational. The comment was bizarre, unprofessional and uncalled for.
- Next, Mr. Perry wrote: *"The city code (BMC 17.70.120) requires that an extension request be reviewed in light of changes in circumstances that may significantly undermine the validity of the city's original decision."* As a matter of fact the city code is silent about what constitutes a change in conditions. (Attachment 4H) Mr. Perry's assertion may have been his opinion but, since he is a seasoned professional, there can be no doubt that he knows that an opinion should be identified as such in public testimony.

- Next, Mr. Perry wrote: *"Some of the testimony from opponents simply does not line up with the facts."* This general statement had no value in that it failed to refute specific testimony.
- Finally, Mr. Perry wrote: *"I have represented the Department of Land Conservation and Development on Oregon's south coast for over 13 years. In my opinion, Dianne's report and recommendation to the Council on this matter are well considered and her work on this case demonstrates her professional commitment to a fair and sound land use process."* Since the testimonial in support of the Planning Director was unrelated to the criteria used to make the decision, it was inappropriate for the DLCD representative to include the gratuitous statement with his testimony.

Item #5. Inappropriate communication. On July 30, 2008 the planning Director sent an email to a private citizen. The email said, in part:

> *"I have come very close to looking for another occupation do to the very personnel attacks to do with the Lone Ranch extension request. I'm used to taking heat but to be called a liar and unethical in the public record is disheartening. There are also serious efforts to alienate the Planning Commission from me which would make an unworkable situation. I decided I had to respond to the accusations and have just done so. Do hope things improve soon. Sorry to whine. Other than that, life is sooooooooo good."*
> Signed Dianne Morris. (Attachment 5A)

When I saw the email I was appalled that the Planning Director sent this email to a private citizen. The statement that she had been called a "liar" was a false statement. The statement about there being efforts to alienate the Planning Commission from the Planning Director was also baseless. The tone in the email was unprofessional.

Lest there is any uncertainty about who the Planning Director was referring to in the July 30 email to the citizen, a follow-up email was sent to the same citizen on August 4, in which the Planning Director named "Pat and the other 2 in opposition" as the people responsible for her distress. (Attachment 5B)

The City Council approved the extension on August 25 and approved the final order and findings of fact on September 8, 2008. In reaching its decision the Council relied on Mr. Perry's testimony; and the findings of fact, written by the applicant's attorney Tim Ramis, included quotations from Mr. Perry's expert testimony as part of the rationale for approving the extension. In its discussion, the City Council expressed their sympathy for the Planning Director and the travails she had dealt with during the hearing process and praised her for her "fine work." There was no local oversight whatsoever at the time, and there has been no accountability since.

Item #6. Solicitation for support. As I mentioned previously, emails emerged after the completion of the master plan extension hearing. The emails from the Planning Director to Mr. Perry are now discussed.

The first email was sent to Mr. Perry on Thursday, July 17 at 1:11 p.m. This would have been after the Planning Director received my inquiry about the staff report of the 2003 case mentioned previously; and the timing of the email to Mr. Perry would suggest that it was about that time that the Planning Director realized she had made an erroneous statement in the public hearing on July 16 about the 2003 case. The email follows:

"Subject: *Help!*

Hi Dave, Did that subject get your attention? ☺ I do have a request due to Pat Sherman's publicly made assertions that I made an inappropriate recommendation to the City Council for approval of the Lone Ranch Master Plan extension request after the Planning Commission had denied it. Would you please write something to the effect that an appeal is a de novo hearing and if Planning staff feels the criteria has been met their recommendation should be for approval regardless of whether the PC denied it in the initial hearing. I know it sounds like small stuff but it really isn't given all the attacks that have been going on. This seems like an effort to alienate the PC from me now. I would REALLY appreciate just a quick e-mail confirming the above!!!! Thanks, Dave. The Council just took testimony last night and continued the hearing for more written information and then deliberation on Aug. 21. All in all it went pretty well but was very painful to have all the negativity publicly aired."

Signed Dianne Morris (Attachment 6A)

Even now, months after I first saw the above email, the unprofessional sniveling tone of the email angers me as a person, a citizen, and mostly as a former mayor and successful career woman. The Planning Director's apparent thought that comments critical of the hearing process did not belong in the public record was wrong; the public record is precisely where such issues must be raised. The Planning Director's apparent thought that there was an effort to alienate her from the Planning Commission was baseless. But, to me, the worst of all was that the email made an absolute mockery of the you-know-how-honest-I-am statement that the Planning Director made to me in her office only four days later on July 21.

The second email was sent to Mr. Perry on 7/28/2008 at 5:08 p.m. This was after I had submitted my July 23 testimony. The email follows:

> *"Hi Dave. We sent you Exhibit J last Thursday which includes Pat Sherman's letter criticizing my handling of the application. I had asked you to write a brief email stating that the PC doesn't make a recommendation on quasi-judicial hearings and it is proper for staff to recommend approval to the Council IF they feel the criteria is met. Would you please do it now? She sent the letter to the PC (and your Director!) which will strain our relationship. If you feel inclined to say something about your Dept's experiences with me over the last 20 years as being diligent in upholding land use laws that would be sooo helpful too. This is so sad for me. Anything that you can do to offer support will be much appreciated. Thanks Dave."*
>
> Signed Dianne Morris (Attachment 6B)

What this email shows is that the Planning Director made a legitimate request for Mr. Perry's expert opinion about the hearing process. She also made an inappropriate solicitation for a personal favor that would benefit the Planning Director. While the request for a personal recommendation would be appropriate if the Planning Director was applying for a job, the request was made in her role as the Planning Director in a quasi-judicial public hearing which, I think, was an abuse of her office. As the public record shows, Mr. Perry willingly obliged the Planning Director's request for a personal favor and included his testimonial about the Planning Director's "professional commitment to a fair and sound land use process." Ms. Morris expressed her gratitude to Mr. Perry, informing him: "I'll sleep better tonight!" (Attachment 6C) As noted previously, Mr. Perry's testimony was the expert testimony that was relied upon

by the City Council in making its decision. The testimony was ill begotten. Although the issue of the admissibility of Mr. Perry's testimony was settled in favor of the City by LUBA, I think the manner in which it was procured was unethical and the manner in which it was included in the record was manipulative.

Because the Planning Director had obtained the supportive testimonial from Mr. Perry through solicitation, the testimony from the applicant's attorney, Mr. Tim Ramis, submitted on the same day as Mr. Perry's testimony, became suspect. (Attachment 6D) It is exceptional that Mr. Ramis's testimony was not signed by Mr. Ramis. Keeping in mind that as the applicant's representative Mr. Ramis had an additional seven days to submit final testimony, it seems peculiar that Mr. Ramis would decide that the need to submit testimony defending the Planning Director was of such importance that it couldn't wait until he could sign the letter himself. After all, there was no need to rush. Indeed, given the *prima facie* evidence that Ms. Morris had solicited a personal favor from Mr. Perry, it seems highly probable that she made a similar request to the applicant's attorney, Mr. Ramis, or to one of Mr. Ramis's associates.

Additional comments regarding case MPD-1-08

What happened to the Tuss letter in case MPD-1-08? There are any number of possibilities, including the unlikely possibility that the letter did indeed arrive on June 5, six days after it was mailed from Roseburg. My theory about what happened is this: the letter probably arrived either Monday or Tuesday, after the Planning Director had prepared the staff report and prior to the Planning Commission hearing. I think the Planning Director probably read the letter, reacted not unlike I had done when the letter was read to me by Ms. Wiley on June 18, and realized the expert testimony could be the basis for the Planning Commission to determine that "conditions had changed" since the master plan had been approved. I think the Planning Director probably panicked, and communicated her concern to the City Manager, and then somehow the letter disappeared until June 18.

Was my July 23 testimony appropriate? I think the testimony was timely, insightful and within the bounds of a fair and reasoned argument. Moreover, in light of the subsequent discovery of the solicitous emails, I think the testimony was restrained and, in a sense, prescient.

Case DDP-1-08

Case DDP-1-08 timetable

August 5, 2008 – Planning Commission hearing

September 2, 2008 – Planning Commission hearing continued

September 9, 2008 – Planning Commission Final Order

October 20, 2008 – City Council (Appeal) hearing

December 3, 2008 – City Council hearing continued

February 25, 2009 – City Council hearing continued

March 9, 2009 – City Council Final Order

Case DDP-1-08, the second hearing related to this property, was an application for a detailed development plan (DDP) by Southwest Oregon Community College for a new college campus.

Item #7. Cave people. The Planning Commission hearing was held on August 5, 2008. Persons in attendance included State Representative Wayne Krieger, City Councilor Dave Kitchen, College President Judith Hansen, College Board member Cherie Mitchell and others. The Chair of the Planning Commission read the instructions to all in attendance including the statement that testimony should address the criteria used to make the decision. The hearing proceeded. All of the above listed people spoke at the hearing, but not one of the people addressed a single criterion in their presentation. Worse than that, without having listened to or read any of the testimony submitted by participants who raised questions related to the criteria, both Mr. Krieger and Mr. Kitchen, as part of their public testimony, called those participants "cave" people. (Attachment 10C, pp. 2-3)

It was a known fact that the site of the proposed campus contains archeological artifacts. It so happened that in attendance at the hearing, and sitting next to me, were two members of the Tolowa tribe who had come to the hearing to highlight their concern that care should be taken with regard to the archeological artifacts. It was their first visit to Brookings City Hall. Although the cave people comment was not intended for the Native Americans in attendance, I

can't begin to describe how the expression on their faces changed when Mr. Krieger, followed by Mr. Kitchen, made their comments about cave people.

Thus was the tone of the DDP hearing: if you have legitimate issues or concerns about this proposal, then you are a cave person. I was glad that I had submitted my testimony in writing and in advance because I lack the courage to speak up in such a hostile environment. I was proud to watch the Native Americans and others go to the lectern and present their testimony that addressed the criteria; in the toxic environment I described, it took a lot of courage for these people to stand up in front of these politically powerful people, and make their statements.

Item #8. Citizen's testimony refused. The evidentiary hearing was completed and the record was left open for additional testimony for seven days. During the seven day period in which the record was left open, on or about August 10, 2008, a citizen, Barbara Nysted, attempted to submit testimony, in conformance with the statute, ORS 197.763 (c). The Planning Director, apparently without consulting the City Attorney, arbitrarily refused to accept the citizen's lawfully submitted testimony. The Planning Director reportedly told the citizen that testimony would only be accepted from those who had participated in the initial evidentiary hearing, and the citizen had not participated in the original evidentiary hearing. (Since I had participated in the hearing I agreed to submit the citizen's refused testimony as an attachment, and did so on August 12.) (Attachment 8A)

This refusal by the Planning Director to accept the citizen's testimony in case DDP-1-08 contrasted with the Planning Director's treatment of testimony that had been submitted less than two weeks previous in case MPD-1-08, by a public employee, DLCD South Coast Representative Dave Perry. Like the citizen in the DDP case, the public employee had not participated in the initial evidentiary hearing in the MPD case. But, unlike the citizen, the public employee submitted his testimony after the public record was officially closed, during the period in which testimony *was* restricted to those who had previously participated in the hearing.

I think it is noteworthy that the citizen's testimony, arbitrarily refused by the Planning Director, was critical of the Planning Director's management of the DDP case. By contrast, the public employee's testimony praised the Planning Director and criticized citizen-participants.

Item #9. Stonewalling. I had submitted testimony for the DDP on August 5, 2008 about the use of a holding tank for sewage. (Attachment 9A) When I read the staff report for the Planning Commission, dated August 25, I observed that the Planning Director had misrepresented or misinterpreted my testimony. (Attachment 9B) Consequently, on August 31, 2008 I sent an off-the-record email to the Planning Director pointing out the error, clarifying my testimony, and requesting that the Planning Director rephrase her statement when she drafted the final order and findings of fact. (Attachment 9C) I received no reply to my email from the Planning Director.

It seemed to me to be a simple enough request – not unlike the request made by the Planning Commission when they requested the Planning Director to rephrase the findings in the earlier master plan case. Clearly, it is a common occurrence to misinterpret testimony, and once a clarification is made by the person whose testimony was misinterpreted, it should be a simple matter to make a correction without further ado. That is not what happened. What happened is the Planning Director did not make a correction to her statement and kept the incorrect comment in the Planning Commission final order that was approved by the Planning Commission on September 9. (Attachment 9D)

On September 9, after observing that my request had been ignored by the Planning Director, I sent a formal complaint to Mayor Larry Anderson in which I wrote: "Believing that the public record should be as accurate as possible, I sent the email below to Dianne after reviewing Planning Commission report in which I noted that the report did not accurately reflect my testimony..." (Attachment 9C) In a reply of September 12, 2008 Mayor Anderson directed me to work with City Manager Gary Milliman. (Attachment 9E) I forwarded my complaint to Mr. Milliman on September 13. (Attachment 9F)

An appeal was filed to the City Council. To compensate for the Planning Director's failure to correct the public record in the final order for the Planning Commission, I did so myself by submitting additional testimony on October 15 for the City Council hearing in which I clarified the testimony. (Attachment 9G) This simple action of taking the situation in my own hands in order to set the record straight apparently raised the ire of the City Manager. The City Manager submitted aggressive testimony on October 20, 2008 in which he defended the Planning Director's interpretation of my testimony, and also further mischaracterized my testimony. (Attachment 9H)

The response by city staff and Mayor Anderson in this instance is another example, in addition to the previous examples, that demonstrates the type of response a citizen can expect if a citizen is bold enough to challenge City Hall.

Item #10. State agency representative submits false testimony. The final incident has to do with the proposal for use of a holding tank for sewage disposal at the college site. The basic problem for the college is that getting a sewer line and pumps to the college site will cost millions of dollars and no one has enough money. The approved master plan anticipated such a problem, and allows for a temporary on-site sewage disposal system as a temporary alternative to a sewer hookup.

The plain language of the City of Brookings Municipal Code also allows for an on-site sewage disposal system. However, the applicant, after consulting with DEQ representatives, proposed using a holding tank system instead of an on-site sewage disposal system. But the Brookings Municipal Code (BMC) does not allow a holding tank as a sewage disposal method.

The plain language of the Oregon Administrative Rules (OAR) has specific and clear definitions for what constitutes an on-site sewage disposal system, and for what constitutes a holding tank system; the two definitions are entirely different from one another. The OAR also has specific rules written in plain language that govern the installation and use of temporary holding tanks as well as rules that govern the installation and use of permanent holding tanks; the rules governing the two are mutually exclusive.

Mr. Del Cline was the DEQ On-site Wastewater Specialist who submitted the expert testimony for the hearing on August 12, 2008. Mr. Cline wrote: "A 'holding tank' is defined in OAR ...as an approvable on-site septic system for the proposed building at the Southwestern Oregon Community College site in Brookings. It is approvable as a temporary or permanent on-site system to serve the College's needs." (Attachment 10A) I submitted testimony in response to Mr. Cline's testimony on August 18 in which I wrote: "there are so many inconsistencies among Mr. Cline's statements, DEQ OARs...that it is difficult to know where to begin." (Attachment 10B) Basically, in his testimony Mr. Cline completely rewrote the Oregon Administrative Rules he is charged with enforcing. Likewise, Planning Director Morris

basically characterized the BMC as though the BMC said that a holding tank was an on-site sewage disposal system, in clear contradiction to the BMC and the OAR definitions.

What we had was the two "experts", DEQ's Mr. Cline and Brookings Planning Director Morris, engaged in a dizzying Alice-in-Wonderland style of governance. The objective, of course, was to twist the language about holding tanks and on-site sewage disposal systems in order to get the DDP approved. The clearest discussion of this whole mess was written in testimony submitted by CRAG Law Center on October 14, 2008 (Attachment 10C, pp. 4-6) and I refer you to that document.

What happened here is that a state DEQ representative provided false and incorrect testimony in the case and the Brookings Planning Director exploited the false testimony. One of the problems when a state official ignores the rules he is charged with enforcing is that the law is above any one person. If a person other than Mr. Cline, or one of his subordinates, is responsible for the approval of the holding tank permit, and that person requires the rules to be followed, there may be untoward consequences for the City and its ratepayers. Specifically, Brookings' ratepayers are at future risk of being stuck with paying for the sewer line and appurtenances to serve the college campus.

Additional comments regarding the DDP

The Curry County college project is expected to cost between $6 million and $7 million. (Attachment 11A) The college has $2.3 million in a state matching grant designated for construction; the grant was obtained through the efforts of State Representative Wayne Krieger. But before the college qualifies for the grant, it first has to spend its own $2.3 million share. (Attachment 11B) $2.3 million dollars plus 2.3 million dollars equals $4.6 million. So, the college is somewhere between $1.4 million and $2.4 million short of the funds needed for construction of the campus. The college is also experiencing other financial difficulties. Of course, there is no money available for sewer infrastructure.

Other serious problems emerged with the DDP related to the applicant's and the City's failure to address issues having to do with master plan conditions of approval concerning wetlands and archeological resources. I have not discussed those issues; they were the main concern of another citizen and would have been a basis for appeal of the City's decision to LUBA.

However, a few days after the final order was adopted, the Army Corps of Engineers (ACOE) issued a notice rejecting the wetlands delineation, and the notice provided a federal nexus to the archeological resources issue. Because of the ACOE determination opponents decided the prudent strategy would be to follow through on all of the outstanding issues through the various agencies as the development progressed – DEQ, ACOE, Department of State Lands, Oregon State Parks (Archeological Resources.)

Conclusion. I think this is one of those situations in which the whole is greater than the sum of the parts. Taken individually, each of the problems I have listed might not seem very important. But when the problems are put all together, a picture emerges that demonstrates how the land use process in these two cases was distorted by public officials at many levels. Accountability at the local level of government failed nearly completely. State officials became part of the problem. The normal checks in the process occasionally compensated for the shortcomings of the public officials, but not often enough.

I think the failures I have herein described are unrelated to Oregon's land use law. Rather, I think the failures arose primarily from a lack of professionalism among the public officials. Public officials, especially land use planners, involved with Oregon's land use issues work in an environment where personal agendas and political interests can interfere with impartial analysis.

Land use planners are involved with decisions which cost cities, counties, the state and the taxpayers millions upon millions of dollars; yet there is no independent oversight of this group of people. I think a board, commission, or similar entity under the jurisdiction of the Secretary of State charged with developing and enforcing professional ethics, standards and practices for land use planners – both in the public and private sectors – would go a long way toward filling this gap. My suggestion is that you give consideration to proposing enabling legislation.

Such is the story of my interesting experience with two quasi-judicial hearings in Brookings. It is my hope that you give fair consideration to the story and to the idea of proposing legislation for establishment of an independent oversight body for land use planners under the jurisdiction of the Secretary of State.

COPY

JORDAN SCHRADER
ATTORNEYS AT LAW

JORDAN SCHRADER RAMIS PC

March 7, 2008

Gary Milliman
City Manager's Office
898 Elk Dr
Brookings OR 97415

Re: **Lone Ranch Master Plan Timeline for Detailed Development Plan**
Our File No. 50018-36816

Dear Mr. Milliman:

The purpose of this letter is to confirm the timeframe in which a Detailed Development Plan ("DDP") must be submitted to and approved by the City of Brookings ("City") Planning Commission. It is my understanding from reviewing Condition 1 of the "Conditions of Approval for the Lone Ranch Master Plan MPD-1-04/Remand (As Amended by the City Council August 22, 2005)" that the DDP is required to be submitted and approved by the Planning Commission within four (4) years from approval of the Master Plan. Therefore, it is my understanding that the DDP must be submitted and approved by the Planning Commission by August 22, 2009.

The Master Plan was originally approved by the City, on October 25, 2004, however, that approval was appealed to LUBA and remanded back to the City for further consideration. The City once again approved the Master Plan with the amended conditions of approval on August 22, 2005. Therefore, the August 22, 2005 approval date is the date used to determine U.S. Borax's obligations for submittal and approval of the DDP. Condition 1 also provides that if conditions at the time warrant, the Planning Commission may extend the four-year DDP period for an additional two-year period at the request of the applicant. If such an extension were requested and granted then the deadline for submittal and approval of the DDP would be extended to August 22, 2011.

If the City's interpretation of the deadlines differs from those discussed above, please notify me as soon as possible. Thank you for your continued cooperation and efforts on this project.

Sincerely,

JORDAN SCHRADER RAMIS PC

Timothy V. Ramis

cc: Dennis Boyle
Dianne Morris

TIMOTHY V. RAMIS

Admitted in:
Oregon

Direct Dial
(503) 598-5573

E-mail
tim.ramis@jordanschrader.com

100 BEST COMPANIES 2007 OREGONIANS

City of Brookings

898 Elk Drive, Brookings, OR 97415
(541) 469-1138 Fax (541) 469-3650
dmorris@brookings.or.us

March 18, 2008

Timothy V. Ramis
Jordan, Schrader, Ramis PC
P.O. Box 230669
Portland, Or. 97281

RE: Lone Ranch Master Plan Timeline for Detailed Development Plan

Dear Mr. Ramis:

The City received your letter dated March 7, 2008 concerning the above referenced issue. The City is in agreement with your interpretation of the deadline for submittal and approval of the first Detailed Development Plan (DDP). The first DDP must be submitted and approved by August 22, 2009 unless an extension request is submitted and approved prior to this date. An extension would allow you to have until August 22, 2011 to submit and receive approval of the first DDP.

The City will gladly offer any assistance we can as you move forward with this project.

Sincerely,

Dianne Morris

Dianne Morris
Planning Director

Copy: Gary Milliman, City Manager
File

1 B

Windows Live™

FW: Decision Date Question

From: **Dianne Morris** (dmorris@brookings.or.us)
Sent: Tue 4/01/08 1:54 PM
To: Catherine Wiley (cwileywoods@hotmail.com)

Here is Jim Spickerman's opinion concerning the decision date for Lone Ranch. Dianne

---

From: James W. Spickerman [mailto:spickerman@gleaveslaw.com]
Sent: Monday, March 31, 2008 11:10 AM
To: Dianne Morris
Subject: RE: Decision Date Question

Hi Dianne--

The time for the submittal runs from the time of final decision after remand. I am sure there is at least one more recent case but the case of Friends of Metolius v. Jefferson County 31 OR LUBA 160 (1996) establishes that the time for an applicant to act starts to run once their is final approval, which, here would mean following final decision on remand. LUBA pointed out the absurdity of a contrary interpretation, which require an applicant to proceed, even though an appeal of his original approval might be successful.

Let me know if there is further questions on this point.

Jim

From: Dianne Morris [mailto:dmorris@brookings.or.us]
Sent: Monday, March 31, 2008 8:57 AM
To: James W. Spickerman
Subject: RE: Ownership of Dedicated Streets

Good morning Jim. Thanks for the very clear memo about "dedicate." The decision date question needs more explanation.....The City Council approved a Master Plan application. It was then appealed to LUBA, subsequently remanded to the City and the Council held another hearing and approved the application with the remanded issues. The applicant's final order gave them 4 years to submit, and get approved, a Detailed Development Plan application to implement the Master Plan. I calculate the start of that 4 years from the final hearing with the remand issues before the Council. Opponents argue the date starts from the original approval by the Council before the LUBA action and remand hearing. I hope that is clearer. If not please get back to me.

