

Michael J. Lilly
Attorney at Law
6600 SW 92nd Avenue, Suite 280
Portland, OR 97223

ORD. NO. PA 249 & 7.08
P.A. NO. _____
DATE: _____ EXHIBIT NO. 54

Telephone: 503-294-0062
Facsimile: 503-452-4433
Email: mikelilly@michaeljlilly.com

January 25, 2010

Lane County Planning Commission
c/o Stephanie Schulz
Lane County Planning Department
125 East 8th Avenue
Eugene, OR 97401

~~By Facsimile~~ and Hand Delivery

Re: Heceta Lake Joint Venture Comments on City of Florence 2020 Plan
and IGA

Dear Planning Commissioners:

I am writing on behalf of the Heceta Lake Joint Venture, which has developed "The Reserve" subdivision in the northern part of the Florence UGB. We think the most recent version of the Florence 2020 Plan and IGA with the County are substantial improvements over the prior versions, but some problematic sections from the old versions remain. We have three particular concerns.

I. The City Plan Contains Inaccurate Findings.

The City proposes a "Background" finding in exhibit B that:

"Based on scientific evidence at this time (2009), septic systems, whether failing or not, pose a threat to the North Florence Dunal Aquifer, the sole source of drinking water in the UGB."

This generalization is repeated several times in the Plan but it is simply incorrect. There is no support for it in the scientific literature and no support in the two sources cited by the City.

Even worse is the City finding on page 24 of exhibit A. According to the City:

"The EPA states that the aquifer is 'highly susceptible to contamination' from septic systems (not just failed systems)..."

In fact the EPA makes no such statement. The "highly susceptible to contamination" phrase is used by the EPA to refer to contamination from surface activity, and nowhere does the EPA state or imply that the aquifer is highly susceptible to contamination from septic systems that have not failed. The full quote from the EPA, in proper context, appears later on page 24 of the plan document.

Neither the North Florence Dunal Aquifer nor the EPA resource document support the City's proposed findings. The City has not pointed to any page number or quote that supports these findings. In fact the North Florence Dunal Aquifer study reached the opposite conclusion. It focuses on providing the City and County with density development restrictions that allows septic systems to be used safely, so that they do not pose a threat.

Quotes From North Florence Dunal Aquifer Study 1982

Page	Quote
99	Thus, conventional low-head (on-site septic) systems could be established at a density of 2.9 dwelling units per acre and sand filter systems might approach five per acre before the 58 lb/acre/year limit is reached. This calculation applies only to the unsewered areas of the North Florence aquifer that are not tributary to Clear Lake.
105	22. Based on the planning standard of 5.0 mg/L nitrate-nitrogen calculations indicate an additional loading of 58 lbs. per acre per year nitrate-nitrogen will not exceed this value using a stirred tank model. This translates to 2.9 d.u. per acre with on-site systems using loading rates of 20 lbs. per d.u. per year.
107	As applied to areas outside the Clear Lake Watershed and beyond the Urban Service Boundary, it is not clear that treatment or removal would provide more benefits than (sic) an adequately functioning on-site system.
108	General Aquifer: For the remainder of the aquifer, the nitrate-nitrogen planning limit of 5.0 mg/L is applicable and implies that planning alternatives are unnecessary after revision of the regional rule.

In contrast to the City's findings, an EPA report to Congress has encouraged the use of septic systems. A full copy of the report is in the record and it is quoted below.

QUOTES FROM EPA RESPONSE TO CONGRESS ON USE OF
DECENTRALIZED WASTEWATER TREATMENT SYSTEMS – April 1997

Quote

Pg. ii Benefits of Decentralized Systems

Protects Public Health and the Environment. Properly managed decentralized wastewater systems can provide the treatment necessary to protect public health and meet water quality standard, just as well as centralized systems. Decentralized wastewater systems can be sited, designed, installed and operated to meet all federal and state required effluent standards. Effective advanced treatment units are available for additional nutrient removal and disinfection requirements. Also, these systems can help to promote better watershed management by avoiding the potentially large transfers of water from one watershed to another that can occur with centralized treatment.

Additional Benefits. Decentralized systems are suitable for ecologically sensitive areas (where advanced treatment, such as nutrient removal or disinfection is necessary).

Pg. 4 Managed decentralized wastewater systems are viable, long-term alternatives to centralized wastewater facilities where cost-effective, particularly in small and rural communities.

II. New Plan Policy #7 is Ambiguous.

New policy #7 contains ambiguous language that could be read to require annexation as a condition for any development within the UGB.

“Development within the Urban Growth Boundary shall require annexation in order to receive a full range of urban services provided by the City of Florence.

We suggest:

“Development on property within the Urban Growth Boundary shall not receive the full range of urban services from the city of Florence unless the property is annexed into the City of Florence.”

III. IGA Footnote 2 Regarding Nitrate Contamination is Ambiguous.

The IGA sets 5.0 mg/L as a trigger concentration for Nitrate, which is consistent with state regulations. The state sets 5.0 mg/L as a level that should be monitored, but 5.0 mg/L is not classified as a health risk. Both the DEQ and EPA set 10.0 mg/L as the maximum allowable concentration of Nitrate.

However, in footnote 2 the IGA suggests that the trigger concentration will be adjusted based on “background” testing. Background levels should not be treated as “trigger” levels. The background levels could be too high or too

low. The 5mg/L as used by the state is a more appropriate trigger level. The background level should not be the presumptive trigger level.

A handwritten signature in black ink, reading "Michael J. Lilly". The signature is written in a cursive style with a large, stylized "M" and "L".

Michael J. Lilly

cc: Mike Van

Heceta Water District

87845 Hwy. 101 N.
Florence, Oregon 97439
(541) 997-2446
Fax: (541) 997-1059
www.hecetawaterdistrict.com

ORD. NO. PA12498 2-08
P.A. NO. _____
DATE: _____ EXHIBIT NO. 53

January 15, 2010

Lane County Commissioners
125 E. 8th
Eugene, OR 9701

via Fax: (541) 682-3947

RE: CITY OF FLORENCE 2020 COMPREHENSIVE PLAN

Dear Commissioners:

Heceta Water District opposes co-adoption of the City of Florence Comprehensive Plan by Lane County until such time as the City and Heceta Water District have a binding agreement (IGA) regarding provision of water to properties within the City's urban growth boundary which are also inside the District's boundaries.

Currently there is no formal agreement between the City of Florence and Heceta Water District for water services to these areas, nor is there an agreement regarding withdrawal of these properties from the District's boundaries.

The City's Comprehensive Plan does not require a formal agreement between the City of Florence and Heceta Water District for water services, nor is there any provision for an agreement regarding withdrawal of properties from the District's boundaries. Lane County should not co-adopt the Comprehensive Plan until such a requirement is included in the provisions of the Plan.

Oregon Revised Statue Chapter 195 mandates that local governments coordinate their planning duties, powers, and responsibilities. Such coordination is to occur by agreement between the parties. Neither the City nor the District is in compliance with this Statue, as no Intergovernmental Agreement has been reached between the District and the City.

With respect to the areas within the City's urban growth boundary that are served by the water district, ORS 195.060 specifically mandates that there be an urban service agreement between the City and the District.

This agreement must address the issues described in ORS 195.065. Those issues include managing and administering provision of service to urban users. ORS 195.070(1) describes the factors to be addressed in such agreements, which factors include the following:

- a. Financial, operational, and managerial capacity to provide service;
- b. The effect of the cost of the urban service to the users of the service, the quality and quantity of the service provided and the ability of urban service users to identify and contact service providers and to determine their accountability, with ease;
- c. Physical factors related to the provision of the urban service;
- d. The feasibility of creating a new entity for the provision of the urban service;
- e. The elimination or avoidance of unnecessary duplication of facilities;
- f. Economic, demographic, and sociological trends, and projections relevant to the provisions of the urban service;
- g. The allocation of charges among urban service users in a manner that reflects differences in the cost of providing services to the users;
- h. Matching the recipients of tax supported urban services with the payers of the tax;
- i. The equitable allocation of costs between new development and prior development; and
- j. Economies of scale.

The District wishes to work cooperatively with the City. One of the factors that must be considered in the intergovernmental agreement is the "economies of scale" (ORS 195.070(l)(j)). The District arguably has the best source of water along the entire Oregon coast. We have invested, and are continuing to invest, in a new state of the art filtration plant. We have a manager and a staff that keep the District running efficiently.

Approximately 60% of Heceta Water District's customers are located within the City's UGB. The District's planning is based on a consideration of the economies of scale. If the City annexes substantial portions of the District's territory and then attempts to withdraw that territory from the District, the District's plan for economies of scale may be lost.

Until such time as the City of Florence and the Heceta Water District have a binding agreement regarding future provisions of water to properties within the City's urban growth boundary, which are inside the District's boundaries, we intend to oppose co-adoption of the Comprehensive Plan by the county.

Respectfully,



Robert V. Hursh, Chairman
Heceta Water District

cc: Heceta Water District Commissioners
City of Florence

SCHULZ Stephanie E

From: Sandra Belson [sandra.belson@ci.florence.or.us]
Sent: Thursday, January 21, 2010 3:10 PM
To: SCHULZ Stephanie E
Cc: HOWE Kent
Subject: RE: Packet for LCPC 1-26-10

Stephanie, I received your fax today that included the letter from the Heceta Water District and notice of the Board hearing.

Are you going to (or have you) provide the e-mail correspondence the Mayor asked to be included in the record (e-mail of Dec. 11) to the Planning Commission, or are you just saving it for the Board?

I'm still waiting for a list of the documents within your public record for this matter. I'd like to make sure you've got everything and it will be easier to be tracking that now so you're ready when you send it in to DLCD for acknowledgement.

Also, I still haven't gotten all of the items I requested back in November. Are you still working on that request?

