



# Oregon

Kate Brown, Governor

**Department of Land Conservation and Development**

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August 20, 2015

**SENT VIA EMAIL**

James Phillips  
11800 SE Timber Valley Drive  
Clackamas, OR 97086

City of Happy Valley  
16000 SE Misty Drive  
Happy Valley, OR 97086

**RE:** Acceptance of James Phillips Petition for Enforcement; setting a date for a public hearing before the Land Conservation and Development Commission

The Department of Land Conservation and Development has completed its review of the above referenced petition for enforcement, filed by James Phillips, as required by OAR 660-045-0070. The department has determined that the petition is complete, containing all the required components for a valid petition as set forth in OAR 660-045-0040 and 660-045-0060.

As required by OAR 660-045-0070(7), this letter provides notice to petitioner James Phillips and to the City of Happy Valley of the department's acceptance of the petition. OAR 660-045-0090 requires that the Land Conservation and Development Commission conduct a public hearing in the manner described in OAR 660-045-0090 to determine whether there is cause to proceed to a contested case hearing as provided for in ORS 197.324(2)(b) and OAR 660-045-0090.

Therefore, a hearing is scheduled for the commission meeting on September 25, 2015, at 8:30 a.m. at the [Holiday Inn Express](#), 204 W Marine Drive Astoria, OR 97103 (see attached hearing procedures).

Please contact Jennifer Donnelly, DLCD Metro Regional Representative, should you have any questions or wish to pursue mediation. Jennifer can be reached either by telephone at 503-725-2183 or by e-mail at [Jennifer.donnelly@state.or.us](mailto:Jennifer.donnelly@state.or.us)

cc (via e-mail): Jason Tuck, City Manager

Chris Crean, Berry Elsner & Hammond/Attorney for the City of Happy Valley

Michael Walter, Economic and Community Development Director

Rob Hallyburton, DLCD Community Services Division Manager

Steve Shipsey, DOJ

**Attachment:**

660-045-0090 The Commission's Determination of Good Cause to Proceed

- (1) The commission shall conduct a public hearing to determine whether there is good cause to proceed to a contested-case hearing.
- (2) Only the department and parties to the proceeding may present testimony during the goodcause hearing described in Section 1.
- (3) The commission may set limits on the time allowed for testimony at the good-cause hearing.
- ( 4) A requester who alleges a pattern or practice of noncompliant decision making may present as evidence of good cause to proceed recent examples of noncompliant decisions made after the requester notified the affected local government or district of the requester's intent to petition for enforcement.
- (5) In deciding whether there is good cause to proceed, the commission shall consider the following:
  - (a) The department's recommendation;
  - (b) The requester's petition;
  - (c) The citizen's request notice to the affected local government or district;
  - ( d) The affected local government or district's response to the citizen's request;
  - (e) Related facts known to or ascertained by the commission; and
  - (f) Any testimony from parties to the enforcement proceeding.
- (6) The commission shall find that there is good cause to proceed to a contested-case hearing if the information described in Section 5 contains substantial evidence of noncompliance.
- (7) If the commission finds there is not good cause to proceed, it shall issue an order dismissing the petition and stating its reasons for doing so. A commission order dismissing a petition on grounds that there is not good cause to proceed shall be a final order. If the commission finds there is not good cause to proceed, no contested-case hearing of the petition shall be conducted.
- (8) If the commission finds there is good cause to proceed, it shall issue a written decision describing the reasons for its decision.
  - (a) The commission may find good cause to proceed on some assertions of noncompliance in a petition, but not on others.
  - (b) The commission may, under its own motion pursuant to ORS 197 .324, proceed on related assertions of noncompliance not contained in the petition.
- (9) If the commission finds there is good cause to proceed, it shall initiate proceedings toward a contested-case hearing, as described in OAR 660-045-0100 to -01 20