Thanks Jim. Dianne

From: James W. Spickerman [mailto:spickerman@gleaveslaw.com]
Sent: Thursday, March 27, 2008 2:36 PM
To: Dianne Morris
Subject: Ownership of Dedicated Streets

Please see attached correspondence.

James W. Spickerman

Gleaves Swearingen Potter & Scott LLP

975 Oak Street, Suite 800

P.O. Box 1147

Eugene, OR 97440-1147

Phone: 541-686-8833

Fax: 541-345-2034

spickerman@gleaveslaw.com

The information contained in this electronic message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this electronic message is strictly prohibited.

DD IC

James D. Brown
Staff Attorney
jd@crag.org

April 4, 2008

Via U.S. Mail

Diane Morris
Planning Director
898 Elk Drive
Brookings, Oregon 97415

Re: Timeframe for Expiration of Lone Ranch Master Plan of Development

Ms. Morris,

On behalf of the Oregon Shores Conservation Coalition and Catherine Wiley, our office has reviewed communications between U.S. Borax representative Timothy Ramis and the City of Brookings, which discuss the date for expiration of the Lone Ranch Master Plan.

Brookings Development Code (BDC) § 70.120 provides that "[i]f the applicant has not submitted a [Detailed Development Plan (DDP)] for the Planned Development or the first phase within four years from the date of approval, the [Master Plan of Development (MPOD] shall expire." A recent decision from the Land Use Board of Appeals (LUBA) is directly applicable to the facts of the present situation and provides that the relevant date of approval referenced by BDC 70.120 is the actual date of approval, irrespective of any appeal to or remand from LUBA. *See Foland v. Jackson County*, 54 Or LUBA 287, 290 (2007) (Attachment A).

In *Foland,* LUBA reviewed an appeal from a Jackson County decision applying language from the County's code that is analogous to the language of BDC 70.120. In the decision, LUBA rejected the County's position that a remand from LUBA resets the date for when a development plan expires where the local code has no specific language to provide for such an extension. *Id.* LUBA additionally did not agree with the argument of the County that a three year time period was an inadequate time period for the applicants to resolve any appeals and obtain approval for the next stage of planning. *Id.* at 293. *Cf. Friends of Metolius v. Jefferson County*, 31 OR LUBA 160 (1996) (reviewing local code provision that provided only one year period for duration of land use approval and specifically stating that the

one year period "shall run from the date a land use approval is no longer appealable.")

BDC 70.120 provides no specific language to extend the time-frame for submission of a DDP where a MPOD is appealed to LUBA or subsequently remanded by LUBA. Accordingly, pursuant to the plain language of BDC 70.120, the MPOD will expire on October 25, 2008, which is four years from the approval of the MPOD.

Please do not hesitate to contact me with any questions or to discuss further.

Sincerely,

James D. Brown
On Behalf of Oregon Shores and Catherine Wiley

cc: Gary Milligan, City Manager
Timothy Ramis, U.S. Borax Representative

CITY OF BROOKINGS PLANNING COMMISSION
STAFF AGENDA REPORT

SUBJECT: Extension of Time/ Lone Ranch Master Plan REPORT DATE: May 20, 2008
FILE NO: MPD-1-04 ITEM NO: 7.2*
HEARING DATE: June 3, 2008

GENERAL INFORMATION

PROPERTY OWNER: U.S. Borax, Inc.

REPRESENTATIVE: Burton Weast

REQUEST: A request for an extension of time for 2 years for an approved Master Plan of Development, known as Lone Ranch Master Plan. The Master Plan approved 1,000 dwelling units of various types, a commercial area, a college site, with new streets, walking trails, and natural areas.

TOTAL LAND AREA: 553 acres.

LOCATION: The subject property is located on the east side of Highway 101 starting approximately 0.8 miles north of Carpenterville Road and extending 1.8 miles north along the Highway.

ASSESSOR'S MAP NUMBER: Map 40-14 & Index; Tax lots 2400, 2401, and 2402

ZONING / COMPREHENSIVE PLAN INFORMATION

EXISTING: Master Plan of Development (MPD)

PROPOSED: Same.

SURROUNDING: West of Highway 101 – County Public Facilities (PF); North and East – County Forest Grazing (FG); South – County Residential (R-2) and FG.

COMP. PLAN: Master Plan of Development (MPD).

LAND USE INFORMATION

EXISTING: Vacant.

PROPOSED: Master Plan of Development.

SURROUNDING: West of Highway 101 – vacant parkland except for the Rainbow Rock

Condominiums; North and East – Vacant, CapeFerrelo area further north; South – Residential uses and a manufactured home park.

PUBLIC NOTICE: Mailed to all property owners within 250 feet of subject property, other interested parties, and published in the local newspaper.*

BACKGROUND INFORMATION

The Applicant is requesting a two year extension of time to submit and receive approval of a Detailed Development Plan (DDP) for the first phase of construction of the Lone Ranch Master Plan. 17.70.120, Effective Period of Master Plan of Development Approval, Brookings Municipal Code (BMC) provides for a 2 year extension of time **(Attachment A)**. The Applicant has requested an extension in a timely manner **(Attachment B)**. The original conditions of approval will remain in force.

On October 25, 2004 the City Council approved the Lone Ranch Master Plan. It was subsequently appealed and finally remanded to the City Council for final action and approval on August 22, 2005. The Final Order/ Conditions of Approval gave the Applicants 4 years to submit and receive approval of a Detailed Development Plan for the first phase. Historically the 4 year approval period begins from the date of the final action after any appeals have been exhausted. A recent court decision, however, ruled the approval period begins from the date of the final action by the City before any appeals beyond their jurisdiction, unless the City's Code clearly specifies the approval period to begin after all appeals have been exhausted. This means the Applicant now has only 5 months rather than 17 months to apply and receive approval of the first DDP. Southwest Oregon Community College (SWOCC) has met with City Staff several times as they prepare their application for the site in the Lone Ranch Master Plan area that Borax has agreed to donate for the college campus. It is unlikely that the college or any Applicant for a DDP could move through the process in only 5 months.

The Applicant has constructed much of the needed water and sewer main extensions from the City's existing mains to the site along Highway 101. Additional infrastructure work is needed and several studies, required by the Final Order/ Conditions of Approval, need to be completed prior to making an application for a DDP.

17.70.120, BMC, authorizes the Planning Commission to grant a 2 year extension of time when "...conditions have not changed...." As the Applicant has explained in Attachment B no circumstances have changed that were fundamental to the findings which are the basis for approval of the Master Plan of Development.

RECOMMENDATION

Staff recommends APPROVAL of the 2 year extension of time for File No. MPD-1-04. This extension of time shall run from the date the MPD is due to expire on October 25, 2008 for 2 years until October 25, 2010. The original conditions of approval will remain in force.

TRANSMISSION VERIFICATION REPORT

TIME : 05/30/2008 12:22
NAME : BROOKINGS
FAX : 5414693650
TEL : 5414692163

DATE,TIME	05/30 12:21
FAX NO./NAME	15413965723
DURATION	00:00:50
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

CITY OF BROOKINGS

Dianne Morris, Planning Director
898 Elk Drive
Brookings, Or. 97415
(541) 469-1138 FAX (541) 469-3650

FAX Cover Sheet

TO: JOHN TREW

FAX NUMBER: 396-5723

SUBJECT: APPROVAL PERIOD

DATE: 5.30.08

PAGES: 3
(INCLUDING THIS PAGE)

COMMENTS:

TIM RAMIS & OTHERS DIDN'T GIVE THIS CASE MUCH CONSIDERATION AS IT MOVED THROUGH THE COURTS NEVER DREAMING THIS WOULD BE THE OUTCOME! I'VE STARTED WORK ON A CODE REVISION IF

ATTACHMENT B

Burton Weast
Axxiom Resource, LLC
148 B Avenue, Suite 100, Lake Oswego, OR 97034
503.708.5222 Fax: 503.607.0686

April 29, 2008

Ms. Dianne Morris
Planning Director
City of Brookings
898 Elk Drive
Brookings, OR 97415

Dear Ms. Morris,

On behalf of U.S. Borax Inc. (Borax), I am requesting a two year extension for the approval of the Lone Ranch Master Plan of Development (MPoD), Case File MPD 1-04.

Borax received approval for the Master Plan of Development (MPoD) for Lone Ranch on October 25, 2004. The approval was appealed to the Land Use Board of Appeals (LUBA) and remanded back to the City. On August 22, 2005, the City Council approved the materials submitted in response to the issues of the remand.

The Court of Appeals recently ruled that the relevant date of approval is the actual date of approval, irrespective of any appeal to or remand from LUBA. *See Foland v. Jackson County*, 215 Or. App. 157, 168 P.3d 1238 (2007). Although Borax has been operating under the understanding that the approval would expire August 21, 2009, (four years from the date of the remand approval) under this interpretation the Lone Ranch MPoD would expire on October 24, 2008. Therefore, consistent with LUBA's interpretation, Borax requests a two year extension to the MPoD, consistent with the provisions of Brookings Development Code (BDC), Section 17.70.120. This would allow for approval of the Detailed Development Plan before October 23, 2010.

It has been expected that the first DDP to be filed would be the plan to accommodate the construction of the Southwestern Oregon Community College campus in Brookings. However, because the Detailed Development Plan has not been approved at this time, the extension is necessary. BDC Section 17.70.120 states that "*Where the planning commission finds that conditions have not changed, the commission may, at its discretion, extend the period for two additional years per extension, subject to applicable hearing and notice requirements.*"

In addressing whether the Commission may find under Section 17.70.120 "...that conditions have not changed..." the question presented is whether there have been changes in circumstances that are so important and fundamental that they completely undermine the findings which are the basis for approval of the Master Plan of Development.

In fact, there have been no changes since the approval of the MPoD, that undermine the findings which are the basis for approval of the MPoD.

Please note that significant progress has been made over the past 2 ½ years and that much of the work completed during this time is necessary in order to submit for the first DDP. In accordance with the appropriate hearing and notice requirements, Borax requests approval of the time extension, for a period of two years.

Enclosed, please find the application form signed by Borax and the fee of $245.00. Please let us know the date of the Planning Commission public hearing on this matter. If you have any questions, please do not hesitate to call.

Very truly yours,

Burton Weast

cc: Dennis Boyle, U.S. Borax Inc.
Tim Ramis, Jordan Schrader Ramis, Attorneys at Law
Marty Stiven, Stiven Planning & Development Services, LLC

Attachments

staff to prepare a Final ORDER with the findings set forth therein for the denial of said application.

THEREFORE, LET IT BE HEREBY ORDERED that the application requesting an extension of the approval period for the MPD on the subject parcel is denied. This denial is supported by the following findings and conclusions:

FINDINGS

- The Applicant is requesting an extension of the approval period for the Lone Ranch Master Plan. The Applicant's request and findings are found in the record as part of the Staff Report packet.
- The request was submitted prior to the expiration date of the original approval.
- The proposed plan for development remains the same.
- Criteria to approve the extension request requires that no conditions have changed that relate to the findings used to approve the Lone Ranch Master Plan.
- The majority of the Planning Commission was uncertain if any conditions had changed.
- The majority of the Planning Commission was also uncertain about the meaning of the word "conditions".

CONCLUSIONS

- The majority of the Planning Commission was unable to conclude that no conditions have changed, therefore the application is denied.

LET IT FURTHER BE OF RECORD that the Planning Commission denied the requested extension of the approval period

Dated this **1st day** of July, 2008.

_____
Hedda Markham, Chairperson

ATTEST:

_____
Dianne Morris, Planning Director

2B

staff to prepare a Final ORDER with the findings set forth therein for the denial of said application.

THEREFORE, LET IT BE HEREBY ORDERED that the application requesting an extension of the approval period for the MPD on the subject parcel is denied. This denial is supported by the following findings and conclusions:

FINDINGS

- The Applicant is requesting an extension of the approval period for the Lone Ranch Master Plan. The Applicant's request and findings are found in the record as part of the Staff Report packet.
- The request was submitted prior to the expiration date of the original approval.
- The proposed plan for development remains the same.
- Criteria to approve the extension request requires that no conditions have changed that relate to the findings used to approve the Lone Ranch Master Plan.
- (The majority of the Planning Commission believed conditions had changed.)
- The free exercise of discretion was encumbered by the wording of the ordinance.

CONCLUSIONS

- The majority of the Planning Commission was unable to conclude that no conditions have changed, therefore the application is denied.

LET IT FURTHER BE OF RECORD that the Planning Commission denied the requested extension of the approval period

Dated this **1st day** of July, 2008.

Hedda Markham, Chairperson

ATTEST:

Dianne Morris, Planning Director

2C

Pat Sherman

From: Catherine Wiley [cwileywoods@hotmail.com]
Sent: Monday, June 08, 2009 12:05 PM
To: P Sherman
Subject: FW: Borax Testimony

Pat; Here's my original correspondence with Craig, the day I discovered the letter in Milliman's notebook file. C

From: cwileywoods@hotmail.com
To: craig_tuss@fws.gov
Subject: Borax Testimony
Date: Wed, 18 Jun 2008 19:39:52 -0700

Craig; This afternoon I discovered why there had been no testimony in the Planning Commission packet for the extension request on 6/3/08 from your office. It was sitting in one of the City Manager's files I have been requesting to review for months, in compliance with the ORS on public documents. It was never date stamped in, & while addressed to the Planning Director, Dianne Morris, she, apparently had never seen it.
While the discovery refreshed my confidence in your commitments, it confounded my concerns about our public officials & this whole Borax process. One of the areas I would like to explore further is the fact that the City has never done an inventory in compliance with Goal 5 of the State mandated Comprehensive Plan. According to Goal 5, they are mandated to do an inventory of " historic, natural & cultural resources..". Of course, my original issue had to do with the Native cultural issues. But, perhaps, with your office & Dennis Griffin's (PhD.,State Archaeologist) we could collectively pressure something to be done in an accountable manner. They have already been in violation of DEQ regarding installation of infrastructure (no permits, etc.); as well as contaminating Rainbow Rock's water supply. Heavy duty equipment was brought in, supposedly for a geohazard assessment. Anyhow, LOTS of documents being discovered, but STILL lots of pressure to let them do their project. By the way, what ever happened about the marbled murrelets?
Thought you'd want to be updated. Hope you'll stay in touch. Catherine

---

The other season of giving begins 6/24/08. Check out the i'm Talkathon. Check it out!

Hotmail® has ever-growing storage! Don't worry about storage limits. Check it out.

3A

Pat Sherman

From: Catherine Wiley [cwileywoods@hotmail.com]
Sent: Tuesday, July 01, 2008 10:40 AM
To: P Sherman
Subject: Dep. of Interior Public Hearing Document

Pat; Per our phone conversation, I am providing you with the factual account of my discovery of testimony submitted by Craig Tuss, Field Supervisor,United States Department of the Interior, Fish & Wildlife Service.
On June 18, 2008, I was in the office of Donna Colby-Hanks, Senior Planner (City Of Brookings), reviewing requested files related to the Borax property and the proposed MPoD. I will note that my initial requests, in writing, began in March of this year, in preparation for anticipated action by Borax representatives. On 6/18/2008, I was given my first opportunity to review of a file from G. Milliman, City Manager, which was contained in a white notebook. Within this notebook file, I noted the original, signed, letter from Craig Tuss. Mr. Tuss's entire submission consists of seven (7) pages, two of which are his letter addressed to the Brookings Planning Commission, Attention Dianne Morris. The date on the letter is May 30, 2008. The attachments include documentation of those copied via email, as well as his previous document to John Bischoff, dated 9/7/2004. There was no date stamp on this letter in G. Milliman's file.
I brought the letter to the immediate attention of Donna Colby-Hanks. She expressed, what appeared to be, sincere shock and surprise; stating that neither she, nor Dianne (Morris) had seen the document from Craig Tuss. I informed her that I, also, was shocked, since he and I had direct communications, wherein he assured me he was going to provide testimony regarding his concerns on the Borax issues. Donna told me she would get a copy for Dianne. I obtained a copy of the document for my records on that date, through Donna.
Yesterday,6/30/08, I returned to complete my review of files provided by G. Milliman and Dianne Morris. The original letter from Mr. Tuss was still in G. Milliman's file, with no date stamp of receipt. There was no copy in the files provided by Ms. Morris. However, I was informed that Mr. Tuss's document was included in the initial package prepared for the City Council on behalf of Borax & their appeal of the Planning Commission's denial of extension. I did not have the time to review the package referenced.
I have an email correspondence to Craig Tuss referencing his "found" testimony, dated 6/18/2008, should you want/need such verification. Further, I am more than willing to provide this information , under oath, should it be deemed necessary.
Catherine Wiley

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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Roseburg Field Office
2900 NW Stewart Parkway
Roseburg, OR 97470
Phone: (541) 957-3474 FAX: (541) 957-3475

Reply To:
File Name: June 3rd Letter.doc
TS Number: 08-1339

Brookings City Planning Commission
Attn: Dianne Morris
City of Brookings
898 Elk Drive
Brookings, OR 97415

May 30, 2008

Subject: Public Hearing on the Master Plan of Development for the City of Brookings

Dear Ms. Morris,

The U.S. Fish and Wildlife Service (Service) has previously provided comments for the above referenced Master Plan of Development (MPD) for the proposed 553-acre development north of Brooking, Oregon in letters dated July 29, August 3, September 7, and September 20, 2004. Our comments expressed concerns that development plans may endanger the presence of western lily at the property. The City of Brookings (City) has scheduled a public hearing regarding a two-year extension of the MPD. It is our understanding that the development plan presented in the MPD is conceptual and that the actual development design will be refined during each of the Detailed Development Plans (DDP). We understand that DDP planning will be based on more intensive characterization of site constraints, including the potential for hydrological impacts on critical wetlands supporting the western lily. Our intent has been to inform the applicants and approving agencies of the importance of the western lily and the unique wetlands they occupy and to try to prevent future conflicts between the extent and configuration for the development as proposed in the MPD and the long term protection of these important resources.

We advise that if the planning commission approves a two-year extension of the MPD, the following issues, which we believe are necessary to adequately protect the significant natural resources on the property, be recognized in future development of the individual DDP's:

- Resource parameters included in the MPD:

    1. The current map of the western lily population on the property included in the March 2006 western lily survey report by Raedeke Associates, does not show the full extent of western lily on the site, as we determined durir survey (Raedeke Associates, Inc. 2006). Therefore, further Service is requested to ensure that the entire western lily pop in prospective planning of the project. In addition, species s

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3C

to be void after 5 years. Therefore, if development has not proceeded by July 2010 in any portion of the project, we recommend an updated survey for the lily to be completed.

2. Based on our partial inspection of the property in July 2005, the Service has concerns about the accuracy of some of the wetland delineations presented in the MPD. The Service is available to assist in field certification of wetland boundaries during certification by the Army Corps of Engineers and the Oregon Department of State Lands.

3. As we have indicated in previous correspondence, the wetland buffers as presented in the MPD are insufficient in many areas to protect wetland functions of the resident western lily population. The width of wetland buffers should be designed based on the characteristics of the specific wetland to be protected, in order to prevent changes in hydrology, pedestrian impacts, introduction of invasive species, and other impacts. We described the inadequacy of the MPD buffers in more detail in our letter of September 7, 2004 (attached). The Service offers to assist in wetland buffer design during the DDP planning.

- We believe it is important for all interested parties to recognize that each of the above deficiencies in the conceptual MPD design and available information pertaining to the natural resources of the project area could affect the ability to meet the development goals stated in the MPD. Based on our partial inspection of the property in July 2005, it appears that the MPD overly estimates the development potential of the site, with regards to the stated objective (LUBA remand order) to "protect the wetlands and western lily".

- We offer to continue to work and improve communication with the project proponents, the City of Brookings, other public agencies, and other appropriate entities, regarding the actual planning and design of the various phases of the proposed project.

Thank you for the opportunity to provide comments regarding the MPD. If you have further questions or require technical assistance please contact Dave Imper at 707-825-5112, Sam Friedman at 541-957-3478, or me at 541-957-3470.

Sincerely,

Craig A. Tuss

Craig A. Tuss
Field Supervisor

Attachment (1)

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Roseburg Field Office
2900 NW Stewart Parkway
Roseburg, OR 97470
Phone: (541) 957-3474 FAX: (541) 957-3475

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CITY OF BROOKINGS

Reply To:
File Name: June 3rd Letter.doc
TS Number: 08-1339

This is a Thursday

May 30, 2008

This is a Friday.

Brookings City Planning Commission
Attn: Dianne Morris
City of Brookings
898 Elk Drive
Brookings, OR 97415

Subject: Public Hearing on the Master Plan of Development for the City of Brookings

Dear Ms. Morris,

The U.S. Fish and Wildlife Service (Service) has previously provided comments for the above referenced Master Plan of Development (MPD) for the proposed 553-acre development north of Brooking, Oregon in letters dated July 29, August 3, September 7, and September 20, 2004. Our comments expressed concerns that development plans may endanger the presence of western lily at the property. The City of Brookings (City) has scheduled a public hearing regarding a two-year extension of the MPD. It is our understanding that the development plan presented in the MPD is conceptual and that the actual development design will be refined during each of the Detailed Development Plans (DDP). We understand that DDP planning will be based on more intensive characterization of site constraints, including the potential for hydrological impacts on critical wetlands supporting the western lily. Our intent has been to inform the applicants and approving agencies of the importance of the western lily and the unique wetlands they occupy and to try to prevent future conflicts between the extent and configuration for the development as proposed in the MPD and the long term protection of these important resources.

We advise that if the planning commission approves a two-year extension of the MPD, the following issues, which we believe are necessary to adequately protect the significant natural resources on the property, be recognized in future development of the individual DDP's:

- Resource parameters included in the MPD:

    1. The current map of the western lily population on the property included in the March 2006 western lily survey report by Raedeke Associates, does not show the full extent of western lily on the site, as we determined during the July 2005 survey (Raedeke Associates, Inc. 2006). Therefore, further coordination with the Service is requested to ensure that the entire western lily population is considered in prospective planning of the project. In addition, species surveys are considered

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3D

Pat Sherman

From: Pat Sherman [psherman99@verizon.net]
Sent: Friday, June 27, 2008 1:07 PM
To: 'Pat Sherman'
Subject: post office

I stopped by the post office today. I asked the postal clerk (the tall lady- don't know her name) if the post office had any kind of document that showed probability of the time it took for a letter sent from Roseburg on a Friday to arrive in Brookings on any given day.
She said there is no such documentation. She said: "it would depend on when exactly the letter went out- morning or afternoon."
Then she said: "a letter from Roseburg to Brookings normally takes two or three days. If mailed on Friday it would be in transit over the weekend and probably arrive on Monday or Tuesday." I asked her what about the possibility of arriving on Wednesday or Thursday. She said: "if it fell off the truck. Normally it takes two or three days."

