

**AGENDA**  
**Aurora Planning Commission Meeting**  
Tuesday, May 3, 2016, at 7:00 P.M.  
City Council Chambers, Aurora City Hall  
21420 Main Street NE, Aurora, OR 97002

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**1. CALL TO ORDER OF THE AURORA PLANNING COMMISSION MEETING**

**2. CITY RECORDER DOES ROLL CALL**

**3. CONSENT AGENDA**

- a) Planning Commission – April, 2016
- b) City Council Minutes – March, 2016
- c) Historic Review Board Meeting Minutes –

**4. CORRESPONDENCE –**

**5. VISITORS**

Anyone wishing to address the Aurora Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora Planning Commission could look into the matter and provide some response in the future.

**6. NEW BUSINESS**

- a) None

**7. OLD BUSINESS**

- a) Discussion and or Action on FEMA Flood Plain Regulations.
- b) Discussion and or Action on DLCDC Land Use Legislation Regarding Annexation and Code Requirements specific to SB 1573.

**8. Commission Action/Discussion**

- a) City Planning Activity (In Your Packets) Status of Development Projects within the City.

**9. ADJOURN**

**Minutes**  
**Aurora Planning Commission Meeting**  
Tuesday, April 5, 2016, at 7:00 P.M.  
City Council Chambers, Aurora City Hall  
21420 Main Street NE, Aurora, OR 97002

**STAFF PRESENT** Kelly Richardson, City Recorder  
Renata Wakeley, City Planner

**STAFF ABSENT:** None

**VISITORS PRESENT:** None

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**1. CALL TO ORDER OF THE CITY COUNCIL MEETING**

Meeting was called to order by Chairman Schaefer at 7:01 pm

**2. CITY RECORDER DOES ROLL CALL**

Chair Joseph Schaefer - Present  
Commissioner Craig McNamara- Present  
Commissioner Bud Fawcett - Present  
Commissioner Jonathan Gibson - Present  
Commissioner Mercedes Rhoden-Feely - Present  
Commissioner Tara Weidman - Present  
Commissioner Open Position -

**3. CONSENT AGENDA**

- a) Planning Commission Minutes – April, 2016
- b) City Council Meeting Minutes – NA
- c) Historic Review Board Minutes – None

Motion to approve the consent agenda as presented was made by Commissioner McNamara and is seconded by Commissioner Gibson. Motion approved by all.

**4. CORRESPONDENCE –**

- a) NA

**5. VISITORS**

Anyone wishing to address the Aurora Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora Planning Commission could look into the matter and provide some response in the future.

Jennifer Raneau, 21367 Hwy 99E, we just wanted to let someone know we are continuing to work hard on getting a plan together. (She thought she was at the City Council meeting) We are

requesting another month or two. Planning Chair Schaefer informs her she is at the wrong meeting and would need to appear next Tuesday at City Council.

**6. PUBLIC HEARING, Begins at 7:06pm**

- a) Discussion and or Action on Continuation of SDR-16-01 Application for Property 21317 Hwy 99E Warren Bean Owner.

Chair Schaefer summarizes the procedures and City Planner Wakeley asks for any ex-parte contact and none is declared. Notice requirements have been met and are complete. Wakeley goes over her staff report as included in the minutes. There is a brief discussion regarding conversations with ODOT and if parking is allowed on 99E. They then begin discussion on what frontage improvements need to take place and if it is feasible to do so or not. Staff recommendations are in the staff report;

**CITY OF AURORA  
PLANNING COMMISSION**

**STAFF REPORT:** Site Development Review 2016-01 [SDR-16-01]  
**DATE:** March 23, 2016 (for the April 5, 2016 Planning Commission meeting)

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**APPLICANT/OWNER:** Warren and Bernice Bean/Valerie Troyer  
P.O. Box 446, Hubbard OR 97032

**REQUEST:** Site Development Review approval for construction of approximate 5,650 sq. ft. addition to rear of an existing structure; on-site improvements including approximately 2,050 sq. ft. of outdoor patio seating area and decorative pathways; provision of 36 on-site parking spaces; and installation of a new access drive from Highway 99E.

**SITE LOCATION:** 21317 Highway 99E NE, Aurora, OR  
Map 41.W.13BA Tax Lot 2300

**SITE SIZE:** 99,752 square feet or 2.29 acres

**DESIGNATION:** Zoning: Commercial (C) with Historic Commercial Overlay (HCO)

**CRITERIA:** Aurora Municipal Code (AMC) Chapters 16.22 Historic Commercial Overlay and 16.58 Site Development Review

**ENCLOSURES:** Exhibit A: Assessor Map  
Exhibit B: Application and site plan  
Exhibit C: Historic District Inventory #122 and Historic Review Board minutes (February 25, 2016)  
Exhibit D: Request for Comments (RFC) responses

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**I. REQUEST**

Site Development Review approval for construction of approximate 5,650 sq. ft. addition to rear of an existing structure; on-site improvements including approximately 2,050 sq. ft. of outdoor patio seating

area and decorative pathways; provision of 36 on-site parking spaces; and installation of a new access drive from Highway 99E.

## **II. PROCEDURE**

The application was submitted to the City on February 4, 2016 but was determined incomplete by staff on February 17, 2016. The applicant submitted supplemental materials on February 17<sup>th</sup> and 22<sup>nd</sup>. The request for comments to interested parties and notice to property owners within 100 feet of the subject property was mailed on 2/23/17- 7 days prior to the Planning Commission meeting. Aurora Municipal Code (AMC) requires notice to surrounding property owners 14 days prior to the Planning Commission meeting and notice published in the paper 20 days prior to the Planning Commission meeting under Limited Land Use decisions, AMC 16.78. Time constraints and submission of supplemental required application materials did not allow for sufficient notification requirements so the Planning Commission continued the hearing to April 5, 2016. Notice was mailed to property owners on March 18, 2016 and notice was published in the Canby Herald on March 16, 2016 in compliance with the AMC.

The City has until **June 20, 2016**, or 120 days from acceptance of the application to approve, modify and approve, or deny this proposal.

## **III. APPEAL**

Appeals are governed by AMC 16.78.120. An appeal of the Planning Commission's decision shall be made, in writing, to the City Council within 15 days of the Commission's final written decision.

## **IV. CRITERIA AND FINDINGS**

*The applicable review criteria for Site Development Review are found in AMC 16.58.*

### **16.58.100 Approval Standards**

*The review of a Site Plan shall be based upon consideration of the following:*

#### **A. Provisions of all applicable chapters;**

**FINDINGS:** The subject parcel is zoned Commercial (C) with a Historic Commercial Overlay (HCO). According to the Marion County assessor, the existing structure was built in 1865 and includes an approx. 993 sq. ft. main floor, 693 sq. ft. finished attic and 693 sq. ft. unfinished basement. The existing structure is estimated to be 30 feet from the front property line with a brick patio within the front yard. The applicant proposes an approx. 5,650 sq. ft. addition to rear (west) of the existing structure with on-site improvements including approximately 2,050 sq. ft. of outdoor patio sq. ft. and a gravel parking area with an estimated 36 parking spaces. Staff finds the property and proposal meet the HCO zone requirements for lot depth, width, and height. AMC 16.22.040.D. states, "no front setbacks shall be permitted, except as necessary to maintain visual clearance areas. No rear or side setbacks are required. The existing structure is setback approximately 30 feet from the front property line and can be considered a pre-existing non-conforming use to the no front setback code requirements.

The existing structure is also identified in the Aurora Historic Building Inventory as the Maria Mohler House (Resource #122), and has a Primary Significant classification.

AMC section 17.040.020.A. governs additions to contributing commercial structures (which applies to the existing structure/subject property as follows:

1. New additions may only be placed on the rear elevation. Architectural detailing including roofing, siding, trim, doors, and windows shall match the existing structure in design and materials unless supported by evidence in the historic inventory.
2. Previous additions to the original structure that were added prior to 1921 shall be subject to the same standards and criteria as the original portion of the structure; however, in the event that the addition does not match the original, the exterior features of the addition may be altered to match the original.
3. Additions to contributing structures that were built in 1921 or later may be removed, and following removal, the exterior materials on that portion of the structure must match the remainder of the structure.
4. Additions to commercial structures are exempt from the parking requirements in Title 16.

Staff believes requiring new construction be placed in front of the historic structure or parallel to the existing would be in conflict with AMC 17.040.020 and staff finds the proposed addition to the rear of the historic structure satisfies both AMC section 16 and 17.

AMC 16.22.040.I states all properties, uses, and structures in the historic commercial overlay shall be subject to the requirements of Title 17, Historic Preservation. The Aurora Historic Review Board (HRB) reviewing the application at a February 25, 2016 meeting and comments from the HRB are included under Exhibit C. Staff finds the proposed addition and site improvements (see Exhibit B) can meet the requirements of AMC Title 16 and Title 17- Historic Preservation.

Staff finds this criterion can be met, with conditions.

- B. Buildings shall be located to preserve topography and natural drainage and shall be located outside areas subject to ground slumping or sliding;*

FINDINGS: Exhibit B11 provides a contour map of the property, as well as the location of the existing structure and proposed new construction. The most significant slope on the property is located along the frontage of Highway 99E and to the west of the existing structure and proposed new construction. According to the applicant, the “proposed addition to the existing building fits nicely into the existing topography, as does the parking area”.

Staff finds this criterion is met.