Sandra Belson

From: SCHULZ Stephanie E [mailto:Stephanie.SCHULZ@co.lane.or.us]
Sent: Wednesday, January 20, 2010 11:15 AM
To: BELSON Sandra (SMTP)
Cc: HOWE Kent
Subject: Packet for LCPC 1-26-10

Hi Sandra. Here is an electronic copy of the packet, without the bulk of Attachment 4, as you have copies of that already (The DLCD letter and Large Notebook from Heceta Lake Ventures.) I will FAX you a copy of the additional Attachment 4 letter, which was FAXed in from the Heceta Water District today, i don't have that electronically available.

Bill F

Sent from my iPhone - Sorry for clumsy thumbs.

On Dec 11, 2009, at 10:42 AM, "Sandra Belson" <sandra.belson@ci.florence.or.us> wrote:

Commissioner Fleenor,

As a follow-up to our meeting in Mapleton on Nov. 30, you had asked for a state analysis of potential annexation policy options. Dave Perry has provided the following response. Please let me know if this e-mail answers your question.

Sandra Belson

From: Perry, Dave [mailto:dave.perry@state.or.us]
Sent: Friday, December 11, 2009 9:11 AM
To: Sandra Belson
Subject: Annexation question

Sandra,

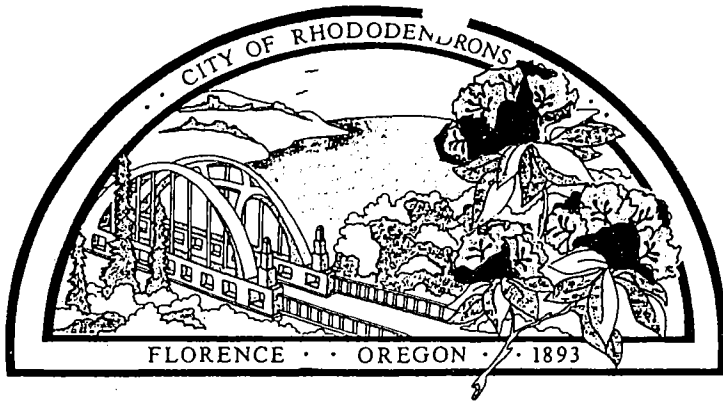
When the Florence UGB was adopted by the city and Lane County in the 1980's it became incumbent upon the city to provide sewer services to all urbanizable properties inside the UGB. Because the city is the sole provider of sewer services in the Florence area, annexation is necessary to carry out the city's obligation to provide full urban services.

Any new city policy that would allow individual property owners to opt out of an annexation process, carried out pursuant to ORS 222, would be working at cross purposes to the city's policies to provide orderly, efficient and cost effective urban services to its urban area. Ultimately, the potential jurisdictional patchwork that could result from such a policy would create chaos for all service providers. Annexations should be contiguous to the city limits and subject to a majority consensus among affected property owners.

We would oppose a policy that would allow individual property owners to opt out of an annexation.

Dave Perry
South Coast Regional Representative
Community Services Division
Coastal Services Center
810 SW Alder Street, Ste. B
Newport, OR 97365
(541) 574-1584 | Fax (541) 574-4514
Web www.oregon.gov/lcd

01/22/2010



REC'D DEC 28 2009

City of Florence

Community Development Department
Planning, Building Inspection and Economic Development

250 Highway 101
Florence, OR 97439-7628
TDD: (541) 997-3437

PH: (541) 997-8237
PH: (541) 997-2053
FAX: (541) 997-4109

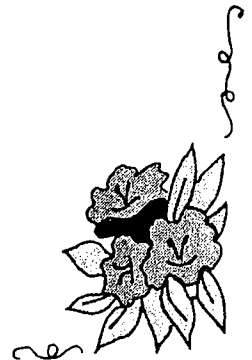
December 24, 2009

NOTICE OF ORDINANCE ADOPTION

On December 23, 2009, the Florence City Council adopted Ordinance No. 18, Series 2009, which amended the Florence Realization 2020 Comprehensive Plan, Chapters 2, 6, 12 (Appendix 12), and 14. The City adopted these amendments to respond to concerns raised during Lane County's adoption process of the Florence Realization 2020 Comprehensive Plan.

The Lane County Board of Commissioners is scheduled to hold a public hearing on February 17, 2010 regarding co-adoption of the Florence Comprehensive Plan. Once the County has adopted the Florence Realization 2020 Comprehensive Plan, the City of Florence will have completed periodic review work task 8 and will submit it to the Department of Land Conservation and Development (DLCD). The City will then send you a notice of completion of work task 8. If at that time you believe the city did not satisfactorily complete the work task, or that the Comprehensive Plan Amendments adopted in Ordinance No. 18 do not comply with the statewide planning goals, you may submit an objection to DLCD.

You may review Ordinance 18 and related documents at Florence City Hall located at 250 Highway 101. Copies are available for purchase at a cost of \$.20 per page. For additional information, call Sandra Belson, Community Development Director, at 541-997-8237 or by e-mail at sandra.belson@ci.florence.or.us.



FAX TRANSMISSION

Michael J. Lilly
6600 SW 92nd Avenue
Suite 280
Portland, OR 97223
503-294-0062
Fax: 503-452-4433

ORD. NO. PA12498 7.08
P.A. NO. _____
DATE: _____ EXHIBIT NO. 52

To: Stephanie Schulz
Lane County Planning Department
Date: Monday, December 21, 2009
Fax #: (541) 682-3947
Pages: 3 (including this cover sheet)
From: Michael J. Lilly
Subject: Amendments to Proposed Plan Provisions and
Amendments to Proposed Intergovernmental Agreement
Council Meeting Agenda Item 5, December 21, 2009

COMMENTS:

Michael J. Lilly
Attorney at Law
6600 SW 92nd Avenue, Suite 280
Portland, OR 97223

Telephone: 503-294-0062
Facsimile: 503-452-4433
Email: mikelilly@michaeljlilly.com

December 21, 2009

Florence Mayor and City Councilors
City of Florence
Florence City Hall
250 Highway 101 N.
Florence, OR 97439

By Facsimile

Re: Amendments to Proposed Plan Provisions and
Amendments to Proposed Intergovernmental Agreement
Council Meeting Agenda Item 5, December 21, 2009

Dear Mayor Brubaker and Councilors:

I am writing on behalf of Mike Van and Heceta Lake Joint Venture, the developer of the Reserve.

The record in this matter has been closed by the City Council, but the City staff continues to amend the proposed plan provisions and amend the proposed intergovernmental agreement. The complex provisions before the City Council are now recommended by staff for adoption on Monday, December 21. These new provisions were available on the City Web site on Friday, December 18, but were apparently published without any public announcement, and even without any significant attempt to notify the public that changes had been made. Instead, the City Manager recommends you conduct two readings on the same night, December 21. In effect you are being asked to by-pass having any public involvement in this process. This violates Statewide Planning Goal 2 and your own ordinances.

The staff continues to attempt to illegally restrict septic tanks within the UGB and by-pass the state's moratorium statute; this time by making "findings" that they apparently believe will enable them to avoid going through the full moratorium process.

Some of the findings proposed by staff are false. For example, the claim by staff that:

"The EPA states that the aquifer is 'highly susceptible to contamination' from septic systems (not just failed septic systems) . . ."

This is plainly false. Some staff statements are misleading because statements from the North Dunal Aquifer Study that refer to the highly regulated area immediately around Clear Lake are used to imply that tighter regulations are needed for the entire aquifer.

Your staff has ignored the engineering reports we submitted from the City's own files indicating that septic tank systems are not the primary risk nor a significant risk in the UGB. In addition your staff continues to claim that they are relying on the North Florence Dunal Aquifer study, but they have ignored a report we presented to you from Ralph Christensen, Senior Geologist, at EGR & Associates. Mr. Christensen is the author of the North Florence Dunal Aquifer Study.

We will continue to oppose the City's misguided efforts to eliminate septic tank systems in the UGB.

A handwritten signature in black ink, reading "Michael J. Lilly". The signature is fluid and cursive, with the first name "Michael" and last name "Lilly" clearly legible.

Michael J. Lilly

Enclosure
cc: Mike Van
Lane County



Oregon

Theodore R. Kulongoski, Governor

Dept. of Land Conservation and Development

Oregon Coastal Management Program

510 SW Alder Street, 5th B

Newport, OR 97265

(503) 574-1584

FAX (503) 574-4514

Website: www.oregon.gov/LCD

December 10, 2009

Sandra Belson, Planning Director
City of Florence
250 Hwy. 101 North
Florence, OR 97439

ORD. NO. PA1249 & 7-08
P.A. NO. _____
DATE: _____ EXHIBIT NO. 51

Re: Lane County Co-Adoption

Sandra:

The city of Florence has requested that Lane County co-adopt elements of the city plan and code that were amended during the periodic review process. This is a process that has been in play for about a year. Your November 27, 2009 memo to the County on this topic clearly outlines the main issues before the County Board, including coordinated population forecasting, water service in the Florence urban growth boundary (UGB), annexation policies, and water quality monitoring. We offer the following comments for your consideration.

Past Development Practices. The city and county practices with regard to development in the UGB have been ill-advised and, having persisted for over 20 years, resulting in a pattern of development within the Florence UGB that violates the intent of the statewide planning goal. The city's November 27th memorandum describes past development practices in the Florence UGB that have facilitated this proliferation of urban development without full urban services. Specifically, these urban subdivisions lack municipal sewer service. Most of these developments were allowed, subject to agreements to annex and to connect to municipal sewers when that service became available.

Now that the city has the capacity to provide sewer service to the UGB, some property owners and developers are protesting prospective annexations. In light of these protests, the city has offered to amend the proposed intergovernmental agreement with Lane County, and would authorize septic installation on about 300 existing lots in the urban area, unless monitoring of groundwater reveals contamination from septic effluent.

Statewide Goal 14 states that, "Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and

services are available or planned. Ideally, the city and county would require annexation prior to any new development within the UGB. However, past practices that have authorized the creation of so many urban density subdivisions, have exercising this ideal problematic. The city's alternative proposal to prohibit further land divisions in the UGB until annexation and to limit septic installations to existing parcels is a fair compromise and is reasonably consistent with the statewide planning goal.

