

MINUTES

Lane County Planning Commission
Florence Events Center—715 Quince Street
Florence, Oregon

January 26, 2010
5:30 p.m.

PRESENT: Lisa Arkin, Chair; Robert Noble, Vice Chair; Tony McCown, Nancy Nichols, George Goldstein, Jozef Siekiel-Zdzienicki, John Sullivan, Lane County Planning Commissioners; Kent Howe, Stephanie Schulz, Lane County Land Management Division; Sandra Belson, Mike Miller, Robert Willoughby, City of Florence.

ABSENT: Steve Dignam, Dennis Sandow, Lane County Planning Commissioners.

Ms. Arkin convened the Lane County Planning Commission (LCPC) at 5:35 p.m. Staff and Commissioners introduced themselves.

WORK SESSION

1. Election of Officers

Mr. Siekiel-Zdzienicki, seconded by Mr. McCown, nominated Mr. Noble as Chair of the Lane County Planning Commission. The motion passed 6:0:1, with Commissioners Arkin, McCown, Nichols, Siekiel-Zdzienicki and Sullivan, voting in favor, and Commissioner Noble abstaining.

Mr. Noble, seconded by Mr. Siekiel-Zdzienicki, nominated Mr. McCown as Vice Chair of the Lane County Planning Commission. The motion passed unanimously, 7:0.

Mr. Siekiel-Zdzienicki thanked Ms. Arkin for a great year and her willingness to raise issues that needed to be addressed by the commission, adding she had been very receptive to the public's concerns.

Ms. Arkin expressed her appreciation for the opportunity to serve and turned the meeting over to Mr. Noble.

Mr. Noble echoed Mr. Siekiel-Zdzienicki's comments regarding Ms. Arkin's service as commission chair.

2. Ordinance No. PA1249/ In the Matter of Co-Adopting the Florence Comprehensive Plan 'Realization 2020', Transportation System Plan, Wastewater Facilities Plan, Water Facilities Plan, and Stormwater Master Plan for Application Within the Florence Urban Growth Boundary, and Adopting Savings and Severability Clauses (File No: PA 08-5142; Applicant: City of Florence; Agent: Sandra Belson, Community Development Director)

Ms. Schulz offered the staff report. The City of Florence had responded to concerns raised by the public and the Planning Commission as summarized in the Agenda Cover Memo and accompanying

attachments. The following documents, received after the packet had been distributed to commissioners, included the following:

- Letter dated January 25, 2010 from Michael J. Lilly to the Lane County Planning Commission, regarding *Haceta Lake Joint Venture comments on City of Florence 2020 Plan and IGA*.
- An email dated December 11, 2009 from Sandra Belson to Stephanie Schulz, subject FW: Annexation question.
- Packet dated January 26, 2009, Ordinance No. PA 1249, **LCPC Deliberations Alternative Motions for the LCPC Recommendation Co-Adoption of Florence Realization 2020 and Associated Refinement Plans; EXHIBIT B—Comprehensive Plan Amendments City of Florence Ordinance No. 18, Series 2009.**
- Packet dated January 26, 2010, Ordinance No. 7-08, **Deliberations Lane Code Chapter 10 Amendments to the Florence Interim Urbanizing Combining District (U) Alternative Motions for the LCPC Recommendation.**

Ms. Schulz said the Florence City Council had adopted the language as revised in Attachment 2 to the Comprehensive Plan Policies. The final version of the language in these two policies would be included in the Ordinance PA 1249 now before the Board of Commissioners (BCC). Additionally, the City of Florence and Lane County also completed development of the Intergovernmental Agreement (IGA) that set out each jurisdictions' roles and responsibilities for a three year groundwater sampling and monitoring program to determine whether or not any contamination of the groundwater was occurring in the area identified as the interface of the Florence Urban Growth Boundary (UGB) and the North Florence Dunal Aquifer.

Ms. Schulz explained the application had been in process since 2008. Subsequently, public hearings had been held on the Comprehensive Plan including the associated refinement plans. A few items remained. Lane County and City of Florence has reached agreement on the language before the commission and the Florence City Council has acted on the plan amendments that are now before the commission, which will be presented to the BCC along with the commission's recommendation. She read the final language for new Policy 12 and new Recommendation 8, included as Exhibit B.

Ms. Schulz added the IGA included in the agenda packet was the tool developed and agreed upon at the staff level that supported the policies as they now appeared in the Comprehensive Plan. The IGA was not a land use action and would not be acted upon by the commission. It would be presented to the BCC for signature by County Environmental Services staff.

In response to a question from Ms. Arkin, Ms. Schulz stated the Haceta Water District (HWD) was not part of the IGA the City and the County had developed. The HWD is participating in the Siuslaw Estuary Partnership Project.

Responding to a question from Mr. Siekiel-Zdzienicki, Ms. Schulz explained the water testing program was larger than the IGA between the City and the County. She understood that the HWD would participate in the groundwater testing program through another intergovernmental agreement.

Mr. Noble asked City of Florence staff to respond to commissioners' questions regarding participation by the partners and what efforts had been made by the city to have agreements with those partners.

Ms. Belson said HWD provided a letter of support with financial commitment to the City in the City's grant application to the U. S. Environmental Protection Agency (EPA). The HWD was receiving funding for culvert work to protect fish passage and water lines, and for signage around the lake, in addition to

water testing. Thus, it was determined to keep the agreements separate, since contractual obligations differed. EPA authorization and funding was received in December 2009 and the city and the HWD were developing the necessary agreements.

In response to Mr. Goldstein, Ms. Belson explained HWD would be involved in the testing program and Clear Lake and other surface and ground water locations would be tested. Additionally, the HWD provided service within the UGB.

Responding to Ms. Nichols, Ms. Belson said the Quality Assurance Project Plan (QAPP) had been submitted for approval by the EPA. Based on the commission's suggestion, caffeine had been included for ground water testing as an indicator of human activity.

Ms. Arkin asked if the EPA or State protocols provided access to private land if contamination was found, and there was a need to determine the source that may or may not be septic systems on private land,

Ms. Belson said the QAPP submitted to EPA did not address Ms. Arkin's question. It did address how data was collected, how soon samples needed to be delivered to a laboratory, and that qualified laboratories needed to do the analysis. If problems were identified in the testing program, the City would work with the County and the EPA to identify potential solutions. The County would have the authority to enter those properties and review septic system records.

Responding to Mr. Goldstein's question regarding sampling protocols, Ms. Belson suggested he should review the QAPP, asserting it was not relevant to the commission's decision since it was a policy level discussion.

In response to questions from Mr. Siekiel-Zdzienicki, Mr. Howe said as an agent of the State of Oregon Department of Environmental Quality (DEQ) the County would exercise the authority delegated to it by the DEQ. He agreed to research whether the County, as a DEQ agent, could enter private property for the purpose of testing.

3. Ordinance No. 7-08/ In the Matter of Amending Chapter 10 of Lane Code to Revise and Add Provisions for The Interim Urbanizing Combining District (/U) Applicable Within the Florence Urban Growth Boundary (LC 10.122-10, 10.122-13, 10.122-14, 10.122-5, 10.122-31)(File No: PA 08-5142, Applicant: Florence; Agent Sandra Belson, Community Development Director)

Ms. Schulz reviewed Lane Code Chapter 10 Amendments to the Florence Interim Urbanizing Combining District (/U) Alternative Motions for the LCPC Recommendation and the attached proposed revised Chapter 10 language provided in 10.122-30 in legislative format. Staff additionally explained that clause 10.122-31 is stricken from the proposed language, and will be shown as such when presented to the BCC.

Mr. Howe assured commissioners the proposed language had been reviewed by County Counsel.

The Planning Commission took a break from 6:52 p.m. to 7:00 p.m.

Mr. Noble reconvened the Lane County Planning Commission and called for public comment not related to items before the commission this evening. There was no one who wished to speak.

PUBLIC HEARING

1. **Ordinance No. PA 1249/ In the Matter of Co-Adopting the Florence Comprehensive Plan 'Realization 2020', Transportation System Plan, Wastewater Facilities Plan, Water Facilities Plan, and Stormwater Master Plan for Application Within the Florence Urban Growth Boundary, and Adopting Savings and Severability Clauses (File No: PA 08-5142; Applicant: City of Florence; Agent: Sandra Belson, Community Development Director)**
2. **Ordinance No. 7-08/ In the Matter of Amending Chapter 10 of Lane Code to Revise and Add Provisions for The Interim Urbanizing Combining District (/U) Applicable Within the Florence Urban Growth Boundary (LC 10.122-10, 10.122-13, 10.122-14, 10.122-5, 10.122-31)(File No. : PA 08-5142, Applicant: Florence; Agent Sandra Belson, Community Development Director)**

Mr. Noble opened the public hearing. He explained speakers should address the specific approval criteria. Failure to raise an issue may preclude an appeal to the Land Use Board of Appeals (LUBA). This was the public's opportunity to enter information into the record. He called for disclosure for conflicts of interest on the part of commissioners. There were none.