- C. Privacy and noise;*

- 1. Buildings shall be oriented in a manner which protects private spaces on adjoining residential properties from view and noise;*
- 2. On site uses which create noise, lights, or glare shall be buffered from adjoining residential uses;*

FINDINGS: The subject property measures approx. 99,752 square feet or 2.29 acres. The property abuts the urban growth boundary and city limits to the west and Highway 99E to the east. The property to the north is zoned HCO and is buffered by approximately 150 feet of existing landscaping proposed to remain (see Exhibit B11). The property to the south is zoned Commercial but is outside the Historic Commercial Overlay. The lot to the south of the subject property measures approximately 50 feet to the south of the

existing structure and proposed addition. The applicant proposes installation of a new asphalt parking area to the south of the existing structure and addition and proposes to buffer the parking area with five (5) ft. fence (see Exhibit B18).

A lighting plan was not included with the subject application. A lighting plan in conformance with criteria 16.58.100.C.2. and I.3-4. shall be submitted for City review and approval prior to final occupancy permit approval. This is included as a recommended condition of approval.

Staff finds this criterion can be met, with conditions.

*D. Residential private outdoor areas:*

FINDINGS: Staff finds this criterion does not apply.

*E. Residential shared outdoor recreation areas:*

FINDINGS: Staff finds this criterion does not apply.

*F. Shared outdoor recreation space shall be readily observable for reasons of crime prevention and safety;*

FINDINGS: The proposed outdoor space abuts the proposed structures. However, the property is completely under private ownership and staff finds this criterion does not apply.

*H. Demarcation of public, semipublic, and private spaces;*

FINDINGS: Staff finds this criterion does not apply as the space is private, commercial property.

*I. Crime prevention and safety:*

- 1. In residential developments, interior laundry and service areas shall be located in a way that they can be observed by others;*
- 2. Mail boxes shall be located in lighted areas having vehicular or pedestrian traffic;*
- 3. Exterior lighting levels shall be selected and the angles shall be oriented towards areas vulnerable to crime;*
- 4. Light fixtures shall be provided in areas having heavy pedestrian or vehicular traffic and in potentially dangerous areas such as parking lots, stairs, ramps and abrupt grade changes. Fixtures shall be placed at a height so that light patterns overlap at a height of seven feet which is sufficient to illuminate a person.*

FINDINGS: Criteria I.1 and I.2 are related to residential development and found not to apply. A lighting plan for the site was not provided by the applicant. A lighting plan in conformance with the above criteria shall be submitted for City review and approval prior to final occupancy permit approval. The lighting plan must also show that lighting shall not reflect onto surrounding properties. Staff will ensure the HRB has an opportunity to review the proposed lighting plan, as requested under Exhibit B. This is included as a recommended conditional of approval.

**J.** *Access and circulation;*

1. *The number of allowed access points for a development shall be as determined by the City Engineer in accordance with standard engineering practices for city rights-of-way, as determined by Marion County for county rights-of-way, and as determined by the Oregon Department of Transportation for access to Highway 99E.*
2. *All circulation patterns within a development shall be design to accommodate emergency vehicles.*

FINDINGS: Comments from the Aurora Rural Fire District are included under Exhibit D and included as recommended conditions of approval. The applicant proposes to close the existing access to the property and add a new access further south along Highway 99E at the location of the proposed parking area. The Oregon Department of Transportation (ODOT) provided comments on the application under Exhibit D.

Based upon their comments, recommended conditions of approval for the approved access permit to be submitted to the City of Aurora prior to occupancy permit approval and dedication of 2 feet of right-of-way in compliance with the Aurora TSP are included below.

Staff finds this criterion can be met, with conditions.

**K.** *Public transit;*

FINDINGS: Access to the property is proposed via Highway 99E. No transit stops abut or are adjacent to the subject property. Staff finds this criterion does not apply.

**L.** *All parking and loading requirements shall be design in accordance with the requirements set forth in Chapter 16.42.*

FINDINGS: Parking shall be in conformance with the AMC 16.22 for the historic commercial overlay zone and Title 17-Historic Preservation. AMC 16.22.040.F. states, "Parking shall be in accordance with Chapter 16.42 except as specifically exempted by Chapter 16.28 and Title 17, and should be located to the rear of the building. The planning commission may approve parking to the side of the building where parking to the rear is not feasible. AMC 17.40.020.A.4. states, "Additions to commercial structures are exempt from the parking requirements in Title 16". Staff finds parking is not required.

As the applicant does propose parking and while parking space minimums are exempt under the HCO, proposed parking shall still be required to conform with the public works standards under 16.38 and 16.42 for screening and buffering as the property does not abut residentially zoned property. Additionally, the proposed location of the parking area to the south of the existing structure and proposed addition appears to provide good access and least impact upon existing topography. Staff recommends the planning commission approve the proposed parking to the side of the building as parking to the rear has the potential to have a greater impact upon existing property slope.

No ADA parking is shown on the proposed site plan. Staff recommends the Planning Commission defer to the building inspector to determine whether ADA parking is required on site. If ADA parking is provided or required, it shall be constructed in accordance with the Oregon Structural Specialty Code, in conformance with AMC 16.42.100. This is included as a recommended condition of approval.

16.42.050.A. states, "All parking and maneuvering surfaces shall have a durable, hard and dustless surface such as asphalt, concrete, cobblestone, unit masonry, scored and colored concrete, grasscrete, compacted gravel, or combinations of the above". According to the applicant, "we concur with this requirement" and the applicants representative has stated the parking area will be gravel with the exception of the first twenty (20) feet at the property line, which would be asphalt as required by ODOT. In addition, there may be a small area paved for ADA parking.

Criteria under 16.42.050.B-I. contain requirements for service drives and/or residential developments and are found not to apply to the subject property and application.

16.42.050.J states, "J. Parking spaces along the outer boundaries of a parking area shall be contained by a curb or bumper rail so placed to prevent a motor vehicle from extending over an adjacent property line or a street right-of-way". 16.42.050.K requires, "The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height, and at least three feet from the lot line or any required fence. This is included as a recommended condition of approval.

Staff finds this criterion can be met, with conditions.

*M. All landscaping shall be designed in accordance with the requirements set forth in Chapter*

*16.38.*

FINDINGS: A preliminary landscape plan with minor improvements for outdoor seating and pathways is included under Exhibit B. AMC 16.38 require properties larger than twenty thousand (20,000) square feet in size shall have at least ten (10) percent of the total lot area landscaped. Staff finds this criterion is met.

If landscaping improvements exceed \$2,500, review and approval by the Historic Review Board (HRB) is also required in conformance with AMC 17.04.050.B.2. Applicant shall be required to provide the caliper of all trees proposed for removal to the City. Trees with a caliper larger than 24 inches requires approval by the HRB pursuant to 17.04.050.B.2.

AMC 16.38.50.D. requires any refuse container or disposal area and service facilities such as gas meters and air conditioners which would otherwise be visible from a public street, customer or resident parking area, any public facility or any residential area, shall be screened from view by placement of a solid wood fence, masonry wall or evergreen hedge between five and eight feet in height. All refuse materials shall be contained within the screened area. According to the applicant, the garbage enclosure will be screened with concrete masonry units and the exterior would be wood siding painted white to match the building. Staff recommends inclusion of screening of refuse containers, disposal areas and service facilities to be screened in compliance with 16.38.050.D be included as a condition of approval.

If landscaping improvements exceed \$2,500, review and approval by the Historic Review Board (HRB) is also required in conformance with AMC 17.04.050.B.2. This is included as a recommended condition of approval.

*N. All public improvements shall be designed in accordance with the requirements of Chapter 16.34.*

**FINDINGS:** The subject property is generally considered developed. Extension/sizing of water, sewer, or storm drainage improvements are required to comply with Chapter 16.34 and the City of Aurora public works design standards and City of Aurora and State of Oregon development, building and fire codes. This is included as a recommended condition of approval.

**Water:** According to the city engineer, a 2” water line serves the property. Depending upon final design, if flows for the existing and proposed development larger than this are required, the water line will need to be upgraded in compliance with the Aurora Water Master Plan at the developer’s cost. According to the building inspector, the Aurora Water Master Plan calls for a 10” water main to cross Highway 99E and would need to connect to existing water main at the east end of Highway 99E and Bobs Avenue (see Exhibit D).

The existing water service requirements will need to be reviewed and upgraded as necessary in accordance with the Public Works Design Standards and Water Master Plan, prior to building permit approval. Appropriate backflow prevention devices, as necessary, will need to be reviewed and approved by the Marion County Building Department and Fire Marshall. This is included under recommended conditions of approval.

**Fire protection-** Unless otherwise approved by the Fire District, fire hydrants are required within 250 feet of any new structure. The Fire Chief reviewed the subject application and has stated that a hydrant will be required at that location as lines cannot cross a major arterial. Prior to building permit approval, the developer shall provide documentation that the Aurora Fire District has reviewed and approved all fire protection devices, systems, and access routes. This is included as a recommended condition of approval.

**Sewer:** Comments from public works and building inspector are included under Exhibit D. Depending upon final design for the addition and kitchen and restroom facilities, the existing 4” sewer line may not be adequate. Sanitary sewer requirements in compliance with the Aurora public works design standards will be determined prior to building permit approval. All upgrades will be at the expense of the developer.

**Storm water:** Storm water detention will need to be provided in accordance with the Aurora and Marion County Public Works Design Standards. Prior to building permit approval, the developer shall submit to the City for review and approval engineered storm water plans and a drainage study/calculations conforming to the Public Works Standards. It is the responsibility of the developer to provide a suitable discharge location for storm water from the development. Storm water operation and maintenance of a private detention facility will be the obligation of the property owner. An operation and maintenance agreement, if required, shall be reviewed and approved by the City prior to building permit approval.