Water Service in the UGB. ORS 195.020 (2) and (3) requires Lane County and the City of Florence to enter into a cooperative agreement with each special district that provides an urban service within an urban growth boundary. The city and county have failed to adopt a cooperative agreement with the Heceta Water District, whose services have facilitated urbanization within the unincorporated portion of the Florence UGB. This is a long outstanding statutory requirement that should have been accomplished many years ago during the city's periodic review. We understand that the city and the water district are presently working on an agreement and we strongly encourage all parties to participate in good faith and to come to terms very soon that will help to ensure the long term sustainability of urbanization in the Florence UGB

Water Quality Monitoring. The most important rationale for adopting urbanization policies that limit further parcelization and septic installations is the protection of the city's sole source of drinking water. The city's sole source aquifer lies beneath extensive development on individual septic systems in sandy soil. The city is rightfully concerned that this aquifer will be contaminated by septic effluent, should the current development practices continue. Until the UGB is fully served by municipal sewers, contamination of the aquifer is a very real possibility. The proposed water quality monitoring program would be an important component of this overall effort to ensure that future urbanization within the Florence UGB does not contaminate the aquifer and thereby risk the health and welfare of the entire community.

In conclusion, we believe that the city of Florence has proposed fair and equitable policies and practices that would begin to correct the ill-advised development practices in the Florence UGB that have resulted in urban development that lacks full urban services. We support the co-adoption of these new policies and strongly encourage the city to adopt a cooperative agreement with Lane County and Heceta Water District, pursuant to the requirements of ORS 195.020.


Please enter this letter into the city and county records on this matter. Please let me know if you have questions, or if I may be of further assistance.

Sincerely



Dave Perry
South Coast Regional Representative

Cc: Stephanie Shultz, Lane County Land Mgmt.

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	ASSISTANCE ID NO.			DATE OF AWARD 12/08/2009
		PRG	DOC ID	AMEND#	
		WC - 00J04801 - 0			MAILING DATE 12/15/2009
		TYPE OF ACTION New			
PAYMENT METHOD:			ACH# PEND		
RECIPIENT TYPE: Other			Send Payment Request to: Las Vegas Finance Center FAX # 702-798-2423		
RECIPIENT: City of Florence 250 Hwy 101 Florence, OR 97439 EIN: 93-6002163			PAYEE: City of Florence 250 Hwy 101 Florence, OR 97439		
PROJECT MANAGER Sandra Belson 250 Hwy 101 Florence, OR 97439 E-Mail: sandra.belson@ci.florence.or.us Phone: 541-997-8237		EPA PROJECT OFFICER NancyT Brown 1200 Sixth Avenue, Suite 900, OMP-145 Seattle, WA 98101 E-Mail: Brown.NancyT@epa.gov Phone: 206-553-2968		EPA GRANT SPECIALIST Evelyn Holtzendorf 1200 Sixth Avenue, Suite 900, OMP-145 Seattle, WA 98101 E-Mail: Holtzendorf.Evelyn@epa.gov Phone: 206-553-6344	
PROJECT TITLE AND DESCRIPTION City of Florence West Coast Estuary This project will improve water quality in the Lower Siuslaw River, North Fork Siuslaw River, and Mercer Lake to include Clear Lake, Munsel Creek, all wetlands, upland and riparian areas, and 100 acres adjacent to the outside of the urban growth boundary that is trust land of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians. The project will include a consortium of experts and stakeholders to shepherd a creation of different programs and projects that will protect, monitor, restore water quality and restore the estuary ecosystem as densification occurs.					
BUDGET PERIOD 10/01/2009 - 09/30/2012		PROJECT PERIOD 10/01/2009 - 09/30/2012		TOTAL BUDGET PERIOD COST \$856,797.00	
				TOTAL PROJECT PERIOD COST \$856,797.00	
NOTICE OF AWARD Based on your application dated 10/12/2009, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$566,797. EPA agrees to cost-share 66.15% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$566,797. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.					
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS EPA Region 10 Mail Code: OMP-145 1200 Sixth Avenue, Suite 900 Seattle, WA 98101			ORGANIZATION / ADDRESS U.S. EPA, Region 10 Office of Water and Watersheds 1200 Sixth Avenue, Suite 900 Seattle, WA 98101		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY					
SIGNATURE OF AWARD OFFICIAL Digital signature applied by EPA Award Official		TYPED NAME AND TITLE Amina K. Nolan, Manager - Grants and Interagency Agreements Unit		DATE 12/08/2009	
AFFIRMATION OF AWARD BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION					
SIGNATURE		TYPED NAME AND TITLE Phil Brubaker, Mayor		DATE	

ORD. NO. PA249 & 7.08
 P.A. NO. _____
 DATE: _____ EXHIBIT NO. 50

WC - 00J04801 - 0 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 566,797	\$ 566,797
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 229,000	\$ 229,000
State Contribution	\$	\$ 21,000	\$ 21,000
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$ 40,000	\$ 40,000
Allowable Project Cost	\$ 0	\$ 856,797	\$ 856,797

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.119 - West Coast Estuaries Initiative	Consolidated Appropriations Act 2008	40 CFR PART 31

[illegible]

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$134,699
2. Fringe Benefits	\$41,975
3. Travel	\$2,098
4. Equipment	\$0
5. Supplies	\$44,000
6. Contractual	\$424,373
7. Construction	\$0
8. Other	\$209,652
9. Total Direct Charges	\$856,797
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>33.85</u> % Federal <u>66.15</u> %.)	\$856,797
12. Total Approved Assistance Amount	\$566,797
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$566,797
15. Total EPA Amount Awarded To Date	\$566,797

Administrative Conditions

1. Payment Information

All recipients must be enrolled to receive funds electronically via the EPA-EFT Payment Process. This electronic funds transfer process was initiated by EPA in response to the Debt Collection Improvement Act of 1996, P.L. 104-134 that requires all federal payments be made via Direct Deposit/Electronic Funds Transfer(DD/EFT). By signing the assistance agreement you are agreeing to receive payment electronically.

In order to receive payments electronically, the ACH Vendor/ Miscellaneous Payment Enrollment Form (SF3881) must be completed and faxed to Marge Pumphrey at (702) 798-2423.

After reviewing and processing the SF3881, the Las Vegas Finance Center (LVFC) will send you a letter assigning you an EFT Control Number, an EPA-EFT Recipient's Manual, and the necessary forms for requesting funds and reporting purposes.

If you need further assistance regarding enrollment, please contact Marge Pumphrey at (702) 798-2492 or by e-mail to: pumphrey.margaret@epa.gov.

Any recipient currently using the Automated Standard Application for Payments (ASAP) system with another government agency should contact Marge Pumphrey at (702) 798-2492 or e-mail to: pumphrey.margaret@epa.gov.

Under any of the above payment mechanisms, recipients may request/draw down advances for their immediate cash needs, provided the recipient meets the requirements of 40 CFR 30.22(b) or 40 CFR 31.21(c), as applicable. Additionally, recipients must liquidate all obligations incurred within 90 calendar days of the project period end date. Therefore, recipients must submit the final request for payment, and refund to EPA any balance of unobligated cash advanced within 90 calendar days after the end of the project period.

2. Cost Principles/Indirect Costs Not Included (All Organizations)

The cost principles of OMB Circular A-21, "Cost Principles for Educational Institutions," relocated to 2 CFR Part 220, OMB Circular A-87, "State, Local or Indian Tribal Governments," relocated to 2 CFR Part 225, or OMB Circular A-122, "Cost Principles for Non-Profit Organizations," relocated to 2 CFR Part 230, are applicable, as appropriate, to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

3. Federal Financial Report (FFR)

Recipients shall submit final Federal Financial Reports (FFR), Standard Form 425 (SF-425), to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center: US EPA, LVFC, PO Box 98515, Las Vegas, NV 89193, or by FAX to: 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 30.62 and 40 CFR 31.43 if the recipient does not comply with this term and condition.

4. Audit Requirements

The recipient agrees to comply with the requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

5. Hotel-Motel Fire Safety Act

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space

for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

6. Recycled Paper

INSTITUTIONS OF HIGHER EDUCATION HOSPITALS AND NON-PROFIT ORGANIZATIONS:

In accordance with 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

STATE AND LOCAL INSTITUTIONS OF HIGHER EDUCATION AND NON-PROFIT ORGANIZATIONS:

In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

STATE TRIBAL AND LOCAL GOVERNMENT RECIPIENTS:

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

7. Lobbying

ALL RECIPIENTS:

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

PART 30 RECIPIENTS:

All contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

8. Lobbying and Litigation

ALL RECIPIENTS:

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this

assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

9. Suspension and Debarment

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. Drug-Free Workplace Certification for all EPA Recipients

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html.

11. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

12. Reimbursement Limitation

If the recipient expends more than the amount of federal funding in its EPA approved budget in anticipation of receiving additional funds from EPA, it does so at its own risk. EPA is not legally obligated to reimburse the recipient for costs incurred in excess of the EPA approved budget.

13. Trafficking Victims Protection Act of 2000

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide

Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

14. Disadvantaged Business Enterprise Requirements (Effective May 27, 2008)

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreement.

Current Fair Share Objective/Goal

The dollar amount of this assistance agreement is over \$250,000; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is over \$250,000. The Oregon Department of Environmental Quality has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

MBE: SUPPLIES 0.43%; SERVICES 2.58%; EQUIPMENT 1.08%
WBE: SUPPLIES 1.28%; SERVICES 4.45%; EQUIPMENT 2.69%

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

If the recipient has not yet negotiated its MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and

facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce in finding DBEs.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and

All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to the EPA Region 10, Grants Administration Unit, 1200 Sixth Avenue, Suite 900, Mailcode: OMP-145, Seattle, WA 98101. For further information, please contact Greg Luchey at (206) 553-2967, email: Luchey.Greg@epa.gov. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

15. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2009, the limit is \$587.20 per day \$73.40 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.36(j), as applicable, for additional information.