Ms. Schulz provided the staff report. The purpose of the public hearing was to take testimony, consider the entire record and provide a recommendation to the BCC for the most recent revisions to the policies and code before the commissioner. She reviewed the history of proposed ordinances. The BCC would conduct a public hearing on February 17, 2010 in Eugene prior to taking final action on co-adoption of the City of Florence's Realization 2020, Comprehensive Plan and associated refinement plans. The BCC would also take final action on Lane Code Chapter 10 implementation measures at that time. The BCC was participating in this action because it had land use jurisdictional responsibilities for lands between city limits and UGB's of Lane County's small cities. The BCC was required under statewide planning goals for coordination of land use to co-adopt Realization 2020 and associated refinement plans for completion of the City of Florence's Department of Land Conservation and Development (DLCD) periodic review work program. The associated IGA for conducting the three year ground water study was an important component but not part of either of the ordinances. Lane County Environmental Services staff and City of Florence Public Works staff had agreed upon IGA language which would be presented to the BCC under a separate process. The final language for the Comprehensive Plan policies and Chapter 10 code text amendments and applicable criteria were discussed in the work session immediately preceding this public hearing. The final Chapter 10 text results reflected the iterative process that changed the exception criteria in the policy code to conducting a ground water study in the affected area under the multi-jurisdictional EPA funded Siuslaw Estuary Partnership Project.

Mr. Noble called for testimony from the applicant.

City of Florence Community Development Director Sandra Belson introduced City of Florence City Manager Bob Willoughby and Public Works Director Mike Miller. She reviewed the history of the ordinances before the commission. She said the question for the commission was whether the 2020 plan before it was an improvement over the existing 1988 Comprehensive Plan, and whether the County should continue to use the 1988 plan for its planning within the UGB or if it was time to move forward with the Realization 2020 plan and corresponding code amendments. Referring to the January 25, 2010 letter previously distributed from Michael Lilly, Ms. Belson distributed a document entitled, *SCOPE NEWSLETTER, Number 63, January 2006, Special issue: fate of phosphorus in septic tanks (autonomous waste water treatment system)*. She asserted Mr. Lilly contended there were erroneous findings in the documents adopted by the City in December 2009, specifically that

there was not scientific evidence that septic systems posed a threat to the drinking water in the North Florence Dunal Aquifer. She reviewed highlighted sections that were relevant to tonight's proceedings and asserted staff believed there may be a threat to the City's sole source dunal aquifer. However, staff was not proposing anything to limit additional septic systems or to require an advanced treatment system. Staff was proposing that a monitoring system be established. If a problem was detected, the City of Florence would work with Lane County to develop the best solution to the problem, which would prevent a health hazard situation from developing. If a health hazard situation did develop, citizens would have no choice and could be forced to annex and hook up to sanitary sewer. Further responding to Mr. Lilly's assertion regarding the 5 milligrams per liter concentration for nitrate levels in the IGA, she said the City and County had already agreed to that level. Concentrations exceeding that level would be studied to determine if any actions were necessary. She added the 2020 Comprehensive Plan had been acknowledged by the State but the amendments were awaiting BCC approval.

Responding to a question from Mr. Siekiel-Zdzienicki, Ms. Belson said the well testing program had been expanded to 30 wells with the EPA grant, and additional wells could be tested in the future if additional funding became available.

In response to Mr. Goldstein, Ms. Belson explained there were test areas outside of the area of influence because the City was concerned about a future well field that would be sited to the north. It was important to have information about water quality in the area to help determine the sites. She said testimony had been received about requiring advanced systems inside the UGB but the BCC did not support that approach.

Mr. Goldstein entered the March 2009 edition of *Water Operations Forum* published by the Water Environment Federation, into the record.

Mr. Sullivan asked if the City of Florence agreed that septic tanks fell under the definition of decentralized systems. He referred to a report submitted to Congress in 1997, noting that the inference in the document was that in order to be classified as such, there needed to be management program of a decentralized system in order for it to function correctly.

Ms. Belson stated the City proposed no changes to the septic tank standards used by Lane County in approving septic systems.

Mr. Miller stated the City of Florence did not agree that septic systems were decentralized systems.

Ms. Arkin asked if one point of the water testing system was to ensure that the water quality along the beaches was at an acceptable level. She opined surface contamination, including runoff from pavement or illegal dumping could also impact the aquifer.

Ms. Belson said evidence had been provided to the City that there was contamination along Haceta Beach, at which point, the City added surface water concerns of that area as well to the groundwater testing program. She added the testing program would be broader than only septic systems to enable monitoring of surface contamination.

Mr. Miller added the testing program would be comprehensive, and include organic and inorganic compounds, such as pesticide, herbicides, and petroleum based products, although it would not test for nitrates on the beach.

Mr. Noble called for public testimony.

Daniel Stotter, 408 Southwest Monroe Street, Corvallis, was in favor of Ordinance 2020 as modified. He addressed the following points:

- The Planning Commission should have an open mind regarding information received from the City of Florence where contrary views had not been expressed. In particular, he asked commissioners be open minded on the City's premise that any septic emergency or septic systems posed a significant impact to the north dunal aquifer. He asserted the study supplied did not support that proposition, and that Ralph Christensen, the author of the report said the City of Florence had misled the Planning Commission on that issue. He distributed copies of a letter dated May 14, 2009 (previously entered into the record) by Mr. Ralph Christensen. He further asserted that the City wanted to develop and to annex and desired urban sprawl for projects that would produce surface water impacts that would devastate the north dunal aquifer. Mr. Stotter submitted a public records request to the city that showed there was no evidence of septic problems.
- The City had said there would be no forced annexation and he encouraged the Planning Commission to hold the City to that requirement. He asserted a "no island annexations" policy was not the same as no annexations.
- The Planning Commission should tell the BCC that the Haceta Water District, a local government body, should have a place at the table in the decision making through the IGA language.
- He suggested revised language for Exhibit B, page 3, new policy 7, that would not mandate annexation for any development within the UGB.
- He suggested the commission make a formal motion to Lane Code Chapter 10 to strike language inadvertently left in the proposal.

Ms. Arkin asked Mr. Stotter if he had information to enter into the record regarding his comment about future large scale development in the UGB.

Mr. Stotter said he did not have that information at the present time, but suggested he could present it to the BCC when it addressed this issue.

Mike Lilly, 6600 Southwest 92nd Street, Suite 280, Portland, represented Haceta Lake Joint Venture, which owned a subdivision called The Reserve. He had been urging that the whole package be rejected since 2008. He was not against a testing program but asked that the commission make some changes in its recommendations to the BCC. He submitted a letter dated January 25, 2010 to the Lane County Planning Commission from himself, regarding Haceta Lake Joint Venture comments on City of Florence 2020 Plan and IGA. The letter addressed the following concerns, which Mr. Lilley reviewed:

- The City Plan Contains Inaccurate Findings.
- New Plan Policy #7 is Ambiguous.
- IGA Footnote 2 Regarding Nitrate Contamination is Ambiguous.

Dave Bradley, 3880 Mirror Pond Way, did not wish to speak.

Lea Patten, 04699 North Jetty Road, stated she lived outside the city limits and was in danger of being annexed by the City of Florence. She was party to a lawsuit against the City's cherry stem annexation of Rhododendron Drive and she was a board member of Citizens Against Annexation (CAA), and had served on the Haceta Water District Board. She asked if the City's sewage system was capable of handling large scale annexations. She noted no information about waste water or sewage was available on the City's web page. She said the City was fined in 1999 for violating the Clean Water Act but she could find no indication that the problem had been resolved. The City's goal was to annex properties

although it did not have the capacity to handle water and sewer. She thanked the Planning Commission for meeting in Florence.

William Roberts, 1960 University Street, Eugene, said his points already been addressed and he did not need to address the commission.

Bob Hursh, 5104 Wood Lake Way, identified himself as the Chair of the HWD. He directed commissioners to a letter in the packet from the HWD. The HWD is against the County's approval of the 2020 Comprehensive Plan until an IGA between the HWD and the City of Florence was approved. He added the HWD was diligently working with the City to develop the agreement. Mr. Hursh then spoke as a private citizen. He suggested that the Planning Commission "take with a grain of salt" information provided by Ms. Belson from the internet, specifically, the *SCOPE NEWSLETTER* previously presented at this meeting. He said pollution at the beach previously addressed was toilet paper, which he asserted, should be blamed on someone emptying a motor home septic tank rather than septic tank problems.

Mr. Siekiel-Zdzienicki asked why the HWD and the City of Florence had not developed an IGA, which had been discussed over a year ago by the Planning Commission.