**Transportation:** The Aurora Transportation System Plan (TSP) defers to the Oregon Department of Transportation (ODOT) for frontage improvements along Highway 99E, classified as a State Principal Arterial. Tax assessor maps show that the current ODOT right-of-way is 80’ along the frontage. Table 3-1 of the Aurora TSP and AMC 16.34.030 recommends 84’ of right-of-way. Staff recommends the Planning Commission require the dedication of 2 feet of right-of-way to comply with the TSP. This is included as a recommended condition of approval.

Staff does not believe the subject Site Development Review application will require completion of a Traffic Impact Analysis (TIA) as the proposed application is not determined by staff to result in more than 25 peak hour trips or 250 vehicle trips per day. The Aurora TSP specifies development resulting in more than 250 vehicle trips per day shall require a TIA (Appendix F-9). According to the Trip Generation Manual<sup>1</sup>, the estimated 2,350 sq ft of dining space with an estimated 1,000 sq ft of the 2,050 sq ft outdoor space for dining, and the existing 993 main floor of the existing structure for retail space (estimated) can be expected to average 15 dining peak hour trips and 5 retail peak hour trips, respectively.

Highway 99E along the frontage contains half-street improvements located along the east side of the Highway from Bob's Avenue and north. These improvements were completed by the City and ODOT. Table 3-1 of the Aurora TSP and AMC 16.34.030 show the recommended street section. **A half-street improvement consisting of paving, curb and gutters, sidewalks and storm drainage is recommended.** ODOT has stated they do not require frontage improvements but will rather defer to the City and TSP.

While the City TSP identifies frontage improvements as recommended and the City may require these improvements along the frontage of the subject property, there are slope constraints and concerns of whether the development justifies the need for this level of improvement when there are not sidewalks, curbs and gutters to the north or south of the property. In addition, the City and ODOT completed a substantial improvement to the east side of Highway 99E in this area and it appears that completion of this eastern portion of 99E is a higher priority to the City in providing bike and pedestrian access to the area. The City Engineer suggests two options:

- a) Prior to building permit approval, the developer shall submit to the City for review and approval a street improvement plan conforming to ODOT, Aurora Public Works Design Standards and the Aurora TSP. Frontage improvements in conformance with the street improvement plan shall be required prior to occupancy permit approval.

*OR*

- b) If the City defers the requirement for frontage improvements, applicant shall be required to record a non-remonstrance agreement for paving, curb and gutters, sidewalks and storm drainage prior to building permit approval. Frontage improvements may be required in the future if the City is able to gather non-remonstrance agreements for a majority of properties in this area of western Highway 99E.

Parking is discussed under criteria L.

An erosion and sediment control plan shall be submitted for review and approval by the City prior to any site grading or earth disturbing activities.

Staff finds this criterion can be met, with conditions.

*O. All facilities for handicapped shall be designed in accordance with the requirements set forth in the ADA requirements;*

**FINDINGS:** The subject application includes new construction which will be subject to Oregon Structural Specialty Code requirements and ADA requirements. Remodel, if applicable, and construction shall be required to comply with all City of Aurora and State of Oregon development, building and fire codes.

This is included as a recommended condition of approval. Staff finds this criterion can be met, with conditions.

*P. All of the provisions and regulations of the underlying zone shall apply.*

FINDINGS: Staff finds the applicant can meet the zone criteria under the HCO and can meet the criteria for Site Development Review approval, with recommended conditions of approval. The application meets the minimum side and rear yard setbacks and meets the height limitation of 35 feet. While the application does not meet the zero front yard setback, the applicant is proposing for the new construction to be complementary and subordinate to the existing historic structure. The applicant has also shown the slope considerations of the site which would make construction along the front property line much more difficult than would be possible for smaller properties in the HCO zone to the north of the subject property.

Staff finds this criterion is met.

## V. CONCLUSIONS AND RECOMMENDATIONS

Based on the findings in the staff report, staff recommends that the Planning Commission **APPROVE** the application for Site Development Review (SDR-2016-01) with the conditions of approval summarized in the staff report and below:

- 1) Develop the subject property in accordance with plans approved by the city. Documentation shall be provided to the City that the plans and specifications have been approved/permitted by all applicable local, state and federal agencies having jurisdiction over the work. This may include, but not limited to, the City of Aurora, Aurora Fire District, ODOT, DHS-DWP, DEQ, etc.
- 2) Comply with all City of Aurora and State of Oregon building and fire codes in applicable at the time of *building permit application*. If applicable, Systems Development Charges will be applied at the time of issuance of a building permit.
- 3) The developer shall be responsible for all costs relating to the required improvements identified for the project within the Aurora Municipal Code, Public Works Design Standards, and the conditions of approval.
- 4) A lighting plan in conformance with AMC 16.58.100.C.2. and 16.58.100.I.3-4. shall be submitted for City review and approval *prior to building permit approval*. The lighting plan shall also show that lighting will not reflect onto surrounding properties. The approved lighting plan shall be installed *prior to final occupancy permit approval*.
- 5) An ODOT approved access permit shall be submitted to the City of Aurora *prior to occupancy permit approval*.
- 6) In accordance with 16.42.50.J.-K., Parking spaces along the outer boundaries of a parking area shall be contained by a curb or bumper rail so placed to prevent a motor vehicle from extending over an adjacent property line or a street right-of-way. The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height, and at least three feet from the lot line or any required fence. Parking improvements shall be completed *prior to occupancy permit approval*.

- 7) If ADA parking is provided or required, it shall be constructed in accordance with the Oregon Structural Specialty Code, in conformance with AMC 16.42.100.
- 8) The existing water service requirements will need to be reviewed and upgraded as necessary in accordance with the Public Works Design Standards and Water Master Plan, *prior to building permit approval*. Appropriate backflow prevention devices, as necessary, will need to be reviewed and approved by the Marion County Building Department and Fire Marshall. All upgrades, if applicable, will be at the expense of the developer.
- 9) Sanitary sewer requirements in compliance with the Aurora public works design standards will be determined *prior to building permit approval*. All upgrades will be at the expense of the developer.
- 10) *Prior to building permit approval*, the developer shall provide documentation that the Aurora Fire District has reviewed and approved all fire protection devices, systems, and access routes.
- 11) Storm water detention will need to be provided in accordance with the Aurora and Marion County Public Works Design Standards. It is the responsibility of the developer to provide a suitable discharge location for storm water from the development. *Prior to building permit approval*, the developer shall submit to the City for review and approval engineered storm water plans and a drainage study/calculations conforming to the Public Works Standards. Storm water operation and maintenance of a private detention facility will be the obligation of the property owner. An operation and maintenance agreement, if required, shall be reviewed and approved by the City *prior to building permit approval*.
- 12) An erosion and sediment control plan shall be submitted for review and approval by the City prior to any site grading or earth disturbing activities.
- 13) Screening of refuse containers, disposal areas and service facilities shall be screened in compliance with 16.38.050.D., *prior to occupancy permit approval*.
- 14) If landscaping improvements exceed \$2,500, review and approval by the Historic Review Board (HRB) is also required in conformance with AMC 17.04.050.B.2. Applicant shall be required to provide the caliper of all trees proposed for removal to the City. Trees with a caliper larger than 24 inches requires approval by the HRB pursuant to 17.04.050.B.2.
- 15) Dedication of two (2) feet of right-of-way along Highway 99E to the Oregon Department of Transportation (ODOT) in compliance with the Aurora TSP shall be required *prior to building permit approvals*. Dedication shall be to “The Public for public road purposes” and in compliance with ODOT approved procedures.
- 16) In accordance with the Aurora TSP, the Planning Commission may require frontage improvements along the subject property.
  - a. Prior to building permit approval, the developer shall submit to the City for review and approval a street improvement plan conforming to ODOT, Aurora Public Works Design Standards and the Aurora TSP. Frontage improvements in conformance with the street improvement plan shall be required prior to occupancy permit approval.

OR

- b. If the City defers the requirement for frontage improvements, applicant shall be required to record a non-remonstrance agreement for paving, curb and gutters, sidewalks and storm drainage prior to building permit approval. Frontage improvements may be required in the future if the City is able to gather non-remonstrance agreements for a majority of properties in this area of western Highway 99E.
- 17) In accordance with AMC 16.34.140.A, prior to beginning any construction, the applicant shall assure the completion and maintenance of improvements by securing a bond, or placing cash in escrow, an amount equal to one hundred twenty-five (125) percent of the estimated cost of the improvements. Further, the applicant shall execute an agreement with the City Attorney regarding the repair, at the applicant's expense, of any public facilities damaged during development.
- 18) AMC 16.76.360.A states approvals issued pursuant to this chapter shall be effective for a period two years from the date of approval. In accordance with 16.58.050.A.3, a development agreement containing the conditions of approval shall be signed by the developer and recorded with Marion County.

## **VI. PLANNING COMMISSION ACTION**

- A. Approve the site development review application (SDR 2016-01) for new construction/additions to the existing structure, on-site landscaping improvements including approx. 2,050 sq. ft. of outdoor patio seating area and decorative pathways; provision of 36 on-site parking spaces; and installation of a new access drive from Highway 99E.
  - 1. As recommended by staff, or
  - 2. As determined by the Planning Commission stating how the application satisfies all the required criteria, and any revisions to the recommended conditions of approval, or
- B. Deny the request for site development review approval for SDR 2016-01 stating how the application does not meet the applicable approval criteria.
- D. Continue the hearing to a time certain or indefinitely (considering the 120-day limit on applications).

Chair Schaefer calls for any questions and at this time the applicant Mr. Bean has questions and concerns regarding the steep drop off and slopes of the site for sidewalks and lack of safety. Mr. Bean would prefer not to sign a non-remonstrance agreement because of the potential cost involved because of the slope of the site. I ask that they remove it all together and not require those frontage improvements based on the lot. Mrs. Bean asks the reason for the sidewalk maybe we can come up with a better alternative that suits both parties. Chair Schaefer well it is a requirement however I do see the issues associated with the site. Applicant agrees that the crosswalk would be nice however if we change our application ODOT will need to see the changes and that could be a lengthy process with ODOT. Schaefer also brings in ADA requirements and the fact that those will need to be met.