NOTE: For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: <http://www.opm.gov/oca>. Select "Salary and Wages", and select "Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

16. Subawards

a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

Programmatic Conditions

West Coast Estuaries Initiative TWG Programmatic Terms and Conditions

1. Quality Assurance Requirements

Acceptable Quality Assurance documentation must be submitted to the EPA Project Officer within 30 days of the acceptance of this agreement or another date as negotiated with the EPA Project Officer. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this project until the EPA Project Officer, in concert with the EPA Quality Assurance Manager, has approved the quality assurance document. (See 40 CFR 30.54 or 31.45, as appropriate.) Additional information on these requirements can be found at the EPA Office of Grants and Debarment website: <http://www.epa.gov/ogd/grants/assurance.htm>.

2. Information Technology

Recipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All environmental data will be required to be entered into the Agency's Storage and Retrieval data system (STORET) and recipients may need to purchase appropriate

ORACLE software. STORET is a repository for water quality, biological, and other physical data used by state environmental agencies, EPA and other federal agencies, universities, private citizens, and many other organizations. It is highly recommended that the grant recipient attend EPA sponsored STORET training as soon as practical and as training is available. Information regarding training sessions sponsored by EPA will be provided by the EPA Project Officer. More information about STORET can be found at <http://www.epa.gov/STORET>.

3. Semi-Annual Performance Reports

The recipient shall submit performance reports every six (6) months during the life of the project. Reports are due 30 calendar days after the end of each reporting period. Reports shall be submitted to the EPA Project Officer and may be provided electronically.

In accordance with 40 CFR Part 30.51(d) and 40 CFR Part 31.40, as appropriate, the recipient agrees to submit performance reports that include brief information on each of the following areas:

- (a) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
- (b) the reasons for slippages if established outputs/outcomes were not met;
- (c) additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

In addition to the semi-annual performance reports, the recipient shall immediately notify the EPA Project Officer of developments that have a significant impact on the award-supported activities. In accordance with 40 CFR Part 30.51(f) and 40 CFR Part 31.40(d), as appropriate, the recipient agrees to inform the EPA Project Officer as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

4. Final Performance Report

In addition to the periodic performance reports, the recipient shall submit a final performance report, which is due 90 calendar days after the expiration or termination of the award. The report shall be submitted to the EPA Project Officer and may be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period. After completion of the project, the EPA Project Officer may waive the requirement for a final performance report if the EPA Project Officer deems such a report is inappropriate or unnecessary.

5. Recognition of EPA Funding

Reports, documents, signage, videos, or other media, developed as part of projects funded by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (WC-00J04801-0) to (City of Florence). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

6. Cooperative Agreements

Regarding Cooperative Agreements and the potential for "substantial involvement" with this project on the part of EPA: Project management and execution will be monitored by EPA representatives throughout the assistance agreement's project and budget period. EPA technical assistance and coordination will be routinely available as requested/needed by the grant recipient. This agreement will be overseen by the EPA project officer with technical support and assistance from the EPA project monitor.

7. Regional Conference Attendance

Attendance is required at a minimum of two annual Regional Targeted Watersheds Grantee Conferences

during the assistance agreement's project and budget period. Costs associated with travel to the annual Regional Targeted Watersheds Grantee Conference are allowable under this assistance agreement.

8. Copyrighted Material

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- a. the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- b. termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

END OF COOPERATIVE AGREEMENT #WC-00J04801-0

Michael J. Lilly
Attorney at Law
6600 SW 92nd Avenue, Suite 280
Portland, OR 97223

ORD. NO. PA1249 & 7-08
P.A. NO. _____
DATE: _____ EXHIBIT NO. 49

Telephone: 503-294-0062
Facsimile: 503-452-4433
Email: mikelilly@michaeljlilly.com

Cover
Letter
to large
notebook

November 16, 2009

Florence Mayor and City Councilors
City Of Florence
Florence City Hall,
250 Highway 101 N.
Florence, OR 97439

By Hand Delivery at Hearing on 11/16

Re: Intergovernmental Agreement with Lane County and Co-Adoption of
2020 Comprehensive Plan Amendments

Dear Mayor Brubaker and Councilors:

I am writing on behalf of Mike Van and Heceta Lake Joint Venture, the developer of the Reserve. We support a testing program for the North Florence Dunal Aquifer. We think that it will put to rest many of the staff's expressed fears about the impact of septic tank systems on the aquifer. We oppose the program as proposed by the staff in the latest version of the Intergovernmental Agreement ("IGA") and the 2020 Comprehensive Plan Amendments ("Plan Amendments") because it gives the staff the power to arbitrarily impose and maintain illegal development moratoriums that force annexation, and because it is based on findings that are not supported by the evidence and are inaccurate.

The first difficulty in responding to the proposed IGA and Plan Amendments is to determine what is being proposed. As recently as yesterday, Sunday afternoon, I received an email with a new version of the IGA. The City should not act on this proposal without giving the public adequate time to review and comment on it. The latest version of the IGA has not been available on the City Web site and the version that is on the Web site is critically different than the version being proposed to you today because it omits the moratorium provisions. The existing notice also appears to be inadequate because it does not reference the appropriate provisions of the existing Comprehensive Plan to provide the public with the criteria under which the decision will be made by the Council. Because of the lack of adequate notice to the public many people will not know what the Council is considering, and in particular will not know that

the Council is considering the moratorium provisions below. We request that the hearing be renoticed, and if that request is not granted then we request that the record be left open for at least another 10 days to allow additional public comment before the Council makes a decision on these proposed Plan Amendments and the IGA.

Illegal Moratorium

A critical part of the new language just added on Sunday to the IGA deals with the response if microbial or nitrate contamination is discovered at the City trigger levels and reads as follows:

"If immediate correction is not feasible, the COUNTY shall not allow the installation of any new septic system, replacement septic system (except in cases of emergency caused by a failing system), or expansion of an existing septic system in the area that is the source of the pollution or in the area that has been contaminated by the pollution until the COUNTY and CITY mutually agree on appropriate measures to stop the contamination."

In other words, in this circumstance, the County is obligated to impose a moratorium on septic systems and is not permitted to lift it without the City's consent. Policies 12 and 13 of the Plan Amendments contain similar language. As we have pointed out earlier, this automatic suspension of permitting authority is a moratorium. Both the IGA and Plan Amendments violate the state law moratorium provisions of ORS 197.505 through 197.540 by imposing prohibitions on land development without proper notice, hearings, findings, and a time limit.

Moratorium Provisions are not Justified

Moreover the moratorium provisions of the new IGA and Plan Amendments make little sense. The proposed IGA and Plan Amendments assume that if there is a pollution problem that septic systems are the source of the problem. But the Florence's Drinking Water Protection Plan Dec. 2003 (pp 17-35) and the Florence Source Water Assessment Report, January 2003 (pp 25-34 and appendix C) find that there are numerous sources of microbial and nitrate contamination other than Septic Systems, including the City Sewer lines, golf courses, and high density housing, all of which are listed as high risk uses. Septic Systems in low density development are not listed as high risks to the aquifer in these reports. These conclusions are confirmed by the reports of Ralph Christensen and Envirologic which we are providing to you. An attached EPA report to Congress finds that septic systems are appropriate for rural areas and in some respects offer a better treatment system than a centralized sewer system.

The existing North Florence Dunal Aquifer Study proposed limits on development density in the area to prevent septic systems from creating a risk to the aquifer. Those limits were adopted by the County and have been enforced. There is no indication anywhere that the limits have been unsuccessful in protecting the aquifer. Mr. Daniel Stotter gave the City a public records request

seeking records of examples of situations in which septic systems have damaged the aquifer and the City's response was that there are no such records.


Water testing of existing wells provides further confirmation of the low risk of ground water contamination posed by septic systems in low density housing typical of new development in the UGB. We gathered and mapped the well water tests submitted to the DEQ in the areas surrounding Florence which are in the North Florence Dunal Aquifer or in areas geologically similar. The map of the well locations and the well tests are included with this letter. The wells are almost uniformly free of Coliform bacteria and have very low levels of Nitrate, They are well under the DEQ and EPA standard of 10 parts per million for drinking water.

The IGA and Plan Amendments also assume that restrictions on new or replacement septic systems will help to address the pollution, and they fail to recognize that replacing old existing systems with modern systems might tend to improve the water quality in an area instead of impairing it, whether or not the replaced system was creating an emergency.

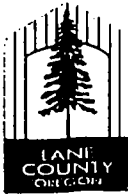
These new moratorium provisions are not needed because existing state laws allow the state to step in and prohibit the use of septic tanks if the State DEQ finds that such action is warranted. In fact because of there extensive breadth and scope it is likely that the State DEQ regulations on septic tank systems are designed to be the exclusive method for determining whether to generally suspend the issuance of septic systems in a particular area, and the DEQ regulations should preempt local governments from adopting different provisions.

Findings are not supported and are not sufficient.

The staff proposed findings are not supported by the sources they cite and are inconsistent with those sources. The North Florence Dunal Aquifer Study and the accompanying EPA Resource document do not find that septic systems are a general threat to the aquifer that would justify the type of automatic moratorium proposed by the staff. To the contrary, those documents set development standards for the UGB area to insure that septic systems would not pose a threat. Those standards are being met by developers and enforced by the County, so there is no basis in those reports or any other reports cited by the staff report or findings to justify the need for an automatic moratorium procedure.


Michael J. Lilly
as attorney for Mike Van
and Heceta Lake Joint Venture
Developers of the Reserve.

Enclosures
cc: Lane County



Lane County Board of Commissioners

Bill Dwyer
Bill Fleenor
Bobby Green, Sr.
Peter Sorenson
Faye Hills Stewart

ORD. NO. PA124957-08
P.A. NO. _____
DATE: _____ EXHIBIT NO. 48

February 18, 2009

Mr. Robert Willoughby, City Manager
City of Florence
250 Highway 101
Florence, Oregon 97439-7628

Dear Mr. Willoughby:

The Lane County Board of Commissioners fully supports the City of Florence's application to EPA for a West Coast Estuaries Initiative for Coastal Watersheds grant: *Siuslaw River Estuary Partnership: An Integrated, Multiple Objective Approach to Watershed Protection and Restoration*. Lane County will participate in, and be a sub-awardee on this project.