3E

Pat Sherman

From: Craig_Tuss@fws.gov
Sent: Wednesday, June 10, 2009 9:51 AM
To: Pat Sherman
Subject: Re: request for email

pat.

I retired in january and my email account was deleted.

I am back as a volunteer, with the same email address, but my email database from 2008 is gone.

sorry I can not be of more assistance.

Craig Tuss
Roseburg Field Office
2900 NW. Stewart Parkway
Roseburg, Oregon 97470
541-957-3479 (W)
541-957-3475 (F)

"Pat Sherman" <psherman99@verizon.net> To <craig_tuss@fws.gov>
06/09/2009 04:48 PM cc
Subject request for email

Good afternoon Craig,

This request is related to the City of Brookings, Borax public hearing, in June, 2008. I lost several documents when my old computer crashed and am trying to reconstruct some events.

If I remember correctly, I sent you an email on or about June 27 - July 3 2008 in which I asked you when you had mailed your testimony, dated May 30, 2008, to the City of Brookings, intended for a Borax Planning Commission hearing. If I remember correctly, you sent me a reply stating that you had mailed the letter from Roseburg on Friday May 30.

3F

Is my memory correct? If so, would it be possible that you could forward to me the series of emails? My email address remains the same:
psherman99@verizon.net

Thank you.

Pat Sherman
Brookings

3F

Exhibit H-1

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Roseburg Field Office
2900 NW Stewart Parkway
Roseburg, OR 97471
Phone: (541) 957-3474 FAX: (541) 957-3475

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JUL 16 2008
CITY OF BROOKINGS

Reply To: Roseburg
File Name: JulyHearing.doc
TS Number: 08-1589
TAILS: 13420-2008-FA-2063
Doc Type: Final

July 9, 2008

Brookings City Planning Commission
Attn: Diane Morris, Planning Director
City of Brookings
898 Elk Drive
Brookings, OR 97415

Subject: Public Hearing on the Master Plan of Development for the Brookings City Council

Dear Ms. Morris:

The U.S. Fish and Wildlife Service (Service) has previously provided comments for the above referenced Master Plan of Development (MPD) for the proposed 553-acre development north of Brooking, Oregon in letters dated July 29, August 3, September 7, September 20, 2004, and May 30, 2008. Our comments expressed concerns that the proposed development plans could endanger the presence of western lily at the property. Our comments also provided recommendations to avoid and minimize impacts to western lily.

Our intent has been to inform the applicants and approving agencies of the importance of the western lily and the unique wetlands they occupy and to try to prevent future conflicts between the extent and configuration for the development as proposed in the MPD and the long term protection of these important resources.

The City of Brookings (City) has scheduled a public hearing in Brookings on July 16, 2008 regarding a possible two-year extension on the MPD. It is our understanding that the development plan presented in the MPD is conceptual and the actual development design will be refined during each of the Detailed Development Plans (DDP). We understand that DDP planning will be based on more intensive characterization of site constraints, including the potential for hydrological impacts on critical wetlands supporting the western lily.

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From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Monday, June 30, 2008 9:42 AM
To: Dianne Morris; Joyce Heffington
Cc: Gary Milliman; Cathie Mahon
Subject: RE: question

Dianne,

Thank you. What is the procedure for date-stamping incoming mail in your department?

Pat

From: Dianne Morris [mailto:dmorris@brookings.or.us]
Sent: Monday, June 30, 2008 8:30 AM
To: Pat Sherman; Joyce Heffington
Cc: Gary Milliman; Cathie Mahon
Subject: RE: question

Cathie noticed it had not been stamped last week and recollects it was June 24 when she put the June 5 date on it. Donna , Cathie, and I all remember its arrival just after the hearing.

Dianne L. Morris
Planning Director
City of Brookings
541-469-1138
dmorris@brookings.or.us

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Monday, June 30, 2008 9:03 AM
To: Dianne Morris; Joyce Heffington
Cc: Gary Milliman; Cathie Mahon
Subject: RE: question

Dianne or Cathie,

Thank you for answering my question about who date stamped the letter. My second question was: When did the date stamp get put on the letter? What is the answer to that question please?

Pat Sherman

From: Dianne Morris [mailto:dmorris@brookings.or.us]
Sent: Monday, June 30, 2008 7:32 AM
To: Pat Sherman; Joyce Heffington
Cc: Gary Milliman; Cathie Mahon
Subject: RE: question

Hi Pat. The Tuss letter arrived after the PC meeting. Cathie date stamped it. In the aftermath of the hearing and the organization/ distribution of all the materials from the hearing, the Tuss letter didn't get date stamped immediately. That letter and comments concerning it are in the City Council appeal packet that is being distributed today. Since there is so much written material for the Council to read, I thought it best to get this much out well in advance. Whatever additional written material that comes in between now and the 7th will go in a Supplemental Packet that I will get out a week ahead.
Laurie has made additional packets for those who would like to look at it or purchase one.

Dianne L. Morris
Planning Director
City of Brookings

Pat Sherman

From: Pat Sherman [psherman99@verizon.net]
Sent: Monday, June 30, 2008 7:18 PM
To: 'Pat Sherman'
Subject: FW: question

Dianne called me after the question below. My recollection of what she said follows:
Dianne said generally that there was much happening the day after the PC hearing and the letter got put in a file. I asked her which file. She said there were many files and she did not know which one it was put into because there were so many files. Dianne also stated that she is an ethical person and that I should know that she is an ethical person because I worked with her. I asked Dianne if she would ask Cathie and Donna to verify to me that they remember the arrival of the letter.

Thus far, Cathie has given me a clear answer. She said she did not remember the arrival of the file. Donna's answers, thus far, have been unclear.

Here is a question. Since Dianne can't remember which file the letter was put into when it arrived, perhaps she can remember which file it came out of so that Cathie could date stamp it on June 24 or June 26?

In this department many of the documents are date sensitive. How often are there problems like this in which the supervisor cannot explain why documents are not properly date stamped upon arrival?

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Monday, June 30, 2008 9:49 AM
To: 'Dianne Morris'; 'Joyce Heffington'
Cc: 'Gary Milliman'; 'Cathie Mahon'
Subject: RE: question

Dianne,

There is a significant gap between the time when, as you stated, you and Cathie and Donna remember the letter arriving, and the time when the letter was date stamped. Can someone in your department explain why the letter was not date stamped upon arrival, according to the procedure? And why it took so long to date stamp the letter?

Pat

From: Dianne Morris [mailto:dmorris@brookings.or.us]
Sent: Monday, June 30, 2008 8:52 AM
To: Pat Sherman; Joyce Heffington
Cc: Gary Milliman; Cathie Mahon
Subject: RE: question

Cathie is the one who date stamps materials and creates the files in which the records are kept.

Dianne L. Morris
Planning Director
City of Brookings
541-469-1138
dmorris@brookings.or.us

Pat Sherman

From: Cathie Mahon [cmahon@brookings.or.us]
Sent: Monday, June 30, 2008 3:35 PM
To: Pat Sherman
Subject: RE: question

Yes. please receipt you rec'd this to verify my computer is finally working.
cm

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Monday, June 30, 2008 4:28 PM
To: Cathie Mahon
Subject: FW: question

Cathie,

When your e-mail is working could you review my recollection (below) and make any additions or corrections that you think are appropriate?

Thank you for your candor.

Pat Sherman

Phone conversation from Cathie just now completed. She stated that her computer is down and she cannot e-mail me. She stated that she did not remember the May 30 letter from Craig Tuss arriving right after the June 3 hearing. She stated she did not see the letter until last week when she put together the packet for the City Council hearing. She said she put the CC packet together on June 26 at which time she date stamped he letter. I asked her why she put a date stamp of June 5. She said her supervisor told her to. I asked Cathie if she would send me a confirmation by e-mail, once her computer was fixed, and she said she would.

Pat

RE: Tuss letter
Pat Sherman

To:	Donna Colby-Hanks
Sent On:	Monday, June 30, 2008 4:22:04 PM
Archived On:	Tuesday, August 19, 2008 11:47:48 AM

Thanks Donna.

I wish I could say your answer helps, but it does not. I do not want to be a pest. So if you could answer my questions I would appreciate it. Here's where I am unclear and why.

Dianne said that you remembered the letter's arrival just after the hearing. She may have misspoke. There would be nothing wrong with a misstatement such as that.

Do you remember the letter's arrival? Yes or no. If you remember the letter's arrival, when was the arrival?

If you don't remember the letter's arrival, could you please say so? There would be nothing wrong about not remembering the letter's arrival.

You said you did not open the envelope. Did you see the envelope? Yes or no. If you saw the envelope, do you remember when you saw it? Yes or no. If you do remember when you saw it, when did you see it? If you don't remember seeing the envelope, please say so. There would be nothing wrong if you don't remember seeing the envelope.

When, if ever, did you first see the letter?

Here's why I am stuck with this puzzling question.

- The letter was dated May 30.
- It was mailed May 30, a Friday.
- The postal clerk in Brookings told me that mail from Roseburg takes two or three days and that a letter mailed from Roseburg on Friday would be in transit over the weekend and arrive Monday or Tuesday. When I asked the postal clerk if it could arrive on a Wednesday or Thursday she told me: "if it fell off the truck. It takes two or three days from Roseburg."
- The letter, whenever it arrived, was not date stamped until June 24 (according to Dianne) or perhaps later. This is not the normal procedure. And the date stamp was June 5, almost three weeks prior to when the later was date stamped.
- I'm hearing a couple of different explanations, and they are not all in agreement.

3K 3K

I'm just a citizen trying to make sense of something that doesn't make sense at this point in time.

Pat

From: Donna Colby-Hanks [mailto:dcolbyhanks@brookings.or.us]
Sent: Monday, June 30, 2008 1:27 PM
To: Pat Sherman
Subject: RE: Tuss letter

Hi Pat,

It is my understanding the girls in the front office retrieve the mail from the mailbox. I did not open the envelope. It seems that Dianne brought it into my office as it had just arrived and I thought how unfortunate it was. At that point in time I was not aware there would be an appeal. Hope this is helpful.

Donna Colby-Hanks

Senior Planner

City of Brookings

(541) 469-1137

FAX (541) 469-3650

www.brookings.or.us

3K

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Monday, June 30, 2008 12:35 PM
To: Donna Colby-Hanks
Subject: RE: Tuss letter

Donna,

This may seem picky, but your answer isn't exactly clear. Do you remember the arrival of the letter? In other words, did you see the letter when it arrived? That's a yes or no question. Or, do you only remember thinking the timing was unfortunate as it was shortly after the extension hearing?

When, if ever, did you first see the letter?

Pat

From: Donna Colby-Hanks [mailto:dcolbyhanks@brookings.or.us]
Sent: Monday, June 30, 2008 10:57 AM
To: psherman99@verizon.net
Subject: Tuss letter

Hi Pat,

Dianne asked me to email you with my recollection of the receipt of the letter from Tuss. I recall thinking the timing was unfortunate as it was shortly after the extension hearing. If there is anything else I can help with don't hesitate to let me know.

Donna Colby-Hanks

Senior Planner

City of Brookings

(541) 469-1137

3K

Pat Sherman
PO Box 1140
Brookings, OR 97415
July 15, 2008

Mayor Larry Anderson and City Councilors
898 Elk Drive
Brookings, OR 97415

RE: Testimony for July 16, 2008 City Council appeal MPD-1-04 Extension

Mayor and Councilors,

I am submitting the following comments regarding the extension application for the Borax Lone Ranch Master Plan. Please include these comments and attachments in the record. These comments are in addition to my comments of June 3, 2008 which are included here by reference (Council packet pp. 167-171).

I have consistently supported the Lone Ranch Master Plan. I believe that this development is very important for the future of Brookings. I have also consistently expressed concerns related to the project's infrastructure.

The Brookings Municipal Code (BMC) lists two criteria that must be met for an extension to be granted. First, you must find that conditions have not changed since the Master Plan of Development (MPoD) was approved. After making a finding that conditions have not changed, then you can use your discretion as to whether or not you choose to grant the extension.

I have considered the current conditions in several areas and compared them to the conditions as they were when the MPoD was approved. I examined the facts available to me and arrived at a conclusion based on those facts. My comments focus on the topics of water, Rainbow Rock Condominiums, electricity, western lily and cost of infrastructure.

Water- Goal 16- Estuarine Resources and Change in Water Rights Law

Current Condition: Water will be supplied to the property, from the beginning, using the City's water system (Option 2 in the MPoD proposal). Oregon House Bill (HB) 3038 requires extension of municipal water right permits to be conditioned to protect listed fish species.
Prior Condition: Goal 16, Estuarine Resources, assessment in Master Plan application was based on initially having wells on the property, and only later connecting to the City's water supply (Option 3 in the MPoD proposal). When the MPoD was adopted, municipal water rights law did not provide for the protection of listed fish species.

Argument:

- The adopted Master Plan will use City water from the beginning (Option 2). This option was chosen during the Master Plan hearings. The Goal 16 analysis was completed prior to the Master Plan hearings based on Option 3. Option 2 has a greater impact on the Chetco than Option 3.
- Testimony submitted June 2, 2008, (Council Packet pp 129-136) Genc Emre, OTAK, the applicant's engineer, argues that there is no change in water source for the project. In support of his argument he submitted pp. 27-29 of the Master Plan application. The application states: "the Utility Analysis and Plan is based on the third option." The third option is described: "Lone Ranch would develop an onsite water system to serve the initial phases of development. When the City's water system is extended to the site, Lone Ranch's on-site system would be connected, providing the City's system with a back-up ground water system."
- By the applicant's own testimony, the analysis for water withdrawals from the Chetco- and thereby Goal 16- was based on the less demanding Option 3.

4A

- In the same June 2, 2008 testimony, Mr. Emre included a statement made by the City Engineer, Richard Nored, on July 6, 2004, about the adequacy of the plan for water. As was argued in my testimony of June 3, 2008, (Council Packet pp 167-171) the City engineer's testimony was based on selection of the less demanding Option 3, the same as the applicant's Goal 16 analysis.
- As I also argued in my June 3 letter, Mr. Nored was not asked for his opinion concerning the change from Option 3 to Option 2 during the MPoD hearing process. In fact, Mr. Nored in an October 31, 2006 e-mail (Council Packet p. 39) described the water system initially based on wells. He stated that the Lone Ranch site was not included in the 2000 Water Master Plan and he stated that including Lone Ranch will place an additional demand on the water system, specifically 583 gallons per minute (gpm) for Lone Ranch domestic use and 53.5 gpm for Rainbow Rock- a total of 646 gpm or 1.44 cubic feet per second (cfs).
- In his testimony Mr. Emre implies that, since the City's Water Master Plan was updated in 2007 to include the Lone Ranch site, the problem of Goal 16 not being addressed in the Lone Ranch Master Plan is solved.
- In the staff report the Planning Director seems to agree with Mr. Emre.
- But, the City's Water Master Plan and the Lone Ranch Master Plan are two different products developed for two different reasons.
- The fact that the City updated its Water Master Plan in 2007 does not correct the deficiency in the Lone Ranch Master Plan regarding Goal 16 analysis.
- During the Land Use Board of Appeals (LUBA) appeal the deficiency in Goal 16 was more or less acknowledged, and the opinion was that the deficiency was harmless.
- What changes the Goal 16 deficiency in the Lone Ranch Master Plan from 'harmless' to important is the new water rights law, HB 3038, which became effective June 29, 2005.
- Now, the City finds itself in the position that, upon application for extension of its water right permit, the extension will be conditioned on preservation of listed fish species. And the Chetco has two- Pacific Lamprey Eel and the Coast Coho.
- Mr. Richard Allan, the applicant's attorney, argues in a June 2, 2008 letter (Council Packet p 134) that HB 3038 is an improvement in municipal water rights law. He submitted a comment from League of Oregon Cities in support of his statement. All agree that increasing the length of extension from 5 to 20 years is an improvement.
- But the improvement in the length of time an extension is good for came with a compromise; and the compromise was that the extension will be conditioned on preservation of listed fish, and the compromise has a direct effect on Brookings and its Chetco River water right.
- At this point in time the City is in the process of obtaining an extension for its 10 cfs water right on the Chetco. When the extension is granted, by law it will be conditioned. And whatever those conditions are, the City will be stuck with them for at least 20 years.
- The City is interested in not having conditions on its water right that restrict the withdrawals from the Chetco beyond the voluntary restriction of 5.1 cfs during periods of low flow that the City has already agreed to.
- What better way to send a message to the people responsible for making the decision about any possible restrictions (Fish and Wildlife Service), and to the watchdog groups (Water Watch), than for the City to demonstrate its sincere commitment to its stewardship of the Chetco River resource by requiring the completion of Goal 16 analysis in the Lone Ranch Master Plan.
- The Lone Ranch area will require 1.44 cfs of water from the Chetco.
- Mr. Tim Ramis, the applicant's attorney, in oral testimony at June 3, 2008 Planning Commission hearing, argued that HB 3038 could not be considered a change in condition because it became law on June 29, 2008, and *that* date was before the remand hearing on August 22, 2008. Mr. Ramis is incorrect. The change in the law occurred after the approval of the MPoD. The remand hearing was limited in scope and did not address this issue. So the only important date is October 25, 2004, the date the MPoD was approved. The LUBA opinion was issued April 20, 2005.

Summary: Requiring the completion of Goal 16 analysis is the right thing to do because the Lone Ranch Master Plan is deficient in this area, and because we care about our Chetco River water resource. Requiring the completion of Goal 16 analysis is also the smart thing to do if the City intends to send the right message to the agencies involved with permitting and to the watchdog groups.

Rainbow Rock Condominiums

Current Condition: Construction activities have already taken place on the Borax property. Prior to the construction activities, Borax failed to demonstrate how the Rainbow Rock Service Association (RRSA) water supply system would not be negatively affected, as required by MPoD Condition of Approval #23. Borax' construction activities have had an adverse effect on the quality and quantity of the water available through the RRSA water supply system. RRSA complained to the City about the problem on May 1, 2006. The City failed to review the applicant's permit, as required by Condition of Approval #2.
Prior Condition: Prior to the problems related to the construction activities, the RRSA water treatment plant and system had been working fine.

Argument:

- BMC states: "The proposed MPoD will further demonstrate that existing utility services and water supplies for adjacent properties will not be negatively affected at each phase."
- Lone Ranch Findings #41f states: "Rainbow Rock Condominiums (RRC) water system....will be able to connect to the City's water system at the time it is extended to serve the Lone Ranch project and before any adverse impacts occur."
- Condition of Approval #23 states: *Prior to construction of any phase that may adversely affect the quality or quantity of water available through the existing RRSA surface water supply system, the applicant shall demonstrate how the water and water supply system will not be negatively affected. Each Detailed Development Plan (DDP) shall evaluate the impact of development on the existing RRSA surface water system, unless RRSA has previously discontinued use of the system.*
- The extension of the water pipes to the Borax property line was completed in 2005-2006. RRC water system has not been connected to the City's water system primarily due to the cost. According to a complaint filed with the City on May 1, 2006, adverse impacts have already occurred as a result of construction activities by Borax. (Attachment A)
- In oral rebuttal on June 3, 2008, Mr. Tim Ramis argued that the adverse impacts were not the result of construction work done by Borax. He claimed that the adverse impacts may have been a result of Sudden Oak Death (SOD) remediation efforts carried out by Oregon Department of Agriculture (ODA). In a June 23, 2008 e-mail (with accompanying map), Alan Kanaskie, Forest Pathologist, Oregon Department of Forestry (ODF), stated: "The first SOD infestation on the US Borax property was discovered on July 25, 2006. So ODA/ODF did no work on the property prior to that time. There was some hand-cutting, piling and burning of trees done intermittently in November-December 2006. There is little or no soil disturbance during these activities. The first use of machinery for SOD eradication on the Borax site was not until February-March of 2007." (Attachment B) Since the discovery of SOD did not occur until after the adverse impacts had occurred, the SOD work could not have been the cause of the adverse impact. Mr. Ramis' argument is incorrect.
- In oral rebuttal on June 3, 2008 Mr. Ramis argued that Borax had a NPDES 1200-C permit for the construction activity, which is required for construction activities exceeding one acre when construction activities may discharge to surface waters of the state. I have no reason to doubt that Borax has obtained the permit. However, the construction permit was not obtained until after the construction activities had occurred. Further, the permit was obtained only after Borax received a warning letter from Department of Environmental Quality (DEQ), and also a follow-up letter from DEQ. It took two letters from DEQ before Borax applied for the permit. (Council packet p.89)
- Source Water Assessment Summary Brochure for Rainbow Rock Condominiums PWS #4101361 is included in the Council packet (pp. 85-87). The brochure maps the Drinking Water Protection Area and potential contamination sources. The Drinking Water Protection Area in

Borax property. Within the Drinking Water Protection Area, managed forest lands are identified as a potential contamination source and is rated at a relative risk level, "higher". Potential impacts are: "cutting and yarding of trees may contribute to increased erosion, resulting in turbidity and chemical changes in drinking water supply. Over-application or improper handling of pesticides or fertilizers may impact drinking water source."

- An additional possible future contamination source to the Rainbow Rock water system has been identified. According to a June 23, 2008 e-mail from Chuck Costanzo, Oregon DEQ and a June 27, 2008 e-mail from Del Cline, Oregon DEQ, Southern Oregon Community College (SOCC) intends to apply for a WPCF Holding Tank Permit to handle its sewage until they can raise enough money to pay the connection fee for the City of Brookings. The Del Cline e-mail states: "the primary option would be the use of a large holding tank. Holding tanks are site tested for water tightness and are required to be equipped with an alarm and a contract with a licensed pumper." (Attachment C) The problems with this kind of system are the problems related to power outages and human error. In a power outage, the alarm couldn't work. If the system is not maintained properly, or is not emptied often enough, or suffers a spill during transfer from the tank to a truck, the error could result in contamination of Rainbow Rock's water source.
- Staff Report states that Condition of Approval (#23) provides adequate assurance that Rainbow Rock Condominiums water source and water shed will be protected. But, since Borax has already ignored this condition, before a DDP has even been submitted, and the City has already failed to enforce the condition, the condition is obviously inadequate to protect the Rainbow Rock water system from existing and future threats.

Summary:
Nothing short of providing water to the Rainbow Rock Condominiums from the City water system will resolve this problem. The condition of approval needs to be amended so that it states that construction activity is prohibited unless and until Rainbow Rock Condominiums are hooked up to the City water system. All costs of hooking Rainbow Rock Condominiums up to City water must be paid by the developer. I can find nothing in the City Charter or City Ordinances that prohibits the City from providing water service outside its Urban Growth Boundary. It appears that a service contract between RRSA and the City would be needed.

Electricity

Current Condition: Coos Curry Electric Cooperative (CCEC) member-owners must either pay the cost of removing the power lines from the Borax property or pay the cost of installing electrical infrastructure on the property or pay some of both.
Prior Condition: In its Annexation Application the applicant stated the developer would pay these costs. Finding #42 for the MPoD links the MPoD approval to the annexation document concerning utilities.