They go on to discuss the SDC charges and the possibility of a 10 inch main in order to fulfill city requirements and that again is at quite a cost so I would ask that the city help in some small way so

this project stays in check and more affordable. Chair Schaefer while its highly unlikely to forgive street improvements however I encourage you to continue talks with the Public Works Department and city to see if there are areas of help that can be achieved.

At this point most discussion has stopped and Chari Schaefer closes the hearing at 7:37 pm to begin the Planning Commissions discussion on the matter.

Chair Schaefer begins the discussion and begins with the frontage improvements that lot is going to require extensive costly improvements and I simply don't see how we can require them. I don't know the answer to a non-remonstrance waiver. This again in the future would be very costly on your end.

Wakeley this is not a small development a 5,000 square foot addition is going to require aprox 36 parking spaces and this will significantly increase the traffic and trips to the site.

The rest of the Commissioners share a few thoughts regarding the site and its significant slope and the costs that would be involved to do frontage improvements. There is some additional conversations regarding the possible crosswalk however there are also some major concerns for crossing 99E. Discussion is leaning to not require improvements and to waive the non-remonstrance.

A motion is made to approve the SDR-16-02 as recommended by staff by deleting 16b completely and adding a new condition for ADA access to the north end of the driveway throat by Chair Schaefer and is seconded by Commissioner Fawcett. Approved by all.

## **7. NEW BUSINESS**

- a) Discussion and or Action on Updated Historic Design Guide Completed by the Board. Chair Schaefer really felt the document was very well written.
- b) Discussion Regarding New Annexation Law, 1543 bill, Currently the City of Aurora has voter approved annexation however not with the passage of SB 1543 it will now be approved by the City Council. Unless the property is not contiguous then it requires a city election for annexation and voter approval. The city cannot force annexation it must be per property owner's wishes.
- c) Discussion/Reminder to Complete Economic Interest Statements for 2016,

## **8. OLD BUSINESS**

- a) Discussion and or Action on Orchard View Subdivision Storm Drain issues. No one is here so there is no update.

Motion to recommend to City Council to take action on taking ownership of tract A and 'B every effort has been made to work with them is made by Chair Schaefer and seconded by Commissioner Fawcett. Passes. Chair Schaefer adds to the motion to encourage development of tract A and is seconded by Commissioner McNamara. Passed by all.

- b) Discussion and or Action on Possible Urban Growth Boundary Expansion for the Airport. Chair Schaefer states, The Mayor and I have met with Thousand Friends yesterday it was productive and they suggested all or nothing. I don't think we have a way to force annexation, I asked in email do they know of a way to do that so we will see. We also met with group of government

people and airport owners they are exploring the possibilities to get more police services and they are of varied minds some are friendly and some not so much. They are very concerned with costs involved they are concerned with what the tax amount would be and I have asked the Mayor to investigate with Marion County tax assessor to see what they would be. Scott Brotherton, Wilsonville, when you and Bill go meet with people is this official meeting and is this decision meeting or just a fact finding meeting and Schaefer this is official fact finding and final decision would be made through the City Council as it should be. Normally if we were a larger city this would be a staff duty but since we are not many of this will fall on its volunteers such as our selves. Now switching to the EOA this is what Council approved and this is a draft document I filled it out and I sent it to DLCD it will go to council next week. The next step would then be to develop a document RFP and RFQ for consultant to do this type of work. No questions or comments from Commission,

Schaefer again the result of this is how many acres the airport needs and what sizes of property do they need and the site characteristics would they need and what mix is there. What type of businesses with or without employees?

- c) Discussion and or Action on TGM Grant Application, this will go to City Council in May this funding would be to supplement our TSP plan update or road plan for the Airport or to the Airport. To hire consultant to figure out how you would map out the road system and how it would fit in. Wakeley might be able to do both EOA and TGM transportation.

Schaefer I have spoken to John Rankin he represents many owners between here and the airport nothing is schedule yet but we will be meeting with many of those folks. Introduce ourselves and answer questions at this point.

Marion County proposes UGB the new rule and exploring this for level of interest thus far we are planning to go through the old rule. So far no one has told us otherwise and so our assumption to move forward under the old rule. No date schedule as of yet for this workshop.

## 9. COMMISSION/DISCUSSION

- a) City Planning Activity (in your packets) Status of Development Projects within the City. Nothing more to report at this time.

## 10. ADJOURN

Chair Schaefer adjourned the April 5, 2016 Aurora Planning Commission Meeting at 8:44 P.M.

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Chair Schaefer

ATTEST:

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Kelly Richardson, CMC  
City Recorder

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<sup>i</sup> Trip Generation. Institute of Transportation Engineers. 7<sup>th</sup> Edition. 2003

**Minutes**  
**Aurora City Council Meeting**  
Tuesday, March 08, 2016, at 7:00 P.M.  
City Council Chambers, Aurora City Hall  
21420 Main Street NE, Aurora, OR 97002

**STAFF PRESENT:** Kelly Richardson, City Recorder  
Mary Lambert, Finance Officer  
Darrel Lockard, Public Works Superintendent  
Officer Huitt, Marion County  
Eleanor Beatty, Koho Law

**STAFF ABSENT:** Dennis Koho, City Attorney

**VISITORS PRESENT:** Byron Schreiber, Aurora  
Shatrine Drake, Aurora  
Mr. Michigan, Aurora

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**1. CALL TO ORDER OF THE CITY COUNCIL MEETING**

Meeting was called to order by Mayor Bill Graupp at 7:00 pm

**2. CITY RECORDER DOES ROLL CALL**

Mayor William Graupp- Present  
Councilor Jason Sahlin - Present  
Councilor Kris Sallee-Present  
Councilor Robert Southard-Present  
Councilor Tom Heitmanek -

**3. CONSENT AGENDA**

a) City Council Meeting Minutes – February, 2016, (disclosure this section is verbatim minutes as stated by Councilor Sallee) Councilor Sahlin points out that the vote for the open council position is not reflected in the minutes at which point City Recorder Richardson examines the minutes in his packet and determines that the wrong minutes were placed in the council packets. At which point it is clearly stated that they would wait until next month to consider the February minutes. Councilor Sallee continues to critique the wrong minutes as clearly determined by everyone. Again Richardson points out that you would be making comments on the wrong information however Sallee continues with her remarks. On Pg 5 I (Sallee) think we need clarification as to who is speaking I do not think that I had said all of the information and it hard to know what the sentence is saying. Again Richardson states you are making comments regarding the wrong information these are the wrong minutes these comments are pointless at this point they are the wrong minutes. However Sallee goes on

Pg 6 Old Business number 9 second paragraph I just need some clarification on how that was recorded as well basically that paragraph is speaking to the Eddy property deal and basically my question was asking well I said council directed city attorney Koho that if there was a change in the deal the liens would go back into place and a new deal needs to be struck at that time and I don't think that is what I said I think I was asking Dennis what because if the deal if the first deal fell through um where does that set the liens and he had somewhat indicated that those liens would probably go back into place until a new deal or offer came into play and we could decide at that time and so again. Councilor Sahlin states the liens were never taken off the property. Councilor Sallee But that was my question to him and he was going to get back to me and clarify that and so I think I just need clarity on that and how that was said. How that all came about and we never heard about it so just wanted clarity. And then um the paragraph after that goes on to state that the terms of the new deal were not presented to council and they should have been prior to signing um to me this is a red flag that council is not being considered I think we should call an executive session and again maybe just listening to the tape cause I felt that we just didn't go through the right process so even though those terms may have stayed in place it was about going through the right process so I guess if you could just get some more clarity on that. Um and then just identifying the action item on that was. (Mayor Graupp) OK.

- b) Planning Commission – February, 2016, they were discussing the UGB expansion and Orchard View action.
- c) Historic Review Board Meeting – November, 2015

**ACTION ITEM: NA**

Motion to approve the consent agenda except for February Council minutes was made by Councilor Sahlin and is seconded by Councilor Southard. Motion approved by all. Councilor Sallee so how does that work if we're getting corrected ones next month Mayor Graupp as normal we will review them next month.

**4. CORRESPONDENCE –**

- a) 2016 Legislative Preview from the Local Focus Magazine LOC. Councilor Sallee I have a question I thought this would be really great to have this up loaded to the City website so citizens could have access to that I was not seeing that on there so I wasn't sure why, Mayor Graupp because I informed staff not to place this document on there as its not ours but that they could put a link to the LOC website on our website. (Sallee) and so where is that at Richardson states it's not up there yet but it will be soon, oh ok well that's fine I (Sallee) am just asking because I think it would be good for our citizens to have access to it and know what is going on in legislature.

**Action Item: Staff directed to put link on the website.**

**5. Discussion and or Appointment of Council Position.**

- a) Letter of Interest from Commissioner Mercedes Rhoden-Feely.
- b) Letter of Interest from Thomas Heitmanek.

Mayor Graupp we have the same two letters of interests so I will take a vote because we were introduced last time would you the applicants want to update us on anything. No discussion.

Vote  
Southard, Tom  
Sahlin , Tom  
Graupp, Mercedes  
Sallee, Tom

Mayor Graupp, Tom your on so let's go through the motions at this time, City Recorder Richardson performs the swearing in of the new council member Tom Heitmanek to fill Councilor Vlcek' old seat. As a reminder Mayor Graupp informs the new councilor that this term is through December 31<sup>st</sup> of 2016 the election process begins August 10<sup>th</sup> or so.