Mr. Hursh said progress was stymied by several factors, including: a change in commissioners; misinterpretation by some of the IGA language; and, the HWD changed attorneys during the process. There had been eleven iterations of IGAs which was aggravating for both the City and the HWD. He stated the HWD was notified on iteration eleven that it would have to charge a franchise fee because it provided water to people living in the city limits which the HWD took exception to. After meeting with Mr. Willoughby, it was determined that the City had the right to charge a public utility or special district a franchise fee for providing services within a city limit. Additionally, there were boundary differences, and the HWD wanted to continue to provide services to a specific footprint based on its long term capital improvement plan. He continued to be optimistic an agreement would be reached.

Mr. Sullivan asked if Mr. Hursh had a response to a letter dated December 10, 2009 from the DLCD.

Mr. Hursh was not familiar with the letter but was familiar with comments made at a December 2009 City Council meeting by Mr. Perry from DLCD. He added there had not been an IGA for many years and there were no consequences of not having such an agreement. He found it difficult to believe that the BCC would not approve the 2020 plan because the HWD and the City of Florence had no agreement.

Peter Boyer, 87497 Rhodowood Drive, stated many of the wells related to planned testing were in the northwest section of the UGB while many of the maps showing the aquifer and water flow showed it flowed downstream and it would not affect the aquifer. He asserted the proposals were pretexts for annexation. He had seen no evidence that septic systems were polluting the beaches. He asserted much of the testing on the coastal side served no purpose since it was downstream from the aquifer.

Mike Van, 6860 Southwest Beckman Road, Wilsonville, did not wish to speak, but did wish to be included on the mailing list.

Jerry Norton, 87896 Lemmet Lane, as the secretary of the HWD, had seen 18 or 19 agreements pass through his hands, and he wanted to get the agreement in place before it went to the BCC. He saw no sense in testing of existing sewers above the aquifer when the city has sewer lines that are old and they also should be included in the testing program. He did want to see the 2020 Plan approved with suggested changes. He added most people in the area were retired and could not afford what the City was asking.

In response to Ms. Arkin, Mr. Norton said he had received a letter from the City several years ago that indicated it would cost \$35,000 to pay for sewer lines and hookups.

The commission took a break from 8:17 p.m. to 8:25 p.m.

Mr. Noble called for comments from staff.

Mr. Howe, County Planning Director, observed comments this evening centered on the competing science regarding aquifer contamination by nitrates and other substances. The issue before the Planning Commission was the policy amendment to the Realization 2020 and the text language in Lane Code proposed for amendment which differed significantly from what had previously been brought to the commission. The issues related to land use issues that would trigger annexation had been removed from the policies and the code. The issue of the IGA between the City of Florence and the HWD was not before the commission this evening. It was important that the policies the commission recommended to and ultimately were adopted by the BCC would inform, govern and guide whatever IGA was developed with the participating parties as subsequent studies and monitoring systems were put into place.

Mr. Noble called for questions of staff by commissioners.

Mr. Goldstein asserted that the language contained in the proposed language for Lane Code Chapter 10 superseded State land use laws.

Referring to LC 10.122-31, Land Uses, Mr. Howe, explained that section had been stricken, and the relationship previously related to uses being proposed triggering annexation was eliminated. He added LC 10.221-30, Lot Area, was a provision within all of the cities' UGBs in Lane County. Because land divisions were the precursor to urbanization, the code amendment retained the provision that eliminates future land divisions in the city UGB without annexation.

Mr. Noble called for applicant rebuttal.

Mr. Miller responded to issues raised during the public testimony.

- Sewer capacity—the wastewater treatment plant was expanded in 1999-2000 and had a capacity of six million gallons a day. He noted today, in the middle of January and one of the wettest months, the plant processed approximately one million gallons. There was ample capacity in the plant.
- Wastewater collection system—one of the lines on the Rhododendron Drive corridor had been an old asbestos line. It had been replaced with high density polyethylene with sufficient capacity for the drainage basin, past the city limits and to the northwest portion of the UGB. The system had been sized to enable it to have sufficient capacity for future annexations that may occur.
- Information in the record questioned the qualifications of expert witnesses the City had retained on a consultant basis regarding hydrogeology, source water and well head protection. He noted those individuals had developed groundwater models across the State of Oregon. The water quality and quantity team for the Estuary Partnership consists of experts from DEQ, Oregon Water Resources Department, U.S. Bureau of Land Management (BLM) and Forest Service (USFS), the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, and the Siuslaw Watershed Council, among others.
- Decentralized systems, frequently used for large food processing facilities, were highly managed and regulated, and not typically used in residential situations with septic systems. There were three types of nitrate removal systems approved by the State for advanced treatment and used in

Oregon communities. The systems in La Pine and Deschutes County were highly managed that included a maintenance package.

- Old systems and missing data -- A goal of the groundwater monitoring program was to look at systems designed and installed in the 1970's and 1980's to determine if they were still working, and to examine the impacts to Munsell Creek, the Siuslaw River and the estuary.
- Well locations—the City was attempting to identify the characteristics of the groundwater as it moved through the UGB to better understand what was happening with the groundwater and what the impacts of the surface water would be, including impacts from urbanized development on industrial and commercial lands in the City. The EPA grant would allow 30 well sites to be tested, which was an increase over the original 18 planned test sites.

Ms. Belson stated testimony had been received asking the commission to make changes to policies. The Florence City Council held several public hearings spanning over a year, and attempted to respond to concerns raised by the public and suggestions from the commission and the BCC. The council had adopted what it thought would be the best for the City of Florence and the community. She was not confident that the council would be willing to entertain further amendments to what it adopted in December 2009.

Mr. Willoughby averred he had never threatened annexation to anyone. He had talked with people about what it meant to live within a UGB. Under Oregon land use law, within the urban growth boundary (UGB) is the place where cities are supposed to grow and people who live within the UGB should assume they will be within the City at some point in the future. The efforts to co-adopt the 2020 Comprehensive Plan with Lane County contained no implied threats of annexation. He was not aware of any million dollar developments under discussion for the Florence area.

Mr. Willoughby said the City of Florence and HWD were bargaining in good faith to develop an IGA. The remaining issues were not trivial. The most significant pending issue addressed fire flows and the City's ISO ratings, which were related to insurance premiums. Staff learned that if the HWD was serving industrial properties within the city limits and not meeting the fire flow requirements, the ISO rating for the entire city would be impacted, which meant four or five properties on the north end of Florence could impact the ratings for all commercial and other properties in the City. This could be mitigated by requiring less dense development or requiring expensive fire suppression systems inside buildings which would increase the cost of commercial development. The City was concerned about economic development and did not want to place restrictions on development of commercial and industrial property that would increase the cost and/or delay development. He had met with and assured water district staff that he would take proposals to the City Council that would benefit the water district if the proposals did not adversely impact the City's insurance rating. He acknowledged there had been multiple drafts of the IGA, all of which came from the water district, and he believed that everyone was currently negotiating in good faith. However the IGA timeline should not dictate the 2020 Comprehensive Plan co-adoption timeline.

In response to Mr. Goldstein, Mr. Miller stated staff was working with a hydro geologist to determine if the well fields could accommodate additional wells. Mr. Miller added capacity was not the pump size but the transmissivity of the water through the aquifer. He added the five city wells located on the wellfield near the golf course were highly productive and records indicated there was no salt water intrusion.

Mr. McCown asked if the goals of the groundwater task team program could be accomplished by removing language of the 2020 plan that suggested forced annexation would result from contaminants in the water.

Ms. Belson said the new policy 12 that addressed ground water testing contained no language that referenced septic tanks or scientific standards, and the policy carried the law, thus supporting the need for the policy. Statements in the background section did not carry the force of law.

Based on what she saw on the maps related to the proposed code language changes, Ms. Arkin observed that the land in question was already almost fully developed to allowable density levels. Under Oregon land use law, there was a transition from rural to urban lands within the UGB.

Ms. Belson reviewed the history of development in the 1960's and early 1970's, that created small lots to take advantage of beach access. The sites between Haceta Beach and the City of Florence were allowed to develop at urban densities within the agreements between the City and the County because, at the time, the City did not have the necessary system capacity to provide sanitary sewer service. The City was able to provide an urban level of sanitary sewer with the system improvements in 1999-2000. Under current Lane Code, and as required under the 1988 Comprehensive Plan, residential development is required to consent and agree to future annexation and hook up to City sewers. Thus, many of the developers entered into non-remonsterance agreements to annex and hook up when the City had the capacity. Now, the City is proposing alternate language to Lane Code Chapter 10 to prevent future land divisions prior to annexing to protect people from purchasing property that contained annexation requirements they were not aware of. The proposed language would accept the status quo for existing sites, but the public would be aware of requirements for future acquisitions. She noted the North Florence Dunal Aquifer study was written before the City had the increased system capacity and municipal sewer was not viewed as an option for development in the area at that time.