Argument:

- The U.S. Borax *Annexation Application*, page 18, states: "Electricity- according to CCEC, there is electrical service adjacent to the Property within the U.S. 101 right-of-way....The developer will pay the costs to connect to these utilities." (Attachment D)
- Section 17.70.070.C BMC states: "the proposed MPoD will demonstrate that adequate utilities and infrastructure are available or can reasonably be made available at each phase."
- The MPoD ordinance does not specifically mention electrical utilities and other dry utilities, but the ordinance does not specifically exclude electrical utilities and other dry utilities. Since electrical utilities and other dry utilities continue to be infrastructure, it appears that the omission is an error of omission.
- Absent any specific comment in the Master Plan about the electric utility, the default comment would be the comment in the annexation application. MPoD Finding #42 links the master plan to the annexation concerning utilities.

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- Finding #42 for the Master Plan states: "Based on the Lone Ranch Master Plan Utilities Report, the City's Public Facilities Plan, the testimony and evidence provided, and the approval of the annexation, public services are adequate or will be adequate during course of Lone Ranch." (Attachment E)
- The omission in the Master Plan would not necessarily be significant except for a change in conditions that was revealed in 2007. I describe the situation below.
- There are two electric transmission lines that run from Thomas Creek to Brookings Harbor. One is the old 'T' line that needs to be replaced as soon as possible. The other one runs through the Borax property.
- During a 2007 CCEC controversy unrelated to the Borax Master Plan, an old 1977 lease was discovered. (Council Packet pp.91-94) The 99-year lease between Borax (lessor) and CCEC (lessee) states: "In consideration of the lease rights herein granted by lessor, lessee agrees to construct, operate and maintain electrical distribution lines to any and all buildings that may hereinafter be constructed by lessor, its successors and assigns, during the period of this lease, on any property now owned by lessor in Sections 14, 23 and 26 of Township 40 South of Range 14 West of the Willamette Meridian, Curry County, Oregon." Further, it states: "In the event that the premises herein leased are not used by lessee, its successors and assigns for a continuous period of one (1) year for the purposes set forth, then and in such event, this lease and all rights of lessee hereunder shall immediately revert to lessor, its successors and assigns."
- In other words, as long as the electric transmission lines remain on the Borax property, and for up to one year after the utility lines are removed from the property, the property owner is entitled to free electrical infrastructure.
- The U.S. Borax Master Plan application is silent about the electrical infrastructure. But, since this old lease has been brought into the open in 2007, it appears to be a significant and costly omission.
- I do not have access to cost estimates from CCEC, but I found the following two cost estimates in the Borax files. For the sake of making this particular argument, these estimates seem to be reasonable.
- The U.S. Borax Annexation Application, Page 18, Table 5, On-site Cost Estimates for Installation of Services, states: "Electrical, TV, Fiber Optic, Telephone (dry utilities) equals $2,000,000." There is no break out for each utility. (Attachment D)
- In a letter from Otak to Burton Weast, June 20, 2001, an estimate given for "Power Line Relocation to Eastern Property Line is $875,000." (Attachment F)
- I do not have access to Engineer News Record (ENR) Construction Cost indexes for all dates. But by using ENR indexes that are pretty close in time to the dates when the above reports were made, I came up with ball park estimates of what these costs would be adjusted for inflation. The ENR Construction Cost Index, July, 2008 is 8293. ENR in November, 2001 was 6395.
- Adjusted for inflation, the estimated cost to install dry utilities today is $2.6 million. To avoid having CCEC member-owners pay the cost, the electrical transmission lines must be removed from the Borax property.
- Adjusted for inflation, the estimated cost to move the lines is $1.3 million. The lines cannot be removed from the Borax property until the old 'T' line is upgraded.
- According to "State of the Cooperative": "The planning stages for the completion of the transmission line upgrade from the Thomas Creek area to Brookings Harbor is progressing on schedule. While we have some property easement issues to resolve, we may be able to begin construction later this year." (Council packet p. 161) Councilor Kitchen, who also is on the CCEC Board, may have an idea of the total time estimate to upgrade the old 'T' line and then remove the Borax line.
- The upgrade of the old 'T' transmission line is essential. The removal of the lines on the Borax property is not essential at this time, but for the need to avoid having the CCEC member-owners pay the cost of installation of electrical utilities on the Borax property.
- Simply, if the transmission lines are left on the Borax property, the CCEC member-owners get to pay estimated $2.6 million to install the utility. If the lines are removed from the property, the CCEC member-owners get to pay an estimated $1.3 million to move the line. Either way, the CCEC member-owners lose.

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- Upon annexation the statement was that "the developer will pay the costs." We now know that, at a minimum, the CCEC member-owners will have to subsidize the cost of removing the lines from the property, about $1.3 million, and, if construction begins sooner than one year after the power lines are removed from the property, there may be additional unknown costs to CCEC member-owners to install some of the electricity infrastructure. This is a significant change in conditions.
- Staff report about electric lines does not address the issue of who pays for electricity infrastructure.

Summary:
Borax Annexation Application says developer will pay for electric utility infrastructure.
There were no City Findings in MPoD concerning electricity infrastructure, an error of omission.
The change in conditions is that now CCEC member owners must either pay the cost of electric infrastructure or pay the cost of moving the lines or pay some of both.

Western Lily

Current Condition: There are deficiencies in the conceptual MPD design and available information pertaining to the natural resources of the project area that could affect the ability to meet the development goals stated in the MPD.
Prior Condition: Deficiencies in the conceptual MPD design pertaining to natural resources of the project area had not been identified.

Argument:
- In his May, 30, 2008 letter Craig Tuss, US Dept of Interior (USDI)/Fish and Wildlife Service (FWS) identified issues that needed to be addressed IF the extension was granted. (Council packet p.173) Generally the issues raised are: Raedeke Associates survey report, 2006, did not show the full extent of the lily population; the FWS had concerns about the accuracy of the wetland delineations; the wetland buffers were inadequate.
- Mr. Tuss also stated: "We believe it is important for all interested parties to recognize that each of the above **deficiencies in the conceptual MPD design** and available information pertaining to the natural resources of the project area could affect the ability to meet the development goals stated in the MPD. Based on our partial inspection of the property in July, 2005, it appears that the **MPD overly estimates the development potential of the site,** with regards to the stated objective (LUBA remand order) to 'protect the wetlands and western lily'."
- Previous comments by FWS, including comments made at the August 22, 2005 remand hearing, (Attachment G) generally focused on: threats to the lily, storm drainage, buffers, and wetland delineation.
- Previous response to FWS comments by the applicant has generally been that the MPoD is a conceptual plan, and that the specific issues concerning the western lily would be deferred until a DDP is submitted, at which time the applicant will be required to obtain joint permits through Corps of Engineers and Division of State Lands.
- As an additional safeguard, Condition of Approval #28, which basically requires a cumulative hydrologic study to be performed with each DDP, was added to the MPoD.
- What is different now is that, having done a preliminary survey in July, 2005 and having reviewed the Raedeke report dated 2006, FWS now describes the shortcomings as deficiencies in the MPD design with respect to the western lily. Basically the MPoD concept is flawed.
- Specifically, FWS believes that the MPoD overstates the development potential of the site with respect to the lilies. FWS does not quantify or qualify how the development potential is overstated. But it seems reasonable to conclude that there would be an impact on many elements of the master plan- number of dwelling units, roads, infrastructure, walkways- and, subsequently, whatever those impacts might entail.
- While FWS affirms their commitment to work with the applicant if the extension is granted, it seems clear that if the basic concept of the MPoD is flawed with regard to the western lily, the appropriate

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action would be to redesign the conceptual plan. In other words, the Master Plan needs to be amended.

- Staff report states: "A letter was received after the Planning Commission hearing on June 3 from USDI discussing the need to coordinate with any applicant submitting a DDP. Once DDPs are known it is then possible to determine appropriate care and protection of the lilies and wetlands....etc."
- Staff report does not discuss the salient points raised in the Tuss letter.

Summary: The change in condition described in the Tuss letter seems to require an amendment to the Master Plan.

Cost of Infrastructure

Current Condition: Adequate utilities and infrastructure are not available and cannot reasonably be made available because the cost is prohibitive. In 2006 documents that describe the off-site infrastructure needed to serve Lone Ranch were discovered by the mayor during a review of the Borax file. The information about the extent and cost of the needed off-site infrastructure to serve Lone Ranch had been available before and during the time of the MPoD approval, and the information had been freely discussed among certain City staff, Borax representatives and the City's contract Engineer before the time of the MPoD approval. But the information about the cost and extent of the needed off-site infrastructure was withheld from the Planning Commission, the City Council, and the public before and during the time of the MPoD approval. The information was and is critical information.
Prior Condition: MPoD Findings concluded that utilities and infrastructure are or can reasonably be made available

Argument:
The argument has three sections. **Section 1** shows that information about the cost of the off-site infrastructure was available at the time of the MPoD hearing, and that it was withheld from the decision makers. **Section 2** argues that the cost of off-site infrastructure needed to serve Lone Ranch is prohibitive relative to funds available or reasonably likely to become available in a timely way. **Section 3** argues that, when evaluating the feasibility of a project the size of Borax relative to the size of the City, failure to consider the cost of the project is unreasonable, and further, failure to provide the decision makers with the critical information about the costs, when the information was readily available, was negligent. Before an extension is granted, the oversight should be corrected.
Section 1:

- In November, 2001 HGE Inc, the City's contract engineer, prepared a report for the City of Brookings entitled "Water and wastewater facilities plan to serve Borax development and surrounding areas." (report)
- The information that was in the report was a topic of discussion in letters from HGE dated February 16, 2004 (Council Packet, p. 64) and April 22, 2004 (Council Packet p. 54) to various City staff.
- The information in the report was a topic of discussion between Richard Nored, HGE, the City's engineer, and Genc Emre, Otak, the applicant's engineer, on April 8, 2004 (Attachment H)
- Neither the report nor information included in the report was included in testimony submitted for the MPoD hearing.
- The report was mentioned by title in testimony submitted for the MPoD hearing by Richard Nored, (Council Packet p. 22)
- The response by the City Manager to a pointed question posed by Councilor Anderson during the MPoD hearing about the off-site infrastructure was incomplete and erroneous. (Council Packet pp. 170, 53 and the tape of the meeting)
- In a related matter, during development and adoption of the 2004-2005 Fiscal Year budget, the Budget Officer, Finance Director Paul Hughes, was not aware that Richard Nored had advised anyone

of a fair cost sharing split with Borax on the Crissey- Parkview sewer project when the budget was adopted. (Attachment I) The project is one of many needed for the Lone Ranch project. The cost sharing split for this project was specifically addressed in the April 22, 2004 letter from Mr. Nored to the City: "projected costs that the City has authorized for replacement of the sewer system from Crissey Circle to Parkview Drive have not been addressed in this analysis. Lone Ranch costs for this project total $601,560." Further, according to Mr. Hughes, he was unaware of the fair cost sharing during the project construction and he didn't become aware of Mr. Nored's opinion until some time later. Incidentally, the contract for the Crissey Parkview project was awarded at the October 11, 2004, the same meeting as the MPoD hearing.

Conclusion: The information about the cost of infrastructure was known at the time of the MPoD hearing, had been discussed between the applicant and the City, but was withheld from the decision makers.

Section 2:

Cost of Project

- The HGE report was revised in November, 2006. (Attachment J) The information in the report is also included in the City's Water Master Plan and Wastewater Master Plan that were adopted in 2007. I am using data from the November, 2006 report because that is what I have available.
- Using the 2006 report, the total cost for recommended water system expansion for Lone Ranch is $3,749,175. The total cost of needed collection system improvements is $7,425,435. The ENR Construction cost index used when the report was prepared was 7883. The ENR index for July, 2008 is 8293. Adjusted for inflation the costs for water and sewer, respectively, are $3,944,172 and $7,811,637, or a total estimated cost of $11,755,809.
- Recommended cost sharing between Borax and the City is described in a September 27, 2007 letter to the City from Richard Nored (Council Packet, p. 62): "WATER- Borax would provide all costs of water installation North of Carpenterville Rd. Borax and the City of Brookings would share recommended improvement costs South of Carpenterville on a 50-50 basis. SEWER- Borax would provide all costs of sewer installations North of Dawson Road. Borax and the City of Brookings would share recommended improvement costs from Dawson Rd. to Moore Street on a 50-50 basis. This work includes costs previously incurred by the City of Brookings from Crissey Circle to Parkview Dr. Borax and the City of Brookings would share recommended improvement costs from Moore St to the Wastewater Treatment Plant (WWTP) on 77% City, 23% Borax basis."
- Completed work includes extension of water and sewer mains from Carpenterville Rd and Dawson Rd., respectively, to the Borax property line and replacement of the Parkview-Crissey segment of the sewer main. The Taylor Creek pump station and all of the other water and sewer mains have not been constructed. The cost of the Crissey-Parkview project was $793,714.81 (Attachment K)
- ***Summary- The needed off-site infrastructure for Lone Ranch will be very expensive.***
- **Funds Available**:
- The City of Brookings 2008/2009 adopted budget is $26.8 million. (Attachment L)
- Needed Capital Improvement Projects for the City of Brookings listed in the budget document, including street, water, wastewater, and storm water projects, and including projects needed for Borax, but excluding General Fund and Recreation projects, total $42,863,278. (Attachment M) Unfunded projects- assuming the City is awarded $4,000,000 loan for its Biosolids A upgrade- totals $33,847,788. Shortfall of funds available for these projects, considering the cost of the projects less funds available but uncommitted in System Replacement and System Development Funds (SDF) is $30,830,716.
- The City adopted Master Plans for Storm Water, Water, and Wastewater in 2007; therefore those items are up to date.
- ***Summary- There are currently no funds available to pay for the needed infrastructure for Lone Ranch.***
- **Recent Funding History for Various Projects for Brookings:**
- In 2000 total System Development Charge (SDC) fees were approximately $4500 per equivalent dwelling unit (EDU).

- In 2001 the City received a $13,100,000 loan to fund improvements to the WWTP. Payment in FY 2008-2009 will be $1,002,488. Funds for the loan payments come from Wastewater Fund and Wastewater SDF.
- After the WWTP loan was received total SDC fees were increased to approximately $8,000 to pay the 'growth' portion of the WWTP loan.
- In 2006 the City increased the total SDCs to $17,209 based on a study done by Dyer and Associates.
- Currently the City adjusts SDCs annually based on ENR Construction Cost Index. Current fees are $17,776 per EDU.
- Single Family Dwelling (SFD) Permits have fallen sharply.

YEAR	SFD Permits
2004	48
2005	44
2006	41
2007	10
2008 YTD	7

- As reported in a June 25, 2008 *Pilot* article, "City Manager Gary Milliman expects to see development-related revenues drop by as much as 50 per cent, which will hamper its ability to pay off debt, particularly that used to make improvements to its waste water treatment plant several years ago." In the article Mr. Milliman is also quoted saying: "Due to the building decline, this growth rate *(3%)* is not being achieved. While we have sufficient funds to meet debt service requirements this year, the city may need to consider an additional sewer rate increase." (Attachment M)
- Next, the Westside Interceptor problem is described. At the February 27, 2006 meeting City Council voted to advertise for bids for replacement of the Westside Interceptor. At the April 24, 2006 meeting City Council voted to reject all bids for the interceptor because the bids were higher than the engineer's estimate of $974,800. (Attachment N) On Christmas Day, 2006 the bottleneck problem in the Westside Interceptor, aggravated by a rain event, overflowed into the street and into the ocean. The Council later learned that this problem had occasionally been occurring during high rain events for eight years. The City has been attempting, so far unsuccessfully, to secure funds for this project. An appropriation request was made to Congress without success (Attachment O). In 2006 at least one and perhaps two meetings were had with Oregon Economic and Community Development Department (OECDD) to secure funds without success. In 2007 the City mitigated the problem by installing a bypass to handle excessive flows during heavy rain events. The effectiveness of the bypass has not been tested yet since there have been no rain events that challenged the system since the bypass was installed. In 2008 another attempt was made to secure funds for this project through OECDD with no success yet. (Council Packet, p 65)
- Next, the Biosolids A problem is described. In 2005 the City Council voted to construct a Biosolids A processing plant. Since that time (almost three years) the City has attempted in many different ways to obtain the funds (not grant funds, but a loan) to finance the project. During this entire time the ratepayers have been paying into the Wastewater Fund to pay for the project. The project is included in the current adopted budget and we are told that our prospects for getting the loan approved look good, but to my knowledge no deal has been finalized yet. The project cost is about $4,000,000.
- In the City of Brookings 2000 Water Master Plan numerous needed capital projects were identified. In 2007 the City took action and finally requested and received $5,000,000 loan to complete some of the needed projects. The specific projects that the money is being used for had been deferred since at least 2000. None of the projects are related to Lone Ranch.
- The City continues in its attempts to secure funding for its needed Capital Improvement Projects.
- In 2001 in its Annexation Application, Borax had proposed using an on-site sewage disposal system for the initial stages of the project because the cost of extending sewer lines was "cost prohibitive." (Attachment P)

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- The Lone Ranch project will be phased, and the entire infrastructure does not need to be installed immediately. But paying for the infrastructure needed for the first phase of the project appears to be a formidable obstacle. Some of the sewer line has been installed but much more needs to be installed.
- Currently, SOCC is exploring the use of a Holding Tank as a way to avoid the cost of the needed sewer improvements for the first phase. (Attachment C)
- Staff Report (Council Packet, p.7) states that the applicant (Borax) and the City are working on a cost sharing agreement. The fact is that Borax and the City have been in discussions about cost sharing agreements since at least April, 2003 (Attachment Q). As yet none has been consummated. Likewise, Rainbow Rock Condominiums had been in discussions with Borax since October, 2004 (Attachment A) about an agreement to resolve Rainbow Rock's issues and, likewise, no agreement has been consummated. While it is encouraging to hear that the City's discussions with Borax in this matter are making progress, it is clear that the promise of an agreement is not the same as an actual agreement.
- ***Summary: The City's ability to secure funds for capital projects has been spotty and there is no reason to believe that the situation will change. The City has an extensive backlog of needed capital improvement projects. Funding requests for Lone Ranch-related projects must be considered along with all other requests for other city-wide projects. The City anticipates decline in revenues due to economic downturn. The developer has expressed concern about the cost of off-site infrastructure since 2001. SOCC is seeking ways to avoid the costs of the infrastructure.***

Conclusion: The cost of off-site infrastructure needed to serve Lone Ranch is prohibitive relative to funds available or reasonably likely to become available in a timely way.

Section 3:

Size is important. Relative size is important. The need for the city to consider financial conditions as an element in determining whether or not infrastructure is or can reasonably be made available depends on the size of the project and the size and resources of the city. For a small or moderately sized development proposal the cost of the infrastructure probably doesn't need to be considered. The Borax project is an enormous project for a city the size of Brookings. The cost of the infrastructure has been one of the biggest obstacles preventing the project from moving forward. Knowing what we now know about the cost of the off-site infrastructure, ANY reasonable person would consider cost of the infrastructure as one important element when evaluating whether or not infrastructure is or can reasonably be made available. Further, knowing what we know now about the cost of the project, any reasonable person who would NOT consider cost of infrastructure would be failing in the performance of his basic fiduciary responsibilities.

Staff did not provide the decision makers with the appropriate information regarding these issues in the MPoD hearing in 2004. This omission was not discovered until 2006. In this particular case, the information about the cost of the infrastructure is critically important to a decision about whether or not infrastructure can reasonably be made available. In fact, I think it is so important, that, had the cost been known at the time of the MPoD hearing, the approval of the MPoD may have been at risk. I think that city staff may have withheld the information precisely to avoid that risk.

Summary of Argument about Infrastructure:

The change in conditions relevant to the cost of needed off-site infrastructure to serve Lone Ranch has as much to do with the information that was withheld and later discovered, as it has to do with the fundamental facts of the matter. The omission and later discovery of the information is a change in conditions on its own merit. Considering the facts of the matter, and remembering that the standard is that the infrastructure can reasonably- as compared to possibly- be made available, a reasonable person would not conclude, without having further information, that infrastructure can reasonably be made available. Based on the information that is now available, a reasonable person would conclude that infrastructure cannot reasonably be made available in a timely way. That is a change in conditions related to the Findings.

Additional Comments

- It seems highly unusual for staff to recommend overturning the decision of the Planning Commission. It seems that if there were procedural or technical errors made by the Planning Commission during the Planning Commission hearing then there might be a good reason for staff to recommend overturning the decision based on those errors. But that does not seem to be the basis for making a recommendation to overturn the Planning Commission decision in this case. Rather, it appears that staff's recommendation is based solely on the fact that staff does not agree with the Planning Commission decision. That's not how the process usually works. How the process usually works is that staff makes a recommendation to the Planning Commission, the Planning Commission makes a decision, and if the decision is appealed to the City Council, the City Council takes measure of the Planning Commission decision and usually staff makes no further recommendation.
- It also seems highly unusual for staff to change definitions between Planning Commission and City Council hearings. In staff report for the Planning Commission, change in conditions was defined as: "no circumstances have changed that were fundamental to the findings which are the basis for approval of the MPoD." (Council packet p. 10) In the staff report for the City Council, staff uses a definition of: "none of the above stated concerns results in changes to the Conditions used in reviewing and approving the original Master Plan." (Council packet p.7)
- Staff report states on several occasions in its comments concerning Review Criteria that "no request for a change to the Plan is being made." If the applicant were seeking a modification to the Plan he would need to submit an application for a modification of MPoD under Section 17.70.130 of the BMC. The applicant is seeking an extension to the MPoD under section 17.20.120. Staff comments seem to be off the point.

Based on the above changes in conditions, I believe that the City Council cannot make a finding that "conditions have not changed." In particular, I believe that the changes in conditions related to electricity, western lily, and cost of infrastructure are profound changes that require an amendment to the Master Plan. I request that the City Council deny the request for an extension, and that the City Council make a recommendation that the applicant submit an amendment to the MPoD under Section 17.70.130 of the BMC to address the substantial changes that have occurred since the MPoD was approved.

Sincerely,

Pat Sherman

Pat Sherman

Pat Sherman

From: Pat Sherman [psherman99@verizon.net]
Sent: Thursday, July 17, 2008 8:37 AM
To: 'Dianne Morris'
Subject: RE: case # and date

thanks

From: Dianne Morris [mailto:dmorris@brookings.or.us]
Sent: Thursday, July 17, 2008 7:51 AM
To: Pat Sherman
Subject: RE: case # and date

Pat, It was APP-3-03/ VAR-1-03.

Dianne L. Morris
Planning Director
City of Brookings
541-469-1138
dmorris@brookings.or.us

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Thursday, July 17, 2008 7:14 AM
To: Dianne Morris
Subject: case # and date

Dianne,

What was the case # and date of the appeal (I think it was a Variance) that you cited last night in which staff recommended overturning PC decision?

Pat

mail copy

Pat Sherman
PO Box 1140
Brookings, OR 97415
July 23, 2008

Mayor Larry Anderson and Councilors
898 Elk Drive
Brookings, OR 97415

Mayor and Councilors:

Please include this letter as additional testimony in File #APP-1-08. Also please include the attachments submitted with this letter.