The Board is excited about the enormous potential for watershed protection and enhancement this grant project presents. Florence is the Siuslaw River Watershed's only major urban center and its entire UGB drains primarily to the estuary or the Pacific Ocean. Rapid infiltration rates into the sand cover, combined with a shallow water table, make the North Florence Dunal Aquifer, and the hydrologically-connected wetlands, riparian, and estuarine system, highly susceptible to contamination from surface activity. These conditions, combined with the high habitat value of the area, and projected growth, make this "Integrated, Multiple Objective Approach to Watershed Protection and Restoration Project" a high priority project for the watershed.

This project is needed to prevent development impacts which will accelerate through use of septic systems, pesticides and fertilizers, increased impervious surface, fill and alteration of drainage patterns and destruction of wetlands and floodplain functions. Cumulative effects of actions that destabilize fluvial systems are harmful to salmon. Growth and survival can be impaired when access to estuarine floodplains is blocked by dikes and levees, or these areas are filled for development. This project will also bring the Florence Comprehensive Plan and implementing land use codes into compliance with Statewide Planning Goal 5, Natural Resources. The assessment and monitoring program will create scientific-based standards, base line data, and processes that will ensure on-going evaluation of the effects of restoration and protection measures. The monitoring program will also signal early detection and trigger remedial action to minimize the effects of future contamination threats. This is of grave importance to the City and the County, especially given that the North Florence Sole Source Dunal Aquifer is an EPA-designated sole source aquifer, and is, in fact, the only aquifer so designated in the State of Oregon.

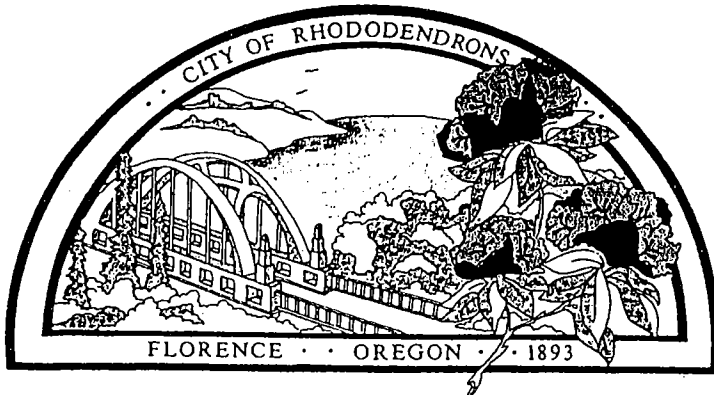
This project will serve as a model for other related projects the County is engaged in or is about to embark on. The work proposed for funding in this Florence grant is not required under a storm water discharge permit because the stormwater BMPs that will be developed and the stormwater demonstration project will apply within the Florence city limits and the City does not meet the size threshold for federal TMDL or NPDES requirements. The information and the process will be helpful to the County when it begins work on meeting its federal requirements for these programs in the future.

Lane County staff will serve on the Inter-disciplinary Team and review and comment on all products and programs related to the area between the City limits and urban growth boundary (UGB) and outside the UGB within the boundary of the North Florence Dunal Aquifer. County staff will be involved in the water quality monitoring program, participating in the development of and agreement with, the monitoring protocol, the standards and criteria, and evaluation of the baseline standards. If there is any contamination of the aquifer within the County's jurisdiction, the County will help to ascertain the source of the contamination and help to problem-solve solutions. The County will be reimbursed for these services in an amount not to exceed \$50,000, to be paid from the grant award, over the three-year grant period.

Sincerely,



Pete Sorenson
Chair, Lane County Board of Commissioners



RECEIVED AT LCPC
P.R. NO. 08-5363

DATE: 11-17-09 EXHIBIT NO. 49

City of Florence

City Manager's Office

250 Highway 101
Florence, OR 97439-7628

Voice/TDD: (541) 997-3437
FAX: (541) 997-6814

November 5, 2009

Daniel J. Stotter
Irving & Stotter LLP
408 SW Monroe, Ste. L163
Corvallis, OR 97333

Mr. Stotter:

Per your email of November 4, 2009 please accept this as the formal letter you have requested regarding my email response to your public information request of October 22, 2009; which I have copied below:

"Dear City Manager Willoughby and Public Information Officer Morgan:

I am writing pursuant to the Oregon Public Records Act to request copies of the following City of Florence records:

- (1) All documents or records (if any) indicating that any **actual damage** has in fact occurred to the North Florence Dunal Aquifer as a result of failing septic systems from January 1, 2000 to the present.
- (2) All documents or records (if any) providing any **evidence that damage has in fact occurred** to the North Florence Dunal Aquifer as a result of failing septic systems from January 1, 2000 to the present.
- (3) All documents or records (if any) indicating that any **actual damage has in fact occurred** to the North Florence Dunal Aquifer as a result of ground water contamination from January 1, 2000 to the present.
- (4) All documents or records (if any) providing any **evidence that damage has in fact occurred** to the North Florence Dunal Aquifer as a result of groundwater contamination from January 1, 2000 to the present.
- (5) All documents or records (if any) indicating that **there are not any reported incidents** of groundwater contamination from failing septic systems have actually caused adverse impacts to the North Florence Dunal Aquifer system."

As stated in my email, staff has informed me that the City does not have any documents or records that apply to your record request.

If you have any questions, please feel free to contact me via email or 541-902-2187.

Sincerely,

Barbara Miller

Barbara Miller
Assistant to the City Manager

Cc: Robert Willoughby, City Manager
Jacque Morgan, Assistant City Manager
Mike Miller, Public Works Director
Sandra Belson, Community Dev. Director



SCHULZ Stephanie E

From: Daniel Stotter [dstotter@qwestoffice.net]
Sent: Tuesday, October 20, 2009 9:50 AM
To: SCHULZ Stephanie E; FLEENOR Bill A; HOWE Kent
Cc: SORENSON Pete; HANDY Rob M; DWYER Bill J; Daniel Stotter
Subject: Re: Florence 2020 Comp Plan Annexation - Co-Adoption Review & Hearing

Stephanie:

What is the current status on this?

- (1) Has the City of Florence submitted a proposal for its proposed Florence 2020 Comp Plan annexation policies to the county? If not, is there a date by which this is expected?
- (2) What is the next date for the BOC's review and/or action in this matter?
- (3) What is the status of the proposed groundwater IGA with the City of Florence and Lane County?

Thanks for your continued assistance.

Daniel J. Stotter
Irving & Stotter LLP
408 SW Monroe, Ste. L163
Corvallis, OR 97333
(541) 738-2601
dstotter@qwestoffice.net

6th
5th

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

From: SCHULZ Stephanie E
To: FLEENOR Bill A ; Daniel Stotter ; GILSTRAP Zoanne M
Cc: SORENSON Pete ; HANDY Rob M ; STEWART Faye H ; HOWE Kent ; DWYER Bill J
Sent: Monday, July 20, 2009 10:10 AM
Subject: RE: Florence 2020 Comp Plan Annexation - Co-Adoption Review & Hearing

Hi Commissioners. For the upcoming "read and roll" on this item Tuesday, staff recommends setting the next reading date in November or December, allowing time for completion of the IGA, and time for the Planning Commission to review, discuss, and provide their recommendation to the Board on the IGA. The Board did close the public hearing last November, leaving the record open to receive written material such as the IGA, and staff fully expects the Board would reopen the public hearing once Florence provides the final product, for testimony. Florence has indicated to Mr. Stotter and County staff that October is the target timeframe for completion of the Draft IGA for approval by the elected officials. Setting the public hearing date at the subsequent reading will ensure there is new material in the record for people to comment on.

Thanks for your patience.
Stephanie
Planner
LMD

From: FLEENOR Bill A
Sent: Sunday, July 19, 2009 7:22 PM
To: Daniel Stotter; GILSTRAP Zoanne M
Cc: SORENSON Pete; HANDY Rob M; STEWART Faye H; HOWE Kent; DWYER Bill J; SCHULZ Stephanie E
Subject: RE: Florence 2020 Comp Plan Annexation - Co-Adoption Review & Hearing

10/20/2009

SCHULZ Stephanie E

To: FLEENOR Bill A; DWYER Bill J; STEWART Faye H; HANDY Rob M; SORENSON Pete;
SPARTZ Jeff R
Cc: Daniel Stotter; HOWE Kent; LAIRD Matt P; MILLER Marsha A
Subject: FW: Florence/Lane County IGA for water quality program

ORD. NO. PA1249 & No. 7-08
DATE: 08-31-08 EXHIBIT NO. 46

Hello Commissioners. Here is an email Mr. Stotter received regarding the IGA for water quality testing that the city of Florence and Lane County are working on to complete the IMPLEMENTATION portion of the upcoming co-adoption of the city's Realization 2020 Comprehensive Plan.

The public record is open for these proceedings so the Board can receive and consider the final draft IGA the 'new' implementation tool. The process has been transparent all along, with FOUR public hearings held on this topic by Lane County, two by the Planning Commission, first one was in Eugene on June 17, 2008 and then the PC traveled to Florence to conduct another hearing on June 17, 2008. The Board conducted two more Hearings, one on October 1 and one on November 25, 2008. both of these were in Eugene. PLEASE NOTE: The proposed Comp Plan POLICES for co-adoption have NOT changed since then.

It is the implementation tool the city intends to use to make those policies meaningful that has changed. Here's the change: Lane Code Chapter 10 is proposed to only restrict future lot divisions in the UGB. Added to that, is this IGA the city and county will complete for a Groundwater Study that does include land in the UGB. The study is partially funded through an EPA grant which took considerable time to apply for, and then be successfully chosen to receive the funding.