Mayor Graupp reads a section of the Council Procedures regarding roles of Liaisons and Department Heads.

### **ADMINISTRATIVE ROLES OF THE CITY COUNCIL AND DEPARTMENT HEADS**

A City Council's administrative role varies according to the form of government. Aurora uses a "strong mayor" system. This means the Mayor is a voting member of the City Council as opposed to a presiding Mayor with veto power. The Mayor appoints City Councilors to serve as Liaison for a particular City Department at the first meeting in January of each year, and may serve as a Liaison for any number of functions.

A City Councilor may be assigned as "Liaison" to any one of these four responsibility areas: Public Works Department, Police Department, as Inter-Governmental Liaison or as with the City Administration Staff/Community Liaison. A portion of each City Council meeting is set aside for reports from the "liaisons" on matters related to their assignments, i.e., committee, workshops, research, etc.

Individually, each City Councilor has authority in administrative matters only to the extent delegated by the City Council as a whole.

This delegation is often formally expressed through an Ordinance or Charter provision but may be implemented through City Council action or resolution.

In Aurora, most administrative authority is vested in the City Council and Department Heads who are appointed and are removed by the City Council. Currently, these Department Head positions are as follows:

Public Works Superintendent  
Police Chief  
City Recorder  
Finance Officer

Under the current administrative role of the City Council, there are likely to be many practical, and in some cases even legal limits to the City Council's administrative activities. But examples of City Councilor's administrative role may be: 1) During a

Department Head's absence, the Department Head's Liaison could present a department request, proposal or report for City Council Meetings, or present a potential problem, or requests for services: 2) The Department Head's Liaison could provide ideas about a program or policy, attend intergovernmental or other meetings to gain insight and background, assist with evaluation or bids for services, etc.

The City of Aurora Liaison's roles are support and advice mechanisms for the Department Heads and are for the City Council's mutual benefit. The Mayor and Department Heads bear the responsibility for the "general day to day" operations of the Department they supervise. Through this relationship, a Liaison uses the knowledge and background of the department or city service they represent at the City Council level to better inform other City Councilors and the citizens.

At this point Mayor Graupp hands out to each Councilor and staff member a link to a video regarding staff and councilor relations that he advises everyone to listen to.

Councilor Sallee asks if she can make some comments and wants to make a part of the record also and reads another section found on pg 30; part of the reason I want to bring this up is I know in the past liaisons have been more of a title and liaisons have not had much participation or encouraged to participate. So there has been really no direction for the liaisons in the past so it is a good thing that we are reviewing these sections.

### **CITY STAFF ROLES**

City Staff will acknowledge the City Council as policy makers, and the City Council will acknowledge staff as administering the City Council's policies.

City Councilors and City Employees may participate in meetings, negotiations, discussions with other agencies, departments, etc. on matters pertinent to the interests and potential involvement of their departments. Liaisons and Department Heads will cooperate in all discussions and creation of any Department Goals.

She also brings in a document from the League of Oregon Cities regarding relations and staff between city councilors.

Regardless of the size of the city or its form of government, communication between the council and a city employee must be made with the recognition of two facts:

- The city employee is responsible to his or her immediate supervisor and cannot take orders from a councilor; and
- Each councilor has the authority in administrative matters only to the extent delegated by the council as a whole. This delegation is often formally contained in an ordinance or charter provision.

Misunderstandings may arise when a councilor intends only to ask for information. The employee receiving a direct request from a councilor can easily jump to erroneous conclusions or misinterpret the councilor intent. The best way for councilors to get

information about administrative matters is to make a request during a regular council meeting or to a specific manager or administrator.  
So I (Sallee) really think that clarifies our roles and so we can be effective.

Richardson requests copies of all the information that Councilor Sallee read out loud.

## 6. VISITORS

Anyone wishing to address the Aurora City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora City Council could look into the matter and provide some response in the future.

No visitors or discussion.

## 7. REPORTS

### a) Mayor Bill Graupp

- I attended the last meeting regarding the Orchard View subdivision along with attending the last Planning Commission meeting where they discussed their options. The group is going to have another meeting on the 27<sup>th</sup> and I plan on attending that one as well so far the issue here is lack of participation amongst the home owners. City Attorney Koho has been in contact with the contractor and so far he is willing to just hand over the property to the city. The City doesn't really want it that is why we are hoping Orchard View finds an alternative solution.

Council discussed. NA

**ACTION ITEM: NA**

### b) Marion County Deputy

- Deputy reports nothing major has been happening we have been focusing on livability issues dealing with Ordinance violations. I have noticed that speeding issues have decreased and the number of related traffic stops has also decreased the main focus has been in and around Aurora and between North Marion School. Marion County has had a big enforcement push to keep commercial vehicles at of the area of the school for the safety of the kids. Been very successful with limiting commercial vehicles on Boones Ferry Rd.

Council discussed nothing at this time with Officer Huitt.

**ACTION ITEM: NA**

c) Finance Officer

- Finance officer reports everything is looking good and I just want to confirm that everyone has received their budget calendar.

Council Sallee had a question regarding the new truck for public works. She wanted to know if there was a specific amount or was it a range. She also wanted to confirm that we were looking at fleet pricing which is what occurred in this instance.

**ACTION ITEM: NA**

d) Public Works

- Public Works reports I apologize for not getting it into your packet were continuing work on the sludge removal/station. We did have a few pumps fail behind plant working on that. Trees in parks currently working on that. Trees along the street were going to trim just so you know. We thought we had a problem with the software however it turned out to be phone lines as to why we were continuing to get alarms at the plant that is now fixed.

Council discussed, Councilor Sallee had a few questions regarding water leaks which Lockard responded that he is on top of those issues. Sallee also had a question regarding the TGM program email that City Recorder, Richardson had sent out is that the same as the street grant no that is the SCA grant and were looking into that. Sallee also informs the group that herself and City "Recorder Richardson had attended the Hazard Mitigation meeting in Marion County were some other grant options were discussed as well. Lockard lets council know that we are still experiencing the water issue and bank erosion I am waiting for the next heavy rain to capture video to document the issue. She (Sallee) also wanted to know the status of the stop lines and Lockard informed her that he is waiting on a quote and working with the County. Sallee also states that she had sent out an email regarding certification for storm water Lockard said he would look at it.

**ACTION ITEM: Lockard to look at storm water certification training.**

e) Parks Committee

- Councilor Sahlin' asks if this is the current Living Color Park Contract. Yes it is stated by Mayor Graupp. Did Jerry get back to us regarding the additional items yes he had however the contract still really didn't call out each item well enough and Lockard still wanted to add some additional items. Consensus of the group to start on the contract items 1-5. Mayor Graupp informs Councilor Sahlin the school shop is closed for repairs so we are looking at another alternative for the garbage surrounds. Councilor Sahlin will talk about soccer goals during budget. Officer Huitt asks Councilor Sahlin for some time to discuss the previous year's issues regarding the park benches and tables.

Council discussed NA

**ACTION ITEM: Get completed and updated contract that is more informative.**

f) City Recorder

- Recorder report states you will notice that my report is neither on your desk top nor in your packet. I was a little swamped this last month with 2 weeks of training and then playing catch up.
- Richardson has one question for Council regarding the sidewalk issue and claim made by citizen the property owner was contacted he is fine with repairing the sidewalk he is wondering about the tree that is there causing the lifting in the sidewalk. The property owner is planning on removing the tree and I just wanted you all to be aware of it.
- Springbrook is going well the billing went ok and the meter reading equipment worked as well we are excited.
- Web-payments should be in May.
- Next budget season we need to look at computers.
- Councilor Sahlin asked about the Master Plan and Mayor Graupp lets everyone know that it is moving forward and they hope to have it finished this year. They should have most if not all of the data they need.

**ACTION ITEM: NA**

g) City Attorney

- City Attorney report, Mayor Graupp introduces Eleanor Beatty from Koho law she is here while Dennis is on leave. Miss Beatty is hopeful that he will return next month.

Council discussed, NA

**ACTION ITEM: NA**

## **8. ORDINANCES, RESOLUTIONS AND PROCLAMATIONS**

- a) Ordinance 482 An Ordinance Amending the City of Aurora Municipal Code (Additional Design Standards Accessory Structures in Commercial Zone). First Reading

Motion to approve the first reading of Ordinance 482 Amending the Aurora Municipal Code Design Standards for Accessory Structures in Commercial Zone was made by Councilor Sahlin and is seconded by Councilor Sallee. Passed by All.

- b) Ordinance 483 An Ordinance Amending the City of Aurora Municipal Code (Regarding Storage of Recreational Vehicles). Second Reading

Motion to approve Ordinance 483 an Ordinance Amending the Aurora Municipal Code Regarding Storage of Recreational Vehicles second reading is made by Councilor Sahlin and is seconded by Councilor Southard. Passed by All.

## **9. NEW BUSINESS**

- a) Discussion and or Action on Auditing Firm Grove Mueller and Swank for FY 2016-2017.

Motion to continue with Grove Mueller and Swank as our Auditing Firm for FY 2016/2017 was made by Councilor Southard and seconded by Councilor Sahlin. Passed by All.

**10. OLD BUSINESS**

- a) Discussion and or Action on Living Color Contract. Council has asked that it come up during budget and staff is going to meet with Jerry in the morning to look at the contract and make sure it is correct. No action is made at this time.

**11. ADJOURN**

Mayor Graupp adjourned the March 08, 2016 Council Meeting at 7:58 PM.

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Bill Graupp, Mayor

ATTEST:

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Kelly Richardson, CMC  
City Recorder

development throughout floodplains impair natural floodplain functions and are at odds with the goals of the Unified National Program for Floodplain Management and the ESA.