Previous testimony primarily addressed topics in which I concluded that 'conditions have changed'. Previous additional comments touched on highly unusual actions taken by staff during the course of the extension application. Specifically, the recommendation by staff to overturn the Planning Commission decision and the fact that staff changed staff's definition of 'changes in conditions' between the staff reports for the Planning Commission and the City Council were mentioned in my testimony of July 15.

What I perceive to be problems with the actions by staff are herein discussed in more detail. In addition to the two items listed above, I will also discuss the Final Order of the Planning Commission and the unusual circumstances surrounding staff's handling of the May 30 letter from Craig Tuss, U. S. Department of Interior/Department of Fish and Wildlife. (DFW)

Recommendation to Overturn Planning Commission Decision Unprecedented

In previous comments I noted that it seemed highly unusual for staff to recommend overturning the Planning Commission decision. Specifically I wrote:

> *It seems highly unusual for staff to recommend overturning the decision of the Planning Commission. It seems that if there were procedural or technical errors made by the Planning Commission during the Planning Commission hearing then there might be a good reason for staff to recommend overturning the decision based on those errors. But that does not seem to be the basis for making a recommendation to overturn the Planning Commission decision in this case. Rather, it appears that staff's recommendation is based solely on the fact that staff does not agree with the Planning Commission decision. That's not how the process usually works. How the process usually works is that staff makes a recommendation to the Planning Commission, the Planning Commission makes a decision, and if the decision is appealed to the City Council, the City Council takes measure of the Planning Commission decision and usually staff makes no further recommendation.*

As it turned out I understated the situation. Staff's recommendation is not only highly unusual, it is unprecedented.

In oral response at the City Council hearing, staff cited Case # APP-3-03/VAR-1-03 as staff's example of a case in which staff recommended overturning a Planning Commission decision. With the intention of comparing and contrasting the 2003 case to the current case to ascertain the relevance of the 2003 case to the current case, I requested a copy of the staff report for the 2003 case. In reviewing staff report for APP-3-03, staff's recommendation for the appeal hearing states in its entirety: "The Planning Commission, in a 3 to 3 vote, effectively denied the variance." (Attachment A) This is not a recommendation; it is a statement about what happened. Based on the actual staff recommendation in APP-3-03, staff's assertion in the City Council Borax extension appeal hearing on July 16 that staff recommended overturning the Planning Commission decision in case #APP-3-03 is not true.

Staff provided me with an additional report at no charge to me, File # App-1-90, in which staff actually did recommend overturning a Planning Commission decision. (Attachment B). I read the 18.year old staff

4C
IX

report. The 1990 case was an appeal of a partition case, and the main problem in the case had to do with access to one of the lots. Staff had recommended *denial* of the application at the Planning Commission level because of the access issue. The Planning Commission agreed with the staff report and denied the application. Subsequent to the Planning Commission denial of the application, and prior to the appeal hearing to the City Council, the applicant had worked out a solution to the access problem. Based on the fact that the applicant's plan had changed, and the access problem had been resolved, staff changed its recommendation in the City Council appeal, and recommended *approval* of the application.

The case APP-1-90 is not comparable to the case currently before the City Council. In the 1990 case staff recommended *denial* at the Planning Commission level, and changed their recommendation to *approval* at the City Council level. The change was based on a change in the underlying circumstances that occurred between the Planning Commission hearing and the City Council hearing. In the case currently before the City Council, staff recommended approval at the Planning Commission level. The Planning Commission denied the application, and staff is recommending overturning the Planning Commission in the appeal. Unlike the 1990 case there have been no changes in the underlying circumstances between the time of the Planning Commission and the City Council hearings. Nor does staff cite any technical or procedural errors made by either the applicant or the Planning Commission.

What appears to be the sole reason for staff's recommendation to overturn the Planning Commission decision is that staff does not agree with the Planning Commission decision. Staff appears to be either changing the rules, changing their argument, changing their definitions, or changing all three. This seems to be a very dangerous precedent and should not be allowed. Given the peculiar circumstances in this case, I encourage the City Council to make a decision based on the facts of the matter and to disregard staff report to the City Council and to disregard staff recommendation to City Council.

Further, to clearly avoid setting any precedent in this matter, whether the decision is to approve or deny the extension, I suggest that the City Council direct staff to include in the Findings of Fact a statement that the staff recommendation to overturn the Planning Commission decision was not considered in the decision because staff exceeded its authority in making the recommendation to overturn the Planning Commission decision, without having a substantive reason for doing so- namely, a change in circumstances, or a procedural or technical error. Also, I suggest that Council include in its Findings a statement that the staff recommendation to overturn the Planning Commission decision was unprecedented and inappropriate.

Staff Changed the Definition of 'Changes in Conditions'

I would like to point out the migrational shift in staff's definition of 'changes in conditions' between the Planning Commission and City Council hearings.

First, the Planning Commission definition. Staff report for the Planning Commission states: "17.70.120, BMC, authorizes the Planning Commission to grant a 2 year extension of time when '...conditions have not changed...' As the Applicant explained in Attachment B *no circumstances have changed that were fundamental to the findings which are the basis for approval of the Master Plan of Development* (MPoD)." (italics added) (Council Packet, p.10) Attachment B, submitted by Mr. Weast, proposes a definition for 'conditions have not changed' as follows: "the question presented is whether changes in circumstances that are so important and fundamental that they completely undermine the findings which are the basis for approval of the MPoD." (Council packet, p.14)

The proposed Planning Commission Final Order states: "Criteria to approve the extension request requires *(sic)* that no conditions have changed that relate to the findings used to approve the Lone Ranch Master Plan." (Attachment C) One concludes that the definition of 'changes in conditions' offered by staff in staff report is the definition adopted by the Planning Commission. Using that definition as their basis, the Planning Commission denied the extension.

Next, the City Council definition. Staff report for the City Council uses a different definition of 'changes in conditions' as follows: "Staff Conclusion: None of the above stated concerns result in *changes to*

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the Conditions used in reviewing and approving the original Master Plan." (italics added) (Council packet, p. 7)

There is a substantive difference between a definition that says *circumstances have changed that were fundamental to the findings which are the basis for approval of the Master Plan of Development* AND a definition that says *changes to the Conditions used in reviewing and approving the original Master Plan.* The first definition, the Planning Commission definition, addresses the fundamental underlying circumstances or conditions. This is substantially the definition proposed by Weast, and referred to by staff in the Planning Commission staff report, and adopted by the Planning Commission in the Final Order. The second definition, the City Council definition, addresses the *process* used in evaluating the fundamental underlying circumstances or conditions. Using the new City Council definition, staff engages in an effort to address the Review Criteria for a MPoD to "demonstrate that 'conditions' used to approve the Lone Ranch Master Plan have not changed." (Council packet, p.4)

The City Council has sole discretion to interpret the meaning of 'conditions have not changed.' I encourage you to use the interpretation proposed by staff, and by Mr. Weast, for the Planning Commission hearing. That definition offers a very high, but reasonable, standard.

Planning Commission Final Order

The Findings proposed by staff in the Planning Commission Final Order were not a reflection of the actual Findings of the Planning Commission. The Findings proposed by staff (Attachment C) for File # MPD-1-04 Extension state in part:

1. "The majority of the Planning Commission was uncertain if any conditions had changed.
2. The majority of the Planning Commission was also uncertain about the meaning of the word 'conditions'."

During the Planning Commission meeting at which the Final Order was adopted, Commissioners disagreed with the Findings that staff had written and Commissioners specifically stated that there was no uncertainty if any conditions had changed. Accordingly, the Commission directed staff to amend the Findings to reflect their Findings. Staff did so. The Findings noted above in the adopted Final Order were amended to read as follows: (Attachment D)

1. "The majority of the Planning Commission believed conditions had changed."
2. The second item noted above was deleted.
3. A third Finding was added: "The free exercise of discretion was encumbered by the wording of the ordinance."

The Findings proposed by staff demeaned the abilities of the Planning Commissioners.

The Tuss Letter

Of all the problems with this case, staff's handling of the May 30 Tuss letter is the most serious problem. The problem with the handling of the Tuss letter goes beyond the fact that the letter was not date stamped until June 26 (with a June 5 date stamp).

Craig Tuss, U. S. Department of Interior/Fish and Wildlife Service, mailed a letter addressed to the Planning Commission, Attn: Dianne Morris on May 30, 2008, the Friday before the Planning Commission hearing scheduled for Tuesday, June 3, 2008 at 7:00 p.m. The Tuss letter was not included in the documents provided to the Planning Commission.

I received a phone call on June 18, 2008 from Catherine Wiley who stated that while Catherine was performing a public records search, she had just discovered what Catherine thought was an original copy of the Tuss letter in Mr. Milliman's file. In Catherine's presence was Ms. Colby-Hanks, Senior Planner, who made a copy of the letter (without date stamp) for Ms. Wiley. Catherine also related to me that the Senior Planner expressed what appeared to Catherine to be sincere shock and surprise, stating that neither she (the Senior

Planner) nor Ms Morris, the Planning Director, had seen the document from Mr. Tuss. Ms. Wiley also said that the Senior Planner told Catherine that she (the Senior Planner) would get a copy for the Planning Director.

On June 26, 2008 I submitted a public records request for the letter. On June 27, 2008 I picked up a copy of the letter. I noticed that the previously undate-stamped letter now had a date stamp on it. The date stamp was June 5 2008, a Thursday, six days after the letter had been mailed from Roseburg. After leaving City Hall on June 27 I stopped at the post office and I asked the postal clerk (tall woman) if the post office had any kind of document that showed the probability of the time it took for a letter sent from Roseburg on a Friday to arrive in Brookings on any given day. She said there was no such documentation. She also said: "it would depend on when exactly the letter went out- morning or afternoon." She continued: "a letter from Roseburg to Brookings normally takes two or three days. If mailed on a Friday it would be in transit over the weekend and probably arrive on Monday or Tuesday." I asked about the possibility of arriving on Wednesday or Thursday. She replied: "If it fell off the truck. Normally it takes two or three days." When I arrived home I documented my recollection of the conversation with the postal clerk.

I later inquired from the Planning Director when the date stamp was put on the letter and who put the date stamp on the letter. It took two back-and-forths to elicit a complete answer to the questions. The Planning Director wrote that Cathie Mahon, the Planning Secretary, had date-stamped the letter on June 24. The Planning Director also wrote that she (the Planning Director), the Senior Planner and the Planning Secretary all remembered the arrival of the letter. In a subsequent phone conversation with the Planning Director I asked if she could have the Planning Secretary and the Senior Planner confirm that they remembered the arrival of the letter. The Planning Director agreed.

Shortly thereafter I received a call from the Planning Secretary. The Planning Secretary said she had never seen the letter until June 26 when she put the date stamp on the letter. I asked if she was sure that June 26 was the date that she put the date stamp on the letter. She said she was sure because she put the date stamp on the letter when she assembled the Council Packet and that she assembled the Council Packet on June 26. I asked her why she put a date stamp of June 5 on the letter. She replied that she had done so because her supervisor told her to. The Senior Planner sent me two e-mails. Neither of the e-mails answered the question: did she remember the arrival of the Tuss letter. A third inquiry from me to the Senior Planner asking the same question was unanswered.

On July 7 the Planning Director sent me the following explanation in response to a question I asked about why and how the Tuss letter ended up in the City Manager's file. "*The original is in the Planning File. I did give Gary a copy and let him know that it had arrived after the Planning Commission hearing and therefore was not a part of the record unless an appeal was filed. An appeal was filed. The letter was made a part of the appeal file. It is in the packet for the City Council hearing.*"

The plain language of the Tuss letter states as a matter of fact: "We believe it is important for all interested parties to recognize that each of the above **deficiencies in the conceptual MPD design and available information** pertaining to the natural resources of the project area could affect the ability to meet the development goals stated in the MPD design." In his May 30 letter Mr. Tuss neither recommended approval nor denial of the applicant's request for an extension. He stated what must happen at the DDP stage IF the application is approved. Staff report to City Council, as I noted in previous testimony, does not discuss, in my opinion, the salient points raised in the Tuss letter. Staff report indicates that staff apparently did not think that the contents of the Tuss letter were much different from previous comments made by Mr. Tuss. My own analysis of the Tuss letter is included in previous testimony, but I would like to re-emphasize the significance of the statement that there are "deficiencies in the conceptual MPD design."

Mr. Tuss sent another letter, dated July 9 2008, from Roseburg and it was received and date-stamped on July 10, one day after it was mailed. In the July 9 letter Mr. Tuss reiterates the statements of the May 30 letter, including the statement as a matter of fact that there are **deficiencies in the conceptual design of the MPD,** and he adds more detail. As in the May 30 letter, Mr. Tuss makes no recommendation about the approval or denial of the application, and he restates what must happen at the DDP stage IF the extension is approved.

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Given both the unprecedented recommendation by staff to overturn the Planning Commission decision, (including the misrepresentation at the City Council hearing of Case # APP-3-03) and the highly unusual change in definitions of 'change of conditions', it is evident that staff wants this extension approved. Within that context, here is what we are being asked to believe about the Tuss letter:

- that the May 30 Tuss letter arrived not one day, but two days, after it should have arrived (a total of six days from Roseburg) compared to the overnight arrival of the July 9 Tuss letter
- that the Tuss letter was erroneously not date-stamped when it arrived
- that the Tuss letter got misfiled and was put into the City Manager's file or, alternatively, the letter in the City Manager's file was a copy, and the original letter, also without a date-stamp, was in a file in the Planning Department
- that the letter was erroneously not date-stamped again when a copy was allegedly made for the City Manager
- that the Tuss letter was erroneously not date-stamped again when it was discovered on June 18 by Ms. Wiley in the presence of the Senior Planner
- that the statement by the Planning Director that the letter was date stamped on June 24 was an erroneous statement
- that the statement by the Planning Director that the Senior Planner and the Planning Secretary remembered the arrival of the letter was an erroneous statement
- and, finally, that the staff report about the letter was an honest discussion of the elements in the letter.

I do not think a reasonable person could attribute this highly unusual string of administrative blunders to human error- especially given the context in which these events are occurring. As it turned out, the absence of the Tuss letter in the Planning Commission's packet was inconsequential to the Planning Commission's decision to deny the extension. But for other persuasive testimony offered by participants in the Planning Commission hearing, the outcome of the Planning Commission hearing, absent the Tuss letter, quite possibly would have been different. So even though the May 30 Tuss letter was not decisive for the Planning Commission, what seems to have happened to the Tuss letter is most significant.

Summary: Based on all of the above, I concur with Ms. Wiley's statement at the City Council public hearing about: the "actions of public employees in setting new precedents in accommodating the proposed Borax development by virtually any means necessary." By its actions, noted above, particularly staff's handling of the May 30 Tuss letter, staff has undermined public trust in what should be an open, honest process. I am deeply saddened and distressed to say that, in my opinion, the actions by staff concerning this particular quasi-judicial hearing are the most dishonest that I have witnessed in any quasi-judicial hearing at City Hall since I moved to Brookings.

Sincerely,

Pat Sherman

Pat Sherman
With Attachments
Cc: Planning Commission/Citizen Involvement Committee
Richard Whitman, Director DLCD

4C

EXHIBIT K

Rebuttal submitted July 24 through July 30, 2008

EXHIBIT K:	DATE:	SUBMITTED BY:	NUMBER OF PAGES:	DOCUMENTS:
K-1	07-30-08	City of Brookings, Planning Director Morris	1	Letter to Planning Commission & City Council
K-2	07-30-08	Dave Perry, DLCD	1	Letter to City of Brookings Mayor
K-3	07-30-08	Robert Yamachika for Tim Ramis, Schrader Attorneys at Law	1	Letter to City Council

Exhibit K-1

City of Brookings

898 Elk Drive, Brookings, OR 97415
(541) 469-1138 Fax (541) 469-3650
dmorris@brookings.or.us

RECEIVED

JUL 30 2008

CITY OF BROOKINGS

TO: Planning Commission and City Council
FROM: Dianne Morris, Planning Director
DATE: July 29, 2008
RE: Lone Ranch Hearing Accusations

Land use hearings often involve strong opinions from varying points of view. That is to be expected and planners often find themselves in the middle of contentious debate. However, in my 20 year career in land use planning, my honesty has never been questioned and it is seriously disheartening. I believe it is important to briefly respond.

The letter from Craig Tuss, U.S. Department of Interior/ Fish and Wildlife Service, did arrive 2 days after the Planning Commission hearing in June. The letter and other materials relating to the Lone Ranch case have been provided to the City Council in the various packets distributed thus far. Unlike what has been stated in Pat Sherman's recent letter (Exhibit J-3), Donna Colby-Hanks did confirm she witnessed the late arrival of this letter.

The descriptions of what the phrase "conditions have not changed" means in staff reports vary slightly in an effort to clarify understanding. The words used were similar and did not change the "definition" of the phrase. It is very important that the Council settle on exactly what they believe the phrase to mean at the outset of their deliberations. Courts give much deference to a jurisdictions interpretation of their Code so it needs to be decided on and stated clearly.

Of great concern are the efforts to suggest the Planning Commission is not being valued. As I have said numerous times to you as a group and individually, I respect and appreciate the work that you do. Your work is an important service to the community. As has been discussed in previous training sessions, there are two kinds of hearings, legislative (such as Code changes) and quasi-judicial (hearings considering specific developments). The Planning Commission makes a recommendation to the City Council in legislative matters. If a quasi-judicial hearing is appealed to the City Council, the hearing is "de novo" meaning "from the beginning." The Council receives all the material submitted from the beginning including the Planning Commissions decision, but it is not a recommendation. The Council is to consider all evidence and draw their own conclusion. In a quasi-judicial hearing Staff has the responsibility to make a recommendation to the Planning Commission or the City Council as to whether the criteria have been met. Attached is a letter from the State land use agency, Department of Land Conservation and Development (DLCD), confirming this process.

It is unfortunate when passions run so high that participants in the planning process attempt to discredit the staff as a means of defeating an application. Honesty and dedication to my responsibilities have always been essential to me in both my work and personal life. If you feel you need to discuss this with me further, please give me a call or come by.

cc: Dave Perry, DLCD

4E

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

OREGON SHORES CONSERVATION COALITION
and CATHERINE WILEY,
Petitioners,

vs.

CITY OF BROOKINGS,
Respondent,

and

U.S. BORAX, INC.,
Intervenor-Respondent.

LUBA No. 2008-172

FINAL OPINION
AND ORDER

Appeal from City of Brookings.

Courtney Johnson, Portland, filed the petition for review and argued on behalf of petitioners. With her on the brief were Christopher Winter, Ralph O. Bloemers and CRAG Law Center.

John B. Trew, Coquille, filed a response brief and represented respondent. With him on the brief was Trew & Cyphers LLP.

Timothy V. Ramis, Portland, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief were Damien R. Hall and Jordan Schrader Ramis PC.

RYAN, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member, participated in the decision.

AFFIRMED 02/24/2009

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

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Opinion by Ryan.

NATURE OF THE DECISION

Petitioners appeal a decision by the city approving an extension of time to implement a previously approved Master Plan of Development.

MOTION TO INTERVENE

U.S. Borax, Inc., the applicant below, moves to intervene on the side of the respondent in the appeal. There is no opposition to the motion and it is granted.

FACTS

In August, 2005, the city approved intervenor's application for a Master Plan of Development (MPoD) on intervenor's 553-acre property located on the east side of Highway 101, across from Samuel Boardman State Park. The development, known as "Lone Ranch," consists of single family housing, attached housing, a commercial area, and a college campus site. Under Brookings Land Development Code (BLDC) 17.70.120, intervenor was required to submit a Detailed Development Plan or secure first phase development approval within four years of final approval, unless the city granted an extension to those time frames.

In April, 2008, intervenor applied for an extension of the Lone Ranch MPoD. The planning commission denied the requested extension, and intervenor appealed the decision to the city council. The city council approved the extension. This appeal followed.

FIRST ASSIGNMENT OF ERROR

In the first assignment of error, petitioners argue that the city committed a procedural error that prejudiced petitioners' substantial rights. ORS 197.835(9). At the close of the July 16, 2008 city council hearing on the requested extension, the city council left the record open for additional submissions, described in the minutes as follows:

> "Mayor Anderson closed the public comment portion of the public hearing * * * and presented the following timeline and process to be used for submitting testimony * * * regarding this matter:

4P

"1. From Thursday, July 17, 2008 to no later than 4:30 p.m., Wednesday, July 23, 2008, anyone who has participated in this hearing proceeding is allowed to submit additional written testimony and/or evidence. No additional testimony will be accepted after this time.

"2. From Thursday, July 24, 2008, to no later than 4:30 p.m., Wednesday, July 30, 2008 anyone who has participated in this hearing may provide written rebuttal only to testimony and/or evidence submitted during the prior seven days. No new evidence will be accepted after this time.

"3. From Thursday, July 31, 2008, to no later than 4:30 p.m., Wednesday, August 6, 2008 the applicant will be allowed to submit written argument to the testimony and/or evidence submitted during the first two seven day periods. No new evidence may be submitted during this period." Record 140 (emphases in original).

Petitioners argue that the city erred in accepting a letter on July 31, 2008 from a Department of Land Conservation and Development (DLCD) representative. Record 65. Petitioners argue that the city erred in accepting that letter because the letter was accepted after the deadline set out for rebuttal of testimony or evidence submitted during the previous seven day open record period. Petitioners also argue the DLCD representative had not previously participated in the hearing and the city left the record open only to persons who had previously participated in the hearing. Petitioners argue that the city's acceptance of the letter after July 30, 2008 prejudiced their substantial rights because the city relied on the DLCD representative's opinion set forth in the letter in its findings, and petitioners did not have the opportunity to respond to the letter.

Intervenor responds that an unsigned but identical version of the letter was accepted into the record on July 30, 2008, within the rebuttal period time frame set out by the city. Record 63-64. We agree with intervenor that the letter was properly accepted by the city during the second open record period described above, and that the city did not err in accepting the letter during that time frame. The fact that the city accepted a signed but otherwise identical version of the same letter one day later does not change the fact that the letter was properly submitted into the record within the required time frame.

4F

The letter was submitted by the planning director as an attachment to a letter to the city council and planning commission from the planning director. We do not see that it was error for the city to accept the letter even though the letter was from a person who had not previously participated in the hearing, because the letter was submitted by the planning director as an attachment to a report to the city council and planning commission, and the planning director had previously participated in the hearing.[1] We do not understand petitioners to allege that the letter contained new evidence that petitioners were entitled to rebut. *See Rice v. City of Monmouth,* 53 Or LUBA 55, 60 (2006), *aff'd* 211 Or App 250, 154 P3d 786 (2007) (there is no unlimited right to rebuttal). Neither do we understand petitioners to argue that the city's acceptance of the letter violated ORS 197.763, or any other applicable statute, code, or ordinance provision. *See Wetherell v. Douglas County,* __ Or LUBA __ (LUBA No. 2007-133, February 12, 2008, slip op 5-9) (discussing relationship between ORS 197.763(6)(a), (b) and (c)). Accordingly, petitioners' first assignment of error provides no basis for reversal or remand of the decision.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

BLDC 17.70.120 provides:

> "If the applicant has not submitted a [Detailed Development Plan (DDP)] for the planned development or the first phase within four years from the date of approval, the MPoD shall expire. *Where the planning commission finds that conditions have not changed, the commission may, at its discretion, extend the period for two additional years* per extension, subject to applicable hearing and notice requirements. If after the approval of the first DDP, construction has not been started or at any time construction has lapsed for a period of three years, the MPoD will expire." (Emphasis added.)