For the upcoming 'read and roll' on this item Tuesday, staff would recommend setting the next reading date in November or December, allowing time for the Lane Planning Commission to review the IGA and provide their recommendation to the Board on the IGA. The Board did close the public hearing last November, leaving the record open, and staff fully expected the Board would reopen the public hearing once Florence provides the final product, the IGA.

Stephanie
Planner
LMD

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

From: Daniel Stotter [mailto:dstotter@qwestoffice.net]
Sent: Saturday, July 18, 2009 12:11 PM
To: SCHULZ Stephanie E
Cc: Daniel Stotter
Subject: Fw: Florence/Lane County IGA for water quality program

Stephanie:

The City of Florence is reporting that the IGA will not be completed until October '09 (see below)

Please let me know if you receive any different information on this.

Thanks for your continued assistance.

Sincerely,

Daniel J. Stotter
Irving & Stotter LLP
(541) 738-2601
dstotter@qwestoffice.net

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

From: "Michael Lilly" <mikelilly@michaeljlilly.com>

>
>

> From: "Barb Miller" [barb.miller@ci.florence.or.us]

> To: "Wendy Farley" <wendy.farley@ci.florence.or.us>, "Tom Holmes"

> CC: "Robert Willoughby" <robert.willoughby@ci.florence.or.us>, "Sandra

> Subject: Fwd: RE: Florence/Lane County IGA for water quality program

> I spoke with the City Manager this morning and at this time we do not
> have
> the document you have requested - the IGA with the county - for the water
> quality program. When I asked about a timeline when that document would
> be
> available he was not sure, but thought sometime the 1st of October.

```
> I have been out of the office for a period of time, but I am back full
> time
```

> Barbara Miller
> City Recorder

> PUBLIC RECORDS LAW DISCLOSURE: This email is subject to the State
> Retention Schedule and may be made available to the Public.
> The City of Florence is an equal opportunity employer and provider.

> -----Original Message-----

> From: Wendy Farley [mailto:wendy.farley@ci.florence.or.us]

> Sent: Thursday, July 09, 2009 3:45 PM

> To: Tom Holmes

> Cc: Barb Miller
> Subject: RE: Florence/Lane County IGA for water quality program
>
>
>
> Tom,
>
> Good afternoon. Barb Miller (cc'd) Florence's City Recorder takes all
> public records requests via the attached form. Please check with her
> about this request and future inquiries. Thank you for your interest
> Tom.
>
> r/w
> Wendy Farley
> Senior Planner
> City of Florence
> 250 Highway 101, Florence, OR 97439
> (541) 997-8237 voice
> (541) 997-4109 fax
> www.ci.florence.or.us
>
> -----Original Message-----
> From: Tom Holmes [mailto:tomholmes@michaeljlilly.com]
> Sent: Tuesday, July 07, 2009 4:24 PM
> To: Wendy Farley
> Subject: Florence/Lane County IGA for water quality program
>
> The city is developing an Inter-Governmental Agreement with Lane County
> for the water quality testing program that is part of the EPA grant the
> city has applied for ("Siuslaw Estuary Partnership..." and the
> Coadoption
> of the Florence 2020 Comprehensive Plan process). Do you know if a
> draft
> has been circulated yet? Can I get a copy of the draft? Should I be
> asking someone else?
>
> --
> Tom Holmes, Paralegal
> Office of Michael J. Lilly
> 6600 SW 92nd Ave., Suite 280
> Portland, OR 97223
> Phone: 503-294-0062 Fax: 503-452-4433
> tomholmes@michaeljlilly.com
>
>
>
>
> ----- End of Forwarded Message
>
>
>

HARRIS Deanna

From: SORENSON Pete
Sent: Monday, July 20, 2009 8:25 AM
To: HARRIS Deanna
Subject: RE: LC Chp 14 Code Amendment comment

Dear Ms. Harris,

Please email the staff report to Steve Cornacchia and Jim Just. They are both interested in this.

Pete

Pete Sorenson
Lane County Commissioner
Eugene, Oregon

From: HARRIS Deanna
Sent: Fri 7/17/2009 3:17 PM
To: EICHNER Lindsey A; FLEENOR Bill A; STEWART Faye H; HANDY Rob M; SORENSON Pete; DWYER Bill J; 'ARKIN LISA'; 'DIGNAM STEVE'; 'JOHNSTON TODD'; 'NICHOLS NANCY'; 'NOBLE Robert'; SHAPIRO Howard (SMTP); 'SIEKIEL-ZDZIENICKI JOZEF'; SULLIVAN John (SMTP); MCCOWN Tony (SMTP)
Cc: HOWE Kent; LAIRD Matt P; VORHES Stephen L
Subject: RE: LC Chp 14 Code Amendment comment

Hello,

I have attached a written comment to the proposed Ch. 14 Code Amendment Staff Report. The comment is entered into the record and can be discussed at the public hearing next Tuesday. Let me know if you have trouble opening the document.

Thank you,
Deanna Harris, Planner
Land Management Division
Phone: (541) 682-4082
Fax: (541) 682-3947
Deanna.Harris@co.lane.or.us

<<Response to Staff Report final.doc>>

SCHULZ Stephanie E

From: FLEENOR Bill A
Sent: Sunday, July 19, 2009 7:22 PM
To: Daniel Stotter; GILSTRAP Zoanne M
Cc: SORENSON Pete; HANDY Rob M; STEWART Faye H; HOWE Kent; DWYER Bill J; SCHULZ Stephanie E
Subject: RE: Florence 2020 Comp Plan Annexation - Co-Adoption Review & Hearing

Zoe,

Will you please place this on next week's agenda team meeting's agenda?

Also, per this email, I would hope staff takes the lead and makes the necessary arrangements to have a public meeting on this issue. Perhaps, staff could contact Zoe and let her know the date and time staff would be prepared to hold a formal public hearing.

Thank you,

Bill F.

From: Daniel Stotter [mailto:dstotter@qwestoffice.net]
Sent: Sun 7/19/2009 12:51 PM
To: FLEENOR Bill A
Cc: SORENSON Pete; HANDY Rob M; STEWART Faye H; HOWE Kent; DWYER Bill J; SCHULZ Stephanie E
Subject: Re: Florence 2020 Comp Plan Annexation - Co-Adoption Review & Hearing

Dear Commissioner Fleenor:

County Land Management staff indicated to me last week that their current directions from the Board do not call for your holding a public hearing in this matter, which was the reason for my email. I am pleased to hear that you (and other members of the Board of Commissioners) support changing that directive, and hopefully you will be informing county staff in this matter, when it is on the Board's agenda for discussion this week, that they are directed to schedule a public hearing before the Board of Commissioners to allow concerned members of the public to address the City of Florence's proposed 2020 Comp Plan language for annexation of county lands when their proposed annexation policy Comp Plan language is submitted to the county for co-adoption review.

Thank you for your continued assistance in this matter.

Sincerely,

Daniel J. Stotter
Irving & Stotter LLP

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

From: FLEENOR Bill A
To: Daniel Stotter ; SCHULZ Stephanie E
Cc: SORENSON Pete ; HANDY Rob M ; STEWART Faye H ; HOWE Kent ; DWYER Bill J
Sent: Sunday, July 19, 2009 11:03 AM
Subject: RE: Florence 2020 Comp Plan Annexation - Co-Adoption Review & Hearing

Mr. Stotter,

07/20/2009

The BCC has a commitment to open and transparent meetings, so I would be surprised if we were to not have a public hearing on such an important proposal.

My best,

Bill F.

From: Daniel Stotter [mailto:dstotter@qwestoffice.net]

Sent: Sat 7/18/2009 11:55 AM

To: SCHULZ Stephanie E

Cc: FLEENOR Bill A; SORENSON Pete; HANDY Rob M; STEWART Faye H; HOWE Kent; DWYER Bill J; Daniel Stotter

Subject: Florence 2020 Comp Plan Annexation - Co-Adoption Review & Hearing

Dear Lane County Board of Commissioers and Land Management Staff:

I am writing concerning the procedural status of the Lane County Board of Commissioners' review of the proposed annexation policies for the Florence 2020 Comprehensive Plan that is currently being proposed by the City of Florence for co-adoption by Lane County.

As you may know, the City of Florence is currently still developing the proposed language for its proposed annexation policies to the Florence 2020 Comprehensive Plan, which (when completed) will be submitted to the Lane County Board and Planning Commission. However, according to Land Management Staff, the current procedural status / direction from the Board is that there will be no further public hearings in this matter before the Board to allow the public to discuss their concerns and comments regarding this still undeveloped Comprehensive Plan language (although apparently the record remains open for submission of written materials).

The Board of Commissioerns has not, to date, ever had an opportunity to hear the public's concerns regarding this matter.

I represent many individuals who reside in Lane County, North of Florence, who are quite concerned with the City of Florence's proposed annexation policies, and who would like to have an opportunity to be able to address the Board of Commissioners at a public hearing after they have had a chance to review the City of Florence's new (still undeveloped) proposed annexation policy language for the Florence 2020 Comprehesive Plan, and before this issue is set for action by the Board of Commissioners in response to the City's co-adoption proposal.

I would respectfully request your assistance in directing Land Mangement Staff to schedule a public hearing in this matter before the Board of Commissioners after the county receives the proposed language from the City of Florence seeking co-adoption of the Florence 2020 Comprehensive Plan Amendment Annexation Policies.

Thank you in advance for your assistance.

Sincerely,

Daniel J. Stotter
Irving & Stotter LLP
(541) 738-2601
dstotter@qwestoffice.net

07/20/2009

SCHULZ Stephanie E

From: MILLER Marsha A
Sent: Tuesday, March 24, 2009 4:26 PM
To: VORHES Stephen L
Cc: SCHULZ Stephanie E; HURLEY Daniel M
Subject: RE: Septic System impacts

ORD. NO. PA1249 & 7+08
P.A. NO. _____
DATE: _____ EXHIBIT NO. 45

Thanks Stephen. Stephanie and I also spoke today and that was helpful. I've left Sandra several messages today. I'll keep trying and if I do not connect with her today, I think I'll ask Dan to call her and see what we can provide her. There are too many processes parallel and otherwise swirling around Florence right now.