Mr. Willoughby said staff had confirmed that when properties were purchased, the title companies provided information that explained to people that the properties were in the UGB and subject to using the City's sewer system.

In response to a question from Mr. Goldstein on stormwater, Mr. Miller explained the Army Corps of Engineers (ACOE) identified the Florence area as a wetland, with stringent requirements requiring permits for discharges into Munsel Creek and the Siuslaw River. The City had been challenged by the ACOE for doing work in the ODOT right-of-way and had been waiting two years for a permit to discharge water into Munsel Creek. The goal was that post development flows could not exceed pre development flows throughout the City, thus requiring each site to develop a storm water management plan.

Mr. McCown, seconded by Mr. Sullivan, moved to close the public hearing.
The motion passed unanimously, 7:0.

In response to Mr. Noble, Ms. Schulz stated the BCC was scheduled to conduct a public hearing on February 17, 2010.

Ms. Arkin, seconded by Mr. McCown, moved that the Lane County Planning Commission recommend the Board of County Commissioners adopt the revision to the amendment to Lane Code Chapter 10 Interim Urbanizing Combining District (/U Overlay Zone).

Ms. Arkin withdrew her motion.

Regarding Ordinance No. PA 1249, Ms. Arkin, seconded by Mr. Sullivan, moved that the Lane County Planning Commission recommend that Board of County Commissioners co-adopt the Florence Realization 2020 Comprehensive

Plan and associated applicable refinement plans with the additional changes recommended and adopted by the City.

Ms. Arkin felt many of the recommendations previously made by the Planning Commission had been taken into consideration by City of Florence elected officials and staff in developing the proposed recommendations and should be moved forward to the BCC.

Mr. Sullivan said Ms. Belson had made monumental steps to improve the quality of managing the resource since she came to the City several years ago. He asserted the inference that she and others were “in cahoots” to expand annexation should not be taken seriously. He opined the area was better off as a result of her efforts, regardless of whether people agreed or disagreed with her. He stated this evening’s meeting was in response to concerns expressed by the Planning Commission regarding the 2020 plan, which the BCC supported. In a December 2009 letter, the DLCD addressed water quality being essential and felt that past practices had violated the intent of the plan and goals. The developer opposed the code changes because there was a lot of money at stake, and the City and the BCC should be aware of the economic risks of moving forward. While the opponent’s geologist had disputed the data provided by the City, he felt it would be a mistake for the commission to fail to move the proposal on to the BCC. He felt strongly that the Planning Commission should move forward with the recognition that some issues remained unresolved.

Mr. McCown thought there remained some issues the commission could address through amendments to make the proposal more palatable to those who opposed it. He did not see the link between groundwater testing and annexation but he understood residents who had this concern and had a degree of mistrust. He suggested the language regarding wastewater treatment systems could be expanded, possibly including public systems next to septic systems, or contrasting the language to remove references to septic systems. He noted groundwater testing was valuable to everyone.

Mr. Sikiel-Zdzienicki averred although there was no evidence of septic system contamination, it could happen anytime. The North Florence Dunal aquifer was a very delicate system. The testing needed to occur right away because a disaster could happen. He saw no issue with annexation. He emphasized an IGA between the City and the HWD needed to be completed but he would not suggest holding up the Comprehensive Plan co-adoption for that to happen. He would support the motion. He encouraged the public to raise their concerns with the BCC at its upcoming public hearing.

Ms. Nichols said the proposed language had improved considerably during the time the commission had been considering the proposals. She believed this was a good proposal and would support the motion.

Mr. Goldstein thought a testing program was valid, but had concerns with how it was done. He stated the 2020 language was vague and contained errors and omissions that conflicted with established data and engineering, which should have been rectified. He was uncomfortable with the proposal.

Ms. Arkin asserted ignorance was not bliss, knowledge was power and testing would give power. She was reassured that the wastewater system was functioning well with adequate capacity. She was impressed with the stakeholder group that is participating in the EPA funded comprehensive testing program. Testing was a reasonable and sensible way to protect a unique water resource. She was reassured about the location of the wells based upon staff responses to her questions about the map. Recently published U.S. Geological Services (USGS) studies indicated that urban density had a greater impact on water quality than rural density. She thanked staff and public officials for their efforts and their responsiveness to Planning Commission queries.

Mr. McCown moved to amend the motion on the table to remove the direct reference to septic tanks in the background information to policy 12.

Mr. Noble stated he would support the motion based upon the collective interest in protecting the water quality for the residents of Florence and those who lived outside the city limits. This would allow for future annexation through State law while not forcing annexation on current residents unless a health hazard developed in which case several options, including sewers, could be considered. The proposed Chapter 10 change and 2020 plan language adequately address these concerns. He was disappointed that an IGA had not yet been developed between the city and HWD but expressed optimism that the parties would reach an agreement.

Mr. Noble declared the motion dead in that it had not received a second.

Mr. McCown declared a point of privilege since there had not been sufficient opportunity for a second to be declared for his motion.

Mr. McCown, seconded by Mr. Goldstein, moved to amend the motion to remove all language in the background section to policy 12 related to septic systems.

Mr. McCown stated although he had no concern regarding scientific evidence on septic tanks, there was testimony asserting conflicting scientific evidence with contamination of groundwater from septic tanks. His proposed amendment to the motion did not change the goals of the plan or the wastewater testing program.

Ms. Arkin thought the motion ill advised and would not support the amendment because policy 12 would remain the same. The background information drew upon numerous scientific sources to address a variety of issues.

The motion to amend the motion passed, 5:2, with Commissioners Arkin, McCown, Noble, Nichols, and Sullivan voting in favor, and Commissioners Goldstein and Siekiel-Zdzienicki opposing the motion.

The motion passed, 6:1, with Commissioners Arkin, McCown, Noble, Nichols, Siekiel-Zdzienicki and Sullivan voting in favor, and Commissioner Goldstein opposing the motion.

Regarding Ordinance No. PA 1249, Mr. Noble, seconded by Mr. Siekiel-Zdzienicki, moved to revise the proposed language as it appeared on page 3 of Exhibit B Comprehensive Plan Amendments, Ordinance No. 18, Series 2009:

“As a matter of public policy, Lane County and the City of Florence share a substantial interest in development within the Urban Growth Boundary. **In order to receive a full range of urban services provided by the City of Florence,** 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.~~ However, it is also recognized that until annexation Lane County will retain primary permitting responsibility for those lands.”

The motion passed 5:2, with Commissioners Goldstein, McCown, Noble, Nichols, Siekiel-Zdzienicki and voting in favor, and Commissioner Arkin and Sullivan opposing the motion.

Ms. Arkin, seconded by Mr. McCown, moved that the Lane County Planning Commission recommend that the Board of County Commissioners adopt the revision to the amendment to Lane Code Chapter 10 Interim Urbanizing Combining District (/U Overlay Zone), including the staff recommendation to strike 10.221-31. The motion passed unanimously, 7:0.

Mr. Howe noted the public hearing and the record were closed.

The meeting adjourned at 9:40 p.m.

(Recorded by Linda Henry)

MINUTES

Lane County Planning Commission
Board of Commissioners Conference Room—125 East 8th Avenue
Eugene, Oregon

November 17, 2009
5:30 p.m.

PRESENT: Lisa Arkin, Chair; Robert Noble, Vice Chair; Steve Dignam, George Goldstein, Tony McCown, Nancy Nichols, Jozef Siekiel-Zdzienicki, John Sullivan via teleconference, Lane County Planning Commissioners; Marsha Miller, Dan Hurley, Lane County Public Works Department; Matt Laird, Stephanie Schulz, Lane County Land Management Division; Sandra Belson, Mike Miller, City of Florence; Daniel Stotter, Mike Lilly, guests.

ABSENT: Dennis Sandow, Lane County Planning Commissioner.

Mr. Noble convened the work session of the Lane County Planning Commission (LCPC) at 5:30 p.m. He explained Mr. Sullivan would participate via teleconference. He introduced new Planning Commissioner George Goldstein who represented the West Lane District. He explained Ms. Arkin would be arriving shortly.

Mr. Noble called for public comment on issues not related to items on the agenda. There was no one who wished to offer comment.

WORK SESSION

1. Approval of Minutes—October 6 and October 20, 2009

October 6, 2009

Mr. Siekiel-Zdzienicki, seconded by Mr. Dignam, moved to adopt the minutes for October 6, 2009. The motion passed 5:02, with Commissioners Noble, Dignam, McCown, Sullivan, and Siekiel-Zdzienicki voting in favor, and Commissioners Nichols and Goldstein abstaining.

October 20, 2009

Mr. Dignam, seconded by Mr. McCown, moved to adopt the minutes for October 20, 2009.