The city interpreted the phrase "conditions have not changed" to mean:

---

[1] Because we deny the first assignment of error, we need not address whether the city could properly limit persons who were entitled to submit testimony during the open record period to those who had previously participated in the hearing.

4 F

Exhibit K - 2

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
Oregon Coastal Management Program Field Office
PO Box 451
Waldport, Oregon 97394-0451
(541) 270-3279
Web Address: http://www.oregon.gov/LCD

July 30, 2008

RECEIVED
JUL 30 2008
CITY OF BROOKINGS

Larry Anderson, Mayor
City of Brookings
898 Elk Drive
Brookings, OR 97415

Re: Loan Ranch PUD Extension

Mayor Anderson,

We have reviewed the materials submitted to the Brookings council for their consideration in the Lone Ranch appeal. It seems there is some confusion over the real heart of the matter in this case. So much so, that the planning staff's judgment has been called into question, based on faulty reasoning.

The city staff has appropriately addressed the criteria relevant to this case in its report to the city council, dated July 16, 2008. The report indicates that the city conceptually approved a planned unit development in 2004 and that the applicant now finds that they require additional time to complete a detailed development plan for the initial phase of the development. The city code (BMC 17.70.120) requires that an extension request be reviewed in light of changes in circumstances that may significantly undermine the validity of the city's original decision. Specifically, the city must find that "conditions have not changed" since the plan was approved four years ago. The planning director's report clearly addresses the code criteria and further addresses opposition testimony in the planning commission record. Some of the testimony from opponents simply does not line up with the facts. The report sets the record straight and makes a recommendation that the Council approve the request as required by the code.

In serving the public interest, the recommendations of the planning staff are not always popular ones. I have represented the Department of Land Conservation and Development on Oregon's south coast for over 13 years. In my opinion, Dianne's report and recommendation to the Council on this matter are well considered and her work on this case demonstrates her professional commitment to a fair and sound land use process.

Thank you for your consideration. Please enter this into the Council's record.

Sincerely,

Dave Perry
South Coast Regional Representative

4G

Attachment A

17.70.130 Effective period of master plan of development (MPoD) approval.

If the applicant has not submitted a DDP for the planned development or the first phase within four years from the date of approval, the MPoD shall expire. Where the planning commission finds that conditions have not changed, the commission may, at its discretion, extend the period for two additional years per extension, subject to applicable hearing and notice requirements. If after the approval of the first DDP, construction has not been started or at any time construction has lapsed for a period of three years, the MPoD will expire. [Ord. 03-O-446.PP.]

4 H

[redacted]

Dianne Morris

To: [redacted]
Sent On: Wednesday, July 30, 2008 3:21:44 PM
Archived On: Tuesday, August 19, 2008 1:20:52 PM

[redacted] I have come very close to looking for another occupation do to the very personnel attacks to do with the Lone Ranch extension request. I'm use to taking heat but to be called a liar and unethical in the public record is disheartening. There are also serious efforts to alienate the Planning Commission from me which would make an unworkable situation. I decided I had to respond to the accusations and have just done so. Do hope things improve soon. Sorry to whine. Other than that, life is sooooooooo good.

Dianne L. Morris

Planning Director

City of Brookings

541-469-1138

dmorris@brookings.or.us

5A

From: "Dianne Morris" <dmorris@brookings.or.us>
To: [redacted]
Sent: Monday, August 04, 2008 8:44 AM
Attach: DLCD Letter on Lone Ranch appeal.pdf; Response to Lone Ranch Accusations.doc
Subject: [redacted]

Hi. Thankfully Dave Perry commented on that process and confirmed staff is to make recommendation on the findings addressing the criteria in a de novo hearing. This is not a situation of the Planning Commission making a recommendation. I will attach his letter and the memo I sent in response to the accusations from Pat and the other 2 in opposition. I respect you and want you to know more than just Pat's opinion on this matter. Normally no response to criticism is best but this was too damaging to ignore. Anyway, thanks for caring and taking the time to look at these. Hope your day's great.

Dianne L. Morris

Planning Director

City of Brookings

541-469-1138

dmorris@brookings.or.us

From: [redacted]
Sent: Saturday, August 02, 2008 1:33 PM
To: Dianne Morris
Subject: [redacted]

Hi Dianne....

[redacted]

Not sure what you mean about a liar/unethical....but assume that is something t occurred recently.

513

Dianne Morris

From: Dianne Morris
Sent: Thursday, July 17, 2008 1:11 PM
To: 'Dave Perry'
Subject: Help!

HI Dave. Did that subject line get your attention? ☺ I do have a request due to Pat Sherman's publicly made assertions that I made an inappropriate recommendation to the City Council for approval of the Lone Ranch Master Plan extension request after the Planning Commission had denied it. Would you please write something to the effect that an appeal is a de novo hearing and if Planning staff feels the criteria has been met their recommendation should be for approval regardless of whether the PC denied it in the initial hearing. I know it sounds like small stuff but it really isn't given all the attacks that have been going on. This seems like an effort to alienate the PC from me now. I would REALLY appreciate just a quick email confirming the above!!!! Thanks, Dave. The Council just took testimony last night and continued the hearing for more written information and then deliberation on Aug. 21. All in all it went pretty well but was very painful to have all the negativity publicly aired.

Dianne L. Morris
Planning Director
City of Brookings
541-469-1138
dmorris@brookings.or.us

Dianne Morris

From: Dianne Morris
Sent: Tuesday, July 29, 2008 9:24 AM
To: 'Dave Perry'
Subject: RE: Lone Ranch Extension Request

Thank you very much. If you don't have Exhibit J in your mail please let me know right away and I can fax or email it to you. I appreciate it so much. I will be briefly responding to her latest attack in a memo to the PC and CC and your email about handling of de novo hearings will be very helpful. Well anyway the sun is shining!

Dianne L. Morris
Planning Director
City of Brookings
541-469-1138
dmorris@brookings.or.us

From: Dave Perry [mailto:Dave.Perry@state.or.us]
Sent: Tuesday, July 29, 2008 8:42 AM
To: Dianne Morris
Subject: Re: Lone Ranch Extension Request

Dianne,

Yes, I will send an e-mail later today responding to the issues in Pat Sherman's letter. I was out of the office yesterday in Roseburg, so I need to pick up the mail. Right now, I have exhibits up to "I." No "J." Should be in the mail.

Dave Perry, So. Coast Reg. Repr.
Dept Land Cons and Development
Oregon Coastal Mgt Prog Field Office
PO Box 451, Waldport, OR 97394
541-270-3279
dave.perry@state.or.us

>>> "Dianne Morris" <dmorris@brookings.or.us> 7/28/2008 5:08 PM >>>
Hi Dave. We sent you Exhibit J last Thursday which includes Pat Sherman's letter criticizing my handling of the application. I had asked you to write a brief email stating that the PC doesn't make a recommendation on quasi-judicial hearings and it is proper for staff to recommend approval to the Council IF they feel the criteria is met. Would you please do it now? She sent that letter to the PC (and your Director!) which will strain our relationship. If you felt inclined to say something about your Dept.'s experiences with me over the last 20 years as being diligent in upholding land use laws that would be sooo helpful too. This is so sad for me. Anything that you could do to offer support will be much appreciated. Thanks Dave.

Dianne L. Morris
Planning Director
City of Brookings
541-469-1138
dmorris@brookings.or.us

6 B

Dianne Morris

From: Dianne Morris
Sent: Wednesday, July 30, 2008 8:52 AM
To: 'Dave Perry'
Subject: RE: Comments on Lone Ranch Extension

Thank you so much, Dave. I'll sleep better tonight! Hope your day's great.

Dianne L. Morris
Planning Director
City of Brookings
541-469-1138
dmorris@brookings.or.us

-----Original Message-----
From: Dave Perry [mailto:Dave.Perry@state.or.us]
Sent: Wednesday, July 30, 2008 8:13 AM
To: Dianne Morris
Subject: Comments on Lone Ranch Extension

Dianne,

I have attached a comment letter on Lone Ranch addressed to Mayor Anderson. The signed hard copy will be mailed out today.

Let me know if you have questions or if I can be of further assistance.

- Dave

6C

RECEIVED

JUL 30 2008

CITY OF BROOKINGS

Exhibit K - 3

JORDAN SCHRADER

ATTORNEYS AT LAW

July 30, 2008

VIA E-MAIL

JORDAN SCHRADER RAMIS PC

Brookings City Council
Brookings City Hall
898 Elk Dr
Brookings OR 97415

Re: **File No. App-1-08 Appeal of Planning Commission's Denial of the Request for an Extension of Time for Lone Ranch Master Plan; Response to Materials Submitted to the Record July 17-23, 2008**
Our File No. 50018-36816

Dear Council Members:

U. S. Borax submits this letter in response to the open record period filings by application opponents.

TIMOTHY V. RAMIS

Admitted in:
Oregon

The various filings require no new evidentiary response because they consist of irrelevant information or statements repetitious of material already in the record. Given the nature of the submissions, it is clear that the purpose of the continuance request was delay and not the need to provide additional relevant factual information.

Direct Dial
(503) 598-5573

E-mail
tim.ramis@jordanschrader.com

The Pat Sherman submission continues an irrelevant and unfair attack on staff. The letter adds nothing new to the interpretation of the "change in conditions" phrase. Mr. Chasar's letter and exhibits are not germane to the decision criteria. The applicant for a Master Plan of Development has no burden to address market conditions or other economic factors, and neither does an applicant for an extension.

U. S. Borax will file a final written argument next week.

Sincerely,

JORDAN SCHRADER RAMIS PC

Robert Yamachika for
Timothy V. Ramis

cc: Dennis Boyle
Burton Weast
John Trew
Dianne Morris

100 BEST COMPANIES 2008

50018-

P.O. Box 230669 Portland, OR 97281 Phone: 503.598.7070 Fax: 503.598.7373 Toll Free: 888.598.707
1498 SE Tech Center Place, Suite 380 Vancouver, WA 98683 Phone: 360.567.3900 Fax: 360.567.39(

6D

Exhibit D-2

RECEIVED
AUG 12 2008 9:45 AM
CITY OF BROOKINGS CM

Pat Sherman
PO Box 1140
Brookings, OR 97415

August 12, 2008

City of Brookings Planning Commission
898 Elk Drive
Brookings, OR 97415

Madam Chair and Commissioners:

ORS 197.763 (6) (a) states that "prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application." Thus, making the request for the opportunity to present additional evidence is limited to those who participated in the hearing.

However, once the time is extended, ORS 197.763 (6) (b) and (c) do not explicitly limit the opportunity to provide additional testimony within the first seven days to those people who participated in the initial hearing.

Apparently Ms. Nysted had been told by planning staff that her testimony would not be accepted because she had not testified in the initial hearing. John Trew had consistently advised me that when there is uncertainty it is more prudent to allow additional testimony than not.

Accordingly, I am submitting Ms. Nysted's letter as testimony in Case # DDP-1-08 in the form of an attachment to this letter. Since I participated in the initial hearing there can be no doubt that I have standing in the hearing.

I have no opinion about the contents of the letter.

Sincerely,

Pat Sherman

Attached: 2 pages

8A

Pumpkin Ink
Barbara A. Nysted
427 Buena Vista Loop
Brookings, OR 97415
Home Phone (541) 469-3711
Email pumpkin5@charter.net

August 08, 2008

City of Brookings Planning Commission
898 Elk Drive
Brookings, OR 97415

Planning Commissioners,

I am not going to mitigate the amount of disgust and frustration I have been experiencing for how certain public servants have been conducting business at City Hall and thus, this testimony will contain what may be considered harsh judgements based upon my observations of what perhaps could be considered dishonest conduct of city officials and outside special interests.

I am appealing to this commission on behalf of the many citizens of this community that could suffer the financial hardships as the result of this duplicitous conduct. The costs of providing infrastructure for new development has already proven to be a burden on the existing taxpayers and in saying this, I point out the fact that continuously during negotiations with Borax, they insisted there would be no financial burden to the city for the cost of development when in fact, cost sharing was always the plan and even that, appears was not part of any legal contract between Borax and the City of Brookings which came to light after the city was unable to collect the Borax share of costs for extending infrastructure to the Borax property. Many of these 'wink and a handshake' deals were formulated during the tenure of then city manager Leroy Blodgett. This is the same Leroy Blodgett who has brought us HW3!

Having read testimony submitted by Pat Sherman to this commission dated June 3, 2008 and August 5, 2008, and testimony from J.D. Brown of the CRAG Law Center dated July 11, 2008 and August 4, 2008, I am greatly concerned for the integrity of the current City Manager and Planning staff which for all outward appearances, indicates at a minimum a lack of ethical conduct.

At this time, of the many concerns I and many others have, this rush to adopt the DDP-1-08 is by far most significant unless of course one considers the attempt to slip a 'DRAFT" copy of the flawed CSWMP into an adopted city document! However, I choose to focus this testimony on the current DDP-1-08 which is before you for approval.

I believe that Pat Sherman once again has done her homework thoroughly and in a forward looking manner whereas she points out what all economic indicators conclude and that is that this housing market decline is not a little blip on the screen, but is here for the duration which

8A

has been forecast as far out as 2013 for full recovery. She makes a case for how no thinking developer would commit to investing in infrastructure if there is no demand for housing.

Which brings us to the major flaw with regard to approving DDP-1-08 and the ramifications of the proposed use of a "temporary on-site Holding Tank for sewerage until a public sewer is available." The 'gotcha' is of course OAR 340-071-0340 (1) (b) (A) which basically is a legal contract with DEQ that requires the City of Brookings to install the entire needed sewer within five years after the date of application for the temporary Holding Tank. The legal entity required to perform per the contract with DEQ is the City of Brookings, not Borax nor the college or any future developer, which is pointed out by Pat Sherman in her testimony.

I share Pat Sherman's concern for just why city staff failed to reveal this requirement to the Planning Commission and have personally concluded that this failure was no mistake, but just another example of duplicitous behavior on the part of city management and planning staff.

In my opinion, this Planning Commission is by far the best group of citizen advocates I have experienced in the sixteen years I have been a resident of Brookings. I feel city management and the planning staff insults the intelligence of this commission and yet, at the same time, it appears that planning staff felt compelled to withhold this crucial information concerning the ramifications of DDP-1-08 and the Holding tank issue in the hopes it would go unnoticed. It also perplexes me how this issue could escape the approval of the Director of Public Works, John Cowan or perhaps it is standard procedure for Planning to usurp the authority of the Public Works Director.

I fully recognize the burden of responsibility you face because the college 'trump card' has been played and who wants to be the impediment to having a college. Clearly, do we really want a college at the expense of ignoring laws and regulations? We can follow the law and make certain that existing homeowners and citizens do not pick up the tab for development, or we can choose to ignore blatant disregard for the law and likewise, disregard for the unknowing citizens who trust that city government is acting in their best interest. I think this commission will agree that if it is a simple choice of having a college or following the law, the latter is the only choice.

It is my hope that this Planning Commission has already weighed the issues and perhaps has concluded that there is financial risk to the city. Attaching Conditions of Approval is one possible way of making certain that the legal entity responsible for any required sewer improvements associated with the DEQ application for the temporary Holding Tank is not the City of Brookings.

Thank you for your time and attention to this matter of great importance to this community.

Sincerely,
Barbara Nysted

Barbara C. Nysted

8A

Pat Sherman
PO Box 1140
Brookings, OR 97415

August 5, 2008

City of Brookings Planning Commission
898 Elk Drive
Brookings, OR 97415

RE: File No: DDP-1-08
Detail Development Plan for Southwest Oregon Community College

Madam Chair and Commissioners:

Please include this letter and attachments in the record for this quasi-judicial hearing.

The Detailed Development Plan proposes the use of a temporary on-site Holding Tank for sewage until a public sewer is available. In a letter to Mr. Mike Crow, (Packet p. 21) Del Cline, On-Site Wastewater Specialist for Department of Environmental Quality (DEQ) refers to Oregon Administrative Rule (OAR) 340-071-0340 (1) (b) (A) & (B) that lists the criteria for allowing the installation of a temporary holding tank within an area-wide sewerage district.

OAR 340-071-0340 (1) (b) (A) states in its entirety:

> *(A) The application for permit includes a copy of a legal commitment from the legal entity to extend a community or area-wide sewerage system meeting the requirements of this division to the property covered by the application within five years from the date of the application*

What this means, of course, is that before the holding tank application is issued, the City must make a legal commitment to install the entire needed sewer within five years. The legal commitment will not be with Borax or the college or any future developer; it will be with the City.

Prior to and without the requirement for a legal commitment to install the sewer by a date certain, the plan for phasing of the installation of the sewer mains and pump station to serve Lone Ranch had been dependent on market conditions. The new requirement for a legal commitment does not offer relief to the City in the event of adverse market conditions; the sewer must be installed within five years.

The missing links in the sewer main include a section from Carpenterville Road to Parkview Drive, a section from Crissey Circle to Moore Street, and a section from the end of Rowland Lane to the Mill Beach Pump Station. Also needed is a pump station at Taylor Creek.

The Crissey/Moore and Rowland/Mill Beach segments have been over capacity in high rain events for many years and have needed replacement for quite a while.

But, except for the requirement for a legal commitment to install *all* sewer within five years, there would be no need at the present time to install the Carpenterville/Parkview segment or the Taylor Creek pump station unless market conditions for the Lone Ranch project so required.

As you are no doubt aware, the housing and real estate market is in a slump. However, you may not realize how severe the housing decline is or how long it is expected to last. I have attached three charts.

9A

The first chart, Case-Shiller/Standard & Poor's Current Data, lists price data from regional markets throughout the country and shows average national decline in house prices of 16.2% percent through May 2008. (A)

The second chart, from the California Realtors Association, lists price changes in various regional markets in California through June, 2008. As you can see, the realtors list an average price decline of 38.38% in California. (B)

The third chart, Case- Shiller/Standard & Poors Futures Data, forecasts future trends. As you can see from the chart, prices in San Francisco and Los Angeles markets are not expected to reach their bottom until May 2011, at which time the total anticipated price decline from the peak will be 41% and 44.5% respectively. (C)

After prices reach the bottom, experts predict that prices will level off for a couple years and then will gradually begin to increase. Simple arithmetic gets us to 2013 before we can expect a recovery from the meltdown in the housing market.

Generally, the anticipated buyers of new homes in the Brookings Harbor area are expected to be retirees from the baby boom generation- many coming from California. As you can see from the data in the charts, the collapse of the housing market is catastrophic; the equity of the homeowners, including baby boomers, is being diminished or wiped out altogether; and the forecast is bleak.

It does not seem realistic to expect a company that is in a profit-making business to commit to spending money- in Brookings' case what would be millions of dollars- to install sewer infrastructure unless and until there is a demand for houses. But, with the new five year legal commitment associated with the holding tank permit requirement, the City- not the developer- would be legally obligated to do exactly that, including the sewers and the pump station for which there is no current need.

The DEQ regulation for a temporary holding tank permit will require the City to make a financial commitment in the near future that will have a material impact on the City and its ratepayers. City staff did not disclose this requirement to the Planning Commission, which must make a decision, and to the public, who will have to pay the bills. As the June 3, 2008 letter from the City Manager to DEQ shows, it seems that staff is aware of the requirement. (D) It is regrettable that the information about this DEQ requirement is being brought into the public record at this late date and in this manner.

Like many in the community I recognize and support the need for a new college campus. But it would not seem right to make the decision about the college plan without giving fair consideration to the impacts of the legal requirement herein disclosed.

Sincerely,

Pat Sherman

Pat Sherman

Attachments A, B, C, D

Housing article if you are interested:
http://online.wsj.com/article/SB121727861946290899.html?mod=googlenews_wsj

9A

EXHIBIT G

CITY OF BROOKINGS

PLANNING COMMISSION REPORT

SUBJECT: Detail Development Plan for Southwest Oregon Community College
FILE NO: DDP-1-08
HEARING DATE: Sept. 2, 2008

REPORT DATE: August 25, 2008
ITEM NO: 7.1

Subject: A continuation of the hearing requesting approval of a Detailed Development Plan (DDP) for Southwest Oregon Community College (SWOCC) within the Lone Ranch Master Plan area.

Background/Discussion: The Planning Commission conducted a hearing on this matter on August 5, and continued the hearing until September 2, 2008 to allow time for further written comment and reb The staff report provided for the August 5th hearing dealt with the applicable criteria and responses to t This report will discuss specific issues raised in the hearing and in written comments submitted as of date.

Issues:

- Open Space - Exhibit B-12 from Crag Law Center states SWOCC should dedicate more space than was required in the approved Lone Ranch Master Plan (LRMP). The LRMP req 4.97 acres to be designated open space and the applicant has met that requirement. Prop Condition of Approval #9 requires the open space be dedicated and shown on the plat.

- Transportation – Exhibit B-12 from Crag Law Center states SWOCC should cons improvements on the State Highway. As explained in more detail in the August 5th staff re the trigger for these improvements was approval of "Phase 1" which included 680 dwelling u commercial area, and college site. Oregon Department of Transportation (ODOT), the agency responsible for determining appropriate improvements for the State Highway system, agreed with the Applicant's Engineer's analysis which does not require improvements t constructed with this development.

  Another stated concern related to the 175 ft of Lone Ranch Parkway, well beyond the entranc the college site, that will be platted but not constructed until such time as additional developn in the LRMP area is approved. Proposed Condition of Approval #16 requires SWOCC to p proportionate amount and future development that will utilize this section of street will pay remainder amount of the construction costs. The public will not bear the cost as stated in Exh B-12.

  The section of multi-use path that is the subject of a requeste gree (DIA) is not a part of the street design as stated in Exhibit B- ndar the college site and will be used to connect to future develo th of subject property. The Applicant is not requesting a DIA for to L Ranch Parkway. That pathway will be constructed at the sam

9B

- Water Service - Exhibit B-12 from Crag Law Center states LRMP Conditions of Approval requires SWOCC to submit water system construction plans together with their application for the DDP. That Condition of Approval is a two part requirement. Construction plans are to be approved by the City Engineer, and the DDP, which shows proposed locations and sizes of water lines, is to be approved by the Planning Commission. The detailed, engineered construction plans are to be submitted after approval of the DDP as stated in proposed Condition of Approval # 34.

  Another concern is insufficient water to flush newly installed water lines within the Hwy. right-of-way adjacent to the property. The Public Works Department has verified the Applicant will be required to wait until there are adequate flows in the Chetco River before the flushing can be done.