→ For this consultation, FEMA proposed to modify the NFIP floodplain management criteria for Oregon to better preserve floodplain habitat for listed species. FEMA's proposal consists of dividing the floodplain into two components: (1) a riparian buffer zone, measured 170-feet laterally from either side of a water course, and (2) the remainder of the floodplain. FEMA proposes that within the riparian buffer zone (RBZ) only certain types of development would be allowed, specifically: development that will not adversely affect listed species or critical habitat; functionally dependent uses; habitat restoration activities; and, activities that result in a beneficial gain for species or habitat. FEMA would require mitigation for any short-term adverse effects associated with these uses. FEMA proposes that in the remainder of the floodplain, mitigation would be required for all adverse effects to floodplain functions so that no net loss or a beneficial gain is achieved. Further, based on discussions with FEMA during this consultation, FEMA intends that the mitigation requirement include, sequentially, avoidance, minimization, and compensation for unavoidable impacts.

NMFS understands the underlying intent of FEMA's proposed measures to be "no adverse effects" to or "beneficial gain" of habitat functions within the riparian buffer zone and "no net loss" of functions within the remainder of the floodplain; NMFS strongly supports these objectives. NMFS also agrees with and supports FEMA's proposal for more stringent development limitations, including limits on acceptable types of development, within the RBZ. However, based on experience in Puget Sound, Washington and for the reasons explained previously and in Appendix 2.4-A of this opinion, NMFS has concerns regarding the ability of local communities to effectively implement these technically complex concepts absent greater specificity regarding acceptable uses, likely impacts on floodplain function, and appropriate mitigation requirements. Also, the state of Oregon DLCDC has expressed its preference for clear and specific mitigation requirements to facilitate local implementation.

NMFS has developed the following modifications to FEMA's proposed action in order to ensure that development impacts will be avoided, minimized, and compensated for, as intended by FEMA. These criteria are similar to the standards that FEMA has been implementing in Puget Sound, Washington since September 2008, and to the higher regulatory standards advocated by FEMA in the 2013 CRS Coordinator's Manual. This RPA element is designed with the understanding that development in urbanized floodplains will incur less degradation and likely require less mitigation than development in floodplains with more rural characteristics, because fewer natural functions remain in previously developed locations.

In order for FEMA to meet the ESA's requirement that its program avoid jeopardy to listed species and adverse modification of critical habitat, FEMA must require that communities adopt the criteria outlined below as a condition of continued participation in the program, and FEMA must enforce community compliance, *i.e.*, by initiating probation/suspension for communities that fail to timely adopt and implement the criteria. Compliance with this RPA element will better guide the development of proposed future construction away from locations which are

threatened by flood and flood-related hazards,<sup>157</sup> and will protect and may reestablish some degree of natural and beneficial floodplain functions as defined by statute (42 U.S.C. 1421(12)), and by regulation (44 CFR 9.4), *e.g.*, “Natural values of floodplains...include but are not limited to (b) living resource values.”

A. Regulatory Revisions to Enhance ESA Compliance

FEMA shall revise its regulations at 44 CFR part 60 to incorporate an ESA performance standard into the regulatory floodplain management criteria required as a condition of NFIP eligibility. NMFS understands that FEMA intends to initially implement an ESA performance standard through guidance, but ultimately will codify it as part of the regulatory floodplain management criteria (*e.g.*, see the proposed regulatory revision provided in Section 2.10, Conservation Recommendations). The ESA performance standard must be sufficiently detailed to allow FEMA to ensure community compliance with the floodplain management criteria set forth in this RPA Element through the issuance of additional guidance or otherwise. FEMA shall also craft guidance and provide technical support as needed for successful implementation of the ESA performance standard and this RPA Element.

B. Avoid Impacts by Guiding Development Away from Land Which is Exposed to High Hazards<sup>158</sup>

Due to the importance of protecting riparian habitat and functions within the high hazard area,<sup>159</sup> apply the following criteria within the HHA:

- i. Except as provided in paragraph (iv) below, allow no new development or substantial improvements (as defined by this RPA) in the high hazard area (see *e.g.*, 44 CFR 9.11(d)(1)).
- ii. A designated floodway may not be redrawn for the purposes of accommodating new structures.<sup>160</sup>
- iii. Designate the E-Zone setback “to create a safety buffer consisting of a natural vegetative or contour strip” as provided in 44 CFR 60.5(b)(2) as the greater of:
  - a. The 60-year erosion setback (44 CFR 59.1) or,
  - b. One-half again the distance of the depicted “high” or “severe” erosion risk.

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<sup>157</sup> Compliance with this RPA will co-incidentally satisfy the GAO recommendation in its climate change report that FEMA should consider amending the NFIP minimum standards to incorporate forward looking standards (GAO 2014).

<sup>158</sup> “Within the 1 percent floodplain, natural and beneficial functions are generally more prevalent closer to the stream where overbank flooding is frequent and complex habitat exists along the aquatic-terrestrial boundary. Disturbances to habitat are typically much greater from activities that occur closer to the stream channel than along the outer limits mapped for the 1 percent flood” (Galloway *et al.* 2006).

<sup>159</sup> “The preservation strategy focuses on the immediate impacts of the proposed floodplain actions. This strategy involves prevention of alteration to the natural and beneficial floodplain values or maintenance of the floodplain environment as close to its natural state as possible using all practicable means. This strategy is most effectively applied to floodplains showing little or no previous disruption by man, but may be appropriate for other floodplains. The best strategy for preserving and protecting the remaining natural values of floodplains is avoidance...” (FEMA 1986).

<sup>160</sup> “Disruption of natural floodplain terrain and vegetation within a floodway adjacent to the stream channel can affect some of the highest quality habitat and represents a significant impact to the natural and beneficial functions of floodplains” (Galloway *et al.* 2006).

- c. Allowed uses within the safety buffer are those identified at 44 CFR 60.5(b)(2), *i.e.*, “ agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.”
- iv. Exceptions
  - a. The following uses may be allowed in the high hazard area: (1) *open space*\* uses (see CRS Coordinator’s Manual at 420-6 to -7); (2) habitat restoration activities; (3) *low intensity recreational uses*\*; (4) *water-dependent uses*,\* and (5) *bioengineered bank protection*.\* In that portion of the HHA outside of the 10 year floodplain, agriculture and forestry are additional uses that may be allowed.
  - b. Development that qualifies for grandfathering per Element 4.G may proceed despite being located in the high hazard area.
  - c. Any development allowed as an exception must meet the mitigation requirements of Elements 4.F, except for habitat restoration activities, which are considered self-mitigating and therefore do not require additional mitigation.

C. Minimize Impacts by Constricting the Development of Land Which Is Exposed to Flood Damage<sup>161</sup> – Division of Lots and Lot Coverage

FEMA shall, in consultation with the Oregon Department of Land Conservation and Development:

- i. For properties that are located partially within special hazard areas, develop clear and measurable spatial standards,<sup>162</sup> governing the creation of new development parcels to ensure that newly created lots reserve sufficient land outside of special hazard areas to accommodate future construction and disallow partitioning that will create new parcels fully within special hazard areas.
- ii. Develop clear and measurable spatial standards governing the minimum permissible size of new development parcels to minimize densification and preserve natural floodplain functions.
- iii. Limit the footprint of new structures to 10% or less of total lot size for both residential and commercial development in order to reduce impervious surfaces in floodplains and minimize impacts to natural floodplain functions.
- iv. Ensure that any lots or parcels created by division are able to accommodate development consistent with the applicable zoning and this RPA, including any necessary mitigation, without requiring any variance from local or state land-use requirements.

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<sup>161</sup> This language found at FEMA’s legislative authorities 42 USC 4102(c)(2), and is part of the larger section, 4102, entitled “Criteria for land management and use.” Section 4012 calls for the Administrator of FEMA to develop comprehensive criteria, which, to the maximum extent feasible, will constrict development of land, and guide development of proposed construction away from locations threatened by flood hazards.

<sup>162</sup> To avoid problems associated with the Puget Sound RPA’s “lack of clarity, and...development standards [that] were not tailored to help communities understand their NFIP and ESA compliance obligations” (*NWF v FEMA*, 10/24/14), NMFS refers FEMA to the standards identified in the 2013 CRS Coordinator’s Manual at 420-26 to -27 as an example of a clear and measurable standard. FEMA shall work in concert with DLCD and local authorities to develop a clear, measurable standard appropriate for Oregon.

- v. Within urban growth boundaries in effect on January 1, 2019, the protective measures in paragraphs (i)-(iii) above may be met by employing alternative methods that preserve hyporheic function, riparian vegetation, and flood refugia for listed fish, such as or using *cluster development/open space zoning\** that places development landward of the 50 year flood interval. A conservation easement or deed restriction shall be utilized to preserve unimpaired flood processes in the undeveloped area (see *e.g.*, 2014 CRS Manual at 420-21).
- vi. Partitioning for the purpose of habitat restoration activities in special hazard areas is excluded from provisions (i)-(iii) above.

D. Minimize Impacts by Requiring Encroachment Analyses Prior to Floodway Development

An equal degree of encroachment analysis must occur prior to approval of floodplain development in any participating jurisdiction that lacks a mapped floodway,<sup>163</sup> to ensure that the de facto floodway that would be identified consistent with RPA Element 3.A(iv) is not encroached in a manner detrimental to natural floodplain values or functions.

E. Minimize Stormwater and Hyporheic Impacts from Impervious Surfaces

Minimize the impacts of new impervious surface in floodplains by requiring the use of pervious surface to the maximum extent feasible. Where use of pervious surface is not feasible, minimize impacts by requiring the removal of existing impervious surface up to an amount equal to the new impervious surface to the maximum extent feasible. Require mitigation per Element 4.F below for any remaining impacts.