In addition to the EPA grant work we committed to, we are also looking at the specific drainage problem near Driftwood Shores. George Ehlers has been hired to do an analysis of that area to attempt to determine if there is contamination and if so, where is it coming from. We were moving forward with that project prior to the request to participate on the EPA grant. More to come I'm sure.

Marsha

From: VORHES Stephen L
Sent: Tuesday, March 24, 2009 11:39 AM
To: MILLER Marsha A
Cc: SCHULZ Stephanie E
Subject: RE: Septic System impacts

Thanks for the update, Marsha. I figured you were trying to connect when Sandra indicated you had left a message for her a couple of weeks ago. I am not sure what is driving the urgency and the comprehensive plan connection is still a concept that the city is proposing, I think. The Board agenda packet for the meeting on April 8th is coming together, but it sounds like there will be little for the Board to actually do that day because the city is still working on the pieces. You may not actually see that packet before you leave. My conversation with Stephanie yesterday leads me to think the Board will read the titles of the ordinances, move the next reading (sometime in July) and perhaps reopen the record until then to allow for the new materials that are still developing. Good luck in your communications with Sandra and have some good time away from the office. Thanks.

From: MILLER Marsha A
Sent: Tuesday, March 24, 2009 9:01 AM
To: VORHES Stephen L
Subject: RE: Septic System impacts

Good Morning Stephen,

I have a call into Sandra this morning. Quite honestly, I am a bit perplexed by her insistence on getting this Intergovernmental Agreement finalized. The City of Florence has been pushing us to get involved with their proposed EPA grant, which we reluctantly agreed to participate on a limited basis provided all our costs were covered. I have not seen the latest draft of the Comprehensive Plan but sounds like I should since it commits us to "sharing costs". That was not the agreement. They do not even have the grant yet, which is why I am hesitant to finalize the IGA. Hopefully I can connect with her today and get this cleared up. If not, I am out of the office until Thursday the 9th. Thanks.

Marsha

03/26/2009

From: VORHES Stephen L
Sent: Monday, March 23, 2009 4:19 PM
To: BELSON Sandra (SMTP)
Cc: SPARTZ Jeff R; MILLER Marsha A; HURLEY Daniel M; HOWE Kent; SCHULZ Stephanie E; Mike Miller;
 WILLOUGHBY Robert (SMTP)
Subject: RE: Septic System impacts

Thanks for the message, Sandra. I will try to connect with folks here, but I got the impression a couple of weeks ago that Marsha Miller (PW Director) was going to try and talk with her counterpart at Florence to get more clarity on expectations and staffing needs. If I hear anything, I will let you know. Thanks.
 -Stephen

From: Sandra Belson [mailto:sandra.belson@ci.florence.or.us]
Sent: Monday, March 23, 2009 11:12 AM
To: VORHES Stephen L
Cc: SPARTZ Jeff R; MILLER Marsha A; HURLEY Daniel M; HOWE Kent; SCHULZ Stephanie E; Mike Miller;
 WILLOUGHBY Robert (SMTP)
Subject: RE: Septic System impacts

Stephen, I haven't had any response to my e-mail below. I still have unanswered questions. Is there anyone on county staff who can answer these questions? -S

From: Sandra Belson [mailto:sandra.belson@ci.florence.or.us]
Sent: Friday, March 06, 2009 3:15 PM
To: 'VORHES Stephen L'
Cc: 'SPARTZ Jeff R'; 'MILLER Marsha A'; 'HURLEY Daniel M'; 'HOWE Kent'; 'SCHULZ Stephanie E'; 'Mike Miller';
 'Robert Willoughby'
Subject: RE: Septic System impacts

Hi Stephen and other county staff,

Thanks for responding. I'm still a little unclear as to who I need to work with in terms of writing out the components of the intergovernmental agreement and how all of this is going to work. It sounds like Steve is saying other county staff should be involved in the technical aspects. Who specifically would that be? Or do I just include all of you that Steve had copied in all correspondence?

When is co-adoption of the Comp Plan and corresponding zoning amendments scheduled for the Board?

In terms of actual implementation of the program, it may be that GSI is involved. But right now, the city's focus is to spell out what would be tested, what would constitute an issue that would need further testing. I am hoping that we can work together to write out that kind of agreement language so that we come up with a workable approach from an interagency perspective. While the city can certainly propose agreement language, it seems more productive if we have at least some idea of what county staff's views are on this issue. For example, to start with, do you think that the indicators proposed by Dennis Nelson (see e-mail below) are the right ones and the limits appropriate? I'm hopeful that we can move forward on this issue because as far as I know, it is the only issue that needs resolving out of all potential issues in co-adoption for the Florence Realization 2020 Comprehensive Plan. It sure would be helpful if we could have one Comprehensive Plan for that area instead of two. --S

From: VORHES Stephen L [mailto:stephen.vorhes@co.lane.or.us]
Sent: Friday, March 06, 2009 2:06 PM
To: BELSON Sandra (SMTP)
Cc: SPARTZ Jeff R; MILLER Marsha A; HURLEY Daniel M; HOWE Kent; SCHULZ Stephanie E
Subject: RE: Septic System impacts

03/26/2009

Thanks for the messages and clarification on the focus of the city proposal, Sandra. I am including Jeff, Marsha and Dan, as well as Kent and Stephanie, to keep them all in the loop. The information on the specific testing and standards would be the kind of thing I would look to the technicians to develop in some sort of description of the scope of work and expectations of the parties as to who would do what. Are the folks from GSI also interested in providing services as part of the program or are they only helping the city determine some of the options? The funding discussion is something that will need to be addressed by the folks that would actually provide services or pay for the program. I see that the new draft comprehensive plan policy talks about the city and county sharing costs. Working on details or a form of agreement prior to the Board getting the latest proposal in the comprehensive plan co-adoption effort may be a bit premature, but I would be glad to help when the details are developed. I understand we have received a waiver of conflict letter from Ross Williamson, the city's attorney, that would enable his assistance in this project. He will be able to help you develop this agreement to provide for the city preferences as to the program responsibilities, as well. Thanks.

–Stephen

From: Sandra Belson [mailto:sandra.belson@ci.florence.or.us]
Sent: Friday, March 06, 2009 8:39 AM
To: VORHES Stephen L
Subject: FW: Septic System impacts

Steve, here is an outline of the types of testing the city is proposing that would be outlined in the intergovernmental agreement. I've left you a voice-mail in response to your e-mail. –S

From: Dennis Nelson [mailto:DNelson@GSIWaterSolutions.com]
Sent: Thursday, March 05, 2009 9:53 AM
To: Mike Miller; Sandra Belson
Cc: Dave Livesay
Subject: Septic System impacts

Sandra and Mike,

In response to your inquiry regarding a monitoring program to determine impact of septic systems, we have the following recommendations.

The primary indicators for drainfield discharge of septic effluent are fecal coliform, more specifically, *E. coli*, and nitrate. The EPA drinking water standard for *E. coli* is "Presence", indicating that for drinking water to be safe, it must be *E. coli* free. In contrast to common coliform bacteria, *E. coli* bacteria are generated in the intestines of warm blooded animals and therefore are specific to contamination by human or other animal waste water contamination.

The nitrogen associated with septic system discharge is quickly transformed into nitrate, with an average concentration of 40-50 mg/L in the wastewater (drinking water standard = 10 mg/L). Natural background levels of nitrate are generally 1-2 mg/L or less. Higher concentrations would indicate an additional source of nitrogen, which, in residential areas, would likely be either septic system waste water or the over application of household fertilizer. The specific source of nitrogen, e.g., fertilizers or animal waste water, can be determined through a nitrogen isotopic study should that be necessary, however, we are not recommending this study at this time.

One other parameter that has been used as an indicator of septic system contamination by the U.S. Geological Survey in a LaPine, Oregon study is chloride concentrations. Natural sources of chloride are primarily from rainfall. In the Florence the natural concentration would have to be determined by testing water from a well in an un-impacted area, would be higher than a well away from the coast, but likely would be less than 15-20 mg/L. Chloride concentrations in excess of the Florence background values would very likely be derived from

septic system effluent.

Based on the discussion above, we recommend that for routine monitoring in the north Florence area, that approximately 10 wells, located appropriately, be routinely tested for E. coli, nitrate, and the common ions, including, chloride, sodium, calcium, total dissolved solids, etc. The laboratory costs associated with these analyses are approximately \$80-130/sample, depending on whether we do a partial or complete analysis. Should it be necessary to conduct nitrogen isotopic analyses, laboratory costs are approximately \$100/sample, but the number of samples required would likely not exceed 6 to 8.

Let me know if this needs clarification or should be expanded.

Dennis

Dennis Nelson, RG
Senior Hydrogeologist
GSI Water Solutions, Inc.
220 N 5th Street
Springfield, OR 97477
541-744-8121
Cell: 541-206-2636
dnelson@groundwatersolutions.com
www.gsiwatersolutions.com

SCHULZ Stephanie E

From: VORHES Stephen L
Sent: Tuesday, March 10, 2009 10:21 AM
To: MILLER Marsha A; SPARTZ Jeff R
Cc: HURLEY Daniel M; FOSSEN Amber L; HOWE Kent; SCHULZ Stephanie E
Subject: RE: Siuslaw News Article

Thanks for the message and update, Marsha, Jeff and Amber. The article and some of the comments add more light on the urgency in messages that we have been receiving from Sandra Belson. If George is also a possibility for the lead contact in the development of an IGA for the program regardless of EPA grant status, that might make sense. I have not identified anyone specifically in my discussions, which most of you have seen. As I told Sandra in my last email message, the Board has not seen the monitoring program proposal in the context of the comp plan effort. The first opportunity for that will be when they resume deliberations on the Florence 2020 Comprehensive Plan scheduled for April 8, 2009. I think the Lane County Planning Commission may be done with its work on those proposals, although I am not certain of that and will be working with Stephanie on the Board packets. Unless it gets scheduled or brought up earlier, that may be the first time the Board will have the opportunity to weigh in on the monitoring program since the EPA grant discussion. Thanks.