- Septic Holding Tank - Exhibits B-11 and D-2 submitted by Pat Sherman, as well as Exhibits B-12 and D-1, submitted by Crag Law Center express concerns about using a septic holding tank. These exhibits reference a letter written by City Manager Gary Milliman dated June 3, 2008 (found in Ex. B-11, page 6) and state this letter commits the City to pay for any needed sewer lines to serve this development in 5 years if the lines have not already been installed. This letter does not commit the City to pay for installation of sewer lines. It states "...we anticipate that sanitary sewer service will be available to the College site within the next five years". Exhibit D-3, page 4, is a letter from the Department of Environmental Quality (DEQ), the State agency responsible for regulating sewage disposal systems, which states the City is not obligated to install a sewer line in the future.

  The DEQ letter does not agree with Exhibits B-11, D-2, B-12, and D-1's interpretation of DEQ regulations. The City has written a proposed Condition of Approval # 22 requiring SWOCC to install an on-site sewage disposal system that is in compliance with DEQ regulations. The City has no authority to dictate what type of on-site septic system DEQ determines is required. The Applicant has agreed to this Condition of Approval. This same Condition of Approval also requires the Applicant to record a DIA stating the College will connect to City sewer when it becomes available.

- Storm Water Management - Exhibit B-12 from Crag Law Center states concerns about the adequacy of the Applicant's engineered storm water management plan. The plan, as well as written concerns in Exhibit B-8 submitted by Allan Haddox, Chairman of Rainbow Rock Condo Assoc., has been reviewed and addressed by the City Engineer in page 67 of the original staff report and Exhibit B-15. The City Engineer concludes the plan will adequately deal with storm water and protects the Rainbow Rock Condo's water source and water shed.

- Changes to Zoning Ordinances: Exhibit C-1 submitted by Pat Sherman references 17.70.110, Brookings Municipal Code, which states any changes to zoning ordinances, policies, or standards after the approval of a Master Plan will not be applicable to the approved development. The concerns related to whether the Applicant will be required to pay for all needed infrastructure. The Applicant has proposed to pay all development costs. To give additional assurance Staff has proposed Condition of Approval # 12 stating the Applicant and improvements approved in this DDP.

9B

Pat Sherman

From: Pat Sherman [psherman99@verizon.net]
Sent: Tuesday, September 09, 2008 6:30 AM
To: 'Larry Anderson'
Cc: 'Dianne Morris'
Subject: FW: planning commission report

Larry,

Believing that the public record should be as accurate as possible, I sent the e-mail below to Dianne after reviewing Planning Commission report in which I noted that the report did not accurately reflect my testimony.

Since Ms. Morris was informed about the misrepresentation, I expected that the misstatement would be corrected in the Final ORDER for the DDP. It wasn't. The Final ORDER (p.4) repeats the misrepresentation and elaborates on the misrepresentation.

Consider this a formal complaint.

Pat Sherman

From: Pat Sherman [mailto:psherman99@verizon.net]
Sent: Sunday, August 31, 2008 3:39 PM
To: 'Dianne Morris'
Subject: planning commission report

Dianne,

My August 5, 2008 testimony in DDP states: "As the June 3, 2008 letter from the City Manager to DEQ shows, it seems that staff is aware of the requirement."

My August 19 testimony states:
"Fourth, in previous testimony I had raised concerns about the financial liability that the City would incur if it approved the installation of a temporary holding tank for sewage, as follows:
Oregon Administrative Rule (OAR) 340-071-0340 (1) (b) (A) states in its entirety:

> (A) The application for permit includes a copy of a legal commitment from the legal entity to extend a community or area-wide sewerage system meeting the requirements of this division to the property covered by the application within five years from the date of the application. Mr. Cline states: "the letter from the City of Brookings as to the possible timing of the sewer line along Highway 101 does not obligate the City to install the sewer line to serve the college." The letter submitted by the City Manager to DEQ isn't the issue. What the issue is is that OAR would require the City, meaning the City Council, to make a legal commitment to extend the sewer as stated in the plain language of the OAR. The legal commitment would carry a financial liability along with it and the liability would be on the City."

Your August 25 2008 report on the DDP states: "These exhibits reference a letter written by City Manager Gary Milliman dated June 3 2008 and **state this letter commits** the City to pay for any needed sewer lines to serve this development in 5 years if the lines have not already been installed."

As you can see from my actual testimony, your statement is an incorrect statement, at least with respect to my testimony. I hope you see the difference between a statement that staff is **aware** of a legal requirement and a statement that staff actually **made** a legal commitment. No where did I assert that staff made a legal commitment. I hope that you will submit a written, or at a minimum, make an oral correction to your report to the Planning Commission during the PC meeting.

We disagree on the entire holding tank issue and that issue will eventually be resolved, but please don't misrepresent what I said.

Thank you.

Pat Sherman.

9/13/2008

9C

letter (Exhibit B-12). The applicant has been in touch with DEQ about the specifics of the college, and DEQ has indicated that it prefers the holding tank instead of the drainage field method as a temporary measure, until such time as the public sewer system is installed. The tank approach is preferable because DEQ does not favor decommissioning an in-ground on-site system. (Exhibit D-3, page 1) A letter from DEQ states: "A 'holding tank' is defined in Oregon Administrative Rule (OAR) 340-071-0100(82) & (83) as an approvable on-site septic system for the proposed building at the Southwestern Community College site in Brookings. It is approvable as a temporary or permanent on-site system to serve the College's needs." (Exhibit D-3, page 4) There is no intention in the LRMP conditions or the City code to eliminate any of the options available through DEQ. The City defers to DEQ in this matter.

The applicant worked with DEQ staff to find an on-site system that would satisfy the state regulators. The proposed holding tank is such a system. Because the DEQ has the sole authority for the issuance of permits under the city code, we believe that the code should be read to be consistent with DEQ policies.

Accordingly, the Planning Commission finds that the proposed holding tank is in compliance with intent of the MPoD and the city code, and with DEQ rules, and that there is convincing evidence in the record to find that the proposed holding tank on-site septic system as approved by DEQ will be satisfactory until the property can be connected to the city sewer system.

Exhibits B-11 and D-2 submitted by Pat Sherman, as well as Exhibits B-12 and D-1 submitted by Crag Law Center reference a letter written by City Manager Gary Milliman dated June 3, 2008 (found in Ex. B-11, page 6) and object that this letter commits the City to pay for any needed sewer lines to serve this development in 5 years if the lines have not already been installed. The letter states "...we anticipate that sanitary sewer service will be available to the College site within the next five years". The Planning Commission finds that this letter does <u>not</u> commit the City to pay for installation of sewer lines. Furthermore, we find that in Exhibit D-3, page 4, a letter from the Department of Environmental Quality (DEQ), the State agency responsible for regulating sewage disposal systems, states the City is not obligated to install a sewer line in the future. Finally, proposed Condition of Approval # 22 also requires SWOCC to record a Deferred Improvement Agreement (DIA) stating the College will connect to City sewer

9D

CITY OF BROOKINGS

Larry Anderson
P.O. Box 1746
Brookings, OR 97415
(541) 469-7915 FAX 412-9718

September 12, 2008

Pat Sherman
P.O. Box 1140
Brookings, OR 97415

Re: Formal Complaint

I am in receipt of your e-mail sent September 9, 2008, regarding the Planning Commission Report. It wasn't clear if the complaint was the land use record or directed to a city employee.

The BMC outlines the process for disagreement with land use process. If the complaint is directed toward staff, please work through the City Manager.

Sincerely,

Larry Anderson
Mayor

LDA:sla

cc: Gary Milliman, City Manager
Dianne Morris, Planning Director

Pat Sherman
P. O. Box 1140
Brookings, OR 97415

September 13, 2008

Gary Milliman
City Manager
898 Elk Drive
Brookings, OR 97415

Re: Formal Complaint

Mr. Milliman,

As requested by Mayor Anderson in correspondence of September 12, I am forwarding the attached complaint about Ms. Dianne Morris for your attention. The complaint concerns less than professional conduct in performance of her duties, specifically regarding accurate presentation of the testimony in a quasi-judicial hearing.

Pat Sherman

cc. Larry Anderson

9F

Pat Sherman
P. O. Box 1140
Brookings, OR 97415

October 15, 2008

Mayor Anderson and Councilors
City of Brookings
898 Elk Drive
Brookings, OR 97415

Re: Case # APP-2-08

Mayor and Councilors,

Please enter this into the record of the above appeal.

I observed that the Final Order and Findings IN Case # DDP-1-08 approved by the Planning Commission inaccurately portrayed the testimony that I had submitted in that proceeding.

With the public's interest in mind of assuring that the public record is as accurate as possible, I request that you instruct staff to rephrase their Findings so that they accurately reflect my previous testimony.

Specifically, my August 5, 2008 testimony in DDP states: "*As the June 3, 2008 letter from the City Manager to DEQ shows, it seems that staff is aware of the requirement.*"

My August 19 testimony states:
"***Fourth**, in previous testimony I had raised concerns about the financial liability that the City would incur if it approved the installation of a temporary holding tank for sewage, as follows:*
Oregon Administrative Rule (OAR) 340-071-0340 (1) (b) (A) states in its entirety:
(A) The application for permit includes a copy of a legal commitment from the legal entity to extend a community or area-wide sewerage system meeting the requirements of this division to the property covered by the application within five years from the date of the application.
Mr. Cline states: 'the letter from the City of Brookings as to the possible timing of the sewer line along Highway 101 does not obligate the City to install the sewer line to serve the college.'
The letter submitted by the City Manager to DEQ isn't the issue. What the issue is is that OAR would require the City, meaning the City Council, to make a legal commitment to extend the sewer as stated in the plain language of the OAR. The legal

commitment would carry a financial liability along with it and the liability would be on the City."

The Findings on the DDP state: *"These exhibits reference a letter written by City Manager Gary Milliman dated June 3 2008 and* ***state this letter commits*** *the City to pay for any needed sewer lines to serve this development in 5 years if the lines have not already been installed."*

As you can see from my actual testimony, the Findings statement is an incorrect statement, at least with respect to my testimony. There is a difference between testimony that says that city staff is **aware** of a legal requirement (my testimony) and a statement that says that city staff actually **made** a legal commitment. (staff's Findings) No where did I assert that staff made a legal commitment.

A possible revision of the Findings could be something like: "These exhibits reference a letter written by City Manager Gary Milliman dated June 3, 2008 **which letter indicates that the City Manager is aware of the need for** the City to pay for any needed sewer lines to serve this development in 5 years if the lines have not already been installed."

Thank you.

Sincerely,

Pat Sherman

Exhibit O-3

MEMORANDUM

Office of the City Manager

GARY MILLIMAN

City Manager

TO: Mayor and Council **DATE:** October 20, 2008

SUBJECT: Pat Sherman Letter Dated October 15, 2008

I have reviewed the letter dated October 15, 2008, submitted as Exhibit M-3 in connection with APP-2-08/DDP-1-08.

As I understand it, Pat Sherman objects to her testimony at the Planning Commission being characterized in an August 25, 2008, Planning Commission Report as indicating that my letter "commits the City to pay for any needed sewer lines to serve this development in 5 years if the lines have not already been installed." Rather, Sherman wishes that her testimony be characterized as referencing "a letter written by City Manager Gary Milliman dated June 3, 2008 which letter indicates that the City Manager is aware of the need for the City to pay for any needed sewer lines to serve this development in 5 years if the lines have not already been installed."

Please note that my letter of June 3, 2008, to the DEQ makes no such assertion

Essentially, Sherman is requesting that the Council change the Planning Director and Planning Commission interpretation of her testimony. Further, Sherman is requesting that the Council create a new, false record indicating that my letter of June 3, 2008, is evidence that I was "aware" of "need" where there are no facts in evidence. My letter of June 3, 2008, does not acknowledge any such requirement. Indeed, a letter dated August 12, 2008, from DEQ clearly states that my letter "does not obligate the City to install the sewer line to serve the college" and that the proposed holding tank is "approvable as a temporary **or permanent** on-site system to serve the College's needs." Thus, the assertion that there is a DEQ requirement for the City to pay for the connection appears to be without merit.

The language in DDP-01-08 ultimately approved by the Planning Commission on September 9, 2008, summarizes Sherman's testimony and that of the CRAG Law Center on this point. This summary is consistent with the interpretation of Sherman's testimony by Director Morris and was approved on a unanimous vote of the Planning Commission without modification. Additionally, in a letter to the Curry Coastal Pilot prior to the public release of Director Morris' August 25, 2008, Planning Commission Report, League of Women Voters President Sara Wilson questioned "whether Milliman had the authority to guarantee the sewer hook up" in an obvious reference to your testimony and Public Forum article in the Pilot. Finally, the Curry Coastal Pilot reports in its August 27, 2008, edition that in a letter to the Pilot Sherman raised the issue as to whether a "letter written by Milliman to the DEQ on July 3" "obligates the city of Brookings to build a sewer line to the Lone Ranch development."

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Obviously, Director Morris and the Planning Commission are not alone in interpreting Sherman's testimony in the fashion indicated in Morris' memorandum of August 25, 2008.

I believe the characterization of the testimony by Sherman and CRAG as contained in her Report to the Planning Commission dated August 25, 2008, is a reasonable interpretation of their intent. Apparently, the Planning Commission agrees as no member of the Commission questioned the matter prior to their unanimous vote on the Final Order on September 9, 2008.

It is my recommendation that the subject Finding be retained as approved by the Planning Commission, or modified to "These exhibits reference a letter written by City Manager Gary Milliman dated June 3, 2008." This may at least resolve Pat Sherman's concern about interpretation of her statements.

9H

Oregon
Theodore Kulongoski, Governor

Department of Environmental Quality
Western Region Coos Bay Office
381 N Second Street
Coos Bay, OR 97420
(541) 269-2721
FAX (541) 269-7984

August 12, 2008

Michael R. Crow/RR
Crow/Clay & Associates, Inc.
125 W. Central Ave., Suite 400

RE: Southwestern Oregon Community College Annex
Brookings, OR

Dear Mr. Crow:

A "holding tank" is defined in Oregon Administrative Rule (OAR) 340-071-0100 (82) & (83) as an approvable on-site septic system for the proposed building at the Southwestern Oregon Community College site in Brookings. It is approvable as a temporary or permanent on-site system to serve the College's needs.

The letter from the City of Brookings as to the possible timing of the sewer line along Highway 101, does not obligate the City to install the sewer line to serve the college.

The college may, in the future, look at other DEQ approved "on-site" treatment and dispersal methods if desired, or if City services do not become available.

Sincerely,

Del Cline, R.S.
On-Site Wastewater Specialist

10A

Pat Sherman
PO Box 1140
Brookings, OR 97415

August 18, 2008

Planning Commission
City of Brookings
898 Elk Drive
Brookings, OR 97415

Madam Chair and Commissioners:

Please include this letter as additional testimony in Case #DDP-1-08

This letter responds to additional testimony submitted by Michael Crow in a letter dated August 12, 2008. Mr. Crow's testimony included a letter dated August 12, 2008 from Del Cline, Department of Environmental Quality (DEQ) On-Site Wastewater Specialist.

There are so many inconsistencies among Mr. Cline's statements, DEQ Oregon Administrative Rules (OAR), Lone Ranch Master Plan (LRMP), Brookings Municipal Code and Brookings Comprehensive Plan that it is difficult to know where to begin.

First, a temporary (or now possibly a permanent) holding tank being permitted by DEQ rules does not change what is required by the LRMP, the Brookings Municipal Code especially Title 13, or the Comprehensive Plan.

Second, in his letter Mr. Cline states "a 'holding tank' is defined in OAR 340-071-011 (82) & (83) as an approvable on-site septic system for the proposed building at SWOCC in Brookings." Mr. Cline attached the definitions he referenced. The DEQ definitions are not consistent with Mr. Cline's definition of a holding tank. The DEQ definitions are: (82) "Holding Tank" means a watertight receptacle designed to receive and store sewage to facilitate treatment at another location. (83) "Holding Tank System" means an alternative system consisting of the combination of a holding tank, service riser, and level indicator (alarm), designed to receive and store sewage for intermittent removal for treatment at another location." Additional relevant DEQ definitions had been submitted by CRAG in previous testimony.

Third, Mr. Cline states further: "It is approvable as a temporary or permanent on-site system to serve the College's needs." It appears that Mr. Cline is now saying that the intention may be to make the holding tank a permanent feature. OAR 340-071-0340 lists the following criteria for permanent use of a holding tank.

> *Criteria for approval. Except as provided in section (5) of this rule, installation of a holding tank system requires a construction-installation or WPCF permit. A construction-installation permit may be issued for sites that meet* ***all*** *the following conditions. (a)* ***Permanent use.*** *(A) The site cannot be approved for installation of a standard subsurface system. (B) No community or areawide sewerage system is available or expected to be available within five years. (C) The tank is intended to serve a small industrial or commercial building or an occasional use facility such as a county fair or a rodeo. (D) Unless otherwise allowed by the department, the projected daily sewage flow is not more than 200 gallons. (E) Setbacks required for septic tanks can be met.*

So the problems with a permanent tank, in addition to inconsistency with LRMP and local law, are: rules for a permanent holding tank preclude possibility of future subsurface disposal system; the rule for temporary holding tank requiring sewer within five years conflicts with the rule for permanent tanks- either the sewer will be available within five years or it will not; the college could not be considered a small industrial or commercial building; projected daily flow will likely exceed 200 gallons.

Fourth, in previous testimony I had raised concerns about the financial liability that the City would incur if it approved the installation of a temporary holding tank for sewage, as follows:
Oregon Administrative Rule (OAR) 340-071-0340 (1) (b) (A) states in its entirety:

(A) The application for permit includes a copy of a legal commitment from the legal entity to extend a community or area-wide sewerage system meeting the requirements of this division to the property covered by the application within five years from the date of the application.

Mr. Cline states: "the letter from the City of Brookings as to the possible timing of the sewer line along Highway 101 does not obligate the City to install the sewer line to serve the college." The letter submitted by the City Manager to DEQ isn't the issue. What the issue is is that OAR would require the City, meaning the City Council, to make a legal commitment to extend the sewer as stated in the plain language of the OAR. The legal commitment would carry a financial liability along with it and the liability would be on the City.

Fifth, Mr. Cline further states: "The College may, in the future, look to other DEQ approved 'on-site' treatment and dispersal methods if desired, or if City services do not become available." As can be seen in OAR 340-071-0340 this option would be precluded by a holding tank.

Perhaps the best resolution of the issue would be to add a condition of approval that **the sewage disposal method *shall* be limited to those methods described in the express language of the Lone Ranch Master Plan, Brookings Municipal Code, the Comprehensive Plan and *shall exclude* use of a holding tank.** Doing so would be consistent with the law and would eliminate the need for the OAR legal commitment and any financial liability associated with the holding tank. As seen in their August 12, 2008 letters neither Mr. Cline nor Mr. Crow seem to object to this solution. Other proposed conditions of approval related to this issue would also need to be reconsidered.

Sincerely yours,

Pat Sherman

CRAG
LAW CENTER

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Suite 417
Portland, OR
97205

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503.525.2724

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503.296.5454

www.crag.org

Courtney Johnson
Staff Attorney
courtney@crag.org

October 14, 2008

Via Email and First Class Mail

City of Brookings City Council
898 Elk Drive
Brookings, Oregon 97415

Re: Statement in Support of Appeal of Detailed Development Plan for Southwest Oregon Community College (File No. DDP-1-08/APP-2-08)

City Council Members:

On behalf of the Oregon Shores Conservation Coalition and Catherine Wiley as an individual (collectively "Oregon Shores") I submit this statement in support of the appeal of the Planning Commission's decision to approve the Detailed Development Plan ("DDP") for the Southwest Oregon Community College ("SWOCC") campus on the Lone Ranch property. The Agenda for the October 20, 2008 hearing, as well as the Staff Report indicate that Crag and Courtney Johnson are appellants. Please note that Crag Law Center and Courtney Johnson represent the Appellants in this matter. Appellants are parties of record having provided testimony, orally and/or in writing, during the Planning Commission hearing process. Please include these comments in the record for this matter.

Oregon Shores provided comments to the Planning Commission, by letter dated August 4, 2008, on the application for Detailed Development Plan approval. The letter is included with these comments as Exhibit A. Oregon Shores incorporates those comments here by reference and provides further comment to respond to additional issues and arguments raised on appeal. O

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requests that the entire Planning Commission file for this matter be included in the appeal record. It appears that some materials that were placed before the Planning Commission have been omitted from the appeal packet. Several documents referenced in this letter that are part of the record are attached hereto.

Request for Seven (7) Additional Days to Provide Comment

Oregon Shores requests a continuance of the hearing to provide additional comments on the DDP appeal and to respond to the testimony and evidence that SWOCC will provide at the hearing in support of its DDP.

The DDP appeal has been scheduled at a time when none of our representatives can be present for the hearing. Given the complexity of the materials at issue, the scheduling of the hearing, and the potential for new evidence to be presented during the de novo hearing, it will be beneficial to the public to have extra time to provide additional comment if needed.

Councilman Kitchen's Recusal

Councilman Kitchen has exhibited a bias and prejudgment in favor of approving the DDP, and therefore must refrain from participating in this decision. While local quasi-judicial decision makers are not expected to be entirely free of any bias, these decision makers are expected to (1) put whatever bias they may have to the side when deciding individual permit applications, and (2) engage in the necessary fact finding and attempt to interpret and apply the law to the facts as they find them, so that the ultimate decision reflects their view of the facts and law rather than a product of bias the decision maker brings to the process. *Wal-Mart Stores, Inc. v. City of Central Point*, 49 Or LUBA 697, 709-10 (2005) (*rev'd on other grounds, Wal-Mart Stores, Inc. v. City of Central Point*, 341 Or 393, 144 P.3d 914 (2006).). Where a local decision maker is unable to set bias or prejudgment aside, he or she must refrain from voting on the decision. *Woodard v. City of Cottage Grove*, 54 OR LUBA 176, 179-80 (2007).

Here, Councilman Kitchen personally testified in support of the SWOCC DDP at the Planning Commission hearing of August 5, 2008. Councilman Kitchen cannot review the application in an unbiased manner having advocated for its approval. In addition to voicing his support of the College, Councilman Kitchen urged the Commissioners to ignore the "Cave people,"[1] amounting to a personal attack on those speaking in opposition to the proposal. Based

[1] This comment apparently referred to "Citizens Against Virtually Everything" as stated by State Representative Krieger in his comments presented a few minutes before those of Councilman Kitchen.

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on the prejudgment and bias exhibited by Councilman Kitchen, Oregon Shores respectfully requests that he recuse himself from this appeal.

In addition, Brookings Municipal Code ("BMC") requires that Council members be bound by State ethics rules, including disclosure of actual or potential conflict of interest. BMC 2.05.170. Councilman Kitchen has a potential conflict of interest due to his financial interest in Curry General Hospital, which stands to benefit from the development of the new SWOCC campus for training or education programs. Councilman Kitchen should refrain from participating in the decision due to this potential conflict of interest.