Mr. Dignam stated the minutes accurately reported what he said, but upon reflection, what he said was not correct. Referring to page 5 of the October 20, 2009 minutes regarding the Junction City urban growth boundary (UGB) and citizens who lived outside the city limits who had a concern

with what was going on. He had stated "If citizens were unhappy with legal land use action taken by their city, they needed to take it up with their city." He asserted those citizens did not have the ability to do that because they lived outside the city limits. He found this a difficult position for citizens, and it complicated the matter of UGB expansions when actions taken by the Junction City Council impacted citizens who owned property outside the UGB or inside the UGB but outside the city limits. They had no voice speaking for them. He said the Planning Commission needed to keep this in mind in the future, noting those citizens in the "no man's land" area relied on the county to be their representation.

Mr. Siekiel-Zdzienicki said the Planning Commission conveyed that issue when it came up to the Board of County Commissioners (BCC) as the conduit for those citizens. He added the Planning Commission's function was to listen to people, gather information and move forward with the process and provide a good recommendation.

Mr. Goldstein asked if the Lane County Planning Commission and involved city would massage their plans to try to bring them up to date with the issues brought forward by the citizens.

Mr. Noble stated it was the role of the Planning Commission to judge whether applications as submitted had merit based on the applicable criteria. If those criteria were met, the Planning Commission would recommend the Board adopt a proposal. If there were questions or concerns, they would be directed to the applicant to address. He noted tonight's deliberations were the result of the item being pushed back to the applicant to address concerns of the commission.

Mr. Siekiel-Zdzienicki stated the Planning Commission had discussed the Junction City proposal at length. When the issues of the "westsiders" went to the BCC, the BCC decided to undertake a mediation process for the "westsiders."

Ms. Schulz asserted the BCC was proceeding as Mr. Siekiel-Zdzienicki noted, and they had identified participants for the stakeholder meetings from both sides of the issue and a Department of Land Conservation and Development representative to participate in the mediation. One meeting was held last week and a second meeting was scheduled for November 18, 2009 to work through and reach an agreement.

Mr. Goldstein asked if it would be fair to call the plans living documents.

Mr. Sullivan said it could be difficult for Planning Commissioner's to disassociate deliberations and questions. Ultimately, the Planning Commission was charged with following the Oregon Administrative Rules (OARs) and the statewide planning goals. He noted the Planning Commission had wrestled with whether it should try to influence what Junction City was doing, but at the end of the day, that was not the Planning Commission's responsibility. The commission's responsibilities rested in the interpretation of facts and criteria as opposed to feelings about how the cities should or should not conduct their business.

The motion passed 5:0:2, with Commissioners, Dignam, McCown, Nichols, Sullivan, and Siekiel-Zdzienicki voting in favor, and Commissioners Noble and Goldstein abstaining.

2. Planning Commission Recommendation on Lane County Planning Commission Appointment

Ms. Schulz offered the staff report, noting this was an at-large appointment, adding there was no code criteria directing the appointment.

Mr. Noble suggested the commission determine whether a reappointment was in order, and if not, it should determine if some or all of the candidates should be selected for interviews. He supported reappointing Mr. Sullivan who had a wealth of knowledge and brought added value to the commission.

Mr. McCown concurred with Mr. Noble. He asked what precedent would be set by reappointing a sitting commissioner without interviews. He was concerned about the perception of perpetuating the "good ol' boys club".

Mr. Noble stated interviews had been held previously for an open position that did not have an incumbent.

Ms. Nichols said it would be hard to find someone with more knowledge than Mr. Sullivan and supported his reappointment. She noted commissioners were limited to two consecutive terms.

Ms. Arkin arrived at 5:45 p.m.

Mr. Siekiel-Zdzienicki averred an interview process was not needed if there was consensus to reappoint Mr. Sullivan.

Mr. Sullivan stated terms needed to be reasonable in length, noting in the Roseburg area, there were 20 year veterans on the Planning Commission. He was opposed to unlimited terms.

Mr. Dignam had reviewed all of the applications and felt all applicants were being considered. He was impressed with a number of the applicants and was pleased at the increased interest in serving on the Planning Commission. He thought no one would do a better job than Mr. Sullivan.

Ms. Arkin said the pool of applicants was impressive, yet felt Mr. Sullivan was the most outstanding among them.

In response to a question from Ms. Arkin, Ms. Schulz said applications were kept on file for one year.

Ms. Arkin asked to receive a copy of the letter sent to applicants not selected, adding she would like to co-sign the letters on behalf of the commission.

Mr. Dignam, seconded by Mr. McCown, moved that the Planning Commission recommend to the Board of County Commissioners that Mr. Sullivan be reappointed to the Planning Commission. The motion passed 8:0.

3. **DELIBERATIONS—Ordinance No. PA 1249 and Ordinance No. 7-08 Co-Adoption of the Florence Realization 2020 Comprehensive Plan and Lane Code Chapter 10 Amendments for Implementation of Policy Amendments to the Plan Under Consideration by the City Council.**

File: PA08-5363

Ms. Schulz offered the staff report. The City of Florence and Lane County had been working on language for the draft Intergovernmental Agreement (IGA) for the ground water health monitoring study for the Florence area. She said there was interest by the public and at the board level for additional opportunities for public input.

Sandra Belson, City of Florence Community Development Director, said the City of Florence City Council held the first reading on the comprehensive plan amendments and made changes to the document. She distributed a document entitled *EXHIBIT B—(as revised by City Council on Nov. 16, 2009)—COMPREHENSIVE PLAN AMENDMENTS—CITY OF FLORENCE ORDINANCE NO. 18, SERIES 2009.*

Ms. Schulz said it had been over a year since the City of Florence submitted its comprehensive plan to Lane County for co-adoption. This included the comprehensive plan, stormwater plan, transportation system plan, and several other refinement plans. The county had never adopted the Realization 2020 plan, and the 1988 plan remained in effect within the UGB of Florence. When the City of Florence brought the Realization 2020 plan to the county for co-adoption, the Planning Commission and BCC asked for additional policy information following review of the plan. Staff had been working on refining implementation language that was captured in Ordinance No. 7-08 amending Lane Code Chapter 10.

Ms. Schulz said during the development of the proposed language, the city had an opportunity to apply for grant funding to conduct a study of the ground water within the UGB to determine whether or not there was a contamination problem in the area. The adoption of the Environmental Protection Agency (EPA) funded IGA between the city and county for the three year groundwater monitoring study was a separate action that would be adopted under an Order by the BCC. The BCC had requested that the Planning Commission review the IGA and make a recommendation to the BCC on whether or not the IGA adequately addressed the need to establish the baseline of the existing groundwater condition. She added Lane County legal counsel had revised the language of the draft IGA and distributed a document entitled *DRAFT INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FLORENCE AND LANE COUNTY TO PROTECT GROUND WATER QUALITY IN THE FLORENCE DUNAL AQUIFER—Prepared afternoon of Nov. 13, 2009 edits added Nov. 17.*

Following a discussion on procedural issues for processing the City of Florence's request, Mr. Laird said the Planning Commission needed to discuss the IGA. The BCC wanted to hear from the Planning Commission on whether or not it supported an IGA to complete the process. Included in the IGA were some significant policy issues the Planning Commission should discuss and consider making a recommendation to the BCC.

Mr. Dignam called for a recess at 6:18 p.m. to enable commissioners to read the *Draft IGA* distributed by Ms. Schulz.

The Planning Commission reconvened at 6:30 p.m.

Ms. Belson explained the city would be able to expand the number of sampling wells with EPA funding to go as far as the Clear Lake area.

Mike Miller, City of Florence, Public Works Director, said there were 15 to 18 sampling points inside the UGB a year ago. This was expanded to 30 sampling points with EPA funding, which would provide a more comprehensive look at the aquifer, looking for impacts to the existing well field, generally from the area on the east side of Florence, Clear Lake which was Heceta Water District's water source, as well as a site for a new well field, that would be north/northwest of Fred Meyer's. There had been no study since the original study was conducted in 1982, and it was important to learn what was happening with the aquifer as a result of development in the area. The EPA grant would also fund gauging stations on Munsel Creek, sampling on the north fork of the Siuslaw River and other programs.

In response to Mr. Siekiel-Zdzienicki, Mr. Miller said information on specific water quality issues would be used to define or enhance the existing ground water model to help explain how the water moved through the aquifer. Staff would be looking at areas inside the city where industrialization and denser urbanization had occurred to help identify the impacts of human activity. Additionally, herbicides, fertilizers and phosphorous would be studied to look at impacts from golf courses and other zoning areas in Florence and the UGB.

Responding to a question from Ms. Nichols, Mr. Miller said caffeine could easily be added into the study criteria.