F. Compensatory Mitigation for Adverse Impacts Associated with Floodplain Development

NMFS fully supports FEMA's objective for implementation of the NFIP in Oregon, that all development impacts to natural floodplain functions be fully mitigated. Accordingly, FEMA, with NMFS' technical assistance, will develop detailed mitigation standards, with the objective of achieving "no net loss or beneficial gain"<sup>164</sup> of natural floodplain functions, which take into consideration the following factors: the likelihood of underperformance; the timing of mitigation performance relative to the accrual of impacts and compensation for delayed realization; the value of on-site versus off-site mitigation; the value of in-kind versus out-of-kind mitigation; and, the need for assurances and performance monitoring to ensure that the mitigation will function in perpetuity.

- i. The mitigation standards shall identify the specific development activities that require mitigation, including, at a minimum:
  - a. The addition of fill, structures, levees, and dikes, which reduces flood storage and fish refugia, impedes habitat forming processes, increases flow volume and velocity thereby eroding stream banks and beds, and alters peak flow timing thereby increasing risk of injury to redds, fry, and alevin;

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<sup>163</sup> FEMA 1979. Community Assistance Series No. 4: "The Floodway: A Guide for Community Permit Officials." See also 44 CFR 60.3(c)(10).

<sup>164</sup> See also Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, November 3, 2015. "Agencies' mitigation policies should establish a net benefit goal or, at a minimum, a no net loss goal for natural resources the agency manages that are important, scarce, or sensitive, or wherever doing so is consistent with agency mission and established natural resource objectives."

- b. The addition of impervious surfaces, which reduces hyporheic function and stream recharge, increases storm water, pollutant loading, water temperature, velocity, and scour, and modifies peak and base flows;
  - c. Vegetation removal, which reduces shade, detrital input, velocity refuge, and habitat complexity and increases storm water and erosion; and
  - d. Bank armoring, which reduces instream habitat values and impedes habitat forming processes.
- ii. If FEMA wishes to provide a variance process that allows communities to adopt alternative mitigation standards that differ from the standards developed by FEMA under Element 4.F(i), FEMA will ensure that such alternative standards are consistent with the intent of this RPA sub-element through one of the following procedures:
- a. Require that the community proposing the alternative obtain an ESA section 10 permit from NMFS; or
  - b. Require that the community proposing the alternative provide its proposal to FEMA for a preliminary finding of adequacy. If FEMA finds that the proposal is adequate, FEMA shall seek NMFS' agreement that the alternative provides resource protection comparable with that provided by RPA Element 4.F(i). and determine whether additional steps are required for ESA compliance.
- iii. Alternatively, or pending FEMA's completion of mitigation standards per Element 4.F(i), FEMA may utilize the criteria set forth below, as supplemented by Appendix 2.8-C, which NMFS considers adequate to offset development impacts.
- a. Location. Locate all mitigation on site, except when precluded by geomorphic or spatial constraints or when off-site mitigation will clearly provide a greater benefit to listed species; financial cost is not a basis for allowing required mitigation to occur at an off-site location.
  - b. Assurances. Require the mitigation proponent to provide appropriate assurances that the mitigation will function in perpetuity, as provided in Appendix 2.8-C.
  - c. Timing. Where delayed realization is anticipated, increase the required mitigation ratios, as provided in Appendix 2.8-C.
  - d. Displaced flood volume. Provide compensatory storage for displacement of flood storage volume/loss of accessible floodplain refugia for listed fish due to fill or structural displacement. This balanced cut and fill requirement applies to all floodplain development except habitat restoration activities. When mitigating lost storage by creating compensatory storage, the compensatory storage must be:
    1. Hydrologically connected to the waterbody which is the flooding source,
    2. Designed so that there is no increase in velocity,
    3. Designed to fill and drain in a manner that does not trap fish,
    4. Within the same *hydraulic reach*\* as the proposed development to minimize impact to affected fish populations,
    5. Measured in one foot elevation increments relative to the amount and location of fill placed, and
    6. Provided at a 1.5 to one ratio laterally, or greater, in order to guarantee no loss of beneficial floodplain functions, including conveyance.

- e. Increased impervious surface. Where minimization per Element 4.E above does not fully compensate for lost functions, mitigate any remaining impacts to natural floodplain functions from the increase of impervious surface by requiring the following measures:
  - 1. Incorporate low impact development (LID) features or methods in new structures,
  - 2. Incorporate green infrastructure development standards at the community planning scale,<sup>165</sup> and
  - 3. Require treatment for any storm water generated despite use of the above measures.
- f. Decreased riparian vegetation. Mitigative planting must replace the lost vegetation in a manner that provides equivalent area, diversity, and function and must be located to benefit the same fish population(s) affected by the development.

#### G. Grandfathering

Development for which the *start of construction*\* occurs on or before September 15, 2016 is grandfathered. However, when a grandfathered structure is substantially damaged or substantially improved, the structure must come into compliance with Elements 4.B-4.F as applicable, *e.g.*, mitigation is required for any adverse impacts to natural floodplain functions associated with the substantial improvement (expanded footprint, vegetation removal, placement of fill, etc.). Substantial damage and substantial improvement shall be calculated at 50% of the value of the structure, measured cumulatively over a 10 year time frame. Also, improvements that increase the footprint of the structure 10% or more (based on the square feet of the lowest floor) measured cumulatively over 10 years shall constitute “substantial improvement” (See 2013 CRS Coordinator’s Manual at 430-1).

#### H. Alternative Compliance for Special Circumstances

If a community demonstrates to FEMA that full compliance with Element 4 is impracticable due to exceptional circumstances (*e.g.*, geomorphic constraints, wildfire risk, or community located fully within the floodplain), a community may propose an alternative scheme (through regulations or enforceable procedures) for complying with the intended outcomes of Element 4 through one of the procedures described below. NMFS expects that such situations will be extremely limited and that alternative compliance will only be approved by FEMA where the community clearly demonstrates that the intended protective outcomes of Element 4 will be achieved through the proposed alternative.

- i. A community may propose an alternative scheme to FEMA; FEMA will make an initial determination whether the alternative is consistent with Element 4, and if FEMA makes a positive determination, FEMA will seek NMFS’ agreement that the alternative provides comparable resource protection prior to approving the alternative.

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<sup>165</sup> “Green stormwater infrastructure or similar pollution prevention methods should be incorporated to the maximal extent practicable, at the watershed scale, for all future development and redevelopment projects, particularly those involving transportation infrastructure” (Spromberg *et al.* 2016).

- ii. A community may seek an incidental take permit from NMFS under ESA section 10; if NMFS grants the permit, FEMA may accept the associated habitat conservation plan as the alternative method of compliance.
- iii. A community may pursue authorization under ESA section 4(d), Limit 12 (50 CFR 223.203(b)(12)).

### ***RPA Element 5: Data Collection and Reporting***

“Water and the adjacent floodplain exist in nature in a state of dynamic equilibrium; when coastal or riverine systems are disturbed, the environmental effects may affect areas far from the original site of the disturbance and can last for decades. Thus, floodplain actions must be viewed with caution and a careful assessment made of their impact on natural and beneficial floodplain values.”<sup>166</sup>

In order to document that FEMA is carrying out the NFIP, and NFIP participating communities complying with NFIP minimum standards are managing floodplain development in a manner that preserves natural floodplain functions to meet the objectives of this RPA, FEMA must systematically collect and analyze information from all participating communities in Oregon so as to document impacts, including: (a) how many floodplain development activities are permitted by participating communities subject to this RPA; (b) where and when the development occurs; (c) a basic description of the development, including mitigation; (d) the impact of the development on natural floodplain functions,<sup>167</sup> and (e) information that allows an evaluation of community compliance with the NFIP requirements as modified by this RPA. NMFS is aware of the difficulties in tracking implementation of the Puget Sound RPA reliably and is therefore seeking to strengthen the tracking and accountability mechanisms in this RPA. NMFS desires a speedy and efficient system of tracking and reporting and will work with FEMA, Oregon’s DLCDC, and local authorities towards this end.

#### **A. Permit Reporting**

FEMA shall require that participating communities report to FEMA on each permit issued for development in special hazard areas, including the following information:

- i. The amount of fill or structural displacement of flood storage, and the amount of compensatory storage measured by volume and area (both surface area and cross sectional area). This reporting element effectively describes loss of refugia for rearing fish, and indicates factors that increase the BFE and flood velocities.
- ii. The amount of new impervious surface (indicates loss of hyporheic function) and any projected change in the timing, velocity, or peak flows of storm water runoff and the types and amounts (if applicable) of mitigation provided.
- iii. The area in which clearing and/or grading occurred (*e.g.*, within the HHA, SFHA, or AFCFH)

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<sup>166</sup> FEMA 2015. Guidelines for implementing EO 11988 Floodplain Management, and EO 13690 Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. 80 FR 64008; Oct. 22, 2015.

<sup>167</sup> “Where location in the floodplain is the only practicable alternative, care must be taken to identify both the beneficial and the adverse impacts to existing natural and beneficial floodplain values and to design or modify the action to avoid or minimize potential harm to or within the floodplain.” FEMA 1986.

**From:** Joseph Schaefer  
**Sent:** Tuesday, April 26, 2016 11:25 AM  
**To:** Recorder  
**Subject:** PC Packet - More on BiOp

### What NFIP Communities can expect

FEMA expects communities and local governments to respond to the findings that floodplain development can harm salmon by applying habitat review criteria to floodplain development applications. The Department of Land Conservation and Development will actively work with local governments, and FEMA as FEMA implements NFIP revisions in Oregon. This assistance may include:

- Workshops and presentations
- Guidance
- Model codes
- Grants
- Technical assistance

It will take some time for DLCD to fully review the documents and provide a synopsis of possible changes to FEMA's floodplain mapping protocol and NFIP floodplain permitting standards. As new NFIP standards or guidance come on line compliance on the part of NFIP communities will be evaluated during periodic community assistance visits.