Background

This DDP is the first detailed development plan submitted to undertake construction pursuant to the terms and conditions of the Lone Ranch Master Plan of Development ("MPoD"), which was approved by the City on October 25, 2004 and set forth a plan for development of 540 single family detached homes, 150 single family attached homes, a commercial area, and a college campus.

Prior to construction of any phase of the MPoD or the issuance of any building permits, the City must approve a DDP. Brookings Municipal Code ("BMC") 17.70.020. The BMC sets forth several specific graphic and narrative requirements for a DDP application, which include a general incorporation of the requirements that an applicant must address when submitting the MPoD. BMC 17.70.140. The BMC sets forth review criteria for the City to consider in reviewing a DDP. BMC 17.70.170. The overarching requirement is that the DDP must be "in substantial conformance with the MPoD."

Arguments on Appeal

At the outset, please note that Oregon Shores does not oppose the development of a community college in Brookings. Oregon Shores' objections are related to the failure of the DDP to comply with local and state land use laws, and failure to protect certain resources adequately. Oregon Shores is opposed to this community college because it is being used by Borax to spearhead a massive development project in a location of that is prized for its untrammeled natural beauty and historical significance; a project that will contribute little to the Brookings community while requiring significant outlays of public funding. Unfortunately, the college has intimately connected itself to the Lone Ranch master plan and at the least must respect the basic limitations that are included in that plan. Oregon Shores appeals the Planning Commission's Decision approving the Detailed Development Plan for Southwestern Oregon Community College in the Lone Ranch Master Plan area on the following bases:

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1. The DDP's proposed use of a holding tank does not satisfy the requirements of the Master Plan of Development, Title 13 of the Brookings Municipal Code, Brookings Comprehensive Plan Goal 14, Joint Management Agreement, Master Plan of Development Conditions of Approval, or the Subdivisions Requirements of Brookings Municipal Code 17.172.070(B).

The DDP proposes a temporary holding tank to serve the campus if a sewer line is not installed by the time the campus is ready for occupancy. A holding tank is not compatible with the terms or conditions of the MPoD. The MPoD states, in part, "[i]f the college develops before a sanitary sewer system is installed, it may be necessary to construct an on-site sanitary sewer system designed to accommodate the college." MPoD at 31. MPoD Condition of Approval number 12 requires that sanitary sewer installation shall comply with the standards of DEQ *and* provisions of the BMC. The findings state that such compliance will be a condition of approval. However, there is no evidence in the record that a holding tank can comply with the requirements of the MPoD, the BMC, or the JMA.

The terms of the MPoD requiring an on-site sanitary sewer system are consistent with the requirements of the BMC. First, BMC 17.168.010, Utilities, requires that the developer "shall provide, install or cause to be installed ... sanitary sewer mains" on-site. BMC 13.10.510 states that where a public sanitary sewer is not available, "the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article." In particular, the BMC requires:

> Before commencement of construction of any private sewage disposal system, the owner shall first obtain written approval from the city stating that because of topography, distance or other special factors, a public sewer cannot be supplied at the time and the city has no objection to the installation of a *subsurface disposal system*. The letter or a copy therefore will be presented to the Oregon State Department of Environmental Quality or its authorized agent when applying for a *subsurface disposal permit*.

BMC 13.10.520 (emphasis added). The Joint Management Agreement ("JMA") between the City and the County is consistent with the limitations in the BMC and also specifies that an "on-site sewage disposal system" is limited to a rural level of development. The City's Comprehensive Plan, specifically Comp Plan Goal 14, requires adherence to the terms of the JMA. The section of the BMC relating to the approval of subdivisions, such as requested with

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the DDP, requires conformance with the Comp Plan, and applicable development standards of the BMC. BMC 17.172.070(B).

Accordingly, the BMC requires that in lieu of connection to a public sewer system, the only option for the provision of sewer services is a subsurface disposal system. The Oregon Department of Environmental Quality ("DEQ") defines "subsurface disposal system" as a "subsurface absorption system," which in turn is defined as "the combination of a septic tank or other treatment unit and an effluent sewer and absorption facility." OAR 340-071-0100(157)&(156). This definition does not include the use of a holding tank.

DEQ regulations define "holding tank" as "a watertight receptacle designed to receive and store sewage to facilitate treatment at another location." OAR 340-071-0100(82). There is a critical difference between an on-site disposal system and a holding tank, which merely stores effluent for treatment at another location.

The Staff Report dated July 28, 2008, makes no attempt to explain how the temporary holding tank complies with applicable criteria of the BMC and Joint Management Agreement, or the MPoD. The Report states, "The LRMP had the option of a temporary on-site septic system serving the College campus." The Report fails to explain how a temporary holding tank satisfies the requirement or even the option of an on-site "septic system."

The Applicant states that DEQ has stated a preference for a holding tank as opposed to other on-site disposal methods. The record does not reflect this statement. In fact, DEQ does not make a preference determination until it performs site evaluations. DEQ site evaluations occur with a permit application after the applicant provides a Land Use Compatibility Statement ("LUCS") from the local government stating that the proposed development complies with local land use regulations and statewide Goals. OAR 340-071-0150. The letter from DEQ On-site Wastewater Specialist Del Cline, dated May 28, 2008 and submitted as part of the DDP, is not an approval for use of a holding tank for the college and *does not satisfy* the requirements of the BMC. Here, not only has DEQ not performed site evaluations which would enable it to state a preference for a particular sewage treatment system, but also the City is attempting to shift its duty to evaluate the DDP for compliance with its own land use regulations by deferring the DEQ the decision as to what type of sewer system is appropriate for the site. The City may not waive compliance with land use regulations and provisions of the BMC by deferring to DEQ on the issue of the proposed College sewer. *See, Harcourt v. Marion County*, 33 Or LUBA 400, 406 (1997) (local government cannot defer its obligation to make findings of compliance with approval criteria to a state agency).

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The Planning Commission attempted to address these deficiencies in proposed Conditions of Approval.[2] Condition number 22 purports to address the issue presented by the holding tank by providing, in part, that the applicant "shall obtain and submit a copy of the Oregon [DEQ] permit to construct an on-site sewage disposal system prior to the issuance of a building permit." This attempt by the city to defer all approvals to DEQ does not ensure compliance with City ordinances, the MPoD, or the JMA. This condition also refers to an "on-site sewage disposal system," which is not what the applicant is proposing, nor what the order purports to approve. This discrepancy between the applicant's proposal and the condition of approval has not been resolved, and creates confusion as to what is being approved. **** may do on-site In addition, a condition of approval is an appropriate means to ensure compliance only where feasibility of compliance has already been established. Here, the holding tank cannot feasibly comply with local regulations therefore any condition of approval would be inappropriate here. *See, e.g., Harcourt v. Marion County, supra*, 33 Or LUBA at 406; *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447-48 (1992).

Despite the fact that a holding tank may be an approvable on-site system for DEQ under certain circumstances, a holding tank is not an acceptable method of sewage disposal under the City's ordinance and regulations. Establishing whatever DEQ's worst case scenario approvable method may be does not relieve the City of its duty to ensure that new development complies with its land use regulations. In other words, before the question of DEQ compliance or approval even enters the analysis, the City must first complete its duty to evaluate all elements of the proposed development for compliance with City regulations and Statewide Goals. The City may not waive this requirement simply by deferring the question to DEQ. Without demonstrating compliance with City ordinance and regulations, this DDP cannot be approved.

Further, the October 8, 2008 Staff Responses to appeal issues, dated October 6, 2008, states that the on-site septic system "may or may not be a holding tank type system." As discussed above, a holding tank is not an allowable system under the MPoD and Brookings Code. If the applicant proposes the use of an on-site septic system, compliant with the terms of the MPoD, the applicant must comply with BMC Section 172, subdivision requirements, which require a plat containing the location of sewer systems. The City cannot approve the use of an on-site septic system at this time because the DDP does not contain the required plat locations of such sewer systems as required by BMC Section 172.

[2] This letter will refer to the proposed conditions of approval reviewed by the Planning Commission in approving the DDP, despite the fact that the signed Final Order did not have attached any conditions of approval. This apparent procedural oversight prevents Appellants from fully addressing the deficiencies in the Planning Commission's approval by making it impossible to know what, if any, conditions of approval were intended to be adopted. This deficiency is discussed further in number 6, below.

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Curry campus moves ahead with new dean

By Alexander Rich, Staff Writer
Tuesday, September 16, 2008 | 9 comment(s)

Font Size:

BOOKMARK

On the cusp of taking title to its future home in Curry County, Southwestern Oregon Community College has learned it is losing its Curry County dean.

Jason Wood is leaving the coast for Klamath Falls, where he will become Klamath Community College's dean of student services, a press release said.

The college plans to appoint Curry Program Coordinator Janet Pretti as interim Curry County dean once Wood departs. School officials expect her to serve as interim dean for the entire 2008-09 school year.

Wood said he was encouraged to seek advancement opportunities by his academic adviser at Oregon State University, where he is in the second year of a PhD program.

He said he was the runner-up for a college presidency in Colorado over the summer and was offered a job at another school, but he held out until Klamath came calling.

"I'm a small-town guy and Klamath Falls fits that bill," he said. "Everything fell into place rather quickly."

The news comes only two weeks after the Brookings Planning Commission appr-oved a detailed development plan for the college's new 10-acre campus, located on U.S. Highway 101 near Lone Ranch Beach.

The decision paves the way for the college to gain ownership of the property, which U.S. Borax has pledged to donate. The college expects to obtain a deed to the property later this week, when the planning commission's decision is final, said President Judith Hansen.

Wood, who was hired by the college 15 months ago as dean, was praised for persuading Brookings officials to support the campus project. Following his own announcement, Wood heaped praise on his successor.

"I believe strongly in Janet and the Curry instructors, staff and community," he said in the press release. "She has been serving Curry County with Southwestern for a long time. She's an outstanding leader and she's the best person for the job."

Pretti has worked at the college for 24 years, the past 13 in her current position.

She started at Southwestern by teaching community education drawing classes in Port Orford, before shifting into administrative work. She has worked mostly in the northern part of the county, though she did serve as the Curry representative in the master planning process for the new campus building before Wood's arrival.

She understood Wood's decision to leave, though she understands it will be a challenge in the coming year.

"He has a lot of capabilities," she said. "I think it's a good move for his family."

Wood's last day with SOCC will be Oct. 8. In her new role, Pretti expects to be in the Brookings offices a lot more, though she hopes to maintain a presence in Gold Beach and Port Orford.

"I'm going to be on the road a lot," she said.

Wood said he is confident in Pretti's abilities, especially given her knowledge of the area and Southwestern employees in Curry County.

"I just see it as a smooth transition," he said.

Although Hansen has been the target of criticism from some faculty members in recent months, Wood said the turmoil at the Coos Bay campus did not factor into his departure.

"I have a strong working relationship with Judith Hansen," he said. "She has helped me both professionally and academically."

At last week's board meeting, board member Marcia Jensen asked why there was no specific line-item account for the Curry Campus project and whether money set aside for the project had been used for other purposes.

After the meeting, Hansen said the funds were deposited in a local government investment pool before she arrived at the college. It is not an exclusive account, however, so the amount of money fluctuates as federal and state funding is received and spent. The arrangement provides the college flexibility, Hansen said.

In addition to the state funding and $1.8 million in taxes collected in Curry County, the college has applied for grants from the Meyer Memorial Trust and the Coquille Tribe. Hansen said she expects to hear back from the two groups later this fall.

The Curry County campus project is expected to cost between $6 million and $7 million, Hansen said.

Currently, the college only has three classrooms and a computer lab in its existing Curry County campus that once was the Brookings Public Library. It also rents six classes from Brookings-Harbor High School to accommodate its classes.

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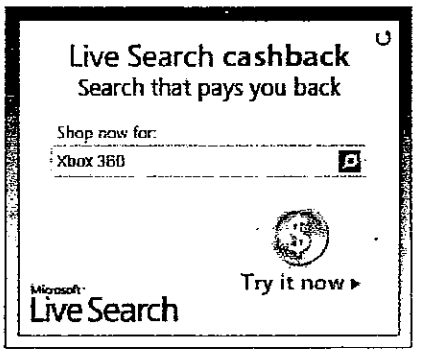

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College board questions funds

By Alexander Rich, Staff Writer
Tuesday, October 07, 2008 | 12 comment(s)

Font Size:

BOOKMARK

Money for Curry campus in debate

COOS BAY — The embattled president of Southwestern Oregon Community College came under harsh criticism from the college's governing board this weekend.

The board criticized President Judith Hansen's handling of financial and personnel decisions Saturday at its annual retreat. Some board members contend there isn't enough money to build a new campus planned in Curry County. They also asked the college's lawyer to see if the college could get out of a contract with a recently hired vice president.

Then they ordered Hansen to help send documents to the Oregon School Boards Association so it can complete its report on the college's management and organizational culture. Hansen said today there was an additional surprise request for documents.

World Photos by Alex Powers
Southwestern Oregon Community College Vice President of Instruction Valerie Martinez speaks with members of the school's board Saturday, during a board meeting as Vice President of Administrative Services Sheldon Meyer looks on.

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These discussions all came just a couple of weeks after the board approved staff's request to get a loan of up to $1.5 million to meet payroll and cover bills.

Board member Marcia Jensen suggested the depletion of cash reserves below $800,000 constituted a violation of the president's executive limitations.

"I want you to know how sick at heart I am about this situation," Jensen said.

Hansen wasn't at Saturday's meeting, having flown to Colorado last week on a family emergency. This morning, however, she returned to campus and was quick to dispute the contentions.

"The money is there in the budget to fund the Curry County campus," Hansen said.

College officials have said more students are enrolling at the college this year. While state revenue to the college will drop slightly, Hansen said that increase in students will bring an unanticipated increase in tuition receipts, along with a 25 percent increase in federal financial aid. And more students are opting into student housing — an additional revenue boost.

Mike Ionno, the college's interim chief fiscal officer, said similar depletion of cash reserves occurred before Hansen's administration. He said Southwestern never put monies for the new campus in a separate fund. Instead, they were included in the college's cash balance, first about $1 million in the middle 1990s, then another $1 million in 2003. Ionno noted that in 2003, when the end-of-year cash balance was $2.27 million, about $2 million should have been restricted to Curry County.

"It's not necessarily a new issue, but it's obviously an issue," he said.

Hansen said the college is facing tight times. Over the past several years, it finished construction on three major projects: the Oregon Coast Culinary Institute, addition to campus housing and the recreation center. All of those projects began before her tenure as president, she said. But, the college now is paying on those loans, requiring it to tighten its fiscal belt.

"On my watch it requires us to be much more fiscally tight," she said.

"Our whole country now is learning how to tighten their belts," Hansen added. "We are fortunate at Southwestern ... we began tightening our belts before the state and nation began to tighten their belts."

Since the college recently authorized the $1.5 million loan, there was general agreement that funds aren't available to start construction on a new campus.

"It does not look like we can afford Curry campus," said board member Rick Howell.

"Not from current funds. I would agree," Ionno said.

To avoid the future loss of Curry campus funds, the board created a separate bank account specifically for the project. Chairman Lonny Anderson requested that the board be notified whenever funds are removed from the account.

"Up until now, we used these funds to pay our ongoing expenses," he said. "Right now, we aren't able to replenish those particular funds. It bothers me."

Today Hansen said the college already has spent $400,000 for the first architectural and detailed development plan. It has $2.3 million in a state matching grant designated for construction, but first it has to spend its own $2.3 million share. Hansen said today, the college already has spent $700,000 toward the goal.

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EXHIBIT: 4 AGENDA ITEM: 4
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 7-30-09
PAGES: 5
SUBMITTED BY: Catherine Wiley

Catherine Wiley
96370 Duley Creek Rd.
Brookings, OR 97415
July 28, 2009

Oregon Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem OR 97301-2540

Chairman and Commission Members:

On May 25, 2005, John N. Morgan, AICP, wrote, "As planners we have a critical leadership role to see that people are given the opportunity to participate in these forums, and even more importantly, to see that they are well and graciously served during these forums. A person should be able to receive accurate and complete information on the project and on the process. They should be able to ask their questions. They should be able to get complete answers to those questions in a timely manner. They should be able to raise concerns and have those concerns given a fair hearing and discussion. Most importantly, they should leave the forum feeling good about their City government because, even if they didn't get the answer they were hoping for, they received clear answers, they understand the reasoning behind those answers, and they were treated with dignity and respect." (Emphasis added.)

Mitch Rohse, AICP, has also compiled and published "The Ten Commandments for Planning Commissioners" (copy attached). Included in these "commandments" are basic principles; "serve the public interest", "honor the process", "be fair", "seek proper balance", "do your homework", etc. Further, he includes the caveat that, "In Oregon, planning commissioners are considered "public officials" and thus are subject to state government standards and practices laws".

I have been involved, as a concerned citizen, in the planning processes in Brookings for over seven years, primarily regarding the Borax/Rio Tinto property. The reason for my initial involvement was directly related to Goal 5 requirements re: natural, historic and cultural resources. This particular piece of property is laced with wetlands and streams, is habitat for the federally endangered Western Lily, contains old growth stands of spruce and fir, and, is now known to contain significant cultural archaeological sites. It was, in fact, my request that a cultural archaeological survey be done, in compliance with state laws that my odyssey into the world of land use planning began.

Unfortunately, during this extended time and experience, it has been repeatedly made clear that the standards and principles quoted above are not in place, nor practiced in the Brookings planning processes.

The issue of compliance with such principles is even more significant since the Brookings Planning Commission also serves as our Citizen Involvement Committee. In the interest of time, and in an effort to be constructive, I would like to offer suggestions through which this Commission might impact the adoption, implementation and enforcement of applicable principles and laws in our planning processes.

1. Either require a separate citizen involvement committee, or require the implementation of measurable and accountable assessments of the combined roles and functions of the planning department and commission.
2. Monitor commission meetings, either by way of unannounced attendance or random review of DVD's of the meetings.
3. Provide a direct mechanism for reporting and assessing issues raised by citizens during planning processes.
4. Establish minimum standards and requirements for the educational levels and qualifications of Planning Directors, including professional limitations, as well as in-service training of planning commissioners and on-going evaluations of performance.

The following list of incidents/actions is intended to provide examples of the reasons for my concerns and recommendations. Factual documentation is available for each item.

1. Planning Director providing response to a land use attorney, without benefit of legal counsel, thus affecting a legal opinion, which was in error.
2. Planning Department taking no action when notified by DEQ that a Borax contractor was in noncompliance with permit requirements (NPDES 1200-C).
3. Lack of public disclosure regarding Coos Curry Electric owner-members' fiscal liability for installation and maintenance of electrical service lines to any/all buildings erected on Borax property, based on 1976 contractual agreement lasting 99years (compensation for transmission line right of way through property).
4. Withholding of documents by the Planning Director which were listed as evidence in a hearing package, despite multiple verbal & written requests, thereby being non compliant with ORS 197.763 (4) (a). "All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public."
5. Planning Director requiring a subordinate staff member to back date a letter of testimony submitted by the Department of the Interior, which had either been inadvertently or purposely not included in the hearing for which it was submitted.
6. Planning Director setting unprecedented standard of countermanding a lawful decision of the Planning Commission by submitting a recommendation to the City Council directly opposed to that of the Commission.
7. Complete disregard for state mandated inventories, in compliance with Goal 5, as well as required management programs and inventory as related to Goal 16. (Over 500 acres annexed & approval for 1,000 housing units, a college and commercial development.)

Ten Commandments for Planning Commissioners

By Mitch Rohse, AICP

I. Serve the public interest. As a planning commissioner, your mission is to serve the public interest in matters involving the use of land. Most development affects people and property beyond its site. Most development affects public facilities such as roads. And most development affects public resources such as water. Such effects on the community create a "public interest" in land use. The chief expression of that interest is your community's plan and state and local land-use laws.

II. Honor the process. Your actions as a planning commissioner will be subject to procedural rules — typically, an agenda, local public hearing procedures, state laws, a budget, your community's citizen involvement program, court rulings, perhaps even the US Constitution. Accept and follow those rules. A good process makes for good decisions.

III. Be fair. Make decisions openly, without bias, and without undue influence from any special interests. Aim for decisions that serve the community as a whole, not just one person or group. Avoid conflicts of interest — and even the appearance of such conflicts. This is especially important when making "quasi-judicial decisions" that apply regulations to a particular person or property. In such cases, you are acting much like a judge: you must adhere to the laws and ethical standards that govern such decision making. Respect all parties to a decision: you are not being impartial if you debate or disparage those with whom you disagree.

IV. Seek a proper balance. Planning often involves a conflict between two competing objectives: efficiency and equity. "Efficiency" means delivering the best product in the most timely, cost-effective way. The basic product from all planning is a decision — a decision in the form of a permit approved or denied, a policy adopted, a plan amended, a property rezoned. "Equity" means making the decisions so that those affected by them have adequate time, information, and opportunity to participate. Too much emphasis on efficiency brings bad decisions, an unfair process, and inadequate opportunity for public participation. Too little brings undue costs in time and money.

V. Do your homework. Your decisions should be based on laws, policies, and facts about the people and places likely to be affected by them. Such information usually will come from staff reports, permit applications, plans, technical reports, ordinances, and testimony (oral and written). This material often is complex and challenging. Perseverance in reading or listening to it is essential to being an effective planning commissioner.

See next page ☞

VI. Look to the future. Consider how the decisions you make today will affect your community not just tomorrow but decades from now. Weigh not only the immediate short-term effects of a given decision but also its likely long-term outcomes. Remember that one of planning's most basic aims is to set and achieve long-term goals for your community's future.

VII. Be comprehensive. Community plans are called "comprehensive" because they involve careful consideration of a wide range of issues and outcomes. As a planning commissioner, you should be equally comprehensive in your decision making. Ask questions. Explore alternatives. Look for "the big picture."

VIII. Encourage widespread participation. Planning is a process for expressing and protecting the public interest in land, development, natural resources, and public services. For each decision you make, "the public" consists of individuals who may be affected by that decision as well as groups and agencies that represent those individuals. Strive to see that all have ample opportunity to participate. Remember that the range of people and organizations affected by your decisions may extend well beyond the legal boundaries of your community.

IX. Respect the staff. In planning, most decisions are made not by professional planners, lawyers, or engineers but by local officials with little formal training in those technical fields. As a planning commissioner, you therefore must often rely on staff members to give you the information and advice you need to make proper decisions. Their reports may be long, boring, slow in coming, or contrary to what you hope for or believe, but keep such frustrations in perspective: you and they are on the same team.

X. Learn about planning. The more you learn about land use and planning, the better you will serve your community as a planning commissioner. Make the personal effort necessary to read key materials, attend training sessions, and enroll in courses. Equally important, encourage your staff and elected officials to develop and maintain a strong program for training commissioners.

NOTE: In Oregon, planning commissioners are considered "public officials" and thus are subject to state government standards and practices laws (ORS Chapter 244). These laws are summarized in a *Guide for Public Officials* published by the Oregon Government Standards and Practices Commission. This small handbook can be viewed on-line at http://www.oregon.gov/GSPC/docs/POGUIDE.pdf