From: MILLER Marsha A
Sent: Tuesday, March 10, 2009 9:31 AM
To: SPARTZ Jeff R
Cc: HURLEY Daniel M; FOSSEN Amber L; VORHES Stephen L
Subject: RE: Siuslaw News Article

Well, this is interesting. We are in the process of hiring George Ehlers as extra help to look into the situation at Heceta Beach specifically. We have had no conversations with the City of Florence about beginning monitoring except in context of their EPA grant application they presented to the Board last month. They will not know about that grant for awhile and if they get it, they were talking about beginning work in the Fall. I will call the City and find out what is going on. They have been pushing for an IGA and I thought it was related to the grant but perhaps it is related to this. The communication with Florence has not been very good on any of these issues. Thanks for forwarding this.

Marsha

From: SPARTZ Jeff R
Sent: Monday, February 09, 2009 2:08 PM
To: MILLER Marsha A
Subject: FW: Siuslaw News Article

Here's where we get publicly dragged into this.

From: FOSSEN Amber L
Sent: Monday, February 09, 2009 10:19 AM
To: SPARTZ Jeff R
Subject: Siuslaw News Article

http://www.thesiuslawnews.com/V2_news_articles.php?heading=0&page=72&story_id=1895

Just an FYI

Amber Fossen
Public Information Officer
Lane County Government
125 E. Eighth Ave.
Eugene, Oregon 97401

(541) 682.3718
(541) 359.9143 (cell)

lane county:
wOrking
for you

Siuslaw News

ONLINE

148 Maple St., Florence, OR 97439 • Ph: 541-997-3441 • 541-997-7979

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City proposes water monitoring program

Posted: Friday, Jan 30th, 2009
BY: Shawn Penrod

Ground water monitoring wells would be installed at 19 locations.

With concerns floating to the surface over the last few months regarding potential fecal contamination on Heceta Beach as well as concerns from annexation opponents that the city is taking advantage of the issue, Florence city staff outlined a plan at the Jan. 26 City Council meeting to implement a water testing program in cooperation with Lane County.

As the city continues to clarify language in its 2020 Comprehensive Plan, news of contamination at Heceta Beach has forced the city to shift its focus from specifying criteria in which the council will grant septic system exceptions to setting up a water testing program as soon as possible.

The city has expressed concern regarding possibly failing septic systems north of Florence contaminating the water supply. Although City Manager Bob Willoughby acknowledged during his report that toilet paper found on the beach last November was more than likely dumped from an RV, Public Works Director Mike Miller said that a ground water testing program is a priority.

"The city is interested in protecting current and future drinking water," said Miller. "It is better to be pro-active than re-active." Miller said that reacting to a possible contamination could cost the city hundreds of thousands to millions of dollars to clean up.

The program would be jointly funded by the city and Lane County, although Community Development Director Sandra Belson said that they have yet to take the proposal to the county.

According to Miller, 19 areas are being looked at as potential sites for ground water monitoring wells. Six additional surface water sites are also being discussed.

Miller said that first-year expenses would be approximately \$16,000 for sampling and \$19,000 for the development of the wells. Common ions, Ph levels, total organic carbons, coliform wastewater discharges and nitrates would be some of the things they would test for.

"It would be very comprehensive," said Miller. Belson added that such tests would be "beyond the state's testing standards."

Councilor Dave Franzen was supportive of the program.

"Cities were formed specifically for public protection," said Franzen.

An attorney representing The Reserve, a subdivision located in the urban growth boundary expressed concern that the proposed program is more of an enforcement

program than a monitoring one.

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Councilor Alan Burns, however, said, "I can't imagine that a property owner wouldn't want to know (if their septic system was failing)."

Miller told the council that there is money in the budget to begin the testing program as early as March 2. He also indicated the potential for some grant funding.

Belson proposed what she described as "simplified" annexation language to the Comprehensive Plan:

- The city would not use an "island annexation method," although all other methods of annexation would be available.
- Annexation would require a majority of property owners (or electors) in a neighborhood's approval, except when a health hazard has been declared.

There would be no impact on people's ability to divide single lots, said Belson.

Belson also recommended in a staff report allowing septic systems on approximately 300 undeveloped lots — including lots in The Reserve — unless the monitoring program shows a problem. The undeveloped lots were identified by the Community Development Department's new geographic information system (GIS).

A public hearing regarding the proposed changes and monitoring program is being planned.

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Discussion of City's Approach to Urbanizable Area¹

This discussion paper is an attempt to answer some common questions of how the city's proposed Comprehensive Plan policies (as presented to Council on Jan. 26, 2009) would or would not affect development in the urbanizable area.

1. What is the city's policy on annexation?

The city would NOT use the island annexation method because that method would not give the affected property owners and electors a vote in the annexation. Other than in situations of a health hazard, the city will only use annexation methods that require a majority of property owners and/or voters within the annexation area to be in favor of the annexation.

2. How would the city's policies affect the development potential of my property?

The city's proposed policies would have NO impact on development of single lots except as covered by question #3 (below). Any development of a single lot that the county would allow today would still be allowed if the proposed Comprehensive Plan amendments are adopted. If you are currently allowed to install, expand or replace a septic system, you will still be allowed to do the same after these policies are adopted. The only new limitations would be that you could not divide your land without annexation.

3. What happens if the testing of the aquifer or a surface watercourse shows that the groundwater or surface water is contaminated?

Once a problem is identified, the city and county would conduct further tests to attempt to identify the cause of the contamination. The city and county would then determine the appropriate "fix" to the problem. In order not to exacerbate the problem, until the fix is identified, the county would put a hold on the issuance of any septic permits within the Florence urban growth boundary (UGB).

4. What is the city trying to achieve with these policies?

The proposed policies, in the context of the Comprehensive Plan, attempt to achieve three objectives:

- a. Limit sprawl and premature expansion of the UGB caused by inefficient development at low densities.
- b. Ensure that the city will be able to provide city services in an orderly, economic manner.
- c. Protect the city's current and future water supplies and ocean beach.

¹ Urbanizable area is the area outside the city limits but within the urban growth boundary.

REC'D MAR 05 2009

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March 4, 2009

Lane County Board of Commissioners
c/o Stephanie Schulz
Lane County Planning Department
125 East 8th Avenue
Eugene, OR 97401

By Hand Delivery and Mail

Re: City of Florence – Comprehensive Plan Co-Adoption Proposal

Dear Commissioners:

The staff of the City of Florence has proposed a monitoring and testing program for the Florence North Dunal Aquifer. As of the date of this letter the City of Florence has held no public hearings on this proposal.

I doubt that anyone will oppose a monitoring and testing program. However, the plan changes proposed by the City staff are much more than that. The City Staff proposal imposes an immediate and illegal land division moratorium inside the Urban Growth Boundary; and the City Staff proposal gives the City the power to require Lane County to prohibit the installation of new septic tank systems inside the Urban Growth Boundary.

A. The City Staff proposal requires the County to implement an immediate and illegal moratorium on all land divisions inside the UGB.

Policy B.2. proposed by the City Staff would provide as follows:

“For properties within the North Florence Dunal Aquifer that are also within the Urban Growth Boundary, no land divisions shall be allowed prior to annexation to the City.”

The City Staff has proposed this as an amendment to the Florence Comprehensive Plan and City Staff has asked Lane County to co-adopt it. This type of freeze on land development is directly prohibited by ORS 197.520, unless the City and County have met the requirements of ORS 197.520. At this point the City has given no indication that it intends to provide the justification required by the statute.

B. The City Staff proposal requires the County to impose an illegal moratorium on septic tanks inside the entire UGB if the City decides that the testing program discovers a "problem."

Section A.13. of the Staff's Comprehensive Plan proposal provides:

"If a problem is identified in the 'Area of Concern' and immediate correction is not feasible, the county shall not allow the installation of any new septic system, replacement septic system, or expansion of an existing septic system until the county and city mutually agree on appropriate measures to stop the contamination." [emphasis added]

1. "Problem" is undefined in the City Staff proposal, and no action standards are proposed. The problem could be anything from a local spill causing a temporary increase in nitrates well below EPA/DEQ standards; or it could be Staff's subjective perception of an early warning signal.
2. The City Staff proposal assumes that all "problems" are related to septic tanks and ignores other likely sources of contamination. Fertilizers, leaks in city sewer lines, and coliform contamination from pets and wildlife are all treated as if septic tanks are the source of all "problems."
3. The City Staff proposal assumes that all "problems" automatically justify a septic tank moratorium on the entire aquifer. A "problem" in the northwest corner of the Urban Growth Boundary, down gradient from all existing and anticipated wells is assumed to be sufficient to close the entire UGB to development—see City's FAQ's:

"3. What happens if the testing of the aquifer or a surface watercourse shows that the groundwater or surface water is contaminated?"

Once a problem is identified, the City and County would conduct further tests to attempt to identify the cause of the contamination.

The City and County would then determine the appropriate 'fix' to the problem. In order not to exacerbate the problem, until the fix is identified, the County would put a hold on the issuance of any septic permits within the Florence UGB." [emphasis added]

Again, this would be another illegal moratorium violating ORS 197.520.

4. The City Staff proposal provides no process for decision making, and ignores the fact that the State and County have programs in place to impose moratoriums and to deal with contamination from Septic Tanks and other sources. See OAR 340-071-0460. Only the Environmental Quality Commission is empowered to create such moratoria. ORS 454.685.

The County should not authorize the City to preempt its planning authority with these moratoria.

A handwritten signature in black ink, reading "Michael J. Lilly". The signature is written in a cursive, flowing style.

Michael J. Lilly

Enclosure

cc: City of Florence, City Council
City of Florence Planning Commission
Lane County Planning Commission