Mr. Miller asserted although specific monitoring well locations had not yet been identified, they could be located inside or outside of the UGB. The intent was to have a reasonable indication of water quality before it reached densified areas. Locations for 18 wells had been identified, but agreement had not been reached on the locations for the remaining 12 wells. Some would be in the Clear Lake watershed to provide information about what was going into the lake. The Heceta Water District would be sampling for personal care products, pharmaceuticals and a broad range of other substances. The purpose was to identify the impacts of development on the water sources. He confirmed the watershed for the dunal aquifer would be included in the study.

Mr. Dignam had attempted to determine the impact of the IGA and was concerned that there were significant unintended impacts. He said paragraph 10, *Wastewater System permitting*, said development would stop when the trigger point was reached outside the city and inside the UGB. He asserted this would stop development and he could not support the proposal with this condition.

Ms. Belson referred to a map that was circulating that showed the locations identified before EPA grant funding had been secured. The project had not yet been expanded to include the sites that would be added with the EPA funding. With the EPA funding came federal protocols and requirements that needed to be followed, which came with significant technical oversight. The City had prepared a quality assurance plan for the testing procedures and lab results for the EPA.

In response to a question from Mr. Noble regarding anticipated costs to Lane County, Ms. Schulz introduced Dan Hurley, Lane County Public Works Waste Management Division, who had been working with Ms. Belson and the City of Florence on this project.

Mr. Hurley explained the grant funding the project covered Lane County staff time which included salary plus overhead. Costs for staff travel time to Florence to inspect wells or for project consultants were not covered by the grant.

Responding to a question from Mr. Siekiel-Zdzienicki, Ms. Belson said the Heceta Water District had not been incorporated into the IGA but it was a partner in the EPA grant and it would receive direct benefit from the grant. The City of Florence was satisfied with this level of involvement from the water district. The city was negotiating an IGA with the water district related to the boundaries identifying the areas the city and the water district would serve. She confirmed that the EPA grant was funding water district testing outside of the UGB.

Ms. Arkin addressed the trigger concentration issues addressed in Section 10. She stated the commission had discussed that water in both quality and quantity would be a limiting factor in development and quality of life. She noted the trigger level for water quality standards was established by the EPA. She understood new septic systems that were more efficient than older systems were available and could be more appropriate in sandy soil. She asked if it was possible to be more specific about what mitigation response would available be if contamination was found.

Mr. Hurley responded the standards in Section 10 should be related to state and federal standards, with the exception of nitrates, which had not yet been determined. Although the federal standard for nitrates was 10 milligrams per liter, he understood the city wanted a lower standard. From the County's viewpoint, a lower standard had not yet been justified through vetting and study.

Mr. Goldstein said the federal nitrate standard had been set at 10 parts per million to counter nitrate in drinking water from inhibiting oxygen absorption in people. He thought it questionable to change the drinking water standard.

Mr. Hurley added if the federal trigger concentration levels were reached, there were federal and state programs that took effect. Staff had discussed appropriate actions with the State Department of Environmental Quality (DEQ), including ground water management, among others. DEQ had their own processes and the county would likely refer any questions to DEQ. He would be concerned about taking this on at the county level since the county did not have staff to do so. In the event any violations occurred, the state and federal agencies would impose their regulations and work with the local agencies to develop solutions.

Ms. Schulz said the county legal counsel had issues with Section 10 setting up a moratorium without having completed the study through the IGA.

Mr. Laird encouraged the Planning Commission to consider the purpose of the IGA and what it was intended to accomplish. The IGA was a document that said the county would participate with the city in collecting data and monitoring water quality and quantity in a specified area, the dunal aquifer. Mitigation for found hazards in the area after data was collected was a new

discussion topic and a separate agreement. He asked the commission if it was appropriate at this point to have anything about mitigation efforts in the current IGA.

Marsha Miller, Lane County Public Works Director, iterated county staff were very supportive of working with the City of Florence, and had been doing so for a long time. Although staff supported most of the language in the IGA, it would not recommend the language in Section 10 after consultation with legal counsel. There was a process that needed to be undertaken before a moratorium could be established. To predispose that a moratorium would be undertaken was premature. There were Oregon Revised Statute (ORS) requirements for establishing moratoriums that required public notice and a series of informational efforts. The DEQ may also have a parallel process the county or city would need to follow to establish a moratorium.

Ms. Schulz noted the same language in Section 10 of the IGA was included in Policy 13 of the Comprehensive Plan.

Ms. Miller stated Policy 13 had not yet been adopted by the BCC.

Mr. Sullivan reiterated the Planning Commission was not attempting to finalize the IGA, but rather the decision was whether the IGA should be included in the sixth reading by the BCC, therefore becoming part of the public record and part of the debate. It was outside the bounds of the commission's charge to continue to come up with the sources of mitigation. He averred the IGA was a sensible document that needed to be brought into the sixth reading and needed to be deliberated. He opined the BCC would listen to legal counsel and issues raised by the commissioners. It was not the responsibility of the commission to fine tune the IGA.

Mr. Goldstein sought clarification that the testing program was to ascertain the viability of pollution to new wells that would be within the UGB. He thought the urban growth area in question would affect the present drinking water source. He thought terms should be better defined to provide more accurate information to the public and officials. He alleged the wording of the definitions was disingenuous and that there was no scientific evidence.

Mr. Miller said time and travel studies, and a two year travel limit of the aquifer, were documented showing an area that consisted of the sole source aquifer that went from Lilly Lake below Highway 101 to Sutton Lake, Mercer Lake, Clear Lake, and Munsell Lake to the north fork of the Siuslaw River. Because of the interplay of the aquifer, the high permeability of the sands, the rainfall and how quickly water rose this time of year in the Florence area, the water tables were deep in some places and at the surface in others. The study was intended to determine what was going on in the entire area as well as specifically what was happening in the city's well field. The study was also looking at what was going into the well field from the rural area. He confirmed that the study area included areas upstream from the wells on the east side of Florence.

Ms. Nichols recalled a presentation that showed the aquifer and septic systems in the area could create problems for existing wells. However, there had not been a review since approximately 1982 and there had been significant development since that time. She opined it had not been proven there was no problem, but rather it was not known if there was a problem. With the existing system, once it was polluted the pollution was permanent.

Mr. Noble was pleased there was consideration being given to finding contamination and doing something about it. He did not think that needed to be addressed in this IGA since its purpose was to set up a monitoring program. How the county staff decided what to do about it could be addressed in another IGA, if in fact another IGA was needed. The policy statement contained similar language but it did not address cases of emergencies caused by failing systems.

Mr. Dignam asserted he was inclined to accept the interpretation of Mr. Miller and the City of Florence Public Works staff when it came to the interpretation of scientific evidence, and was therefore inclined to believe the accuracy of the data in the report opposed to those who challenged the report. In response to Mr. Laird's question, Mr. Dignam did not think Section 10 should be included in the report. He would not want to make a recommendation to forward the IGA to the BCC if it included Section 10 since it addressed the impact which was premature at this stage of the process.

Ms. Arkin noted the name of the IGA was "To Protect Groundwater Quality in the Florence Dunal Aquifer", which went beyond monitoring. She suggested the IGA should include a time limit by which the city and county would work together to develop specific actions to address the contaminations when they exceeded the trigger level.

Mr. McCown asked if the IGA could include language that set contamination levels to EPA standards, rather than city or county levels that may differ from those of the EPA. He was concerned that the language implied that the IGA could be terminated without any obligations to mitigate unacceptable contamination levels.

Mr. Hurley said there were state and federal programs in place, and they would take effect if any aquifer, as the current or future source of drinking water, was contaminated.

Ms. Arkin said the state could be more stringent than the EPA, and that should be reflected in the IGA language.

Responding to a question from Mr. Goldstein regarding criteria for bacterial concentration and percolation rates for sandy soil, Ms. Miller stated DEQ regulations addressed the septic approval process taking into consideration soil type for septic system design.

Mr. Siekiel-Zdzienicki concurred with Ms. Arkin's suggestion regarding a timeline to develop specific actions. He did not believe it necessary to address detail about percolation rates for varying soil types.

In response to a member of the public who wished to address the commission, Mr. Dignam raised a point of order, noting the public hearing was closed and questioned taking additional public testimony at this time.

Following a brief discussion by the commission, Ms. Arkin determined she would not entertain questions from the public at this time.

Mr. Noble, seconded by Mr. Dignam, moved that the Planning Commission recommend to the Board of County Commissioners that an intergovernmental agreement be included as part of their deliberations on

December 2, 2009. He further moved that the Planning Commission recommend that clause number 10 of the IGA be modified on the waste water system permitting to indicate that if contamination that triggered concentration levels was discovered in the City of Florence's urban growth boundary, the county would work with the city on an appropriate strategy to mitigate the contamination and shall meet within 60 days of the discovery to create that strategy. He further moved that the Planning Commission recommend that the trigger contamination action levels in clause number 7 be referenced to state and federal standards and they shall be modified as those are subsequently modified in this intergovernmental agreement.