# Oregon

Kate Brown, Governor

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April 18, 2016

**TO: Interested Persons, Local Governments and State Agencies**

**FROM: Dan Eisenbeis, Urban Policy Analyst / Legislative Coordinator  
Department of Land Conservation and Development**

**SUBJECT: 2016 Land Use Legislation**

The attached report describes legislation enacted by the 2016 Legislature that is related to land use planning or programs administered by the Department of Land Conservation and Development (DLCD). All of the bills listed here have been approved by the Governor. This report is also published on the DLCD website at: [www.oregon.gov/LCD/Pages/publications.aspx](http://www.oregon.gov/LCD/Pages/publications.aspx)

This report provides only a brief summary of each legislative measure. Many of these new laws have elements in addition to those described in the summary or include details not apparent in the summary. We recommend that you use the report primarily as a reference to new laws that may be of interest. Unless the legislation specifies an effective date or includes an emergency clause (effective upon passage), the new law will take effect on January 1<sup>st</sup>, 2017. The attached report indicates the effective date of each new law included in the report, as well as the 2016 Oregon Laws chapter number assigned to each new law.

State law (ORS 197.646) requires DLCD to notify local governments when new statutory requirements require changes to local comprehensive plans, regional framework plans, or land use regulations implementing those plans. The department is providing this report for that purpose with the caveat that DLCD cannot determine which bills will apply to particular local governments.

One of the bills that may require changes to city acknowledged comprehensive plans and/or land use regulations is SB 1573. SB 1573 limits city annexation voter approval provisions, which might be imbedded in existing comprehensive plan and/or land use regulations. SB 1573 may also affect city charters and other codes.

Additional bills listed in this report may also require changes for certain local governments. Certain bills also authorize, but do not require, local plan and code amendments. Others may apply only to specific local governments indicated in the legislation. The department suggests local governments seek advice from legal counsel in considering whether new laws on this list require local changes and *when* such changes should be adopted given the applicability date of the new laws. Finally, we note that some of these new or amended statutes may soon be reflected in new or amended DLCD administrative rules adopted in response to the legislation.

Oregon Law (ORS 197.646) requires that “*a local government shall amend its acknowledged comprehensive plan, regional framework plan, and land use regulations implementing the plan, by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with ... a new statutory requirement.*” Furthermore, this statute requires that, “*when a local government does not adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing the plan as required by ... this section, the new statutory ... requirements apply directly to the local government’s land use decisions.*”

This report includes hyperlinks to pdf copies of each final “enrolled” bill. Information about all legislation considered in the 2016 legislative session is available from the [Oregon Legislative Information System](#).

If you have questions or comments about the attached report or other legislation, please contact Dan Eisenbeis, Urban Policy Analyst/Legislative Coordinator at 503-934-0020 or [dan.eisenbeis@state.or.us](mailto:dan.eisenbeis@state.or.us).

Cc: LCDC, LOC, AOC

# **Final Report on 2016 Land Use Legislation**

## **DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

The following bills relating to land use planning or similar topics have been enacted by the 2016 Oregon Legislature.

For questions about this report, contact Dan Eisenbeis, (503) 934-0020, [dan.eisenbeis@state.or.us](mailto:dan.eisenbeis@state.or.us). For information about the Oregon Legislature, visit [www.oregonlegislature.gov](http://www.oregonlegislature.gov).

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**SB 1517 – Wetlands in EFU:** This bill authorizes Tillamook County to establish a pilot program for applying conditional use review to wetland restoration in areas zoned for exclusive farm use (EFU). The bill also specifies a project-specific collaborative process for settlement of disputes, and directs Tillamook County as part of a pilot program to initiate a planning process to identify areas suitable for wetland restoration and priority areas for agriculture. The bill requires Tillamook County to report the progress of the pilot program to the legislature each biennium through 2025. The authorization for the pilot program will sunset in January 2027.

Effective: January 1<sup>st</sup>, 2017  
Chapter 84, Oregon Laws 2016

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**SB 1533 – Inclusionary Zoning and Construction Excise Tax:** This bill authorizes city and county use of inclusionary zoning to require that up to 20% of units in multifamily housing developments of at least 20 units be sold or rented at affordable rates, if the jurisdiction also offers developers certain incentives. The bill also requires a city or county that implements inclusionary zoning to provide the options for developers to pay an in-lieu fee. The bill also lifts the general preemption on city and county authority to impose new local construction excise taxes (which had previously been scheduled to sunset in 2018), subject to certain requirements to use the revenue for housing programs and incentives. The bill also removes the sunset on the preemption of new local construction excise taxes for purposes not specified in SB 1533.

Effective: June 2<sup>nd</sup>, 2016  
Chapter 59, Oregon Laws 2016

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**SB 1573 – Annexation in Cities with Voter Approval:** This bill specifies that if all property owners in an area within a UGB and contiguous to a city boundary petition the city for annexation, the annexation is not subject to voter-approval, if the area is or will be subject to the

acknowledged comprehensive plan and the proposal conforms to all the other requirements of the city's ordinances.

Effective: March 15<sup>th</sup>, 2016  
Chapter 51, Oregon Laws 2016

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**SB 1598** – **Marijuana:** This legislation includes provisions to clarify that both recreational and medical marijuana are a crop for purposes of “farm” and “farm use” in statute, and prohibits new dwellings, farm stands, and commercial uses in conjunction with a marijuana crop on land designated for exclusive farm use. The bill also allows existing medical marijuana grow sites registered with the Oregon Health Authority of 5,000 square feet or less outdoors and 1,250 square feet or less indoors to be exempt from the Oregon Liquor Control Commission licensing requirement to obtain a land use compatibility statement.

Effective: March 3<sup>rd</sup>, 2016  
Chapter 23, Oregon Laws 2016

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**SB 5701** – **State Budget:** This bill amends the State budget for the 2015-17 biennium. Provisions affecting DLCD include administrative adjustments as well as an increase in the department's other funds expenditure limitation by \$216,000 for a pre-disaster mitigation planning grant awarded by the Federal Emergency Management Agency to the Office of Emergency Management and DLCD.

Effective: March 29<sup>th</sup>, 2016  
Chapter 82, Oregon Laws 2016

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**HB 4014** – **Marijuana:** This bill makes a number of changes to statutes governing production, processing, sale, and use of marijuana. The provisions include requiring an applicant to obtain a land use compatibility statement from a city or county prior to receiving a license from OLCC, rather than the current requirement that OLCC request the land use compatibility statement after receiving an application for a license.

Effective: March 3<sup>rd</sup>, 2016  
Chapter 24, Oregon Laws 2016

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**HB 4018** – **Annexation of Jackson County Industrial Lands:** This bill extends the sunset from 2016 to 2026 on the annexation prohibition for certain unincorporated Jackson County industrial lands without the consent of the landowner.

Effective: April 7<sup>th</sup>, 2016  
Chapter 121, Oregon Laws 2016

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**HB 4039** – **Rural Airport Definition / Through the Fence:** This legislation revises the definition of rural airport for purposes of “through the fence” operations to include airports with an air traffic control tower. An air traffic control tower was constructed last summer at the Aurora airport, where “through the fence” operations have been allowed.

Effective: March 14<sup>th</sup>, 2016  
Chapter 35, Oregon Laws 2016

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**HB 4084** – **Brownfield Redevelopment Tax Incentives:** This legislation authorizes a city, county, or port to establish a local program to provide property tax incentives for brownfield remediation and redevelopment for a period of up to 10 years, and for up to an additional five years based upon locally established criteria. A program established by a city, county, or port only becomes effective with the agreement of taxing districts representing a combined 75 percent or more of the total rate of property taxation within the territory of the city, county, or port.

Effective: June 6<sup>th</sup>, 2016  
Chapter 96, Oregon Laws 2016

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**HB 4079** – **UGB Expansion for Affordable Housing Pilot Project:** This legislation directs LCDC to create a pilot program for two cities, one with a population of 25,000 or less and one with a population of 25,000 or more, to expand their UGBs by up to 50 acres for affordable housing. The bill provides that the expedited UGB expansion process for the pilot sites may be established without regard to whether an UGB contains a 20-year land supply and requires a local government to protect a pilot project site for continued use as affordable housing for 50 years. The bill directs LCDC to develop rules for selecting projects nominated by a local government that demonstrate efforts to accommodate and encourage needed housing within its existing UGB. It also specifies that local governments in the following areas are not eligible to participate in the pilot program: Clackamas, Marion, Multnomah, Polk, and Washington counties, and the portion of Jefferson County served by the North Unit Irrigation District. HB 4079 allocates \$100,000 to DLCD to implement the provisions of the bill and requires LCDC to complete rulemaking to implement the pilot program by July 1, 2017. It also requires LCDC to

report on the progress of the pilot program to the Legislature three consecutive sessions and three consecutive interim periods beginning with the 2017 legislative session.

Effective: March 15<sup>th</sup>, 2016  
Chapter 52, Oregon Laws 2016

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**[HB 4126](#)** – **UGB Rules Grandfather Clause:** This bill conforms statute to recent [UGB rule amendments](#) adopted by the Land Conservation and Development Commission to make clear that a city outside Metro that initiated, but did not complete, an UGB evaluation and amendment process prior to January 1, 2016 (the effective date of the rules) may choose to complete its UGB process under the old rules or under the new rules.

Effective: March 29<sup>th</sup>, 2016  
Chapter 81, Oregon Laws 2016