Ms. Nichols did not want to preclude an agreement being entered into earlier than 30 days.

Mr. Dignam would support the motion. He did not fully understand the consequences of the 60 days. He asked what that meant in terms of practical action and what would happen if the parties did not meet within 60 days.

Mr. Noble stated it would be a breach of their agreement, which could force a political discussion between the parties.

As Mr. Laird understood the motion, as soon as the county learned there was a contamination problem, the county had 60 days to meet with the City of Florence to begin to formulate a plan. It did not mean that the plan would need to be completed within 60 days, as it would not be reasonable to expect that a full mitigation plan could be implemented for a hazardous waste issue in that timeframe. It would provide direction to both jurisdictions that this was a serious issue that needed to be mitigated. He added if one side was not meeting its obligation under the agreement the other side could raise the issue with the City Council or BCC for resolution.

Mr. Siekiel-Zdzienicki offered the DEQ would step in. The county and city should adhere to the framework in the agreement.

In response to a question from Mr. Sullivan, Mr. Noble explained the motion removed language that gave specific direction to institute a moratorium on the installation or replacement of septic systems.

The motion passed 7:1, with Mr. Goldstein voting against the motion.

4. Other Business

Mr. Laird agreed to email the November and December Planning Commission calendars to commissioners.

Responding to a question from Mr. Noble, Mr. Laird said the BCC approved the commission's work program as submitted with the exception of the removal of *eliminate template dwelling*. The BCC added *potential change to an urban industrial zone for Goshen rather than a rural industrial zone*. The BCC also adjusted several staff resource allocations (FTE's), including

increasing staff resources for legislative code update to reflect changes since the 2003 legislative session. The BCC was also looking for ways to streamline the code and make it more efficient, which could include BCC interpretation of certain policy issues, and could result in more than legislative code updates.

Ms. Arkin adjourned the meeting at 7:45 p.m.

(Recorded by Linda Henry)

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FLORENCE AND LANE COUNTY
TO CONDUCT A GROUNDWATER QUALITY STUDY IN THE NORTH FLORENCE DUNAL
AQUIFER***(This marked-up agreement shows amendments recommended since it was presented to
Council on Nov. 16. Deletions are shown in strikeout and additions are shown in double underline.)*

This Intergovernmental Agreement ("AGREEMENT") is made and entered into this ____ day of ____, 2009, between the City of Florence, a municipal corporation of the State of Oregon, ("CITY"), and Lane County, a political subdivision of the State of Oregon ("COUNTY"). CITY and COUNTY are jointly referred to as "the PARTIES."

PURPOSE

The purpose of this AGREEMENT is to outline the roles and responsibilities of the CITY and COUNTY for implementing a study of the groundwater and surface water quality in the North Florence Dunal Aquifer. This AGREEMENT establishes provisions for installing a water quality monitoring network, water quality parameters to be monitored and testing methods, a monitoring schedule, and initial actions to be taken if pollutants are discovered at specified trigger level concentrations.

DEFINITIONS

As used within the AGREEMENT, the PARTIES agree that terms below have the following definitions:

Aquifer: A geologic unit in the subsurface, comprising sediment or bedrock, in which the open spaces in the unit are filled with water, and through which water moves.

Chemical Baseline: The chemical composition and characteristics of groundwater or surface water, determined through one or more sampling events in order to provide a basis for recognizing future changes in water composition or characteristics.

Common Ions: Dissolved inorganic chemicals commonly found in both groundwater and surface water that reflect the evolution of the water composition with time as the water interacted with minerals, organic matter, and atmosphere, flowing through an aquifer, or over the ground surface. Common ions include calcium, sodium, magnesium, potassium, iron, manganese, chloride, sulfate and alkalinity (bicarbonate).

Contamination: The introduction to groundwater of chemicals, particulates, or biological pathogens that hinders the beneficial use of that groundwater as a result of a public health hazard or decrease in aesthetic water quality.

North Florence Dunal Aquifer: The dunal aquifer designated by the US Environmental Protection Agency as the North Florence Dunal Aquifer. This includes the geographic area of sand dunes extending from the Siuslaw River on the south to the headlands to the north and from the Pacific Ocean on the west to the abrupt change in topography from low rolling sand dunes characteristic of the City to the forested hills to the east (see attached Exhibit A). The aquifer supplies drinking water to the residents of Florence and other domestic wells in the vicinity of Florence, and is hydraulically connected to area lakes, e.g., Munsel and Clear Lake. The aquifer consists primarily of an accumulation of wind-blown sand and silt and is highly permeable.

Down Gradient: With respect to groundwater movement in the vicinity of a well or facility, the term *down-gradient* is used to refer to a location that, relative to the well, is in the direction that groundwater is moving.

Groundwater: Water that exists in the subsurface within the open spaces of an aquifer.

Monitoring Well: A shallow well that allows periodic sampling to determine groundwater quality. The well is often pump-tested upon drilling to determine aquifer properties, and allows the periodic determination of static water levels to determine direction of groundwater flow.

Potential Contaminant Source: A site that because of a specific activity or storage and use of chemicals is recognized as a potential contaminant threat to the environment, e.g., gas stations, dry cleaners, septic systems, auto repair shops, etc.

Sole Source Aquifer: A federal designation for an aquifer that is the sole or primary source of drinking water to an area, and the contamination of which would create a significant hazard to public health.

Static Water Level: The level of water, measured downward from the surface, that is in the well when the pump is at rest. The Static Water Level, when converted to elevation relative to seawater, indicates the elevation of the water table which controls the direction of groundwater flow.

Unconfined Aquifer: An aquifer that is directly connected to the surface, i.e., not separated from the surface by low permeability geologic material. Unconfined aquifers are more vulnerable to surface activities.

Water Table: The upper surface of an unconfined aquifer, below which the open spaces in the geologic material are filled with water and above which the open spaces are primarily filled with air.

RECITALS

The PARTIES agree upon the following recitals:

- A. The North Florence Dunal Aquifer was designated as a Sole Source Aquifer by the U.S. Environmental Protection Agency (U.S. EPA) in September of 1987; and
- B. The North Florence Dunal Aquifer is the only supply of drinking water for the CITY and for private domestic wells within the CITY's urban growth boundary. Clear Lake, which is the source of water supply for Heceta Water District, is hydrologically connected to the aquifer; and
- C. The protection from contamination of the North Florence Dunal Aquifer is important to the long-term sustainability of the drinking water source in the Florence area north of the Siuslaw River; and
- D. The EPA Resource Document "For Consideration of the North Florence Dunal Aquifer as a Sole Source Aquifer," EPA 910/9-87-167, September, 1987, page 5 states: "Rapid infiltration rates into the sand cover combined with a shallow water table make the North Florence Dunal Aquifer highly susceptible to contamination from surface activity.... Possible sources of aquifer contamination include fuel storage tank failure, accidental spills of hazardous material transported across the aquifer, septic tank effluent, storm runoff, pesticides, and chemical fertilizers." The "North Florence Dunal Aquifer Study, Final Report," June 1982, Finding 14 on page 104, states: "Subsurface disposal of sewage waste is the primary human caused source of nitrate-nitrogen. Except for the landfill, the school district and the golf course, there are no other significant human caused nitrate sources within the North Florence watershed."; and

- E. The EPA Resource Document "For Consideration of the North Florence Dunal Aquifer as a Sole Source Aquifer," EPA 910/9-87-167, September, 1987, page 9, states: "No feasible alternative sources to the North Florence Dunal Aquifer system exist in the area. Therefore, contamination of the aquifer would "create a significant hazard to public health"; and
- F. The recognition of a real or potential contamination problem in the aquifer requires an understanding of the current variations in the chemical and biological composition of ambient groundwater in the North Florence Dunal Aquifer, from both across the aquifer and from a seasonal perspective; and
- G. The determination of a chemical and biological baseline of water quality can best be accomplished through a system of strategically-placed monitoring wells; and
- H. In order to recognize contamination, these monitoring wells should be sampled on a frequency as determined and mutually agreed upon by the PARTIES, initially to provide background compositions, and subsequently to monitor future water quality for potential impacts, and
- I. The placement of the monitoring wells should be based on the direction of groundwater flow and, where possible, up-gradient and down-gradient of activities that have been determined by the Oregon Department of Environmental Quality (DEQ) as potential threats to water quality.

NOW THEREFORE, in consideration of the agreements contained herein, the PARTIES agree as follows:

1. **Contamination Inventory.** The PARTIES will develop an inventory of all potential contaminant sources within the North Florence Dunal Aquifer.
2. **Location of Monitoring Wells.** The Parties will jointly identify locations for the monitoring wells. Generally speaking, the monitoring wells will be located throughout the North Florence Dunal Aquifer, including above and below Clear Lake, in locations that quantify water flow within the aquifer (volume, direction and speed of travel); track the rise and fall of the water table; establish head data as function of location and in response to storm events. To the extent practicable and convenient, COUNTY will make COUNTY right of way or COUNTY property available for the installation of monitoring wells, subject to application for and approval of COUNTY facility permits for those locations within COUNTY right of way. COUNTY review of applications for facility permits will include review for issues of safety, maintenance, and impacts to other COUNTY facilities.
3. **Monitoring Wells.** Subject to any applicable COUNTY facilities permit, the CITY will install approximately 30 monitoring wells based on the potential contaminant threat inventory and a scientifically-based understanding of groundwater flow in the Florence Dunal Aquifer. The CITY will install the wells to a depth that will allow for adequate groundwater sampling during seasonally low water table levels. Wells will be placed in both up-gradient and down-gradient positions relative to potential contaminant sources. The CITY will ensure that the monitoring wells are constructed according to the standards of the Oregon Water Resources Department.
4. **Baseline Water Quality and Water Level Monitoring.** The CITY will conduct the baseline and periodic monitoring of water quality and water levels from the monitoring wells, as specified in provision 5, below.

5. **Monitoring Schedule.** The PARTIES agree that the following monitoring schedule, subject to mutually agreed upon revisions, will provide a representative and ongoing view of water quality and groundwater flow direction within the CITY and the CITY's urban growth boundary ("UGB"):

a) Water Level Monitoring. *The CITY will monitor the wells for static water levels quarterly and after major storm events for two years, and semi-annually thereafter.*

b) Chemical Monitoring. *During the first year of the program, the CITY will conduct chemical monitoring on a quarterly basis at all wells to identify the seasonal trends and variability that will establish baseline conditions for future comparison. After the first year, monitoring frequency may be reduced to semi-annually or annually, depending upon the results of the first year. The following chemical constituents will be monitored as part of a comprehensive groundwater monitoring program:*

- i) *The CITY will analyze all monitoring wells for the common ions, pH, temperature, oxidation reduction potential, conductivity, total organic carbon, and coliform bacteria.*
- ii) *The CITY will test monitoring wells in the CITY's commercial and industrial areas annually for organic chemicals (volatiles and pesticides) for which there are established drinking water standards. The frequency of testing may be reduced if the results are below drinking water standards.*
- iii) *The CITY will test all monitoring wells within the UGB north of the CITY once to determine the presence or absence of organic chemicals (volatiles and pesticides) in the residential area. If any of these chemicals are detected, the CITY will monitor the wells quarterly.*
- iv) *The CITY will monitor all monitoring wells in the residential area of the UGB quarterly for nitrate, phosphorous and coliform bacteria.*
- v) *The CITY will confer with the Oregon Department of Environmental Quality ("DEQ") and other appropriate parties to identify surface water sources to be tested. The CITY will test water from the identified sources for water quality parameters, including, coliform bacteria, pH, conductivity, nitrate, phosphorous, common ions, total organic carbon, and oxidation state.*

c) Biological Monitoring. *During the first year of the program, the CITY will conduct biological monitoring, following standard protocols for sampling, handling, etc., on a quarterly basis at all wells to identify the seasonal trends and variability that will establish baseline conditions for future comparison. After the first year, the CITY may reduce monitoring frequency to semi-annually or annually, if the results of the first year indicate concentrations below standard limits. Baseline is absent or non-detect for E. coli in groundwater.*

6. **Methods and Laboratories.** The CITY, in consultation with the Oregon Department of Human Services' Drinking Water Program, will ensure that the analytical methods used to determine water quality will be those approved by the U.S. EPA for determining drinking water quality, e.g., see <http://www.epa.gov/safewater/methods/index.html> and <http://www.epa.gov/waterscience/methods/>. The analyses will be conducted by one or more state-certified laboratories.

7. **Action Levels.** In order to identify and mitigate potential risks to water quality, the PARTIES, in consultation with the Oregon Department of Human Services' Drinking Water Program and the

DEQ, will work together to establish chemical and biological concentration action levels that, if exceeded, will result in the response actions identified in paragraphs 8 and 9. Below are typical contaminants and their corresponding action levels.

Contaminant	Trigger Concentration ¹	Health Concern
E. coli	Presence	Acute response possible
Nitrate	5.0 mg/L ²	Acute response possible
Phosphorous	0.1 mg/L	Nutrient
Fuels, solvents, etc.	Detection level	Chronic contaminant
Pesticides	Detection level	Chronic contaminant

1. Source: E. coli, Safe Drinking Water Act MCL; phosphorous, DEQ adopted Clean Water Act Criteria, Fuels, Solvents, Pesticides, DHS monitoring requirements for Public Water Systems. If referenced agencies change the established trigger concentrations, new standards shall apply unless otherwise agreed to by PARTIES. 2. Trigger concentration to be 5 milligrams per liter (DHS standard for quarterly monitoring) unless otherwise determined by the PARTIES based on analytical results of baseline monitoring. Since the naturally occurring nitrate level(s) is not known, a monitoring period of the groundwater for one year will be completed. A background or baseline level will be established through the testing program for groundwater in the areas outside of developed areas. Generally speaking this would be areas north of the current Florence UGB.

8. **Management Approaches.** The PARTIES will work together to identify contaminant source(s). If contaminates are found, the CITY will conduct further testing and site investigations to locate and isolate the contamination source, and establish and implement appropriate management approaches that have been demonstrated elsewhere to reduce the risks associated with the specific contamination.
9. **Groundwater Contamination.** If groundwater contamination is identified, the City will conduct further tests to attempt to identify the extent of the contamination, and the probable source(s) of the contamination. The PARTIES will meet within 60 days to develop and implement a strategy to mitigate and eliminate the source(s) of the contamination and may utilize a stakeholder group process that includes affected citizens where appropriate. The parties will also notify the appropriate regulatory agency(ies) for further evaluation and action.
10. **Technical Assistance.** The COUNTY will provide technical assistance to the CITY to support the development and implementation of groundwater protection strategies within the Florence Dunal Aquifer. CITY will reimburse COUNTY in an amount not to exceed \$46,481 paid over three years for costs associated with technical assistance from the COUNTY, payable in accordance with the City's EPA grant "Siuslaw Estuary Partnership: An Integrated Multiple Objective Approach to Watershed Protection and Restoration". COUNTY will invoice CITY on a quarterly basis for costs incurred. CITY compensation to COUNTY may be modified upon mutual agreement of the PARTIES.
11. **Duration of the Agreement.** This AGREEMENT remains in effect for 3 years from the date of execution and can be renewed for additional three-year periods upon mutual consent.
12. **Modification.** The AGREEMENT may be modified at any time by mutual written agreement of the PARTIES.
13. **Termination.** The AGREEMENT may be terminated by either party upon 180 days' written notice of termination. Not less than 120 days in advance of the termination date, the PARTIES

will meet to discuss the reasons for termination and any continuing responsibilities. The PARTIES agree to strive to reach mutual agreement with respect to those responsibilities.

14. **Dispute Resolution.** If a dispute arises between the PARTIES regarding breach of this AGREEMENT or interpretation of any term thereof, the PARTIES shall first attempt to resolve the dispute by negotiation prior to any other contested case process. If negotiation fails to resolve the dispute, the PARTIES agree to submit the matter to non-binding mediation. Only after these steps have been exhausted may either PARTY submit the matter to binding arbitration.
15. **Severability Clause.** If any portion of this AGREEMENT is declared invalid, or unconstitutional by a court of competent jurisdiction, such portion constitutes a separate, distinct, and independent provision and such holding does not affect the validity of the remaining portions of this AGREEMENT.

SIGNATURES OF PARTIES TO AGREEMENT

IN WITNESS WHEREOF, this AGREEMENT is executed by the authorized representatives of the COUNTY and the CITY. The PARTIES, by their representative's signatures to this AGREEMENT, signify that each has read the AGREEMENT, understands its terms, and agrees to be bound thereby.

CITY OF FLORENCE

By _____

Robert Willoughby

Title: City Manager

Date: _____

Address for Notice:

City of Florence Public Works
250 Highway 101 N
Florence, OR 97439

City of Florence Community Development
250 Highway 101 N
Florence, OR 97439

LANE COUNTY

By _____

Jeff Spartz

Title: County Administrator


Date: _____

Address for Notice:

Lane County Public Works
Waste Management Division
Environmental Services Section
3100 E. 17th Avenue
Eugene, OR 97403

P:\Community Development\Comp Plan\County Co-adoption 2008\City-County IGA\version to Council 12-21-09.doc

Attachment 6

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	ASSISTANCE ID NO.			DATE OF AWARD 12/08/2009	
		PRG WC -	DOC ID 00J04801	AMEND# - 0		
		TYPE OF ACTION New			MAILING DATE 12/15/2009	
		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 Armina 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		

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

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1010MOG005	10	E1C	10M3	403B26E	4158			566,797
									566,797

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